

TAMH NADU GOVERNMENT GAZETTE EXTRAORDINARY

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 21st July 1987 and is hereby published for general information: —

ACT No. 33 OF 1987.

An Act to provide for the use of Kidneys of deceased persons for therapeutic purposes and for matters connected therewith, in the State of Tamil Nadu.

BE it enacted by the Legislative Assembly of the State of Tamil Nadu in the Thirty-eighth Year of the Republic of India as follows :—

1. Short title, extent and commencement.—(1) This Act may be called the Tamil Nadu Kidneys (Authority for use for Therapeutic Purposes) Act, 1987.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall come into force on such date as the Government may, by notification, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “Government” means the State Government;

(b) “near relative”, in relation to a deceased person means any person related to him as spouse, parent, son or daughter ;

(c) “registered medical practitioner” means a medical practitioner who possesses any recognised medical qualification as defined in clause (d) of section 2 of the Indian Medical Council Act, 1956 (Central Act 102 of 1956) and who is registered under the provisions of the Tamil Nadu Medical Registration Act, 1914 (Tamil Nadu Act IV of 1914).

3. Authority for removal of kidneys of deceased persons.—(1) If any person had, either in writing or orally, in the presence of two or more witnesses (atleast one of whom is a near relative of such person) unequivocally authorised, at any time before his death, the use of his kidneys, after his death, for therapeutic purposes (such person being hereafter in this sub-section referred to as the donor), the person lawfully in possession of the dead body of the donor shall, unless he has in his possession sufficient evidence to be produced before the registered medical practitioner to the effect that the donor had subsequently revoked the authorisation aforesaid, grant to a registered medical practitioner all reasonable

facilities for the removal, for therapeutic purposes, of the kidneys from the dead body of the donor.

(2) Where NO such authorisation as is referred to in sub-section (1) was made by any person before his death but no objection was also expressed by such person to his kidneys being used after his death for therapeutic purposes, the person lawfully in possession of the body of the deceased person may, unless he has reason to believe that any near relative of the deceased person has objection to the deceased person's kidneys being used for therapeutic purposes, authorise the removal of the kidneys of the deceased person for their use for therapeutic purposes.

(3) The authority given under sub-section (1), or, as the case may be, under subsection (2), shall be sufficient warrant for the removal, for therapeutic purposes, of the kidneys from the body of the deceased person.

4. Removal of kidneys not to be authorised in certain cases — (1) No facilities shall be granted under sub-section (1) of section 3 and no authority shall be given under sub-section (2) of that section for the removal of kidneys from the body of a deceased person if the Person required to grant such facilities, or empowered to give such authority, has reason to believe that an inquest may be required to be held in relation to such body in pursuance of the provisions of any law for the time being in force.

(2) No authority for the removal of kidneys from the body of a deceased person shall be given by a person to whom such body has been entrusted solely for the purpose of internment, cremation an other disposal.

5. Authority for removal of kidneys in case of unclaimed bodies in hospital or prison.—(1) In the case of a dead body lying in a hospital or prison and not claimed by any of the near relatives of the deceased person, the authority for the removal of the kidneys from the dead body which so remains unclaimed may be given, subject to the provisions of sub-section (2), in the prescribed form, by the person in charge, for the time being, of the management or control of the hospital or prison or by an employee of such hospital or prison, authorised in this behalf by the person in charge of the management control thereof.

(2) The authority referred to in sub-section (1) shall not be given except after the expiry of such time as may be prescribed,

(3) No authority shall be given under sub-section (1) if the person empowered to give such authority has reason to believe that any near relative of the deceased person is likely to claim the dead body eventhough such near relative

has not come forward to claim the body of the deceased person within the time specified.

Explanation.—For the purposes of this section, “ hospital ” includes a nursing home, medical or teaching institution for therapeutic purposes or other like institution-

6. Authority for removal of kidneys from bodies sent for post-mortem examination for medicc-legal or pathological purposes.— Where the body of a person has been sent for post-mortem examination-

(a) for medico-legal purposes by reason of the death of such person having been caused by accident or any other unnatural cause; or

(b) for pathological purposes,

the person competent under this Act to give authority for the removal of the kidneys from such dead body may, if he has reason to believe that the kidneys will not be required for the purpose for which such body has been sent for post-mortem examination, authorise the removal for therapeutic purposes, of the kidneys of such deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to his kidneys being used for therapeutic purposes after his death or, where he had granted an authority for the use of his kidneys for therapeutic purposes after his death, such authority had not been revoked by him before his death.

7. Removal of kidneys to be made by registered medical practitioner and in presence of police officer.—No removal of kidneys under this Act shall be made,—

(i) by any person other than a registered medical practitioner who had satisfied himself, before such removal, by a personal examination of the body from which kidneys are to be removed that life is extinct in such body ; and

(ii) except in the presence of a police officer not below the rank of a Sub-Inspector of Police.

8. Preservation and deposit of kidneys removed from dead bodies.— After the removal of the kidneys from the body of a deceased person, the registered medical practitioner shall take such steps as may be prescribed for the preservation of the kidneys so removed and deposit the same in such Government Kidneys Bank as may be specified in the rules.

9. Saving—(1) Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body, or with any part of

the body, of a deceased person if such dealing would have been lawful if this Act had not been passed.

(2) Neither the grant of any facility or authority for the removal of kidneys from the body of a deceased person in accordance with the provisions of this Act nor the removal of kidneys from the body of a deceased person in pursuance of such authority shall be deemed to be an offence punishable under section 297 of the Indian Penal Code (Central Act XLV of 1860).

10. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

11. Power to make rules.—(1) The Government may make rules to carry out the purposes of this Act-

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which removal of kidneys from unclaimed bodies may be authorised, as required by section 5;

(b) the preservation of removed kidneys, as required by section 8 ;

(c) the publicity which may be given to the provisions and objects of this Act;

(d) any other matter which is to be, or may be, provided for by rules under this Act.

(3) All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(4) Every rule made under this Act shall, as soon as possible after it is made, be placed on the table of the Legislative Assembly and if before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or the Assembly decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(By order of the Governor)

S. VADIVELU,

Commissioner and Secretary to Government,

Law Department.

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