



Legal complexities of Kidney donation & Transplant

By:

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**The Transplantation of Human Organ Act
(THOA) 1994 & Rules of 2014
by government of India**

**The different state's domicile Rules
divides**

India in to 28 countries

Legal Framework

- **The Transplantation of Human Organ Act (THOA) 1994 by government of India**
- **The Transplant of Human Organs and Tissue Rules of 2014**
- **Gujarat Deceased Donor Organ and Tissue Transplantation Guideline (G-DOT Guideline) Dated 14th March 2019 - Government of Gujarat.**

(Health and Family welfare department Resolution No. MKM-1018-SFS-69-Ss)

Gujarat Aim and Object

- **Para 2(A) State Advisory Committee for Organ and Tissue Transplant (SACOT) & Functions & Responsibility**
- **Para 2 (B) State Appropriate Authorisation Committee (SAAC) & Functions & Responsibility**
- **Para 2 (C) State Organ & Tissue Transplant Organisation (SOTTO) A Convener appointed to head SOTTO, who will establish network of registered transplant with Regional Organ Tissue & Transplant Origination (ROTO)**

Gujarat Operation

- In Gujarat IKRDC-IKS hospital in Ahmedabad is the head quarter of SOTTO and works with ROTTO KEM Hospital in Mumbai and NOTTO at Safdarjang Hospital , New Delhi
- **RESPONSIBILITY OF SOTTO TO Create computerized state wait list of organ donation and distribute among the hospital.**

SOTTO - Gujarat

- **Appointment of convener of SOTTO and his responsibility –**
- **Will maintain computerized list know as Gujarat Network for Cadaver Organ Sharing (GNCOS) and will share organ received from hospital as per guideline of Government of Gujarat (Page-6 Para (ii)**
- **NOT as per Organ donation Act and Rues of the Government of India in Section 31 (4) (b) (d) & (e)**

Creation of Portal in Gujarat

- Para 3 of Guideline provides for creating a PORTAL / PLATFORM for The Gujarat Network For Cadaver Organ Sharing (CNCOS) which will be established, operated and maintain by Convener
- Hospital shall become members and NGO can also join
- This para also mentions how PORTAL WILL be created AND
- SAYS success of this whole program organ donation and transplant depends on this portal.
- **NO SUCH PUBLIC PORTAL CREATED**

Allocation of cadaver Organ Distribution System – Procedure:

- This whole para 13 gives authority to SOTTO and convener who and how hospital and patient will receive organ under cadaver.
- This para 13.1 (Page 22) provides and mentions domicile certificate is mandatory.

Allocation of cadaver Organ Distribution System – Procedure:

- Para 13.7 (page 24) provides one hospital for patient to register and if hospital is changed then priority is lost.
- This is in violation of section 31 (4) of b of the Transplant of Human Organ Rules 1995. (Rules) which allows hospital change

Allocation of cadaver Organ Distribution System – Procedure:

- Para 13.8 provides for two separate list. One for the government and grant in aid Hospital list and second for private hospital organ donation list .
- No such provision in the Act or Rules.
- In fact section 31 (4) (e) of Rules provides for following priority
- – State list – Regional list – National List – Person of Indian Origin – Foreigner

Allocation of cadaver Organ Distribution System – Procedure:

- **CADAVER DONATION TO GOVERNMENT HOSPITAL** Para 13.10 (A) (1) provides for another priority list for Government hospital if donor is deceased in that hospital that hospital will get preference.
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- **THIS para 13.10 (A) (4) further provides for allocation 1,3 and 5 to government hospital and 2 and 4 to common pool and non government hospital. - Non utilized organ will go in common pool. This is based on five-point roster.**

Allocation of cadaver Organ Distribution System – Procedure:

- **13.10 (B) (1) provide for private hospital can use their own deceased donor for wait listed patient and if not used organ will go to common pool**
- **13.10 (C) (1) COMMON POOL – FIRST COME FIRST BASIS BUT ONLY AFTER ABOVE UTILISATION BY GOVERNMENT AND PRIVATE HOSPITAL.**
- **Para (C) 2 makes mandatory to have domicile certificate in a list**

Allocation of cadaver Organ Distribution System – Procedure:

- Para (C) 3 provides that after using organ by public and private hospital where patient died and donated will get to common pool of cadaver list.
- Pare D provides after above utilisation to ROTTO and NOTTO
- **No provision for Person of Indian origin and Foreigners.**

Rules for Domicile Certificate in Gujarat

- Resolution - 1.11.1940 – Original domicile rule before independence – Object was for Bombay Civil Service Classification and recruitment rules
- Resolution 27.09.1950 – The rules amended due to change in the Indian constitution and Rules made determine “Citizenship of India” and determine SC, ST and Decelerated Community and provide special privileges and rights given under the Indian constitution (*Ref. Format of Domicile Certificate on Page 5*)
- Part I Provision for determination of Domicile
- Part 2 Questionnaire of the Domicile
- Part 3 Instruction regarding Scrutiny of the Domicile Certificate application - Para 3- Need for DC to receive State government benefit
- Format of Domicile certificate

Rules for Domicile Certificate in Gujarat

- Resolution 08.08.1963 by GOG – Form of the Domicile Certificate is adopted and changed by Government of Gujarat to adopt for need of the State of Gujarat
- Resolution 6.06.1964 by GOG – Form amended again and word “Nationality” and “Citizen of India” removed.
- Resolution 14.09.1976 by GOG – Questionnaire made in original rules of 1950 were amended and it was translated in Gujarati.

Rules for Domicile Certificate in Gujarat

- Question added above living outside India, Visa and receiving foreign citizenship at Question (gg)
- Question 7 ask for purpose of DC and also ask your Religion, Cast and Tribe

Rules for Domicile Certificate in Gujarat

- Letter dated - 8.06.1989 by GOG – Who can be issued DC and 10 years continuous stay required
- Guideline dated 5.09.2009 - To issue DC, addressed to Ahmedabad CP - For Medical and Engineering admission –
 - (i) if student born in Gujarat and gone out of Gujarat for study DC can be issued
 - (ii) If student born out of Gujarat but parents are settled in Gujarat and / or have real estate in Gujarat DC can be issued.

Rules for Domicile Certificate in Gujarat

- Circular dated 17.3.2011 – 10 years of stay can be waived if born in Gujarat and gone out of Gujarat for study.
- This was for medical and engineering students who has gone to Kota for 11 & 12 study

Domicile Requirement in Other states

- Gujarat – 10 years
- Maharashtra – 15 years
- Rajasthan – 10 years
- Tamilnadu – 10 years or parents
- Karnataka – 6 years
- Kerala – 10 years
- Andra Pradesh – 10 years
- MP – 5 years

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Domicile Requirement in Other states

- Punjab - 10 years / 15 years
- Haryana – 15 years
- Telangana – Land and 7 years
- Uttra Khand – 15 years / permanent home
- Utter Pradesh – 3 years / parents or applicant
- Assam – Land Owner / 10 years / parents / Grand parents 50 years

Real Example

- Company Employee
- Central Government Employee
- OCI Card Holder – One can become citizen of India in 7 years but for domicile not given at all after staying 12 years in Gujarat as you are foreign citizen

Likely Examples who may needs Domicile for organ transplant & may not get

- Mr. N. Modi
- Mr. M. Mandavia
- All MPs
- All out of state High & Supreme court Judges
- Arm force & Central Government employees
- Employees of Indian Multinational companies
- Migrant Workers
- All those who moved for job or business from their home states

Thank you

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