

Review Research Paper

Ethical and Legal Aspects of Required Request for Organ Donation

M. S. Vinay Kumar

Abstract

The demand for organs is ever increasing globally and even after coming out with many innovative measures to deal, the scarcity of organs continues to be of major concern for both developing and developed nations. This is a review research article wherein articles were searched using 'Google' search engine and hard copies available in the library of medical college. The articles were selectively filtered based on full text availability and access to references and a total of 20 articles were reviewed to study various ethical and legal complications arising out of required request for organ donation. Required request though initially seemed to be a very effective measure to overcome the shortage of organs, it has its issues which are highly debatable with respect to conflicts of treating doctor, psychological aspects of family members of patient, economic constraints and rights of donor. It is better to adopt strategies which are widely accepted and are less controversial before going for required request.

Key Words: Required Request, Ethical Issues, Legal Issues, Organ Donation

Introduction:

India is the second most populous country in the world after China with an estimated population of over 1.2 billion but unfortunately when it comes to organ donation it is one of the lower ranked nations with 0.08 donors per million people. Countries like USA and UK have 10-30 donors per million populations where as some of geographically very small nations like Singapore, Belgium and Spain are doing still better having a staggering statistics of 20-40 donors per million populations.

In India every year 5 lakh people die because of non-availability of organs, 2 lakh die from liver disease, 50 thousand from heart disease and over 10 lakh people suffer from corneal blindness. [1-3]

When we look at this disappointing statistics of India where people are dying for the want of organs there is an urgent need to address this issue seriously and look for more options to enhance organ donation even if it means any modifications in the existing legal system.

Corresponding Author:

Assistant Professor
Department of Forensic Medicine and Toxicology
Prathima Institute of Medical Sciences
Nagunur, Karimnagar. 505415 Telangana
E-mail: drvinaykumarms2006@gmail.com
DOR: 04.02.1015 DOA: 06.07.2015
DOI: 10.5958/0974-0848.2015.00075.5

This paper is aimed at addressing the shortage of organ donation by discussing the pros and cons and conflicts of required request which at the very outset looks very promising to increase organ donation.

Materials and Methods:

The present study was undertaken from July 2014 to January 2015 at Prathima institute of medical sciences which is located at Karimnagar town of Telangana state. The articles were searched using 'Google' search engine which guided further to selective websites and hard copies available in library.

The articles were filtered based on full text availability; access to references and a total of twenty articles were selected for this review research study. The articles were searched using keywords ethical issues, legal issues, required request and organ donation.

What actually is "Required Request"?

"Required request" or "required referral" is defined as "that it shall be illegal, as well as irresponsible and immoral to disconnect a ventilator from an individual who is declared dead following brain stem testing without first making proper enquiry as to the possibility of that individual's tissues and organs being used for the purposes of transplantation". [4]

In other words it makes mandatory for the hospital personnel to request the families of potential donors to donate organs and tissues. Though it is considered in many countries as a

significant step to overcome the shortage of organ donation and transplantation adequate evidence is certainly lacking to support this law.

Issues of Doctor While Treating the Patient:

Consider a road traffic accident case in which the patient has sustained multiple injuries and has edema of brain. In these circumstances the treating doctor faces a huge dilemma whether to administer intravenous fluids to patient which is considered beneficial for survival of organs like liver, spleen and kidney on one hand and on the other hand the very same IV fluids are detrimental to brain as it further worsens cerebral edema.

At this critical juncture, giving volume replacement therapy favors organ donation as organs are preserved compromising the function of brain whereas withholding it will favor the preservation of brain at the cost of other organs which in turn does not favor organ donation.

Apart from this physical aspect, the treating doctor also faces the mental challenge as he has to constant shift his views from saving the life of patient to making the patient potential donor which is considered as the toughest part for the doctor to deal with. [5-9]

Issues Regarding Psychological Aspects of Health Professionals and Family Members:

The first and foremost challenge is addressing the attitude of the health professionals as they have shift their thought process from dealing with the living patient who is battling for the survival to brain dead person whose sole purpose of management is only for organ procurement.

Next thing is health professionals dealing with the relatives of the patient. Till then they were giving hope to the family members about the survival of the patient but once the required request is made it automatically causes the relatives to lose hope about the chances of survival of their loved one.

The acceptance of brain death by the family members of the patient is very hard and in numerous instances they struggle to come to terms with it as patient will be still breathing and pulsating apart from having a warm body.

As for as informed consent is concerned, if we are to go by the literal meaning of it which states the patient or the relatives of the patient should be in compos mentis state and should be able to understand the nature of the proposed intervention offered by the health professional which is seriously compromised in these circumstances as family members are

emotionally disturbed. This makes required request less valid as it does not fully serve the purpose for which it is meant.

Later on when the relatives recover emotionally they may comprehend better to the concept of required request and may feel they are the soft targets of organ donation. They may even blame the health personnel for coercing them which actually is not the case. [10-13]

Issues Relating to Financial Constraints:

Once required request is made it implies that hospital should possess adequate infrastructure for organ preservation and transplantation. This includes team of transplant surgeons, trained assisting paramedical staff, fully fledged Operation Theater, proper preservation facilities for the donated organ and tissues, immunosuppressive drugs and so on.

All these will definitely put heavy monetary burden on the state. This means required request cannot be made at all centers as it is literally impossible to provide these facilities to all hospitals. This economic burden will certainly hinder the purpose of required request as it cannot be made to all and at every trauma center.

Some hospitals may receive funding from Non-Governmental Organizations or others but even then for this funding to sustain it requires a minimum number of transplants to be made in a single year in that particular center.

This may compel the hospital management and health professionals to convince the family of the deceased to donate organs for the survival of the hospital which again raises serious ethical issues.

Required request law in a sense creates an imbalance in resource allocation of health care delivery system in any nation whether developed or developing. Since a lot of money is spent on preservation of tissues and organs, transplant team etc. the health care of the vulnerable groups of society such as the poor, back classes and those who do not have easy access to health care facilities is severely compromised. [14-20]

Issues Regarding Health Education and Rights of the Donor:

This required request law may suppress the health education programs which aim to motivate the people to donate their organs. Though this request initially seem to increase organ donation rates in the long run there is less chance that it will produce the same result as it cannot replace less debatable methods of organ procurement like voluntary donation.

Another point which attracts a lot of debate is the rights of the donor being completely taken by hospital personnel and family members. How can a doctor make a request to family members of the patient to agree for organ donation? And how can any family member give consent for the same when the patient is still breathing and pulsating? This law if not properly guarded may lead to hastening of the death of the patient.

Conclusion:

Even though required request appears to be very attractive move initially to meet the increasing demand for organs, on the long run it has its inherent pitfalls with regards to doctors treating the patient, psychological aspects of family members of the patient, economic factors and issues of rights of the donor. In culmination it is better to address the shortage of organ donation by implementing strategies which are less controversial and which are ethically and legally less debatable.

References:

1. <http://timesofindia.indiatimes.com/aboutorgandonation.cms>
2. <http://skeptics.stackexchange.com/questions/9948/can-we-solve-most-blindness-by-cadaver-donationcan-we-solve-most-blindness-by-cadaver-donation>
3. <http://www.dnaindia.com/india/report-only-one-in-a-million-indians-donates-organs-1879110>.
4. The potential impact of an opt out system for organ donation in the UK, Opt in and opt out, November 2008
5. New York Public Health Law, Sec. 4351 (1985).

6. **Fred Plum, Jerome B Posner.** The Diagnosis of Stupor and Coma, 3rd edition, Philadelphia: F.A. Davis Co., (1983) 313.
7. **Howard H., Kaufman, Joanne Lynn.** "Brain Death," *Neurosurgery* 19:5 (November 1986), 855.
8. Uniform Anatomical Gift Act Sec. 7 (b).
9. **James F. Childress,** "Some Moral Connections Between Organ Procurement and Organ Distribution," *Journal of Contemporary Health Law and Policy*, V. 3 (1987), 85-110
10. **A. Earl Walker.** *Cerebral Death.* (Baltimore: Urban and Schwarzenberg, 1985), 136.
11. **Stuart J. Youngner et al.** "Psychosocial and Ethical Implications of Organ Retrieval," *New England Journal of Medicine* 313:5 (August 1985), 321-23.
12. **Stuart J. Youngner.** "Toward Greater Donor Organ Availability for Transplantation," *New England Journal of Medicine* 312:5 (January 1985), 319.
13. **Elizabeth Kubler-Ross.** *On Death and Dying* (New York: Macmillan, 1969); *Harriet Somoff Schiff, the Bereaved Parent* (New York: Crown Publishers, 1977).
14. Department of Health and Human Services, Health Care Financing Administration Proposed Rule, 52 Fed. Register 28666-28677 (July 31, 1987).
15. **Douglas J. Besharov, Jessica D. Silver,** "Rationing Access to Advanced Medical Techniques," *The Journal of Legal Medicine* 8 (November 4, 1987), 507-32.
16. **E. Corsini et al.** "Cyclosporine A and Transplantation: The Financial Impact," *Dialysis and Transplantation* 15:9 (September 1986), 496-507
17. Associated Press wire story, *The Toledo Blade* (September 11, 1986), p. 6 col. 1.
18. **Michael E. Whitcomb.** "Health Care for the Poor: A Public Policy Imperative," *New England Journal of Medicine* 315:19 (November 6, 1986), 1220-22.
19. **Burke.** "Why Not Spend Organ Funds on Other Programs," p. 9.
20. **Caplan.** "Requests, Gifts, and Obligations: The Ethics of Organ Procurement," *Transplantation Proceedings* 18:3, Suppl. 2 (June 1986), 49-56; see William E. Parks et al., "Ethical Issues in Transplantation," *Surgical Clinics of North America* 66:3 (June 1986), 635-36.