

Letter by the Chairperson to the Chief Ministers

D.O. No.11/5/2001-PRP&P

29 January 2004

Dear Chief Minister,

The Commission is deeply concerned about the illegal trade in human organs and in particular, trade in kidneys which often involves exploitation of poor people and violation of their human rights. There are reports of organ trafficking involving clinicians, managers of clinical centers, middlemen and others. The National Human Rights Commission has come across a number of instances in which the 'compassionate donor' provision in the Organ Transplantation Act is being abused. In many cases, the donor is an unrelated and unacquainted person who is lured into donating an organ such as the kidney by financial offers made by or on behalf of the prospective recipient.

The practice of 'organ purchase' has acquired the dubious dimensions of 'organ trade' with touts operating as middlemen, and creation of allegedly false records of a compassionate donation. While several steps are reported to have been initiated in Karnataka to make the review process stricter, in the media there are disturbing reports of this pernicious practice being widespread in Tamil Nadu, Andhra Pradesh and a number of other States. This illegal trade in human organs is unethical and is a serious violation of human rights.

The Commission had constituted a Core Group of medical experts to go into issues relating to public health and human rights and in particular about the trade in human organs. They have collectively expressed the view that the clause relating to 'compassionate donation' in the Organ Transplantation Act has been frequently exploited in an unethical manner, which is violative of human rights. They have suggested certain remedial measures.

To curb this abuse, the Commission recommends that the remedial measures which are enclosed be adopted. I request you to direct the concerned authorities to implement these measures. It would also be useful if the situation is monitored at the highest level at regular intervals. It would be appreciated if a report on the action taken on the above recommendations could be sent to the Commission at the earliest.

With regards,

Yours sincerely,

(A.S.Anand)

Encl: as above

To

All Chief Ministers of all States

ANNEXURE

Remedial Measures suggested by NHRC to all States/UTs to check illegal trade in human organs

- a) State Medical Councils should screen the records of hospitals performing organ transplants (especially kidney transplants) and estimate the proportion of transplants which have been made through a 'compassionate donor' mechanism. In case of kidney transplants, wherever the proportion has exceeded 5% of the cases performed in any of the past 5 years, the State Medical Council should initiate a full fledged enquiry into the background of the donors and the recipients, as well as a careful documentation of the follow-up health status of the donor and the nature of after care provided by the concerned hospital. Wherever police enquiries are needed for such background checks, the help of the State Human Rights Commission may be sought for providing appropriate directions to the State agencies.
- b) Cadaver Transplant programmes should be promoted to reduce the demand for 'live donors'.
- c) Facilities for chronic renal dialysis should be increased and improved in hospitals, to provide alternatives to kidney transplantation.
- d) Better facilities should be provided for transparent and effective counseling of prospective donors.
- e) Wherever possible, a mechanism should be established for independent verification of the veracity of 'compassionate donation' by a group of experts which is external to the hospital wherein the transplant procedure is proposed to be performed.