

THE BALOCHISTAN TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ACT, 2010

(Fed. Act VI of 2010)

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'THE ?[BALOCHISTAN] TRANSPLANTATION OF HUMAN ORGANS AND
TISSUES ACT, 2010

(Fed. Act VI of 2010)

[18" March, 2010]

An Act to provide for removal, storage and
transplantation of human organs and tissues for therapeutic
purposes.

Preamble. Whereas it is expedient to provide for the regulation,
removal, storage and transplantation of human organs and
tissues for therapeutic purposes and for matters connected
therewith or ancillary thereto;

It is hereby enacted as follows: —

Short title, extent 1. (1) This Act may be called the +[Balochistan]
and Transplantation of Human Organs and Tissues Act, 2010.
commencemen

t. (2) It extends to the whole of "[Balochistan].

(3) It shall come into force at once.

Definitions. 2. In this Act, unless there is anything repugnant in the
subject or context, —

(a) "brain dead" means irreversible loss of brain and
brain stem functions simultaneously;

(b) "death" means an irreversible cessation of the
entire function of brainstem;

(c) "donor" means a person who donates any part of
his body, organ, tissues or cell;

(d) "Evaluation Committee" means a committee
appointed under section 5;

(dd) "Government" means Government of

This Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 17" March, 2010; and published in the
Gazette of Pakistan (Extraordinary), dated 18" March 2010, pp. 89-96.

It was originally in the Federal ambit, which after the 18" Amendment in the Constitution of Islamic Republic Pakistan, 1973
with the abolition of the Concurrent Legislative List, was devolved to the provinces and declared continues to remain in force
under Article 270 (6) of the Constitution. Hence it was adopted, with amendments, for the province of the Balochistan by the
Balochistan Transplantation of Human Organs and Tissues (Amendment) Act 2012 (Act VII of 2012).

Inserted by Balochistan Act VII of 2012, passed by the Balochistan Assembly on 27" September, 2012; assented to by the

Governor of Balochistan on 1* October, 2012; and published in the Balochistan Gazette (Extraordinary) No. 90, dated 3 October 2012.

Inserted, *ibid.*

Substituted for the word “Pakistan” by Balochistan Act VII of 2012; published in the Balochistan Gazette (Extraordinary) No. 90, dated 3 October, 2012.

New clause (dd) inserted, *ibid.*

Donation of organ
or tissue by a
living person.

Balochistan; |

(e) "human organ" means any part of a human body,
organ or tissue;

(f) "Monitoring Authority" means an_ authority
constituted under section 8 to monitor
the. process of transplantation of human organs
or tissues and matters relating thereto;

(g) "payment" means payment in money or money's
worth but does not include any payment for
defraying or reimbursing,—

(1) the cost of removing, transporting or
preserving the human organ to be
supplied; or

(i1) any expenses or loss of earnings incurred
by a person so far as reasonably and
directly attributable to his supplying any
organ from his body.

(h) "prescribed" means prescribed by rules made
under this Act;

(i) "recognized institution" means a_ medical
institution or hospital for practice of operative
surgery in transplantation of human organs or
tissues to be recognized by the Monitoring
Authority;

(j) "recognized transplant surgeon or physician"
means Surgeons or Physicians possessing
appropriate qualifications, experience, and
trained in the relevant field, to investigate,
examine and carry out transplantation surgery of
human organs or tissues; and

(k) "transplantation" means the grafting of any human
organ or tissue of any living or deceased person
to some other living person for therapeutic
purposes.

3. (1) Notwithstanding anything contained in any other
law for the time being in force, a living donor who is not less
than eighteen years of age, may during his lifetime voluntarily

donate any organ or tissue of his body to any other living

person genetically and legally related, who is a close blood relative and the donation of organ or part or tissue by such person for therapeutic purpose shall be regulated in the manner as may be prescribed. In the case of regenerative tissue, i.e. stem cells, there is no restriction of age between siblings.

Explanation. — For the purpose of this section, the expression "close blood relative" means parent, son, daughter, sister, brother and includes spouse:

Provided that transplantation shall be voluntary, genuinely motivated and without any duress or coercion.

(2) In case of non-availability of a donor as explained under subsection (1), the Evaluation Committee may allow donation by a non-close blood relative, after satisfying itself that such donation is voluntary.

Donation of human 4. (1) Any person who is not less than eighteen years

organs or of age may before his death, in writing duly signed and verified tissues after

death by the respective Evaluation Committee, donate any of his eath.

organ or tissue for transplantation and for this purpose may authorize any medical institution or hospital duly recognized by the Monitoring Authority. The cases of unclaimed brain dead hospitalized patients shall be presented to an Evaluation Committee for transplantation after an intense search for their relatives within twenty-four hours.

(2) On the death of a donor referred to in subsection (1), any close relative of the deceased shall inform the Evaluation Committee about the deceased and cause the removal of the human organ or tissue in accordance with the authorization.

(3) A donation under this section may be executed in such form and manner as may be prescribed and may be revoked at any time during the lifetime of the donor in the presence of two witnesses.

Evaluation 5. (1) As soon as may be after the commencement of Committee. this Act the '[Government] may, by notification in the official Gazette, appoint as many Evaluation Committees as may be

necessary which shall consist of a surgical specialist, a medical

specialist, a transplant specialist, a nephrologists, and a

neurophysician and an intensivist where available and two local

Substituted for the words "Federal Government" by Balochistan Act VII of 2012; published in the Balochistan Gazette (Extraordinary) No. 90, dated 3rd October, 2012.

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Transplantation to
be carried out
by the team of
transplant
surgeons and

physicians, etc.

notables having a good record of social service. The Evaluation Committee shall be established for every medical institution and hospital where at least twenty-five transplants are being carried out annually.

(2) The Evaluation Committee shall —

(a) ensure that no organ or tissue is retrieved from non-related living donors without the prior approval of the Evaluation Committee;

(b) determine brain death of a person;

(c) determine propriety of removal of a human organ from any living person using brain death protocol to be formulated; and

(d) determine fitness or otherwise for transplantation of a human organ into any other body.

6. (1) The transplantation of human organ or tissue or removal of any part of human organ for the purpose of transplantation shall only be carried out by the recognized professionals who shall, before the removal of any human organ from the body of the deceased, ensure that written certification has been obtained from the Evaluation Committee that death has occurred.

(2) For the purpose of sub-section (1) a person shall be deemed to be medically and legally dead at the time when in the opinion of the Evaluation Committee, based upon acceptable standard of medical practice, there is —

(a) an absence of natural respiratory and cardiac functions and attempt at resuscitation are not successful in restoring those functions; or

(b) an irreversible and permanent cessation of all brainstem functions and future

attempt of resuscitation or continued supportive maintenance would not be successful in restoring such natural functions.

(3) On the commencement of this Act the

Effects etc., to the donor and the recipient

Monitoring Authority.

"[Government] shall on the recommendation of the Monitoring Authority, by notification in the official Gazette, publish the list of medical institutions and hospitals as recognized medical institutions and hospitals for practice of operative surgery in transplantation of human organs and _ tissues. The *[Government] may revise the list from time to time.

(4) No hospital or medical institution shall carry out transplantation of human organs and tissues unless it is recognized as provided in sub-section (3).

7. (1) No transplantation of a human organ and tissue from a donor other than defined in sub-section (1) of section 3 shall be carried out without prior permission of the appropriate Evaluation Committee and only at such medical institutions and hospitals which have been notified under sub-section (3) of section (6) provided that such donation by Pakistani citizens shall not be permissible to citizens of other countries.

(2) | No human organ or tissue shall be removed from the body of a living person except for the purposes of section 3 and no transplantation team of a recognized medical institution or hospital shall undertake the removal or transplantation of any human organ or tissue from a living donor unless they have explained the effects, complications and hazards connected with the removal of organ or tissue for transplantation to the donor and its outcome in the recipient respectively in such manner as may be prescribed.

8. 7[() The Government shall, by notification in the official Gazette, constitute a Monitoring Authority consisting of the following:

(i) Minister for Health or a nominee Chairperson of the Chief Minister;

(ii) Secretary to the Government, Member/ Health Department; Secretary

(iii) Secretary to the Government, Member

Home Department or his representative not below the rank of Additional Secretary;

(iv) President, Transplantation Member

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Substituted, *ibid.*

Substituted for the sub-section (1), *ibid.*

(v)

(vi)

(vii)

(viii)

(ix)

(x)

Society of Pakistan or his
nominee;

Executive Director, Pakistan
Medical Research Council or his
nominee;

President, Ophthalmologic
Society of Pakistan or his
nominee;

President Pakistan Medical
Association of Pakistan or his
nominee;

President, Pakistan Society of
Gastroenterology or his
nominee;

Surgical Transplant Specialist
nominated by the Government;
and

Any other outstanding Medical
Specialist nominated by the
Government.

Member

Member

Member

Member

Member

Member]

(2) The Authority so constituted shall —

(a)

(b)

(c)

(d)

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monitor transplantation and_ enforce
prescribed standards for recognized
medical institutions and hospitals;

investigate and hold inquiry into the
allegations of breach of any provision of
this Act;

inspect recognized medical institutions
and hospitals for examination of quality
of transplantation, follow up medical care
of donor and recipient and any other
matter ancillary thereto and also
periodically inspect institutions wishing
to be recognized;

cause establishment of a National
Registry and national and_ regional
networks for evaluating quality outcome
of transplant centers and _ cause
enhancement and _ promotion = of
transplantation; and

Prohibition of
removal or
transplantation
of human
organs for any
purpose other
than
therapeutic

purpose.

Punishment for
removal of

(e) due to shortage of available human organs for transplantation to meet lifesaving patient needs; the Monitoring Authority will explore and support the international collaboration of xenotransplantation in future, after considering all ethical and safety risks and also continue to examine and collect global data on the practices, safety, quality, efficacy and epidemiology of stem cell as well as non-human organ transplantation.

(3) The Monitoring Authority shall appoint an Administrator, preferably from the medical profession, in consultation with the '[Government]' and also appoint such other officers as may be required, on terms and conditions, to be determined by it, to carry out the day to day business of the Authority, for which the *[Government] shall provide a reasonable annual grant.

(4) The *[Government] in consultation with the Monitoring Authority shall establish a fund consisting of grants by the Federal and Provincial Governments and contributions by NGOs, philanthropists and other individuals for the transplantation or indigent patients including post transplant care and medicines.

(5) The pool of voluntary donors and registry of potential recipients shall be established and regulated as may be prescribed.

9. No donor and no person empowered to give authority for removal of any human organ shall authorize the removal of any human organ for any purpose other than the therapeutic purposes.

10. (1) Whoever renders his services to or at any medical institution or hospital and who for the purposes of

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Substituted, *ibid.*

Substituted, *ibid.*

human organ
without
authority.

Punishment for
commercial
dealings in

human organ.

transplantation, conducts, associates with or helps in any manner, in the removal of any human organ without authority, shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one million rupees.

(2) Where any person convicted under sub-section (1) is a registered medical practitioner his name shall also be reported to the Pakistan Medical and Dental Council for appropriate action including removal of his name from the register of Council for a period of three years for the first offence and permanently for subsequent offence.

11. Whoever —

(a) makes or receives any payment for the supply of, or for an offer to supply, any human organ;

(b) seeks to find a person willing to supply for payment of any human organ;

(c) offers to supply any human organ for payment;
or

(d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply any human organ, —

(1) takes part in the management or control of a body of persons, whether a society, firm, or whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or

company,

(ii) publishes or distributes or causes to be published or distributed any advertisement, —

(a) inviting persons to supply for

payment of any human organ;

(b) offering to supply any human organ
for payment; or

(c) indicating that the advertiser is
willing to initiate or negotiate any
arrangement referred to in clause

(d),

shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend to one million rupees.

Punishment for 12. | Whoever contravenes any provision of this Act or any contravention rule made, or any condition of the registration granted, of any other thereunder for which no punishment is separately provided in Provision o this Act, shall be punished with imprisonment for a term which this Act. . .

may extend to three years or with fine which may extend to three hundred thousand rupees or with both.

Offences by 13. | Where any offence, punishable under this Act has been companies. committed by a company, its Chief Executive or Director or any other person who, at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of business of the company, as well as the Company, shall be deemed to be guilty of offence and shall be liable to be

proceeded against and punished accordingly:

Provided that a company shall be liable to pay fine only:

Provided further that nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation. — For the purposes of this section,

(a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner

in the firm.

Cognizance of 14. (1) No Court inferior to that of the Magistrate of offences. First Class empowered under section 30 of the Code of Criminal Procedure, 1898 (Act V of 1898) shall try an offence

punishable under this Act.

(2) No Court shall take cognizance of an offence under this Act except on a complaint in writing made by, —

(a) the Monitoring Authority or its Secretary;
or

(b) an aggrieved person who has given notice

Savings.

Protection of
actions taken in
good faith.

Power to make
rules.

Removal of
difficulties.

of not less than fifteen days, in such
manner as may be prescribed, to the
Monitoring Authority, of the alleged
offence and of his intention to lodge a
complaint.

(3) Notwithstanding anything in section 32 of the
Code of Criminal Procedure, 1898 (Act V of 1898) it shall be
lawful for a Magistrate referred to in subsection (1) to pass any
sentence authorized by this Act even if such sentence exceeds
his powers under the said section.

(4) Notwithstanding anything in the Code of
Criminal Procedure, 1898 (Act V of 1898) the offences
punishable under this Act shall be non-bail able.

15. Neither the grant of any facilities of any authority for
removal of any human organ from the body of the donor
deceased or alive in accordance with the provisions of this Act
nor removal of any human organ or tissue from the body of a
deceased person with due care in pursuance of such authority
shall be deemed to be an offence punishable under section 297
of the Pakistan Penal Code (Act XLV of 1860).

16. (1) No suit, prosecution or other legal proceedings
shall lie against any person for anything which is done in good
faith or intended to be done in pursuance of the provisions of
this Act or rules made there under.

(2) No suit or other legal proceedings shall lie
against the '[Government]' for any damage caused or likely to
be caused for anything which is done with due care in good
faith or intended to be done in pursuance of the provisions of
this Act.

17. The '[Government]' may, by notification- in the official
Gazette, make rules for carrying out the purposes of this Act.

18. If any difficulty arises in giving effect to any provision

of this Act, the *[Government] may make such order as “[it]
considers necessary or expedient for the purpose of removing

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(Extraordinary) No. 90, dated 3" October, 2012.

Substituted, by Balochistan Act VII of 2012; published in the Balochistan Gazette (Extraordinary) No. 90, dated 3"
October, 2012.

Substituted for the words “President”, *ibid*.

Substituted for the words “it”, by Balochistan Act VII of 2012; published in the Balochistan Gazette (Extraordinary) No.
90, dated 3 October, 2012.

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the difficulty.

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