

The Rajasthan Corneal Grafting Act, 1982

RAJASTHAN

India

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Act 1 of 1984

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The Rajasthan Corneal Grafting Act, 1982 Act No. 1 of 1984 Statements of objects and Reasons. - The Rajasthan Corneal Grafting Bill, 1982 was passed by the House of the Rajasthan Legislative Assembly on 6th September, 1982. As provisions contained in clause 8 of the said Bill were repugnant to section 297 of the Indian Penal Code, 1860, the Governor reserved the said Bill for the assent of the President. The Ministry of Home Affairs, Government of India communicated to this State Government the observations of the Ministry of Health of that Government. The Ministry of Health suggested that the definition of the expression 'Registered Medical Practitioner' should be redefined in the manner suggested by it. It was also suggested that a provision should also be inserted with regard to protection of action taken under the Act in good-faith. The Ministry of Health further pointed out that provisions should be made for making the doctor, who removes the eyes, responsible for taking certain prescribed steps for preservation of eyes of the donor removed by him and also for authorising the removal of eyes from bodies sent for post-examination for medico-legal or pathological purposes if the eyes are not required for the purpose for which the dead body was sent for post-mortem examination. The State Government considered the suggestions of the Ministry of Health and agreed to undertake an amending legislation to incorporate the suggestions made by the said Ministry. The Ministry of Home Affairs required the State Government that the suggestions of the Ministry of Health may be incorporated in an amending Ordinance so that the assent of the President to the Rajasthan Corneal Grafting Bill, 1982 may be given simultaneously with the previous instructions of the President to the amending Ordinance. According a draft of the Rajasthan Corneal Grafting (Amendment) Ordinance incorporating therein all the amendments suggested by the Ministry of Health was sent to the Governments of India for obtaining previous instructions of the President. The President gave assent on January 6, 1984 to the Rajasthan Corneal Grafting Bill, 1982 which was published as Rajasthan Act. No. 1 of 1984 in Rajasthan Gazette Extraordinary, Part IV-A, dated January 11, 1984. As regards the Rajasthan Corneal Grafting (Amendment) Ordinance, which had been sent for previous instructions of the President, the Government of India by their letter dated January 19, 1984 addressed to the Secretary to the Governor, conveyed the previous instructions of the President subject to only minor change in the draft Ordinance. The change suggested by the Government of India while conveying the previous instructions of the President, was duly carried out. Accordingly,

the Rajasthan Corneal Grafting (amendment) Ordinance, 1984 (Ordinance No. 3 of 1984) was promulgated by the Governor on February 13, 1984. This Bill seeks to replace the said Ordinance. Published in Rajasthan Gazette Extraordinary Part III-A, dated 8.3.1984, page 117 [Published in the Rajasthan Gazette, Part 4-A, Extraordinary dated 11.1.1984.] [Received the assent of the President on the 6th day of January, 1984.] An Act to make provision for the removal and use of eyes of deceased persons for therapeutic and research purposes. Be it enacted by the Rajasthan State Legislature in the Thirty-third Year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Rajasthan Corneal Grafting Act, 1982. (2) It extends to the whole of the State of Rajasthan. (3) It shall come into force on such date and in such area or areas as the State Government may, by notification in the Official Gazette, appoint in this behalf and different dates may be appointed for different areas.

2. Definitions.

- In this Act, unless the context otherwise requires:- (a) "approved institution" means a hospital or a medical teaching or research institution for therapeutic purposes approved by the State Government for the purposes of this Act; (b) "near relative" in relation to a deceased person means any of following relatives of the deceased, namely, wife, husband, parent, son, daughter, brother and sister and includes any other person who is related to the deceased- (i) by lineal or collateral consanguinity within six degrees in lineal or collateral relationship; or (ii) by marriage either with the deceased or with any relative specially mentioned in this clause or with any other relative within aforesaid degrees; (c) ["registered medical practitioner (ophthalmic)" means medical practitioner who possesses any recognised medical qualifications defined in clause (h) of section 2 of the Indian Medical Council Act, 1956, and possesses a post-graduate qualification in Ophthalmology or a certificate showing that he had received training in enucleation procedure in the Ophthalmic Department of a hospital or teaching institution for therapeutic purposes approved by the State Government in this behalf and who is enrolled on a State Medical Register as' defined in clause (k) of the said section;] [Substituted by Rajasthan Act 7 of 1984 [13-2-1984]] (d) "unclaimed body" means the body of a deceased person who has no near relative or which has not been claimed by any of his near relatives within such time as may be prescribed.

3. Removal of eyes of deceased person.

(1) If at any time, any person has expressed a request in writing, [in the presence of two or more witnesses of whom at least one shall be a near relative of such person] [Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] that his eyes be used for therapeutic or research purposes after his death, the person lawfully in possession of his body after his death, may, unless such request had been subsequently withdrawn, authorise in writing the removal of the eyes from the body for the said purposes. (2) Where any such request has been expressed by any person orally in the presence of two or more witnesses during his last illness, the person lawfully in possession of the body of the deceased may, unless he has reason to believe that the request was subsequently withdrawn,

authorise in writing the removal of the eyes from the body for the purposes aforesaid.(3)without prejudice to the provisions of sub-sections (1) and (2), the person lawfully in possession of the body of a deceased person may authorise in writing the removal of the eyes from the body for the purposes aforesaid unless he has reason to believe-(a)that the deceased had expressed an objection to his eyes being so dealt with after his death, and had not withdrawn such objection; or(b)that a near relative of the deceased objects to the deceased's eyes being so dealt with.(4)The eyes of a still-born child may be removed for the aforesaid purposes with the consent of his parent or her parent, as the case may be.(5)An authority given under the provisions of this section in respect of any deceased person shall be sufficient warrant for the removal of the eyes from the body of the deceased person and their use for the purposes aforesaid; but not such removal shall be effected except by a [registered medical practitioner (ophthalmic)] [Substituted by Rajasthan Act 7 of 1984 [13-2-1984]] who has satisfied himself by a personal examination of the body that life is extinct.(6)[After the removal of the eyes from the body of the deceased person, the registered medical practitioner (Ophthalmic) shall take such steps for the preservation of the eyes so removed as may be prescribed.] [Added by Rajasthan Act 7 of 1984 [13-2-1984]]

4. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] Removal of eyes from bodies sent for post-mortem examination.

- Where the body of a person has been sent for postmortem 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 eyes from such dead body may, if he has reason to believe that the eyes 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 eyes of such deceased person provided that he is satisfied that the deceased person had not expressed, before his death, any objection to his eyes being used for therapeutic purposes after his death or, where he had granted an authority for the use of his eyes for the rapeutic purposes after his death, such authority had not been revoked by him before his death.

5. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] Authority to remove eyes when not to be given.

- Authority for the removal of the eyes shall not be given under section 3:-(i)if the person empowered to give such authority has reason to believe that an inquest may be required to be held on the body of the deceased in accordance with the provisions of any law for the time being in force; or(ii)by a person entrusted by another person with the body of the deceased person for the purpose only of its interment or cremation; or(iii)after the body has been removed to the burial or cremation ground for the purpose of burial or cremation.

6. [] [Renumbered by Rajasthan Act 7 of 1984 [13-2-1984]] Authority in respect of unclaimed body.

- In the case of an unclaimed body lying in an approved institution, an authority for removal of eyes under this Act may be given in such manner as may be prescribed by the person having the control or management of such institution, or by any other person authorised by him in this behalf.

7. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] Authority to remove eyes to be sent to the eye specialist eye bank or approved institution.

- An authority for removal of eyes given under this Act: shall, immediately after the death of the deceased, be sent to the nearest approved institution and the person having the control or management of the approved institution or an officer authorised by him in this behalf shall, immediately on receipt of such authority, arrange for the removal of the eyes from the body of the deceased for use for the purposes of this Act.

8. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] 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.]

9. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] Power to make rules.

- (1) The State Government may by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.(2)all rules made under this Act shall be laid as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which they are so laid, or of the session immediately following the House of the State Legislature makes any modification in any of such rules, or resolves that any such rule should not be made, such 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 thereunder.

10. [] [Renumbered and Inserted by Rajasthan Act 7 of 1984 [13-2-1984]] Savings.

(1)Nothing in the foregoing provisions of this Act shall be construed as rendering unlawful any dealing with the body or any part there of a deceased person which would have been lawful if this Act had not been passed.(2)Any authority for the removal of eyes given in accordance with the

provisions of this Act shall not be deemed to be a contravention of the provisions of section 297 of the Indian Penal Code, 1860 (Central Act 45 of 1860).