

# Body Donation- Consent from Non-Related Persons: Case Series, Review, and Recommendations

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## ABSTRACT

Learning anatomy by dissection of cadavers is the best way to learn anatomy. Voluntary body donation is one of the sources of procuring cadavers. In the case of donations after hospital or non-institutional deaths, the family members of the deceased approach the hospital authorities regarding body donation of the deceased. There are situations, where there is no available accompanying near relatives of the deceased, which pose a challenge for personnel involved in the process of body donation. In two of the reported cases, the body donation was done by the live-in partner and a friend of the deceased. In another reported case, the son of the deceased was nominated by the donor at the time of registration. As the son of the deceased was not available at the time of death of the donor, donation was executed by another near relative. Anatomy Acts of individual States in the Union of India and Acts of other countries are examined about the consent for body donation by persons other than near relatives. None of the Anatomy Acts of various States in India provide an alternative in the absence of near relatives for claiming the body or for donating the body, except for Acts of Delhi and Kerala. There is a need to bring in a Unified Anatomy Act, common for all the States and Union territories in India and include: friend, live-in partner and a nominated person in the provisions of the Act to enable them to give consent for body donation.

**Keywords:** Anatomy Act, Cadavers, Near relative

## INTRODUCTION

Donation of the body after death to medical colleges for medical education and research purpose is a noble gesture. Donated body is embalmed using preservative fluid and utilised for teaching undergraduate and postgraduate medical students as a part of their curriculum. Learning anatomy by dissection of cadavers is the best way to learn anatomy [1]. There is a growing demand for cadavers for dissection due to increase in the number of medical colleges in the country [2]. The increasing trend of hands-on cadaver workshops conducted to impart soft training skills to the surgeons regarding certain complicated procedures makes the cadavers indispensable.

Whole body donations are of two types. Voluntarily donors register beforehand and family of the deceased, donate the body of the registered donor after his/her death. In the case of donations after hospital or non-institutional deaths the relatives of the deceased approach the hospital authorities regarding body donation of the deceased. In either case, the onus lies on immediate family or near relatives to decide and carry out the donation of the body of the deceased.

Unavailability of a near relative of the deceased at the time of donation, result in a challenging situation for the non-related persons accompanying the deceased and the staff or officer of the medical college and hospital who is handling the donation of the bodies for educational and research purpose.

## CASE SERIES

**Case 1:** A 38-year-old male, auto rickshaw driver by occupation, was admitted to a government tertiary care hospital for treatment of terminal illness. He was accompanied by his wife and daughter. The individual eventually succumbed to his illness. Due to their poor financial status, the wife of the deceased decided to donate the body of her husband to the hospital. While processing the request for donation in the department of anatomy, she was unable to provide any legally admissible proof to establish the identity of

the deceased or identity of self or any documents to establish the relationship between her and the deceased. On further probing, she revealed that she was not a legally wedded wife of the individual (now deceased). An undertaking was obtained from the accompanying female that she is the only person in charge of the body, before proceeding to accept the body for embalming.

**Case 2:** A 73-year-old male retired school teacher, who was suffering from liver malignancy was hospitalised during the terminal stages of the disease and was accompanied by his friend. He recently expressed his wish to donate his body after death to his friend. He eventually succumbed to the illness. His friend approached the hospital authorities regarding the donation of his friends' body (now deceased) for medical education and research purpose. The accompanying friend revealed that the person (now deceased) used to live alone as he was a widower without children or any other near relatives. As the friend of the deceased was the only available person responsible for the body of the deceased, a notarised affidavit was obtained from him in this regard before accepting the body.

**Case 3:** The body of a 65-year-old female, registered voluntary donor was brought to the department of anatomy for donation by the daughter of the deceased. On reviewing, the body donation registration form was signed by the son of the deceased as a witness for registration and as a person who would be responsible for executing the donation after the death of the donor. But the requisition letter for accepting the donation was signed by the daughter of the deceased, who was accompanying the body along with necessary documents, as the son of the deceased was out of the country. The body was accepted and embalmed to be utilized for medical education and research.

## REVIEW OF LITERATURE

Anatomy Acts are examined with respect to the consent for body donation, from persons other than the deceased, before death.

## Indian Scenario

Bombay Anatomy Act 1949, now Maharashtra Anatomy Act - 2014 is one of the earliest Anatomy Act in the Country. This Act caters to the supply of unclaimed bodies and facilitates voluntary whole body donations to the teaching medical institutions [3,4]. According to Section 2(5), a body, which is not claimed by near relatives is labelled as an "unclaimed body". Section 2 (3) defines the term "near relative". Section 5A (1) of the Act elaborates on disputes about claims of near relative and states that such matters will be referred to an executive magistrate or such officer and that his decision will be final. Section 5B of the Act says that the person in lawful possession of the body is authorised to donate the body of the deceased to any approved institute for the purpose of medical education and research including anatomical examination and dissection [3,4]. Eligibility criteria for giving consent for donation of body of the deceased in the Anatomy Acts in various States in India are summarised in [Table/Fig-1] [3-13].

Persons eligible to claim an unclaimed body or to give consent for body donation	Anatomy Acts
Near relatives of the deceased including spouse, children, siblings, including consanguineous relatives in collateral relationship within 6 <sup>o</sup> and lineal relationship within 3 <sup>o</sup> or anyone associated through marriage with any of the mentioned relations	Bombay Anatomy Act 1949 [3], now Maharashtra Anatomy Act-2014 [4], Delhi Anatomy Act-1953[5], Kerala Anatomy Act-1957 [6], The Haryana Anatomy Act-1974 [7], The Himachal Pradesh Anatomy Act-1966 [8], The Karnataka Anatomy Act-1957 [9], The Tamil Nadu Anatomy Act-1951 [10], The Punjab Anatomy Act-1963 [11], The Orissa Anatomy Act-1975 with latest amendment-2012 [12], The Gujarat Anatomy Act-2011 [13]
Friend of the deceased	The Delhi Anatomy Act-1953 [5]
Recognised religious or public organisation belonging to the faith of the deceased	The Kerala Anatomy Act-1957 [6]

**[Table/Fig-1]:** Provisions for body donation in Anatomy Acts in various States of India [3-13].

## Scenario in Other Countries

Persons who are eligible to give consent for donation of body of the deceased as per Anatomy Acts in other countries is summarised in [Table/Fig-2] [14-25].

As per Uniform Anatomical Gift Act USA, a member of the immediate family can make the anatomical gift in the absence of document of gift by the individual, if there is no objection from the available family members. If there is an objection, the donation can be made by the majority of the members among the relatives of the decedent, who are reasonably available [14]. According to Human Tissue Act 2004, England, an individual can nominate one or more persons in the presence of witnesses, to represent him after his death and give consent for donation. Such nominations are revocable by the individual and renounceable by the nominees [15]. In Scotland, an adult person (a signatory), acting on behalf of a blind person or anyone who cannot write, can withdraw any prior authorisation given for the utilisation of their body for research and medical education, in the presence of a witness [16]. As per Human Tissue Gift Act of British Columbia, Canada, the head of the crematorium, funeral director, embalmer or the head of administration in case of hospital death cannot be automatically regarded as the person in lawful possession of the body, just because they have the body of the deceased in their possession [19]. According to the Transplantation and Anatomy Act of Australian Capital Territory, if the next of the kin of the deceased are unavailable and untraceable after making reasonable efforts to trace them, then the body of the deceased can be transported and utilised in the school of anatomy by a written order from an officer designated for a hospital for the purpose of the Act [23].

## DISCUSSION

Teaching Medical Institutes source cadavers from voluntary donations and unclaimed bodies donated to the department of anatomy under the Anatomy Act.

Place & Acts	Near relatives	Other relatives	Others
United States of America (USA), Uniform Anatomical Gift Act - 2006 [14]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Children</li> <li>Parents</li> <li>Brother</li> <li>Sister</li> </ul>	<ul style="list-style-type: none"> <li>Adult grandchildren</li> <li>Grandparents</li> </ul>	<ul style="list-style-type: none"> <li>Agent of the deceased</li> <li>An adult who exhibited special care and concern for the decedent</li> <li>Persons who were acting as the guardians of the decedent at the time of death</li> <li>Any person having the authority to dispose off the decedent's body</li> </ul>
England, Human Tissue Act 2004 [15]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Child</li> <li>Parent</li> <li>Brother</li> <li>Sister</li> </ul>	<ul style="list-style-type: none"> <li>Grandparent</li> <li>Grandchild</li> <li>Child of brother or sister</li> <li>Stepfather or Stepmother</li> <li>Half-brother or Half-sister</li> </ul>	<ul style="list-style-type: none"> <li>Partner</li> <li>Long-standing friend</li> </ul>
Scotland Human Tissue Act-2006 [16]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Child</li> <li>Parent</li> <li>Brother</li> <li>Sister</li> </ul>	<ul style="list-style-type: none"> <li>Grandparent</li> <li>Grandchild</li> <li>Uncle</li> <li>Aunt</li> <li>Cousin</li> <li>Niece</li> <li>Nephew</li> </ul>	<ul style="list-style-type: none"> <li>Civil partner</li> <li>Partner in a relationship characteristic of husband and wife for a period not less than six months</li> <li>Long-standing friend</li> </ul>
Ontario, Canada. The Anatomy Act-1990 [17]	<ul style="list-style-type: none"> <li>Relatives</li> </ul>		<ul style="list-style-type: none"> <li>Friend</li> <li>Any person who gives an undertaking to dispose off the body (Unclaimed body)</li> </ul>
Alberta, Canada. Human Tissue and Organ Donation Act-2006 [18]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult Child</li> <li>Parent</li> <li>Adult sibling</li> </ul>	<ul style="list-style-type: none"> <li>Adult next of kin</li> </ul>	<ul style="list-style-type: none"> <li>Guardian</li> <li>Live-in partner</li> </ul>
British Columbia, Canada. Human Tissue Gift Act-1996 [19]	<ul style="list-style-type: none"> <li>Spouse adult children</li> <li>Parents</li> <li>Adult siblings</li> </ul>	<ul style="list-style-type: none"> <li>Any next of kin who is an adult</li> </ul>	<ul style="list-style-type: none"> <li>Any available person in lawful possession of the body</li> </ul>
Prince Edward Island, Canada. Human Tissue Donation Act-2008 [20]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Parent</li> <li>Brother</li> <li>Sister</li> </ul>	<ul style="list-style-type: none"> <li>Any next of kin</li> </ul>	<ul style="list-style-type: none"> <li>Guardian</li> <li>Person who shared residence with the deceased and has knowledge about the wishes of the deceased regarding body donation</li> <li>Coroner</li> </ul>
South Australia, Australia. Transplantation and Anatomy Act-1983 [21]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult Children</li> <li>Parent</li> <li>Adult siblings</li> </ul>	<ul style="list-style-type: none"> <li>Senior available next of kin</li> </ul>	<ul style="list-style-type: none"> <li>Domestic partner</li> </ul>
Queensland, Australia Transplantation and Anatomy Act-1979 [22]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Adult child</li> <li>Parent</li> <li>Biological sibling</li> </ul>	<ul style="list-style-type: none"> <li>Adopted sibling</li> <li>Sibling by surrogacy</li> <li>Step brother</li> <li>Step sister</li> <li>Adopted child</li> <li>Stepchild</li> <li>Foster child</li> <li>Child by surrogacy</li> </ul>	<ul style="list-style-type: none"> <li>A person who, under Aboriginal tradition or Island custom, is regarded as a child or a sibling</li> <li>A person who, under the cultural traditions of their community, is regarded as a child or a sibling</li> </ul>
Australian Capital Territory, Transplantation and Anatomy Act-1978 [23]	<ul style="list-style-type: none"> <li>Senior available next of Kin</li> </ul>		
Western Australia Anatomy Act-1930 [24]			<ul style="list-style-type: none"> <li>Executor of the Will</li> <li>Person in lawful possession of the body</li> <li>Nominated person</li> </ul>
New Zealand Human Tissue Act-2008 [25]	<ul style="list-style-type: none"> <li>Spouse</li> <li>Child</li> <li>Parent</li> <li>Brother</li> <li>Sister</li> </ul>	<ul style="list-style-type: none"> <li>Grandparent</li> <li>Stepchild</li> <li>Stepparent</li> <li>Step brother</li> <li>Step sister</li> </ul>	<ul style="list-style-type: none"> <li>Nominated person(s)</li> <li>Civil union partner</li> <li>de facto partner</li> <li>Person who is in close relationship</li> <li>Guardian</li> </ul>

**[Table/Fig-2]:** Persons eligible to claim an unclaimed body or to give consent for body donation of the deceased [14-25].

The Maharashtra Anatomy Act 2014, previously Bombay Anatomy Act 1949 is taken as reference Anatomy Act in the present discussion as the most of the State Anatomy Acts including the Tamil Nadu Anatomy Act- 1951 which our institution follows, are similar to the Bombay Act 1949 [4,11].

In the reported case 1, the female accompanying the deceased was not a legally wedded wife but a live-in partner and had a daughter as a result of the relationship. The antecedents of any other prior marriage or any other family members of the deceased were unavailable to contend the donation or counterclaim the body even after 24 hours, which is necessary to label the body as unclaimed. Criminal procedure code 1973 and the Hindu Marriage Act 1955 does not recognise the live-in relationship, but according to Protection of Women from Domestic Violence Act 2005 (PWDVA) and Supreme Court of India Judgement, any couple living together for a long time are presumed married until proven otherwise [26]. The aggrieved live-in partner will be protected by Domestic Violence Act 2005, which provides protection and maintenance and thereby grant the right of alimony [27]. Even if the live-in relationship is legally validated, the said relationship is not mentioned in the Anatomy Act while defining the term "near relative". Hence, there is a need to expand the definition of "near relative" in the Anatomy Acts enacted by the States in the Union of India to include live-in relationship. However, in the present reported case, a written undertaking was obtained from the said live-in partner of the deceased person.

In the reported case 2, the deceased was not accompanied by any near relatives during hospitalisation or after death except for his friend. Hence, due to unavailability of any relative of the deceased person, the friend of the individual (now deceased) took upon himself to carry out the wish of the said individual to donate his body after his death for medical education and research purpose. None of the Anatomy Acts in the country mention the alternatives in the event of the absence of near relative of the deceased as in the case of orphans and persons without family members, yet who wished to donate their body after death, with an exception being Delhi and Kerala Anatomy Acts [5,6]. Hence, it is necessary to bring friends and other persons acting on behalf of the family of the deceased into the provisions of the Anatomy Acts in India and extrapolate this provision to all other States and Union territories in the Union of India by promulgating a Unified Anatomy Act. However, in the present case, a notarised affidavit is obtained from the friend of the deceased person that there are no available family members to claim the body and that he is the only available responsible person to give consent for donation of the body of the deceased.

**Case 3:** According to the Anatomy Act the consent for body donation should be given by the "near relative" of the donor after his/her death even though the deceased is registered as a voluntary donor. In the present case, the donor registration form was signed by the son of the deceased donor as deemed fit by the donor at that time of registration. But the son of the deceased was out of the country at the time of the death of the donor and was not available. So, the daughter of the donor carried out the execution of donation. Section 5B (2) (b) says that any person who is in lawful possession of the body is not allowed to donate the body in case of any objection from any near relative. Objection, if any, arising from the son of the deceased, due to his changed preferences, at a later stage, could make things complicated. According to Section 5A (1) of the Act, the decision of the executive magistrate will be final and conclusive in a case of any dispute regarding the person claiming the body of the deceased as to whether (or not) is a near relative. However, it does not deal with disputes arising from conflicting claims of the near relatives as close as son and the daughter, at a later stage (sometime after donation and embalming). Although, such disputes arising during the process

of the donation will culminate in categorically rejecting the body for donation.

At this juncture, there exists a need to explicitly define the term "person in lawful possession of the body", as Section 5B (1) of the Act empowers the person in lawful possession of the body to carry out the donation of the body of the deceased.

## RECOMMENDATIONS

- There is a need to formulate a Unified Anatomical Act by the Union of India, which applies to all the States and Union territories in the Union of India similar to the United States Revised Uniform Anatomical Gifts Act 2006.
- There exists a need to explicitly define the term "person in lawful possession of the body".
- There is a need to put forth a provision to deal with disputes arising from the counterclaiming near relatives who are unavailable at the time of donation, yet object to body donation at a later stage.
- There is a need to increase the purview of the Anatomy Acts in India to provide eligibility for giving consent for body donation by including the following:
  1. Validate the consent from a long-standing friend of the deceased.
  2. Validate the consent from a partner who is in a live-in relationship with the deceased for a period not less than six months.
  3. Increase the purview of the definition of the term "near relative" to include niece or nephew of the deceased person.
  4. Validate the consent from a Guardian or any person who had stayed in the same house along with the deceased before his death and had prior knowledge of the deceased persons' desire to donate the body.
  5. Provision for the nomination of one or more persons by the donor to act on behalf of him after his death, with the facility to withdraw such nominations any time by the donor and a facility to renounce such nominations by the nominated person.
  6. Specify the validity of the consent of the son and daughter or brother or sister of the deceased person, only if they are above 18 years of age.
  7. To include adopted child, step-child or child out of surrogacy in the definition of the term "near relative" of the deceased.
  8. To empower the coroner or investigating officer to give consent in case the next of kin of the deceased are untraceable after making reasonable efforts.

However, till such provisions are included in the respective Anatomy Acts of the States in the Union of India, it is important to get a notarised affidavit from the person accompanying the body of the deceased that he is acting on behalf of the family of the deceased in their absence to claim or donate the body. It is in the interest of whole medical fraternity to facilitate the whole process of body donation. Cumbersome donation procedure will discourage people from volunteering for a noble cause.

Applications for driving license and hospital admission can include a column for giving consent for donating organs and the whole body after death. Teaching medical institutions can promote voluntary whole body donations by giving extensive publicity and setting up a help desk to facilitate donation process and disburse information.

The whole exercise is essential to respect the expressed will of the individual who wish to serve humanity after his death by donating his body for utilisation in medical education and furthering research.

## CONCLUSION

Voluntary body donation is important to maintain sufficient number of cadavers for teaching in medical colleges. There are certain lacunae in the Anatomy Acts of India regarding the consent for body donation in the absence of near relative of the deceased. It is imperative to expand the term "person in lawful possession of the body" for the purpose of consent for body donation. We recommend the inclusion of friend, live-in partner or any other person nominated by the donor in the provisions of the Anatomy Acts of India. Such inclusions are justifiable as long as the death is institutional (hospital) or extra-institutional, in the absence of any suspicion of foul play. Further, there is a need to bring in a Unified Anatomy Act common for all the States and Union territories in India. After all, the purpose of the Act is to increase the number of cadavers available for medical education and research.

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