

West Bengal Act XIX of 1965¹

THE WEST BENGAL CORNEAL GRAFTING ACT, 1965.

AMENDED ..

.. West Ben. ActLIV of 1980.

[11th August, 1965.]

An Act to make provision with respect to the removal and use for therapeutic purposes of eyes of deceased persons.

WHEREAS it is expedient to make provision with respect to the removal and use for therapeutic purposes of eyes of deceased persons;

It is hereby enacted in the Sixteenth Year of the Republic of India, by the Legislature of West Bengal, as follows:

1. (1) This Act may be called the West Bengal Corneal Grafting Act, Short title, 1965 and

(2) It extends to the whole of West Bengal.

commence-
mem-

(3) This section shall come into force³ at once and the remaining provisions of this Act shall come into force in such area and on such date as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for this purpose in respect of different areas.

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

(1) "approved institution" means any hospital or other institution approved by the State Government by notification in the *Official Gazette* for the purposes of this Act;

(2) "authorised medical practitioner" means a medical practitioner possessing any of the medical qualifications included in the Schedules to the Indian Medical Council Act, 1956, registered under any law for the time being in force in any State regulating the registration of practitioners of medicine and attached to, or employed in, an approved institution;

(3) "near relative" in relation to a deceased person means any of the following relatives of the deceased, that is to say wife, husband, parent, son, daughter, brother and sister

102 of 1956.

¹For Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, Part IVA, dated the 7th April, 1965, page 177; For proceedings of the West Bengal Legislative Assembly, see the proceedings of meeting of that Assembly held on the 11th May, 1965.

²This Act came into force on 15th August, 1966 in the Corporations of Calcutta and Howrah and in the municipalities of South Suburban, Beliaghata, Kamrhati, Dum Dum and South Dum Dum Municipality, vide Notification No. 5251 TR-15/66, published in the *Calcutta Gazette, Extraordinary*, Part I of the 11th August, 1966, page 2909.

¹Clause 3(a) was inserted by s. 2 of the West Bengal Corneal Grafting (Amendment) Act, 1980 (West Ben. Act LIV of 1980) w.e.f. 2.4.1981.

³Section 2A was inserted by s. 3, *ibid.*

(Section 2A.)

and includes any other person who is related to the deceased

- (i) by lineal consanguinity within three degrees, or by collateral consanguinity within four degrees, or
- (ii) by marriage with any of the aforesaid relatives.

Explanation. In this clause the expressions "lineal consanguinity" and "collateral consanguinity" have the same meanings, respectively, as in the Indian Succession Act, 39 of 1925.

(3a) "person lawfully in possession of the body" includes a near relative or the deceased person and, in the case of the body of a deceased person lying in a hospital, prison, nursing home or other institution, the person having the control and management of such hospital, prison, nursing home or other institution, as the case may be, but does not include a person who has been entrusted with the body of a deceased person solely for the purpose of its interment, burial, cremation or disposal in any other way;

(4) "prescribed" means prescribed by rules made under this Act,

Form of 2A. Where admission of a patient to a hospital, nursing home or other institution is sought for, the person in charge of admission of the patient or to such hospital, nursing home or other institution shall impress on the admission. patient or, if the patient is incapable of making a judgment, the person accompanying the patient, the implication and necessity of donation of the eyes of the patient to be used for therapeutic purposes in the event of death of the patient. A prescribed form of request shall be presented for signature of the patient or the person accompanying him. The form of request signed by the person accompanying the patient shall be deemed to have been signed on behalf of the patient and shall have the same effect as if signed by the patient himself:

Provided that it shall not be obligatory on the part of the patient or the person accompanying him to sign such a form for admission of the patient to the hospital, nursing home or other institution.

XIX of 1965.]

(Sections 3, 3A.)

3. Save as hereinafter otherwise provided in this Act,

(1) if any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his eyes be used for therapeutic purposes then, after his death, the person lawfully in possession of the body of the deceased person may, unless he has reason to believe that such request was subsequently withdrawn, authorise the removal of the eyes from the body of the deceased for use for those purposes; [or]

*(I A) where a request in the prescribed form has been made under section 2A, then after the death of the patient, the person lawfully in possession of the body of the deceased person may, unless he has reason to believe that such request was subsequently withdrawn, authorise the removal of eyes from the body of the deceased for use for therapeutic purposes;

(2) notwithstanding the provisions of² [clauses (1) and (1 A)], the person lawfully in possession of the body of a deceased person may³ [subject to section 3A,] authorise the removal of the eyes from the body of the deceased for use for the purposes aforesaid unless such person 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

5* * * *

6* \$ **

⁷3A. (1) The body of a deceased person lying in any hospital, prison, nursing home or other institution shall be claimed within one hour and a half from the time of death in case there is no facility for cold storage of the dead body, or within six hours from the time of death where facilities for the cold storage of the dead body are available.

(2) If the body is not claimed within the period referred to in subsection (1) and if the person having the control and management of the hospital, prison, nursing home or other institution, as the case may be, considers that the removal of the eye or eyes from the body of the deceased may be authorised, he shall give the authority for such removal in such form as may be prescribed.

[West Ben. Act

(Sections 3B and 4-7.)

Authority
for removal
of eyes of
deceased
persons.

Claiming or
dead bodies.

²Sub-clause (b) was omitted by s. 4(3)(c), *ibid.*

The 'Explanation' was omitted by s. 4(4), *ibid.*

³Sections 3A and 3B were inserted by s. 5, *ibid.*

⁷See footnote 7 on page 25, ante.

3B. On removal of the eye or eyes from the body of the deceased person for use for therapeutic purposes, the person who removed the eye or eyes shall grant a certificate in such form as may be prescribed.

4. Authority for the removal of the eyes from the body of any deceased person shall not be given under section 3 if the person empowered thereunder to give such authority knows or has reason to believe that an inquest may be required to be held on the body in accordance with the provisions of any law for the time being in force in that behalf.

26
Removal of
C>CS

The West Bengal Corneal Grafting Act, 1965.

5_ (1) Subject to the provisions of sub-section (2) an authority given under the provisions of this Act in respect of any deceased person shall be sufficient warrant for the removal of the eyes from the body of such deceased person and for the use of the eyes so removed for the purposes aforesaid.

Gram of
certification
removal of
eyes.

(2) No removal of eyes from the body of any deceased person under an authority given under this Act shall be effected except by an authorised medical practitioner who must have satisfied himself by a personal examination of the body that life is imminent. "

Authority
not to be
given in
certain
circumstances.

(3) Any eye removed from the body of a deceased person under an authority given under this Act shall, after such removal, be made over by the authorised medical practitioner removing the eye to the nearest approved institution and shall be kept therein for use for therapeutic purposes.

Penalty.

6. If any person contravenes, or abets the contravention of, any of the provisions of this Act, he shall, on conviction before a Magistrate, be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.

Savings.

7^ (I) Nothing in this Act shall be construed as rendering unlawful any dealing with, or with any part of, the body of any deceased person which would have been lawful if this Act had not been passed,

(2) Notwithstanding anything contained in section 297 of the Indian Penal Code, an authority for the removal of the eyes from the body of a deceased person given in accordance with the provisions of this Act or the removal of the eyes from the body of the deceased person in pursuance of such authority shall not be deemed to be an offence punishable under the said section.

The West Bengal Corneal Grafting Act, 1965.

XIX of 1965.]

(Section 8.)

8. (1) The State Government may, by notification in the *Official Gazette*, make such rules as may be necessary for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions of this Act such rules may be made in respect of any matter which is required to be or may be prescribed.

27

¹Word within the square brackets was inserted by s. 4(t) of the West Bengal Corneal Grafting (Amendment) Act, 1980 (West Ben. Act LIV of 1980) w.e.f. 2A1981.

²Clause (1A) was inserted by s. 4(2). *ibid.*

³The words, brackets, figure and letter within the square brackets were substituted for the word, brackets and figure "clause (1)" by s. 4(3)(a). *ibid.*

⁴The words, figure and letter within the square brackets were added by s. 4(3)(b). *ibid.*

