

Summary of Gujarat HC Judgment

Now, a person from outside Gujarat may register on the state's registry of organ receivers without a domicile certificate. On Monday, the Gujarat high court issued a landmark ruling that invalidated the state government's preference for Gujarat residents in organ transplants from cadavers under the Transplantation of Human Organs and Tissues Act, 1994.

Prior to this change, the Gujarat Deceased Donor Organ and Tissue Transplantation Guidelines (G-DOT) stated that a person who did not have Gujarat domiciliary status was not given precedence on the list of recipients and could not register on the state list.

A Canadian citizen who has been residing in Gujarat for the past 13 years was having trouble getting an organ transplant because of the old rules. She is currently waiting for a kidney transplant in Ahmedabad alongside a woman from Jharkhand who has been there for the past seven years. There is another woman in Madhya Pradesh who needs a liver transplant.

As Justice Biren Vaishnav said, G-two DOT's offending phrases 'directly contradict' the Act and its implementing rules. The court said that the guidelines specify a patient can register with any transplant centre in the country, but only one centre in a certain state or area. In the words of one critic, "the establishment of such criteria via guideline, in the form of executive orders is a colorable use of powers." "They are considered to be unconstitutional, irrational, and in violation of basic rights under Articles 14 and 21 of the Constitution of India," the ruling states.

The state administration has argued that giving preference to locals for cadaver transplants is necessary to prevent the commodification of organ transplants and the emergence of a 'transplant tourism' industry. The state administration stated that a lack of donations prompted the adoption of the legislation.

The court rejected the plaintiffs' contention, noting that the Act's stated goal is to ban organ trading. To limit access to healthcare services inside a state's borders was never intended to be the result of the Act or the Rules. While interpreting Article 21 of the Constitution of India, the supreme court declared

that the 'Right to Health' is an important element of the 'Right to Life' and the state has a fundamental duty to provide health services. The court ruled that it is unlawful and unconstitutional to deny petitioners who are not residents of Gujarat access to medical care.

Mr. Sivaram Vemu,
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