POSTHUMOUS AUTONOMY AND FAMILY AUTHORITY: RE-EXAMINING THE LEGAL EFFECT OF PRIOR CONSENT TO ORGAN DONATION UNDER INDIAN LAW

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ABSTRACT

Organ donation after death raises a great legal question concerning who has the authority over the decision to retrieve organs from the deceased person.an individual may express their consent during their lifetime to donate organs after death but the legal problem arises in the practical process of organ retrieval where the consent of the family or the person lawfully possessing the deceased body contradicts .The Transplantation of Human Organs and Tissues Act, 1994 is the statutory framework which recognizes the prior authorization by donor for removal of organs after death ,while the regulatory framework also provides for declarations and consent involving relatives or the lawful possessor in certain circumstances .this create an important area for examining the relationship between the deceased persons prior wish and the authority exercised by family members after death so this paper adopts a doctrinal approach to examine the statutory provisions under the transplantation of human organs and tissues rules ,2014,along with relevant constitutional principles relating to dignity ,autonomy and privacy of the deceased donor it analyses situation where the deceased has expressly consented to donation ,has not expressed decisions ,or has expressly opposed donation ,and examines the legal position of the family in reach situation .this paper seeks to identify ambiguities in the existing framework and suggests possible legal clarification to ensure greater consistency between individual autonomy and the role of family members in deceased organ donation

Keywords: organ donation, posthumous autonomy, donor consent, family authority, THOTA, Article 21, organ transplant.

INTRODUCTION

Organs play a crucial role in the functioning of the human body. When an essential organ fails, it can result in serious health consequences and may ultimately lead to death. In such situations, the idea of organ transplantation becomes significant. Organ transplantation has become an important means of saving and improving human lives, particularly in cases where patients suffer from irreversible organ failure. However, in the case of deceased organ donation, where organs are removed after death for transplantation, the issue is not merely a medical procedure but also involves questions of consent, legal authority and individual autonomy. Indian law regulates the removal and transplantation of human organs and tissues primarily through the Transplantation of Human Organs and Tissues Act, 1994 (THOTA).[1] The Act recognises the possibility of a person authorising the removal of their organs after death for therapeutic purposes and also provides for situations where no such prior authorisation was given.[2] The Transplantation of Human Organs and Tissues Rules, 2014 further prescribe the procedural framework and documentation relating to organ and tissue donation.[3]

One of the important aspects of deceased organ donation is the decision made by an individual during their lifetime regarding the donation of their organs after death. A person may voluntarily express their willingness to donate their organs with the intention of contributing to the treatment and survival of patients in need of transplantation. Such a decision reflects the individual's personal choice and autonomy in determining what should happen to their body after death. However, deceased organ donation presents a distinct legal question because the decision to donate is made while the person is alive, whereas the actual removal of organs takes place only after death. Therefore, the legal significance and continuing effect of a person's prior consent become important considerations in determining whether and to what extent such a decision should be respected after death.[4]

At the same time, deceased organ donation involves the participation of persons other than the deceased donor. After death, the deceased person's body comes under the lawful possession of another person, and the statutory framework recognises the role of such person in relation to

[1] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994).
[2] *Id.* § 3(2)– (3).
[3] *Transplantation of Human Organs and Tissues Rules*, 2014, r. 5(4)(a), Form 7
[4] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(2).

the removal of organs. The law also provides for situations in which no prior authorisation for organ donation was made by the deceased and permits authorisation to be given in accordance with the conditions prescribed under the Act.[5] Thus, the legal framework does not deal with deceased organ donation solely as a matter of individual choice, but also incorporates the role of relatives and other persons connected with the deceased. This interaction between the deceased person's prior wishes and the authority recognised in others forms an important aspect of the legal framework governing posthumous organ donation in India.

The legal position becomes particularly significant when the wishes expressed by the deceased during their lifetime differ from the position taken by the family after death. For instance, a person may have formally expressed their willingness to donate their organs after death, while the family may subsequently object to the retrieval of those organs. Conversely, there may also be situations where a person has not given prior authorisation , but the family or another person lawfully in possession of the body seeks to authorise organ removal in accordance with the law. These situations raise questions regarding the extent to which prior consent given by the deceased continues to have legal effect even after death and the nature of the authority that may be exercised by the family or other persons under the existing legal framework. The absence of a clear resolution to such competing considerations makes the relationship between posthumous autonomy and family authority an important area for legal examination. The issue also has a constitutional dimension, particularly in relation to the right to privacy, personal autonomy and human dignity under Article 21 of the Constitution of India. The recognition of personal autonomy implies that individuals should have a meaningful choice in matters concerning their bodies and personal decisions. In the context of organ donation, this raises the question of whether a person's clearly expressed decision during their lifetime regarding the donation of their organs after death should be given continuing legal significance. At the same time, the involvement of family members raises questions about how individual autonomy should be balanced with the interests and authority recognised by law in relation to the deceased person's body. Therefore, the issue of posthumous organ donation extends beyond the statutory framework and requires examination from a constitutional perspective as well.[6]

Although Indian law provides a statutory framework for organ donation after death, the relationship between an individual's prior authorisation and the role of family members or other

[5] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(3).
[6] INDIA CONST. art. 21.

persons involved after death requires closer examination. In particular, the legal position becomes significant when a deceased person has expressed a clear intention to donate their organs, but a different position is subsequently taken by the family. The existing framework therefore raises questions about the extent to which prior consent should be given continuing legal significance and how competing claims of individual autonomy and family authority should be addressed. This research seeks to examine these issues by analysing the relevant provisions of the Transplantation of Human Organs and Tissues Act, 1994, the Transplantation of Human Organs and Tissues Rules, 2014, and relevant constitutional and judicial principles. The study particularly aims to examine whether the existing legal framework provides sufficient clarity regarding the legal effect of prior consent to organ donation after death and the role of family authority in cases of disagreement.

2. LEGAL FRAMEWORK GOVERNING DECEASED ORGAN DONATION IN INDIA

2.1 AUTHORITY FOR REMOVAL OF HUMAN ORGANS OR TISSUES

The Transplantation of Human Organs and Tissues Act, 1994 provides the primary statutory framework governing the removal and transplantation of human organs and tissues in India. Section 3 of the Act specifically deals with the authority for the removal of human organs or tissues. Section 3(1) permits a donor to authorise, during their lifetime and subject to the prescribed conditions, the removal of an organ or tissue from their body for therapeutic purposes. This provision establishes the legal basis for an individual's decision to donate their organs and tissues after death. The significance of such prior authorisation becomes more apparent under Section 3(2), which deals with the removal of organs or tissues after the death of a person who had previously authorised such removal.[7]

2.2 PRIOR AUTHORISATION UNDER SECTION 3(2)

Section 3(2) of the Transplantation of Human Organs and Tissues Act, 1994 gives specific legal recognition to a person's prior decision to donate an organ after death. The provision requires that the donor's authorisation must be made in writing and in the presence of two or more witnesses, at least one of whom must be a near relative of the donor. The authorisation must unequivocally express the donor's decision regarding the removal of the organ after death

[7] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(2).

for therapeutic purposes. Once such authorisation has been validly made, the person lawfully in possession of the deceased donor's body is required to provide reasonable facilities to a registered medical practitioner for removal of the authorised organ, unless there is reason to believe that the donor subsequently revoked the authorisation.[8]

This provision is significant because it does not merely recognise organ donation as a voluntary expression of intention; it attaches a statutory consequence to a valid prior authorisation. At the same time, the provision expressly recognises the possibility of subsequent revocation, thereby indicating that the donor's later decision may affect the continuing validity of the earlier authorisation. The precise legal effect of this statutory recognition, particularly when the deceased's prior authorisation is met with opposition from family members after death, requires closer examination.

2.3 ROLE OF THE PERSON LAWFULLY IN POSSESSION OF THE BODY

Section 3(2) also identifies the role of the person lawfully in possession of the deceased person's body. Where the deceased had validly authorised the removal of an organ or tissue after death, the person lawfully in possession of the body is required to provide reasonable facilities for the removal of the authorised organ or tissue by a registered medical practitioner. The provision therefore places a statutory obligation upon the person in possession of the body rather than treating that person as having an unrestricted discretion to determine whether the deceased's prior authorisation should be given effect. However, this obligation is subject to an important qualification: if there is reason to believe that the donor had subsequently revoked the authorisation, the removal cannot proceed merely on the basis of the earlier authorisation.[9]

2.4 WHERE NO PRIOR AUTHORISATION WAS MADE

Section 3(3) of the Act deals with a different situation where the deceased had not made any prior authorisation for the removal of their organs or tissues. Where the deceased had also not expressed any objection to the use of their organs or tissues after death, the person lawfully in possession of the body may authorise the removal for therapeutic purposes. However, this authority is subject to an important limitation: the person must not have reason to believe that

[8] *Id.* § 3(2)
[9] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(2).

any near relative of the deceased objects to the use of the organs or tissues.[10] Thus, unlike Section 3(2), where the deceased has expressly authorised organ donation during their lifetime, Section 3(3) operates in the absence of such prior authorisation and gives a limited role to the person lawfully in possession of the body, subject to the position of the deceased's near relatives.

TABLE 1. Statutory Distinction Between Sections 3(2) and 3(3) of THOTA

Aspect	**Section 3(2)**	**Section 3(3)**
Prior authorisation	Deceased has given prior authorisation	No prior authorisation by deceased
Deceased's position	Authorised removal after death	Must not have expressed objection
Person involved after death	Person lawfully in possession of body	Person lawfully in possession of body
Nature of authority	Required to provide reasonable facilities for removal	May authorise removal
Role of near relative	Relevant to the statutory authorisation process	Objection of a near relative can affect the authority to remove
Central issue	Effect of deceased's prior decision	Authority in the absence of a prior decision

2.5 PROCEDURAL FRAMEWORK UNDER THE 2014 RULES

The Transplantation of Human Organs and Tissues Rules, 2014 supplement the statutory framework under the Act by prescribing procedures and documentation relating to organ and tissue donation. The Rules provide a formal mechanism for recording the intention of an individual to donate organs and tissues after death. Form 7, prescribed for organ or tissue pledging, enables a person who has attained the age of eighteen years to expressly authorise the removal of specified organs or tissues after being declared brain-stem dead for therapeutic purposes.[11]The Rules also provide for documentation concerning the deceased person's prior authorisation and, where such authorisation is absent, the decision of the near relative or person

[10] *Id.* § 3(3).
[11] T*ransplantation of Human Organs and Tissues Rules*, 2014, r. 5(4)(a), Form 7.

lawfully in possession of the dead body through the prescribed form.[12]

The procedural requirements are significant because they provide documentary evidence of the donor's intention and distinguish between a situation where the deceased had previously authorised donation and one where no such authorisation exists. Thus, the Rules provide an important link between the individual's prior decision and the procedure followed after death. The forms therefore provide a procedural basis for identifying whose decision is being relied upon when organ removal is considered.

3. PRIOR CONSENT AND FAMILY AUTHORITY: THE CENTRAL LEGAL CONFLICT

3.1 WHEN THE DECEASED HAS GIVEN PRIOR CONSENT

Where a person has validly authorised the donation of their organs during their lifetime, the Transplantation of Human Organs and Tissues Act gives statutory recognition to that decision. Section 3(2) provides that where the deceased had, in writing and in the presence of two or more witnesses, at least one of whom is a near relative, unequivocally authorised the removal of an organ or tissue after death for therapeutic purposes, the person lawfully in possession of the body shall provide reasonable facilities for such removal by a registered medical practitioner. The provision is subject to the qualification that there must be no reason to believe that the donor subsequently revoked the authorisation.[13]

The provision is significant because it gives the deceased person's prior decision a specific legal consequence after death. The language of Section 3(2) indicates that the role of the person lawfully in possession of the body is primarily facilitative where a valid prior authorisation exists. Thus, the statutory scheme distinguishes between a situation in which the deceased has expressly authorised donation and one in which no such authorisation was made. This distinction becomes particularly important when considering whether a subsequent objection by family members can affect an otherwise valid prior authorisation, an issue that requires separate examination.

3.2 WHEN NO PRIOR CONSENT HAS BEEN GIVEN

[12] *Id.* Form 8
[13] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(2).

The legal position differs where the deceased has not given any prior authorisation for the removal of organs or tissues. Section 3(3) of the Act permits the person lawfully in possession of the body to authorise the removal of an organ or tissue for therapeutic purposes where the deceased had not expressed any objection to such use. However, this authority is subject to the condition that the person does not have reason to believe that any near relative of the deceased objects to the removal.[14] Unlike Section 3(2), where the deceased's own prior authorisation forms the basis for organ removal, Section 3(3) operates in the absence of such authorisation and recognises a limited role for the person lawfully in possession of the body.

This distinction demonstrates that the statutory framework gives different legal significance to an individual's express decision and to the absence of a prior decision. Where the deceased has expressly authorised donation, the law provides for the implementation of that authorisation subject to its statutory conditions. Where no such authorisation exists, the decision-making process may involve the person lawfully in possession of the body and is expressly conditioned by the absence of objection from a near relative. The difference between these two situations is central to understanding the extent of family authority under Indian law.

3.3 FAMILY OBJECTION TO THE DECEASED'S PRIOR CONSENT

A more complex legal situation arises when a person has validly authorised organ donation during their lifetime but a family member subsequently objects to the removal of the organs after death. Section 3(2) expressly recognises the deceased person's prior authorisation and requires the person lawfully in possession of the body to provide reasonable facilities for removal, subject to the possibility of subsequent revocation by the donor. However, unlike Section 3(3), which expressly refers to an objection by a near relative where no prior authorisation exists, Section 3(2) does not expressly state that a subsequent objection by a near relative invalidates or overrides a valid prior authorisation.[15]

This difference in the statutory language gives rise to an important interpretative question. If the deceased has complied with the statutory requirements and has not subsequently revoked the authorisation, it becomes necessary to determine what legal significance should be given to a family objection raised after death. At the same time, the involvement of the family cannot simply be disregarded, particularly because the statutory framework recognises the role of near

[14] *Id.* § 3(3).
[15] *The Transplantation of Human Organs and Tissues Act*, No. 42 of 1994, INDIA CODE (1994), § 3(2)–(3).

relatives in different circumstances and because the deceased's body remains subject to legal and procedural control after death. The resulting tension between the deceased's expressed wishes and the position taken by the family forms the central legal conflict examined in this study.

3.4 LEGAL UNCERTAINTY IN THE EXISTING FRAMEWORK

The existing legal framework therefore presents a significant question concerning the relationship between an individual's prior consent and the authority exercised after death. Section 3(2) gives statutory recognition to a person's prior authorisation and places an obligation on the person lawfully in possession of the body to provide reasonable facilities for organ removal, subject to subsequent revocation. In contrast, Section 3(3) specifically takes into account the absence of prior authorisation and the possibility of objection by a near relative. The difference between these provisions creates an important area for legal inquiry: where a person has clearly and validly authorised organ donation during their lifetime, but a near relative subsequently objects, the Act does not expressly set out the precise legal consequence of such an objection. The uncertainty is therefore not merely about whether family members have a role in deceased organ donation, but about the extent of that role when it comes into conflict with an already expressed decision of the deceased.

This raises a broader question about the legal status of an individual's autonomy after death. If prior consent is given statutory recognition, the extent to which that consent should continue to guide decisions concerning the person's body after death becomes significant. At the same time, the law must also account for the practical and procedural role of relatives and other persons involved in the handling of the deceased's body. The absence of an expressly articulated mechanism for resolving a direct conflict between these positions leaves an important question at the intersection of statutory interpretation, individual autonomy and family authority. Examining this relationship is therefore essential to determine whether the existing framework provides sufficient legal clarity for situations in which the deceased's documented wishes and the family's subsequent position do not coincide.

TABLE 2. Legal Position on Prior Consent and Family Authority under THOTA

Situation	**Legal position**	**Role of family/near relative**	**Main legal issue**
Deceased gave valid prior authorisation	Prior authorisation is recognised under §3(2)	Family objection is not expressly identified as overriding the prior authorisation	Effect of subsequent family objection
Deceased gave prior authorisation but may have revoked it	Removal is subject to there being no reason to believe that authorisation was subsequently revoked	Family may potentially provide relevant information regarding revocation	How revocation should be verified
Deceased gave no prior authorisation and did not object	§3(3) permits authorisation by the person lawfully in possession of the body, subject to statutory conditions	Objection by a near relative is expressly relevant	Scope of authority under §3(3)
Valid consent is disputed	Requires verification of the consent and surrounding circumstances	Family may raise information relevant to validity	Who should determine the dispute and by what procedure

4. CONSTITUTIONAL AND JUDICIAL PERSPECTIVES

4.1 RIGHT TO PRIVACY AND PERSONAL AUTONOMY

The question of prior consent to organ donation can also be examined through the constitutional protection of privacy and personal autonomy under Article 21 of the Constitution of India. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court recognised privacy as a constitutionally protected right and connected it with individual liberty, dignity and autonomy. The Court also recognised decisional autonomy as an important aspect of the individual's ability to make personal choices.[16]Although the decision did not specifically concern organ donation, its recognition of individual autonomy provides a constitutional basis for examining decisions concerning one's own body. In the context of deceased organ donation, this raises the question whether a person's deliberate and documented decision to donate organs during their lifetime should receive constitutional significance when decisions concerning the person's body arise after death.

4.2 DIGNITY AND RESPECT FOR PERSONAL DECISIONS

[16] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

The constitutional principle of dignity is also relevant to the question of prior consent to organ donation. The Supreme Court has recognised that dignity is closely connected with individual autonomy and the ability of a person to make important decisions concerning their own life. In *Common Cause v. Union of India*, the Supreme Court recognised the importance of individual autonomy in the context of medical decision-making and held that a person's ability to make decisions concerning matters closely connected with their life forms an important aspect of human dignity.[17] Although the case concerned end-of-life medical decisions rather than organ donation, the principle is relevant to the present study because both situations involve the legal significance of a person's decision concerning their own body and medical treatment.

This principle may provide support for giving due consideration to a clearly expressed decision to donate organs after death. If an individual has consciously made such a decision during their lifetime, respect for dignity may require that the decision not be treated as legally insignificant merely because the person is no longer alive to reaffirm it. At the same time, the constitutional principle does not by itself determine the precise legal authority of family members under the Transplantation of Human Organs and Tissues Act. The question therefore remains one of determining how the constitutional value of dignity should operate within the statutory framework governing deceased organ donation.

4.3 BODILY AUTONOMY AND INDIVIDUAL CHOICE

The principle of bodily autonomy has also been recognised by the Supreme Court in cases concerning individual decision-making over one's body. In *Suchita Srivastava v. Chandigarh Administration*, the Court recognised reproductive choice as an aspect of personal liberty under Article 21 and emphasised the importance of a woman's right to make decisions concerning her own body.[18] The decision demonstrates that constitutional protection of personal liberty includes respect for important bodily decisions made by an individual.

Although *Suchita Srivastava* did not concern organ donation or decisions made after death, its reasoning is relevant to the broader principle of bodily autonomy. In the context of deceased organ donation, the prior decision of a person to donate organs may similarly be understood as an exercise of personal choice concerning their body. However, the extent to which such autonomy continues to have legal effect after death must ultimately be determined with

[17] *Common Cause (A Regd. Soc'y) v. Union of India*, (2018) 5 SCC 1.
[18] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.

reference to the statutory scheme under the Transplantation of Human Organs and Tissues Act, rather than by directly extending the facts of *Suchita Srivastava* to organ donation.

4.4 RELEVANCE OF PRIOR WISHES IN MEDICAL DECISION-MAKING

Indian judicial decisions have also recognised the importance of giving consideration to a person's wishes expressed before they become incapable of communicating their decisions. In *Common Cause v. Union of India*, the Supreme Court recognised the legal significance of an Advance Medical Directive, through which a competent person may express preferences regarding future medical treatment.[19] The decision reflects the broader principle that an individual's previously expressed wishes may remain relevant when the person is later unable to communicate or make decisions personally.

A similar principle can be seen in *Aruna Ramachandra Shanbaug v. Union of India*, where the Supreme Court examined the relevance of a person's wishes in the context of withdrawal of life-sustaining treatment and discussed the principle of self-determination in medical decision-making.[20]These decisions do not directly determine the legal effect of consent to organ donation after death. However, they demonstrate that Indian constitutional jurisprudence does not necessarily treat a person's earlier expressed wishes as irrelevant merely because the person is subsequently unable to communicate them.

This reasoning is relevant to the present study because prior organ donation consent is also an expression made during the individual's lifetime concerning what should happen to their body in a future situation. The cases therefore provide a constitutional and judicial basis for examining whether such a decision should receive continuing legal consideration after death, while leaving the precise question of its statutory effect to be determined under the framework of the Transplantation of Human Organs and Tissues Act.

4.5 JUDICIAL POSITION AND LIMITS OF EXISTING PRECEDENT

The judicial decisions discussed above provide important constitutional principles relating to autonomy, dignity and personal decision-making, but they do not directly resolve the specific question of conflict between a deceased person's prior organ donation authorisation and a

[19] *Common Cause (A Regd. Soc'y) v. Union of India*, (2018) 5 SCC 1
[20] *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454

subsequent objection by the family. In *Common Cause v. Union of India*, the Supreme Court examined advance medical directives and recognised the legal significance of a person's previously expressed wishes in the context of medical treatment. The Court also specifically referred to Form 7 under the Transplantation of Human Organs and Tissues Rules, 2014 as an example of statutory recognition of prior authorisation for organ donation.[21] However, the decision was primarily concerned with end-of-life medical decisions and did not determine whether a near relative can legally prevent organ retrieval where a valid authorisation under Section 3(2) exists.

Similarly, *Suchita Srivastava v. Chandigarh Administration* and *Aruna Ramachandra Shanbaug v. Union of India* provide broader principles concerning bodily autonomy, dignity and medical decision-making, but neither case interprets Sections 3(2) and 3(3) of the Transplantation of Human Organs and Tissues Act in the context of a dispute between prior donor consent and family objection.[22]The existing judicial position therefore provides constitutional principles that can guide interpretation, but does not appear to provide a direct judicial answer to the precise statutory conflict examined in this research.

This distinction is important because constitutional principles alone cannot replace the statutory analysis required under THOTA. The central question remains how Sections 3(2) and 3(3) should operate when the deceased has made a valid prior authorisation but a near relative subsequently objects. The limited direct judicial guidance on this specific situation strengthens the need to examine the statutory language, the Rules and the constitutional principles together rather than treating any one of these sources as conclusive.

5. IDENTIFIED LEGAL GAP AND NEED FOR REFORM

5.1 ABSENCE OF A CLEAR RULE ON FAMILY OBJECTION

One of the significant gaps in the existing legal framework is the absence of a clear statutory mechanism for dealing with a situation where a deceased person has given valid prior authorisation for organ donation, but a near relative objects to the removal after death. The Transplantation of Human Organs and Tissues Act recognises prior authorisation by the

[21] *Common Cause (A Regd. Soc'y) v. Union of India*, (2018) 5 SCC 1; see also *Transplantation of Human Organs and Tissues Rules*, 2014, Form 7.
[22] *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1; *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454

deceased and separately refers to the objection of a near relative in circumstances where no prior authorisation has been made. However, it does not expressly provide a procedure for resolving a direct conflict between a valid prior authorisation and a subsequent family objection.

This lack of clarity may create uncertainty at the stage of organ retrieval. Medical professionals and authorities may be required to determine whether they should proceed on the basis of the deceased person's documented authorisation or defer to the objection raised by the family. In the absence of an express statutory procedure, different authorities may adopt different approaches, particularly where there is disagreement regarding the validity of the consent, its subsequent revocation, or the authority of the person objecting to the donation.

The issue is therefore not simply whether family members should have a role in deceased organ donation. Rather, the important question is what legal procedure should be followed when the deceased person's documented wishes and the family's subsequent position are inconsistent. A clear statutory mechanism could reduce uncertainty for medical practitioners, protect the integrity of the deceased person's expressed decision, and provide an orderly method for addressing genuine disputes without unnecessarily delaying organ retrieval.

5.2 UNCERTAINTY REGARDING THE STATUS OF FAMILY AUTHORITY

Another area of uncertainty concerns the precise legal status of the family in decisions relating to deceased organ donation. The statutory framework refers to a “near relative” in different contexts, but it does not clearly establish whether such a person acts as a decision-maker, a representative of the deceased, or merely as a person whose objection must be taken into account in particular circumstances. This distinction becomes important because each role would carry a different legal effect.

Where the deceased has already made a valid decision during their lifetime, treating the family as an independent decision-maker could potentially give greater weight to a decision made after death than to the deceased's own documented intention. On the other hand, treating family members as having no meaningful role may overlook legitimate concerns relating to the authenticity of the consent, possible subsequent revocation, or compliance with the statutory requirements. The law therefore requires a clearer distinction between the family's role in verifying or communicating relevant information and the family's ability to independently determine whether donation should proceed.

This uncertainty also has practical implications for medical institutions and transplant authorities. A clear understanding of the family's legal role would help determine when a family objection has legal significance and when it cannot prevent implementation of a valid prior authorisation. Clarifying this position would therefore contribute to greater consistency in the implementation of deceased organ donation while maintaining appropriate safeguards against invalid or outdated consent.

5.3 NEED FOR A CLEAR DISPUTE-RESOLUTION MECHANISM

The absence of a specific procedure for resolving disagreements concerning prior organ donation consent creates a further gap in the existing framework. A dispute may arise not only because a family member objects to donation, but also because questions may be raised regarding the authenticity of the consent, the identity of the person who gave it, or whether the donor subsequently changed their decision. In such circumstances, medical practitioners and transplant authorities require a clear legal process for determining whether organ retrieval may proceed.

A statutory dispute-resolution mechanism could provide a structured procedure for addressing such objections without leaving the decision entirely to individual medical institutions or family members. Such a mechanism could require verification of the donor's recorded authorisation, examination of any evidence indicating subsequent revocation, and identification of the legal standing of the person raising the objection. Where a genuine dispute remains, the matter could be referred to an appropriate designated authority for an expeditious decision.

The need for such a mechanism is particularly important in the context of organ transplantation because the opportunity for retrieval is time-sensitive. Prolonged uncertainty may affect the possibility of transplantation even where suitable organs are available. Therefore, any future legal framework should attempt to balance procedural safeguards with the need for timely decision-making. A clearly defined process would provide greater certainty to families, medical professionals and transplant authorities while reducing the possibility of inconsistent decisions in similar circumstances.

The introduction of such a mechanism would not necessarily require the family to be excluded from the process. Instead, it could establish the circumstances in which a family objection

should be considered, the evidence required to support such an objection, and the authority competent to make the final determination. This would help distinguish legitimate safeguards from an unrestricted power to prevent implementation of the deceased person's documented decision.

5.4 BALANCING INDIVIDUAL AUTONOMY AND FAMILY INTERESTS

The legal issues surrounding deceased organ donation involve two interests that require careful consideration: the individual's decision regarding organ donation and the interests of the family after the person's death. Respecting the individual's prior decision is important because it gives legal significance to a choice that was made voluntarily and consciously during the person's lifetime. At the same time, the involvement of family members cannot be completely disregarded, particularly where they may possess relevant information concerning a subsequent change in the donor's wishes or circumstances affecting the validity of the authorisation.

A balanced approach would therefore require a distinction between **respecting the deceased person's decision** and **allowing the family to provide relevant information concerning that decision**. Family participation need not necessarily mean that family members have an independent power to replace a valid decision of the deceased. Their role may instead operate as a safeguard against situations where the consent relied upon is disputed, has potentially been revoked, or does not satisfy the statutory requirements.

Such an approach would also be consistent with the constitutional principles discussed earlier. Individual autonomy provides a basis for giving appropriate weight to a person's deliberate and documented decision, while procedural safeguards can ensure that the decision relied upon is genuine and remains legally valid. The objective should therefore be to create a framework in which the deceased person's wishes are neither automatically disregarded nor implemented without adequate verification.

The need for balance becomes particularly important because deceased organ donation involves both ethical and legal consequences. A framework that gives excessive authority to family members may weaken the practical significance of prior consent, while a framework that excludes family participation altogether may fail to address genuine concerns regarding the validity or continuing effect of that consent. The existing legal uncertainty therefore supports the need for clearer statutory guidance defining the respective roles of the deceased

donor, family members, medical practitioners and transplant authorities.

5.5 NEED FOR LEGISLATIVE AND ADMINISTRATIVE CLARIFICATION

The analysis indicates that the existing legal framework would benefit from greater legislative and administrative clarity regarding the implementation of prior consent to organ donation. The present framework recognises prior authorisation and also provides for the involvement of persons connected with the deceased, but it does not expressly establish a detailed procedure for situations in which these positions come into conflict. This leaves important questions concerning the verification of consent, the significance of a family objection, and the authority responsible for resolving such disputes.

Legislative clarification could define the respective roles of the deceased donor, near relatives, medical practitioners and transplant authorities while specifying the circumstances in which a family objection may have legal effect. Administrative guidelines could further provide a uniform procedure for verifying donor authorisation, checking for subsequent revocation and documenting objections raised at the time of organ retrieval.

Such clarification would not require the complete exclusion of family members from the donation process. Instead, it could establish a structured framework in which family participation serves legitimate verification and procedural purposes while ensuring that a validly expressed decision of the deceased is given appropriate legal consideration. Clearer rules would therefore reduce uncertainty, promote consistency in organ-retrieval procedures and provide greater legal certainty to all persons involved.

6. SUGGESTIONS AND RECOMMENDATIONS

6.1 CLEARER STATUTORY TREATMENT OF PRIOR CONSENT

The legal framework would benefit from an express clarification regarding the continuing effect of a valid prior authorisation for organ donation. The law should clearly state the circumstances in which such authorisation is to be acted upon after death and the limited circumstances in which its implementation may be questioned. In particular, the law could clarify that a subsequent objection by a near relative does not, by itself, invalidate a valid prior authorisation, while allowing an objection to be considered where there is credible evidence of subsequent revocation or a defect in the original authorisation.

Such clarification would reduce uncertainty for medical practitioners and transplant authorities and would give greater legal certainty to individuals who record their decision to donate organs during their lifetime. It would also establish a clearer distinction between the deceased person's decision and the family's role in verifying circumstances relevant to that decision.

6.2 PROPOSED LEGISLATIVE AMENDMENT TO ADDRESS CONFLICTING DECISIONS

In light of the uncertainty identified in this study, the Transplantation of Human Organs and Tissues Act, 1994 could be amended to expressly address situations in which a valid prior authorisation given by the deceased conflicts with an objection subsequently raised by a near relative. The amended provision should clearly state the legal effect of a valid authorisation under Section 3(2) and specify the circumstances in which a subsequent family objection may be considered.

In my view, where the deceased has complied with the statutory requirements for prior authorisation and there is no credible evidence of subsequent revocation or invalidity, the prior authorisation should ordinarily be given effect. A family objection, by itself, should not automatically nullify the deceased person's legally documented decision. However, the proposed provision should allow an objection to be considered where it is supported by credible evidence indicating subsequent revocation, coercion, fraud, mistake or another circumstance affecting the validity of the authorisation.

The amendment should also establish a time-bound procedure for determining such objections through a designated authority. This would provide a clear statutory basis for resolving conflicting decisions while preserving an appropriate opportunity for family members to raise genuine concerns. Such an amendment would, in my view, provide greater certainty than leaving the issue to interpretation and would strengthen the practical legal effect of prior consent to organ donation.

6.3 PROCEDURE FOR RECORDING AND VERIFYING CONSENT

A clear and reliable system for recording and verifying organ donation consent should form an important part of the legal framework. The existing documentation process could be strengthened through a centralised and easily accessible record of valid donor authorisations,

particularly where consent has been recorded through the prescribed forms. Such a system would enable hospitals and transplant authorities to verify the existence and authenticity of the donor's authorisation before organ retrieval is undertaken.

The verification process should also include a mechanism for recording any subsequent revocation or modification of the donor's decision. The information should be regularly updated and capable of being accessed by authorised medical and transplant personnel when required. Where a family member claims that the deceased subsequently withdrew consent, the relevant authority should be able to verify that claim against the available records before organ retrieval proceeds.

A standardised verification procedure would reduce uncertainty at the time of organ retrieval and minimise reliance on informal records or conflicting statements. It would also provide greater certainty that the decision being implemented represents the donor's most recent legally valid intention.

6.4 DEFINED ROLE OF FAMILY MEMBERS

The legal framework should clearly define the role of family members in deceased organ donation. Family members may be permitted to provide information concerning the deceased's wishes, possible subsequent revocation, or circumstances affecting the validity of the donor's authorisation. Their participation may therefore serve an important verification and safeguarding function.

However, where a valid prior authorisation has been established and there is no credible evidence of its subsequent revocation or invalidity, the role of the family should not automatically extend to replacing the deceased person's documented decision. Clear statutory guidance could distinguish between a family member providing relevant information and a family member exercising an independent power to determine whether donation should take place.

Such clarification would help prevent unnecessary disputes while still allowing legitimate concerns raised by relatives to be considered. It would also provide medical practitioners and transplant authorities with a clearer basis for determining the legal significance of a family member's objection in individual cases.

6.5 PROCEDURE FOR RESOLVING OBJECTIONS

A defined procedure should be established for dealing with objections raised by family members or other persons after the death of a registered donor. Where an objection is raised, the hospital or transplant authority should first verify the donor's recorded authorisation and determine whether there is any credible evidence of subsequent revocation or other circumstances affecting its validity. The objection should be documented along with the evidence relied upon by the person raising it.

Where the objection raises a genuine question concerning the validity or continuing effect of the donor's authorisation, the matter should be referred promptly to a designated authority competent to make a determination. The procedure should provide for a time-bound decision because delays in organ retrieval may affect the possibility of transplantation. At the same time, an objection based solely on a disagreement with the deceased person's documented decision should be distinguished from an objection supported by evidence of revocation, coercion, fraud or other legal defect.

A clear objection-resolution mechanism would provide consistency in cases involving disagreement and reduce the possibility of decisions being made solely on an ad hoc basis. It would also ensure that both the deceased person's documented wishes and legitimate concerns raised by family members are considered within a defined legal process.

6.6 SAFEGUARDS AGAINST COERCION, FRAUD AND UNCERTAINTY

The legal framework should also contain adequate safeguards to ensure that prior consent to organ donation is genuine, voluntary and properly documented. Consent should be given without coercion, undue influence or deception and should satisfy the statutory requirements relating to its recording and witnessing. Proper identification of the donor and secure preservation of the consent record are also necessary to prevent fraudulent or disputed authorisations.

Where a person subsequently claims that the donor's consent was obtained through coercion, fraud or undue influence, such a claim should be supported by credible evidence and examined through the prescribed verification process. Similarly, evidence suggesting that the donor

subsequently revoked or modified the decision should be considered before organ retrieval is authorised.

These safeguards would protect both sides of the legal issue. They would prevent an invalid or outdated authorisation from being acted upon while also preventing a valid decision from being disregarded merely on the basis of an unsupported objection. A reliable consent system would therefore strengthen both individual autonomy and confidence in the organ donation process.

6.7 INSTITUTIONAL PROTOCOLS FOR HOSPITALS AND TRANSPLANT AUTHORITIES

Hospitals and transplant authorities should adopt uniform protocols for cases involving deceased organ donation. Such protocols could provide a standard checklist for verifying the donor's identity, confirming the existence and validity of prior authorisation, checking for any recorded revocation, and documenting objections raised by family members. The protocol should also identify the personnel responsible for making each verification and recording the decision taken.

Medical institutions should be provided with clear guidance on the steps to be followed where a family objection is raised. Instead of leaving such matters to individual institutional practice, hospitals should follow a uniform procedure for documenting the objection and referring genuine disputes to the designated authority. Appropriate training should also be provided to medical and transplant personnel regarding the legal requirements governing consent and organ retrieval.

Standardised institutional protocols would promote consistency in the implementation of the statutory framework and reduce uncertainty at the time of organ retrieval. They would also help ensure that decisions concerning deceased organ donation are made through a transparent and legally structured process while respecting both the documented wishes of the deceased and legitimate procedural safeguards.

7. CONCLUSION

Deceased organ donation raises an important legal question concerning the continuing significance of a person's decision made during their lifetime. The Transplantation of Human Organs and Tissues Act, 1994 recognises prior authorisation for organ donation and also

provides for the involvement of persons connected with the deceased in circumstances where prior authorisation is absent. However, the analysis in this study demonstrates that the statutory framework does not expressly provide a clear mechanism for dealing with a direct conflict between a valid prior authorisation and a subsequent objection by a near relative.

The constitutional principles of privacy, dignity and personal autonomy provide important considerations in addressing this issue. The decisions of the Supreme Court, particularly in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, *Common Cause v. Union of India* and *Suchita Srivastava v. Chandigarh Administration*, demonstrate the significance given to individual decision-making concerning matters closely connected with one's body and personal life. However, these decisions do not directly determine the precise legal effect of prior consent to organ donation when a family objection arises after death. The statutory question therefore remains one requiring clearer legal treatment.

This study proposes that a valid prior authorisation should ordinarily be given effect where it satisfies the statutory requirements and there is no credible evidence of subsequent revocation or invalidity. Family members should continue to have an opportunity to provide relevant information concerning the donor's wishes or the validity of the authorisation, but a family objection should not automatically displace a legally valid decision of the deceased. A clear statutory amendment, supported by appropriate verification and dispute-resolution procedures, could provide greater certainty while protecting legitimate family concerns.

Ultimately, the legal framework governing deceased organ donation should seek to give meaningful effect to both individual autonomy and legitimate procedural safeguards. Recognising a person's prior decision does not require the complete exclusion of the family, nor does family participation necessarily require the displacement of the deceased's expressed wishes. A clearer legal framework can reconcile these interests by establishing when prior consent should be implemented, when an objection may be considered, and who should determine a genuine dispute. Such clarity would strengthen the legal certainty surrounding deceased organ donation and provide greater confidence to individuals, families, medical practitioners and transplant authorities.