Introduction

With the increase in the organ transplantation as a method of treatment in the end stage disease of kidney, liver heart etc., all over the world the availability of organs is becoming the stumbling block. As of now the organs cannot be retrieved without the explicit consent by the person and the relatives. The gap between the availability of organs and the patients who are in need of them is very big. Because of ignorance, religious beliefs, grief, and lack of knowledge many refuse to give consent to take out the organs in a brain dead individual. Effects are being made to bring awareness among the public about the organ donation from a brain dead individual through counseling electronic and print media etc., However it is becoming increasingly difficult to get the consent. Hence certain countries like Singapore and some European countries have

Deceased organ transplantation shortage of organs and role of presumed consent-A review

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ABSTRACT

At present globally there is paucity of deceased organ transplantation although they are in vogue in many countries. Consent for organ donation is easy in living donors. In decreased persons if they have made a living will in regard to their organ donation upon death it is easy. Around the world this number is grossly deficient in comparison to the persons waiting to receive the organs. To facilitate better compliance the concept of presumed consent brought in Singapore and some European countries observed that this has helped in increasing availability of organs by 25-30%. It is proposed in this article that India also must consider this and enunciate suitable changes in the law to derive the benefits of increased availability of deceased organs for transplantation.

Keywords: ● Deceased Organ Donations ● Presumed Consent ● Donor express consent ● Indian Scene
introduced presumed consent as a method to get more organs donated. Availability of deceased person’s organs for donation is very low in countries like Malaysia, Myanmar, Bulgaria, Thailand, and Guatemala. Among countries following the presumed consent or specified refusal or opt-out method, better rates of organ donation are seen in Australia, Belgium, France, Spain, Singapore etc compared to the days prior to the presumption of consent sanctified by law.\textsuperscript{2}

**Presumed consent**

The concept of presumed consent in relation to deceased organ donation lays down that unless specific objection is available in writing from a prospective donor, the medical profession can go ahead with the retrieval of organs in brain dead patients and provide them as per the regulations in force at the given place and time in consonance with the laws of the land in question, to the needy persons in the waiting list of the would be recipients.\textsuperscript{3}

It is well known that nobody can transgress the autonomy of the patient while dealing with the anatomy. Unless the person is ready to donate the organs and informs the intention in candid language in the set pattern in writing with two witnesses, organs cannot be taken out for transplantation.

In the presumed consent model, all eligible subjects are deemed to have consented for the organ donation upon the death. Only those who in writing give their objection for retrieval i.e., who opt out are exempted and not touched for organ procurement. Once this concept is put into practice by law the medical profession is relieved of the burden of procuring express consent from the relatives of the deceased. This facilitates easier utilization of available organs from the medically fit deceased persons whose organs are living and healthy to be transplanted.

The presumed consent allows people to register their objection or unwillingness to donate after death. When a person attains 18 years, a letter is received in which he can register his / her objection. All others who have not raised any objection are deemed to have given consent.

- **Who are the persons who can raise objection?**

Only those persons above eighteen years and in a state of compos mentis or in sound mental health are entitled to record the written objection.

- **How this differs from express voluntary informed consent?**

In informed consent the person who consents gives his option for organ donation upon his death in the form of a ‘living will’. This facilitates organ removal. However, the next of kin can still over rule the decision and raise objection for organ retrieval. The differences between presumed consent and express consent are presented in Table.(see Table)

- **Advantages of presumed consent.**

It is analysed and found that countries who follow presumed consent have 25-30\% higher donation rate and hence available organs. Than in non presumed consent countries.

- **Countries following presumed consent.**

Presumed consent law is existing in Austria (1995)
Belgium (1987) Bulgaria (1996), Croatia (2000), Cypous (1987), (Zech Republic (2002), Estonia, Finland ( 1985), France (1990) Greece (1999), Hungary (1999), Israel (1953), Italy (1999), Latvia, Luxemburg (1982), Norway (1973), Poland (1996), Portugal (1994), Slovak Republic (1994), Slovenia (2000), Spain (1979), Sweden (1996), Turkey (1979), Prominent informed consent countries are USA, UK, Japan, New Zealand Germany, Ireland, Canada, Australia, etc. There are more than twenty three countries operating presumed consent concept. They have increased the organ donation from an average of 20/million population as in USA, UK and Canada, to 40/million population. Spain has the world’s highest rate of deceased donation.

- Religious acceptances:

Christianity, Judaism and Islam have no objections to this concept. This is made clear by Islamic Fatwa Committee to Kuwait (1979), Jewish Rabbinial council of USA (1991) and Pope John Paul II (1992).

- Increased donors in presumed consent countries.

Spain has 34.30, Belgium 25.61 France 25.31 and Austria 20.72 per million population, This is an increase over their pre presumed consent days. In Austria the rate increased fourfold within eight years of starting the presumed consent policy. In Singapore presumed consent law exists since 1987.

Countries with presumed consent policy have noted higher rates of organ donation in comparison to others like USA. Denmark which reverted to express consent noticed fall of 50% in donations rates. Brazil adopted presumed consent in 1997 but repealed the same due to unwillingness of doctors to remove organs without family consents even though the law permitted.

**How this presumed consent is adopted?**

In Spain the prospective donor is required to be declared dead on neurological criteria (brain dead) by three physicians. Once death is declared, the individual becomes a potential donor. Exception is when the said individual has formally registered the opposition/objection. The presumed consent law in Spain was passed in 1979.

Belgium accorded sanction to the presumed consent law in 1986 which came in to effect from 1987. Here, the person who is not willing to donate is required to register the objection with the central authority. A person can change opinion / decision at any time. Physicians in Belgium need not take permission of the family. However if a family member explicitly opposes organ removal for donation purpose they should not proceed. Less than 2 percent of the population registered the opposition/objection. So, the availability of organs of deceased for donation has very much increased.

In Austria unconnected with and irrespective of relatives’ objections the organs are recovered unless there is a registered objection of the potential donor while alive.

In France even a third party is allowed to bring to notice of the authorities if the potential donor raised any objection, even though no written objection is registered with concerned authority. In Norway removal of organs is carried out by
informing the relations. However, the next of kin is allowed to withhold if there is any objection. In Italy the organs are removed after finding out that the relatives do not object.

In Singapore all eighteen year old persons receive a letter stating that they are presumed to consent for organ donation (upon brain death) unless they express objection in writing. In case of Muslims, ‘opting in’ policy is adopted, considering them as objectors.6

**What is the Indian Scene?**

In India with an effectively much higher younger population and speeding vehicles leading to accidental deaths on roads, a presumed consent policy is the need of the hour. It should be considered to enhance the availability of organs in this vast country with one hundred and twenty plus crore population.

Deceased organ transplantation is a late comer to India. In Delhi National Capital region between 2012 and 2014 – total organs and tissues utilized from deceased/cadaveric organs is 117 from 38 donors.7 In Kerala 122 donors between August 2012 and 21st March 2015 provided 324 organs and tissues.8 INOS – Indian network for organ sharing based in Tamil Nadu9 has utilized 68 organs and tissues between 2000 and 2008 and Andhra Pradesh used 350 organs and tissues at the same time.10 For a country of this dimensions and population the number of donors and available organs is miniscule compared to the demand for the same, hence the need for adopting presumed consent for deceased organ transplantation. If necessary payment to the bereaved of the deceased donors as an incentive may be permitted.11

**Summary and conclusion**

Due to the gross disparity between the available organs and the expecting recipients, the deceased organ donation and transplantation has become inevitable. It is of significance in increasing the availability of organs and tissues. Deceased organ donations with ‘living wills’ or express consent are happening around the world. Still there is a big gap between availability of organs and demand for them. Some countries adopted presumed consent policy and achieved more availability of organs compared to others with traditional express consent. Among such countries are Italy, Spain, Austria, Norway, Belgium and so on. It is proposed in this paper to ponder and proceed with the presumed consent concept in India also to achieve better organ availability in view of the big demand and great paucity in the available organs and tissues.

In Conclusion, it can be said that Countries which have adopted presumed consent policy for deceased organ donation and transplantation have 25 to 30% more access to the organs. This factum should not be over looked and India should start presumed consent for deceased organ transplantation by promulgating suitable legislation. Table given right side page.
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REFERENCES


Presumed consent

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<tr>
<th>Presumed consent</th>
<th>Donor express consent</th>
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<tr>
<td>1 Followed in Singapore, Austria, Italy, France, Spain, Belgium, Columbia, etc.,</td>
<td>1 Followed in all countries in general.</td>
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<td>2 This presupposes consent of the brain dead to donate organs for the purpose of transplantation.</td>
<td>2 Here express consent of donor for organ retrieval is essential.</td>
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<td>3 A recorded objection/refusal is necessary from the person in case he/she has any objection.</td>
<td>3 The donor may alter his/her decision at a letter date.</td>
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<td>4 This facilitates the medical personnel to retrieve the organs in all suitable cases except when there is a specific objection.</td>
<td>4 Till the last minute the medical personnel are on tenterhooks.</td>
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<td>5 The right of refusal by the legal heirs may or may not be available (Family consent).</td>
<td>5 The right of refusal is available to legal heirs. In some countries this right is not present, consent is donor specific.</td>
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<td>6 Facilitates more organs retrieval, though shortage still persists. Presumed consent has positive and sizeable effect on organ donation rate as per study of countries over 10 yrs period in regard to organ donation. (Alberto Abadie 2005)</td>
<td>6 Shortage continues.</td>
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