

# Can you die twice? In India you can! Paradox and ambiguities in the legal determination of brainstem death in India

**Keywords:** brain death, death by neurological criteria, DNC, cardiac death

## Introduction

*What is life: a delicate balance of the five elements. What is death: a slight disturbance of this equilibrium. - Brij Narayan 'Chakbast'*

Let us consider a not so uncommon scenario. A-65-year-old male with large brain stem haemorrhage on life support ventilation has been in neurological intensive care unit (ICU) for the past 2 weeks. Glasgow Coma Scale (GCS) score is 3, pupils dilated and fixed and doll's eye responses are absent. All other metabolic parameters are normal and reversible causes of the above clinical presentation have been ruled out. The transplant coordinator of the hospital counsels the family and gives them the option of donating organs and tissues. After consent, the formal procedure for brain death certification is carried out and patient declared brain dead. The patient's son changes his mind and refuses organ donation. Due to the lack of consensus among family members, organ donation consent is revoked. At this point what is the legal status of our patient? Is he 'dead' or is he 'alive'?"

Discussions about brain death raise a plethora of ethical and philosophical questions. In India from a legal perspective our brain-dead patient is still alive. Only if the organ donation form had been signed and executed, our patient would be dead as per Indian law. Unfortunately, Indian law remains silent on the question whether life support can be withdrawn for patients certified as brain dead but not undergoing organ retrieval for transplant. "You only die once" is a common phrase. In India as things stand today we can die twice-once when the heart stops (death by cardiac criteria) and once when the brain stops (brain death or death by neurological criteria) (DNC).<sup>1,2</sup>

*"First, I will define what I conceive medicine to be. In general terms, it is to do away with the sufferings of the sick, to lessen the violence of their diseases, and to refuse to treat those who are overmastered by their disease, realizing that in such cases medicine is powerless"- Hippocrates*

With the advent of advanced cardiopulmonary resuscitation techniques, patients with severe, irreversible brain dysfunction can be maintained indefinitely on a ventilator. In India brain-dead patients can be certified legally dead only for the purposes of organ donation. If patient or family's consent is against organ donation, doctors must continue ventilation and life support measures in the brain-dead patient. Such a patient dies a second time when cardiac function ceases (death by cardiac criteria).

In India, death is defined under three different laws. Section 46 of the Indian Penal Code (IPC) defines death as '*death of a human being unless contrary appears from the context*'. As per section 2(b) of the Registration of Birth and Death Act 1969, death is '*the permanent disappearance of all evidence of life at any time after live*

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**Rahul Chawla, Nitin K Sethi**

Department of Neurosciences, Pushpawati Singhania Hospital & Research Institute (PSRI), New Delhi, India

**Correspondence:** Nitin K. Sethi, MD, MBBS, FAAN, Chairman Neurosciences and Senior Consultant Pushpawati Singhania Hospital & Research Institute (PSRI), New Delhi, India, Email [sethininitnm@hotmail.com](mailto:sethininitnm@hotmail.com)

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*birth has taken place*'. As per Transplantation of Human Organs Act (THOA), 1994 death is '*the permanent disappearance of all evidence of life by reason of brainstem death or in a cardiopulmonary sense at any time after live birth has taken*'. In India as per THOA, brainstem death is defined only in context of organ donation.

Kerala is the first state to adopt a standard operating procedure (SOP) for determining brain death cases, delinking brainstem death certification from organ donation. Discussions have followed about mandatory certification of brain death in ICUs irrespective of whether organ donation takes place or not. There is still ambiguity whether doctors can legally remove ventilatory support from such patients and certify them legally 'dead' outside the ambit of organ donation?

In resource limited country like India, is it justifiable to continue intensive care for a brain-dead individual? The cost of maintaining such a patient in the ICU is extremely high. It adds to the financial burden of the individual's family as well as increases health care cost for the larger society. Utilitarianism promotes "the greatest amount of good for the greatest number of people." Keeping a brain-dead patient on a ventilator and continuing all supportive care is against Utilitarianism at its most basic. It is neither good nor moral. Unfortunately, as things stand now, in India it is only cardiopulmonary death which finds mention on the death certificate and is deemed acceptable for the purpose of cremation, burial and insurance claim settlement.

In resource limited India there is a huge deficiency of ventilators and ICU beds. Moral and ethical issues arise when a 'brain-dead' patient is artificially supported depriving another potentially salvageable patient of a much-needed ventilator or ICU bed.<sup>3</sup> Ambiguities in the legal interpretation of brain death also exist in other countries such as the United States where a patient can be legally dead by DNC in New York but alive in New Jersey! But in most countries, one is pronounced legally dead if DNC are met whether or not organ donation follows.

Sustaining body organs artificially when the brain is dead is equivalent to simply keeping the body alive (chola) and not the person (atma). In India there is an urgent unmet need to formulate a Uniform Determination of Death Act on the lines of that which exists in the United States.<sup>4</sup> DNC (brain stem death) should be delinked from organ donation and SOP guidelines need to be formulated for the death certification of such patients legally. Physicians managing critically ill patients should be trained to determine DNC reliably, counsel and educate grieving family members about medico legal perspectives that guide the certification of death in such patients.<sup>5,6</sup> Just like in other countries of the world Indians too should die only once but live every day.

### Author contributions

RC and NKS drafted the manuscript and share first author status.

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### Conflicts of interest

The authors declare no conflicts of interest.

### References

1. Gligorov N. Is Death Irreversible? *J Med Philos.* 2023;48(5):492–503.
2. Nair-Collins M. Abortion, Brain Death, and Coercion. *J Bioeth Inq.* 2023.
3. Feng D, Lewis A. Brain Death: Ethical and Legal Challenges. *Neurol Clin.* 2023;41(3):469–483.
4. Lewis A, Kirschen MP. Potential threats and impediments to the clinical practice of brain death determination: the udda revision series. *Neurology.* 2023;101(6):270–279.
5. Mihály S, Smudla A, Dominguez-Gil B, et al. Approaching the families of potential deceased organ donors: an overview of regulations and practices in council of europe member states. *Transpl Int.* 2023;36:11498.
6. Wahlster S, Wijdicks EF, Patel PV, et al. Brain death declaration: Practices and perceptions worldwide. *Neurology.* 2015;84(18):1870–1879.