

# BLOOD DONATION BY LGBTQ COMMUNITY – POLITY

**NEWS:** Recently, the Supreme Court asked the Centre to seek expert opinion on the bar on transgender people and gay persons from donating blood, pointing out that it could lead to stigma.

## WHAT'S IN THE NEWS?

### Background

- October 2017: National Blood Transfusion Council (NBTC) issues blood donation guidelines which bars transgender persons, gay individuals, and sex workers from donating blood.
- 2019–2021: During the COVID-19 pandemic, transgender individuals attempt to donate blood but are denied, exposing the discriminatory nature of the guidelines.
- March 2021: The Supreme Court begins hearings, issues notice to the Centre, and seeks justification for the exclusionary policy.
- September 2023: SC emphasizes that public health cannot override dignity and equality, urging reconsideration of identity-based bans.
- May 2025: SC directs the government to seek expert medical opinion and re-evaluate the scientific and legal basis of the ban.

### About Transgender

According to the Transgender Persons (Protection of Rights) Act, 2019, a transgender person is one whose gender identity does not align with the sex assigned at birth. This includes:

- Trans men and women
- Persons with intersex variations
- Genderqueer, non-binary persons
- Socio-cultural identities like Hijras, Aravanis, Jogtas, Kinnars

### Petitioners' Arguments

- **Discrimination Based on Identity:** The 2017 guidelines impose a blanket ban on entire communities (transgender persons, gay men, sex workers) rather than evaluating individual risk factors—violating Articles 14, 15, and 21.
- **Violation of Dignity and Autonomy:** Requiring LGBTQIA+ persons to disclose their identity in public blood donation settings is humiliating, violating their privacy and bodily autonomy.
- **Unscientific & Outdated Policy:** The ban is based on stereotypes, not current medical science. Modern testing (like NAT & ELISA) can effectively detect infections, making such exclusions unnecessary.

- Impact During Emergencies: During the COVID-19 crisis, trans persons willing to donate blood were denied, worsening blood shortages and depriving people of life-saving transfusions.

### Government's Arguments

- Precautionary Public Health Measure: The policy is meant to protect recipients by avoiding donations from groups statistically at higher risk for blood-borne infections (e.g., HIV, Hepatitis B/C).
- Lack of Uniform Testing Infrastructure: India does not yet have universal access to high-end screening technologies (e.g., NAT) across all blood banks, so precautionary exclusions are deemed necessary.
- Administrative Practicality: Risk-based individual screening is resource-intensive and hard to implement nationwide; hence identity-based bans were adopted for simplicity and safety.
- Global Practices: Government cited that some other countries have had similar policies in the past—though many are now revising them toward more inclusive practices.

#### What are NBTC Guidelines?

- Issued in 2017 by the National Blood Transfusion Council (NBTC) under the Union Ministry of Health & Family Welfare.
- Titled: "Guidelines on Blood Donor Selection and Blood Donor Referral".
- Key Provisions Relevant to Transgender Persons
  - Clause 12 of the guidelines permanently defers (i.e., bars) blood donations from:
    - Transgender persons
    - Men who have sex with men (MSM)
    - Female sex workers
  - These groups are labelled as "high-risk donors" for HIV, Hepatitis B, and Hepatitis C, irrespective of individual health status or screening.

#### National Blood Transfusion Council (NBTC)

- Established in 1996 by the Ministry of Health and Family Welfare.
- Legal Origin: Pursuant to a Supreme Court directive in response to PILs seeking regulation of blood banks and safety in transfusion.
- Objectives
  - Promote voluntary and non-remunerated blood

donation.

- Ensure safe, quality, and affordable blood and its components.
- Develop human resources, training, and infrastructure for Blood Transfusion Services (BTS).
- Formulate and implement the National Blood Policy.
- Role and Structure
  - Apex body for all matters related to the operation, policy, and regulation of blood centres across India.
  - Coordinates with State Blood Transfusion Councils (SBTCs).

### Supreme Court's Observations

- Highlighted the risk of stigmatization and bias by labeling entire communities as "high-risk."
- Questioned the lack of medical evidence linking transgender identity directly to higher disease risk.
- Noted that even "normal" individuals engage in similar activities that could pose risks, questioning the fairness of targeting specific groups.
- Emphasized the need for expert consultation to find a solution that ensures medical safety without stigmatizing communities.
- Acknowledged advancements in technology and testing mechanisms, suggesting that evolving medical practices could address concerns without blanket bans.

### Constitutional and Legal Framework

#### Key Fundamental Rights Involved

- Article 14 – Right to Equality: Ensures equality before the law and equal protection of laws.
  - Blanket bans based on identity violate this by denying equal treatment.
- Article 15 – Prohibition of Discrimination: Forbids discrimination on grounds of sex, interpreted by the Supreme Court in *NALSA v. Union of India* (2014) to include gender identity and sexual orientation.
  - The exclusion of transgender persons from public health programs violates this protection.
- Article 21 – Right to Life and Personal Liberty: Encompasses the right to dignity, privacy, and autonomy.
  - Denial of the right to donate blood based solely on identity is a violation of dignity and bodily autonomy.

## Key Judicial Precedents

- **NALSA v. Union of India (2014):** Recognised the right to self-identify gender, and held that transgender persons deserve equal rights under the Constitution, including access to public spaces and services.
- **Justice K.S. Puttaswamy v. Union of India (2017):** Established the right to privacy as a fundamental right.
  - Identity-based exclusions, especially if forced to disclose, violate privacy and decisional autonomy.
- **Navtej Singh Johar v. Union of India (2018):** Decriminalised consensual same-sex relations.
  - Asserted that sexual orientation and gender identity are core aspects of personal liberty and must be protected.

## Statutory Law: Transgender Persons (Protection of Rights) Act, 2019

- **Section 3:** Prohibits discrimination against transgender persons in healthcare and access to public services.
- **Section 15:** Mandates the State to provide healthcare without discrimination, including preventive and general health services.
- **Contradiction:** The blood donor guidelines (2017) contradict the spirit and letter of this Act by excluding transpersons from participating in health-related civic duties.

## Institutional Mechanisms and Welfare Schemes for Transgenders

- **National Council for Transgender Persons (NCTP):** Established under the Transgender Persons (Protection of Rights) Act, 2019.
  - Advises the government, monitors policies, and handles grievance redressal.
- **Transgender Persons Act, 2019 & Rules, 2020:** Provides for non-discrimination in education, employment, healthcare, housing.
  - Mandates legal recognition of gender identity and access to welfare schemes.
- **Garima Greh (Shelter Homes):** Aimed at providing safe housing, skill training, and rehabilitation for trans persons.
  - Operated under the SMILE Scheme by the Ministry of Social Justice and Empowerment.
- **SMILE Scheme (2022):** Stands for Support for Marginalised Individuals for Livelihood and Enterprise.
  - Offers rehabilitation, counselling, education, and livelihood support to trans persons.
- **Ayushman Bharat TG Plus:** A sub-scheme under PM-JAY for gender-affirmative healthcare services.

- Covers hormone therapy, SRS, counselling, and related expenses.
- Skill Development Initiatives: NSDC and state governments offer vocational training programs for transgender youth.
  - Focus is on economic empowerment and reducing dependency.
- State-Level Welfare Boards: States like Tamil Nadu and Kerala have formed Transgender Welfare Boards.
  - They provide identity cards, housing, pensions, and microfinance access.

### Stigmatization vs. Public Health

- Identity-based bans fuel stigma, not safety: NBTC's 2017 guidelines excluded transgender persons, Men sex with men (MSM), and sex workers as "high-risk" groups—not based on behaviour or screening, but on identity.
  - This stigmatizes entire communities rather than ensuring rational public health safety.

#### Stigmatization of Transgender Communities

- Stigmatization refers to widespread social disapproval and discrimination based on gender nonconformity.
  - It manifests through exclusion, abuse, denial of rights, and institutional neglect of transgender persons.
- Blanket exclusions ignore medical advancements: Modern blood screening technologies (e.g., NAT, ELISA) can detect HIV and hepatitis infections effectively. Yet the continued blanket deferral ignores this progress and undermines scientific integrity in favour of outdated stereotypes.
  - Public health must balance dignity and safety: The Supreme Court questioned whether safety protocols can come at the cost of dignity.
    - It stressed that medical guidelines should not reinforce biases, especially when no conclusive evidence justifies identity-based exclusions.
  - Stigma discourages engagement with health systems: Transpersons often avoid hospitals due to discrimination by staff and fear of being humiliated.
    - This reduces their access to preventive care, mental health support, and even participation in voluntary programs like blood donation.
  - False link between identity and disease spreads misinformation: Branding trans persons as inherently risky for HIV transmission promotes a misinformed public narrative, shifting focus away from actual risk behaviours, such as unprotected sex or lack of screening.

- Inclusive health systems foster better outcomes: Policies built on trust, privacy, and individual risk (not identity) encourage wider participation, early testing, and better public health outcomes.
  - Stigma, in contrast, pushes vulnerable groups into isolation, worsening health indicators overall.

### Global Best Practices

- Behaviour-Based Risk Assessment: United Kingdom (2021) and Canada (2022) have shifted from identity-based bans to individual behaviour-based screening.
  - Donors are evaluated based on sexual activity, safety practices, and testing history, not sexual orientation or gender identity.
- Deferral Periods Replaced by Neutral Questionnaires: Many countries have moved away from blanket deferrals for MSM or transgender persons.
  - Instead, they use gender-neutral risk questionnaires, focusing on recent sexual activity, number of partners, and use of protection.
- Scientific Evidence as the Foundation: France, Netherlands, and Germany reformed their policies after studies showed no higher transmission risk when blood donations were properly screened.
  - This ensures both safety and inclusion, without resorting to discriminatory bans.
- Regular Review of Blood Policies: Agencies like FDA (USA) and UK's Advisory Committee on the Safety of Blood have institutional mechanisms to review blood policies every 1–2 years based on new data.
- Engagement with LGBTQ+ Communities: Countries like Australia and Spain include community representatives in policy advisory bodies, ensuring that exclusionary practices are avoided.
  - This promotes trust, awareness, and better compliance.
- Public Communication to Counter Stigma: Public health bodies in the UK and New Zealand have run campaigns to educate citizens that blood donation policies are evidence-based and inclusive, reducing societal prejudice.

### Way Forward: Blood Donation and Transgender Inclusion

- Shift from Identity-Based to Behaviour-Based Risk Assessment: Replace blanket bans with individual risk screening based on recent sexual behaviour and medical history.
  - Adopt gender-neutral donor questionnaires, as followed in the UK and Canada.

- Update and Standardise Screening Infrastructure: Expand access to Nucleic Acid Testing (NAT) and advanced diagnostics across all blood banks.
  - Invest in training technicians and blood bank personnel to ensure quality and safety without discrimination.
- Amend the 2017 NBTC Guidelines: Revise Clause 12 to remove permanent deferral of transgender persons.
  - Involve medical experts, legal professionals, and transgender representatives in the policy review process.
- Ensure Informed Consent and Privacy: Protect the right to privacy of donors by avoiding mandatory disclosure of gender identity or sexual orientation.
  - Adopt confidential pre-donation counselling models.
- Build Trust Through Community Engagement: Include transgender leaders in public health dialogues and advisory boards.
  - Run awareness campaigns to challenge stereotypes and promote inclusion in voluntary blood donation drives.
- Strengthen Legal and Institutional Safeguards: Align blood donation policies with the Transgender Persons (Protection of Rights) Act, 2019, which prohibits discrimination in healthcare.
  - Monitor compliance through the National Council for Transgender Persons.
- Judicial and Policy Accountability: Implement Supreme Court directions from 2025 to seek expert medical review of discriminatory clauses.
  - Periodically audit and publish data on donor inclusivity, adverse events, and grievance redressal.

## Conclusion

The Supreme Court's push to re-evaluate the NBTC's discriminatory blood donation guidelines reflects a commitment to balancing public health with constitutional guarantees of equality and dignity. By advocating for evidence-based, inclusive policies, the Court aims to eliminate stigma and ensure transgender persons' rightful participation in civic duties like blood donation.

Source: <https://www.siasat.com/sc-questions-bar-on-lgbtqia-persons-from-blood-donation-seeks-expert-opinion-3220701/>