

Let the Test Decide whether the Blood is fit to be transfused or not rather than the Government or the Society –With Reference to the Ban on the LGBTQ community from the Blood Donation in India

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The hallmark judgment of the Supreme court in Navtej Singh Johar's case decriminalizing Section 377 of The Indian Penal Code, 1860 penalizing homosexuality was not just an end in recognition of the LGBTQ community on an equal par with others as still they are subjected to many atrocities in every facet of their lives due to their sexual orientation and gender identity. One such deprivation is the ban imposed on them from blood donation due to the stereotypical myth by the government as well as the society which are highly intolerant towards them. Due to AIDS epidemic in 1980's prevailing all over the world, the minuscule groups were permanently banned globally from blood donation. Though the lifetime ban has been removed in other nations i.e. United States of America, United Kingdom, Canada and France subjected to fulfillment of a certain criteria but India is lagging behind in such clause which has been raised in the judgment of "Thangjam Santa Singh Khurai v. Union of India and Ors" where a Public Interest litigation was filed challenging certain provisions of Guidelines on Blood Donation Selection and Blood Donation Referral, 2017 violative of the fundamental rights of the community under Article, 14, 15 and 21 of the Constitution of India, 1950. Therefore the current article focuses on discrimination particularly the ban on blood donation by the community adhering to the landmark decisions for recognition and upliftment of the community and further concluding the paper with some suggestions to lift the lifetime ban on the community from blood donation in India.

Keywords: LGBTQ community, AIDS epidemic, lifting of the ban on blood donation in India, Violation of Constitutional Right.

1. Introduction

Since ages, our society has been following the traditional gender classification into male and female only and they limit their classification to this extent only. Anything beyond this or additional to such category is considered to be an alienated concept or a western culture to

which they are highly intolerant and consider it as a taboo. They were looked down as 'social evils' due to the difference in their sexual orientation and gender identities. Before indulging into the discrimination faced by the miniscule group, it is certain to define the community as a whole.

LGBTQ is an abbreviated term of the group which involves lesbians, gays, bisexuals, transgender and the queer community where Lesbian is the female who is emotionally, physically and sexually attracted to a female, gay is the male who is attracted in the same sense with another male, bisexuals are the individuals who are attracted to both the genders, physically, emotionally and sexually and transgender refers to those individuals who identify themselves with the gender opposite to their birth sex. They have different sexual orientation and gender identity as compared to the normal individuals. Before going ahead it is necessary to elaborate sexual orientation and gender identity.

Sexual orientation refers to emotional, physical and sexual inclination of a person to some other of the same/opposite gender and it is further classified into:

Homosexuals refer to the person attracted to the other person of the same sex.

Heterosexuals refer to the person attracted to opposite sex.

Bisexuals refer to the person attracted to both the genders.

Gender identity means where a person identifies himself or herself with the gender either similar or different from the birth sex (male, female or the third gender).

Section 377 of The Indian Penal Code, 1860 deals with the punishment for Unnatural Offences which further elaborates that whoever has a carnal intercourse with any man, woman or an animal against the order of nature shall be punished with either life imprisonment or an imprisonment for ten years and shall also be liable to fine which depicts punishment for homosexuality.

Homosexuality has been considered to be a taboo in the Indian society until the landmark decisions by the Supreme court namely "Justice K.S Puttaswamy v Union of India"¹ and "Navtej Singh Johar v Union of India"² arose which gave a legal recognition to the community as equals with others by conferring same fundamental rights to the people having different sexual orientation and gender identity along with others by decriminalizing Section 377 of The Indian Penal Code, 1860 which paved the way for the community struggling for their basic human rights since centuries to come forward and enjoy the same rights and duties as other normal individuals in the society.

However recognition and acceptance of the group through such judgements is not just sufficient as a lot has to be done for their upliftment in our Indian society through legislative, judicial as well as societal acceptance as a whole. This is just the beginning not the end of their acknowledgement.

¹ (2017)10SCC1

² (2018)10SCC1

2. Research Methodology

The current research paper has been made by purely doctrinal method by referring to primary and secondary data involving the legal regulations governing the subject, articles, blogs, journals, newspapers and judgements available on websites i.e. SCC online, Lexis Nexis etc.

Discrimination faced by the Community

In spite of the decriminalization of the impugned provision above, still the community till today are undergoing what not discrimination in their daily lives leading them to a vulnerable situation. Every day they are facing harassment, violence, threats, torture etc. due to no fault of theirs due to the orthodox chauvinistic norms of the people who are highly intolerant towards the group. They are subjected to discrimination through the following means:

1. Disowned by their own families: To begin with the discrimination at the first place, family is considered to be the safest for any individual to live with. But in this scenario, the situation is totally opposite. When the family gets to know about the sexuality of their child then they are unable to digest the fact and they pressurize their child to reject such a trait and behave like a normal heterosexual individual so as to live in the society respectfully. This pressure is supported by two reasons which is lack of liberal mindset of the family members on such an aspect and the second is due to the fear of being subjected to any sort of humiliation by the society. These reasons coerce the child either to reject such a trait or if they don't then they are being thrown out of their respective houses as well as disowned by their own families.
2. Forced Marriages/Conversion therapies: Apart from being disowned those who are still staying with their families after the family gets to know about their identities are being subjected to forced marriages to a heterosexual person with the mindset that after the marriage their child shall become normal again. Not only the forced marriages but also there are conversion therapies which most of the families resort to so as to avoid the shame and embarrassment of having a child with different sexual orientation and gender identity despite of the fact that conversion therapies are banned which further leads the child to mental trauma further leading to suicidal tendencies.
3. Drop outs from schools/Colleges: The other unsafe place where they are subjected to be discriminated and shamed are the educational institutions i.e. schools and colleges. Where the institution gets to know the identity of any of its student belonging to the community then they suspend such a child with the unreasonable excuse of having a wrong impact on other students as they categorize the gender into boys and girls only. If not this then the parents of other students take their child out from such an institution due to the fear that such a homosexual child shall be an adverse impact on their child too. Not only this children are also being bullied by their batch mates and friends due to which they face difficulty in studying and they back out themselves from the education.
4. Lack of adequate health facilities: The health sector also has a homophobic behavior towards this community and considers homosexuality to be disease due to which some medical professionals refuse to treat these people as a result, the community is denied of even the basic medical care which they are entitled to as human beings. At times most of the people have to conceal their identities in order to avail the basic medical care.
5. No source of livelihood: Workplace is the most common place where they are subjected to

harassment and embarrassment not only by their bosses but also by their fellow colleagues. The bosses pile them with overload and further paying them lesser salaries as compared to other employees. At times they are further subjected to sexual harassment and also they are being abused with some foul languages by the other people working in the same sector. Due to such harassment, they are forced to leave their jobs due to which they lack even the basic source for survival.

6. Deprivation from social gatherings: The community is also not invited to any social gatherings like family events, friends circle due to sheer embarrassment by the people having them in their gatherings leading the community to isolation and loneliness.

7. Lack of legal Protection: The gravest form of discrimination against the community is that there is no law governing the protection of community from any violence or exploitation. Nor there are any LGBT advocates or judges protecting the community. Infact the police exploits them more than giving them any sort of protection due to which the community refrains from approaching to the police authorities for any grievance.

8. Banned from Donating Blood: The most prevalent discrimination against the community In spite of giving them legal recognition in Navtej Singh Johar's case is that the community is refrained from donating any blood due to the presumption by the Indian government that these people are prone to HIV, Hepatitis or any sexually transmitted disease without giving any scientific evidence.

Deprivation from Blood Donation

Talking about discrimination faced by the community, the most important aspect which needs to be considered is deprivation of the community from donating blood. The act of donating blood is a noble act. The purpose of blood donation worldwide is to save the life of a person who due to some medical ailment has lesser chances of survival due to the blood loss. The duty of National Blood Transfusion Council which is a governing body regulating the supply of blood is to ensure that the recipient receives speedy and safe blood. However, the blood is not dependent upon the gender classification when it goes to the body of the receiver then why does the law and the society discriminates on such ground? Indian laws do not permit donation of blood by the homosexuals and the transgender due to the stigma attached to the community that they are likely to spread HIV AIDS or other sexually transmitted diseases to the recipients without revealing any scientific evidence.

Being derivative in such a lifesaving cause even with respect to the blood donation by the member of community for their own families would have an adverse psychological impact on the community.

During the Covid -19 pandemic there were a lot of blood shortages throughout the nation. The lifetime ban on the community from donating blood even during such tough times added to losing a lot many lives as their blood was not even been tested by the medical laboratories whether it is safe to be transmitted or not.³

³ Jhangra,G(25TH June,2023)student of National Law University,Bhopal,Ban on Blood Donation By LGBTQ Community + :A Discrimination in Disguise, Legal Edge Law School <https://www.linkedin.com/pulse/ban-blood-donation-lgbtq-discrimination-disguise>

The lifetime ban is not only prevalent in India but earlier it was in other nations as well. However, the lifetime ban has been lifted in other nations subjected to the conditions imposed by the bodies governing the blood transfusions in such countries based on their rules and regulations. However, India is still lagging behind in recognition of such right which hinders the upliftment of the community.

The law which prohibits the community from donating blood is Guidelines for Blood Donor Selection and Blood Donor Referral, 2017 which was introduced by National Blood Transfusion Council and National Aids Control Organization in 2017 which are the bodies regulating safe supply of blood throughout the nation. Clause 12 of the guidelines mentions that it is necessary for the donor to be free from any disease like Hepatitis B or C or HIV as determined by medical officer on examination. The clause excludes transgender, gays, lesbians, drug addicts or persons having multiple sexual partners from donating blood. Clause 51 of the guidelines permanently bans the third gender from donating blood.⁴

Such guidelines are contrary to the Supreme Court's victorious judgements in recognition and upliftment of the community through the NALSA judgment and Navtej Singh Johar's judgment which paved the way for the community to come forward and enjoy equal rights like other citizens.

As same sex marriages are allowed by the Supreme Court, allowance to donate blood by the community should be a priority now.

History on the Ban on Blood Donation

The ban imposed on the community from donating blood can be traced from 1980's during the AIDS pandemic where it was illegal for homosexuals from donating blood.⁵ Though people were not aware about the cause of the said disease nor there were any accurate test to determine that HIV was found in blood samples of the homosexual donors. On such baseless reasons, a myth was created on their prohibition from donating blood as they might spread HIV, Hepatitis B&C infections which might endanger public health and safety.

The National Blood Transfusion Council which is a governing body declared that the minority community must be secluded and it reasoned that the ban on the community from blood donation is based on scientific fact though there was no evidence proving the same.

Instances of the Ban

There have been instances where the community has been refrained from donating blood due to the negative stereotypes of being susceptible to any infectious disease which may kill others in the society.

1) One such instance is a 29 year old trans model named Palak Thakur who is also a dancer and wanted to donate her blood to her sister-in-law who after the delivery of the baby required blood immediately. But the hospital refrained her from doing so because of the lifetime ban imposed on the community in India and asked her whether any other family

⁴ Noor,A(16TH August,2023).What's in The Blood: Why Trans Persons Can't Be Blood Donors In India.IndiaSpend <https://www.indiaspend.com/health/whats-in-the-blood-why-trans-persons-cant-be-blood-donors-in-india-873458>

⁵ Nagvanshi,A(31ST July,2023)Student of ICFAI University, Dehradun, Blood Donation by Gay and Transgender People-Reason for the Imposition of Ban and Measures to overcome the Problem, Jus Corpus Law Journal ,2023-ISSN-2582-7820

member could donate the blood to the patient due to which her brother was called upon to donate blood In spite of Palak's blood matching with her sister-in-law which depicts violation of her fundamental rights under Article 14, 15 and 21 of The Constitution of India, 1950.⁶

Looking at this incidence, many of the gays and lesbians have to conceal their identities due to the fear of being shamed or deprived from donating blood to their own families or loved ones with the object to save their lives which is vital to them.

2) Another incidence is the story of Naz Ali Joshi who is the first international trans beauty queen who is also a model in Delhi in an interview contended that whenever she felt sick be it cold or flu then firstly she is being mandatorily advised by the doctors to get her HIV test done due to the stigma of being a transgender and being susceptible to HIV irrespective of the fact that such a test has nothing to do with her fever still she was coerced to get her test done which was further undermining her privacy, dignity and self-respect under Article 21 of The constitution of India, 1950.⁷

Though these are the highlighted incidences which have been mentioned however there are many people belonging to the community who must be facing such discrimination on their daily basis which are not highlighted and leave them handicapped. They have now become used to such deprivations and humiliations.

Not only with regard to the blood donation but the members of the community especially the transgender people have to face a lot of difficulty in receiving the blood also from their family members or loved ones even if the latter wishes to do so. It becomes very difficult for them to find donors due to which in most of the cases they lose their lives also. In India still the biggest price that these people especially the transpeople have to pay is due to their different gender identities.

Analysis of Thangjam Santa Singh v. Union of India & Others

Referring to the discrimination faced by the community since ages with respect to blood donation and with an effort to put an end to it arose a landmark judgment of "Thangjam Santa Singh v Union of India"⁸ where petitioner Santa Singh who is a transgender activist from Manipur looking at the atrocities faced by the transgender people in this regard filed a Public Interest Litigation before the Supreme court challenging the constitutional validity of Clause 12 and 51 of the Guidelines on Blood Donor Selection and Blood Donor Referral, 2017 issued by National Blood Transfusion Council and National AIDS Control Organization. The petitioner filed a writ petition to strike down the above clauses as they were violative of the fundamental rights of the community under Article 14 of The constitution of India dealing with right to equality, Article 15 dealing with prohibition on discrimination against any person on the grounds of caste, class, religion, sex or place of birth etc. and also Article 21 dealing with right to live with dignity.

The petitioner's plea was supported by the judgment of "National Legal Service Authority limited v Union of India"⁹ which mentioned that gender is not limited to two categories only.

⁶ Ibid 4

⁷ Supra note 6

⁸ W.P.(Civil) No.000275/2021(PIL)

⁹ AIR 2014 S.C.1863(INDIA)

The rights which are available to normal person shall also be available to the transgender and there shall be no discrimination on the grounds of gender identity. Therefore, restriction by such clauses was unreasonable and unscientific.

Clause 12 of the Guidelines marginalizes homosexuals and transgender without any proper medical examination to determine whether they are at risk or not.

The marginalization is violative of the fundamental rights of the community under Article 14 and 15 of the constitution. To support this, the petitioner highlighted the case of “Navtej Singh Johar v Union of India”¹⁰ where by decriminalizing Section 377 of the Indian Penal Code, 1860; the Supreme Court held that there shall be no discrimination against any citizen on the grounds of sexual orientation or gender identity.

The petitioner further asserted that the hospitals are worse place for the transgender as they are discarded from the basic medical facilities.

Answering to the Public Interest Litigation filed by the petitioner, the Union Ministry of Health and Family Welfare Department defended that the reason for such a lifetime ban on the community from blood donation was to ensure safe and adequate supply of blood to the recipient and protect it from any sort of risk. The Ministry mentioned that the ban was for a scientific reason as the community is at the risk of spreading Hepatitis B & C, HIV AIDS. On conflict between rights of the blood donor and right of the recipient to receive a healthy blood, the latter shall prevail as ensuring the public safety and health is the top priority of the department.

The defense was also objected by Rohin Bhatt who was an LGBTQ human rights activist stated that the community is being unreasonably blamed for the systematic failure in testing the samples as still there are many persons who get infected In spite of the ban.¹¹

The Supreme Court referring to its previous judgements in the recognition and upliftment of the community mentioned that discrimination on the grounds of sexual orientation and gender identity comes under the violation of discrimination on the grounds of sex under Article 15 of the constitution. Therefore, the exclusion of the community under the Guidelines without any actual medical examination of the concerned persons is violative of the fundamental rights of the community. The court further ordered that guidelines for exclusion from blood donation must be based on the actual test and not on the basis of the myth of having a different sexual orientation and gender identity.

Judicial Recognition of the Community

There have various landmark judgements which have led to the judicial recognition of the community:

1) “Naz Foundation v Government of NCT Delhi & Others”¹² was the first decision which enforced recognition of the community where the Delhi high court legalized gay sex by

¹⁰ Supra note 2

¹¹ Taran Deol, Centre’s Ban on Blood Donation for transgender people, gay men and sex workers symptomatic of systematic failure, Down to Earth Blog (2nd May, 2023) <https://www.downtoearth.org.in/blog/health/centre-s-ban-on-blood-donation-for-transgender-people-gay-men-and-sex-workers-symptomatic-of-systemic-failure-89072>

¹² (2009)111DRJ1

decriminalizing a part of Section 377 of the Indian Penal Code, 1860. In the present case, Naz Foundation which was a government based organization was dealing with HIV AIDS filed a writ petition before the Delhi high court challenging the validity of Section 377 of The Indian Penal Code, 1860 violative of the fundamental rights of the community under Article 14, 15 and 21 of The Constitution of India, 1950 where Article 14 deals with right to equality, Article 15 of the Constitution deals with prohibition of discrimination against any citizen on the grounds of caste, class, religion, sex or place of birth and Article 21 of the Constitution deals with right to live with dignity without any interference except according to the due procedure by law. The Delhi high court initially dismissed the petition but later on after 8 years of struggle by the petitioner, the high court struck down a part of the impugned provision as it was violative of the fundamental rights of the members of the community by creating unreasonable classification of the community on the basis of their sexual orientation and gender identity.

The decision was the first step in recognition of the community but the decision could not sustain for a long as the decision was overturned by the Supreme court in the case of “Suresh Kumar Kaushal v Naz Foundation & Others”¹³ where the two judge bench of Supreme court declared that the community constitute miniscule of the population and they are not entitled to any legal protection. The court further asserted that the upholding Section 377 is not violative of the fundamental rights of the community which was a big blow in recognition of the community. The judgment created a hue and cry and was highly criticized by not only the members belonging to the group but also many heterosexuals were unhappy with the judgment.

2.” National Legal Service Authority v Union of India”¹⁴ was another landmark judgment which recognized the transgender community as the ‘Third gender’ and granted them equal status on par with others. In the current case, National legal Service Authority filed a writ petition before the Supreme Court for the recognition of transgender in India as non-recognition of them amounted to violation of their fundamental rights i.e.

-not allowed the right to vote

-not allowed to acquire or own any property

-no mention of the third gender in formal identities like passport, driving licenses etc. as these documents initially had the categorization of two genders only i.e. the male and female only.

Considering the issues above, the Supreme court gave legal recognition to the community as ‘Third gender’ which shall be included in socially and educationally backward classes and shall be entitled to live with equality and a dignified life like other citizens under Article 14, 15 and 21 of The Constitution of India, 1950. Not only this, the court broadened the meaning of ‘sex’ which now includes male, female and the third gender as well.

3.” Jusjustice K.S. Puttaswamy v Union of India”¹⁵ also played an important role in recognition of the community by mentioning that right to privacy is a fundamental right to life involving sexual orientation and gender identity. The court further asserted that people having different

¹³ CIVIL APPEAL NO. 10972 OF 2013

¹⁴ Supra note 9

¹⁵ (2017)10SCC1

sexual orientation and gender identity have the equal right to live with dignity and privacy.

4. “Navtej Singh Johar v Union of India”¹⁶ was a victorious judgment in recognition of the community where the Supreme Court officially struck down Section 377 of The Indian Penal Code, 1860 thereby granting them protection under the Indian Constitution. The judgment recognized sexual autonomy to the two consenting adults of the same or the opposite sex.

Lifting on the Ban on Blood Donation by the community in other nations i.e. U.S.A, U.K, Canada and France

The lifetime ban was not only in India but in other nations after the AIDS epidemic in 1980 however with changing times the ban has been removed and the community in such nations can donate blood subjected to the criteria mentioned by the blood transfusion regulating bodies in such nations respectively¹⁷:

1) United States of America

Initially the lifetime ban was in United States of America as well after the AIDS epidemic due to which the American homosexuals and transgender were outcasted from blood donation. However, with the time passing by and due to the technological advancement, the lifetime ban was uplifted in 2015. But such permission was subjected to certain regulations as per the U.S Blood Donation Policy. During this period the homosexuals could donate blood only if they refrained from any sexual activity for a period of 1 year before donation.

With years passing by, the time period before the blood donation got curtailed from 1 year to 3 months during the Covid-19 pandemic with an object to save lives.

The federal body in U.S which governs the blood transfusion throughout the nation is Food and Drug Administration Authority. The body revised its blood donation policy in 2023. Under the revised policy, the members of the community who are willing to donate blood have to fulfill criteria that they should have been in a monogamous relationship which means that they must have only one sexual partner before blood donation irrespective of their sexual orientation and gender identity.¹⁸

But those LGBT persons having multiple sexual partners have to wait for 3 months before the blood donation with the purpose to ensure safe and adequate supply of blood to the concerned recipient in U.S.A.

This was considered to be progressive step by the Food and Drug Administrative Authority but this is not just the end as a lot has to be done for the enhancement of the community in as lot of aspects which were earlier denied to them.

2) United Kingdom

Earlier the lifetime ban was in United Kingdom as well. However the ban has been lifted in England, Wales and Scotland where LGBT people are allowed to donate blood. National Health Service which is the authority dealing with blood donations throughout the United Kingdom revised its blood donation policy in 2021 which allowed the blood donation by the

¹⁶ Supra note 10

¹⁷ <https://www.firstpost.com/explainers/indias-gay-transgender-people-blood-donation-rules-world-12294772.html>

¹⁸ Supra note 17

community on the condition that the homosexuals should have same sexual partners for three months before the donation.

3) Canada

The lifetime ban was there in Canada as well in 1992 with the object of preventing the spread of HIV in the blood samples. But the ban was removed initially in 2013 by the health Canada where the community was allowed to donate blood only on the condition that they refrained from sexual activity for a period of five years. However, the time period got less to 3 months. In 2022, the ban got officially ended.¹⁹ The Health Canada has also implemented sexual behavior screening tests for all those members of LGBT community who wish to donate blood. During the screening the Canadian homosexuals and the transgender are asked whether they has multiple or a single sexual partner before donation or not irrespective of their sexual orientation or gender identity? If yes then such donors shall be asked to wait for a period of 3 months before donation. If not and such donors fulfill other criteria of the guidelines on blood donation then they shall be allowed to donate.²⁰

4) France

In 1983, the lifetime ban was prevailing in France due to the AIDS epidemic. But the ban was removed in 2016 on a condition that the homosexuals or transgender should refrain from intercourse for a period of 1 year before donation. However, the duration got reduced to 4 months in 2019.

The lifetime ban was officially ended in 2022 by mentioning that the homosexuals and the transgender can donate blood subjected to the same conditions applicable to the heterosexuals irrespective of their sexual orientation and gender identity²¹.

3. Conclusion

There is nothing precious then saving a life for a cause. It is like giving a life to the other person which we refer to as 'humanity'. The blood doesn't see the caste, religion or sex of the donor then who we humans are to decide irrationally to decide who should or should not be the donor. Like oxygen, blood is also vital for human survival. As determined from the comparative analysis of the ban on blood donation in other nations, it is clearly concluded that they have lifted their lifetime ban on the LGBT community from donating blood subjected to conditions imposed by them then why is India lagging behind and why can't it implement the same as it is a developing nation. Therefore, it is high time that India should take an inspiration from such nations and amend their blood donation guideline which is arbitrarily based on the myth that the community is likely to spread infectious and life-threatening diseases. Sad reality is that the community is being prohibited from donating blood even to their loved ones. Complete ban will worsen the situation. Just because of lack of technological advancement to detect any infectious disease while taking the samples especially the HIV disease, we cannot simply the community without any reasonable grounds or any scientific evidence as already

¹⁹ <https://www.bbc.com/news/world-us-canada-61265645>

²⁰ <https://www.blood.ca/en/blood/am-i-eligible-donate-blood/sexual-behaviour-based-screening>

²¹ <https://www.euronews.com/2022/01/12/france-removes-restrictions-on-gay-blood-donors>

they are being marginalized due to a lot of other reasons as well.

Therefore, allowing them to donate along with restrictions as well as safety measures will help the nation to tackle with issues like shortage of blood which would save a lot many lives which would further balance the rights of the recipient as well as protection of the rights of the community from deprivation in such a lifesaving cause.

4. Suggestions

At the end, the researcher would conclude the research paper with the following suggestions:

- 1) Society is changing and the laws must be responsive to such change as well. Therefore, the current guidelines excluding the community from blood donation must be amended and the clauses which are permanently banning g the community i.e. Clause 12 and 51 of the Guidelines on Blood Donor Selection and Blood Donor Referral, 2017 must be curtailed.
- 2) The guidelines above must include the community to donate blood subjected to restrictions as imposed by the other nations.
- 3) Proper study must be conducted by taking samples from some members of the community so as to determine whether there is likelihood of spreading of life-threatening diseases by the community or not by using actual technical procedures. If the results are negative, then the provision out casting the community from blood donation must be struck down by the Government of Health Department in India with immediate effect.
- 4) Like Canada, India must also introduce an advanced screening system for the safe blood transfusion which would be appropriate for testing the blood donated and determine whether it is fit to be donated or not rather than unreasonable excluding the community which shall be a progressive step.
- 5) The screening system should be handled by a well-equipped and trained staff that must have an expertise in handling it.
- 6) Not only this, before the screening tests being conducted, questionnaires must be asked as to the history of the donor, any medical ailment they m might be having or the medications they might be using or their last duration of any sexual activity. Also, the time period must be given to the members of community to refrain from any sexual activity or intercourse before donation.
- 7) Just like the Covid-19 tests, there must be rapid test conducted on those members of the community who wish to donate blood so as to determine whether they are suffering from any communicable disease or not so that they could help their families, loved ones or other members of the society in need through a proper channel.
- 8) For such screening and rapid tests conducted on the blood donation by the community require separate laboratories where the members of the community can freely approach and save lives without any fear or embarrassment of belonging to a minority group.

References

1. Abhinav Verma, Banning Blood Donation Based on Sexual Orientation or Practices is Unfair and Ineffective, The Swaddle (10th November, 2019)
2. <https://www.theswaddle.com/blood-donor-bans-are-unfair-ineffective>
3. Aliza Noor, What's in The Blood: Why Trans Persons Can't Be Blood Donors in India, India Spend (16th August, 2023).
4. <https://www.indiaspend.com/health/whats-in-the-blood-why-trans-persons-cant-be-blood-donors-in-india-873458>
5. Animesh Nagvanshi,A, The ICFAI University, Dehradun, India, Blood Donation by Gay and Transgender People- Reason for the Imposition of Ban and Measures to overcome the Problem, Jus Corpus Law Journal(31st July,2023) 2023-ISSN 2582-7820.
6. <https://www.juscorpus.com/wp-content/uploads/2023/08/29.-Animesh-Nagvanshi.pdf>
7. Anusha Rao & Divya Joseph, Legal Validity of the ban on Transgender community from Donating Blood, The Daily Guardian (10th June, 2021) 09:02 am IST
8. <https://thedailyguardian.com/legal-validity-of-the-ban-on-transgender-community-from-donating-blood/>
9. Canada removes Ban on Blood Donations from gay men,BBC News (28th April,2022)
10. <https://www.bbc.com/news/world-us-canada-61265645>
11. France removes restrictions on gay blood donors, Euronews (12th January, 2022) 16:19 PM
12. <https://www.euronews.com/2022/01/12/france-removes-restrictions-on-gay-blood-donors>
13. Gauri Kashyap, Writ Petition Summary-Constitutionality of Blood Donation Guidelines- Supreme Court Observer (17th February, 2021)
14. <https://www.scobserver.in/reports/santa-khurai-v-union-of-india-constitutionality-of-blood-donation-guidelines-writ-petition-summary-santa-khurai/>
15. Gunjeeta Jangra, student of National Law University, Bhopal, Ban on Blood Donation by LGBTQ: A Discrimination in Disguise, Legal Edge Law School (25th June, 2023).
16. <https://www.linkedin.com/pulse/ban-blood-donation-lgbtq-discrimination-disguise>
17. India's Ban on gay, transgender people from Donating Blood: What are the rules across the world, First Post Explainers (15th March, 2023)
18. <https://www.firstpost.com/explainers/indias-gay-transgender-people-blood-donation-rules-world-12294772.html>
19. India cites science to ban transgender, gays from Donating Blood, Live Mint (17th May, 2023)
20. <https://www.livemint.com/news/india-cites-science-to-ban-transgenders-gays-from-donating-blood-11679072862504.html>
21. Jaishree Kumar & Aman Singh, Feature- LGBTQ+ India's demand to end 'Discriminatory' Blood Donation Ban, Thomson Reuters Foundation (2nd October 2023), 7:30 PM
22. <https://www.reuters.com/article/idUSL8N3AH4HI/>
23. Kalash, Denied the Right to Give , the Ongoing Battle for Transgender people from Donating Blood, Scroll Staff (5th March,2021) 02:44 PM.
24. <https://www.legalserviceindia.com/legal/article-11768-denied-the-right-to-give-the-ongoing-battle-for-transgender-donor-inclusion.html>
25. Lift Ban on Blood Donation by Transgenders, Lawxperts (2nd April, 2021)
26. <https://www.lawxpertsmv.com/post/lift-ban-on-blood-donations-by-transgenders>
27. Rohin Bhatt, I am not a disease vector: Why the Union governments stand on blood donation is unscientific and reeks of queer phobia, The Leaflet (19th March, 2023)
28. <https://theleaflet.in/i-am-not-a-disease-vector-why-the-union-governments-stand-on-blood-donation-is-unscientific-and-reeks-of-queerphobia/>
29. Sakshi Shukla, Public Interest litigation sought Against Constitutional Validity of Guideline on Blood Donor Selection & Blood Donor Referral Prohibiting Transgender persons from Donating Blood : SC issues notice to the Government ,Law Beat (6th March,2021) 02:20 PM.

30. <https://lawbeat.in/top-stories/pil-sought-against-constitutional-validity-guideline-blood-donor-selection-and-blood>
31. Saloni Chowdhury, Transgender Persons, Gays and Sex workers excluded from Blood Donation based on Scientific Evidence : Centre tells Supreme Court, live law (10th March,2023) 07:36 PM.
32. <https://www.livelaw.in/top-stories/transgender-persons-gays-sex-workers-excluded-from-blood-donation-based-on-scientific-evidence-centre-tells-supreme-court-223496>
33. Supreme court agrees to hear plea against Centre's rules barring gay , transgender people from donating blood , Scroll Staff (5th March,2021) 02:44 P.M.
34. <https://scroll.in/latest/988666/sc-agrees-to-hear-plea-against-centres-rules-barring-gay-transgender-people-from-donating-blood>
35. Supreme court issues notice to Centre over ban on transgender, gays from donating Blood, Money Control News (5th March,2021) 08:06 P.M IST.
36. <https://www.moneycontrol.com/news/india/sc-issues-notice-to-centre-over-ban-on-transgenders-gays-from-donating-blood-6610991.html>
37. Sexual behavior based Screening, Canadian Blood Services.
38. <https://www.blood.ca/en/blood/am-i-eligible-donate-blood/sexual-behaviour>
39. Shabbir Ahmed & Anshika Malik, students of Jamia Millia Islamia, Faculty of law, New Delhi, India Needs to End Discriminatory Ban on LGBTQ + Blood Donations, Jurist Staff (3rd May,2023).
40. <https://www.jurist.org/commentary/2023/05/blood-donation-discrimination-india/>
41. Sravasti Dasgupta, "India's government opposes blood donations by LGBT + community by citing 'Scientific Evidence', The Independent (16th March, 2023) 10:29 GMT.
42. <https://www.independent.co.uk/asia/india/india-transgender-lgbt-blood-donation-b2301274.html>
43. Taran Deol, Centre's Ban on Blood Donation for transgender people, gay men and sex workers symptomatic of systemic Failure , Down To Earth Blog (2nd May,2023)
44. <https://www.downtoearth.org.in/blog/health/centre-s-ban-on-blood-donation-for-transgender-people-gay-men-and-sex-workers-symptomatic-of-systemic-failure-89072>
45. The Indian Penal Code, 1860, §377
46. The Constitution of India, 1950, Article 14, 15 and 21
47. Guidelines on Blood Donor Selection & Blood Donor Referral, 2017, Clause 12 & 51.