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## **Stigmatisation of Transgender People in Indian Blood Donation Policies**

In recent years, India has started to open up to changes that challenge patriarchal norms. Following the decriminalisation of Section 377 IPC by Indian law, decades of intersecting oppressions and tags on the queer community were reformed. However, victimisation and stigmatisation of sexual and gender minorities still continues in various areas of life, including the healthcare sector. This was evident during the Covid pandemic, which created a strong demand for blood donations, but in many reported cases, the queer community was denied the opportunity to donate blood, which clearly demonstrates that while laws have evolved, stigmatisation persists. This paper focuses on Indian blood donation guidelines, reviews about laws that are being put into place to prevent queer people from donating blood, and discusses countries where queer people are excluded from blood donation programs. The paper closes with a set of suggestions to help overcome discriminatory blood donation policies.

*Keywords:* criminology, discrimination, queer community, rights, victimisation, violation

### **Stigmatisierung von Trans-Personen in der indischen Blutspendepolitik**

In den letzten Jahren hat Indien begonnen, sich für Veränderungen zu öffnen, die patriarchalische Normen in Frage stellen. Nach der Entkriminalisierung von Section 377 IPC durch das indische Recht wurden jahrzehntelange Unterdrückungen und Verfolgungen der queeren Gemeinschaft reformiert. Die Viktimisierung und Stigmatisierung von sexuellen und geschlechtlichen Minderheiten besteht jedoch in verschiedenen Lebensbereichen fort, so auch im Gesundheitswesen. Diese Stigmatisierung wurde während der Covid-Pandemie deutlich, die einen großen Bedarf an Blutkonserven schuf, aber in vielen gemeldeten Fällen wurde der queeren Gemeinschaft die Möglichkeit zur Blutspende verweigert, was deutlich zeigt, dass sich die Gesetze weiterentwickelt haben, aber die Stigmatisierung fortbesteht. Dieser Beitrag konzentriert sich auf die indischen Blutspenderichtlinien, gibt einen Überblick über die Gesetze, die sich gegen die Blutspende von queeren Menschen richten und diskutiert Länder, in denen die Blutspende von queeren Menschen ausgesetzt wird. Der Beitrag enthält einige Vorschläge zur Überwindung der Diskriminierung bei der Blutspende.

*Schlagwörter:* Diskriminierung, Kriminologie, queer Community, Rechte, Verletzung, Viktimisierung

## **1. Introduction**

Policies in India regarding blood donation have been linked to stigmatisation of LGBTQIA+ people. Due to the discriminatory nature of current laws, the LGBTQIA+ community is often excluded from blood donation testing. Some people in India have been reluctant to get tested

or receive treatment because of the stigma associated with carrying the HIV virus, as well because sexuality remains forbidden to be discussed or expressed freely in the nation. The implementation of measures by the Indian government, such as random testing and the disposal of blood that is HIV-positive without notifying the donor (Mudur, 2002), has resulted in a lack of awareness and the possibility of HIV transmission. The LGBTQIA+ population faces barriers to healthcare and ongoing discrimination as a result of these regulations, which have strengthened preconceptions and prejudices against them.

The term “queer stigmatisation” describes the prejudice and discrimination that people who identify as queer, which includes lesbian, gay, bisexual, transgender, and other non-heteronormative identities, face on a social, cultural, and structural level. Stigmatisation can take many different forms, such as:

1. **Exclusion:** Because of their gender identity or sexual orientation, queer people may experience exclusion from families, communities, and social circles.
2. **Bias:** Another form of discrimination faced by the queer community is discrimination in healthcare, housing, governmental provisions, work and other sectors of life.
3. **Crimes:** Queer people are more likely to experience verbal and physical abuse, hate crimes, bullying, and harassment because of their gender and sexual orientation.
4. **Psychosocial impact:** Stigmatisation can result in mental health problems such as sadness, anxiety, and low self-esteem as well as internalised homophobia or transphobia.
5. **Legal barriers:** The stigmatisation of queer people is exacerbated by discriminatory laws and regulations, such as those that prohibit same-sex marriage or restrict the rights of transgender people.
6. **Religious and cultural rejection:** Certain religious or cultural doctrines may stigmatise and reject LGBTQIA+ identities, which can result in rejection and stigmatisation among the groups (Westwood, 2022).

Eliminating queer stigmatisation requires a variety of strategies, such as advocating for legislative reforms, establishing supportive communities for LGBTQIA+ people, and enacting legal safeguards and educational programs that cultivate acceptance and understanding. Reducing stigma and challenging preconceptions can also be achieved by increasing the visibility and portrayal of queer people in the media and public debate.

## **2. Stance of the Indian Government on the Blood Donation Policy**

One of the discriminatory rulings by an apex court that blatantly violates the constitutional rights of the queer community is the ban on gay and transgender people donating blood under clauses 12 and 51 of guidelines issued by the National Blood Transfusion Council (NBTC) and the National Aids Control Organisation which was released on October 11, 2017 (Rahul, 2023; Kashyap, 2021).

Clause 12 states that a “donor shall be free from any disease transmissible by blood transfusion, as far as can be determined by history and examination”. It prohibits donation by a person considered to be “at risk” for HIV, Hepatitis B or C infections, and specifies that this includes transgender people, men who have sex with men, female sex workers, injecting drug users and persons with multiple sexual partners (Rahul, 2023).

Clause 51 states that transgender persons, men who have sex with men and female sex workers are considered “at risk” and are permanently deferred or prohibited from being eligible as donors for blood or plasma, because they are “at risk for HIV infection” (Rahul, 2023).

In 2021, Manipur-based trans activist Santa Khurai filed a writ petition in the Supreme Court, to contest the prohibition of queer individuals from donating blood based on their gender or sexual orientation rather than their health background or sexual activity (Noor, 2023).

Clauses 12 and 51 of the Guidelines on Blood Donor Selection and Blood Donor Referral from 2017, published by the National Blood Transfusion Council (NTBC) and the National Aids Control Organisation (NACO) under the Ministry of Health and Family Welfare, were challenged by Khurai in her petition as being unconstitutional (Rahul, 2023).

In response to Khurai’s appeal, the government stated in March 2023 that the ban is supported by scientific evidence. The matter was assessed from the standpoint of public health and not just from an individual rights perspective, keeping in mind the practicality (Rahul, 2023).

In India, the LGBTQIA+ individuals are still permitted to donate blood but discriminated in some law points due to which they are stigmatised and treated differently in hospitals or healthcare sectors. As per the latest rules established by the National AIDS Control Organisation (NACO) (2017), transgender individuals and men who have sex with men (MSM) are classified as high-risk groups for HIV and are prohibited from donating blood for life.

As per the criteria, male gay and bisexual donors who are in monogamous relationships are eligible to donate blood. In the last many years, India has changed its laws regarding blood donation. Males who have sexual relations with men (MSM), including gay and bisexual men, were historically permanently prohibited from donating blood due to the assumed higher risk of HIV/AIDS transmission. However, in 2018, the Indian government modified its blood donation regulations, allowing MSM individuals in monogamous partnerships to donate blood after a 12-month deferral period (Custer et al., 2016). After coming to the conclusion that homosexual relations provide a lower risk of HIV transmission than promiscuous sexual behaviour, the National AIDS Control Organisation (NACO) suggested the modification.

Since this policy assumes the falsehood that those who identify as LGBTQIA+ are inevitably more likely to get HIV, many have criticised it for being discriminatory (HIV.org, 2023). Indian medical professionals and a multitude of LGBTQIA+ campaigners have called for a revision of these standards, one that would remove any discriminatory language and allow LGBTQIA+ individuals to donate blood as long as they meet the same eligibility requirements as other donors.

Courts have not given up on further policy reform to ensure that blood donation laws in India are based on research, individual risk factors, and inclusivity rather than stigmatising assumptions about gender identity or sexual orientation (Noor, 2023). These programs aim to eradicate systemic biases and advance a more equal approach to blood donation laws. Currently, a lot of nations no longer have laws that permanently forbid people based only on their identification. For example, deferrals from homosexual intercourse are now based on a 45-day or 3-5-month period following the last high-risk sexual contact, rather than identity (Noor, 2023). This is in accordance with changed laws in the US and the UK (Noor, 2023).

It’s important to recognize that attitudes toward queer individuals and blood donation can vary across different regions and organisations within India. While there have been some positive changes in recent years, ongoing advocacy and awareness efforts are necessary to combat stigmatisation and promote fair and inclusive blood donation policies.

### 3. Laws Pertaining to Indian Blood Donation

India famously decriminalised homosexuality (Union of India, 1860) in the historic judgement *Navtej Singh Johar v Union of India* on September 6, 2018 (Kumar, 2018). With homosexuality decriminalised and transgender people having been recognised as the third gender in the 2014 decision *National Legal Services Authority vs Union of India*, an optimistic future seemed within reach, elevating the rights of the LGBTQIA+ community to those enjoyed by other Indians (Goodman, 2014). Yet interceding cases have indicated a fluctuating level of support for realising these substantive rights for the queer community in India. India's current laws prohibit trans people, gay and bisexual men, and female sex workers from donating blood, despite acute shortages in the world's most populous country and a global shift away from bans on blood donation by LGBTQIA+ people.

The rules, which date back to the start of the HIV/AIDS crisis in the 1980s, exclude members of those groups on the grounds that they are at high risk for the virus – even though all donated blood is screened for HIV (Kumar & Singh, 2023)

India's Guidelines for Blood Donor Selection and Blood Donor Referral (Ariba, 2023) expressly prohibit transgender people and gay men from donating blood, classifying them as persons 'at risk' of infections including HIV-AIDS. Therefore, this ban constitutes group discrimination, violating Article 14 of the Constitution (Constitution Article, n. d.) which guarantees the right to equality (Gaur, 2022).

With blood donation deficits presenting a grim reality of India and many people continuing to die for lack of blood (Gaur et al., 2022), guidelines such as these also contravene the spirit of Article 21 of the Constitution, which protects the right to life. As every unit of donated blood must already be screened for transferable diseases like HIV and Hepatitis, the existing Blood Donation guidelines are simply a systematic means of prejudicing the community against the LGBTQIA+ people, denying them the enjoyment of equal rights as against the rest of the population.

Although LGBTQIA+ equality jurisprudence is gradually emerging in India, the fight for equality continues. Blood Donation guidelines which discriminate on the basis of gender and sexuality reinforce prejudicial attitudes and practices.

### 4. Existing Donor Selection Criteria

The gazette notification brought out by the government of India, dated 11th March 2020, has put an elaborated list of exclusion and inclusion criteria for blood donors. Although it looks a robust one to prevent transfusion-transmitted infections, a balance of deferral against the demand for blood is noticeably uneven. Therefore, an empirical revision in these is the need of the hour (Gaur, 2022).

### 5. Criminological Perspective

Labelling theory is a perspective within criminology that focuses on how individuals come to be labelled as deviant or criminal by society and the effects of those labels on subsequent be-

haviour. It suggests that societal reaction to certain behaviours or individuals plays a significant role in the development of criminal identities and behaviours. This theory (Wellford, 1975) can be correlated to how homosexuality was considered a crime until recently and then the queer community labelled as criminals. They were imposed with a lot of stigma and discrimination in various phases of life from childhood within the household to school, to workplace stereotyping and inconveniences caused in governmental provisions. Cases against the queer communities are less reported and registered as the individuals fear law enforcers reactions and stereotyping and negligence of law enforcers (Wellford, 1975).

## 6. Literary Review

A qualitative exploratory study by Arora et al. (2022) aimed to understand the experiences of discrimination faced by LGBTQIA+ patients in Indian hospitals using a human rights perspective. Most administrators and doctors were not familiar with the varied needs of the LGBTQIA+ spectrum and treated them as a homogenous group. Public hospitals did not have separate human resources departments, and most of the gender-affirmative guidelines/policies were not inclusive of the entire LGBTQIA+ spectrum. Trust hospitals, especially those with religious affiliations, tended not to have LGBTQIA+ inclusive policies. Some administrators believed that serving the minuscule LGBTQIA+ population may adversely affect business in private hospitals. Policymakers, government, and executives need to be accountable at the systemic level for better enforcement of ratified treaties and laws, designing inclusive public health policies, and reforming medical curricula. Hospital and healthcare administrators must be accountable for implementing inclusive policies and practices and creating a non-discriminatory environment for LGBTQIA+ patients.

A review study by Chakrapani (2022) focuses on the health of LGBTQIA+ people in India and identifies research gaps and recommendations for future research. High prevalence of HIV and sexually transmitted infections among LGBTQIA+ people in India. Mental health burden linked to stigma, discrimination, and violence victimisation among the queer community was prevalent.

A study by Velasco et al. (2022) focuses on the experience of stigma among transgender and gender-diverse people accessing healthcare. Three main themes emerged: stigma experienced within the individual, interpersonal and structural socio-ecological levels among transgender people accessing care.

Chakrapani's et al. (2022) paper gives insights on sexual stigma and enacted HIV stigma are associated with depression. Internalised HIV stigma mediates the association between sexual stigma and depression.

In 2022, Preety Chouhan, a 29-year-old transgender woman, wanted to donate blood to her friend who was admitted to a state-run hospital in the Indian capital city, New Delhi, for a severe dengue infection. But she was denied as she belonged to a high risk group as per the blood donation policies (Kuchay, 2024).

Naaz Joshi, a trans model from New Delhi states that people or the health care sector considers "us as sex-workers or beggars and deny the right to equality by discrimination and ignorance". Joshi, 42, recalls that, toward the end of 2017, she contracted mononucleosis, a viral infection, which resulted in significantly low levels of certain blood cells, primarily platelets and white blood cells. "I informed the hospital staff that since my haemoglobin levels were within a

healthy range, I wished to exchange my blood for platelets without incurring additional costs”, Joshi said. She said that they declined her request because she is transgender. Joshi is a TED speaker, was crowned Miss World Diversity three consecutive times, and was awarded the Empress Earth 2021-22 title in a virtual competition. She emphasised that these accomplishments do not diminish the ongoing discrimination she faces as a trans woman (Noor, 2023).

Jayna Kothari, one of the lawyers representing Khurai in the Supreme Court, said about the blood-donation guidelines: “There is a stigma and discriminatory attitude that members of the trans community are engaged in unprotected sex, that they are criminals. It’s sad and frustrating for them that they cannot donate blood to their own family members who need it.” Despite parliament passing the Transgender Persons (Protection of Rights) Bill in 2019 (Bhattacharya et al., 2022).

## 7. Research Methodology

A systematic bibliographic review was conducted related to transgender stigmatisation in Indian blood donation policies. The study was conducted according to PRISMA-P guidelines (Moher et al., 2015). Reviews were conducted to look into the parameters of stigmatisation encountered by Transgender specially focusing on the healthcare sector and the discriminative policies within the Indian blood donation system. A total of 30 studies were reviewed and studied including national and international papers.

The inclusion criteria was that all publications referred to queer community, regardless of age; The exclusion criteria were studies that collected data from populations other than the queer population. Data or articles written in languages other than English were not considered. After the initial screening of articles few studies did not clearly meet the criteria, therefore, not included. Some studies were discarded because the full text of the studies was not available. In addition, some studies were taken from citations but not reviewed as they did not have the inclusion criteria. Eligible full texts that met all criteria and protocols were selected and checked for consistency and used in the review.

Grey literature is included to avert publication bias and improve understanding of the subject matter. There was no primary data collected. All secondary data research protocols and ethics have been followed, and there is no ethical risk to consider.

## 8. Deferral Policies in Various Countries

Deferrals in Australia last for three months. In Australia, the deferral time without medicine was shortened from a year to three months starting in 2021 (Mowat et al., 2023).

As of September 2022, no deferral in Canada. Anybody, regardless of gender or partner’s gender, who has had anal intercourse with a new partner within the last three months is required to wait three months before donating as of September 11, 2022.

As of September 2021, no deferral in Germany for men who identify as gay or bisexual and who are in a committed monogamous relationship are eligible to donate blood. Men who engage in sexual activity outside of these types of relationships will be barred from blood donation for

four months. The German Ministry of Health eliminated all remaining policies that discriminated against homosexuals who wanted to donate blood nationwide as of April 1, 2023 (ILGA Europe, 2023).

In India a court decision is still ongoing, deferral for male sex with male is indefinite and female with female is no deferral (Economist, 2021).

There is no deferral in Ireland. Ireland changed from a lifelong prohibition on blood donations from MSM who have ever had oral or anal intercourse with another man to a 12-month deferral in January 2017. In March 2022, this was further lowered to a 4-month deferral period. From November 28, 2022, all potential donors – regardless of gender or orientation – are evaluated on an individual basis and are eligible to donate if they haven't had anal intercourse with any new or multiple partners in the four months before the donation (Economist, 2021).

China and Japan have no deferral and 6 months deferral respectively. Middle Eastern or Muslim countries are not very open to the queer community and their laws are not.

In the United Kingdom, there is no deferral; all individuals who have engaged in anal intercourse with one or more partners within the previous three months, irrespective of their own or their partner's gender, are required to wait a further three months before donating (ILGA Europe, 2023).

Within the United States of America, the American Red Cross and the Food and Drug Administration both established and put into force in August 2023 the blood donation policy that permits homosexuals “who are monogamous” as a requirement without any waiting period. Before then, during the height of the COVID-19 pandemic worldwide, gay and bi males wishing to donate blood had to wait three months to be eligible (Economist, 2021).

## 9. Suggestions

Some of the suggestions to avoid queer stigmatisation against the queer communities are:

- Revising the nation's blood donor standards can be done on the basis of a customised system, not on the basis of a person's ethnicity, gender, or any other orientation or stigmatisation.
- Through an extensive assessment, blood can be drawn for screening to check haemoglobin levels, sexual history patterns and frequency, and strict adherence to amended guidelines on specific drugs.
- Introduce sexual and gender orientation topics in schools and colleges, to help children learn the correct information instead of getting wrong information from misleading sources.
- Blood donors' rights to be treated equally with other donors should not be violated when blood units are collected from them and tested for infectious diseases like HIV/AIDS, Hepatitis B, and Hepatitis C. As a result, excluding them from blood donation permanently and classifying them as high risk solely based on their gender and sexual orientation violates these rights.
- Prohibition of rights on the basis of traditional negative stereotypes without any reliable and valid scientific evidence should be avoided, as this can cause many riots and gender based violence.

With the ongoing epidemic and anticipated increase in demand for blood components, updated and more lenient donor selection criteria deserve rapid consideration, even though the current standards are sufficient to guarantee blood safety and reduce transfusion-related morbidity. These changes require careful consideration by the experts in order to develop a workable plan for the present as well as a gauge of pandemic readiness for use in the future. It may be imperative to modify donor selection criteria to align with the local environment following a critical risk assessment.

## 10. Conclusion

Stigmatisation of gender or sexual minorities is an age-old practice which needs to be stopped in this Gen-z age. As individuals, we must educate ourselves and our fellow beings about the various minorities in our communities, and as legal enforcers or part of legal enforcement, we must understand, learn, and raise voice against the stigmatisation and victimisation of our queer peers rather than simply endorsing them as brand logos and accepting them once a year during pride marches. Amendments to laws, such as the Blood Donation Policies, can help to restore and maintain their equality and dignity in the society in which they live. This paper all in all discusses the stigma and discrimination encountered in laws affiliated to blood donation policies and queer community within India and finally recommends a few suggestions to overcome the prejudice.

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