

# HEALTH MINISTRY BACKS 2017 GUIDELINES THAT EXCLUDE TRANSGENDER PERSONS, MSM, FEMALE SEX WORKERS FROM DONATING BLOOD

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The Health Ministry reaffirmed the ban on transgender persons, men having sex with men and female sex workers from donating blood. Image for representational purpose only. | Photo Credit: The Hindu

The Union Health Ministry has in the Supreme Court supported its 2017 guidelines, which excludes transgender persons, men having sex with men (MSM) and female sex workers from donating blood, saying they are “at risk” category population groups and sometimes, the public health perspective must trump individual rights.

The Ministry was responding [to a petition by Thangjam Santa Singh](#), represented by advocate Anindita Pujari, who sought the striking down of clauses in the Blood Donor Selection Criteria of the Guidelines for Blood Donor Selection and Blood Donor Referral, 2017, which excludes transgender persons, MSM, and female sex workers from being blood donors. The 2017 guidelines permanently defer these population groups from being blood donors on account of being at risk of HIV and Hepatitis infections or Transfusion Transmissible Infections (TTI).

The petitioner argued that the guidelines to this extent violated the fundamental right to equality, the right to non-discrimination, and the right to life and dignity of these communities.

“The issue should be judged from the lens of a public health perspective rather than that of an individual rights perspective... Even on the balance of individual rights of the blood donor versus the rights of the recipient, the right of the recipient to receive a safe blood transfusion far outweighs the right of an individual to donate blood,” the Ministry responded.

It said a “robust” blood transfusion system (BTS) was an essential feature of any country’s healthcare system without which quality medical care was impossible. Every effort had to be made to strengthen the integrity of India’s BTS so as to instill confidence in the people who had little option but to use the BTS in what may be perhaps the most difficult situation in their lives.

“It is imperative that both the donor and the recipient at the opposite ends of the BTS have complete faith that the system functions in a manner that is safe, minimising all possible risk of unsafe blood transfusion,” the Ministry argued.

The government said that even the most advanced testing technologies could never be considered completely fool-proof and it was most critical to limit the pool of blood donors to individuals who present the least risk of TTIs in accordance with available scientific evidence.

The 21-page affidavit said the categories of persons excluded were considered at risk for HIV, and Hepatitis B or C infections based on substantial evidence, and based on the assessment of subject experts. Transgender persons, MSM and female sex workers were included in the 'at risk' category, it noted.

It referred to the annual report of the Department of Health and Family Welfare 2020-21, which showed that HIV prevalence among *hijras*/transgender persons, MSM and female sex workers was "six to 13 times higher than adult HIV prevalence".

Similar restrictions for blood donors in respect of population groups with a high prevalence of HIV and other TTIs exist all over the world, the Ministry contended.

"Population groups of transgender persons, MSM and female sex workers continue to be marginalised groups in the social fabric of India and find it difficult to seek timely treatment due to associated stigma, even when they are infected. Due to this, the risk of transmission from these groups further increases. There is also a higher risk of transmission of new emerging diseases from these groups as was recently seen among MSM in the [case of monkeypox](#)," the affidavit said.

It informed the court that there was always a "residual window period" of a few days to several months even with the best of tests like the Nucleic Acid Testing (NAT) to detect infection in donors. The Ministry said NAT was currently deployed in only a small fraction of the 3,866 licensed blood banks in the country.

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