

LETTER TO EDITOR

Modernizing Blood Donation Policies: Challenging the Lifetime Ban on MSM and Transgender Individuals

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Dear Editors,

This article will shed light on a medico-legal issue where MSM (male sex with male) are life-time debarred from blood donation on the basis of suspicion that they can have HIV infection and can transmit the same to others through blood transfusion. In the 1980s, acquired immunodeficiency syndrome, popularly known as AIDS, left the world in fear and stigma. Until 1980, the number of cases and causes of HIV were greatly unknown.¹ During the 1980s, HIV reached around 5 continents (Australia, South America, North America, Europe, and Africa), covering around 1 million people affected by it. The early detection of HIV was linked to males who have sex with males (MSM). In 1982, many gay men in southern California were diagnosed with HIV, and because of this, HIV at that time was called gay-related immune deficiency.² In 1982, CDC used the term "AIDS".²

According to the WHO, around 39 million people around the globe will be living with HIV by 2022.³ National Blood Transfusion Guidelines 2017 under Point 51 prohibits the donation of blood by people who have male-to-male sex and are transgender.⁴ The same kind of prohibition on blood donation can also be seen in the USA.

A team of scientists determined that if a one-year deferral⁵ is done instead of a lifetime ban on blood donation by MSM, this will save many lives. Here, it is important to know and understand the reasoning behind keeping a one-year deferral period for blood donation by MSM. For this one must know about the window period. The window period is the time between HIV infection and when a test can accurately detect it.⁶ Different tests have varying window periods. Among all available tests to detect HIV, only the nucleic acid test (NAT) can detect HIV the soonest (typically within 10 to 33 days after exposure).⁷ Earlier the medical test was not that advanced and owing to this reason only medical experts asked to keep ban on blood donation by MSM. But now with this new test HIV can be detected within 10-33 days of the exposure.

In this study, the researchers aim to argue that the blood donation ban on men who have sex with men (MSM) and transgender individuals is discriminatory, lacking a rational connection to

modern circumstances, and infringing upon basic human rights and constitutional guarantees. They contend that the blood ban policy is arbitrary, and its continued enforcement would violate the rights of MSM and the transgender community. The article sheds light on this outdated ban and explores potential avenues for challenging it. The paper intends to demonstrate how the blood ban is a relic of the past, considering the advancements in blood testing capabilities worldwide and the numerous countries that have already amended or lifted similar bans, surpassing the USA and India.

In India, we had The HIV and AIDS (Prevention & Control) Act, 2017⁸ to protect HIV patients so that no one can discriminate against their rights. However, discriminating only based on assumption is also biased on the part of MSM as medical technology has a different saying in terms of HIV testing because the fourth-generation test for HIV is much more advanced in comparison to previous tests. Thus, researchers here would like to conclude that a complete ban on MSM is not required. A maximum of two months deferral or waiting period will be sufficient as NAT can detect HIV accurately within 33 days of exposure. Thus, based on new scientific evidence, the waiting period should be kept for MSM.

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Article History

DOR : 00.00.0000 DOA : 00.00.0000

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