



**CASE COMMENTARY ON COMMON  
CAUSE V. UNION OF INDIA & OTHERS  
(1996) 1 SCC 753**

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**INTRODUCTION (SUBJECT-MATTER)**

“Blood is an essential component of the body which provides sustenance to life. There can be no greater service to the humanity than to offer one’s blood to save the life of other fellow human-beings. At the same time blood, instead of saving life, can lead to death of the person to whom the blood is given if the blood is contaminated.”<sup>1</sup>

As a result of developments in medical science, it is possible to preserve and store blood after it has been collected so that it can be available in the case of need. There are blood banks which undertake the task of collecting, testing and storing the whole blood and its components and make the same available when needed. In view of the dangers inherent in supply of contaminated blood it must be ensured that the blood that is available with the blood banks for use is healthy and free from infection<sup>2</sup>.

**ISSUE**

In this petition filed by way of Public Interest Litigation under Article 32 of the Constitution, the petitioner has high-lighted the serious deficiencies and short-comings in the matter of collection, storage and

supply of blood through the various blood centers operating in the country and has prayed that an appropriate writ order or direction be issued.

**LAW LEADING UP TO THE CASE**

The Drugs and Cosmetics Act, 1940 was formulated by the Drug Controller General of India for the purpose of ensuring quality control on collection, testing, storage, distribution, and infusion of blood and blood components.

The Drugs and Cosmetics Rules, 1945 were also published as required by sections 12 & 13 of Drugs and Cosmetics Act, 1940.

For the purpose of regulating its collection, storage and supply, blood is treated as ‘drug’ under the Drugs and Cosmetics Act, 1940 because the blood is required in the diseased state of a human and also it is required to cure diseases such as anemia, and extreme blood loss.

**SHORT COMINGS AND DEFICIENCIES  
IN THE BLOOD TRANSFUSION  
SERVICES AND WORKING OF THE  
BLOOD BANKS BEFORE 1996**

In 1990, the Government of India, Ministry of Health entrusted M/s A.F. Ferguson & Co., a Management Consultancy Firm with the study of blood banking system in the country. In the report it was stated:-

- 616 blood banks out of 1018 were reported to be unlicensed.
- The health status of the blood sellers was not properly examined and no medical check- up was done on them.
- The mandatory tests which were required to be done were rarely conducted.

<sup>1</sup> Judgment Order by S.C. Agrawal, J.

<sup>2</sup> Common Cause v Union of India & others (1996) 1 SCC 753



- The blood banks were thriving on bleeding 4000-5000 regular professional donors.
- Paucity of trained personnel in the blood banks.
- Storage facilities in the blood banks were not satisfactory.
- Blood banks were operating in an unhygienic environment and collect and store blood in dirty conditions<sup>3</sup>.

7. Strengthening the existing machinery for the enforcement of the provisions of the Act and the Rules<sup>4</sup>.

**JUDGMENT**

The Court, keeping in view the potentialities of harm in the prevailing state of affairs and the need for speedy action in this regard, gave the following directions:-

1. To take steps to establish a National Council of Blood Transfusion and State Council in each State/ Union Territory which shall be registered as a society under Societies registration Act.
2. The programmes and activities of the National Council and the State Councils shall cover the entire range of services related to operation and requirements of Blood Banks.
3. Training programmes for training of technical personnel shall be undertaken by the National Council.
4. Steps shall be taken by the National Council for starting special postgraduate courses in blood collection, processing, storage and transfusion.
5. To ensure licensing of all blood banks in the country within a period of not more than one year.
6. To take steps to discourage the system of the professional donors and completely eliminating it within a period of not more than 2 years

**ANALYSIS**

Looking at the poor and dismal state of the blood transfusion mechanism in India and the terrible history of diseases spread due to transfusion of contaminated blood in the human body, it had become very necessary to take urgent action in this regard to improve the conditions of Blood Transfusion Services in India.

There was an urgent need for the elimination of such a system which was being carried on in the name of Blood Transfusion. The lives of many innocent people were at stake. No proper care and safety was ensured earlier for the Blood Transfusion. Due to this many people became the victims of deadly diseases like AIDS, hepatitis, syphilis etc.

So, according to my view, the decision of the Supreme Court has proved to be very much beneficial because it mandated the establishment of National Council of Blood Transfusion and State Councils, the training of the personnels to be posted in the blood banks, the licensing of the blood banks and also the elimination of the professional donors.

This decision of the Supreme Court led to many amendments in the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules 1945 and also to the formulation of National Blood Policy in 2003 and also an action plan on blood safety was formulated. Voluntary Blood donation has improved gradually in India with

<sup>3</sup> Common Cause v Union of India & others (1996) 1 SCC 753

<sup>4</sup> Common Cause v Union of India & others (1996) 1 SCC 753



transfusion experts and regulators enhancing awareness on the need for blood donation. The blood transfusion community is also actively working on safe blood transfusion. But still India has a long way to go for ensuring access to safe blood across its blood banks. Globally, safe blood transfusion is almost a norm. No transfusion-transmitted HIV cases have been reported in Canada since 1985. In US, the last known case of HIV transmission was in 2008. In India, patients are still getting infected during blood transfusion and at least 2,000 people were infected with HIV while getting blood transfusion.

In India, the blood transfusion industry is regulated by multiple governing bodies managing different aspects of the industry. There is a lack of a centralized national blood transfusion body to enforce policies. Blood banks on the one hand are regulated by the Drugs and Cosmetics Act, 1940 and this Act regulates blood as a drug which is controlled and managed by the Drug Controller General of India and on the other hand, the collection, storage, testing and distribution of blood and its components is regulated by the NACO but the apex body to formulate policies relating to the operation of blood donation centres is the National Blood Transfusion Council<sup>5</sup>.

### **CONCLUSION**

The blood transfusion sector in India still needs improvements. A separate legislation governing Blood Transfusion Services in India shall be passed and there must be a single centralized body governing the blood transfusion.

The personnels who are posted in blood banks for blood transfusion shall be properly educated and they must possess required skills and knowledge regarding blood transfusion and for this purpose education centres for such personnels shall be set-up. Cleanliness shall be maintained in each and every blood bank.

Various awareness programs regarding blood donation shall be organized in both rural and urban areas and focus should be on increasing voluntary blood donation. The Nucleic Acid Amplification Test (NAT) shall be mandated in India.

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<sup>5</sup><http://www.pharmabiz.com/ArticleDetails.aspx?aid=105283&sid=11> (visited February 2, 2019)