The blood management system needs a fresh infusion

Chetan Makam
is Senior Vice President and General Manager, Global Blood Solutions at Terumo Blood and Cell Technologies

The COVID-19 pandemic magnified the inequities in public health across the globe. Learning from experiences, policymakers across the world have rightly endorsed the need to improve the global health architecture as a tool to catalyse economic growth and secure the future of the planet. Greater health financing through international collaborations, deepening the adoption of digital health solutions, and increasing access to medical countermeasures are some of the aspects that are key to reducing the global disparity in health and strengthening the global health architecture. However, amidst these crucial strategies, prioritising access to blood and its products remains fundamental to building a resilient global health architecture.

Blood and its various products play a crucial role in a number of medical scenarios, which includes scheduled surgeries, emergency procedures, as well as in the treatment of conditions such as cancer, thalassemia, and postpartum haemorrhage (PPH). This underscores their irreplaceable significance in upholding patient health across a spectrum of health-care needs.

The issue of blood shortage

A recent report by the World Health Organization (WHO) has brought attention to the global disparities in blood collection. For example, despite having 14% of the global population, countries in the WHO African region could only collect 5% of the global donations. Comparable patterns emerged in low-income and lower-middle-income nations, where these countries received 2% and 24% of the worldwide contributions, respectively, even though their populations account for only 8% and 40% of the global population, respectively.

Similarly, while India has improved its blood management ecosystem, the country still faces a perennial shortage of blood units, impacting critical health-care services. Calibrating according to WHO's standards for self-sufficiency, India collected around 1.27 crore blood units and faced a shortage of over six lakh units in 2019-20. Such shortages can have serious implications on the functioning of the health-care system and if addressed promptly, can significantly contribute to saving lives. For example, according to a study by Savitribai Phule Pune University, an automobile accident victim needs up to 50 units of blood. In 2019-20, the shortage was significant enough to put approximately 12,000 accident victims' lives at risk. Moreover, this deficit could impact 1,00,000 heart surgeries and approximately 30,000 bone marrow transplants.

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Advantages of a hub and spoke model

Inequities in access to safe and sustainable blood can be mitigated through the establishment of robust public-private partnerships (PPP). Collaborations between leading industry players hold immense potential in introducing innovative models for blood collection and distribution, effectively addressing numerous existing challenges. The hub and spoke model is one such innovative method where high-volume blood banks act as a hub for smaller blood centres. This model can be particularly relevant for resource-constrained settings in Low- and Middle-Income Countries (LMIC) as it can address critical gaps in blood availability and distribution, thereby enhancing the accessibility and availability of blood and its products.

Further, as the shelf life of blood and its products is short, a hub and spoke model would help in optimising their utilisation by the smaller blood centres. This innovative approach streamlines distribution, ensuring that these vital resources reach their maximum potential while reducing losses from expiration.

According to the data points tabled in Parliament, over the course of three years, from 2014-15 to 2016-17, a surplus of 30 lakh blood units and related products were discarded. The primary reasons were expiration from not being used, degradation during storage and the presence of infections such as human immunodeficiency virus (HIV) and syphilis. Moreover, the implementation of a hub and spoke model can also improve the accessibility to safe blood and its products in community health centres and smaller sub-district hospitals, especially in geographically challenging topographies.

Dispel the myths around blood donation

Another aspect of the blood management system that perpetuates the inequities associated with it is the propagation of myths and misinformation around voluntary blood donation. Many people still refrain from donating blood voluntarily because of the fear of infections, damaging their immunity, or simply because they assume it to be a time-consuming process. These misconceptions can be dispelled through targeted awareness initiatives.

While the government and its agencies have tried to improve awareness through regular campaigns, the private sector can work closely with the government to launch dedicated awareness campaigns aimed at the grassroots. Such campaigns can leverage the power of social media and deploy innovative tools such as multi-lingual comics to reiterate the need and benefits of regular and voluntary blood donation. These creative strategies can be effective in engaging diverse audiences and fostering a culture of informed and voluntary blood donation.

As we leave the COVID-19 pandemic behind us and align the global developmental road map for an equitable and sustainable future, the health paradigm must be prepared accordingly. Along with other modifications in the health paradigm, since blood and its products are central to modern medicine, political leaders and the policymakers must continue to take steps to strengthen the blood management ecosystem. Simultaneously, proactive engagement from industry and active participation of the citizenry should also be pivotal aspects of this concerted effort.

I-T searches, a form of extra-constitutional power

Suhrith Parthasarathy
is an advocate practising in the Madras High Court

In August 2017, a nine-judge Bench of the Supreme Court of India, in *Justice K.S. Puttaswamy vs Union of India*, declared to rousing acclaim that the Constitution of India guaranteed to persons, a fundamental right to privacy. It was widely believed that the verdict would help usher our civil rights jurisprudence into a new era, where our most cherished liberties are preserved and protected against arbitrary and whimsical governmental excesses.

The six separate judgments rendered in the case spoke through a common voice. The individual, the verdict affirmed, would be placed at the heart of our constitutional discourse and any state action impinging on our privacy, or indeed on any allied right, would be subject to the most piercing of scrutiny.

Judicial deference to executive authority

But much as the ruling infused life into the Constitution's text, when it has come to interpreting our statutes, the meaning ascribed to our rights has remained unchanged. The promised culture of justification – grounded in principles such as proportionality – is rarely on show. In its place, permeating the conversation is a culture of judicial deference, where our laws continue to be construed on lines that vest absolute authority in the executive.

A notable example of this feature is the use of Section 132 of the Income Tax Act, 1961, which grants to the taxman, untrammelled police power to forcibly search persons and their properties, and seize goods found during such a search, including money, bullion, and jewellery. While this measure can be undertaken only where the authorities have, among other things, a "reason to believe" that a person has failed to disclose his income properly, the purported foundation underlying a search is subject to little safeguards under the statute.

Last month, the Gujarat High Court questioned income-tax authorities on a raid conducted on a lawyer, where he and his family members, according to his counsel, were kept in virtual detention for days together, with the search continuing between the morning of November 3 to the morning of November 7. We do not yet know the full facts here, and we perhaps would not until the culmination of the hearings before the court, but it is scarcely uncommon for actions undertaken through the Income-Tax Act to involve detention of individuals for days on end. When these moves are eventually challenged before the courts – there is no prior judicial warrant that the statute prescribes – the invariable result is an imprimatur to the search, with the judiciary yielding to executive wisdom.

A bare reading of Section 132 of the Income-Tax Act suggests a breach of the doctrine of proportionality

In its original colonial form, India's income-tax law, as framed under a 1922 legislation, did not provide the revenue with a power to search and seize. What was available was only authority that was otherwise granted to civil courts – powers involving discovery, inspection, examination of witnesses and so forth. In 1947, the Union government sought to rectify this through the enactment of the Taxation on Income (Investigation Commission) Act. But this law was struck down by the Supreme Court in *Suraj Mall Mohta vs A.V. Viswanatha Sastri* (1954) on the ground that it treated a certain class of assesses differently from others, thereby violating the guarantee of equal treatment contained in Article 14 of the Constitution.

Search and seizure and proportionality

When the income-tax law was altogether refashioned through the enactment of new legislation in 1961, express powers of search and seizure were vested through Section 132. The provision was assailed before a Constitution Bench of the Supreme Court in *Pooran Mal vs Director of Inspection* (1973). In upholding the law, the Court placed strong reliance on its own judgment in *M.P. Sharma vs Satish Chandra*, particularly on the following passage: "A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under Article 20(3) would be defeated by the statutory provisions for searches."

On a reading of this, two things stand out. First, immediately following this passage, the judgment in *M.P. Sharma* also records the fact that the Court was concerned there with searches under the Code of Criminal Procedure, where actions were customarily made under the authority of a magistrate. Searches under the Income-Tax Act, on the other hand, require no judicial licence.

Second, and this is no fault of the judges in *Pooran Mal*, the Court's own reading of the law has since changed. Indeed, *M.P. Sharma* has been formally overruled. As *Puttaswamy* points out, the judges in *M.P. Sharma* did not have the benefit of the various interpretive devices that have since become, in Justice S.A. Bobde's words, "indispensable tools in the Court's approach to adjudicating constitutional cases". The different rights guaranteed in the Constitution are no longer meant to be seen as occupying separate silos. Thus, the right to privacy is intrinsic to the right to personal liberty that Article 21 guarantees.

Today, should the judgment in *Puttaswamy* be read properly, the state's power to search and seize cannot be viewed as a simple tool of social security. It would represent instead a rule that is subject to the doctrine of proportionality. That is, for it to remain lawful, its use must be intended for a legitimate aim; the measure as adopted must be rationally connected to its objective; no alternative and less intrusive means must be available to attain the same purpose; and a balance must be struck between the means chosen and the right that is violated.

A bare reading of Section 132 of the Income-Tax Act suggests a breach of this principle. Although the provision has since not been formally challenged, when the manner of its application came up for discussion in 2022, in *Principal Director of Income Tax (Investigation) & Ors. vs Laljibhai Kanjibhai Mandalia*, the Court paid no heed to its ruling in *Puttaswamy*. A two-judge Bench found there that the formation of an opinion necessitating a search was not a judicial or quasi-judicial function but was only administrative in character.

Therefore, it held that the Court ought to look not at the sufficiency or inadequacy of the reasons recorded for a search, but merely at whether the formation of the belief was honest and *bona fide*. In other words, judges should adopt the "Wednesbury" principle, derived from the U.K. Court of Appeals' 1948 judgment in *Associated Provincial Picture Houses Ltd. vs Wednesbury Corporation*. This requires the court to review whether a measure is so "outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it," and ask nothing more.

Post-*Puttaswamy*, there ought to be no place for the Wednesbury rule, especially when fundamental rights are at stake. Our constitutional canon demands more. It requires any executive action to conform to statutory law in the strictest sense possible. To that end, a warrant for an income-tax search must be founded on proper application of mind and must be amenable to the most penetrating rigours of judicial review. Any other interpretation would only bestow on the executive a form of extra-constitutional power, risking enormous public mischief.