

# **THE INDIAN VACCINATION CAMPAIGN: CHALLENGES POSED BY THE WORLD'S LARGEST DEMOCRACY IN THE WORLD'S LARGEST VACCINATION DRIVE**

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## **INTRODUCTION**

The Novel Coronavirus, which started to spread meteorically in the March of 2020 has transmitted shock waves around the world, traumatising everyone and everything in its way. Coronaviruses are a group of related RNA viruses that cause diseases in mammals and birds. In humans and birds, they cause respiratory tract infections that can range from mild to lethal. Mild illnesses in humans include some cases of the common cold, sore throat and mild fever, while more lethal varieties can cause SARS, MERS, and COVID-19.<sup>i</sup> As the world approaches the anniversary of the pandemic, the virus has already infected over 100 million people worldwide and over 10 million people here in India, and continues to surge worldwide in the form of second and third waves of infection, causing new lockdowns and restrictions, thanks to various new strains. As India, tries to recover from the first wave of the pandemic, the variants from U.K., South Africa, etc. have already amassed a second wave of the virus. The states of Maharashtra & Kerala being the leaders in the resurgence of the virus' infection rate.

Although the ingenious and relentless efforts of the Scientific Community in manufacturing the vaccine has renewed the hopes of people around the globe, it sadly also brings with it a wildfire of rumours on the internet and social media sites regarding the vaccine's safety, efficacy, & side-effects rendering many people on the fence about taking one although, the practice of immunisation dates back hundreds of years.

In 17th century Buddhist monks drank snake venom to confer immunity to snake bite and variolation (smearing of a skin tear with cowpox to confer immunity to smallpox). Edward Jenner is considered the founder of vaccinology in the West in 1796, after he inoculated a 13 year-old-boy with vaccinia virus (cowpox), and demonstrated immunity to smallpox. In 1798,

the first smallpox vaccine was developed. Over the 18th and 19th centuries, systematic implementation of mass smallpox immunisation culminated in its global eradication in 1979.

Similarly, Louis Pasteur's experiments spearheaded the development of live attenuated cholera vaccine and inactivated anthrax vaccine in humans (1897 and 1904, respectively). Plague vaccine was also invented in the late 19th Century. Between 1890 and 1950, bacterial vaccine development proliferated, including the Bacillus-Calmette-Guerin (BCG) vaccination, which is still in use today.<sup>ii</sup> Thus, the use of the earliest vaccine goes back to the 17<sup>th</sup> Century.

Yet, the situation the world finds itself in is indeed unprecedented, there are barely any jurisprudential guidelines nor precedents the government and the judiciary respectively could use to venture through these uncharted territories. This paper tries to, observe and study the Rights of the people & those of the government regarding the vaccination policy.

1. What happens if and when a person rejects and also, does he have the right to reject the jab of the life – saving vaccine?
2. Can the Government force its citizens and aliens to take the vaccine and what are its constitutional repercussions?

### **THE INDIAN VACCINATION DRIVE:**

The First round of India's Vaccination Drive started on the 16<sup>th</sup> of January with priority given to an estimated three crore healthcare workers and the frontline workers. This was followed by voluntary vaccination of those above 50 years of age and the under-50 population groups with co-morbidities, numbering around 27 crore people.<sup>iii</sup> Following which, anybody over the age of 45 shall be able to register and voluntarily take a dose of the vaccine.

This development came about a week after the country's drug regulator approved two vaccines – Serum Institute of India's Covishield and Bharat Biotech's Covaxin – for restricted emergency use.<sup>iv</sup> Further, the Indian Government has developed an online platform, "CoWin" for registration and tracking of the people who want to register to take the vaccine & track the people who already have taken it as well as issue Vaccination Certificates to citizens already vaccinated.

## **THE CONSTITUTIONAL SAFEGUARDS FOR ANYONE REFUSING TO VACCINATE:**

- Article 21 of The Constitution<sup>v</sup> guarantees that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This gives every individual the inherent fundamental right to reject the vaccine if they wish to. Therefore, any person if being forced to vaccinate has the recourse of Article 32 & Article 226<sup>vi</sup> available to approach the Supreme Court & High Courts respectively for the sake of safeguarding his/her constitutional rights.
- The Right to Privacy, under Article 21 of the Constitution, protects people from the interference of the government in personal matters, also has the power to shield any person unwilling to take the vaccine. However, it is not an absolute right and any invasion of privacy by state or non-state actor must satisfy the triple test i.e., the proportionality, the legitimate aim, and the legality.
- Similarly, Article 25 of the Constitution<sup>vii</sup> guarantees everyone the Freedom of Conscience, in other words, the innate sense to decide what is morally right and wrong for themselves. This too is subject to public order, morality and health of the people at large.
- Article 25, also encompasses the freedom of regulating religious affairs. The act of vaccinating may be said analogous to receiving a medical treatment, thus an individual possesses the right to refuse any such vaccination attempt under his/her religious beliefs.

Thus, in a way, the Constitution offers various resorts to people who are apprehensive of the vaccine.

## **THE ROLE OF THE GOVERNMENT IN THE VACCINATION RACE:**

‘*Salus populi suprema lex esto*’ wrote Cicero: the health / welfare of the people is the supreme law.

Part IV of the Constitution of India enumerates the Directive Principles of State Policy, which aims to create social welfare and help the citizens lead an overall good and healthy life.

Presently, the role of government has undergone a radical shift, from the humdrum laissez-faire police state, to a welfare state ensuring its citizens, not just administration and security, but ensuring economic and social well – being, so as to take care of them, “from the cradle to the grave” as in the words of Clement Atlee. The modern Indian Government ensures its citizens ideals such as Justice, Liberty, and Equality & Fraternity in the role of a Welfare State, as devised by the Preamble.

Articles 39<sup>viii</sup> entails important principles of the Directive Principles of the State Policy, making it a governmental prerogative in this welfare state, to conjure measures for the promotion and betterment of health of its citizens. Whereas, Article 47 implores the government to raise the level of nutrition and the standard of living and to improve public health.<sup>ix</sup>

The nature of these principles is such that they are directory, optional; it is at the sole discretion of the government whether to follow these principles, but they do grant a certain constitutional leeway to promulgate peremptory norms for vaccination of people who refuse to vaccinate, if they risk to continue the spread of the virus.

Under Part III of the Constitution, through Article 21 the right to life and liberty, has brought within its ambit, the Right to Livelihood which includes<sup>x</sup> basic shelter, food, education, occupation and medical care. The five-judge bench of the Supreme Court in *Olga Tellis v. Bombay Municipal Corporation*<sup>xi</sup>, popularly known as the “Pavement Dwellers Case” implied that ‘right to livelihood’ is borne out of the ‘right to life’ under Article 21 of the Constitution, as no person can live without the means of living, that is, the means of Livelihood. It is imperative in the present scenario that the Right to Livelihood be extended to providing an ample number of vaccines to the people and also equally important, educating people regarding the safety and efficacy of the vaccines, and it is the duty of the government to provide both.

## **MEASURES AVAILABLE TO THE INDIAN GOVERNMENT PRESENTLY:**

It takes on average 261 days for the parliament to pass a law and it then in turn come into force<sup>xii</sup>, keeping in mind the urgency of the situation the country finds itself in, it is imperative that the government use present acts such as The Disaster Management Act, 2005 & The Epidemic Diseases Act, 1897 to take control of the rampant spread of the virus. The pandemic,

unfortunately has seen inhumane acts like attacks such as spitting, pelting of stones and various forms of abuse against the medical fraternity. The Government to its credit quickly amended the Epidemic Diseases Act, 1897 and added Section 2B, which made it punishable to indulge in any act of violence against a healthcare service personnel or cause any damage or loss to any property during an epidemic<sup>xiii</sup> Thus, using an act already in force to stop the escalation of a situation. If needed, the government may potentially use the following acts for the formulation of peremptory vaccination norms.

### **THE DISASTER MANAGEMENT ACT, 2005:**

The Disaster Management Act puts forward the measures to be taken up by the Central and State governments for the speedy and efficient resolution of any disaster plaguing the nation. The Act mentions the formulation of the National & State Disaster Management Authorities, who have been given wide powers to lay down policies relating to the measures to be taken up and management of funds for the efficient redressal of the disaster. The Disaster Management Authorities can lay down the National Plan for dealing with the effects of any disaster (the pandemic in this case) and the same plan may be implemented by the States as well as the Districts with minor adjustments.<sup>xiv</sup>

The DM Act, bestows extensive powers on the Central Government and the National Disaster Management Authority; which was used earlier in the pandemic the Act to enforce lockdowns throughout the nation and implement the use of masks and enforce laws relating to social distancing. The DM Act bestows wide power on the Central Government to issue directions u/ S. 62 of the Act and the same has to be carried out mandatorily by the respective authority. The scope and ambit of the act, mainly Sections 6 – 10 along with Section 62 can potentially help the government frame rules for mandatory vaccination.<sup>xv</sup>

### **THE EPIDEMIC DISEASES ACT, 1897:**

The Epidemic Diseases Act, is an act enacted for the prevention of spread of any virulent disease in India. Although some notable amendments have been made to the act; India still longs for a thorough & a much more comprehensive act to confront such new virulent diseases

as and when it arises. Despite its age, it does contain some provisions such as Section 2A which gives powers to take measures & prescribe regulations to the Central Government for stopping the outbreak of any dangerous epidemic disease and help formulate rules for the world's largest vaccination programme.<sup>xvi</sup> It's a safe assumption to make, that such powers could be extended to formulate rules for mandatory vaccination of the world's largest democracy.

## **THE PASSPORT ACT, 1967 & THE PASSPORT (ENTRY TO INDIA) ACT, 1920:**

An alternate and an unconventional method the Government may perhaps employ for compulsory vaccination scheme could be the use of the Passport Act:

- Firstly, under Section 3(b) of the Passport (Entry to India) Act, 1920<sup>xvii</sup> Government could employ policies which require every alien who wishes to enter on the Indian soil be vaccinated. As an alternative, the government could impose a mandatory quarantine period for anyone entering the country, to prevent any new strains from entering & spreading throughout the country.
- Section 9<sup>xviii</sup> of the 1967 Act, which cites the conditions for passports and travel documents too, can include the mandatory vaccination clause for people wanting passports / travel documents.

The Central Government reserves to make regulations discussed above under Section 24 of the Passport Act, 1967<sup>xix</sup>.

## **THE ROLE OF INTERNATIONAL AGENCIES**

The United Nations whose motto is Peace, Dignity and Equality on a healthy planet, has to be at the forefront, facilitating the poorer and developing countries through the vaccination phase. It is the prerogative of the United Nations (U.N. herein) and the World Health Organisation (W.H.O. herein) to assist such countries, who do not possess sufficient legislation for the formulation of rules for vaccination as well as insufficient infrastructure for procuring the same, by laying down a general framework for the global vaccination programme; as was done previously for the protection of environment through the Stockholm Conference in 1972.

India too, benefitted immensely from the Stockholm Conference, after which the National Council for Environmental Policy and Planning was set up in 1972 within the Department of Science and Technology to establish a regulatory body to look after the environment-related issues. This Council later evolved into a full-fledged Ministry of Environment and Forests, through which later a flurry of acts evolved such as, The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986.<sup>xx</sup>

## **EFFECT OF THE GENERAL FRAMEWORK FOR THE GLOBAL VACCINATION POLICY**

The formulation of a general framework of the Global Vaccination Policy will have a two – fold positive impact:

- Firstly, by providing such a framework, it will expedite the process wherein the countries would save a lot of precious time which translates to lots of saved lives and lessens the burden on the healthcare personnel as well as makes it more economical.
- Secondly, before adopting such an International Convention, countries would need to ratify to it so as to show their consent. Doing so attracts the eminent principle of Public International Law, “Pacta Sunt Servanda” making it the duty of the participating nations to ensure that they take all the necessary steps for bringing up regulations for mandatory vaccination of their citizens & actually vaccinating them.

## **THE GLOBAL STANCE ON VACCINATION**

In countries all over the world, there are certain vaccines made compulsory to new born babies and as per the age of children. Most developed nations follow a strict vaccination schedule during a child’s adolescence.<sup>xxi</sup> Vaccines have been around a long time now, the Small Pox epidemic was the first disease that was successfully eradicated by a vaccine, so there are some guiding principles & precedents regarding compulsory vaccination that could be borrowed from the period.<sup>xxii</sup>

United Kingdom passed a series of Compulsory Vaccination Acts (United Kingdom Vaccination Act, 1853) starting from the year 1853 for the eradication of small pox. The Acts stated that, every child whose health permits, must compulsorily be vaccinated by a medical practitioner against the disease and various monetary and subsequent penal charges were attached on the parents, if they refused such vaccination of their children within the stipulated period.<sup>xxiii</sup>

At the same time in the United States, in a historic decision, the US Supreme Court in *Jacobson V. Massachusetts* reiterated, it was within the police power of the state to enact a mandatory law regarding vaccination. It further stated, the liberty secured by the Constitution of the United States does not import an absolute right in each person at all times, and in all circumstances, wholly freed from restraint, nor is it an element in such liberty that one person, or a minority of persons residing in any community and enjoying the benefits of its local government, should have power to dominate the majority. Thus, the US Supreme Court directed all citizens in due health of Massachusetts to get vaccinated against Small Pox, and a refusal to do so was met with a monetary fine of five dollars.<sup>xxiv</sup>

In India, The Vaccination Act of 1880 of Bengal outlawed inoculation and made it increasingly compulsory for children to be vaccinated. The reports reveal that the Act was continually updated and that similar legislation spread to other Indian regions.<sup>xxv</sup>

## **CONCLUSION:**

Vaccines save millions of lives each year. Vaccines work by training and preparing the body's natural defences i.e., the immune system to recognize and fight off the viruses and bacteria they target. If the body is exposed to those disease-causing germs later, the body is immediately ready to destroy them, thereby preventing illness.<sup>xxvi</sup> Over the history of humanity, vaccines have worked wonders in eradicating diseases such as smallpox and rinderpest. There are fewer than 500 new cases of Polio, which are largely in Afghanistan, Pakistan and Nigeria. Similarly, there are a number of diseases preventable by vaccines such as Chickenpox, Cholera, Diphtheria, Hepatitis A and B, Influenza, Tuberculosis, etc.<sup>xxvii</sup>

Throughout its history, India has always been pro – vaccine and has managed some significant victories over:

- a. Outbreak of cholera and plague in India (1896-1907)
- b. The First World War (1914-1918) started and with coinciding Influenza Pandemic (which reportedly killed around 17 million Indians).
- c. The Small Pox Epidemic<sup>xxviii</sup>

The Indian Government has dubbed the Indian Covid-19 Vaccines as safe; the Oxford AstraZeneca vaccine has completed Phase 3 trials and has been approved in a handful of countries in addition to India, including the U.K. It hasn't received approval in the U.S. The Bharat Biotech's Covaxin hasn't completed Phase 3 trials. It's Phase 1 trial results were published in the Lancet Medical Journal and, India's Health Ministry said it had seen enough data on both vaccines to be confident that they are safe and effective.<sup>xxix</sup>

India being the second most populous country of the world, makes mandatory vaccination an immensely difficult undertaking to achieve, although not impossible. During continuous large outbreaks it becomes necessary to control the continuous spread of the disease through vaccine mandates for children and highly exposed groups in educational and public health facilities, working people. India already has vaccinated its healthcare professionals and frontline workers and is supporting that goal worldwide by providing Indian made vaccines to all countries in need of it. The next tricky step however, would be handing the vaccination of the working-class people and of children. Various countries around the world have employed preemptory vaccination norms for school going children and, this pandemic has time and again showed that hasty opening of schools and colleges have been nothing short of a bio – bomb. Thus, employing mandatory vaccination policies becomes necessary for school and college going students and the staff of such schools and universities before opening for good, coupled with monetary penalties if any person shall be found flouting such rules. For the working-class population, the government must frame rules of mandatory vaccination before using any public transport system and stringent penalties for flouting any such rules. Thus, the government need not make a formal act or even any amendment for the outright vaccination of its citizens, it can be tackled with mandatory vaccination requirement for using governmental services such as the public transport system. Leading immunologists claim that around 70 to 75 percent of the

population needs to be vaccinated for the community spread of the virus to stop. Such vaccination norms coupled with mandatory use of face masks & social – distancing shall help the country and the economy to recuperate.

This paper started out with two specific questions:

1. What happens if and when a person rejects and also, does he have the right to reject the job of the life – saving vaccine?
  - Firstly, the Constitution does provide safeguards to any person not willing to take the vaccine, but if the government makes regulations for mandatory vaccination in order to use specific governmental services, such a person does not retain any recourse in that specific matter.
2. Can the Government force its citizens and aliens to take the vaccine and what are its constitutional repercussions?
  - The Constitution of India is the *Grondnorm* i.e., the Supreme law of the land, any regulation promulgated by the government, must necessarily be *intra vires* of the constitution. The government, may potentially take recourse of the Latin maxim, ‘*Salus Populi Suprema lex esto*’ and, the assistance of the Disaster Management & the Epidemic Diseases Acts, to make such regulations for children and working-class people, as deem necessary for the prevention of community spread of the virus, subject to morality.

In the case of aliens wishing to visit the country, the government can easily have a framework in place making vaccination compulsory and a quarantine in the alternative.

The pandemic, has had an unparalleled effect on the day to day lives of people all over the globe, it has winded back the world & Indian economy to unfathomable limits.

Millions of lives lost! Millions of employments lost! This needs to stop!

The vaccine is the most effective way it will. It is the Fundamental Duty as citizens to get their doses of vaccine hence, refusing to take one, would not only be *Contra bonos mores*, but a disservice to the healthcare workers, the frontline workers, and the scientists, who have worked

relentlessly within an inch of their life to expedite the creation of the vaccine, making it the quickest ever to be prepared in human history!

It is the job of the government to provide a fair quantity of the vaccines to the people and instil awareness regarding its safety, so that the country can restart and rebuild from the aftermath of this pandemic. Leading global epidemiologists and experts have been claiming that the next big disaster to the world wouldn't be a war or nuclear weaponry, rather the spread of a efficient & deadly mutant virus, philanthropist & co – founder of Microsoft, Mr. Bill Gates has been seen endorsing this view numerous times. This pandemic although extremely deadly, should ring a warning bell for the world as there could be an even uglier virus in the nature waiting to surface. Thus, India a global manufacturing hub, with its neighbour first policy needs to set a strong precedent on the vaccination of its citizens.

As in the famous words of Hellen Keller:

*“Although the world is full of suffering, it is also full of the overcoming of it.”*

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