

# IN THE INTEREST OF THE PUBLIC

Relevant for: Developmental Issues | Topic: Health & Sanitation and related issues

Representational image.

In *Registrar General v. State of Meghalaya*, the Meghalaya High Court ruled that the State government's order requiring shopkeepers, local taxi drivers and others to get the COVID-19 vaccines before they resume economic activities is violative of the right to privacy, life, personal liberty, and livelihood. In response to the court's order, the State government released a new order stating that the requirement of vaccination was merely directory and not mandatory. The case raises important questions of how the government can overcome widespread vaccine hesitancy and bring the pandemic to an end.

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The court reasoned that forcing people to vaccinate themselves vitiates the "very fundamental purpose of the welfare attached to it". It ruled that the government's order intrudes upon one's right to privacy and personal liberty as it deprives the individual of their bodily autonomy and bodily integrity, even though the intrusion is of minority intensity. It ruled that the government's order affects an individual's right "significantly" more than affecting the general public. It found that the government's order is not maintainable in law as there is no legal mandate for mandatory vaccination. It relied on the Central government's frequently asked questions, which specify that COVID-19 vaccination is voluntary. The court concluded that the State, rather than adopting coercive steps, must persuade the people to get themselves inoculated.

NGOs slam jab clause in market reopening order in Meghalaya

Compulsory vaccination has often been deployed in India and abroad. The Vaccination Act, 1880, allowed the government to mandate smallpox vaccination among children in select areas. Similarly, several State laws, which set up municipal corporations and councils, empower local authorities to enforce compulsory vaccination schemes. Contrary to the High Court's opinion, compulsory vaccination has passed the muster of judicial review in several national and international courts abroad. In a recent judgment in *Vavika and Others v. Czech Republic*, the European Court of Human Rights (ECtHR) said that the compulsory COVID-19 vaccination scheme is consistent with the right to privacy and religion. The ECtHR cites case laws in France, Hungary, Italy, the U.K., among others to show that several constitutional courts have validated compulsory vaccination and ruled that it has an overriding public interest.

The main bone of contention is that compulsory vaccination violates bodily integrity and takes away decisional autonomy from people, thereby violating their right to life and privacy. It is a well-established principle that no right is absolute; rather rights are subject to reasonable restrictions. According to the order in *Justice Puttaswamy v. Union of India*, a restriction on privacy can be justified if it passes a three-prong test.

First, the restriction must be provided in the law. State governments have the authority to mandate vaccines under the Epidemic Diseases Act, 1897, which allows them to prescribe regulations to prevent the spread of an epidemic disease. Second, the restriction must have a legitimate aim. Compulsory vaccination pursues the legitimate aim of protecting the public from COVID-19. Third, the restriction must be proportional to the object pursued. With more than four lakh reported deaths and a looming third wave, the current scenario counts as a pressing social need. Violations of rights from mandatory administration of a vaccine cannot be termed so grave

so as to override the health rationale underlying the government's order. Nevertheless, the government could provide appropriate accommodation for persons based on genuine medical reasons. Even if the court felt that the consequences of non-compliance with the order (i.e., non-resumption of economic activities) was excessive, the government could have been ordered to replace it with less stringent consequences, such as a moderate fine.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

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