

# WHY VACCINE MANDATES ARE ESSENTIAL

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

A healthcare worker administers the COVID-19 vaccine to a man at a vaccination centre in Gurugram. | Photo Credit: PTI

The recent Supreme Court verdict upholding the government's current vaccination policy deserves to be lauded. The court, however, held that restrictions imposed by States and Union Territories on unvaccinated individuals cannot be said to be proportionate as they sought to invade an individual's bodily integrity and personal autonomy under Article 21 of the Constitution. The court used the test of proportionality to scrutinise these vaccine mandates. The proportionality test is a standard of review that is invoked to keep a check on the infringement of bodily integrity and privacy of an individual by the state.

At the outset, the proportionality test requires any state action which purports to infringe on individual privacy and autonomy to satisfy the following conditions. One, the state action should be sanctioned by law; two, the proposed action should have a legitimate state aim; and three, the extent of interference by the proposed state action should be proportionate to the need for such interference. This essentially means that there should not exist any other less restrictive measure which can be employed to achieve the same legitimate state aim.

To the extent that the vaccine mandates of the States require partial or full vaccination of individuals as a precondition for accessing public spaces, services, or using public transportation, they can fully withstand the contours of the proportionality test, especially at a time when the state interest is as compelling as that of preventing the transmission of COVID-19 and the number of deaths. This has been illustrated forthwith.

First, the competency of the States to legislate and take effective measures on issues concerning 'public health' flows from Entry 6 of the State List of Schedule VII of the Constitution. The Disaster Management Act of 2005 and the Epidemic Diseases Act of 1897 empower the States to undertake effective measures to mitigate the harms caused during a medical emergency. As such, the States' actions have legislative backing.

Second, the legitimate aim of the state is unequivocally illustrated by the fact that inoculations can go a long way in preventing serious illness and reducing deaths in persons infected with COVID-19. In this regard, the Indian Council of Medical Research said that 92% of COVID-19 deaths in India this year occurred in unvaccinated individuals. Any vaccine mandate which nudges individuals to get inoculated in order to prevent deaths or further mutations of the virus has a legitimate state aim.

Third, the extent of interference exercised by the state with the privacy and bodily autonomy of an individual in making vaccination an essential precondition for availing of certain services cannot be said to be disproportionate. While we acknowledge that the third prong of the proportionality test requires the court to make a value judgment in terms of what measures may or may not qualify as disproportionate, we would be remiss here if we lost sight of the fact that any less restrictive measure would have failed to achieve mass inoculation, which lies in the vanguard of our battle against the pandemic.

The imposition of vaccine mandates to safeguard community interests of the society is not unprecedented. In 1905, the U.S. Supreme Court in *Jacobson v. Massachusetts* held that the

city of Cambridge in Massachusetts could punish citizens who rejected smallpox vaccinations. In 1901, a smallpox outbreak raged across the Northeast and Cambridge, and the state responded by mandating that all adults obtain smallpox vaccinations or face a \$5 fine. In 1902, Pastor Henning Jacobson refused to get vaccinated and pay the fee, claiming that he and his son had been harmed by prior immunisation. Jacobson contended in the State court that the legislation violated both the Massachusetts and Federal Constitutions. His claims were denied by State courts, including the Massachusetts Supreme Judicial Court. Jacobson argued before the Supreme Court that “compulsion to introduce disease into a healthy system is a violation of liberty.” The Supreme Court dismissed Jacobson’s arguments and said: “A community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” This ruling was soon fortified when a separate issue of vaccinations — state laws requiring children to be vaccinated prior to attending public school — came up in *Zucht v. King* in 1922. Justice Louis Brandeis and a unanimous court held that *Jacobson* had already established that a state may exercise its police power to provide for compulsory vaccination.

In India, Justice John Marshall Harlan’s sentiments on community interest being prioritised over individual interests were echoed by the Supreme Court in *Asha Ranjan v. State of Bihar* (2017). In that case, the court essentially laid down a hierarchy for a situation when two fundamental rights under the same umbrella are pitched against each other. It observed that the community interest cannot be sacrificed at the altar of individual interests especially in a situation where a fear psychosis is running through the community.

It is puzzling to note here that despite acknowledging the argument on community interest in paragraph 49 of the judgment and addressing the need to limit individual liberty in such cases, the Supreme Court still went on to declare vaccine mandates to be disproportionate until the time infection rates remain low. This will inevitably have a direct bearing on India’s ability to equip itself and its citizens for further mutations of the virus, if any, in the times to come.

The arguments in opposition to vaccine mandates could have the potential to be sustained if it had not been proved that vaccines are medically essential to prevent severe illness and reduce deaths among infected persons. Should the virus mutate further, the presence of a class of unvaccinated persons would have wide-ranging ramifications for an already overburdened healthcare system.

Being a signatory to the International Covenant on Economic, Social and Cultural Rights, India is bound to take all possible measures to progressively realise the enjoyment of “highest attainable standard of physical and mental health” of its citizens under Article 12 thereof. In this regard, it is only befitting that the state expedites inoculations at a time when infection rates are relatively low. This will not only alleviate the burden on the healthcare system during more difficult times, but will also ensure that the state’s healthcare policies are proactive and not merely reactionary.

As for bodily integrity and personal autonomy of an individual under Article 21 of the Constitution, we would be remiss if we did not acknowledge the fact that such autonomy proceeds on the guarantee of life itself. In such a scenario, it becomes essential for the state to first safeguard the life and health of its citizens before individuals’ decisional autonomies, even if that requires the state to take aid of its constitutionally recognised police powers.

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