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LEGAL POSITION ON MANDATORY COVID-19 VACCINATION

A. Introduction

The Covid-19 pandemic raises unique legal challenges in India on mandatory vaccinations. As it is a novel conundrum, there is currently minimal executive and judicial guidance to rely on. However, there has been some traction in this area lately. Below is a brief view on the current legal position of mandating vaccines for employees at workplaces.

B. Analysis

Statutory Position

As per the Epidemic Diseases Act, 1897, the Central or state government, on determining that the existing provisions of law cannot handle the outbreak of a ‘dangerous epidemic disease’, may prescribe temporary regulations to help control its spread.¹ The Disaster Management Act, 2005, empowers the governments to formulate strategies and implement measures it may deem necessary for the purpose of disaster management.

Central Government’s Position

Central Government has currently not made the vaccination mandatory. Ministry of Health and Family Welfare opined that: “*Vaccination for COVID-19 is voluntary*” and “*it is advisable to receive the complete schedule of COVID-19 vaccine for protecting oneself against this disease and also to limit the spread of this disease to the close contacts including family members, friends, relatives, and co-workers.*”²

Judicial Precedents

Meghalaya HC³ advised that mandating the Covid-19 vaccination has no force in law and is unconstitutional in the context of orders passed by the state’s Deputy Commissioners that held that shopkeepers, vendors, and taxi drivers may not resume their businesses if they are not vaccinated. Similar views were held by HCs of Guwahati and Manipur. On the contrary, the Madras HC observed⁴ that when the wider interest of public health and safety is in question, the right to refuse the vaccine may not exist.

The Supreme Court issued a notice⁵ while refusing to stop the compulsory vaccination drives initiated by some states, stating that the personal autonomy of an individual can be compromised against a wider public health interest. However, the final legal position is difficult to determine, though this view offers some

¹ Section 2A of ED Act.

² Government of India, Ministry of Health and Family Welfare, ‘Frequently Asked Questions’, as of March 25, 2021, Accessible at: https://www.mohfw.gov.in/covid_vaccination/vaccination/faqs.html.

³ Registrar General v State of Meghalaya MANU/MG/0061/2021.

⁴ M. Karpagam v Commissionerate for the Welfare of Differently Abled and Ors. MANU/TN/4399/2021.

⁵ Dr. Jacob Puliyel v. Union of India on 9th August 2021.

clarity on mandating vaccinations.⁶

C. Conclusion

An authoritative legal position on mandatory vaccination is yet not available. There are also logistic concerns on mandatory vaccination, especially considering the issue of vaccine accessibility in India and the current low vaccination status.⁷

Article 47 of the Constitution⁸ requires the State to maintain and improve the conditions of public health. While mandatory vaccination may threaten the right to self-determination, bodily integrity and rights of individuals to pursue their livelihood, not mandating could pose health risks for the public at large. A considered view on this from the Supreme Court will especially help employers address this issue in respect of their employees and visitors entering their workplaces as and when they open their offices.

This *Counselence Connect* contains information in a nutshell on a recent change in law.
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⁶ <https://www.barandbench.com/news/litigation/supreme-court-notice-to-central-govt-on-plea-for-disclosure-of-covid-vaccine-trial-data>.

⁷ Only 8.2% of India's population is fully vaccinated (<https://ourworldindata.org/covid-vaccinations>).

⁸ Article 47 (*Duty of the State to raise the level of nutrition and the standard of living and to improve public health*).