



Editorial

Ethical considerations of COVID-19 and compulsory vaccination: An Indian Viewpoint

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Introduction

Following a devastating second wave of COVID-19, initiatives were taken to vaccinate India's eligible population, despite various barriers such as vaccine shortages, logistics, and popular skepticism of vaccination. India could manage to vaccinate 100 crore population.¹ This has resulted in the manifestation of a seminal issue of autonomy vis a vis public health. The Central Government has evidently stated that vaccination is voluntary. However, there have been a few instances of coercive vaccination throughout India. This article debates the ethical contemplations and limitations of COVID-19 and compulsory vaccination across the Indian population.

How compulsory COVID-19 vaccination is implemented indirectly?

Mandates facilitate faster implementation of guidelines

1. No vaccine no free COVID-19 treatment, ration and pension: Many states amid low vaccination rates had formulated the mechanisms of withdrawing treatment, ration and pension as action against those still unvaccinated.²
2. No vaccine no salary: as witnessed in Punjab, the finance department in its order to administrative officers on had instructed to inform the employees to register their vaccination certification number for both doses with its web-based human resource portal. Punjab government had instructed to withhold salaries of government employees who are unvaccinated.³
3. No vaccine no access: restricting access to public places for unvaccinated individuals.⁴

How the human rights are violated?⁵

1. Violation of right to privacy: Orders imposing mandatory vaccination do not give a rational choice to an individual to take a vaccine. This violates their right to decisional autonomy and rights relatable to physical body.
2. Violation of Right to livelihood and Right to carry on trade or profession: The right to livelihood, and the right to involve in any trade, profession, or business by connecting vaccinations to critical services are adversely affected by these orders. Vaccination cannot be made compulsory, especially where there is no reasonable connection between immunization and the loss of one's job or profession.

Scenarios

1. The Guwahati High Court relied on the Meghalaya High Court's order declaring the Standard Operating Procedure (SoP) circulated by the State of Mizoram restricting unvaccinated people from leaving houses, opening/managing shops, or operating public transport as arbitrary and not in consonance with the provisions of Articles 14,19 & 21 of the Indian Constitution.⁶
2. The Manipur High Court also recently observed that denying people their livelihood by lining to their vaccination status vis-a-vis would be illegal on part of the State, if not unconstitutional.⁷
3. The Kohima bench of the Guwahati High Court had given directives to the State to modify an SoP regarding mandatory vaccination of teaching and non-teaching staff as a precondition to opening educational institutions on the ground that vaccination cannot be made compulsory for

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re-opening of colleges and technical institutions from July 26 and classes 11 and 12 from August 2, 2021, with 50 per cent attendance as a preventive measure against coronavirus.⁸

In such scenarios, the Court believes that coercive vaccination orders which infringe on people's fundamental rights are invalid and taints the primary objective of vaccination, which is to protect people.

Legal Challenges of coercive vaccination:

1. Absence of valid law: compulsory vaccination curbing the fundamental rights of people is being carried out through executive orders by state or local governments and not by the law.
2. Disproportionate state actions: Benefits of vaccination cannot be justified to deprive people of their food and livelihood.
3. Perturbation of the principle of equity:
 - a) Lack of access to vaccines: the coercion to vaccinate came when there was a shortage of vaccines.
 - b) Unreasonable discernment between vaccinated and unvaccinated: Coercive vaccination orders leads to excessive discrimination against the unvaccinated population without a reasonable nexus because population immunized with the first dose are allowed to earn their livelihood while their unvaccinated counterparts cannot.

Propos to these observations three propositions form the crux of the argument in defence of the compulsory vaccination:

Proposition 1: Harm to others

The COVID-19 vaccination was rolled out for elderly vulnerable population and adults.

Let us consider an adult traveler might knowingly put others in danger due to risk of infection if they refuse to be vaccinated.

1. Contagious diseases that might result in (more than trivial) harm can be passed on to others through non-intentional action.
2. This could be prevented through vaccination of any potential source individual in advance (where a relevant vaccine exists).
3. People through their individual actions and inactions have a universal moral obligation of non-maleficence to others.

An individual can diminish the risk of causing harm to others through vaccination for contagious disease especially during COVID-19 pandemic. Others should not be harmed because of an individual's choice. During the COVID-19 pandemic many public health issues at stake are numerous.

As health care professionals have a duty to warn about a risk of harm or provide relevant information, any attempt to bring about a vaccination for someone's own good shall be met with charge of paternalism. However, here the harm resulting from one being unvaccinated is not remote but more imminent and larger than the adverse effects of vaccination.

Proposition 2: Concept of best interests

This argument requires a lot of explanation and discussion over issues such as what constitutes 'best interests'.

Medical decisions are usual made keeping best interests of the patients. In this scenario the public who are unvaccinated are at greater risk of COVID-19. In this regard, best interests are decided on the overall welfare judgment, and on at least some occasions other parties may step in to guarantee that individuals are unharmed from the consequences of their decision making.

In COVID-19 where herd protection may protect the population, it looks as though a judgment about best interests may favor non-vaccination (assuming there is any possibility of harm resulting from that vaccination). However, from the past experiences we have recognized that there are practical reasons in favor of vaccination even though herd immunity; example of Polio vaccination exemplifies the same.

Proposition 3: Benefit and harm

Balancing the harms and benefits are a must for vaccination policies. As for the COVID-19 vaccine the focus cannot just be on harms and benefits in relation to particular individuals but that any such judgment needs to take into cogitation the consequences for populations not just individuals.

Possible 'harm-related' objections to vaccination are fewer in number. For example, it may be claimed that the risk of harm from vaccines is disproportionate to the threat from such diseases. Such arguments tend to be over-generalized or involve dubious empirical claims.

Those who are vaccinated are less likely to develop severe COVID-19 if they are infected. If sufficient members of that population are vaccinated then there is additional and major benefit to the society to create herd immunity

If routine vaccination for all recommended diseases were available to everyone across the world the impact on global health would be immensely significant.⁹

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Conclusive Remarks

Immunization may be required in the way forward to prevent COVID-19 and needs to be done as a state obligation rather than by coercive means. Coercive means and unchecked power shall only lead to uninformed consent and more mistrust among population.

Strong legislative norms in India shall allow for obligatory vaccination. Article 47 of the Constitution mandates that state preserve the public health. Furthermore, the Government has all-encompassing authority according to the Epidemic Diseases Act of 1897 and the Disaster Management Act of 2005 to take all means necessary to manage an epidemic, including vaccination.¹⁰

Communitarianism is a socio-political ideology that values the needs or “common good” of society over the needs and rights of individuals.

Vaccination is not just about individuals and their choices but the health of the population and shall emphasize the canonical principles of bioethics.

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