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RECENT JUDGEMENT OF HON'BLE SUPREME COURT OF INDIA ON VACCINATION OF PERSONS

On May 02, 2022, the Hon'ble Supreme Court pronounced judgement in a public interest litigation petition (PIL) filed in 2021 before it by Dr. Jacob Puliyeel, a member of the National Technical Advisory Group on Immunization (NTAGI), a group advising the Indian Government on vaccines. The aforesaid petition was filed seeking reliefs on the issues such as adverse consequences of vaccination approval, lack of transparency in publishing segregated clinical trial data of vaccines, non-disclosure of clinical data, lack of appropriate approval from regulatory authorities, evaluation of Adverse Events Following Immunization (AEFIs), and mandatory vaccination being unconstitutional (violating Article 21 of the Constitution of India). Further, petition dealt with various Government Notifications wherein restrictions were imposed on unvaccinated people including their right to access public places freely being in violation of fundamental right of right to livelihood.

Union of India, being the Respondent no. 1 raised the preliminary issue of maintainability of Petition on the ground that the sensitive issue of vaccination should not be dealt with by the Court, as it has the propensity of fueling doubts about the efficacy of the vaccines. It was contended that the pandemic has not come to an end, and any interference with the steps being taken to curb COVID-19 including implementation of vaccination policy will add to hesitancy of people in following it.

Further, the Union of India stated that the decision of domain experts should not be interfered with in judicial review and the courts should not sit in an appeal over a scientific process undertaken by domain experts. The States of Tamil Nadu, Maharashtra, Delhi and Madhya Pradesh also filed counter-affidavits, justifying the restrictions that were placed on unvaccinated persons in public interest.

On the issue of maintainability, the Hon'ble Court relied on the Judgment of Indian Bank's Association, Bombay v. Devkala Consultancy Service¹ and reiterated that the

¹ 2017) 10 SCC 1

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Court is entitled to entertain public interest litigation moved by a person having knowledge in the subject-matter and, thus, having an interest therein, as contradistinguished from a busy body, in the welfare of people. Further, the Hon'ble Court iterated that issue being a public health issue and pertaining to the fundamental rights of the country's population needs due consideration.

Regarding issue of judicial review of executive decisions based on expert opinion, the Hon'ble Court opined that it is a well-settled position that it is not within the domain and scope of the courts to interfere or adjudicate whether a particular public policy is wise or the same can be replaced with better policy. Further, it stated that Courts can only look into the same to the extent whether it violates the fundamental rights of the citizens, is of manifestly arbitrary nature or is opposed to the provisions of the Constitution.

In the present petition, the Hon'ble Court identified primarily four issues which are as follows-

- I. Vaccine mandates being violative of Article 21 of the Constitution of India.*
- II. Non-disclosure of segregated clinical trial data in public domain.*
- III. Improper collection and reporting of AEFIs.*
- IV. Vaccination of children.*

The focus of this article is issue # 1 pertaining to the question whether vaccine mandates are violative of Article 21 of the Constitution of India.

The Hon'ble Supreme Court examined various notifications issued by the Central and State Governments which require compulsory two doses of vaccination for the people to attend offices, colleges, and schools, access public places, private organisations, boarding houses, hostels, factories, shops, events, and programs. It also examined instances where directives were issued that mandate two doses of vaccination for getting food grains at fair price shops or for appearance in examinations.

The Petitioner argued that there is nothing wrong on the Government's part in encouraging people from getting vaccinated, but denial thereof should not invite

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coercive action or lack of access to essential services (to non-vaccinated people) which is plainly unconstitutional, violative of bodily autonomy, and right to access to livelihood. It was also submitted that vaccines do not prevent infection from the virus and are ineffective in preventing infection from new variants. Further, the vaccines which are being administered are only authorized for emergency and clinical procedure for trials have not been complied with. Petitioner also identified aspects such as lack of data disclosure, transparency, and absence of informed consent making the mandate for vaccination unconstitutional. In addition, it was stated that disparity between vaccinated and unvaccinated persons is discriminatory in nature as there is no threat of spread of virus by unvaccinated persons.

The Union of India made submissions that vaccines were proved to be effective, safe and the Government of India had taken necessary care to examine their efficacy, safety, immunogenicity, and pharmacodynamics while granting the approvals. It was also submitted that the vaccination is a completely voluntary exercise, though it was considered necessary to avoid risk of transmission of virus from the unvaccinated people to other individuals of the society.

Several counsels representing various states also submitted that the steps taken by the Governments of their respective states are justified as they are aimed for public safety and in the interest of the community at large. Further, they submitted that unavoidable restrictions were temporarily imposed, and with improvements in the situation, the same were withdrawn.

The Petitioner apprised the Hon'ble Court, on the basis of the Counter-Affidavit filed by the Union of India, that the Government is taking a dual stand on the vaccination mandates. On one hand, Government submitted in their counter affidavit that vaccination is completely voluntary and on the other hand, they are issuing various advisories and directives which make vaccination mandatory. The Petitioner reiterated that there is no scientific and legal contention that unvaccinated people are a threat to society and any public health rationale in a vaccination mandate. Further, it was submitted that any restriction placed on personal autonomy is violative of Article 21

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which is a fundamental right unless the criteria laid down in Judgement of K. S. Puttaswamy v. Union of India², followed.

In the case of K. S. Puttaswamy (supra) it was held that, for any kind of invasion of privacy or personal liberty, the restriction or condition must pass three-fold test-

“(i) The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement.

(ii) Second, the requirement of a need, in terms of a legitimate state aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary state action. The pursuit of a legitimate state aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not re-appreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness.

(iii) The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law.

Hence, the three-fold³ requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms”.

² (2017) 10 SCC 1

³ Legality, need and proportionality

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For understanding the evolution of the Covid-19 virus, its variants and vaccines and its impact on people Hon'ble Court examined on various documents, recommendations, and advisories of WHO, Strategic Advisory Groups of Experts on Immunization (SAGE). After analyzing the same, the Hon'ble Court observed that vaccination of a majority of population of this country played a significant role in preventing severe disease, hospitalization, and deaths and saved the life of public at large. Further, based on its findings, the Hon'ble Court concluded that the vaccination drive undertaken by the Government of India is in the interest of the public and it is not faulted.

While dealing with personal autonomy and public health and on the issue of a coercive vaccination, the Hon'ble Court referred to case of Common Cause v. Union of India⁴, and observed that personal autonomy has been recognized as a critical facet of the right to life and right to self-determination on how individuals should live their own life which consequently encompasses the right to refuse to undergo any medical treatment in the sphere of individual health. Following the decided principles, the Hon'ble Court concluded that bodily integrity is protected under Article 21 of the Constitution of India and no person can be forced to get vaccinated. It also stated that persons who are not keen to be vaccinated on account of personal beliefs or preferences, can avoid vaccination. However, if there is a likelihood of such individuals spreading the infection to other people or contributing to mutation of the virus or burdening of the public health infrastructure, thereby affecting the community health at large, the Government can regulate such public health concerns by imposing certain limitations on individual rights that are reasonable and proportionate to the object sought to be fulfilled.

The Hon'ble Court noted that basis the data / information received, it is clear that an unvaccinated person does not pose a greater risk than a vaccinated person in terms of transmission of the infection.

The Hon'ble Court emphasized that restrictions imposed by Government are open for scrutiny by constitutional courts, it also stated that while adjudicating any restriction or condition, constitutional courts can see whether they meet the requirement laid down in K. S. Puttaswamy (supra).

⁴ (2018) 5 SCC 1

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With regard to coercive vaccine mandates issued by the State, the Hon'ble Court examined restrictions imposed by the States and noted that no submission or data has been put forth to justify restrictions only on unvaccinated individuals, when emerging scientific evidence appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost at par with that from vaccinated persons and both the categories of persons appear to be susceptible to transmission of the virus at similar levels. In this regard, the Hon'ble Court stated that it is the domain of the executive to determine how best to encourage vaccination without unduly encroaching into the fundamental rights of unvaccinated individuals.

The Hon'ble Court while expressing its opinion on the State mandates reiterated that vaccines effectively address severe diseases arising from COVID-19 infections, are instrumental in reducing oxygen requirement, hospital and ICU admissions and mortality and, continue to be the solution to stopping new variants from emerging, as advised by WHO. Further, the Hon'ble Court stated that the clear purpose served by the approved vaccines is in terms of restoration and protection of public health, hence suggestions of the Hon'ble Court with regard to review of vaccine mandates are limited to the present situation alone, and the judgement should not be construed as impeding, in any manner, the lawful exercise of power by the executive to take suitable measures for prevention of infection and transmission of the virus in public interest, which may also take the form of restrictions on unvaccinated people in the future, if the situation so warrants. At the same time such restrictions will be subject to constitutional scrutiny to examine if they meet the threefold requirement for intrusion into rights of individuals.

The Hon'ble Supreme Court in its conclusion held that the current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary. The Court also highlighted the mechanism of the "health pass" employed in France considering that it does not infringe the right to personal privacy. Further, while for the reasons provided in its judgement, the Hon'ble Court held that restrictions on unvaccinated individuals imposed by State Governments / Union Territories cannot be said proportionate. Furthermore, it stated that till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions

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on the rights of unvaccinated individuals, all authorities in India, including private organizations and educational institutions, review the relevant orders and instructions imposing restrictions on such persons in terms of public access, services and resources, if not already recalled. The Hon'ble Court stated that the conclusion is relevant to the present situation and is not to be construed as interfering with the lawful exercise of power by the executive to take suitable measures for prevention of infection and transmission of the virus including any other directions requiring maintenance of COVID-appropriate behavior issued by the Union (Central government) of the State governments.

Anhad Law's Perspective

While in several rural and urban areas there is a willingness amongst individuals especially of a certain age, to get vaccinated, still there are individuals who are vaccine hesitant and averse to vaccination.

It is clear from the above judgement that for the reasons provided earlier, unvaccinated persons, as of now cannot be forced to get vaccinated. With regard to vaccinated persons attending the workplace of private establishments / organizations, while judgement provides that COVID-appropriate behavior would be followed, it could have provided further clarity on this aspect. However, it would be interesting to see how specific government guidelines imposing restrictions on certain establishments asking them to bring double dose vaccinated employees to workplace, from specific dates, could be complied with.

It is important to note that the Hon'ble Supreme Court has clearly provided that while the views expressed by it are relevant in the current context, the Government, subject to any constitutional scrutiny, would have the liberty to issue any restrictions, if a situation warrants so in public interest. Significantly, the Court has held that till the infection rate and spread remains low, as it is currently, and any new development or research finding comes to light which provides the Government due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals in furtherance of the continuing efforts to combat this pandemic, all authorities in the country, including private organizations and educational institutions,

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should review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources.

https://main.sci.gov.in/supremecourt/2021/12077/12077_2021_5_1502_35439_Judgement_02-May-2022.pdf

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