

“MANDATING ‘COMPULSORY VACCINES’ ON RELUCTANT CITIZENS - THE COVID-19 ERA”

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INTRODUCTION

The weakened microorganisms causing such developments in the bodies to attack their pathogen counterparts. How better could human minds function!

From treating diseases with herbs, taking long time to cure, the human race, wanting quick results, has come around a time of vaccination with greater effectiveness. The technique of immunization with vaccines has existed and developed over hundreds of years. The world has gone through major diseases that for then had crippled the lives of people all across and still it would leave its impact for decades to come. Not to forget these diseases- polio, tetanus, influenza, Hepatitis B, measles, chickenpox, diphtheria, just to name a few.¹ History has been a witness of the fact that these major diseases have been able to be eliminated by the effectiveness or may it be said, the magic of vaccines. Polio was eliminated in the US by 1979 through widespread vaccination efforts. So, was the ‘ring vaccination’ method adopted to eradicate smallpox, wherein all those who had a possibility of coming in contact with an exposed patient, was tracked down and vaccinated.² However, hardships are never far away from any scenario and so have been in this case. While vaccines have their own benefits and advantages but why should the reluctance from the population still follow? And even after the success and efficacy of vaccines are guaranteed by the organizations and governments, can still such resistance be place over the danger posed by the widespread diseases?

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Where experts believe vaccines to be one of the major achievements of the 20th century, still there might be a section that would not believe in so, owing to the myths and misconceptions. Science has failed before misconceptions and myths. All this dates back to the time when

¹ ‘14 Diseases That You Almost Forgot About’ (*Centers for Disease Control and Prevention*)
<<https://www.cdc.gov/>> accessed 26 February 2021

² ‘Disease Eradication’ (*The History of Vaccines*)<<https://www.historyofvaccines.org/>> accessed on 26 February 2021

vaccines were administered for small pox and people strongly condemned and criticized it on hygiene, sanitation, religious and political basis. The reasons are not limited to this but go beyond this where the skepticism is for logical reasons like, the fear of allergic reactions or some adverse reaction that could cause some significant damage to the body.³ This is in the worst case scenario let alone is the time where the disease is eliminated, and then there is no motivation or cause to get vaccinations.

But where there is a possibility that the citizens are under misconceptions and outweigh non-existent damages, owing to myths and misconceptions, with the benefits of vaccine, then the governments in the past have resorted to laws that have been passed that require vaccinations as a measure of public health. Thus, citing public health as a necessary reasonable defense, the vaccines are administered to the citizens. This becomes all the more important when we currently are dealing with the worst disease of all times that was declared as a pandemic situation by the World Health Organization (WHO). The situation becomes even more worse where the virus mutates and new strains can be more dangerous, then the best tool in hand is vaccine. And for it to work positively, it is to be made sure that a large chunk of population is administered with vaccines. Now, yet again the question is upon the reluctant citizens, what does the government do about it and can it force such administration of vaccinations?

SAFETY ASSURANCE OF VACCINES

The 2020 pandemic made people curious about the vaccines and it was daily news in households about the stages that various vaccines crossed. Much was made known to people about how there are phase wise trials and then approvals by various organizations and the governments of respective countries. This is just the plain information but there are a lot other procedures go on inside.

To remember it throughout, that, currently vaccines are the most effective medium to prevent diseases and it is stated by WHO that every year at least 2-3 million lives are saved through it.⁴ To ensure the safety of vaccines, it is declared safe only after the governments, scientists, vaccine manufacturers, medical experts work with the WHO vaccine safety programme which monitors such safety.

³ 'Understanding Opposition to Vaccines' <[Healthline: Medical information and health advice you can trust.](#)> accessed on 27 February 2021

⁴ 'Vaccines and Immunization: Vaccine Safety' (World Health Organization) <<https://www.who.int/>> accessed on 28 February 2021

There are vaccines that exist today which have been approved for a long time and have been used for decades to a point where they have successfully helped in eliminating and eradicating serious diseases. And there are other set of vaccines which are, under development or are just approved, being prepared to administer to population to help prevent life threatening diseases such as that of- COVID-19, Zika or Nipah viruses.

What is common to all the vaccines, whether already in widespread usage or under development, are that they all undergo proper tests and monitoring and there are phase wise trials wherein in each subsequent trial, the number of subjects keep on increasing. This ensures that people from different regions are able to have the uniform benefits of vaccine and the efficacy can be trustworthy. There, of course, is a possibility of side effects from vaccines, which is very much normal and are minor and for a short duration. But this usually gets people a reason for being skeptical and much worse, to completely condemn the vaccine.

PROBABLE CAUSES FOR HESITATION AND RELUCTANCE

Before anything, stating the obvious that people's willingness is the key to achieve the herd immunity goal which in turn might save the human population from its long lasting doom. The Delhi-NCR Coronavirus Telephone Survey Round-4 was able to bring out the evidences of vaccine hesitancy in the light. The pattern was such that, firstly, the uneducated lot was much hesitant and then was the religion and caste minorities. This minority hesitancy has been observed in the US too, where the white population is much more willing to take the vaccines than the black counterparts.⁵

The issue is the perspective of how far are people knowledgeable about the working of vaccines or the supremacy of myths over scientifically-backed vaccines. Where the development of vaccines in the COVID-19 era has been at a much faster pace than ever witnessed, the most popular argument that comes from people is the concern regarding the compliance, protocols and approval process. The doubts over, if the governments are quickly approving the vaccines so that there can be profitable earnings from these. Side-effects from the vaccine are another important reason behind people's reluctance. The LocalCircles

⁵ Shantanu Pramanik, Sonalde Desai, 'Reluctance To Take COVID-19 Vaccines Could Hinder Achieving Herd Immunity Sooner' (*The Indian Express*, 28 January 2021) <<https://indianexpress.com/>> accessed on 28 February 2021

Survey in November 2020 indicated that 59 per cent of Indian citizens were hesitant citing side effects, efficacy and also the fear instilled from adverse events resulting during the trials of vaccines.⁶ Moving further in time, where vaccines actually have completed the first phase of vaccination and the second phase has just rolled out, another reason for reluctance is the resulting deaths of severe cases or some serious complications that follows, all across the world. Phase-1 reported various reasons for why the frontline workers were hesitant- some worry about the costs, if there will be a guarantee of treatment in case there is fallout, being wary of getting vaccinated and other reasons. But there were cases where the workers or employees were forced by the senior officials of respective domain to get vaccinated despite any condition. However, there were health centers that ensured there is no pressure to take the vaccine and people have their free will and can opt out if they wished to.⁷

All these reasons still dominate over the fact of each pharmaceutical company presenting reports of the procedures, the results of the phase wise trials and even after that got approvals from the WHO and governments of respective countries. So, what is clear here is that the lone efforts of these pharmaceutical companies would not suffice. The cooperation and proactive role is to be played by the governments and health policymakers who in collaboration with each other need to promote the vaccination by educating the public and implementing such policies that ensure health and the financial risks associated with the adverse events that might follow vaccination.

MEASURES TO ENCOURAGE TAKING VACCINATION

The Government of India released the 'COVID-19 Vaccine Communication Strategy' before the vaccine rollout and was purposed to disseminate timely, accurate and transparent information about the vaccines in order to alleviate apprehensions about the vaccines and thus, making its acceptance widespread and encourage uptake. This strategy is also aimed to tackle the issue of hesitancy which comes up on account of apprehensions around safety, efficacy and any other myths and misconceptions. And to achieve the goal of ensuring that all eligible groups are accordingly vaccinated with confidence. This strategy would give all prior details plus any information that would have to be given in case there are some changes in

⁶ Milan Sharma, '60% Polled Indians Still Hesitant Towards COVID-19, Shows Survey' (*India Today*, 27 January 2021) <<https://www.indiatoday.in/>> accessed on 28 February 2021

⁷ Sadia Akhtar, 'Some Health Workers Reluctant of Getting Vaccines: Claim Pressure From Superiors' (*Hindustan Times*, 16 January 2021) <[News Headlines, English News, Today Headlines, Top Stories | Hindustan Times](#)> accessed on 1 March 2021

plans and information pertaining to- new vaccines, availability, safety, and timelines and other processes.⁸ This detailed Communication Strategy is so designed and strategized as to address all popular doubts and concerns that can arise as regards the vaccination drive.

Another major player here is the World Health Organization, which has constantly released statements on various aspects of COVID-19. This also includes the information on efficacy and safety of each of the vaccines that have been released as till now. Also, it addresses the frequently asked questions and the most common questions that can arise from the population. In a recent event, where more than 2,800 scientists gathered on a virtual platform hosted by WHO to identify knowledge gaps and accordingly set research priorities for vaccines against SARS-CoV-2 (virus causing COVID-19). The discussions included the safety offered by the existing vaccines and upcoming new candidates, the ways to optimize limited supply and the need for additional safety studies. Even after the administering of 30 million vaccines in 47 high-income countries, the challenges still persist and the fight has yet not come to an end.⁹ Experts have suggested that there is a need for critical research on administering vaccines to different target populations along with vaccination delivery strategies and schedules. This would include trials, modelling and observational studies, all of which would help in informing the policy.

All this only points out the fact that there is a constant struggle by organization, scientists and experts to ensure safety through best possible ways.

CAN VACCINATIONS BE MANDATED TO OVERCOME RELUCTANCE?

The goal of herd immunity to be achieved has been the center of focus since the beginning of the pandemic. To achieve herd immunity naturally, is next to impossible as it would take years and would be coupled with great devastation and bringing the normal life to a halt for the longest times. The only way out then is large scale vaccination. Considering the above analysis where in every way the vaccinations are being encouraged and assured of its safety still if people do not turn out in required numbers, can it be mandated and forced upon people?

⁸ 'COVID-19 Vaccine Communication Strategy' (*Ministry of Health and Family Welfare*) <<https://www.mohfw.gov.in/>> accessed on 1 March 2021

⁹ 'Scientists Tackle Vaccine Safety, Efficacy and Access at Global R&D Forum' (*World Health Organization*, 16 January 2021) <<https://www.who.int/news/item/>> accessed on 1 March 2021

The COVID-19 vaccines as of now have not been mandated, rather, are advisable to get vaccinated and thus are optional at the will of the population. However, vaccination has been mandated in the past in various countries and the judicial branches have had a role to play where various decisions considered vaccination mandates as valid and attempted to address the conflict between individual rights and protection of the public's health.

The US Supreme Court in a case upheld the constitutionality of the mandatory smallpox vaccination programs that were initiated which were valid for the preservation of public health.¹⁰ Another such instance was when many US schools required the students to get smallpox vaccines before they could attend the school and a number of cases were filed in the court. One such case was considered by the US Supreme Court where a student, Rosalyn Zucht, was excluded from a public school upon failure to present proof of vaccination. The argument proposed was that the city ordinance mandating vaccination violated the due process and equal protection clauses of the Fourteenth Amendment. The court dismissed the argument and held that city ordinance was a law of the state and that it was "within the police power of a state to provide for compulsory vaccination."¹¹

Considering the present Covid-19 era, vaccination has yet not been mandated and at most there are advisories and encouragement through information dissemination or subjecting people to various conditions like getting a passport only if vaccinated or vaccination being a precondition to attending schools. In November 2020, the New York State Bar Association recommended the state to make it mandatory for all residents to get the shot, except those exempted by the doctors. Similarly, the Australian Prime Minister suggested mandatory vaccine but later backtracked on these statements.

Dr. Anthony Fauci (key member of the White House coronavirus task force) assured and stated that it never has been the case where the vaccines have been mandated and the population is forced to take the shots. They can be mandated for health workers but not for the general population. Mandate from the federal government would both be unenforceable and inappropriate. This mandate can flow from the orders issued by the states, cities or businesses, but even these, would not be forced vaccination meaning that no one would enter

¹⁰ *Jacobson v. Massachusetts*, [1905] 197 U.S. 11

¹¹ 'Government Regulation' (*The History of Vaccines*) < <https://www.historyofvaccines.org/> > accessed on 2 March 2021

the houses of people, pin them down and forcibly inject them with shots. Dorit Reiss, (a law professor at the University of California Hastings College of the Law) who studies legal and policy issues related to vaccines stated that refusing to follow a mandate could only mean a fine, tax or some other sort of penalty.¹²

There are these groups of people probably called the anti-vaxxer group has emerged which is blamed to be anti-science and are also against such compulsory vaccinations. No such group exists here in India but there are legal frameworks that give enough powers to the government to enforce compulsory vaccination. However, the basic premise to be kept in mind is that this shall only be initiated if it is in the larger public interest.

Firstly, as a legislative measure, the parliament can always enact a specific law that would only be incorporating the law around such obligation just like the British government did to deal with the smallpox epidemic through the Compulsory Vaccination Act, 1892. To back any executive action in this regard the Epidemic Diseases Act, 1897 empowers the state government to take the necessary measures to prevent the outbreak or spread of an epidemic disease however it is subject to the requirement that it shall be a grave health crisis of the century. The National Disaster Management Act, 2005 confers wide powers on the national authority and the national executive committee created under this Act through which it is possible for these authorities to mandate compulsory vaccination through appropriate departments in the state governments and central government. The central government too can enforce such a measure through Section 62 of this Act. Then the next creative way to enforce compulsory vaccination is through imposing high cost on refusing vaccination. Like, under the Passport Act of 1967, the government can either refuse the issuance of a passport or revoke an already issued passport of any person who refuses to get vaccinated.¹³

This does pose a question on the individual rights of the citizens. Here, what can be claimed by the citizens as a matter of right are- the right to privacy (Article 21 of Constitution of India) and right to religious freedom (Article 25 of Constitution of India)? However, both stand countered, as right to freely practice religion is subject to restrictions on account of public order, morality and health. And another that right to privacy is not an absolute right

¹² A Powlowski, 'Will The COVID-19 Vaccine Be Mandatory?: What the Law Says' (*Today*, 3 September 2020) < <https://www.today.com/health/>> accessed on 2 March 2021

¹³ Rangin Pallav Tripathy 'Indian Government has Multiple Legal Options To Force Citizens to Vaccinate Against Covid' (*The Print*, 30 April 2020) < <https://theprint.in/>> accessed on 2 March 2021

and can be curtailed as long as the procedure is fair, just and reasonable.¹⁴ Thus, there is a sufficient leeway through constitution for the government to own such powers of enforcing compulsory vaccination.

CONCLUSION

As much as one can feel that their individual rights are being compromised, it is not to forget that even such powers of mandating the vaccines is subject to the condition that there shall be a grave public health crisis compromising the lives of the citizens. And COVID-19, declared as a pandemic is one of its kind widespread disease that has taken millions of lives globally and the menace is ever growing with mutations and new strains of virus popping up in a number of countries, rendering a possibility of inefficacy of the vaccines (though such has yet not been confirmed). The only savior in such a time of crisis is the widespread vaccination of populations around. Considering the gravity of this pandemic, the vaccinations have yet not been mandated. And other measures are being adopted to encourage and inform people through various means to gain people's confidence in vaccination and taking the shot. One popular means that has come around is the leaders of various countries getting vaccinated in public eye and ensuring safety and thus encouraging vaccination. Prime Minister Narendra Modi got the first dose of COVID-19 vaccine in the Phase-2 of vaccination, on March 1st, 2020 and what followed is the obvious. Health centers witnessed an increase in the number of people to get vaccinated.

It is always a better and worthwhile option to make people informed rather than forcing upon. Also, it always works from both the sides, not only should the government be careful but the citizens too have to believe the scientific data rather than the myths and misconceptions and blatantly rejecting the procedures. The world is now susceptible to more such happenings and it will be a struggle between science and such occurrences. Thus what is required and expected of people is to prepare them beforehand so that it can be avoided in time before it gets worse.

¹⁴ *Justice K.S. Puttaswamy and Ors v Union of India* [2018] 1 SCC 809