



DIGITAL VACCINATION AND ITS CONCERNS AROUND FUNDAMENTAL RIGHTS.

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ABSTRACT

The numerous COVID-19 vaccines that have been produced over the course of the last several months are widely regarded as the sole way of meeting the difficulties presented by the current pandemic epidemic. Despite this, public opinion on vaccinations is very split. And, of course, debates over mandatory vaccination, which are often based on arguments based on basic rights, may become very emotional. A vaccination system in which the enforcement of the obligation to vaccinate is eventually guaranteed by the mandatory delivery of the vaccine is referred to as a compulsory vaccination system, which is not unexpected. Nonetheless, in the vast majority of instances, governments choose for indirect, relative modes of enforcement, which indicate negative repercussions in the event of refusal to vaccinate but do not involve mandatory administration. Fines or the tying of one's vaccination status to the enjoying of some (non-essential) services, such as preschool, or circumstances, such as attending a concert, are examples of such indirect measures to consider. In this article, the authors provided a brief analysis of the digitalization of vaccines in our country and compulsory vaccination in the context of fundamental rights.

Keywords: Vaccine, Vaccination, Covid 19, Fundamental Rights.

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INTRODUCTION

With the COVID-19 pandemic raging on in India with its daily load of cases, it's quite pertinent that the nation gears up for its vaccination drive. With a population of 136.64 Crore¹, it's a complicated process to administer doses of vaccine to its citizens, nevertheless, the Indian government took up the vaccination drive, which started with the 45+ age group and ramped up the administration to even 18-45 age group. In this hubbub what is being ignored is the governments' mode of selection for vaccination. They introduced a digital app through which people were to book slots and get their doses, but the problem is that not everyone owns a smartphone which is one of the primary ways to get their slots, which is essentially causing a digital divide.

Now the question put forth is whether this mode of administration is violating the fundamental rights of its citizens mainly the right to equality and the right to health. So, in this paper we're going to embark on a journey of understanding, what are the different types of vaccines available in India? What are the laws regarding vaccinations? Who carries the responsibility of carrying out the vaccination drive? And how is this digital divide so adopted violating our core fundamental rights?

COVID VACCINE

The Serum institute² in India is currently the biggest manufacturer in the globe. The vaccine which is on the tip of the tongue is almost every Indian citizen is due to the hysteria surrounding the COVID-19 and the threat of its adverse health effects.

The Production, testing, trial phase that a normal vaccine goes through was ramped up due to critical urgency and was made available in the Indian market in just about 10 months, since the inception of the pandemic in the country. This is certainly an incredible pace and even with questions regarding the efficiency and side effects of the vaccine, it was a relief for what was becoming a helpless situation.

The government introduced two vaccines namely Covaxin – developed by Bharat biotech with ICMR³ and Covishield an AstraZeneca⁴ Oxford vaccine manufactured by serum institute of

¹ 'India Likely To Surpass China As World's Most Populous Country In Next 8 Years: UN - ET Healthworld' (ETHealthworld.com, 2021) <https://health.economicstimes.indiatimes.com/news/industry/india-likely-to-surpass-china-as-worlds-most-populous-country-in-next-8-years-un/69850344> accessed 16 July 2021.

² Ishika Sharma, 'Top 10 Biotechnology Companies In India In 2021 - Inventiva' (Inventiva, 2021) <https://www.inventiva.co.in/trends/ishikasharma/top-10-biotechnology-companies-in-india-in-2021/> accessed 16 July 2021.

India. Now with these two vaccines, the government had constituted a task force called 'National expert group'⁵ under the chairmanship of NITI AAYOG in August to formulate a strategy for vaccination.

Hence both the vaccines were made available to Indian citizens from February for the age group of above (60 and 45+ with comorbidities), Healthcare sector and to Frontline warriors, for 45+ it was made available via the government-made Co-win app which allows the user to book and slot near to his location i.e., after uploading his Aadhar card for identification and finally get an appointment.

LAWS ON VACCINATION AND ITS RESPONSIBILITY

The act that specifically deals with vaccination is the vaccination act of 1880 the gist of it is regarding the vaccinations for children and functions of the municipality and state's power. This act is in no way equipped to handle the vaccination drive of an entire nation. Vaccination is not compulsory but the central government can invoke the Epidemic act⁶ (1897) or Disaster management act⁷ (2005) or pass a special ordinance to empower themselves and make it mandatory for all the citizens to get vaccinated.

This brings us to the responsibility of vaccination; It comes under the ambit of health which is a state subject under the seventh schedule of the Indian Constitution. Hence the constitutional liability falls on the individual state. But the ground reality is that states are heavily dependent on central in terms of their technical expertise and its financial aid and with many states providing the same for free, it has become overburdened which is causing a financial strain.

Nonetheless, India started its largest vaccination drive through digitization.

DIGITIZATION OF VACCINATION

With the introduction of the Cowin app for vaccination, three things were made necessary to schedule an appointment. 1) Smartphone 2) Internet 3) Aadhar cards. People who could book a

³ 'About Us' (*Icmr.gov.in*, 2021) <https://www.icmr.gov.in/aboutus.html> accessed 16 July 2021.

⁴ 'Vaxzevria (Previously COVID-19 Vaccine AstraZeneca) - European Medicines Agency' (*European Medicines Agency*, 2021) <https://www.ema.europa.eu/en/medicines/human/EPAR/vaxzevria-previously-covid-19-vaccine-astrazeneca> accessed 16 July 2021.

⁵ 'National Expert Group On Vaccine Administration For COVID-19 Deliberates On Strategy To Ensure COVID-19 Vaccines' Availability And Its Delivery Mechanism' (*Pib.gov.in*, 2021) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1645363> accessed 16 July 2021.

⁶ The Epidemic Diseases Act, 1897 (Act No. 3 of 1897).

⁷ The Disaster Management Act, 2005 (Act No. 53 of 2005).

slot were those people who could match the prerequisite of all three conditions. This created a digital divide among people. The natural question to be asked here is how? To which the following statistics could give us a picture. According to the statistics research department and report by Simon Kemp,

1)The smartphone penetration for the financial year 2020 is standing at 42%,⁸ given the first condition of owning a smartphone to book a slot. It would mean approximately 58% of the population is currently missing out on the central government's vaccination drive due to the non-availability of these devices.

2) The internet penetration in India for the financial year 2020 stood at 45% with 624 million internet users and this is in terms of internet access. Right to the Internet⁹ is a fundamental right, but more than half the population still does not have internet access and those who do, do not have a sustained connection that will require booking a slot. This is a deep concern as even technically prowess people have difficulty in doing so.

3) According to the 2011 census¹⁰, English is the main language of 256000 individuals, and the second language of 83 million individuals, and the third language of another 46 million individuals, which makes it the second most generally spoken language after Hindi. Around 528 million individuals use Hindi as their first language, for the readers, the correlation here is because the Cowin portal is only available in English which is an entry-level barrier in India. So, if you have little to no knowledge of English, you can't register yourself for Covid vaccination. The information has only been shared through a certain medium. This restricts the number of people registering for the Covid vaccine, to those who are familiar with the English language.

Digital penetration falls short on majority even with its remarkable advances in the sector, and with no address to problems of people with visual disabilities and dependence on NGOs for marginalized groups for vaccination, the slot is unreliable, especially when people who are highly skilled in digital outlets facing trouble getting a slot and lastly, with a language barrier to the usage of the app prima facie there exists a digital divide. But does this lead to a violation of fundamental rights?

⁸ 'India: Smartphone Penetration Rate 2025 | Statista' (*Statista*, 2021) <https://www.statista.com/statistics/1229799/india-smartphone-penetration-rate/> accessed 16 July 2021 .

⁹ The Constitution of India,1949 (Article 19).

¹⁰India News and Major 2011, 'Major Highlights Of The Census 2011 | India News - Times Of India' (*The Times of India*, 2021) <https://timesofindia.indiatimes.com/india/major-highlights-of-the-census-2011/articleshow/7833854.cms#:~:text=The%20major%20highlights%20of%20the,males%2017.19%20and%20fe,males%2018.12.> accessed 16 July 2021.

WHETHER FUNDAMENTAL RIGHTS ARE BEING VIOLATED?

Right to Equality (Article 14¹¹) in concord with Right to Life (Article 21¹²) talks about “no individual will be denied of personal life or freedom except as indicated by the procedure set up by law” and “the state will not deny anybody fairness under the watchful eye of law or the equivalent insurance of laws inside the domain of India” Now the problem arises in two aspects.

Failure to address the digital divide caused due to digitization and Centre's haphazard manner of expansion of vaccination to age group 18-45. The states cannot afford to source or have requirements through which they can procure vaccines for this new age group. The current stock is not enough for both these age groups and this could be a catastrophe in its self which could result in panic among citizens about vaccine shortages.

This is further exacerbated with vaccine wastages where in some states is as high as 31% compared to the national average of 7%. This in its entire essence is a violation of the right to public health outlined in Article 21 Right to life. The government will have to reassess and properly plan out the structure of its vaccine policy and bring out a clear road map where the state does have to bear the burden completely.

Lastly Right to Privacy (Article 19) can the vaccine be made compulsory and is the collection of Aadhar for slot booking an act of violation? With vaccine hesitancy among citizens, the Centre can opt for an obligatory vaccination ordinance. Yet right to privacy has been ensured under Article 19 of the Indian Constitution and compulsory vaccination will be invading a person's right to remain private, not only that even collecting data of personal details is an infringement of the right to privacy. However, Article 19 is anything but an outright right and it accompanies sensible limitations as far as public order, morality, and wellbeing. Now to understand reasonableness we can look at the ruling of Suresh Kumar & Ors. V Union Of India & Ors¹³ where the court observed the fact “Reasonableness infers intelligent care and pondering, i.e., the decision of a course which reason directs a discretionary or unnecessarily attacks the right can't be said to contain the nature of reasonableness except if it finds some kind of harmony between the opportunity ensured under Article 19(1) (9) and the social control allowed under condition (6) of Article 19, should be held to be needing to be reasonable”. Hence reasonableness w.r.t to the grounds of health and morality is justified. Simultaneously because

¹¹ The Constitution of India, 1949 (Article 14).

¹² The Constitution of India, 1949 (Article 21).

¹³ Suresh Kumar & Ors. Dalmia Cement vs Union of India & Ors, (1996) W.P.Nos. 778/95 & 826/95

vaccination is under the umbrella of health, the violation can be justified on these grounds as well.

CONCLUSION

The concluding remarks can be placed in a basket of mixed feelings. Does the vaccination drive that's biggest to date violate fundamental rights? Yes, it does. But can it be legitimized on the grounds of public wellbeing as well as interest? Yes, again though there are prima facie violations of our rights, pandemic does demand a ground for necessity, but to what extent can these be accepted is something that we have to reflect on ourselves.