



Indian Supreme Court Rules Vaccine Mandates Unlawful

Description

Vaccine mandates are now illegal in India following a bombshell Supreme Court ruling on Monday that states “bodily integrity and personal autonomy” are more important than government mandates.

Seeking a “review” of vaccine mandates, the bench of Justices L Nageswara Rao and B R Gavai said: “Till the infection rate remains low and any new development or research finding emerges which provides due justification to impose reasonable and proportionate restrictions on the rights of unvaccinated individuals, we suggest that all authorities in this country, including private organisations and educational institutions, review the relevant orders and instructions imposing restrictions on unvaccinated individuals in terms of access to public places, services and resources, if not already recalled”.

[Indianexpress.com](https://www.indianexpress.com) reports: The court, however, upheld the Centre’s vaccination policy, saying it was not “unreasonable or manifestly arbitrary”, and also asked the government to make data on adverse events after immunisation “publicly accessible”.

The judgment came on a petition filed by Dr Jacob Puliyel, a former member of the National Technical Advisory Group on Immunisation (NTAGI), seeking disclosure of vaccine trial data and stay on vaccine mandates.

Writing for the bench, Justice Rao said: “With respect to the infringement of bodily integrity and personal autonomy of an individual considered in the light of vaccines and other public health measures introduced to deal with the Covid-19 pandemic, we are of the opinion that bodily integrity is protected under Article 21 of the Constitution and no individual can be forced to be vaccinated. Further, personal autonomy of an individual, which is a recognised facet of the protections guaranteed under

Article 21, encompasses the right to refuse to undergo any medical treatment in the sphere of individual health”.

“However, in the interest of protection of communitarian health, the government is entitled to regulate issues of public health concern by imposing certain limitations on individual rights, which are open to scrutiny by constitutional courts to assess whether such invasion into an individual’s right to personal autonomy and right to access means of livelihood meets the threefold requirement as laid down in K S Puttaswamy (privacy judgment) ...i.e., (i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them,” the court said.

“On the basis of substantial material filed before this court reflecting the near-unanimous views of experts... this court is satisfied 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,” it said.

On vaccine mandates, the court said that “no data has been placed by the Union of India or the states appearing before us, controverting the material placed by the petitioner in the form of emerging scientific opinion which appears to indicate that the risk of transmission of the virus from unvaccinated individuals is almost on par with that from vaccinated persons” and therefore, the “various vaccine mandates by state governments / Union territories cannot be said to be proportionate”.

The court clarified that “in the context of the rapidly evolving situation presented by the Covid-19 pandemic, our suggestion to review the vaccine mandates imposed by states/ Union territories is related to present situation alone 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. Our suggestion also does not extend to any other directions requiring maintenance of Covid-appropriate behaviour issued by the Union or the state governments”.

“Persons who are keen to not be vaccinated on account of personal beliefs or preferences, can avoid vaccination, without anyone physically compelling them to be vaccinated. 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 communitarian health at large, protection of which is undoubtedly a legitimate state aim of paramount significance in this collective battle against the pandemic, 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,” it said.

On the plea to disclose segregated clinical data, the ruling said: “The results of Phase III clinical trials of the vaccines in question have been published, in line with the requirement under the statutory regime in place, the GCP guidelines and the WHO statement on clinical trials”.

Stating that “information relating to adverse effects following immunisation is crucial for creating awareness around vaccines and their efficacy, apart from being instrumental in further scientific studies”, the court also directed the Centre “to facilitate reporting of suspected adverse events by individuals and private doctors on an accessible virtual platform. These reports shall be made publicly accessible, without compromising on protecting the confidentiality of the persons reporting...”

On emergency use approvals granted to Covishield and Covaxin, the court said “material provided by the Union of India, comprising minutes of the meetings of the SEC, do not warrant the conclusion that

restricted emergency use approvals had been granted to Covishield and Covaxin in haste, without thorough review of the relevant data”.

The bench also approved the vaccination policy for children but directed that the clinical trial data be made public at the earliest. “We recognise that the decision taken by the Union of India to vaccinate children in this country is in tune with global scientific consensus... and it is beyond the scope of review for this court to second guess expert opinion on the basis of which the government has drawn up its policy. Keeping in view the WHO’s statement on clinical trials and the extant statutory regime, we direct the Union of India to ensure that key findings and results of the relevant phases of clinical trial of vaccines already approved by the regulatory authorities for administration to children be made public at the earliest if not already done,” it said.

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