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# A Critical Analysis on the Right to Vaccination under Article 21 of the Indian Constitution

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## ABSTRACT

*We have always heard that, “prevention is better than cure” but when there is no cure than prevention is the cure. The statement is very much relatable in the recent times when the whole world is fighting with a new kind of virus, generally, known as ‘COVID-19’. This COVID-19 is caused by a virus known as Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) and generally belong to the family of Coronaviruses. The sad part is that there is no permanent cure to the disease caused by the COVID-19 virus. Though the medical science has approved some medicines but it is very much difficult to stop the spread of virus amongst the people. The only hope left is now on the different vaccines available to the citizens in the current situation. It is very well clear that Right to Health comes under the ambit of Article 21 of the Indian Constitution as witnessed through the various precedents but still it has become a herculean task for the Government of India to vaccinate each and every citizen due to various reasons, out of which maximum of them are fake. Now, the question arises here is that does the Indian Government has a constitutional obligation or is under a legal duty to vaccinate all its citizens against COVID-19 or not? The answer to which, according to me, should be given in a legal, logical and scientific manner. If Right to Health is a Fundamental Right under Article 21 of the Indian Constitution, then Right to Vaccination, being one of the attributes of Right to Health, would also come under Article 21 of the Indian Constitution.*

**Keywords:** Article 21, COVID-19, Right to Life, Right to Health, Right to Vaccine.

## I. INTRODUCTION

The Earth is full of everything and is the place of living for different kinds of organisms such as plants, animals, humans and also includes bacteria, fungus and viruses. A virus can be defined or classified as a very small, tiny or sub microscopic particle with collection of certain

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genetic code like DNA or RNA which is surrounded by a protein coating.<sup>2</sup> Human body, as it is said, is a wonderful creation of God because it has been made up in such a way, that it naturally prepares the antibodies, as to fight against different kinds of infection or diseases in the body. Yes, it is true that it depends upon the immunity (cells) present in the individual which is not the same in all. In the current medical science, there are three hypotheses regarding the origin and evolution of viruses, as said by different virologist. First is that these viruses evolve from the genetic elements and gained the ability to move through cells like the HIV, Second is that these viruses evolved from the free-living ancestor or the descendants of complex ancestors like the smallpox and third is that these viruses existed first, even before the existence of the cells of humans and bacteria<sup>3</sup>. All of these can be true with regard to the origin and evolution of viruses but none can be said to be 100 percent correct. So, still today it is very difficult to say that the viruses existed before the existence of humans, or originated from different organisms, or is a creation of humans.

In the present scenario, the whole world is facing difficulties with regard to the evolution and spread of a new virus known as COVID-19. This virus originates from the coronaviruses and according to World Health Organisation, coronaviruses are the large family of viruses which can cause illness ranging from the common cold to more severe diseases such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS). Coronavirus is generally found in different animals like bats, camels or cattle but the recent one which we call as COVID-19 originated from bats and is known as SARS-CoV-2 which causes Severe Acute Respiratory Syndrome as said by some experts.<sup>4</sup> It is clear that this virus originated in Wuhan, a Chinese city in December, 2019 and then spread rapidly in the different parts of the world including India in January, 2020 when the first case was recorded.

After the spread of this COVID-19 virus, the whole world was under fear as how to save the lives of people because there was no remedy or medicines available to fight with it. The only available remedy was the preventive medicine, meaning prevention from the spread of virus from one individual to another. Therefore, certain guidelines and restrictions such as lockdown, use of mask, sanitizers were imposed by the Indian Government to tackle the then prevailing situation. Slowly, with the passage of time, the medical science with the help of intellectual minds of different scientists and doctors, achieved success in creating different vaccines in the

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<sup>2</sup> Virus, National Human Genome Research Institute, <https://www.genome.gov/genetics-glossary/Virus>, (last visited July 2, 2021).

<sup>3</sup> David R. Wessner, *The Origins of Viruses*, Scitable, 2010, <https://www.nature.com/scitable/topicpage/the-origins-of-viruses-14398218/>, (Last visited July 2, 2021).

<sup>4</sup> Hansa D. Bhargava, *Coronavirus History*, WebMD, April, 15, 2020, <https://www.webmd.com/lung/coronavirus-history>. (Last visited July 2, 2021).

very short span of time. Now, after the vaccines were tested and passed by the competent authority, the government was under the obligation to vaccinate its citizens, especially in India, where the large population was a challenge. Fake news and rumours regarding the origin of vaccines, its efficacy or efficiency, were spread by the people through social media which also created hindrance in the act of vaccinating the people.

## II. RIGHT TO HEALTH UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

Health is considered as one of the most important part of human development. According to World Health Organisation, Health is defined as, 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.<sup>5</sup> After reading the above definition, it is clear that health not only includes physical aspects but also the mental aspects and is not only related to absence of disease or infirmity.

The Constitution of India is considered as the longest written constitution among the various democratic countries of the world. It is also considered as the best constitution as it contains various principles and provisions not only with regard to protection of the rights of its citizens but also with regard to the good governance and establishment of better society. The Constitution of India gave certain rights known as fundamental rights to the citizens of India and simultaneously gave the constitutional duty to the State that these rights should not be violated at any cost except in certain necessary situations. These fundamental rights are called heart and soul of Constitution and one of them is Article 21 of the Indian Constitution which is as follows:

*Protection of Life and Personal Liberty – No person shall be deprived of his life or personal liberty except according to procedure established by law.*

Article 21 of the Indian Constitution may seem to be very small, one line, in reading but has a very broad scope like an ocean which includes right to livelihood, right to food, right to healthy environment, right to basic standard of living, right to hygienic conditions in workplace etc. The right to live under Article 21 of the Indian Constitution does not only mean mere an animal existence but also includes right to live with human dignity and decency<sup>6</sup>. Now, to live a life with human dignity and decency, it is very important to have a healthy life, both physically and mentally. Though there is no expressly written provision regarding the recognition of right to health as a fundamental right but there are numerous judgements given by the Supreme Court

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<sup>5</sup> Frank P. Grad, The Preamble of the Constitution of the World Health Organization, Signed at the International Health Conference, New York, 22 July, 1946, [https://www.who.int/bulletin/archives/80\(12\)981.pdf](https://www.who.int/bulletin/archives/80(12)981.pdf).

<sup>6</sup> Francis Coralie Mullin v The Administrator, Union territory of Delhi, AIR 1982 746.

in which the courts have held that Right to Health is a fundamental right and comes under the ambit of Article 21 of the Constitution of India. This was done because of the reason that health was considered an important part of an individual to live a meaningful life.

The Indian judiciary has always been pro-active with regard to the protection of rights and interest of the citizens or people of India. The Supreme Court as well as different High Courts have entertained numerous Public Interest Litigation (PIL) regarding various socio-legal issues including the right to health in the society. We know that the Constitution of India and the governance of society is based on the concept of welfare state, where the primary duty of the government should be to secure the welfare of the people and the State or the government is under an obligation to maintain a healthy life of all the citizens by providing them with sufficient medical facilities to all its people<sup>7</sup>. Right to life under Article 21 of the Indian Constitution also includes right to healthy life as health is considered as the cardinal principle of human life. Therefore, the government or the State is under a constitutional obligation or duty to provide all kinds of medical facilities including lifesaving drugs or vaccines for the protection of life of the people. Non-performance in doing so shall result in violation of right to life of the people as guaranteed under Article 21 of the Indian Constitution. The Supreme Court<sup>8</sup> has given certain directions with respect to the same:

- Public health care centres are to be given utmost importance and all the basic necessary medical facilities should be provided to the people for their treatment.
- Government should focus on to upgrade the public health care centres or hospitals at district and sub-divisional level so that patients with serious illness can be treated.
- Each and every hospital at district and sub-divisional level should have specialist for treatment of certain kinds of common diseases.
- A centralised communication system to be made with regard to providing information regarding the availability of beds, in any emergency, at State level hospitals. This information is to be directly shared with the patient so that the patient does not suffer shortage of time and the treatment should start at the earliest.
- Proper arrangement and maintenance of ambulance should be done with regard to transportation of patient from one hospital to another or as the case may be. Also, the ambulance should be fitted with all the necessary medical equipment.

It can be said that the primary duty of the State or the government is to safeguard the life of its

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<sup>7</sup> *Paschim Bangal Khet Mazdoor Samity and Others v State of West Bengal and Others*, AIR 1996 SC 2426.

<sup>8</sup> *Ibid* 6.

citizens by protecting and securing good health. That is why government has opened multiple hospitals, primary and secondary health care centres etc for the people, even for the poor ones where the basic facilities are free or is available at a very reasonable price. Simultaneously, it is also the duty of the medical professionals or doctors, whether at government or private hospital, to obey their professional, moral, ethical as well as legal duty and provide his services in the protection of life of the people<sup>9</sup>. The State or the government shall not intervene with regard to these medical facilities as provided by the medical professionals.

There were several aspects of health as considered by the Indian judiciary in different cases with regard to health being a fundamental right under Article 21 of the Constitution of India. It was held that, health and strength of an individual is considered as an integral part and facet of right to life<sup>10</sup>. The main aim of fundamental rights is to create equality amongst the people in the society. It is said that a healthy body results in healthy mind and therefore is the very foundation for all human activities<sup>11</sup>. A three judge's bench of the apex court of India ruled that right to health and medical care of a worker includes right to protection of health even in service or post retirement, is a fundamental right under Article 21 of the Constitution of India<sup>12</sup>. The right to health is therefore, considered as inherent right and the right to life under Article 21 includes right to live a healthy life and with dignity<sup>13</sup>.

After going through the above observations made by the courts, it is clear that, after applying the judicial minds of the judges, a conclusion can be drawn that right to health is not only a part of right to life but also and inseparable right under Article 21 of the Constitution of India.

### Chapter 3: Right to Vaccination under Article 21 of the Indian Constitution

As we have discussed earlier that right to health is a part of right to life under Article 21 therefore, it can be said that right to vaccination is also a part of right to health and subsequently right to life under Article 21 of the Indian Constitution. Before going into further discussion, let us first try to know the definition of vaccine. It can be said that, in general, a vaccine is a part of immunisation programme particularly focused on to susceptible groups, who are at high risks, for the prevention of certain kinds of diseases. It is a kind of substance which when administered in the human body, creates antibodies with the help of immunity (cells) of humans to fight against a specified disease. According to World Health Organization, vaccines are helpful in reducing the risk of getting a disease by working with the natural defences of human

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<sup>9</sup> Parmanand Katara v Union of India and others, AIR 1989 SC 2039.

<sup>10</sup> CESE Ltd. V Subhash Chandra Bose, AIR 1992 SC 573.

<sup>11</sup> Vincent v Union of India, AIR 1987 SC 990.

<sup>12</sup> Consumer Education and Research Centre v Union of India, AIR 1995 SC 922.

<sup>13</sup> Bandhua Mukti Morcha v Union of India, AIR 1984 SC 812.

body to build protection<sup>14</sup>. It can be said that vaccines are useful in combating the outbreak and spread of certain diseases.

As it is clear that vaccine is a part of science, which helps in prevention of spread of disease by building antibodies therefore, it can be said that vaccine is a part of a healthy life. The point is the people only needs a vaccine when there is a necessity, meaning when it is required. Imagine if there was no such outbreak of COVID-19, then precisely there would not have been any vaccine regarding it. But the situation is different, rather can be said a critical one as now, vaccine is only the hope for the time being to reduce the greater impact or risk associated with the COVID-19 disease. Surely the vaccine is not 100 percent effective and efficient is eradicating the COVID-19 virus but surely it can help in decreasing the mortality rate and saving lives of millions of people.

So, therefore it can be said that, with respect to India, right to vaccination is a fundamental right under Article 21 of the Constitution of India and the government is under the constitutional duty or obligation to ensure that each and every citizen gets vaccinated as soon as possible. The government should not force or compel the citizens rather come up with a specific law regarding compulsory vaccination for every citizen and should handle it in a legal, logical and scientific way.

### **III. RECOMMENDATIONS AND SUGGESTIONS**

It has been seen in the history of India, when at the time of British rule in 1892, the British Government passed a legislation known as The Compulsory Vaccination Act of 1892, to combat the smallpox epidemic. In present situation, the Epidemic Diseases Act of 1897 is there to combat all such epidemics, which gives powers to the governments to take necessary measures to prevent the outbreak or spread of any epidemic disease such COVID-19 present scenario. Even the provisions of The National Disaster Management Act of 2005 are there to impose compulsory vaccination through appropriate authorities in the state as well as central governments.

In the present time, the COVID-19 has surely taken down the lives of millions of people from different part of the world. Even today, there is no effective medicine available to combat this, except the only hope which is the available vaccines. But irrespective of the various laws, it has become very much difficult for the government to implement and vaccinate all its citizens. This is due to various reasons including spread of fake news or rumours regarding the spread

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<sup>14</sup> Vaccines and Immunization, [https://www.who.int/health-topics/vaccines-and-immunization#tab=tab\\_1](https://www.who.int/health-topics/vaccines-and-immunization#tab=tab_1).

of vaccines, illiteracy rate, lack of knowledge or awareness amongst the people especially in rural areas etc. The Government should come up with certain guidelines and take steps regarding the compulsory vaccination for all such as:

- i. First and foremost, production of vaccines should be given priority.
- ii. All the information regarding the effectiveness as well as side effects of the vaccines should be informed earlier.
- iii. Door-to-door awareness programmes with the help of educated people, preferably locals, in the rural areas should be implemented.
- iv. The youth should be educated with respect to vaccination and given responsibility for the vaccination of each and every member of their family.
- v. It shall also be the duty of the doctor, nurse and medical staffs to check all the details such as age, any prevailing health issues, name of vaccine, etc of the person taking the vaccine.
- vi. The government, if possible, come up with certain kinds of rewards for the people who have taken the vaccine so that others can be motivated.
- vii. The state government as well as central government should work jointly in vaccinating the people.
- viii. The government should stop the spread of fake news or rumours in the social media.

#### **IV. CONCLUSION**

It can be said that health includes both physical as well as mental health. People are not suffering physically but also mentally in the current scenario due to COVID-19. So, right to health is a part or tenet of right to life which is guaranteed under Article 21 of the Constitution of India. It can be said that no virus disease goes very easily, meaning in short span of time. It basically means that, this coronavirus or COVID-19 will live as long as the human civilisation will exist. This does not mean that there is no solution to this, rather we have a solution that is vaccine, which may be temporary, but is capable of reducing the risk of life. Therefore, it is high time for the government to monitor those people who have not taken vaccines and try to convince them by appropriate measures, be it legal, logical or scientific so that they can live a healthy and prosperous life.

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