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# Compulsory COVID-19 Vaccination for Domestic Workers: A Decision for RWAs to take?

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DR. KAVITA CHAWLA<sup>1</sup>

## ABSTRACT

*The Residents Welfare Associations (RWAs) insist that all domestic workers employed in the societies must be compulsory vaccinated, to prevent the spread of COVID-19. The domestic workers, however, take the argument of being protected under the right to religious freedom and with absence of any law advocating mandatory vaccination for all, the RWAs' rule is arbitrary and discriminatory. The article examines the issue of whether the RWAs can make compulsory vaccination a precondition for employment. It assesses the legal position and confirms that both the Central and State governments have the constitutional power to legislate a similar law. However, as physical enforcement of such a law will be a challenge, the governments will have to attach incentives or soft penalties for 100% enforcement. The article concludes that the government may in future have a law for compulsory vaccination for COVID-19, as we had done in the past for smallpox, but till there is such a law in place, the domestic workers are well within their rights to object to RWAs' directives of asking to compulsory vaccinate.*

**Keywords:** COVID-19, domestic workers, compulsory vaccination, RWA.

## I. INTRODUCTION

The Government of India opened its COVID-19 vaccine policy to all above 18 years of age from 1 May 2021<sup>2</sup>. With this, came the race for getting the vaccination as soon as possible. However, not everyone was keen to get in the line. Many from the economically weaker section were hesitant of getting a jab, wary that the vaccine had contents that were against their religious belief or believed in the rumour that vaccination would lead to infertility. This led to a tug of war between the Residents Welfare Associations (RWAs) and the domestic workers<sup>3</sup>, with RWAs demanding that all domestic workers employed at their respective societies must be vaccinated. This article considers the issue of whether the RWA can force the domestic helpers to be compulsory vaccinated even though not all residents of the societies are willing

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<sup>1</sup> Author is an Assistant Professor at BML Munjal University, India.

<sup>2</sup> Information Regarding COVID-19 Vaccine, MINISTRY OF HEALTH AND FAMILY AFFAIRS, (14 June 2021, 10:02 AM), [https://www.mohfw.gov.in/covid\\_vaccination/vaccination/](https://www.mohfw.gov.in/covid_vaccination/vaccination/)

<sup>3</sup> Domestic Workers to include the categories of house helps, plumbers, security guards, electricians, car cleaners, etc.

to get the same.

## II. THE TUSSLE: RWA V. DOMESTIC WORKERS

It is not questioned that an unvaccinated person is at greater risk of spreading COVID-19 further, a highly infectious disease. The RWAs aver that those domestic helps, who work at multiple houses within a society, can act as super spreaders and infect the high-risk category of people. The RWAs have taken the argument of prioritizing the health of its residents and of the domestic workers. The directive on part of the RWAs to censure domestic helps who are not vaccinated raises serious concerns as the Government of India is yet to make the vaccination program compulsory.

Ever since last year, domestic workers have borne the brunt of COVID-19 in multiple ways. The RWAs implemented many whimsical rules such as asking the house helps to work at only one house leading to less income for them, encouraging the house helps to stay with the resident employers 24X7 to lessen the risk of getting the infection from outside but ignoring the fact that the house helps have families with young children, demanding COVID-19 negative report every 15 days<sup>4</sup> from the domestic helps of all their family members and including the bizarre rule of not allowing the maids to touch lift buttons<sup>5</sup> etc. In addition, the RWAs are now denying entry to the unvaccinated domestic workers to society. The domestic workers are worried that if the RWAs have their way, they might lose their livelihood.

The domestic workers have presented the following arguments for objecting to getting vaccinated. Firstly, the cost of the vaccination is a worrisome factor. The domestic workers have suffered a major dip in their income in the last year. Most of them were not paid when there was a nationwide lockdown for nearly two months. For few, the family income has dipped as the earning members lost their jobs as business all around closed. The pressure on the domestic workers to get the vaccine began even before the Government announced that the vaccine will be free of cost<sup>6</sup>. Nonetheless, with free vaccines being in shortage, the employers are coercing the workers to get paid vaccination, which will be an additional burden on their budget. The vaccination cost in India is among the highest in the world – covishield at Rs. 780 and covaxin at Rs. 1410, making it unaffordable to the poor. The most amicable solution to this

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<sup>4</sup> Christin Mathew Philip, *RWAs told to test maids, helpers every 15 days*, THE TIMES OF INDIA, 1 May, 2021, <https://timesofindia.indiatimes.com/city/bengaluru/bengaluru-rwas-told-to-test-maids-helpers-every-15-days/articleshow/82346343.cms>

<sup>5</sup> Sakshi Dayal, *Among Gurgaon RWA rules: 'Domestic helps shouldn't touch lift buttons'*, THE INDIAN EXPRESS, 20 May 2021, <https://indianexpress.com/article/cities/delhi/among-gurgaon-rwa-rules-domestic-helpers-shouldnt-touch-lift-buttons-6418360/>

<sup>6</sup> w.e.f. 21 June 2021.

would be that the resident employers or the RWAs must sponsor the cost of immunization so that the domestic workers do not incur any additional cost on their already dwindling income.

The second argument for vaccine hesitancy is that the religion followed by the helpers does not permit them to take the vaccine. However, this argument is weak. If India were to have a law on compulsory vaccination, the right to religious freedom would be subject to exceptions being made on the ground of health<sup>7</sup>. Nonetheless, the RWAs cannot force the domestic workers to be vaccinated against their wishes until there is a definite law in place for the same. As of now, we do not have any legal policy or directions from the Government of India on compulsory vaccination.

The third argument is that the vaccine will make the males infertile. However, there seems to be no basis for this claim. The research published in the Journal of American Medical Association found that the Pfizer and Moderna vaccines had no impact on male fertility.<sup>8</sup> Though, in India vaccines by these manufacturers are not used, there is no scientific evidence to suggest otherwise.

Next, the domestic workers assert that with absence of any law making COVID-19 vaccination compulsory for all, the RWAs' rule of making vaccination a pre-condition for employment in the society is arbitrary and discriminatory, violative of principles<sup>9</sup> enshrined in the constitution.

### III. LEGAL PERSPECTIVE

India has never made vaccinations compulsory before except for the limited purpose of protecting against smallpox under the Vaccination Act, 1880<sup>10</sup>. As of today, there is no law that enforces compulsory vaccination for COVID-19. Nevertheless, both the Union Government and the State Governments have the power to make laws on the current pandemic as it is covered in List III<sup>11</sup> and List II<sup>12</sup> of the Constitution. The laws, if enacted, would be in the greater public interest.

Nonetheless, there are existing laws that can be used to include the immunization policy. For instance, the Epidemic Diseases Act, 1897 gives the State Government and Central Government the power to take such steps that are “necessary to prevent the outbreak of such

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<sup>7</sup> INDIA CONST. art. 25, cl. 1.

<sup>8</sup> Gonzalez DC, Nassau DE, Khodamoradi K, et al. *Sperm Parameters Before and After COVID-19 mRNA Vaccination*, JAMA, published online June 17, 2021. doi:10.1001/jama.2021.9976

<sup>9</sup> INDIA CONST. art. 14.

<sup>10</sup> Vaccination Act, 1880, No. 13, Acts of Parliament, 1880 (India).

<sup>11</sup> INDIA CONST, *supra* note 7, schedule VII, list III, entry 29.

<sup>12</sup> *Id.* at list II, entry 6.

disease or the spread thereof”<sup>13</sup>. To date, the Government has been issuing orders under the National Disaster Management Act, 2005 under Entry 23<sup>14</sup>, as COVID-19 is a biological disaster. If an order of compulsory vaccination were to be issued under the abovementioned Act, it would be outside the court’s jurisdiction<sup>15</sup>. Even more, the Indian Penal Code, 1860 also has provisions under which an order issued by the public servant mandating compulsory vaccination can be included. An unvaccinated person “knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life”<sup>16</sup> and therefore, if an order is passed by the public servant and is disobeyed it is punishable with imprisonment for a term of one month or with fine<sup>17</sup>.

The various States of India also have their own health laws, which could be amended to include provisions of compulsory vaccination. For instance, Tamil Nadu has the Tamil Nadu Public Health Act, 1939. A few States like Kerala<sup>18</sup> promulgated ordinance in 2020 to give directions, issue lockdowns and pass necessary orders. States like Rajasthan<sup>19</sup>, Karnataka<sup>20</sup> and Uttar Pradesh<sup>21</sup> have passed health legislations to specifically deal with COVID-19.

Importantly, the RWAs cannot have separate policies for the residents and the domestic workers. When the rate of vaccination is not 100% amongst the residents themselves, it is plausible that the policy of asking the domestic workers to be compulsorily vaccinated will be viewed as discriminatory by the Courts, if challenged.

#### IV. INTERNATIONAL OUTLOOK

No country in the world has made the vaccination for COVID-19 compulsory for its citizens. The developed nations are attempting to ensure 100% vaccination rate but are still facing hurdles. The USA has vaccinated only 65% of its citizens<sup>22</sup>. Developing countries are yet to even get in double digits. India, for instance, has fully vaccinated only 3.5% of its population.<sup>23</sup> Only 0.8% of people in low-income countries have received at least one dose.<sup>24</sup> With vaccine

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<sup>13</sup> Epidemic Diseases Act, 1897, §2A, No. 3, Acts of Parliament, 1897 (India).

<sup>14</sup> INDIA CONST, *supra* note 7, schedule VII, list III, entry 23.

<sup>15</sup> National Disaster Management Act, 2005, §71, No. 53, Acts of Parliament, 2005 (India).

<sup>16</sup> Indian Penal Code, 1860, §270, No. 45, Acts of Parliament, 1860 (India).

<sup>17</sup> *Id.* at §188

<sup>18</sup> The Kerala Epidemic Diseases Ordinance, 2021 (repealing the Ordinance 2020).

<sup>19</sup> Rajasthan Epidemic Diseases Act, 2020, No. 21, Acts of Rajasthan State Legislature, 2020 (India).

<sup>20</sup> The Karnataka Epidemic Diseases Act, 2020, No. 26, Acts of Karnataka State Legislature, 2020 (India).

<sup>21</sup> The Uttar Pradesh Public Health and Epidemic Diseases Control Act 2020, No. 17, Acts of Uttar Pradesh State Legislature, 2020 (India).

<sup>22</sup> THE NEW YORK TIMES, <https://www.nytimes.com/interactive/2020/us/covid-19-vaccine-doses.html>, (last visited 17 June, 2021)

<sup>23</sup> OUR WORLD IN DATA, <https://ourworldindata.org/covid-vaccinations> (last visited 17 June, 2021)

<sup>24</sup> *Id.*

availability a challenge, it is difficult to imagine a situation where governments will make vaccinations mandatory.

However, in April 2021, the European Court of Human Rights gave a ruling that compulsory vaccines for children is “necessary in a democratic society”<sup>25</sup>. The judgment, though not given in the context of COVID-19, gains significance wherein the Court rejected the right to respect for private life when it came to health risks involved if a child is unvaccinated.

## V. CHALLENGES AHEAD

On the assumption that we may have a law in place in future, the road to achieving 100% success is difficult. Certainly, the Central Government cannot physically coerce citizens to get vaccinated. It has been argued that the Government may use the provisions of the Passport Act, 1967 to deny or revoke an issued passport to any person who is not vaccinated. The rich might be chasing the vaccination card for getting the coveted visas; though, the domestic workers will not be lining up for the same. Consequently, the argument of employing the provisions of the Passport Act, 1967 to convince the domestic workers will not apply here.

Nevertheless, the Government may use different carrot and stick policy to convince the economically weaker. It may have a few incentives attached to the vaccine program, similar to the US policy<sup>26</sup> of offering free rides, beer, wine, weed, to energise the vaccine program. For instance, in India, a village in Punjab has become the first village to achieve 100% vaccination success rate and has become eligible for a special grant of Rs. 10 lakhs<sup>27</sup>. On other hand, it may have softer penalties attached for those who refuse to get vaccinated, such as denying benefits under the government schemes such as pension to maids, gardeners under the Atal Pension Yojna, or free monthly rations under the Minimum Common Programme of Government of India, or giving minimum wages under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), or health insurance under the Ayushman Bharat Yojna etc.

## VI. CONCLUSION

Vaccination is a proven tool to prevent high-risk diseases. The world has spent billions on research and development before we had a vaccine for COVID-19. Instead of playing power games between the haves and have nots, it is better to educate all on the advantages associated

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<sup>25</sup> Vavřička and Others v. The Czech Republic, no. 47621/13, ECHR 2021.

<sup>26</sup> *Free rides and beer: Incentives are added to vaccine drive*, THE ECONOMIC TIMES, Apr 30, 2021, <https://economictimes.indiatimes.com/news/international/world-news/free-rides-and-beer-incentives-are-added-to-vaccine-drive/articleshow/82326940.cms?from=mdr>

<sup>27</sup> Shariq Majeed, *Covid-19: Bhikhri village first in Punjab to achieve 100% vaccination of its adult population*, THE TIMES OF INDIA, 12 June, 2021, <https://timesofindia.indiatimes.com/city/ludhiana/covid-19-bhikhri-village-first-in-punjab-to-achieve-100-vaccination-of-its-adult-population/articleshow/83457207.cms>

with it. We may have a law for compulsory vaccination like in the past for smallpox, nevertheless, it is better if the citizens realise the benefit and come forward on their own instead of getting vaccination due to fear of a penalty. A compulsory vaccination law in place will impose a positive legal duty on the State machineries to take appropriate measures to ensure the program is inclusive and is not limited to those who can afford to pay for the vaccine. But till we have such a law in place, the domestic workers are well within their rights to object to RWAs' directives of asking to mandatorily vaccinate.

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