

COVID-19: Supreme Court upholds individual's right against forcible vaccination

Bodily autonomy and integrity are protected under Article 21 of the Constitution, holds Supreme Court

- The Supreme Court on Monday upheld both the right of an individual against forcible vaccination and the government's current vaccination policy to protect communitarian health, but found certain vaccine mandates imposed by State governments/Union Territories, which tend to deny access to basic welfare measures and freedom of movement to unvaccinated individuals, disproportionate.
- A Bench led by Justice L. Nageswara Rao said that such vaccine mandates wilted in the face of "emerging scientific opinion" that the risk of transmission of COVID-19 infection from unvaccinated individuals was almost on par with that from vaccinated persons.

'Set up virtual public platform'

- The court directed the Centre to set up a virtual public platform at the earliest to facilitate individuals and private doctors to report adverse vaccine events without compromising their privacy.
- "Information related to adverse events is crucial to create awareness about vaccines and their efficiency, apart from contributing to scientific studies about the pandemic... There is a pertinent need for collection of data on adverse events and wider participation," Justice Rao, who authored the judgment, observed.

Paediatric vaccination policy

- The Bench also comprising Justice B.R. Gavai, in a judgment, held that India's paediatric vaccination policy against the COVID-19 virus was in tune with "global scientific consensus" and the opinions of expert bodies like the World Health Organisation, the United Nations International Children's Emergency Fund and the Centres for Disease Control and Prevention.
- The court said it did not want to "second guess" these expert opinions on the basis of which the government had implemented its paediatric vaccination policy.
- However, the court directed the Union government to ensure that the findings and results of the relevant phases of clinical trials of vaccines already approved by the regulating authorities for administration to children be made public at the earliest, if not already done.
- The court said the government had already disclosed segregated clinical data on phase three trials.
- It held that materials published by the government did "not warrant the impression that the emergency use authorisation for Covishield and Covaxin vaccines was given in haste without thorough review of the data".
- The court reiterated that, subject to the protection of the privacy of individuals, with respect to ongoing and future trials, "all relevant data to be published under the statutory regime must be made available to the public without undue delay".

- The Bench said though the government had a wide latitude to frame policy affecting public health based on expert medical opinion, the court could not be barred from scrutinising whether the policy was unreasonable, manifestly arbitrary and affected the right to life of individuals.
- The court struck a balance between individual right to bodily integrity and refuse treatment with the government's concern for public health.
- “With respect to bodily integrity and personal autonomy of an individual 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 (right to life) of the Constitution and no individual can be forced to be vaccinated,” the Supreme Court laid down.
- A person has the right under Article 21 to refuse treatment, the court acknowledged.
- “Personal autonomy of an individual, which is a recognised facet of protection guaranteed under Article 21 encompasses the right to refuse to undergo any medical treatment in the sphere of individual health,” Justice Rao observed.

‘Communitarian health’

- However, when the issue extended to “communitarian health”, the government was indeed “entitled to regulate issues”.
- But the government's right to regulate by imposing limits to individual rights for the sake of protecting public health was also open to judicial scrutiny.
- Courts had the authority to review whether the government's interventions into the personal autonomy of an individual and right to access means of livelihood met the “three-fold” requirements as expounded in the Constitution Bench judgment in K.S. Puttuswamy case (the judgment which upheld the right of privacy as a constitutional right under Article 21).
- The three-fold requirements include whether the legality of the limitations imposed by the government on individual rights presupposes the existence of a law. That is, the limitations should be backed by a clear statutory law.
- Secondly, the need for limitations should be proportionate to a legitimate State aim.
- Thirdly, there should be rational nexus between the State's objectives for imposing the restrictions and the means adopted to achieve them.
- The court concluded that the Union government's current vaccination policy met the requirements and “cannot be said to be unreasonable and manifestly arbitrary”.
- The policy reflected the “near unanimous views of experts on the benefits of vaccination in addressing severe infection, oxygen requirements, hospital and ICU admissions, mortality rate and stopping of new variants from emerging”.
- The judgment did not engage the argument from “certain quarters” that natural immunity offered better protection against the virus, saying “it was not pertinent for the determination of the issue before us”.

- The court, however, said neither the Union government nor the States had produced any “material” to counter the opinion raised in the petition filed by Jacob Puliyeel, a former member of National Technical Advisory Group on Immunisation represented by advocate Prashant Bhushan, that a vaccinated individual could spread the virus as much as his or her unvaccinated counterpart.
- “In light of this, restrictions on unvaccinated individuals imposed by various vaccine mandates by the State governments and Union Territories are not said to be proportionate,” Justice Rao noted.
- The court hence “suggested” that, as long as the infection rate remained low or until any new development or research justified the imposition of “reasonable proportionate restrictions on unvaccinated individuals”, all authorities, including private organisations and educational institutions, review their restrictions for the time being.
- The Bench clarified that “in the context of the rapidly evolving situation presented by the pandemic, our suggestion to review the vaccine mandates imposed by the States/Union Territories is related to the present situation alone and should not be construed as an interference in the lawful exercise of power by the executive to take suitable measures against the spread of infection”.
- The judgment was a result of Dr. Puliyeel’s challenge that certain vaccine mandates notified by States, including those that made vaccination a precondition for accessing any benefits or services, were violative of the rights of citizens and unconstitutional.

No short circuits: On electric vehicles catching fire

Safety is an imperative and should be built into the cost and utility of electric vehicles

- A spate of incidents related to the burning of electric vehicles (EV) has resulted in the Union government announcing an expert panel to investigate the battery explosions causing them and a few manufacturers recalling batches of electric scooters after some caught fire. EVs have increasingly become a viable transportation device, with more than 11 lakh electric/battery-operated vehicles registered in India (Vahan database, April 2022). The increase in the utilisation of EVs has also been largely helped by the significant reduction in costs of lithium-ion batteries that have fallen by an estimated 89% since 2010. With climate change concerns driving governments, including India’s, to incentivise the shift to EVs, their manufacture for commercial use has undergone an acceleration with an increase in indigenous companies in the Indian market as well. The enhanced use of EVs and utilisation of the underlying technology is welcome as despite the institution of fuel emission norms and building these into fossil fuel-driven vehicles, the shift to EVs from petrol and diesel ones is expected to gain significant net environmental benefits. But it must also be remembered that the Li-ion battery packs that form the core of the technology, are sophisticated devices and there should be no compromise on the inbuilt safeguards.

- As an energy storage scientist explained in The Hindu (‘FAQ’ page, May 1, 2022), battery fires occur due to the convergence of heat, oxygen and fuel, and the controlled manufacturing of devices is specifically required to prevent these. Engineering higher safety into EVs can result in higher costs but the smooth functioning of Li-ion batteries without accidents is reliant on the absence of “shoddy engineering” and “cutting corner approaches”. With long-term device changes in Li-ion batteries such as the use of solid state electrolytes, special safety switches, etc. still some time away in

implementation, the onus is on manufacturers and regulators to ensure that testing and certification standards related to battery management systems such as devices that prevent accidental shorting of the cells, and thermal management solutions among others are met in existing EV systems and supply chains. Union Transport Minister Nitin Gadkari has said that the Ministry of Road Transport will issue guidelines for EVs which would include tests for compliance with specific safety norms. While the regulation of a fledgling albeit growing sector that has shown a lot of promise but requires adequate safety norms to be put in place is an imperative, manufacturers and other companies in the EV supply chain should also proactively work in recalling defective batches of vehicles and ensuring safety compliance to prevent the recurrence of mishaps.

The debate on the national language

What were the Constituent Assembly debates about Hindi being made the 'national' language? What happened in 1965?

- The story so far: Remarks by a Hindi actor to the effect that Hindi is the national language of India sparked a controversy recently over the status of the language under the Constitution. Many were quick to point out that there is no national language for India, and that Hindi is the official language of the Union. The official language issue was hotly debated in the Constituent Assembly, and the provisions relating to it were formulated only after a compromise that English shall continue to be used for 15 years.

What is the status of Hindi?

- Under Article 343 of the Constitution, the official language of the Union shall be Hindi in Devanagari script. The international form of Indian numerals will be used for official purposes.

- The Constituent Assembly was bitterly divided on the question, with members from States that did not speak Hindi initially opposing the declaration of Hindi as a national language. Proponents of Hindi were insistent that English was the language of enslavement and that it should be eliminated as early as possible. Opponents were against English being done away with, fearing that it may lead to Hindi domination in regions that did not speak the language.

- There were demands to make Sanskrit the official language, while some argued in favour of 'Hindustani'. There were differences of opinion over the script too. When opinion veered towards accepting Hindi, proponents of the language wanted the 'Devanagari' script to be adopted both for words and numerals. Some advocated that the Roman script be adopted, as it would facilitate faster learning of Hindi. The predominant opinion was in favour of adopting 'international numerals' (the Arabic form used and understood throughout the world) instead of Hindi numerals.

- Ultimately, it was decided that the Constitution will only speak of an 'official language'. And that English would continue to be used for a period of 15 years. The Constitution said that after 15 years, Parliament may by law decide on the use of English and the use of the Devanagari form of numbers for specified purposes.

What is the Eighth Schedule?

- The Eighth Schedule contains a list of languages in the country. Initially, there were 14 languages in the schedule, but now there are 22 languages. There is no description of the sort of languages that are included or will be included in the Eighth Schedule. There are only two references to these languages in the text of the Constitution. One is in Article 344(1), which provides for the formation of a Commission by the President, which should have a Chairman and members representing these scheduled languages. The purpose of the Commission is to make recommendations for the progressive use of Hindi for official purposes of the Union and for restricting the use of English.
- The second reference, found in Article 351, says it is the Union government's duty to promote the spread of Hindi so that it becomes "a medium of expression for all elements of the composite culture of India" and also to assimilate elements of forms and expressions from Hindustani and languages listed in the Eighth Schedule.

What were the 1965 protests about?

- The Official Languages Act, 1963 was passed in anticipation of the expiry of the 15-year period during which the Constitution originally allowed the use of English for official purposes. Its operative section provided for the continuing use of English, notwithstanding the expiry of the 15-year period. This came into force from Jan 26, 1965, a date which marked the completion of 15 years since the Constitution was adopted.
- Jawaharlal Nehru had given an assurance in 1959 that English would remain in official use and as the language of communication between the Centre and the States. The Official Languages Act, 1963, did not explicitly incorporate this assurance, causing apprehensions in some States as the January 1965 deadline neared. At that time, Prime Minister Lal Bahadur Shastri reiterated the government's commitment to move towards making Hindi the official language for all purposes.
- In Tamil Nadu, then known as Madras, the prospect of the use of Hindi as the medium of examination for recruitment to the Union public services created an apprehension that Hindi would be imposed in such a way that the future employment prospects of those who do not speak Hindi will be bleak. With the Congress government in the State taking the view that the people had nothing to fear about, protests broke out in January 1965. It took a violent turn after more and more student activists joined the protest, and continued even after key Dravida Munnetra Kazhagam (DMK) leaders were arrested. More than 60 people died in police firing and other incidents as the protests went on for days. The agitation died down later, but by then the Congress at the Centre realised the sensitivity of the language issue among Tamil-speaking people. When the Official Language Rules were framed in 1976, it was made clear that the Rules apply to the whole of India, except Tamil Nadu.

What is the three-language formula?

- Since the 1960s, the Centre's education policy documents speak of teaching three languages — Hindi, English and one regional language in Hindi-speaking States, and Hindi, English and the official regional language in other States. In practice, however, only some States teach both their predominant language and Hindi, besides English.
- In States where Hindi is the official language, a third language is rarely taught as a compulsory subject. Tamil Nadu has been steadfastly opposing the three-language formula and sticks to teaching Tamil and English. It argues that those who need to know Hindi can learn on their own.