



TAKSHASHILA  
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# *COVID-19 Vaccine Mandates in India*

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## *Executive Summary*

Vaccine mandates are instruments for the government or private institutions to make it compulsory for its citizens/employees/students to be vaccinated for a specific disease in order to avail the benefits and services of the state or the institution.

As various countries mandate the use of COVID-19 vaccines, this assessment recommends the checks and balances that India must take into account when mandating the COVID-19 vaccine in the country. The broad recommendations include:

1. The Union government should authorise vaccines based on clinical trials and ensure that there is sufficient vaccine supply.
2. All employers - government (Union, States, and local bodies) or private, should be given the freedom to mandate the vaccine *proportionate* to the public health threat.
3. Even when electing to issue a mandate, the employer should ensure vaccine supply, extra sick leave, and business continuity (in the case of government services).
4. Special cases must be considered for exemptions from the vaccine mandate.

# *I. Introduction*

The United States of America's (USA) unvaccinated population is believed to be a major cause of the rising number of COVID-19 infections in the country through July-August 2021.<sup>1</sup> Despite 51.6% of the population being fully vaccinated as of 25th August 2021, a return to normalcy in the country has been delayed by a hospital bed shortage and a rapid rise in infections among children as schools reopen.<sup>2</sup>

The sudden wave of new infections saw a widespread declaration of vaccine mandates around the country by both governments and the private sector. Some state administrations<sup>3</sup>, for example, have mandated the vaccine and masks for a section of their residents, such as teachers in both public and private schools. Three major cities in the USA have enforced a COVID-19 vaccine mandate for accessing indoor spaces such as restaurants and gyms.<sup>4</sup> Some private companies have also made COVID-19 vaccination mandatory for all their employees and staff.<sup>5</sup>

COVID-19 vaccine mandates are becoming common across the rest of the world as well. Canada, which has already vaccinated 63% of its population, issued a vaccine mandate for all air, train, and cruise ship travellers, as well as federal public servants and other government workers.<sup>6</sup> France and Italy require a COVID-19 pass — which certifies the vaccination status of the holder — to access restaurants and bars.<sup>7</sup> Sri Lanka recently announced it would make COVID-19 vaccine certificates compulsory for inter-provincial travel and for moving around in public spaces.<sup>8</sup>

India, which suffered a devastating second wave of COVID-19 infections earlier in 2021, must urgently pick up the pace of vaccinations and increase vaccine coverage. Research suggests that vaccine hesitancy among a large section of the Indian population has stymied the efficient dissemination of the COVID-19 vaccine.<sup>9</sup> One way to overcome this roadblock and to protect public health interests, institutions may find it necessary to mandate the vaccine.

This document delves into what a vaccine mandate in India could look like, along with a strategy that could be adopted by employers and educational institutions when mandating the vaccine. It recommends factors that need to be considered, along with the legal framework that must be adhered to. Finally, the document specifies some prerequisites to be met before issuing such a mandate becomes possible.

## *II. History of Vaccine Mandates*

A historical analysis of vaccine mandates across the globe shows that they significantly reduce deaths due to infectious diseases. In the mid-19th century, at the peak of the smallpox epidemic across Europe, several states mandated the smallpox vaccine for all their citizens. Italy and Sweden were among the first countries to issue a mandate for the smallpox vaccine, followed by England in 1853. German states made the smallpox vaccine compulsory in 1874. The smallpox mortality rate in the region five years before the mandatory vaccination law was 30 times the rate observed five years after the declaration of the mandate.<sup>10</sup>

In the 19<sup>th</sup> century, vaccines were also mandated for children to attend schools in the United States. It started off with a vaccine mandate for students of all schools by Massachusetts in the 1850s to prevent smallpox transmission, and it was adopted by the majority of the states by the early 1900s.<sup>11</sup> By 1963, vaccine mandates in schools were expanded to include other diseases. At the time, 20 states, the District of Columbia, and Puerto Rico had such laws, with a variety of vaccines being mandated, but enforcement was minimal.<sup>12</sup> Laws requiring people to get their vaccinations done were upheld by the US Supreme Court in its rulings, *Jacobson v. Massachusetts* (1905) and *Zucht v. King* (1922).<sup>13</sup>

However, there have been instances when vaccine mandates faced pushback both from the courts and the public. Great Britain's Vaccination Act of 1867 made the smallpox vaccine mandatory for all citizens up to the age of 14. It also put penalties in place for those who refused to comply with the Act. This led to an uproar among citizens, who demanded the right to control their children's bodies as well as their own. The Anti-Compulsory Vaccination League was soon formed, and many anti-vaccination journals sprang up dismissing the concept of mandatory vaccinations.<sup>14</sup>

Following a 1982 legislation on compulsory vaccination of school going students in the province of Ontario in Canada, the Committee Against Compulsory Vaccination was formed to oppose the law. The Committee argued for exemptions on vaccinations to be given on the grounds of religion and the conscience of an individual. This led to an amendment of the legislation in 1984 on court orders.<sup>15</sup>

Given the risk of potential blowback from vaccine mandates, they should only be issued proportionate to the threat to public health. COVID-19, with its persistent threat to global and national public health, maybe one example where the benefits of vaccine mandates far outweigh the concerns.

In India, no vaccine has ever been made compulsory either by the erstwhile British colonial government or by any government in independent India.<sup>16</sup> The COVID-19 pandemic has resulted in death tolls and infection rates surpassing other major diseases in the country today.<sup>17</sup> Frequent lockdowns and curfews due to this pandemic have had severe economic consequences for a large section of Indian society. The virus still remains highly contagious, especially among the unvaccinated.

As discussed above, there is considerable evidence from history that large-scale vaccinations and vaccine mandates have worked in mitigating the effects of an infectious disease. In India, the Universal Immunisation Programme (UIP) launched in 1985 by the Union Government now offers free vaccinations for 13 diseases, sponsored by both the Union and State governments. The UIP has managed to gradually increase vaccine coverage for all the diseases it covers. It has also helped destigmatise the process of vaccination in rural areas. 'Mission Indradhanush' was launched in 2014 with the objective of making immunisation for new-borns a health priority. Flagship mass vaccination schemes such as the UIP have provided significant dividends, helping to reduce infant mortality and deaths due to infectious diseases.

# *III. Legality of Mandatory Vaccinations in India*

There is a looming risk of a future rise in COVID-19 infections due to the slow pace of vaccinations in the country. India has a small but significant population who are unwilling to get vaccinated against the virus.<sup>18</sup> Before mandating any vaccine, the legal validity of such a move must be assessed. India is equipped with laws that give the government adequate wherewithal to tackle a situation such as the COVID-19 pandemic, keeping in mind overall public health. These laws are discussed in this section.

The Epidemic Diseases Act of 1897 provides executive powers to the government in order to prevent the spread of diseases. As per Section 2 of the Act, state governments have the right to introduce any temporary measures to curb the outbreak of the disease if they are not satisfied with existing current laws. Though these regulations may be temporary, inoculation cannot necessarily be surely deemed temporary, as stated in the judgement, Registrar General and High Court of Meghalaya v. State of Meghalaya (2021).<sup>19</sup> Section 2A of the Act gives the Union government some unique powers in dealing with health crises. However, this is only in the context of travel in buses, trains, goods vehicles, ships, or aircraft. Under this Act, therefore, the Union government is allowed only to mandate the COVID-19 vaccine for passengers using public transport or traveling between states.

As per the Disaster Management Act 2005, the Union government is in charge of running the National Disaster Management Authority (NDMA). Section 6 of the Act notes that the NDMA is authorised to formulate any disaster management policy and issue guidelines to State governments in drawing up their plans. Section 35 of the Act allows the Union government to take any necessary measures for disaster management. This includes the coordination of the Union government with state governments and state-level authorities, as well as governmental and non-governmental organisations.

Therefore, under the current legal framework, the National Disaster Management Authority (NDMA) and the Union government can issue vaccine mandates.

## *IV. Who Should Mandate the COVID-19 Vaccine?*

Existing laws give overriding powers to the Union government in terms of vaccine mandates. However, we recommend that the Union government delegate this power to employers — state governments and the private sector — to allow them to mandate the COVID-19 vaccine in response to local contexts.

In India, a blanket vaccine mandate by the Union or a particular State government can cause unintended consequences: increasing vaccine hesitancy, resistance, and inequity. As such, we do not recommend a blanket mandate like those seen in other countries: instead of the government mandating the vaccine, it should be left to employers and service providers. India's workforce is predominantly in the informal sector, and the majority of the country's population is rural. Hence, the vaccine mandate should be limited to employers, educational institutions, or other service providers to cover those under their employment or associated with them.

We recommend the following institutions be responsible for vaccinating their workforces:

1. The Union government can issue a vaccine mandate covering only Union government employees, who form 8.5% of the total organised workforce. This could include those employed in the Union Ministries, Railways, and the Armed Forces. Those employed by Public Sector Undertakings (PSUs) and national banks could also be covered under this mandate.
2. On directions by the NDMA, the state governments may issue vaccine mandates covering all their employees and state-level bureaucrats. The state governments' vaccine mandate could also cover government doctors and healthcare workers employed at all levels of the public health system, along with all government school teachers.
3. A separate vaccine mandate may be issued for all Central and State Universities, National Institutes of Importance, and other government degree colleges in the country. This could make the COVID-19 vaccination mandatory for all students and staff in the educational institution.

4. Apart from this, provisions must be made such that the private sector can issue vaccine mandates.
  - Private companies could be able to issue a COVID-19 vaccine mandate to cover all the employees under its payroll, as well as others working on a contract basis.
  - Private schools and universities must be given the freedom to issue a COVID-19 vaccine mandate to cover all the students, teachers/professors, and other staff employed by the institution.

## *V. Conditions before Mandatory Vaccinations*

With the threat of surges in infections and emerging COVID-19 variants, a decision on vaccine mandates needs to be taken urgently. However, simply putting in place vaccine mandates would be insufficient in the face of inadequate vaccine supply. Therefore, before issuing any vaccine mandate, we recommend that the Union government first finalise supply deals with Indian and foreign vaccine manufacturers who can supply the requisite doses.

For all private sector players who are interested in issuing their own vaccine mandate, we recommend the following:

1. All private educational institutions could issue vaccine mandates before commencing full-time offline classes.
2. All private companies and employers could prioritise client-facing employees for mandatory vaccinations before asking them to return to work in offices.



# *VI. Factors to Consider for Vaccine Mandates*

We recommend the following conditions be met before the imposition of a mandate:

## **I. VACCINE SUPPLY AND DRIVE**

It is the responsibility of whoever declares a mandate to ensure an adequate and steady supply of proven and reliable vaccines to provide for all those covered under the mandate. Along with an ample supply of vaccines, the duty of conducting the vaccination drive solely rests with the authority issuing the mandate. This means, for example, that if a mandate is issued by an employer institution for its employees, it is the sole responsibility of the employer to ensure a smooth vaccination process for all. But public service providers which include closed spaces and exposure to a number of people, such as restaurants and gyms, can issue a mandate in the public interest to access their facilities, without having to facilitate the vaccination process for those who want to avail their services.

We recommend that the mandate should be issued only when there is a sufficient stock of the COVID-19 vaccine available to cover all those eligible.

We also propose that the administration (the government/ private player) that issues the mandate organises the vaccination process for all those eligible. This might include finalising the dates for a vaccination drive, securing the site where the vaccination drive will be organised, and transportation to and from the location where the drive is being held.

Though the right to mandate the vaccine can be delegated to private institutions, the government must not be absolved of its duties in ensuring vaccine access to all. There must be mechanisms set in place by the government to promote and provide vaccines, especially to the informal sector. This will help in addressing any inequity that exists in the vaccination process.

## 2. COST

The government (Union/state/local) should bear the costs of any vaccine mandate it issues. Similarly, a private entity should handle the vaccination cost for all employees if it mandates the vaccine.

We propose that the cost for all vaccinations (both doses) must be covered by the specific entity which has declared the mandate.

## 3. EXTRA LEAVES

COVID-19 vaccines can cause multiple temporary side effects in recipients, rendering them unable to work for a few days.

We recommend that an institution mandating the vaccine should create a leave policy for employees, providing a day or two of leave to recuperate after the vaccination.

The effects of the vaccine may take a toll on available manpower due to extended leaves. This could particularly impact the functioning of government institutions (schools and hospitals).

We recommend that when issuing a mandate, an institution must have contingency plans to cover for this possible impact.

## 4. EXEMPTIONS

Though a vaccine mandate means that the process of vaccination is made compulsory for all those involved, there may be reasons for exempting some people from getting the vaccine.

We recommend that any person with an allergy or a life-threatening response to the COVID-19 vaccine must be exempted from getting the jab. Instead of vaccinations, we suggest a regular and timely COVID-19 testing process be put in place for everyone covered under the mandate, but unable to take the vaccine for medical reasons.

Another potential roadblock might be negotiations with employee unions. There might be some pushback from unions which can hamper the process of mandating the vaccine and hence might lead to exemptions.<sup>20</sup>

## 5. REPERCUSSIONS

The repercussions of ignoring a vaccine mandate should be transparently conveyed. In many countries with a COVID-19 vaccine mandate, those who did not comply have been suspended or terminated.<sup>21</sup> Since this is a harsh step, all possible means should be taken to ensure that people have every opportunity to comply with a vaccine mandate. Furthermore, to maximize the likelihood of compliance, mandates should only be issued in response to overwhelming threats to public health. Since COVID-19 currently poses a threat to the normal functioning of society: therefore, if institutions want to create mandates along with regulations to ensure compliance with the mandate, they should be allowed to do so.

# *VI. Conclusion*

As various countries consider the enforcement of vaccine mandates to tackle vaccine hesitancy, we argue that certain conditions have to be met for India to take this step. The decision on vaccine mandates should be delegated to employers and service providers. Vaccine mandates should only be put in place if an employer can guarantee the supply and cover the cost of the vaccine. Particularly for government employers, contingency plans should be created to manage the fallout from any personnel shortfalls arising from the mandate. Enforcing a vaccine mandate without sufficient attention provided to these key factors could lead to further vaccine hesitancy and inequity.

## Acknowledgements

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