

Impact of Supreme Court's new covid vaccination ruling on India's employers

Vikram Shroff, Vivek Ilawat, and Sayantani Saha

13 May 2022



The covid-19 pandemic has exposed the world to unforeseen challenges. Its impact has pervaded the lives of all persons – both natural and legal. From adapting to an overnight lockdown, shifting to remote working, to vaccinating and supporting employees in combating the virus, employers have come a long way since 2020 and are now looking forward to having their employees return to office.

In wake of this, and to promote vaccination and prevent aggravation of the disease, various state governments have been notifying mandates excluding unvaccinated individuals from public spaces and services. In some states, such as Maharashtra, private employers were also directed to exclude unvaccinated individuals from their offices. The constitutionality of such mandates was recently challenged before the Indian Supreme Court (SC) in *Jacob Puliyel v Union of India*.

Issues

In assessing the constitutionality of such mandates, the SC also assessed:

1. an individual's constitutional rights *vis-à-vis* personal autonomy in relation to covid-19 vaccine mandates; and
2. the limits of state authority in imposing restrictions on unvaccinated individuals in the interest of public health and safety.

Rights to personal autonomy

The SC emphasised the importance of personal autonomy by referring to its views in *Common Cause v Union of India*, which upheld an individual's right to refuse unwanted medical treatment and not be compelled to take any undesired medical treatment.

Recognising such rights, the SC stated that where there is a likelihood of unvaccinated individuals spreading covid to others, or contributing to mutation of the virus, burdening public health infrastructure and affecting public health at large, the government can impose limitations on individual rights that are

reasonable and proportionate to the legitimate state aim of fighting the pandemic.

It is pertinent to mention here that the respondent, Union of India, in its response to the petition has affirmed that covid vaccination in India is voluntary for individuals.

State rights to impose restrictions

On state rights *vis-a-vis* imposing restrictions on unvaccinated individuals on grounds of public health and safety, the SC referred to its views in *K.S. Puttaswamy v Union of India*, reiterating the three conditions for constitutional validity of state policies placing restraints on an individual's constitutional rights to privacy:

1. the existence of a law to justify an encroachment on privacy;
2. the need for such restriction in terms of a legitimate state aim, by virtue of which the imposed restriction may be deemed reasonable by standards of Article 14 of the Indian Constitution; and
3. the adoption of means which are proportional to the object and needs sought to be fulfilled by the law imposing restrictions on an individual's privacy

The SC stated that such parameters will also guide a state's right to curb an individual's personal autonomy through state policies and mandates in the context of inter alia covid-19-related restrictions.

In view of the *K.S. Puttaswamy* judgment, the SC considered the vaccination policy of the Indian government to be reasonable and not manifestly arbitrary. However, it considered restrictions imposed by states on unvaccinated individuals in barring access to public places, services, and resources to be disproportionate to the state's legitimate aim of combating the pandemic.

The SC further suggested that in view of the present low infection rate and spread of covid, and until there is research to provide due justification for restricting the rights of unvaccinated individuals, all authorities including private organisations should review any currently applicable restrictions on unvaccinated individuals in terms of accessing public places, services and resources.

Such suggestion for review is not applicable to state instructions for maintenance of covid appropriate behaviour, however.

Impact on employers

The judgment pertains to restrictions on access rights of unvaccinated individuals to public resources. As a result, it is clear that an individual's personal autonomy cannot be vitiated through a vaccination mandate and, to that extent, an individual cannot be mandated to take a covid vaccine.

The question that arises is the impact of the judgment on private employers that continue with certain restrictions, such as office entry or official travel, on employees who are unvaccinated. The judgment does not specifically discuss any restriction on entry right to the workplace and, accordingly, may not directly impact employers that continue to prohibit office entry to unvaccinated employees and visitors, largely from a duty of care perspective.

It may be noted that as an example of a proportionate measure for combating the pandemic, the SC referred to France's "health pass" system, which may either be a viral screening test, proof of vaccination status, or a certificate of recovery following an infection. Employers intending to continue imposing office entry restrictions upon unvaccinated individuals may take into consideration such an example.

The judgment specifically excludes directions in relation to covid-appropriate behaviour from its ambit of review, and otherwise recognises public health and safety as a ground for imposing reasonable restrictions on individual rights towards combating the pandemic. Accordingly, some Indian states continue to recommend observation of covid-appropriate behaviour by all individuals, which can also be referred to by employers while taking such decisions.