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COVID-19 HEALTH INTERVIEWS

Right to self-determine what may be injected into our bodies is fundamental, says petitioner in the vaccination case in the Supreme Court

SARAH THANAWALA · JUNE 20, 2022



Explaining the Supreme Court's May 2 judgment in Jacob Puliyel versus Union of India & Ors., the petitioner in that case says that restrictions on the unvaccinated, in the form of mandates, amount to forced vaccination, and are in clear violation of fundamental rights guaranteed under Article 21 of the Constitution.

ON May 2, the Supreme Court bench consisting of Justices L. Nageswara Rao and B.R. Gavai, in the case of [Jacob Puliyel versus Union of India & Ors.](#), pronounced its judgment on a writ petition filed for enforcement of fundamental rights under Articles 14 and 21 of the Constitution. The petition sought the respondents to publicise the segregated data of the clinical trials for the vaccines under the Emergency Use Authorisation.

The petitioner, Dr. Jacob Puliyel, submitted that the COVID-19 vaccines are not adequately tested for safety and efficacy, and hence, are in clear violation of the basic norms of scientific disclosure and guidelines. Dr. Puliyel prayed for coercive mandates to be removed for use of the COVID-19 vaccines, and for the court to uphold citizens' right to autonomy and the right to self-determine what may be injected into their bodies.

The Supreme Court bench, in its judgment, observed that bodily integrity and personal autonomy are protected under Article 21 of the Constitution. Till the infection rate remains low, the Court

urged all authorities to review and recall relevant orders, with respect to the COVID-19 pandemic, that impose restrictions on unvaccinated individuals in terms of access to public places, services, and resources. The Court held that the government can impose limitations on individual rights to address issues of public health concern, provided that it meets the requirements: “(i) legality, which presupposes the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.”

Dr. Puliyl is a former member of the National Technical Advisory Group on Immunization, the government’s apex body on immunization. He has advised the Union Government on vaccines. As is clear from his petition in the above-mentioned case before the Supreme Court, Dr. Puliyl believes the vaccine mandates to be a violation of the rights of citizens, and thus, unconstitutional. He urges readers to access and explore the book – [‘The Real Anthony Fauci: Bill Gates, Big Pharma and the Global War on Democracy and Public Health’](#) by American environmental lawyer and author Robert F. Kennedy Jr. – which challenges the mainstream idea around vaccines.

“ Dr. Puliyl prayed for coercive mandates to be removed for use of the COVID-19 vaccines, and for the court to uphold citizens’ right to autonomy and the right to self-determine what may be injected into their bodies.

In an interview via email, Dr. Puliyl shared his views with *The Leaflet* on vaccine mandates imposed across the country, in the context of the Supreme Court judgment.

Q. The Supreme Court, in the case of [Asha Ranjan versus State of Bihar](#) (2017), prioritised community interest over individual interest. What are your views on protecting the right of self-determination of individuals under Article 21 of the Constitution over safeguarding the life and health of citizens?

A: Your question makes an assumption – that the ‘community interest’ is served by forcing me to get vaccinated. This is a myth. The COVID-19 vaccine does not prevent the vaccinated from spreading the disease to others. Hence, others in society are not helped by my getting vaccinated. The court clearly recognised this.

The next question is: can the State insist I get vaccinated for my own good – safeguarding my own life and health as a citizen? The argument can be extended – should the State be able to force me to

undergo cancer treatment (painful radiation and chemotherapy) even if I prefer palliative care instead? The answer should be a resounding NO. The State exists to serve its citizens, and as [Genevan philosopher and writer] Jean-Jacques Rousseau says in ‘[The Social Contract](#)’, attains its right to exist and to govern by “the consent of the governed”.

Can the State override the rights of the individual for self-determination, in the interests of ‘the community’? I will like my right to self-determination not to be abrogated under ANY circumstances. Altruism and sacrifices for the greater good of society have to come from within me – it cannot be mandated by the State.

Also read: [Politics Around COVID Vaccine Access in Context of Covid-19 Prevalence and Mortality](#)

Q: The state governments have justified taking emergency measures to contain the spread of COVID-19 under Section 2 of the [Epidemic Diseases Act, 1897](#). The Union Government has relied on Sections 35, 62, and 72 of the [Disaster Management Act, 2005](#) to issue directions to facilitate or assist in disaster management. What are your views on governments’ claim that their restrictions draw legitimacy from such provisions?

A: It is not sufficient that there is a law allowing restrictions under the Epidemic Diseases Act. The court said that if there is another pandemic with the potential of serious harm to the community that can effectively be prevented by a vaccine, the State may mandate the vaccine, but it must first pass the test of proportionality. Abrogating the right to self-determination demands a significant sacrifice, and the reason for doing it must be commensurate. In this manner, the verdict in the COVID case is nuanced, but it restrains the government from abrogating my rights to self-determination without a very good reason.

Q: Can you explain your contention that vaccines do not prevent virus transmission among the vaccinated, in light of the Indian Council of Medical Research (‘ICMR’) observing that 92 per cent of deaths occurred in unvaccinated individuals?

A: Let us assume that the ICMR claims are correct and the vaccine does reduce the likelihood of getting seriously ill and dying from COVID-19. Neither the ICMR nor the government has provided any evidence that the vaccine prevents infection (a vaccinated person from getting the infection) or transmission (spreading it to others). The court sought evidence, from the government, of vaccine protection against disease-spread, and the government was not able to provide any.

Also read: [Doctors, Lawyers, Journalists and Social Workers Write to Centre Again: ‘Share Details of 65 Covid Vaccine-Related Deaths and Adverse Events](#)

It is telling that Dr. Anthony Fauci (the Director of the U.S. National Institute of Allergy and Infectious Diseases, and the Chief Medical Advisor to the U.S. President on Covid) who is vaccinated and has received repeated boosters, now has COVID.

“ *The COVID-19 vaccine does not prevent the vaccinated from spreading the disease to others. Hence, others in society are not helped by my getting vaccinated.* ”

The mandates for COVID-19 were struck down because the court recognised that the vaccine does not prevent person-to-person spread of the disease and the unvaccinated posed no greater threat to the general public than the vaccinated.

Q: What are your views on the precautionary approach, and states adopting this with the objective to curtail the dangerous mutations and spread of the COVID-19 virus?

A: It is true that precaution and prevention are better than cure. Unfortunately for COVID-19, the vaccine does not fit the bill. In fact, there is some evidence that the vaccine has been putting pressure on the virus and encouraging it to mutate into new vaccine-resistant strains. Omicron is far more resistant to the vaccine than the original Alpha strain.

Also read: Maharashtra Government’s decision to continue with COVID vaccination rule for public transport users unfortunate: HC

Q: How, according to you, should the State approach a pandemic of this scale?

A: In this or any pandemic, the State should work to make treatments available, ensure the healthcare system is able to care for the sick, and devise preventive vaccines. These must be made available, but not forced on anybody. If they are effective, the public voluntarily accepts these measures. However, forced vaccination and restrictions on the liberty of people are difficult to justify.

In this COVID-19 pandemic, it was known from very early that COVID-19 does not cause serious illness among children and healthy young people. The closure of schools and colleges was tragic in these circumstances. The government should have allowed the disease to spread among these children who would have not come to any harm, and it would have improved herd immunity. The

elderly and vulnerable could have been isolated. This was what Sweden did very effectively while disregarding the misguided advice of the World Health Organisation to lockdown everyone.

Q: If a vaccine mandate can push individuals to get immunised that could in turn prevent deaths, shouldn't such a guarantee of life be assigned higher priority over an individual's autonomy?

A: Even the most ardent promoters of vaccination aren't making a claim to a 'guarantee of life'. Merely some, debatable, reduction in risk from the virus, with some inevitable increase in the risk of adverse reactions or side effects, was witnessed. People must be informed and weigh these risks for themselves, and it is not for the State to decide for them.

[American polymath Benjamin] Franklin has said famously, “*Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.*” By allowing the State to decide, we are giving up liberty for a mere mirage of security.

Also read: [Unequal vaccination raises questions on vaccine passports](#)

Q: While you state that the vaccinated cannot be prevented from getting COVID-19 and spreading it, you acknowledged that the vaccines do reduce the severity of the disease. How do you approach the consequences of the severity of the illness and the resulting deaths in an already over-burdened healthcare system? Shouldn't then the State's approach be to speed up vaccination while the healthcare policies are not under any pressure in emergency situations? What are your views on the State adopting a proactive approach over a reactionary approach?

A: All vaccines are reactionary – the reaction of pharmaceutical companies to a new pathogen. The State can ensure remedies and treatments are developed, tested, and made available. But it should not force its administration. It can bring the horse to the water's edge but it cannot make it drink.

“ Neither the ICMR nor the government has provided any evidence that the vaccine prevents infection (a vaccinated person from getting the infection) or transmission (spreading it to others). The court sought evidence, from the government, of vaccine protection against disease-spread, and the government was not able to provide any.

The only truly proactive approach would be to address the healthcare system as a whole, and ensure the ill can be cared for. The ‘burden to the healthcare system’ argument can be extended, logically, to ban cars on the roads because of the risk of accidents becoming a burden on the healthcare system. These arguments are only a ruse to curtail freedoms and liberty.

“ *In this or any pandemic, the State should work to make treatments available, ensure the healthcare system is able to care for the sick, and devise preventive vaccines. These must be made available, but not forced on anybody. If they are effective, the public voluntarily accepts these measures.*

You ask whether it is not a good policy to speed up vaccination prior to the emergency situation. How is that possible? It will require clairvoyance to predict the virus which will cause the next pandemic so that vaccination against it can be carried out before the emergency!

Q: You mentioned that the test of proportionality must be fulfilled. How do you view the State’s obligation to prevent deaths as a legitimate State aim? According to you, rather than restricting access to public places for the unvaccinated, what is a non-restrictive approach to ensure lesser severity of COVID-19 illness, including for the sick and elderly?

A: What the court acknowledged is that this vaccine does not prevent the spread [of COVID]. Allowing the unvaccinated access to the same spaces as the vaccinated does not increase the risk of transmission since the vaccinated pose the same risk. It is therefore an unfair and unjustified restriction on the liberty of individuals. I am not aware that the prolongation of life and prevention of death is a State’s function or a legitimate aim, and it cannot be used to justify the curtailment of basic freedoms guaranteed under our Constitution.

“ *The ‘burden to the healthcare system’ argument can be extended, logically, to ban cars on the roads because of the risk of accidents becoming a burden on the healthcare system. These arguments are only a ruse to curtail freedoms and liberty.*

The truly vulnerable must be cautious about the risk of exposure to pathogens, both in the midst of the pandemic and outside it. But even they must enjoy the right to weigh the risks for themselves without undue State interference.



Sarah Thanawala

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