



COVID - 19  
VACCINE

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**COVID-19 VACCINATION  
DRIVES IN INDIA:  
STORY SO FAR**



## INTRODUCTION

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India launched its Covid-19 vaccination drive at the start of this year, after the Drugs Controller General of India (DGCI) approved '**Covishield**' (by Oxford-AstraZeneca) and '**Covaxin**' by (Bharath Biotech) for 'restricted use in an emergency situation.' On January 16, 2021, India rolled out its mammoth campaign of vaccinating 940 million people by the end of 2021 in a phased manner. Initially, the entire vaccination drive was anchored by the Central Government, and as part of the first phase, healthcare and frontline workers were inoculated followed by other vulnerable groups – individuals above the age of 45 and those below 44 with co-morbidities. The next phase commenced on May 1, 2021 (close on the heels of the horrific second wave), wherein the vaccines were made available to individuals between 18 and 44 years of age, and the State Governments and the private sector began playing a more significant role in the procurement and administration of vaccines.

Since then, even as the drive progressed, factors such as India's sheer size and supply chain issues led to several questions, challenges and further studies being undertaken. What is clear however is that increasingly, the scale of vaccination is one of India's critical pillars in its fight against Covid 19. Interestingly though, the Central Government has at various instances clarified that vaccination against Covid-19 is voluntary – **there is no central law at present in India that makes vaccinations compulsory**. That being said, there are State Government circulars and orders wherein it appears that vaccination must be undertaken as a pre-requisite to resuming economic activity (e.g. opening offices, shopping malls, hotels, salons, etc.) or even attending large scale events.

We have attempted to analyze some of these State Government notifications, circulars and orders ("**Notifications**") and have outlined below the possible implications for private sector employers.

# STATE NOTIFICATIONS

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**Bangalore:** The Bruhat Bengaluru Mahanagara Palike (BBMP), the civic administrative body of Bangalore, issued a circular dated August 26, 2021, directing employers of commercial establishments, industries, hotels, restaurants and offices in Bangalore to ensure that the staff working at their premises was fully vaccinated. The circular also stated that employers must bear the costs of vaccination, must maintain proof of the employees' vaccination status at the workplace and produce them as and when required to do so, and also undertake regular testing. Violation of the terms of this circular could attract criminal liability.

**Maharashtra:** A similar order was passed by the Government of Maharashtra on August 11, 2021, requiring employees of restaurants, shops, shopping malls, gymnasiums, yoga centres, salons, indoor sports spaces, offices, industrial and service establishments, working at their respective workplaces, to be fully vaccinated against Covid-19. Employers are required to collect and maintain proof of their staff's vaccination status and this could be subject to inspection by local authorities.

**Tamil Nadu:** The Government of Tamil Nadu issued an order on August 21, 2021, inter alia, directing that: (i) district collectors must ensure that all Anganwadi staff is

vaccinated against Covid-19; and (ii) all establishments, organizations and industries which are permitted to function, must also ensure that their employees are vaccinated against Covid-19.

**Meghalaya:** The State Government of Meghalaya vide various orders of the Deputy Commissioner made it mandatory for shopkeepers, vendors, local taxi drivers and others to get themselves vaccinated before they could resume business. These orders were however set aside later by the Meghalaya High Court (discussed below).

**Mizoram:** The Mizoram Government issued an SOP dated June 29, 2021 ("**Mizoram SOP**") in terms of which all persons in the State of Mizoram had to be vaccinated, failing which they would not be allowed to leave their homes or earn their livelihood by working in shops, driving vehicles, etc. This was challenged before the Gauhati High Court and was struck down on grounds that it was violative of the Indian Constitution (discussed below).

Similar orders have also been issued by various governmental authorities in the states of Uttar Pradesh, Gujarat and Odisha.

## JUDICIAL PRECEDENTS ON MANDATORY VACCINATION

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Some Indian courts have addressed issues surrounding mandatory vaccinations, and the position thus far appear to be that **while individuals should be encouraged to get vaccinated, government authorities should refrain from making vaccinations mandatory**. There is a petition currently filed before the Supreme Court of India (*Dr. Jacob Puliyelv v. Union of India and Ors.*) wherein it is prayed that any and all forms of vaccination mandates (including making it a pre-condition for accessing benefits or services) should be declared unconstitutional and a violation of citizens' rights and liberties.

In *Dinthar Incident Aizawl v. State of Mizoram (WP(C)/37/2020)*, the provisions pertaining to mandatory vaccination under the Mizoram SOP were challenged. The primary issues were whether a person can be vaccinated against her/his will and whether non-vaccination can debar a person from earning her/his livelihood. The Court struck down the concerned provisions in the Mizoram SOP and stated as follows: (i) these provisions discriminated against unvaccinated individuals as it deprived them of a right to earn a livelihood. Moreover, the available scientific data was insufficient to conclude that vaccinated

individuals cannot be infected with Covid-19; and (ii) prohibiting unvaccinated individuals from stepping outside their homes would effectively put them under house arrest, which would be violative of Article 21 of the Indian Constitution (*the Right to Life*).

The Meghalaya High Court in **Registrar General, High Court of Meghalaya v. State of Meghalaya**<sup>1</sup>, held that even though vaccination is an absolute necessity

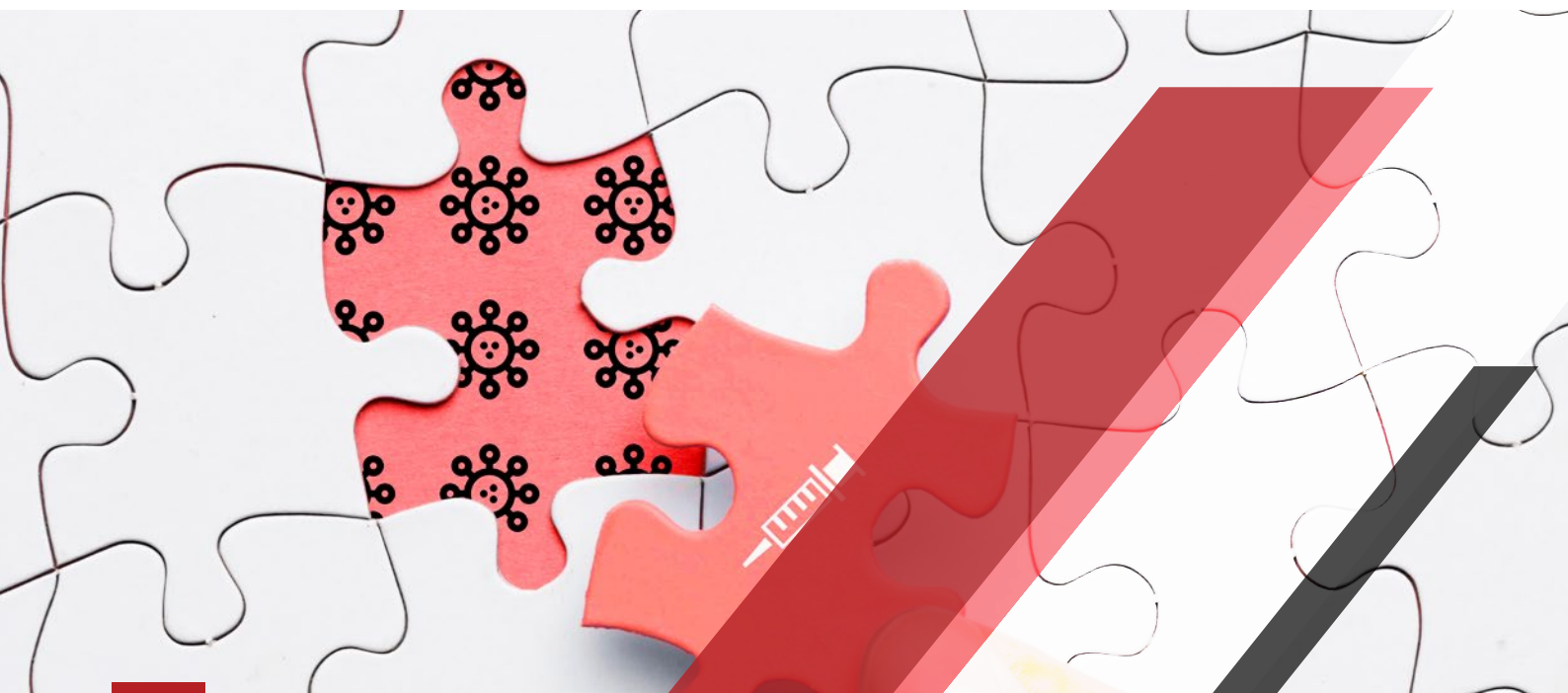
to curb the ongoing pandemic, “a *harmonious and purposive construction of the provisions of law and the principles of equity, good conscience and justice reveals that mandatory or forceful vaccination does not find any force in law...*” The Court referred to the FAQs issued by the Central Government and held that coercive or mandatory vaccination has no legal standing, and the State’s vaccination drive cannot be used to take away the fundamental right to livelihood.

## INDUSLAW VIEW

While there is an unarguable need to contain the spread of the virus and reduce vaccine hesitancy in the most time efficient manner, it may be difficult to justify mandatory vaccinations. The way forward perhaps is to enhance overall awareness and disseminate scientific data on vaccine efficiency so as to encourage maximum participation. Several employers are already playing their part by conducting myth busting programs for their staff, partnering with local medical institutions to facilitate vaccination drives, incentivizing employees for taking the vaccine and also voluntarily displaying the rate of their staff vaccination in order to promote vaccine confidence.

Even as some of the Notifications have been struck down by courts, there are still others (*e.g. those issued by the Maharashtra State Government and BBMP in Bangalore*) that seem to be causing a fair amount of controversy, given that they appear to place the onus on employers to insist on proof of vaccination before allowing employees to work from the office premises. While some verbal clarifications have been issued to the effect that the Notifications should be construed as ‘persuasive’, there is still a risk, given that any non-compliance with these could attract criminal consequences both under the Disaster Management Act, 2005 and the Indian Penal Code, 1860. Employers will therefore have to undertake a balancing act and frame suitable internal policies with respect to staff vaccinations in order to take into account various (and often competing) considerations.

1. Registrar General, High Court of Meghalaya v. State of Meghalaya (judgement dated June 23, 2021)



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