

**Constitutional Aspects of Compulsory
Vaccinations in USA and EU Law**

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Abstract

Across the globe, different nations have heterogeneous vaccination policies. Countries vary in the mandate and the implementation and enforcement of directives and potential consequences for incompliance. Public immunization programs are deemed effective because they help minimize morbidity and mortality rates associate with vaccine-preventable diseases. The debate on if vaccination should be made compulsory through legislation is aggravating. It focuses on the community's privileges versus individual rights, especially the right of an individual to decide on their best interest. At times, mandatory vaccination policies lead to opposition, considering that few compulsory vaccination policies are aimed at adults. Mandatory vaccine policies influence human rights. An evaluation of the existing mandates in Europe could be crucial in informing policy choices across the globe. The dilemma is if accomplishing herd immunity against staid and avertable diseases justifies infringing individual rights regarding previous vaccine-preventable conditions and discovering the recent COVID-19 vaccine. Coronavirus vaccine discovery has raised concerns and the public fear that governments may coerce mandatory vaccination. The article will apply

qualitative research methods to explore constitutional limits to compulsory vaccination in USA and EU Law. The paper cites that mandatory vaccination may be invasive to some people considering that vaccination legislation is not done on a vaccine-by-vaccine basis. The paper also indicates that implementing mandatory or voluntary vaccination depends on a nation's statutes and regulations, and the European Union only plays a supplementary role. Case law clearly indicate in both the United States of America and the European Union the constitutionality of imposing vaccinations, as long as these measures are appropriate, necessary and proportionate to the desired purpose, which is to protect public health.

Key Words: Balancing, Compulsory Vaccination, Constitutional Jurisprudence, Coronavirus, Individual Rights, Informed Consent, Herd Immunity, Pandemics, Public Health.

المخلص

الجوانب الدستورية للقاحات الإلزامية في الولايات المتحدة الأمريكية والاتحاد الأوروبي

أشار اكتشاف لقاح فيروس كورونا مخاوف الجمهور من أن الحكومات قد تفرض التطعيم الإلزامي، لذا يتزايد الجدل حول ما إذا كان يمكن فرض التطعيم من خلال التشريع، هذا الجدل يركز على الميزات التي يمكن أن تعود على المجتمع مقابل الحقوق الفردية، وخاصة حق الفرد في تقرير مصلحته الفضلى. تكمن المعضلة فيما إذا كان تحقيق مناعة القطيع ضد الأمراض المعدية يبرر انتهاك الحقوق الفردية. تظهر مشكلة البحث في تحديد مدى دستورية فرض التطعيمات، وما هي الحدود الدستورية للتلقيح الإلزامي في قانون الولايات المتحدة الأمريكية والاتحاد الأوروبي؟ ويشير البحث إلى أن تنفيذ التطعيم الإلزامي أو الطوعي يعتمد على قوانين ولوائح كل دولة من دول الاتحاد الأوروبي، ويلعب الاتحاد الأوروبي دورًا تكميليًا فقط، مع التأكيد على أن السوابق القضائية في كل من الولايات المتحدة الأمريكية والاتحاد الأوروبي تقضي بشكل واضح بدستورية فرض التطعيمات، طالما أن هذه التدابير ملائمة وضرورية ومتناسبة مع الغرض المنشود، وهو حماية الصحة العامة.

الكلمات المفتاحية: الموازنة، القضاء الدستوري، التطعيم الإلزامي، فيروس كورونا، الحقوق الفردية، الموافقة المستنيرة، مناعة القطيع، الأوبئة، الصحة العامة.

Introduction

As nations continue to draft stringent vaccination policies compared to before, mandatory vaccinations raise incredible amounts of conversation worldwide. Whether mandatory vaccination policies impinge, fundamental human rights can be argued from an ethical perspective and legal perspective. People tend to inquire why something as invasive as vaccination could be considered proportionate and justify its legislation⁽¹⁾. This is because vaccinations have certainly experienced a far-reaching revolution from experimental medical trials to commonly accepted lifesavers. Public health and vaccinations have an irrefutable correlation because vaccine programs and regulations put in place and enforced prevent and control diseases. Recognizing personal responsibility is difficult regarding public health, considering immunized people enhance public safety to people who cannot be vaccinated for various reasons. Mandatory immunization is mostly defended from a utilitarian perspective because immunized people choose inexpensive vaccination instead of pricey therapeutic options that could be avoided. Different nations have diverse ways

(1) Gostin, L. O., and Lindsay F. W.) 2016. (Public health law: power, duty, restraint. Univ. of California Press. 115- 155.

of enforcing vaccination policies because some are inclined to mandatory guidelines, mixed regimens, or leave the citizens to decide if they are interested in vaccination.

Citizens in nations that uphold mass-immunization regimes have raised their concerns regarding people's bodily integrity and the threat associated with mandatory vaccinations regarding free consent and human rights⁽¹⁾. The International Human Rights Law Legislation stipulates that free and informed consent should be upheld and extremely crucial in the medical field and the right to bodily integrity. This is indicated in Article 3 of the Charter of Fundamental Rights of the European Union. At times, job seekers might face discrimination if their immunization profile is not standard or fail to get vaccinated, creating equality and human rights concerns. All forms of discrimination, regardless of background, gender and ethnicity, are prohibited under all situations in Article 14 of the European Convention on Human Rights.

Families that decide to evade vaccination have faced several challenges and children segregated, although family units and their

(1) Chemerinsky, E., & Goodwin, M. (2016). Compulsory vaccination laws are constitutional. *Nw. UL Rev.*, 110, 589.

privacy should be upheld according to Article 8 of the European Convention on Human Rights. Most nations take this stand undergrounds that serving the common good surpasses individual rights and liberties. The states are allowed to interfere with family values in healthcare matters even though the interference may not be beneficial as stipulated in Article 8⁽¹⁾. Vaccination may lead to disparities and inequalities among children. For instance, in certain states, children enrolled in schools must be immunized⁽²⁾.

The medical and social facts surrounding current vaccination policies in the European Union are strikingly different from initial policies in the 20th century and warrant legal recalibration. The adverse effects of vaccine-related injuries and mortality rates among infants had increased drastically in the early 1980s, which forced the vaccine industry into bankruptcy until nations such as America enacted the National Child Vaccine Injury Act 1986

(1) For example, in July 2017, Italy adopted a new law, which extended the number of mandatory vaccines from four to 10 vaccines for those aged 0–16 years. Kristin H. & Lynne S. & Gregory Z. and Eric M. (2016). Ethics and Childhood Vaccination Policy in the United States. *Am J Public Health*, 106(2): 273–278.

(2) Fortunato D'A. & Claudio D'A. & Francesco M. & Giovanni R. and Stefania I. (2019). The law on compulsory vaccination in Italy: an update 2 years after the introduction. *Am J Public Health*, 24(26): 1900371.

(NCVIA)⁽¹⁾. The legislation created a no-fault reimbursement system for all vaccine injury complaints that emerge from unavoidable risks handled by the vaccine court. Even though the bill was meant to work with greater ease, experts say that the compensation procedures are non-functional and are antagonistic, considering that most claims are discharged without reparation. The Supreme Court ascertained that the NCVIA pre-empts all sorts of vaccine injury claims. Most claimants are left with no other option than pursuing even avoidable vaccine injury claims away from the vaccine court⁽²⁾.

The scientifically proven and documented benefits of vaccination policies in different nations have created a perfect menace of corruption and abuse, which has raised several questions regarding the safety and effectiveness of modern vaccines and the main reasons for coercing herd immunization of a growing number of vaccines. Modern-day infants are subjected to multiple vaccinations than the initial list of vaccines that the Center

(1) Chemerinsky, E., & Goodwin, M. (2016). Compulsory vaccination laws are constitutional. *Nw. UL Rev.*, 110, 589.

(2) Apolinsky, Joanna B. and Van Detta, Jeffrey A. (2010). Rethinking Liability for Vaccine Injury. *Cornell Journal of Law and Public Policy*: Vol. 19: Iss. 3, Article 1. Available at: <http://scholarship.law.cornell.edu/cjlpp/vol19/iss3/1>

recommended for Disease Control and Prevention. In the past two decades, the incidences of novel chronic disorders among infants have been alarming, leading some scientists and parents to question the correlation between increased vaccinations and elevate chronic childhood disorders, especially childhood cancers. In specific occupations, adult vaccination is a requirement, and time-honoured religious freedoms are being disregarded to accomplish better vaccination rates. Recently approximately 90% of the Claimants in the Vaccine people are adults complaining of the adverse injuries cause annual flu vaccine. Changes in vaccine laws have triggered many debates. Still, when lawsuits are presented, courts decide to engage in superficial and conclusory constitutional analyses to uphold constitutional laws rather than following the care and balance reasoning of *Jacobson v. Massachusetts*⁽¹⁾. Current vaccine opinions have depicted excessive reverence to the legislatures as they dismiss a basic constitutional right: the right of medical self-sufficiency, which lies at the core of individual liberty⁽²⁾.

(1) The court decision, 20 February 1905, H. Jacobson v Commonwealth of Massachusetts. 197 US

(2) Saukila, W.S. (2020). Overcoming Parental Consent: How can International Human Rights Law be used to Protect a Child's Right to Health in Childhood Immunization Cases? (LLM) University of Cape Town, Faculty of Law.

The medical sector largely supports community herding, but some recent vaccines' efficacy, safety, and necessity are highly debatable among scientists, practitioners, and the general public. Certain vaccines' effectiveness is questionable, considering that contradictory research is published in peer-reviewed journals in scientific databases. Some vaccines can be effective and safer than others, but the judiciary does not consider vaccines' variations while reviewing vaccine laws' encounters. Currently, the public has insight into various vaccine processes, but the lower courts haven't provided significant oversight to coercive vaccine laws, leaving the people frightened and confused. Public attitude towards the integrity of the vaccine industry threatens the medical ideologies that support herd immunity⁽¹⁾. Mass vaccination cannot work if a segment of the community refuses immunization, a reason why some states have retorted with elevated coercion and the issue has intensified. The COVID-19 pandemic has exposed the real controversy concerning vaccination policies. There have been debates on most social platforms with speculation on policies, the government will institute once the vaccine has been proven effective. The discovery and announcement of the COVID-19

(1) Katharine M. (2020). The end of certainty: Scott Morrison and Pandemic Politic, Quarterly Essay, No. 79, Sep 2020: 1-98.

vaccine have been public concern that the government may initiate compulsory vaccination. Recently anti-vaccination campaigns are flourishing, and fake news is spreading in a flash⁽¹⁾.

This article addresses the correlation between vaccine science and constitutional law, arguing that some nations respond to the public's growing resistance to vaccination. More forceful coercion of vaccine laws is unconstitutional. It is the wrong strategy considering its applicability is hard if unachievable. A careful review of vaccine policy and a reasonable equilibrium of all interest involved is required, or specific population groups evade herd immunization, and the thought of the benefits of herd immunization will be obscure.

The paper will address the contrasting legal aspects of compulsory immunization and the varying citizen attitudes on the stringent vaccination policies. The paper focuses on showing the harm of imposing mandatory immunization on human rights by derogating individuals' right to family life of choice. The article will also look if various states comply or conflict with Article 12 of

(1) Michaël S., Verity W., Pierre A., François A. and Stéphane L. (2021). COVID-19 vaccine hesitancy in a representative working-age population in France: a survey experiment based on vaccine characteristics, *The Lancet Public Health*, Volume 6, Issue 4. e210-e221.

the International Covenant on Economic, Social, and Cultural Rights when imposing compulsory herd immunization. Skeptics argue the shortcomings of vaccination are more than the benefits but considering the significant decrease in infectious disorders indicates the need for mass vaccination worldwide. Mandatory vaccination policies can be legally imposed to sustain public health. These policies can be formulated to support the stipulations of human rights law and family law.

The research methods used are qualitative, and the information used will be normative sources and also authoritative sources such as case law. The methodology will apply the initial legal doctrinaire research of describing and analysis the current relevant legislation of human rights. The sociological approach to law will also be used to analyses various perceptions concerning mandatory vaccination legislation. The sociological perspective will help understand why people fail to adhere to multiple vaccination policies that may impose a risk.

The structure of the paper is subdivided into three sections: The first section focuses on the Public Health Interest and Vaccination Policies. While the second part focuses on constitutional jurisprudence and compulsory vaccination. Whereas the third part will cover the imperative of public health and individual rights.

Chapter One: Public Health Interest and Vaccination Policies

Under the federal system of government of the United States of America, state governments have general power within the limits of the constitution to pass laws, which provide for public health, safety, and morals that act in the interest of the residents of the states. Whereas, states have general police power to enact laws that cater for the needs of their inhabitants, Congress's power to legislate is strongly derived from the constitution. In that regard, the federal government of the United States of America allows States in the country to use police power to promote public health and safety by encompassing the authority, which require mandatory vaccination.

The Congress on the other hand, must follow the due process of the constitution if they have to arrive at a decision that authorizes mandatory vaccinations by looking at all factors that do not infringe the individual constitutional rights of ordinary people. Therefore, following the general policy authority to promote elements of public health, safety, and morals of the people in those particular States, American States have in the past used that

authority to pass different compulsory vaccine laws for specific populations and identified circumstances that require such policies. Some of the populations on which compulsory vaccine laws have been applied include school children and certain health care workers in circumstances public health emergency⁽¹⁾.

It is, therefore, clear from the federal government system of the United States of America that compulsory vaccine laws can be enacted during times of public health emergency through the police powers to ensure that people are vaccinated against vaccine-preventable diseases. Therefore, the Constitution of the United States of America provides provisions, which allows both States and the Congress to make laws, which act in the interest of the people in circumstances where public health and safety is at stake. The United States law allows for compulsory vaccination under specific circumstances thereby, allowing all people to be vaccinated against diseases that present significant damage to the American population. The element of public health is indeed very progressive because it is the duty of both the federal government and State

(1) Shen W. (2019). An overview of State and federal authority to impose vaccination requirement. Washington D.C. Congressional Research Service, Available at:
<https://crsreports.congress.gov/product/details?prodcode=LSB10300>

governments to ensure that the interests of the people prevail at all costs. In circumstances where public health is at stake and more people are likely to suffer from a vaccine-preventable disease, the constitutional limits would be invoked with a critical eye to deliver mandatory vaccine to the general public as a means to protect them against diseases⁽¹⁾.

1- Vaccinations History

Vaccination emerged with smallpox. Edward Jenner is termed the father of modern vaccinations. Previously there were several vaccination methods, but Jenner began a vaccination technique referred to as vaccinology. The predecessor was called variolation, where a virus was extracted from a sick patient's pustule directly to a healthy individual body through the skin using a sharp object. At the time, variolation was effective because statistics indicated that it reduced death rates by approximately 11%. Initially, smallpox's adverse effects and consequences were largely felt, considering it was the first epidemic associated with the death of over three hundred million people across the globe in the 20th century alone. Smallpox was a major threat to civilization,

(1) Erwin C. and Michele G. (2016). Compulsory Vaccination Laws Are Constitutional, 110 Nw. U. L. Rev. 589. Available at: <https://scholarlycommons.law.northwestern.edu/nulr/vol110/iss3/2>

considering it led to the demise of approximately 60% of infected people⁽¹⁾. Vaccines became well known in the 19th century. Roughly 100,000 people were vaccinated, and over a million were vaccinated by the end of the decade.

After the discovery of safe and effective vaccines, most administrations sought to create compulsory vaccination legislation. For instance, in 1871, England's administration instituted the Vaccination Act, where people were obliged to go through vaccination procedures. Three years later, Germany made children vaccination mandatory. In most cases, the mandatory vaccines' outcomes were not favourable, leading to the augmentation of controversy over compulsory vaccinations, eventually leading to a massive uprising against the medical practice. In the 1880s, the Royal Commission on Vaccinations took responsibility for determining vaccines' efficacy and safety, which led to discovering new vaccines against disorders such as diphtheria and tetanus. In most cases, resistance against vaccines was associated with anti-

(1) Attwell, K., Navin, M. C., Lopalco, P. L., Jestin, C., Reiter, S., & Omer, S. B. (2018). Recent vaccine mandates in the United States, Europe and Australia: a comparative study. *Vaccine*, 36(48), 7377-7384.

vaccine notions that the vaccine manufacturers would elevate a disease's intensity⁽¹⁾.

In those eras, vaccines were tested on slaves or military camp prisoners, especially Nazi troops. There have been vaccination struggles in the past, especially with the emergence of novel disorders such as polio and measles. The founding of the United Nations Children's fund helped campaign for more successful and broad public immunization and children's immunization enhanced in developing nations. By the 1970s, numerous vaccines were available and tested across Europe. Each decade they brought either singular or a combination of vaccines for public use. Vaccination gave rise to modern vaccine technology that involves a similar approach or partially identical approach by introducing disabled viruses to create vaccines instead of living transfer among individuals⁽²⁾. Most medical practitioners agree that vaccination has been an effective means of preventing and controlling the spread of diseases such as polio, measles, and other serious illnesses that are life-threatening. The Center for Disease

(1) José E. (2020). Three different paths to introduce the smallpox vaccine in early 19th century United States. *Vaccine V. 38, Issue 12, P. 2741-2745*

(2) Giubboni S.,)2010(. Social Rights and Market Freedom in the European Constitution: A Re-Appraisal. *European Labour Law Journal, 1(2), pp.161-184.*

Control and Prevention listed vaccination among the best interventions in the 20th century.

2- Vaccine Laws Scrutiny and Social Facts of Vaccination: A DEBATE

Most state acts campaign for mass vaccination, which places the vaccine industry in a position to make profits even by delivering low-quality products that may be invasive to the public. Most people think that high non-compliance rates are associated with the externalization of cost, not the case. Mandatory vaccination policies have given rise to unethical conduct among practitioners and vaccine manufacturers, which has resulted in the harm and deaths of several people. Most nations, especially nations that have experienced damage and high death rates affiliated with vaccination, have mistrusted both vaccine manufacturers and the legislation considering most courts rule in favour of vaccine manufacturers. All these negative facts associated with herd immunity should be regarded to retain the judiciary's legitimacy in reviewing vaccine laws' lawfulness. Evidence of corruption in the vaccine implementation process should be considered beginning from approval, recommendation, and the legislative process because mandatory vaccination might cause harm and infringes medical autonomy. For instance, in the United States, several

stories have been making headlines of very prominent people who bypass normal vaccine safety procedures. The famous people cover up their acts by making significant political donations to facilitate new laws that force mass herding with their products. It is hard to believe that public interest has been subverted to vaccine profits by major health regulatory bodies such as CDC, WHO, and NIH, among other administration and private entities, evidenced by growing evidence⁽¹⁾.

A serious conflict was identified by US House Government Reform Committee between the pharmaceutical industry and the ACIP and the FDA vaccines and Related Biological products advisory committees, which are crucial federal advisory committees. The health department has previously assumed raised issues by providing conflict of interest waivers, which eventually led to relaxed vaccine trials, such as HPV, which led to adverse reactions and even death. The verge of coercing the COVID-19 vaccine has also raised concerns. Public awareness of the tycoon's funding and influence in the World Health Organization and other

(1) Kristin H. & Lynne S. & Gregory Z. and Eric M. (2016). P.R., PP. 273–278; Hussain A., Ali S., Ahmed M. & Hussain, S. (2018). The Anti-Vaccination Movement: A Regression in Modern Medicine. *Cureus*, 10(7). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6122668/>

vaccine industry powers has led to vaccine testing and allocation questioning⁽¹⁾. The public tends to reason that the tycoons try to protect their public images and credibility⁽²⁾.

The healthcare industry is the largest employer in most nations, and pharmaceutical firms' especially in the US, are the largest campaigners influencing legislation and politics. Vaccine manufactures have paid large sums compensating lawsuits for injuries associated with defective vaccines and have also been fined for improper marketing⁽³⁾. A growing number of Americans and Europeans are rejecting vaccines. If mandatory vaccine policies are not amended, most Americans will turn to unlawful means of avoiding vaccination, such as faking vaccination certificates. People don't trust the vaccine industry. They feel that governments and lawmakers deny them their constitutional rights. People will violate the law with a sense of entitlement if they think the law violates their rights regardless of the vaccine law's coerciveness.

(1) Savonitto, G., (2019). *Pharmaceuticals in the European Union: Law and Economics*. Cambridge Scholars Publishing.

(2) Smith T. C. (2017). Vaccine Rejection and Hesitancy: A Review and Call to Action. *Open forum infectious diseases*, 4(3), ofx146. <https://doi.org/10.1093/ofid/ofx146>

(3) Gostin, L. (2006). Public health strategies for pandemic influenza: ethics and the law. *Jama*, 295(14), 1700-1704.

The key to achieving herd immunity is formulating policies that support informed consent vaccination⁽¹⁾.

Several vaccine laws should be classified as unconstitutional under scrutiny analysis considering that all vaccines are not effective or safe, especially HPV and Flu vaccines which are less effective and are linked to a variety of health concerns⁽²⁾. The HPV vaccine has very different medical facts compared to the smallpox vaccine. The current COVID-19 pandemic became a concern in early 2020, and it was shrouded with controversy concerning its origin. At the very early stages, questions were asked about who was to profit from the pandemic, especially from manufacturing a vaccine. The international highly competitive hurry to create a vaccine for the pandemic is a public health concern. It seems as political control and domination considering that the vaccine's search was intensified than seen in medical research.

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- (1) Ramalhinho A.C., Castelo-Branco M. (2021) Ethics of DNA Vaccine Transfer for Clinical Research. *Methods in Molecular Biology*, vol 2197. Humana, New York, NY. PP. 307-316.
- (2) Martin, R., Conseil, A., Longstaff, A., Kodo, J., Siegert, J., Duguet, A. M., ... & Coker, R. (2010). Pandemic influenza control in Europe and the constraints are resulting from incoherent public health laws. *BMC Public Health*, 10(1), 1-10.

All nations researched the vaccine, and the research was protected fiercely to prevent theft, with superpowers trying to be first to get approval from the FDA. Creating a safe vaccine takes almost ten years. For instance, the development of an efficacious HIV/AIDS vaccine has been unsuccessful for years, but the United States launched a ten-month scheme to develop the vaccine⁽¹⁾. Stories emerged that mandatory vaccination policies would be legislated as a condition for employment, education, and travel after discovering the vaccine. Geriatrics and others that are not subject to vaccination are concerned about vaccination policies that could restrict traveling. Attempts of nations to coerce COVID-19 vaccination may fail, and there are more likely to persuade the public to vaccinate through financial incentives.

If significant daily operations such as employment, schooling, and travel are made contingent on proof of COVID-19 vaccination based on medical data available on the pandemic, constitutional rights will be infringed. The European Union has authorized four safe and effective vaccines against COVID-19 after

(1) Marco-Franco, J. E., Pita-Barros, P., Vivas-Orts, D., González-de-Julián, S., & Vivas-Consuelo, D. (2021). COVID-19, Fake News, and Vaccines: Should Regulation Be Implemented? *International journal of environmental research and public health*, 18(2), 744.

positive scientific recommendations by the European Medicines Agency. Requiring a medically invasive procedure as a condition for daily operations, especially for a vaccine that has been proven effective and tested in all population groups, will influence human rights. The medical estimates for the number of immune people required for herd immunity are uncertain. It is unsure if the immunity of the vaccine lasts long or could prevent mutated coronavirus reinfection. Research has shown that most coronavirus infections are mild, and there have been few adverse events.

The COVID-19 virus is spotty and difficult to predict. The lack of adequate information regarding the virus renders the vaccine riskier and unpredictable. Cases of reinfection even after vaccination have been reported. Initially, there have been less intrusive measures to curb the spread of the virus. In the absence of the vaccine, nations educated the public on how the disease is spread, instituted curfews and social distancing strategies, and mandated people that exhibited fever other coronavirus symptoms to visit nearest facilities. Currently, little evidence and literature are available regarding the effectiveness or risk of COVID-19 vaccination. Politics and financial interests can motivate nations to coerce vaccination over public health concerns that could be addressed without vaccination risk.

3- *USA Vaccination Policies*

The fact that States have traditionally in the United States of America exercised in significant circumstances the authority to institute compulsory vaccination laws, Congress, which is the arm of the federal government does not enjoy such powers. The Congress is only allowed to invoke the public health concept using the federal jurisdiction derived from the Commerce Clauses of the Constitution of the United States of America, which argues that, “Congress shall have power to regulate commerce with foreign nations and among the different states in the country. This means that Congress will enact laws for compulsory vaccination in circumstances, where foreign nationals or countries carry the risk of transmission of communicable diseases to the country and American people⁽¹⁾.

Congress can cite that power to create laws that result in compulsory vaccination in pursuant to the requirements of the Constitution by deriving its authority to make such a decision among other legal backings such as Commerce Clause and at the

(1) Cole, J.P. & Swendiman, K. (2014). Mandatory vaccination? Precedent and current laws. Washington D.C. Congressional Research Service. Available at: <https://fas.org/sgp/crs/misc/RS21414.pdf>

same time Spending Clause all from the Constitution of the United States. Commerce Clause for example, from the Constitution bestows the Congress the power to regulate commerce with foreign Nations as well as, other States in the country. The Clause, therefore, gives Congress authority to regulate three core broad categories of activities related to commerce and at the same time public health protection. These three core activities include Channels of interstate commerce such as canals and road, persons or things in interstate commerce, and activities that substantially affect interstate commerce⁽¹⁾.

The Spending Clause on the other hand, empowers Congress to tax and spend for the general welfare. Following this authority, Congress may offer federal funds to non-federal institutions and entities and at certain points prescribe the terms and conditions on grants given to states are only subjected to specific limitations including conditions that the states must be useful or germane to the federal interest in all the particular national projects as well as programs that federal funds would be used. Whereas, Congress has Constitutional authority to make such decisions, it is also subjected

(1) Mark H., (2011), Commerce Clause Challenges to Health Care Reform, University of Pennsylvania Law Review, Vol. 159, No. 6, pp. 1825-1872.

to some element of external constraints. For example, constraints in the context of public health laws must be always grounded in the federalism system of the government of the United States and in the protection of individual rights of the people ⁽¹⁾.

In pursuant to the principles and values of federalism, the Supreme Court of the United States of America has gone ahead and interpreted the 10th Amendment of the Constitution to prevent the federal government from commandeering or requiring state officers to carry out federal directives. Therefore, this clear demarcation between the federal government and State governments have enabled the United States of America to interpret the constitution correctly and as such allow each level of government to play its role in quest to protect public health interest. For example, when it comes to protection of individual rights of the people of the United States of America, there are few constraints on Congress's ability to impose mandatory vaccination because it is deemed that when Congress arrives at the decision to enact laws that demand mandatory vaccination requirements it will be doing so based on the interest to protect people of the United States from being

(1) Hendrix, K. & Sturm, L. (2016). Ethics and Childhood Vaccination Policy in the United States. *American Journal of Public Health*. 106 (2): PP. 272–279.

significantly affected by a public health threat such as the ongoing Coronavirus Disease⁽¹⁾.

The viability of due process and equal protection Clauses cited in the 18th Constitutional Amendments is certainly limited in the Case Law of *Jacobsen and Zucht*. In addition, the First Amendment of the Constitution on Free Exercise Clause in some occasions could offer limit on the federal government's ability to require vaccination for those individuals who would otherwise in ordinary circumstances refuse to take vaccines on grounds of religious basis. This particular Constitutional Clause is in most cases reflected under Employment Division department of human resources in the case of *Oregon v. Smith*. In this particular case, the court held that neutral, generally applicable laws in areas that do not target specific religious groups. The constitution in this case would demand that vaccination should not in any way violate the principles of the Constitution, when certain groups of people are involved⁽²⁾.

(1) Ferro, V. (2019). Legal aspects of informed consent in clinical research: The case of vaccinations in international legal framework. *Journal of Biological Law*, 1(1) pp. 139-149.

(2) Holland, M. (2012). Compulsory, vaccination, the constitution, and Hepatitis B mandate for infants and young children. California. *Yale Journal of Health Policy, Law, & Ethics*, 12(1), pp. 41-85.

In addition, federal laws or rulings can also restrict federal authority in relation to public health regulations. Under the Religious Freedom Restoration Act of 1993 for example, the federal government demonstrates the application of the burden to the person to represent and this is indeed the least restrictive means of the federal government compelling interests. This particular requirement is only demanded in circumstances where the federal government law has prescribed specific public health requirements, which might impose substantial burden on a controlled person's exercise of religion⁽¹⁾.

In such circumstances, the Religious Freedom Restoration Act of 1993 might require certain religious exemptions to the federal law to the regulated entities. Moving forward, it is important to understand that Religious Freedom Restoration Act of 1993 does not apply to the actions and decisions of state government or court. In this case, the court might observe that the law is unconstitutional as applied to the State because the law exceeded Congress enforcement authority under the 14th Amendment of the Constitution. Following this reality, unless a

(1) Patricia D. & Nuno P. (2011). Vaccine Supply: Effects of Regulation and Competition. *Int. J. of the Economics of Business*, Vol. 18, No. 2, pp. 239–271.

State has chosen to enact a State version of RFRA as with the case of 21 States, which have generally broad authority under their police power to impose mandatory vaccination requirements without providing a religious exemption, RFRA laws should not applied randomly in all States⁽¹⁾.

Under the Public Health Service Act (PHSA) Congress has approved broad flexible powers to federal health authorities, which are expected to use their judgment in their attempt to protect the public against the spread of communicable disease. This authority by Congress to make and at the same time enforce regulations necessary to prevent the transmission, introduction, or spread of communicable diseases from one foreign State to the other or from one state to the other could unfavourably be cited or used to mandate vaccination provided that the authority is not exercised in a manner that allows violation of the Constitution or in certain circumstances fail to comply with the statutory requirements such as the Administrative Procedure Act⁽²⁾.

(1) Shen W. (2019). P.R.

(2) Cole, J.P. & Swendiman, K. (2014). Mandatory vaccination? Precedent and current laws. Washington D.C. Congressional Research Service. Available at: <https://fas.org/sgp/crs/misc/RS21414.pdf>

Current regulations issued in accordance with this particular authority have put into consideration the limits to measures such as quarantine and isolation measures to help in lowering down the spread of specific communicable diseases. Section 317 of the Public Health Service Act among other functions allows the federal vaccination grants to different States, cities, and territories to implement measures that would result in improvement in vaccination rates. Measures such as reducing out-of-pocket costs for families to vaccines, offering targeted education exercises, and offering targeted vaccine reminders for patients are allowed under section 317 of the Public Health Service Act. In addition, the Spending Clause authority empowers Congress to recommend certain vaccination requirements, which must be implemented by States or localities as a condition of receiving federal funds.

4- EU Vaccination Policies

The European Union indicates that the National immunization strategies and programs need to evolve to ensure that they meet the ever-increasing needs of changing infectious disorder patterns in all population groups ranging from infants to geriatrics. The European Union indicates the need for more improved surveillance systems to assess the burden of infectious diseases better, altering contagious diseases epidemiology, evaluating

vaccine safety and efficacy, and assessing vaccine coverage rates⁽¹⁾. The body's capability to monitor vaccination to determine the benefits and risks of immunization is limited and typically not integrated. The European Centre for Disease Prevention and Control (ECDC) has supported member nations in various vaccination programs. The current European Union vaccination policies emphasize the importance of herd immunization as a public health strategy. Vaccine policies are regularly updated after vaccine assessments, alterations in groups at risk, and when a change in vaccine efficacy occurs.

Vaccines are categorized into recommended and mandatory vaccinations. A recommended vaccination is a highly effective vaccine for a certain population group, while a mandatory vaccine is an immunization that every infant must-have regardless of their parent's consent. When a mandatory vaccine is not administered, the economic consequence may follow. The World Health Organization does not have a concrete policy on mandatory vaccines but clearly understands the rationale various nations use to enforce it. In countries such as the United States, mandatory

(1) Law S. (2007). Human papillomavirus vaccination, personal choice, and public health. UC Davis L. Rev., 41, 1731.

vaccination is implemented for children entering school even though exceptions are made based on a medical, philosophical, and religious basis⁽¹⁾. In other nations such as Australia, mandatory vaccination is not reinforced, but the government uses financial compensation as bait to encourage parents to vaccinate their children. The Australian legislators apply a positive means of affirmation rather than use negative affirmations such as fines⁽²⁾.

Vaccination policies among member states of the European Union vary significantly. The European Union does not have a standard immunization policy but supports various immunization strategies and policies in its member states, especially through funding. The European Union, in most cases, is involved with the assessment of vaccines and ensuring that at-risk groups among its member nations receive vaccines promptly to improve public health. In some countries, recommended vaccines may be mandatory, while in others, they may not. This is because the

(1) Ventola C. L. (2016). Immunization in the United States: Recommendations, Barriers, and Measures to Improve Compliance: Part 1: Childhood Vaccinations. *P & T: a peer-reviewed journal for formulary management*, 41(7), 426–436; Hodge J.r., & Gostin, L. O. (2001). School vaccination requirements: historical, social, and legal perspectives. *Kentucky Law Journal*, 90 (4), 831-890.

(2) Hadjipanayis A., & Efstathiou E. (2020). Editorial Commentary on the paper "Mandatory vaccination in Europe". *Translational pediatrics*, 9(3), 206–209.

incidence and prevalence rates of various infectious diseases vary in different geographical locations due to various ecological factors. The European Union mostly considers nine contagious diseases, including polio, tetanus, tuberculosis, and pertussis. As of 2017, approximately 96% of Finnish Children were vaccinated, considering that they are free and voluntary⁽¹⁾.

Only a few nations have comprehensive and robust, and mandatory vaccination policies. A good example is Slovenia, where only medical exceptions are allowed. Nine mandatory vaccines in the government must be given to children with 18 months of birth, and the final is given before a child starts school⁽²⁾. To a large extent, some of the mandatory vaccination policies in specific nations violate Article 18 of the Universal Declaration of Human Rights by not providing vaccination exceptions based on religious beliefs. However, Slovenia's government indicates that collective

(1) Helena M. (2019). Vaccination of healthcare personnel in Europe: Update to current policies, *Vaccine*. Volume 37, Issue 52, 7576-7584; Kuitunen I. (2020). Effect of Social Distancing Due to the COVID-19 Pandemic on the Incidence of Viral Respiratory Tract Infections in Children in Finland During Early 2020. Volume 39. 423-427.

(2) Phalen, E. (2019). Mandatory vaccinations in the united states and the european union. *Arizona Journal of International and Comparative Law*, 36(3), 537-562.

immunity must be upheld at the cost of conscious conviction. Other nations such as France and Italy have announced mandatory immunization for children aged 0-16 years, free. The only exception to the Italian administration is a medical document signed by a registered practitioner indicating the subject is medically unfit for a specific vaccine, especially for children joining learning institutions. Intentions of nations that are on the verge of implementing mandatory vaccinations may be invaded by *The Pavel Vavřička and others v Czech Republic* case. In the case, the European Centre for Law and Justice intervened, highlighting the need for pedagogy and recommendations rather than imposing fines for non-compliant subjects. The Center also highlighted that guardians' emotional perspectives are a scanty excuse over herd immunization's collective public health benefit⁽¹⁾.

The Vaccine European New Integrated Collaboration Effort (VENICE) project was designed to establish a European Network of experts to encourage collecting and disseminating knowledge and best practices associated with vaccination and improving partnership and collaboration among member nations. The project

(1) The European Court of Human Rights, Pavel VAVŘIČKA & Others V. Czech Republic case (no. 47621/13); See also: The European Court of Human Rights, Grand Chamber, Case of Vavřička And Others V. The Czech Republic, Strasbourg, 8 April 2021.

aimed to enhance the experience and identify vaccination gaps across the EU, have consensus on common indicators applicable in monitoring vaccination programs, define models of the decision-making process, and share expertise on surveillance and case management. The VENICE would be an effective strategy if the European Union decided to adopt a uniform immunization policy because the program would aid decision-making through data analysis a credible registry⁽¹⁾.

VENICE's previous research indicated that most nations have single mandatory vaccination legislation. Other countries that do not have compulsory legislation have a mixed strategy where some vaccines are mandatory while others are just recommended vaccines. In nations that vaccines are not required, vaccination rates are extremely high, indicating that mandatory vaccination policies are unnecessary for most countries in Europe. The European Union cannot formulate a uniform vaccination policy considering differences in vaccine types and differences in timing and dosages

(1) Haverkate M. and others, (2012) Mandatory and recommended vaccination in the EU, Iceland and Norway: results of the VENICE 2010 survey on the ways of implementing national vaccination programmes. Euro Surveill. 2012;17(22):pii=20183. <https://doi.org/10.2807/ese.17.22.20183-en>

administered depending on the geographical location. According to VENICE data, vaccination timings are categorized into low, medium, and high, where high-income families were most likely to get vaccines promptly compared to low-income families. Various nations reinforce their vaccination programs and policies based on historical and cultural stands and less on medical evidence-based practice or observations. The EU's efforts to establish a legal regime for mass immunization are intricate, but nations may later find consensus with time and collaboration. The biggest challenge remains adult vaccination⁽¹⁾.

The Integrated Monitoring of Vaccines Effects is a collaboration among European Union Public Health Institutes, SME, and Universities. The partnership aims to assess and compare the effectiveness and impact of influenza and pneumococcal vaccines and vaccination schemes in the geriatric population in Europe. I-MOVE has served as a training and research platform for both young and experienced scientists. The network has enabled the

(1) Vaccine European New Integrated Collaboration Effort (VENICE). Report on First survey of Immunisation Programs in Europe. 2007. Available at: http://venice.cineca.org/Report_II_WP3.pdf

generation and testing of many hypotheses relevant to influenza vaccination⁽¹⁾.

In 2010 the ECDC started working with the Vaccine Adverse Events Monitoring and Communication (VAESCO) syndicate to monitor the potential risk factors associate with narcolepsies, such as infections and vaccinations. This initiative was taken following the possible association between pandemic (H1N1) monovalent vaccines and the occurrence of narcolepsy after significant numbers of narcolepsy cases was reported in Finland and Sweden. The syndicate of research aims to develop vaccine safety monitoring via linkage of enormous automated clinical databases and immunization registries. This project will help in the routine monitoring of adverse events and reports submitted to the European Medicines Agency. It is evident that large doses of vaccines are administered to healthy people; this may create or trigger reactions or events that could be temporarily or permanently associated with vaccination. The adverse events could be real or coincidental. VAESCO syndicate with ECDC is effective in checking vaccines' efficacy and ensuring they restore public

(1)Valenciano M. and Others. (2012). I-MOVE: A European network to measure the effectiveness of influenza vaccines. Euro Surveill. 17(39):pii=20281. <https://doi.org/10.2807/ese.17.39.20281-en>

confidence in immunization programs. Vaccine safety should focus on vaccine production and administration parties ranging from key stakeholders, manufacturers, vaccine providers, and the government⁽¹⁾.

(1) Pier L. and others. (2010) Monitoring and assessing vaccine safety: A European perspective, *Expert Review of Vaccines*, 9:4, 371-380.

Chapter Two: Constitutional Jurisprudence and Compulsory Vaccination

This chapter presents some of the current constitutional cases regarding mandatory vaccination, which can determine the constitutionality of mandatory vaccination in both the United States of America and European Union countries.

1- Constitutional Jurisprudence and Compulsory Vaccination in USA

The Supreme Court has reviewed two mandatory vaccine legislation in the US in 1905 and 1992. In *Jacobson v. Massachusetts*, the court refused a claim to compensate a man who had been fined after evading smallpox vaccination. The court's analysis indicated that public policy and separation of powers consistent with prior state court vaccine legislation played a major role in the verdict delivered on the Jacobson case. After 17 years, the court issued a brief opinion on the essence of a school health policymaking vaccination, a school enrolment condition. Before the mandatory smallpox vaccination legislation, few state courts had

proposed mandatory child vaccination to allow school attendance⁽¹⁾. For instance, in 1890, the Supreme Court turned down an injunction to compel a school principal to admit James Abeel. He was not compliant with California's vaccination act that required smallpox vaccination to attend school. The Supreme Court in *Abeel v. Clark*, the California court determined that vaccination was the only viable method that could help curb the spread of a highly contagious disease (smallpox), and the legislation was justified when it made vaccination a condition for enrolment in school. The vaccine's cost was to pay from public funds in groups where parents could not afford it, and the exception from vaccination would require verification from a certified practitioner⁽²⁾.

The supreme court of Utah provided a detailed verdict on whether children should be expelled on a smallpox vaccination basis. In *Cox v. Board of Education of Salt Lake City*, the court found out that Cox was not vaccinated and was at risk of suffering a

(1) Supreme Court, November 13, 1922, *Zucht v. King*, 260 U.S. 174, 176; Debbie K., (2020) 'Vaccines in the Time of COVID-19: How Government and Businesses Can Help Us Reach Herd Immunity', *Wis L Rev Forward* 101.

(2) Supreme Court, May 31, 1890, *Abeel v. Clark*, 84 Cal. 226; Pollard S., Deana, (2021), *Judicial Protection of Medical Liberty*. P. 6. Available at SSRN: <https://ssrn.com/abstract=3801253> or <http://dx.doi.org/10.2139/ssrn.3801253>

contagious disease. The court made it clear that exclusion was done if an individual was at risk of getting infected because she was unvaccinated or if the person was already infected⁽¹⁾. The court verdict was that the board's attempt was not to compel the respondent's daughter to get vaccinated but gave the daughter an option to stay out of school until the contagious infection's danger was averted. The court's verdict was that the child was not forced to vaccination but temporarily excluded from school⁽²⁾. Justice Baskin, however, was not contented by the fact that exclusion out of school was not limited to situations where a child was infected or was exposed to smallpox. Justice Baskin believes that Ms. Cox was not supposed to be excluded because she was not afflicted with any disease.

The United States Supreme Court has always updated its statutes whenever challenged on the constitutional basis as the court did in *Jacobson v. Massachusetts*. An exception of vaccination was implemented that favoured children that presented a certificate

(1) Supreme Court, April 26, 1900, State ex rel. Cox v. Board of Education of Salt Lake City, 21 Utah 401.

(2) Willrich, M. (2008). "The Least Vaccinated of Any Civilized Country": Personal Liberty and Public Health in the Progressive Era. *Journal of Policy History*, 20(1), 76-93.

signed by a registered medical doctor to indicate they are unfit subjects for vaccination. The complainant was more than 21 years of age and was feared vaccination considering as a child he underwent extreme suffering resulting from a disorder associated with vaccination. Jacobson raised the concerns, but he had to pay a fine of \$5 or face incarceration. His appeal to get the refund was declined after the court reviewed and affirmed that the penalty for evading smallpox vaccination was constitutional⁽¹⁾. Jacobson argued that the administration lacked jurisdiction to pass and enforce suitable vaccine legislation.

The court discussed the separation of powers and expressed states' respect to regulate public health, standards, or safety and elaborated that the courts' role is to affect the constitution by enforcing existing legislation. The court explained that the state's social compact had set policies. It was the court's role to ensure that people are governed by the guidelines for the sake of the common good. The court highlighted that legislative power was bounded by the people's rights and liberties secured by the constitution. The court felt that Jacobson's argument was relatively small,

(1) Eichelbaum, K. (2019). Is mandatory vaccination an unjustified limit on human rights? Auckland UL Rev., 25, 105.

considering his claims were based on the alleged adverse effects of vaccination. The court thought that the statements were sketchy or aberrational.

In most cases, the court will regard common medical knowledge in passing legislation⁽¹⁾. The court found out that the risks of smallpox herd immunity were minimal compared to the benefits. This is because most legislators in the United States and other developed nations mandate smallpox vaccination. After all, the vaccine effectively controlled high mortality rates associated with smallpox. The vaccine was already proven to be effective based on available evidence from trials performed for several years⁽²⁾.

In *Jacobson v. Massachusetts*, the courts' decision was based on the notion that legislators mandate vaccine use when its use is necessary to protect public health and improve public safety. The judiciary balanced the state's interests in controlling smallpox with

(1) See, e.g., United States Court of Appeals, January 07, 2015, *Phillips v. City of New York*, 542 (2d Cir. 2015); California Court of Appeal, December 06, 2018, *Love v. State Dept. of Education*, 59 Cal App. 5th 980.

(2) Katherine D., (2020) 'Disentangling Dicta: Prince v. Massachusetts, Police Power and Childhood Vaccine Policy' 29 *Annals Health L* 173. Available at: <https://lawecommons.luc.edu/annals/vol29/iss1/6>

the individual liberty interest impacted by the law to embrace the nation's social compact justifying mandatory smallpox vaccination and financial penalties against the subject's wish⁽¹⁾. The state's interests were quite compelling, considering that smallpox had taken several lives in the 20th century alone. Global statistics indicated that less than 2% of vaccinated contracted the diseases than 47 percent of unvaccinated individuals. After the case, the court later ruled that a medical exemption was necessary in cases where it would result in adverse events, for instance, injuring an individual. The court stated that there was no absolute legislation that mandated the vaccination of an adult. If it can be certified that the subject is unfit for vaccination, it should not be administered. My Jacobson lost because he failed to prove that he was not in perfect health or not fit for immunization⁽²⁾. His evidence of prior experiences was scanty evidence that could be used to exempt him from vaccination.

(1) Mariner, W. K., Annas, G. J., & Glantz, L. H. (2005). Jacobson v Massachusetts: it's not your great-great-grandfather's public health law. *American Journal of Public Health*, 95(4), 581-590.

(2) The court decision, 20 February 1905, H. Jacobson v Commonwealth of Massachusetts. 197 US

2- Constitutional Jurisprudence and Compulsory Vaccination in EU

In this part, the paper presents the position of the constitutional judiciary in some countries of the European Union regarding compulsory vaccination.

- Italy

The Constitutional Court in its ruling on June 14th, 1990 stipulated that it was constitutional for anti-poliomyelitis compulsory vaccination made by the legislature. The ruling followed the fact that there were persons that were harmed by vaccination who was not compensated. The law-making process failed to offer remedy to injured parties, thereby, the behaviour amounting to outright negligence in case number 307/1990.

In 1992, lawmakers created another provision, law number, 210 on February 25th, which provided a basis for Ruling in case no.118/1996. In this particular case, the Constitutional Court cited two significant constitutional laws in April 18th, 1996. These two laws include constitutional law related to individual rights and health as a public interest. The court declared these provisions as unconstitutional because they also failed to offer a clear compensation mechanism for persons harmed by the vaccination.

Therefore, cases 307/1990 and 118/1996 were both found unconstitutional on the grounds that the legislative arm failed to factor the negative effects of Poliomyelitis vaccination and in the process resulted in people being put at risk and their health, thereby, eliminating the public health interest required in all compulsory vaccination exercises⁽¹⁾.

In addition to the previous ruling, in Ruling Number, 5/2018 was concerned with a constitutional validity dilemma⁽²⁾. The legislature had ordered Urgency laws to add vaccines from the current four to ten. As a result, the Announced laws under urgency made it mandatory for all school-going children to receive ten vaccinations as opposed to the current four vaccinations as a criterion for school admission. The laws further instituted an administrative fine for non-compliance to the new urgency laws to increase the number of vaccines to ten.

The laws to increase vaccine numbers were previously challenged several times. However, in the ruling of the case by the Constitutional Court in November 22nd, 2017 observed that the challenge that urgency laws to add the number of vaccinations from

(1) The Constitutional Court, June 14th, 1990, Ruling Numbers, 307/1990 and 118/1996.

(2) The Constitutional Court, November 22nd, 2017, Ruling Number, 5/2018.

previously four to ten violated constitutional right to self-autonomy was overruled. The Court overruled the challenge on the grounds that vaccinations in their nature are preventive and as such, suitable for children.

In addition, there was increased apathy towards vaccinations in Italy and something needed to change. Further, the court also argued that lawmakers acted within their constitutional rights and requirements as leaders to prevent a health crisis by ordering for an increase in mandatory vaccinations. By making it compulsory for school going children to receive ten vaccinations as opposed to four was the best interest for school-going children given the dangers they encounter by the mere fact that they find themselves among other students who come from different parts of the country. Therefore, the mere fact of being in such a school setting environment, infectious disease can spread easily and quickly in a society. To that end, the legislature took necessary precautions by making six vaccinations compulsory such as medical practice requirements. The imposition of fines was also within the constitutional requirements because it helped to strengthen the compulsory vaccination laws by aiming at compliance. The provision to require vaccination certificate from all school-going

children as a criterion for admission was also constitutional and did not contravene the rights of children in any way.

The Constitution Court cited its case-law that has been developed by changing time and pointed out that when it comes to vaccination drives, it is always important to place health above individual rights. Moreover, the interests of children to quality health overrode the rights of parents to choose what is right for their children in the face of law. The Constitutional Court also observed that when it comes to laws requiring treatment of certain health issues, such requirements are not constitutional. Therefore, in circumstances, where a law requires specific medicine to be given to a certain person as treatment for a specific identified disease and medicine or treatment instead harms that individual, he or she is entitled to compensation.

The Court observed that vaccination exercises comprised of different constitutional values. Therefore, lawmakers are at liberty to create laws that ensure that the compulsory vaccinations drives are effective and reach out to the people who need them most in this case school-going children. The aim of making such laws is to prevent infectious diseases from spreading and in the long run create a possible health crisis in the near future. Moreover, The Ruling given in November 22nd, 2017 on case number, 5/2018 was

in relation to a legal provision that failed to offer compensation mechanism and at the same time recommended a vaccination. People took the vaccine and were eventually harmed by the side-effects in the vaccine⁽¹⁾. The Court ruled that there was little difference between recommendation and compulsory vaccination. The terms recommendation and compulsory both have one objective, to curb the spread of infectious diseases. As such, failing to factor the negative impacts of the vaccine and in response create clear compensation mechanism was indeed unconstitutional.

- **France**

According to case no. 2015-458 QPC are request was received by the Court of Cassation⁽²⁾. The request was to look into a constitutional ruling concerning Public Health Code provisions, which was tasked to look at the constitutionality of the provisions stipulated by the Public Health Code. The matter in question was the provision on compulsory vaccination against Diphtheria, Tetanus, and Poliomyelitis respectively. The vaccinations were scheduled to be administered on young children who were still being cared for by their parents. The opposers in the case were

(1) The Constitutional Court, November 22nd, 2017, Ruling Number, 268/2018.

(2) The Constitutional Council, March 20th, 2015, case no. 2015-458 QPC.

contesting the constitutionality of the provisions on compulsory vaccinations. They argued that compulsory vaccinations against Diphtheria, Tetanus and Poliomyelitis presented significant health risks, which went beyond the requirements of health protection. As such, the Public Health Code provisions on compulsory vaccinations against the three viral diseases violated the constitutional rights of the children.

The Constitutional Council was tasked with the duty of presiding over the case and on March 20th, 2015, it delivered its verdict, which observed that the Public Health Code provisions on Compulsory vaccinations did not violate the constitutional rights of the children. Instead, the laws in the provisions aimed at preventing the three viral diseases from spreading, which if left to their fate, the diseases could result in a further serious health crisis. In addition, the Constitution Council observed that the provisions followed all due process by eliminating any possible medical risks to the children. As such, the compulsory vaccinations on Diphtheria, Tetanus, and Poliomyelitis were safe and fit for young children.

Compulsory vaccinations against the three diseases were within the constitutional requirements and did not undermine the health of both individuals and Public Health. The Council further

ruled that it is the duty of legislators to create laws that protect people against viral diseases such as the three diseases. Therefore, the applicants had no case to argue because all the provisions under Public Health Code acted within the Constitutional requirements. Children are very important human beings who need to be protected at all costs. Therefore, by Public Health Code issuing compulsory vaccinations acted in the interest of children by offering them maximum protection through vaccinations.

- **Germany**

Lately, The Federal Constitutional Court⁽¹⁾, rejected the applications for an interim injunction in the constitutional complaints connected with an application for the issuance of an interim order against section 20, paragraph 8, sentences 1 to 3, paragraph 9, sentences, 1 and 6, paragraph 12, sentences 1 and 3 and paragraph 13, sentence 1 of the Infection Protection Act (IfSG) in the version of the Act for Protection against Measles and Strengthening Vaccination Prevention (Measles Protection Act) of February 10, 2020 (Federal Law Gazette I p. 148), which came into force on March 1, 2020.

(1) The Federal Constitutional Court, May 11, 2020, 1 BvR 469/20.

The regulation attacked by the constitutional complaints provides, among other things, that children who are cared for in a day-care centre or in child day care that requires a permit must have adequate vaccination protection against measles or immunity against measles (Section 20 (8) sentence 1 no.1, Sentences 2 and 3 IfSG), unless they cannot be vaccinated due to a medical contraindication (Section 20 (8) sentence 4 IfSG). Furthermore, appropriate evidence must be submitted before the start of their supervision (Section 20 (9) sentence 1 IfSG). In both proceedings, complainants 1 and 2 are jointly custodial parents, complainants 3 are their one-year-old children who are promptly cared for in a municipal day-care centre who is permitted to take care of children in accordance with Section 43 of Book VIII of the Social Code should be. The children are not vaccinated against measles. There is neither a medical contraindication to a measles vaccination, nor do you have an appropriate immunity.

The minor complainants complain of a violation of Article 2, Paragraph 2, Sentence 1 of the Basic Law, their parents of a violation of Article 6, Paragraph 2 of the Basic Law and all complainants also of a violation of Article 3, Paragraph 1 of the Basic Law.

Without proof of a measles vaccination, the law prohibits the third party from being looked after and admitted to a day-care centre or child day-care centre in accordance with Section 43 of Book VIII of the Social Code. In order to avoid this, parents would have to obtain vaccinations in the exercise of their health care for their children. However, the measles vaccinations disproportionately interfered with the fundamental right of complainants re 3 to physical integrity. In addition, the parental rights of the first and second complainants are also disproportionately interfered with. They would not be able to provide the care provided for in their upbringing plan in a day-care centre or day-care centre without tolerating a disproportionate medical measure to the detriment of their respective child.

The complainants justify the necessity of the coveted interim measures within the scope of the necessary weighing of consequences, among other things, by the fact that complainants re 3, in the absence of interim legal protection for the implementation of the care in a day care centre or child day care that their parents have firmly planned for, the usual, irreversible Would have to accept vaccination reactions and would be exposed to the dangers of undesirable side effects. Their occurrence would lead to massive permanent impairment of their state of health. The irreversible

sense of responsibility and guilt would remain with the respective complainants to 1 and 2.

The court concluded that the issuance of an interim order is out of the question, for the following:

- If the interim order was not issued and the constitutional complaints were successful, the legal ban on childcare would have been wrong. As a result, the minor complainants could not be looked after as intended due to a lack of measles, vaccination and their parents would have to look after childcare elsewhere, which could have negative economic consequences. Due to the measures to contain the SARS-CoV-2 coronavirus, this is currently necessary in some cases anyway.
- If, on the other hand, the requested interim order was issued and the constitutional complaints were unsuccessful, the requested temporary suspension of section 20, paragraph 8, sentences 1 to 3, paragraph 9, sentences 1 and 6, paragraph 12, sentences 1 and 3 and paragraph 13 sentence 1 IfSG, the interests of a large number of third parties that are protected by fundamental rights are very important. The basic obligation to demonstrate and prove adequate vaccination protection against measles prior to care in a community facility (Section 33 No. 1 IfSG) according

to Section 20, Paragraph 8, Paragraph 9, Clause 1, Paragraph 13, Clause 1 IfSG, its compatibility with Article 2 (2) sentence 1 of the Basic Law, Article 6 (2) sentence 1 of the Basic Law and Article 3 (1) of the Basic Law must remain open in the urgent procedure, serves to provide better protection against measles infections, in particular for people who regularly come into contact with other people in community and health facilities. Vaccinations against measles in certain community facilities are not only intended to protect the individual against the disease, but at the same time prevent the spread of the disease in the population if measures ensure that the vaccination rate in the population is high enough. In this way, people could also be protected who, for medical reasons, cannot be vaccinated themselves, but who are at risk of severe clinical courses in the event of an infection. The aim of the Measles Protection Act is, in particular, the protection of life and physical integrity, to which the state in principle also by virtue of its fundamental right to protect under Art. 2 para.

- When comparing the expected consequences, the interest of the applicants in having their children cared for in a community facility without a measles vaccination or in being cared for there themselves must subordinate themselves to the interest in

averting infection-related risks to life and limb of a large number of people. The disadvantages that would be associated with the entry into force of the challenged provisions of the Measles Protection Act after it was later determined to be unconstitutional do not outweigh the extent and severity - and certainly not clearly - the disadvantages that would arise in the event of a provisional prevention of a law that proves to be constitutional.

- **Czech Republic**

According to the decision of the Court I.US 1234/2014, Parents had refused to have their child get immunized from the various ongoing vaccination exercises that were taking place at the time and were identified as compulsory⁽¹⁾. The parents of the child were triggered to seek redress from the court because they were prompted to pay a fine as a result of their decision to refuse compulsory vaccination. The sitting Court reached a verdict, which was made in a reference to a case identified as ‘Vavrickar.’ The observations of the Constitutional Court were as follows; “Secular objections of conscience” must demonstrate that parents had fulfilled and met other exemption requirements. Further, the

(1) The Constitutional Court, Ruling Number, I.US 1234/2014.

objections had to demonstrate that there was an emergency and that fundamental rights of autonomy were being infringed upon via compulsory vaccination. If the parents met all the aforementioned requirements, then the fine imposed on them was not justified.

Matters raised by the parents of the child required constitutional interpretation because they were serious. For example, vaccinating the child and public health were in competition so was the rights of the parents to the child. As such, a viable solution will only be reached after a long and proper examination of the articles in the Constitution such as, Article 15(1), which defines different forms of freedoms and freewill enjoyed by the people. The observation that compulsory vaccination exercises tempered with one's body quality was also at stake. Therefore, all these competing matters needed to be examined with a lot of caution and understanding.

Parents appeal appears to be weak in the face of the law and for that reason they did not merit because the appeals not only stood in the way of a legal process but also failed to convince the court that refusal of compulsory vaccination was actually necessary.

The objectivity of “secular objection” to compulsory vaccination requires an individual evaluation of each objection. Therefore, the parents bringing the objections before the court of law must ensure that they have done due diligence and demonstrate that their objections are within constitutional exemptions. Otherwise, without that individual examination and criticality of each objection, it is very difficult to determine the emergency and relevance of a ‘secular objection’ in a legally viable process.

Conclusively, objections to a legal process such as compulsory vaccination cannot take place without putting into consideration the purpose of the law and why it was created in the first place. Vaccination plays a critical role in saving lives and at the same time protecting public health. To that end, the ruling of the court cannot permit an objection above the law, which makes an exemption for the existence of that objection. Therefore, an objection cannot supersede the law that gives it life.

The Constitutional Court has reached a conclusion that there is no difference between ‘secular’ and religious objections and as such, the nature that religious objections are considered should be the same merit that secular objections apply.

Failing to partake in compulsory vaccination following religious or secular beliefs are restricted exemptions. As such, courts can only accept such objections based on a highly formidable proof that shows that admission of a vaccine gravely undermines the beliefs the religion follows and the people who practice those beliefs.

All the reasons that parents raised in the case concerning being slapped with a fine for failure to allow their child to receive compulsory vaccination were based on the ‘secular objections’ and were looked into seriously by the court. The court has therefore, ruled that, such objections can only be considered if they present the highest benefit to the child. However, the fact that vaccinations are aimed at protecting public health, unmerited objections should not stand in the way of a legal exercise.

Based on the accounts of case number I.US 1253/14, it is an application, where parents of a young child were concerned that they received a fine of at least CZK four thousand for preventing their child from partaking in a regular vaccination drive⁽¹⁾.

(1) The Constitutional Court, January 27th, 2015, Ruling Number, I Pl. ÚS 19/14.

This appeal prompted court to look into its case-law, gave the person appealing free request based on section 46 and PHP Act, which lays down clear regulations that state the role that secondary laws play in compulsory vaccination exercises. Therefore, in circumstances where negative effects have been determined in an ongoing vaccination exercise, parents have the right to prevent their children from participating in such activities because the law has not laid out strategies for remedies. The appellants, who happened to be parents, based their decision to dispute the fine on a judgment given in a case number, 3ADS 42/2010, where they argued that the basis of this particular provision was inconstant with Article 4 of the Charter.

The parents advanced their arguments and pointed out that laws that provided for compulsory vaccination were acting against the principles of Articles five, six, and 26 respectively of a clear exemption did not meet the threshold to protect public health. There were no stringent measures that were put into consideration by the compulsory vaccination laws that required their child to be vaccinated. Parents said that they refused to take vaccination because they were acting in the interest of their child.

The argued that the health of the child came first based on their human dignity, their rights to movements, and freedom of

conscience and thought. Parents argued for exemption from vaccination based on Vavricka Jurisprudence. The decision to participate or not to participate in a vaccination drive should be based on the personal position as opposed to critical information. It is quite devastating to note that a body empowered by the law took its precious time to examine a flawed process and determine why parents were disgusted by the exercise. It was clear that people were opposed to the exercise because there was no clear mechanism to respond to the negative effects caused by vaccines. Therefore, parents were right to prevent their children from taking the vaccine because the country that issued the compulsory vaccination exercise did not demonstrate any capacity to take responsibility if negative effects were experienced. The lack of clear compensation strategies was the downside of exercise and as such, failed to uphold public health protection intended by all compulsory vaccination drives.

In January 27th, 2015, the panel in the Constitutional Court rejected the views and positions of the parents in the case PI.US 19/14. The Court argued that laws concerning compulsory vaccination meet constitutional requirements and those national bodies of law-making were within their mandate to create such provisions in a country. On the issues that certain issues before the

court were subject to evaluation by an Act of Parliament, the Court cited the following, according to section 46 of the PHP ACT; clear provisions have been laid out concerning secondary laws. The existence of this particular section has even made it easy to reach a conclusion by the court on matters related to medicine and drugs in the contemporary setting of the matter before the court.

In the first place, mandatory vaccination infringed on the personal rights of the individual and the rights involved freedom of movements and right to family life. Restricting such a constitutional right not only depicted vaccination exercise as attempting to undermine the constitution itself but also acting in contempt of the spirit of the law that instituted the vaccination exercise in the first place. Therefore, the vaccination exercise failed to respect the individual rights as laid out in section 46 clauses two and three respectively of the constitution.

In fact, there are five processes that need to be followed in conjunction with all compulsory vaccination activities. Therefore, the matter in front of court met all constitutional requirements when it comes to protecting constitutional rights of the people. Second, the rights to family and individual life as well as freedom of movement were practically infringed upon the moment the team administering the vaccination failed to honour the rights. Privacy

meant that no one should interfere with the isolated space of an individual. Therefore, being in such a secluded space was an infringement and as a result, dislocated the individual from being in charge of his or her family. For example, the decision to determine that care his or her children were impacted on by vaccination of the children. Third, vaccination exercise was supposed to take place based on the laid down guidelines, which were also clearly manifested in the auxiliary laws. Fourth, vaccination exercise was aimed at protecting public health of the individual not putting the life of the individual at risk. Fifth, the desire to protect individual rights is the duty of both the legislature and the government. These particular provisions have been laid out clearly in both local and global laws. As such, it was not the desire of the court to engage in such matters of interpretation of the law because on average, the court has so many things to deal with in a day. Therefore, the desire of a vaccination drive to protect public health is well known and at the same time curbs the spread of viral diseases and viruses. Therefore, the request to oppose vaccination, which a legal process cannot be upheld because it goes against the aims of all compulsory vaccination, drives.

On the side, if the government and parliament developed clear punishment for those people who refused to take part in a

legal process, they were also obligated to establish clear laws that gave way for people that the vaccine would harm.

Also, in Ruling Number, 3. US 3311/2012⁽¹⁾, The constitutional court refused to honour the request of parents who wanted to be exempted from paying a fine as a result of not letting their child to receive vaccination. The court in its ruling among other things observed that; The current case that parents wanted to be exonerated from paying for a fine for refusing to allow their child to take a vaccine was a unique case. First, the case involved a legal process, which is fully recognised by the law and the constitution. Second, the parents cited their constitutional fundamental freedoms and rights, which they deemed were being infringed by allowing their child to receive the compulsory vaccine. In this particular case, the court found no compelling reasons why parents would prevent their child from taking a compulsory vaccine. The parents did not present a strong case to demonstrate that indeed the exercise contravened their fundamental freedoms and rights. In addition, the reasons that they offered for not taking

(1) The Constitutional Court, August 17th, 2015, Ruling Number, 3. US 3311/2012.

the vaccine were weak and did not meet the requirements of exemption.

The parents in the case presented general views, which were collected from reading an article concerning vaccination. In response to their reading of the article, the parents deemed that it was in the best interest of their child not to take the compulsory vaccine because their baby was healthy. As such, their general views and observations cannot supplant the power of a constitutional order. Parents need to know that compulsory vaccination exercises are instituted with the objective of keeping the public space safe for every individual that finds him or herself in the public space. Therefore, to oppose a constitutional order with mere claims was unacceptable.

Refusing to have a child take a vaccine based on other people's opinions without scientific evidence that points to the dangers of the vaccine is unconstitutional. When people oppose vaccine exercises, the same laws that create compulsory vaccination laws offer exemption areas, where people can use to eliminate their children from participating in vaccine exercises. Exemptions always border on medical reasons, religion, philosophical beliefs, and some health conditions. In this particular case, none of the legally recognized exemptions were cited by the

parents. Instead, they based their opposition on the fact that it was their child and they had a right to decide what is best for the child, an argument that does not capture the essence of compulsory vaccination drives.

- **North Macedonia**

Case no-30/2014 was concerned with the constitutionality of clearly specified laws related to compulsory vaccination towards children and dangers of not complying with the laws⁽¹⁾. The Compulsory vaccination law under investigation required children and all people aged a certain identified age to undergo compulsory vaccination against diseases such as whooping Cough, Diphtheria, tetanus, Mumps, polio, Haemophilis Influenzae Type B, Measles, Rubella, and Hepatitis B respectively.

The Constitutional Court in October 8th, 2014 ruled that compulsory vaccination laws cannot be questioned given the roles that they play in the overall health of individuals in a society. Further, the laws could also not challenge on its capacity to prevent parents from making a decision about how they want to raise and care for their children. Therefore, any form of refusal by parents to prevent their children from participating in the compulsory

(1) The Constitutional Court, October 8th, 2014, Ruling Number, 30/2014.

vaccination exercise not only compromised the health of the individual children but also other people who due to medical reasons cannot be vaccinated. The compulsory vaccination provisions aimed at achieving ‘herd immunity’ to protect all people in society.

The Constitutional Court further observed that the health of children came first over the right of parents to choose for their children. The health of the child is the responsibility of the law to protect and nothing can come in between. Law makers were empowered by the constitution to institute any suitable punishment to all persons that failed to observe the compulsory vaccination drive by fine.

In addition, all children who have attained school-going age needed vaccination as proof before being admitted to school. As such, law makers were within their constitutional rights to create such provisions because they aimed at protecting schools, child-care facilities, and society given the fact that children would come from different parts of the country. Further, parents of the children who had their children vaccinated had the right to protect their children by preventing all unvaccinated children from getting admission to a school.

- **Slovenia**

The Constitutional Ruling in February 12th, 2004 refers to a case where the court retained the constitutionality of compulsory vaccination exercise aimed at preventing various diseases among them Tuberculosis, Mumps, and Whooping Cough, tetanus Rubella, Hepatitis B and Infantile Paralysis. Apart from retaining the constitutionality of the legal provision, the court also observed that there were irregularities in the current law when it comes to exemptions due to medical reasons⁽¹⁾.

The Constitutional Court further established that there were more inconsistencies in the same legal provision that mandated compulsory vaccination. For example, the law did not offer remedies to side-effects from vaccinations to persons harmed by vaccines. The law requires that any state that seeks to make compulsory vaccination to also create clear pathways that address side-effect. This particular State, the law did not consider vaccine side-effects. Therefore, the people that experienced injuries and harm did not access readily available redress to compensation. Failure to offer direction was actually wrong because it put

(1) The Constitutional Court, February 12th, 2004, Ruling Number, u-i-127/01.

people's lives at risk and even acted in contravening of the same objective of promoting both individual and public health.

- **Republic of Moldova**

In October, 2018, the Constitutional Court was tasked with the duty of examining the specific challenge to a legal provision that made taking children to areas that catered for many people at the same time as well as learning environment very dangerous not only to their health but also the health of other people in those places and the ability to take regular Prophylactic vaccination violated children's right to education based on a claimant⁽¹⁾.

The Court in its ruling considered different issues and eventually ruled that the legal provision in question was interested in protecting children's health and public health interest, which aimed at preventing infectious diseases on occasions when vaccination rates were considered low. Therefore, restricting children who had not been vaccinated from accessing public places did not amount to constitutional infringement.

The ruling of the Court depicted clear demarcation among health protection, access to educational facilities, and enjoyment of

(1) The Constitutional Court, October 2018, Ruling Number, 26.

private life. Consequently, failure to vaccinate children simply because they did not pose any risks or have Prophylactic disease was not only unconstitutional but also a measure to be excluded from public spaces that accommodate other people. Contradicting a contagious disease would result in the children not enjoying their private rights.

Whereas, children who had been immunized met all requirements for admission, they were also at risk of catching a viral disease from children who were not vaccinated. Therefore, the behaviour put at risk the overall objective of societal protection. Ignorance as always is not a defence and people cannot make certain individual decisions when they operate in an organized society. Parents who prevented their children from getting vaccinated because they did not have any disease were at liberty to find other modes of education and learning. Therefore, the difference between vaccination and unvaccinated children was justified before a court of law and facing of the law.

- **Serbia**

The case, IUz-48/2016 involved challenges to different constitutional merits. The case questioned the validity of specific legal provisions related to compulsory vaccination and at the same

time compliance with global treaties legalized by Serbia. Based on the requirements of free democratic society based on the provisions in question, the Court ruled that the current 2015 immunization Records on Vaccine as per Vaccination time frame depicted significant trends of the lowest immunization levels in a decade. The low rates clearly introduced the risk of high numbers of infections and even crises concerning viral disease, which ceased their operation for several years and was now needed to prevent a mass outbreak spread of a viral disease. Based on the factors before the court, the legal provisions followed the right path and acted in law.

Unvaccinated children were not discriminated upon; when they were prevented from accessing learning institutions because they put the lives of vaccinated children at risk. The legal provision required all children of a certain aged specified by the law to get vaccinated except in circumstances where medical reasons were involved and a certified professional provided that intelligence to relevant authorities. The mere fact that children operated in a group where vaccination was needed preventing unvaccinated children from accessing the vaccination facilities did not amount to discrimination.

- **Hungary**

In Case no-39/2007, a married couple appealed to the Constitutional Court of Hungary with a clear intention to question the 1997 Health Act, which provided for compulsory vaccination. The couple was against the idea of the Act giving their child vaccination. Therefore, in June 20th, 2007, the Constitutional Court ruled that refusal to comply with the 1997 Health Act was a clear violation of the law. The Act was constitutionally enforceable and as such, any form of appeal did not eliminate the fact that the Act was constitutional. The married couple was therefore, acting in contempt of the Health Act of 1997 by questioning its constitutionality.

The Constitutional Court observed that the health of children come first, and compulsory vaccination is just one way of protecting the health interests of children. The court further argued that the compulsory vaccination provisions put into consideration the scientific knowledge and benefits of the vaccine. Overall, the benefits overrode the demerits because based on science and benefits of Vaccination society at large and children stood to benefit significantly from the compulsory vaccination provisions. The Compulsory vaccination did not in any way violate the rights and privileges of children and neither did it interfere with their right

to movements. However, the Constitutional Court also observed that whereas, compulsory vaccination laws might interfere with certain issues such as religious, or philosophical conscience of parents, it is the duty of the law to protect people and public health. As such, the compulsory provisions focused at protecting all people including the society.

The fact that the provisions of compulsory vaccination under the Health Act 1997 did not violate the constitutional rights of the people, does not necessarily mean that the legislature need to be careless. Failure to stipulated exemptions based on certain clear knowledge was wrong.

- **United Kingdom**

The decision of the Court of Appeal related to a child who was under the custody of local authorities to be vaccinated despite the rejection of the parents of the child was ruled as stipulated below. The case was identified as EWCA Civ 664, 2020 and the Court of Appeal was the deciding court and it summarized its ruling as stated below in May 22nd, 2020⁽¹⁾;

(1) Court of Appeal, May 22nd, 2020, EWCA Civ 664.

- Although vaccines for children are not mandatory in the United Kingdom, scientific evidence is considered important. Therefore, in circumstances where science proposes that a child is much safer vaccinated under the guidelines of Public Health of England, parents have no choice but to comply with the requirement unless a child has underlying medical reasons.
- Based on relevant law, local bodies have the power to act in the interest of a child by asking for the child to be vaccinated even when his or her parents oppose the vaccination drive.
- Parent's opinions concerning vaccination should be put into consideration. However, their opinion should not at any given point in determining whether a child should or should not be vaccinated unless otherwise stated.
- When regular vaccination drives take place, the exercise should not treat as a solemn issue. As such, local authorities are not obligated all the time to cite High Court decisions in circumstances where parents oppose the drive. Therefore, resources and time that could have been invested in the court should be channelled to other serious issues that the local authorities deal with such as Family issues.

In fact, the decision of the England and Wales Court of Appeal referred to above is an application of case law in this matter, as the England and Wales High Court held that imposing compulsory vaccinations on children is consistent with the right to family life and respect for private life, because it achieves a best interests of the child⁽¹⁾.

(1) *“Finally, I have, as I must, paid careful regard to the Art 8 right of the mother to respect for her family life. A decision by the court (as a public authority pursuant to s 6(3)(a) of the Human Rights Act 1998) to authorise the immunisation of SL in the face of the mother’s objection, and in circumstances where parents are ordinarily accorded a significant degree of autonomy by the State when deciding whether to have their child immunised as a function of the exercise of their parental responsibility where there is no dispute, constitutes an interference in the mother’s Art 8 right to respect for family life. For that interference to be lawful it must be justified by reference to the terms of Art 8(2). Having regard to the evidence set out above, I am satisfied that the interference in the mother’s right to respect for family life under Art 8 constituted by a decision of this court to authorise the immunisation of SL against her wishes is in accordance with the law and necessary in a democratic society in the interests protecting SL’s health and, accordingly, is a justified and proportionate interference. I am reinforced in this conclusion by the fact that a decision to authorise the immunisation of SL accords with his right to the enjoyment of the highest attainable standard of health under Art 24 of the UNCRC”.* The High Court of Justice, EWHC 125 (Fam) (30/01/2017).

Chapter Three: The Imperative of Public Health and Individual Rights

Whereas, members of the public have genuine reservations and concerns regarding the safety of the Coronavirus vaccine, their reluctant and opting out would clearly negatively impact the herd immunity prospects needed by the States. In circumstances, where the governments would fail to achieve herd immunity, which a significant number of people must be vaccinated in a community in order to act as a barrier against those who are not vaccinated and whom the vaccine would prove ineffective. Legislation to make Coronavirus Vaccine compulsory would present conflicting issues regarding fundamental freedoms and rights of individuals. As much as the desire to achieve herd immunity might present legal dilemmas for the States, it is important to note that if voluntary immunization would fail to achieve herd immunity legislation requiring mandatory Coronavirus vaccination will follow the spirit of the Constitution and observe all Constitutional limits that would not result in individual rights infringements.

This literature review is interested in pursuing a legal rationale for compulsory vaccination in USA and EU, In the

process of pursuing the legal rationale behind constitutional limits to compulsory vaccination in the United States of America.

1- Individual Rights and Vaccination

Mandatory affects several human rights. It involves several aspects of normal daily operations because it may affect education, religious views, status and opportunities for foreigners, body integrity, and other privacy issues. Mandatory vaccination violates Article 12 of the International Convention on Economic, Social, and Cultural Rights, assuring all people's dignity and body integrity⁽¹⁾. The article's controversy is that it stipulates that all covenant parties must take necessary measures to control, treat or prevent diseases from enhancing public safety. The article argues that if any administration decided to adhere to the article, the state would demand a vaccination policy. Both ideologies and approaches in Article 15 can be used to defend vaccination because vaccination has been indisputable in averting diseases and is a product of scientific development.

(1)Rosholt, A.P.)2005(. The Seventh Amendment Directive—An Unnecessary Measure to a Necessary End—Possible Legal Challenges to Directive 2003/15/EC of the European Parliament and the Council Amending Council Directive 76/768/EEC under European Union Law. Food and drug law journal, 60(3), pp.421-446.

1-1: Privacy of Medical Records

Article 7 of the covenant invades the rights of healthcare workers. This is because workplaces are obliged to make certain that their employees are up to standard with mandatory health procedures. Explaining the covenant in two ways implies that the nation facilitates a safe and healthy occupation environment by imposing mandatory vaccination. Still, on a healthcare practitioner, their rights are violated by mandating vaccination for practitioners. All workers have the right to bodily integrity. Body integrity is violated, for instance, by ordering a flu vaccine as a condition of work yearly⁽¹⁾. There have been several proposals against mandatory vaccination for medical practitioners because there is insufficient evidence on vaccines' efficacy and safety.

By citing their concerns, they are protected by the constitution because everyone has the freedom of expression and has the right to obtain transparent information regarding vaccination and its possible side-effects as guaranteed by Article 19 of the Universal Declaration of Human Rights. The issue of mandatory influenza vaccination takes a different stand in

(1) Tucak, I. (2017). Legal and ethical justification of compensation regarding compulsory vaccination injuries. *FACTA UNIVERSITATIS-Law and Politics*, 15(2), 145-155.

protecting workers' medical data. Unvaccinated employees are discriminated against even though some may be medically unfit for immunization⁽¹⁾. Medical records' privacy is shared with the employer; unvaccinated practitioners are supposed to wear masks during the flu season, visible to the patients. Discriminatory practices are prohibited on Article 7 of the Universal Declaration of Human Rights. EU legislation has standard data handling procedures to uphold privacy and confidentiality⁽²⁾.

The medical data of all people should be protected. Not everybody has given consent to the government to explore their medical records and monitor vaccination adherence. In the recent past, the boundaries between autonomy and surveillance state have faded, allowing authorities to penetrate boundaries that violate privacy. The European Data Protection Directive classifies medical information as sensitive information that should be protected. Mandatory vaccination requires extensive medical data processing and enormous registries require plenty of protection. Door-door

(1) Hodge J.r., & Gostin, L. O. (2001). P.R., PP. 831-890.

(2) Zeinalipour-Yazti D. & Claramunt C. (2020). "COVID-19 Mobile Contact Tracing Apps (MCTA): A Digital Vaccine or a Privacy Demolition?" IEEE International Conference on Mobile Data Management (MDM), Versailles, France, 2020, pp. 1-4.

vaccinations violate Article 8 of the European Convention on Human Rights, which stipulates "respect for private and family life, his home and his correspondence."⁽¹⁾ Door-door vaccination strategies from a public perspective lack respect towards family exclusivity, which breaches Article 8. For immigrants, cross-border data sharing is secure, and the subjects are informed on the data that will be used. The data subject should give free consent for data use without being subjected to outside pressure⁽²⁾.

1-2: Informed Consent

All people have the right to medical autonomy. There are several aspects of personal values that seem to affect individual medical decisions, especially in matters that involve life or death, which play an integral role in a person's right to medical privacy. The same personal beliefs that affect individual therapeutic choices and the meaning of life and death are at stake in vaccination

(1) Charter of Fundamental Rights of the European Union. (Right to the Integrity of a Person, Article 3).

(2) Celeste E. (2021). Cross-Border Data Protection After Brexit (February 12, 2021). Brexit Institute Working Paper Series, No 4, Available at SSRN: <https://ssrn.com/abstract=3784811> or <http://dx.doi.org/10.2139/ssrn.3784811>

issues⁽¹⁾. The state's history, tradition, and legislation protect people against the state action of coercing non-consensual medically invasive procedures. Any forced medical procedure, even with the slightest chance of causing harm or death, is invasive. Most international courts uphold the individual's right to evade risky medical procedures over competing states' interests due to bodily integrity⁽²⁾.

The right to informed consent is protected in many provisions of the European Union. In the context of the European Union, Article 3 of the Charter of Fundamental Rights of the European Union (CFR) directly protects the right to informed consent, as it specifically refers to the right of "consent" in the fields of medicine and biology. The right to informed consent of individuals participating in clinical trials is protected by the European Union's Clinical Trials Regulation, and the GDPR requires explicit and informed consent to the processing of personal

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- (1) Grzybowski, A., Patryn, R. K., Sak, J., & Zagaja, A. (2017). Vaccination refusal. *Autonomy and legal coercion. Pathogens and global health*, 11(4), 200-205.
- (2) VAN KOLFSCHOOTEN H. (2019). EU Coordination of Serious Cross-Border Threats to Health: The Implications for Protection of Informed Consent in National Pandemic Policies. *European Journal of Risk Regulation*, 10 (4), 635-651.

health data⁽¹⁾. Article 5 of the Convention for the Protection of Human Rights and Human Dignity with regard to the Application of Biology and Medicine: The Convention on Human Rights and Biomedicine states: *"Interference in the health field shall not be permitted except after the person concerned gives his free and informed consent. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time"*. Article I of the same convention also stipulated that: *"Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity"*.

The right to informed consent is protected more broadly, in particular in the European Convention on Human Rights (ECHR), European Convention on Human and Biomedical Rights, and the

(1) VAN KOLFSCHOOTEN H. P.R. P. 640.

case law of the European Court of Human Rights (ECHR) ⁽¹⁾. In some instances, the court has allowed some minimal risk medical procedures when the state interest is robust. Still, in other cases, the court has rejected other claims as unlawful depending on the equilibrium between the extents of corporal incursion and the inherent medical risk comparative to the nation's concern⁽²⁾. Vaccination is highly invasive, and chances of injury or demise are high, so it is a medical procedure that should not be coerced unless it is crucial in a very compelling situation. Still, appropriate sanctions for non-compliance should be allowed. Several doctrines don't support the notion that people must sacrifice themselves or their kin to benefit society⁽³⁾.

In care, a person exercises informed consent if they receive all the relevant factors, information and is informed on possible side-effects associated with a specific therapeutic procedure. This should be done adequately; if not, the consent is considered

(1) See for Example: ECtHR, 5 October 2006, Trocellier v France App no 75725/01; ECtHR, 8 November 2011, VC v Slovakia App no 18968/07; ECHtR, 5 June 2015, Ambert and Others v France App no 46043/14.

(2) See for Example: ECtHR, 15 March 2012, Solomakhin v. Ukraine App no 24429/03.

(3) The court decision, 20 February 1905, H. Jacobson v Commonwealth of Massachusetts. 197 US

unlawful. Article 3 of the European Union of Fundamental Rights upholds respect for free and informed consent in the medical sector. The charter has a similar status in the European Union legislation as the European Union treaties do. Informed consent should also be respected in vaccination issues to ensure that the subjects understand the side effects extent, whether major, minor, or mere inconvenience⁽¹⁾.

When mandatory vaccinations are coerced, health workers assume that the subjects know about the vaccination, considering that mandatory vaccination campaigns are supported and done by major state or international organizations and health organizations. The means to which information is presented to vaccination subjects may be insufficient. Mass vaccination tends to assume significant issues that may cause harm, such as previous medical histories. Written consent is always acceptable as informed consent if the subject is unaware of the material and special risk⁽²⁾.

(1) Camilleri F. (2019). Compulsory vaccinations for children: Balancing the competing human rights at stake. *Netherlands Quarterly of Human Rights*. 37(3) :245-267.

(2) Novak, A. (2004). The religious and philosophical exemptions to state-compelled vaccination: constitutional and other challenges. *U. Pa. J. Const. L.*, 7, 1101.

1-3: Parents' Autonomy and Child Vaccination

In most nations, the legislation recognizes that parents have the right to control their child's upbringing, which at times may overcome the state's interest in managing education. The state has a responsibility in ensuring the proper upbringing of a child but the parents or guardians that nurture the child direct the destiny. Parents have some legal right to some childrearing autonomy⁽¹⁾. The biggest concern is that independence may be subverted when the parents' interests' conflict with the state interest of protecting children, for instance, in mandatory school vaccination legislation. Parents' rights to control vaccination should be in line with the child's medical liberties to ensure that they are not coerced to compulsory vaccination, which may be medically invasive⁽²⁾. The right of parents to control vaccination should also relate to the degree of the state's interest. The parent's extent to influence the child's medical decision depends on state interest, but this does not

(1) Salmon, D. A., Teret, S. P., MacIntyre, C. R., Salisbury, D., Burgess, M. A., & Halsey, N. A. (2006). Compulsory vaccination and conscientious or philosophical exemptions: past, present, and future. *The Lancet*, 367(9508), 436-442.

(2) Attwell, K., Drislane, S., & Leask, J. (2019). Mandatory vaccination and no-fault vaccine injury compensation schemes: An identification of country-level policies. *Vaccine*, 37(21), 2843-2848.

apply to all vaccines with varying efficacy and safety levels relative to disease. It is recommended that when parents and child's autonomy rights align and are in conflict with the state interest, there is a need for an intensified review, and the judiciary should ensure it carefully reviews the challenges to state legislation⁽¹⁾.

The opinions of the parents must not always be decisive but should be put into consideration. Initially, vaccination was considered a parental legal responsibility, especially in the 1960s, not only for private purposes but also for public health concerns. The controversy around vaccination recently has led to ideological changes where some parents think not complying with vaccination schemes is a means of protecting their children. Recently the World Health Organization formed a Vaccine Security Strategy, and its purpose is to ensure accessibility of safe and effective vaccines for children around the world. The concept of vaccine refusal is currently more prevalent compared to before in paediatrics⁽²⁾. This

(1) Krasser A. (2021). Compulsory Vaccination and the ECtHR: What to Expect. Graz Law Working Paper No 04, 9-11. Available at SSRN: <https://ssrn.com/abstract=3797859> or <http://dx.doi.org/10.2139/ssrn.3797859>

(2) MacDonald, N. E., Harmon, S., Dube, E., Steenbeek, A., Crowcroft, N., Opel, D. J., ... & Butler, R. (2018). Mandatory infant & childhood immunization: Rationales, issues and knowledge gaps. *Vaccine*, 36(39), 5811-5818.

trend is mostly associated with social aspects considering most non-compliant cases are from extremely wealthy, educated families and poor, less-educated households for different reasons.

The respect for the family is also upheld by the European Convention on Human Rights and Privacy, considering that a child and the family are considered a unit and can make distinctive decisions regarding the quality of their lives without any external interference. Concepts of family protection are compatible with family law and human rights because they protect the family as an entity. The European Centre for Law and Justice Highlights compulsory vaccinations must be reached in a more respectful, moral, and physical manner. A family requires security and protection because it should be treated as the fundamental unit of society⁽¹⁾.

Mandatory vaccination regulations had begun a long time ago when smallpox demonstrated great danger to public health and safety. For example, Massachusetts became the first State in the United States in 1809 to enact a compulsory smallpox vaccination law. The government support for compulsory vaccinations has

(1) The European Court of Human Rights, Grand Chamber, Case of Vavřička & Others V. The Czech Republic, Strasbourg, (nos. [47621/13](#), 8 April 2021).

grown since the 18th century. In the 19th century for instance, compulsory education laws were enacted in all the 50 states of the United States and by 1980s, all the States in the country had developed compulsory vaccination laws that aimed at protecting children entering public school for the first time. The rationale for arriving at such decisions was informed by the fact that when children converge in a public setting such as, a school, their risk of getting infected increases. Therefore, having mandatory vaccinations was the only ideal way to get all school-going children to get vaccinated so that public health can prevent the spread of communicable diseases, such smallpox, mumps, measles, and hepatitis among other⁽¹⁾.

2- *Balancing Competing Rights*

The United Nations Conventions on the Rights of the Child (UNCRC) indicates that a child has the right to high-quality care, including immunization; however, the European Court of Human Rights under Article 8 states the right to respect of private and family life. The European Court of Human Rights should establish an acceptable level for the right to rear, considering it is

(1) Chemerinsky, E., & Goodwin, M. (2016). Compulsory vaccination laws are constitutional. *Nw. UL Rev.*, 110, 589.

inadequately defined. Failure to vaccinate a child does not necessarily mean the parent is acting in the child's best interest. Before the formulation of a mandatory vaccination policy, the ECHR should balance potential risks and benefits⁽¹⁾. The freedoms of individual parents should be restricted to an acceptable level for the sake of herd immunity. The severity of an infectious disease should determine the type of vaccination policy implemented. The EU provides a concrete legal framework that authorizes safe and efficacious vaccines. According to Article 168 of the Treaty, the EU should complement national policies in public health and respect states' responsibilities in the definition of their health policy. It is the role of the member state to decide whether the vaccination should be compulsory or voluntary. The EU should formulate an effective pharmacovigilance system to assess the vaccines' safety as part of the legal framework.

In case of a pandemic, the European Union should formulate a robust policy to ensure compliance respecting human rights and body integrity. However, Mandatory vaccines are constitutional when the state's interests are high. Mandatory vaccination is among the legitimate aims enlisted in the European Convention of Human

(1) Giubboni S.,)2010(P.R., pp.161-184.

Rights article 8 (2) when public health is at stake. A potentially mandatory Covid-19 vaccination would pursue a legitimate aim. However, the European Court of Human Rights (ECHR) suggests that the legitimate objective should be achieved in a less intrusive manner. Mandatory vaccination is compatible with the ECHR if the requirement of a prior assessment of the suitability of vaccination for the individual at issue is not met. It is the EU's role to complement healthcare policies. Still, it is the member nations' responsibility to determine the type of vaccination policy to implement after carrying out risk and benefit analysis. In this context, the courts seek to ensure that measures are appropriate, necessary, and proportional to the result it is pursuing⁽¹⁾.

Compulsory vaccination laws proved effective following two features that have been extracted from various State efforts to enact laws for compulsory vaccination. One such feature shows that compulsory vaccination programs are effective in preventing and in certain circumstances eradicating diseases. Second, compulsory vaccination exercises have established clear exemptions for

(1) See for Example Decisions of ECtHR: *Sanoma Uitgevers B.V. v. the Netherlands*, no. 38224/03, § 83, 14 September 2010; *Hristozov and Others v. Bulgaria* (nos. [47039/11](#) and [358/12](#)); *Kotilainen and Others v. Finland*, (no. [62439/12](#), 17 September 2020); *Dubská and Krejzová v. the Czech Republic*, (nos. 28859/11, 15 November 2016).

mandatory vaccination, which recognizes certain people are not fit for vaccination due to well-established reasons associated with medication or allergies. This clearly shows that mandatory vaccination laws do not operate outside law nor do they operate above the interests of individuals. The mere fact that regulations tie themselves to certain measures proves that mandatory vaccination is not unconstitutional because it is aimed at protecting the public against the spread of vaccine-preventable diseases⁽¹⁾.

It is also important to mention that the constitution recognizes that compulsory vaccination is necessary to save lives and courts have cited that threshold across history concerning different cases that have been brought before it challenging the constitutionality of a State or federal government to enact laws that allow compulsory vaccination among people. In addition, vaccinations are not just about protecting individuals who receive them but also persons who cannot receive vaccination due to compromised immune system. Therefore, in most occasions, both States and federal governments will act in the interest of vulnerable groups in society by making vaccination mandatory⁽²⁾.

(1) Hendrix, K. & Sturm, L. P.R., PP. 272–279.

(2) Cole, J.P. & Swendiman, K. (2014). Mandatory vaccination? Precedent and current laws. Washington D.C. Congressional Research Service. Available at: <https://fas.org/sgp/crs/misc/RS21414.pdf>

The Supreme Court in particular has demonstrated on different occasions that the power for States to use police power to enact mandatory vaccination, especially among those people who show noncompliance to such regulations act unconstitutionally. As such, States have constitutional power to make such laws in circumstances, where they are convinced that the public health and safety is at risk and if nothing happens, more people are likely to die from a communicable disease. To that end, the Supreme Court has rejected constitutional challenges to states laws requiring mandatory vaccination⁽¹⁾.

In the case of *Jacobson v Massachusetts*, 197 US 11 (1905), the Supreme Court established that the State of Massachusetts was within the constitutional limits when it required all school-going children to be vaccinated against smallpox and as such, that law did not infringe the 14th Amendment of Due process and Equal Protection Clause requirements as the parents of the child argued. In fact, courts are guided by the common belief among physicians and the public, which states that vaccines for sure prevent the spread of diseases and to that end, this common belief is enough

(1) Ciolli A. (2008). Mandatory school vaccinations: the role of tort law. The Yale journal of biology and medicine, 81(3), 129–137.

evidence to justify the decisions that law makers engage into to create compulsory vaccination laws⁽¹⁾.

There are, indeed, many cases that have challenged the constitutionality of compulsory vaccination laws, which have been brought before different courts in the United States of America both in the contemporary society and in the past. The rationale presented by the plaintiffs concerning unconstitutionality of the laws was rejected by the courts. For example, *Workman v. Mingo County board of Education*, a case that came before the court of Appeals of the United States of America. The court observed that the West Virginia law, which required all school children to be vaccinated without any exemption for religious reasons, was indeed constitutional. The Court of Appeals explained that compulsory vaccination rules are within the State's police power, even if there may be no immediate danger of the disease to the public or children in question. Therefore, the claim those parents in the case brought to that court that citing a religious claim not to vaccinate their children was rejected. The Court cited the 1944 case of *Prince v. Massachusetts* and argued that "The right to practice religion freely

(1) Caplan A. L. (2018). The Battle Over Compulsory Vaccination in the United States. *American Journal of Public Health*, 108(4). <https://doi.org/10.2105/AJPH.2018.304315>

does not include liberty to expose the community or children to communicable disease or the community to poor health”⁽¹⁾.

Aside from these two cases, other different federal courts have also arrived at the same conclusion. For example, in *McCarthy v. Boozman*, the federal court argued in favour of Arkansas compulsory vaccination regulation. The Federal District Court observed that the constitutional right to freely practice one’s religion does not provide an exemption for parents who want to avoid compulsory vaccination for their school-age children. Therefore, the constitutionality of compulsory vaccination is vested in constitutional limits of the United States of America law, where the constitution clearly observes that personal freedoms might be suspended in cases where the interest of the common good of the community is of significance importance⁽²⁾.

Protecting people against diseases is indeed very important to their own personal health and that of their loved one. Therefore, the controls, restrictions, and conditions of compulsory vaccination

(1) *Workman v. Mingo County Board of Education*, No. 09-2352 (4th Cir. 2011); Chemerinsky, E., & Goodwin, M. (2016). Compulsory vaccination laws are constitutional. *Nw. UL Rev.*, 110, 589.

(2) Cole, J.P. & Swendiman, K. (2014). Mandatory vaccination? Precedent and current laws. Washington D.C. Congressional Research Service. Available at: <https://fas.org/sgp/crs/misc/RS21414.pdf>

are found in the interests of common good, public health safety, and prevention of communicable diseases. In circumstances, where one or all the mentioned thresholds are proved, both States and Federal governments have constitutional power to enact laws that require compulsory vaccination⁽¹⁾.

The question of what are the controls, restrictions, and conditions of compulsory vaccination is well answered by the fact that the constitution of the United States of America, empowers state and local governments to power to enact laws that require compulsory vaccination when the issue in question is concerned with public health and safety of people. To that end, the Centres for Disease Control and Prevention works closely with public health organizations and the private sector with the aim of improving and sustaining immunization coverage and at the same time monitor the safety of the vaccine. All these efforts between Centres for Disease Control and Preventions are guided by state vaccination laws. One of the conditions of state vaccination laws is the requirement that all children in public and private schools, day-care, university/college students, healthcare workers, and patients in

(1) Arora, K. S., Morris, J., & Jacobs, A. J. (2018). Refusal of Vaccination: A Test to Balance Societal and Individual Interests. *The Journal of clinical ethics*, 29(3), 206–216.

specific facilities must be subjected to compulsory vaccination in circumstances, where a vaccine-preventable disease presents serious risk to public health and safety of the people⁽¹⁾.

The state laws not only issues conditions for compulsory vaccination but also determine how vaccines are accessed in the country. For example, all health care professionals involved in the administration of any vaccine for a vaccine preventable disease must have the right qualifications and vaccine administration must fall within their scope of practice. The state governments in the quest to keep up with public health and safety interest have established public health law program that governs all matters related to compulsory vaccination. In addition, the Public health law program makes available selected resources needed by public health professionals involved in the vaccination exercise and at the same time given an opportunity using the legal opinion of an expert to question the rationale, which state governments use to establish

(1) Cox A. B. (2018). Mandatory School Immunization Laws in the United States: Historical origins, policy implementation, and assessing the impact of strengthening exemption requirements. Baltimore, Maryland. PP. 32-44.

laws that require compulsory vaccination in the United States of America⁽¹⁾.

Vaccine restrictions are clearly observed in the state vaccine laws, which specify specific exemptions to persons who do not qualify to receive vaccination based on viable reasons. Further, all the 50 states of the United States provide medical exceptions to compulsory vaccination, while some states also provide religious exemptions or even philosophical reasons that justify why a child should not participate in state mandatory vaccination programs. To ensure success of school vaccination requirement and exemptions, state laws have established clear strategies that govern compliance using enforcement powers such as police powers. Overall, controls, restrictions, and conditions of compulsory vaccination is a prerogative of State and local governments and the constitution gives both state and local governments that power to create laws that demand compulsory vaccination with specific controls and restrictions of compulsory vaccination programs⁽²⁾.

(1) CDC (2021). Benefits of getting vaccinated with a COVID-19 Vaccine. Washington D.C. Centers for Disease Control and Prevention. Available at: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html>

(2) NCSL. (2021). States with Religious and Philosophical Exemptions from School Immunization Requirements, Available at: =

The current ongoing Coronavirus Disease 2019 (COVID-19) clearly fits in the public health emergency and as such, States in the United States have the authority to pass laws, which lead to compulsory vaccination of all people in their states as a means to lower the impacts of the spread of Coronavirus disease. Following the growing number of infections each day in USA, the country will have no choice but to use all available constitution limits to make Coronavirus vaccine mandatory for all people in the country. The fact that the virus has presented great danger to the survival of most people, especially vulnerable people, States would be expected to make the right call using the constitution to ensure that as many people as possible receive the vaccine. In circumstances, where individuals would challenge the decision of the State and even the court the Constitution would be used to determine the viability of the opposition and rule in the interest of the majority. Given the current growing number of deaths every day the Supreme Court would focus on interpreting the Constitution to help those individuals who have reservations against the Coronavirus vaccine understand why it is important for significant number of people to

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<https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>

come out in large numbers of receive the vaccination both voluntarily and using mandatory vaccination laws, that require all citizens in a given community to receive the vaccine⁽¹⁾.

When the concept of constitutional limits to compulsory vaccination in U.S.A law is invoked, a researcher has to take a moment and look back at how the concept of constitutional limits and jurisprudence were applied or implied in the past to make vaccination compulsory or not compulsory. The wisdom of the past has significant contribution to the overall success of beating the current ongoing Coronavirus Diseases, which has hit the United States of America very hard. At this point, legislatures at all levels would want to take their time and appreciate past judicial decisions and consider different legal frameworks that have been used to facilitate mandatory vaccine to beat vaccine-preventable diseases such as smallpox, measles, polio, and hepatitis B among others⁽²⁾.

(1) Gostin L. O. & Salmon D. A. and Larson H. J. (2021). Mandating COVID-19 Vaccines. JAMA. 325(6):532–533; Sacks D. P. (2020). The Vaccine Controversy and Constitutional Limits to Coerced Vaccination. Available at SSRN: <https://ssrn.com/abstract=3801248> or <http://dx.doi.org/10.2139/ssrn.3801248>

(2) Ventola C. L., P.R., PP. 426–436.

For instance, in the early stage of the 20th century, the Supreme Court of the United States of America in two different occasions considered Constitution dilemmas to instances, where mandatory vaccination was required. In circumstances where the Supreme Court was forced the challenges that aimed to shut down the mandatory vaccination requirements, the Supreme Court recognized that all the challenges fell practically within the States' police power authority to initiate mandatory vaccination ⁽¹⁾.

In one such challenge case of 1905, the Supreme Court of the United States of America in *Jacobsen v. Commonwealth of Massachusetts* observed that a State law, which gave Municipal boards of health the authority to require vaccination of persons over the age of 21 years old against Smallpox determined that the vaccination program had a real and substantial relation to the protection of public health and safety. When the Supreme Court rejected the argument that a vaccination program designed to end Smallpox violated a liberty interest, which under more contemporary jurisprudence would likely have been asserted as a substantive due process right, which aimed at eliminating Smallpox

(1) Shen W. (2019). P.R.

among the population that was at risk of being infected with Smallpox ⁽¹⁾.

Therefore, if we take a moment and consider this particular Supreme Court decision to reject the argument that posited that by the State giving municipal boards of health the authority to require the vaccination of persons over 21 years old against Smallpox violated a liberty interest, it becomes apparent that Constitutional limits to Compulsory vaccination in U.S.A law would allow for compulsory vaccination when the disease in question presents significant public health emergency and safety at the same time⁽²⁾.

Most states and Congress would definitely go back in law and such for case laws, which were determined in the past, which are similar with mandatory vaccination and apply them to the current ongoing Coronavirus diseases in circumstances, where a certain group of people or community would raise objections against the Coronavirus vaccine. Whereas, the aforementioned case

(1) Patricia D. & Nuno P. (2011). Vaccine Supply: Effects of Regulation and Competition. *Int. J. of the Economics of Business*, Vol. 18, No. 2, pp. 239–271.

(2) Chemerinsky, E., & Goodwin, M. (2016). Compulsory vaccination laws are constitutional. *Nw. UL Rev.*, 110, 589; Mehlman, M. J., & Lederman, M. M. (2020). Compulsory Immunization Protects Against Infection: What Law and Society Can Do. *Pathogens & immunity*, 5(1), 1–7.

took place in the beginning of the 20th century, the same pattern was followed in 1922 in the case of *Zucht v. King Case*. In this particular *Zucht v. King Case*, parents of a child who was excluded from school because the child was not vaccinated challenged the local ordinance requiring vaccination for all school children. The parents argued that the Ordinance violated the Equal Protection and Due Process Clauses of the 18th Amendment of the Constitution. When ruling the matter, the Supreme Court again went back to *Jacobsen Case* and rejected the Constitutional challenges. The Supreme Court concluded that it is within the police power of a State to provide for compulsory vaccination and that the Ordinance did not bestow arbitrary power. Instead, the Ordinance considered broad discretion required for the protection of the public health⁽¹⁾.

Following these two Case Laws, *Jacobsen v. Commonwealth of Massachusetts* and *Zucht v. King* all the 50 States of the United States of America and the District of Columbia currently have legislation, which require specified vaccines for students. Whereas, the requirement is applicable to all states in America, it does not necessarily mean that it is final. The requirement is indeed subjected to specific exemptions, which vary

(1) *Zucht v. King*, 260 U.S. 174 (1922); Cioli, A. (2008). P.R., PP. 129-137.

from one State to the other. it is important to note that as much as, all student immunization laws offer exemptions to children who have medical reasons such as allergies to vaccines or any other immune compromised medical situations. In addition, most States also offer exemption from the vaccine based on certain religious observations, which counsel their followers against immunization⁽¹⁾.

Further 16 States also provides a comprehensive philosophical exemption to those people who reject vaccines on grounds of beliefs, morals, or personal reasons. Whereas, compulsory vaccination requirements in the United States of America have faced numerous legal challenges since the two Case Laws, Jacobsen and Zucht, Courts in the United States of America have remained steadfast in their commitment to the constitution and protection of public health. As such, courts have rejected those legal challenges and offered significant differences to the use of States' police power to require vaccination as a means to protect public health⁽²⁾.

(1) Emma T. (2020). The Public Health Demand for Revoking Non-Medical Exemptions to Compulsory Vaccination Statutes, 34 J.L. & Health 129. available at <https://engagedscholarship.csuohio.edu/jlh/vol34/iss1/8>

(2) Mariner, W. K., Annas, G. J., & Glantz, L. H. (2005). P.R., PP. 581-590.

The Supreme Court and other State courts have not just followed the rulings of the past case laws but also more recent Case Laws around compulsory vaccination. In recent decisions of the legal challenges, the courts have concluded that a State is not constitutionally required to provide a religious exemption to uphold compulsory vaccination regulations, which only cater for a medical exemption⁽¹⁾.

Moreover, the same states that provide a religious exemption and where parents have filed for a suit to challenge their rejected attempt to overturn the constitution courts have gone ahead to apply relevant State laws to further scrutinize whether objections to vaccination using religious arguments are indeed based on a sincere religious belief. It is, therefore, clear that even in circumstances where the States have accepted religious exemptions to vaccination, the courts have not slept on their job in their quest to uphold protection of public health in circumstances where compulsory vaccination requirements are needed⁽²⁾. The Constitution of the United States is broad, and it is specifically made to serve the

(1) Caplan A. L. (2018). P.R., PP. 224-

(2) Temoka E. (2013). Becoming a vaccine champion: evidence-based interventions to address the challenges of vaccination. *Journal of Science & Drug Medicine*, 1(1), pp. 68–72.

people of the United States of America. The Supreme Court and other State Courts have definitely done a wonderful job in interpreting the law and applying relevant legal frameworks in all legal challenges that come across as unconstitutional and attempt to put the lives of the majority at risk in circumstances of a public health emergence such as the ongoing Coronavirus Pandemic.

Conclusion

Issues of mandatory vaccination have been a topic of discussion for several decades. In most instances, courts have ruled in favour of the government, by balancing between state interests and individual constitutional rights associated with vaccination laws. Mandatory vaccination policies require all subjects to be vaccinated unless they present medically signed certificates to indicate that they are unfit subjects for vaccination. Compulsory vaccination has been criticized through various perspectives, including medical autonomy, religious attitudes, and philosophical perspectives. The legislation of mandatory vaccination laws at times leads to discrimination which is against Fundamental Human Rights. In most nations, people are denied fundamental rights to education, employment, and travel if they are non-compliant. Public trust in vaccination has decreased in the recent past, associated with public awareness of corruption and abuse in the

vaccine industry, where Various vaccines have varying degrees of safety and efficacy, and some vaccines curb disorders that may not be a threat to society. The public's concern about the safety of the vaccine industry is right and justified, so eliminating forced vaccination in the absence of a truly urgent disease crisis would spur the vaccine industry to test vaccines more thoroughly in order to convince the public that the choice of vaccination is in their best interest. Even in the context of an emergency disease crisis, reasonable and proportionate penalties for non-compliance remain necessary to comply with due process.

The recent Covid-19 pandemic has raised concerns among the public, especially after vaccine discovery. The public fears that the administration may coerce mandatory Covid-19 vaccination, a vaccine that has not been adequately tested in all population groups. Mandatory vaccination is an effective means of achieving herd immunity, especially when the state's interests are high compared to personal interests. Compulsory vaccination, however, can be constitutional depending on the statutes and regulations of a state.

The paper concludes that it is the role of a state to use the law to get a significant number of People to get Coronavirus immunization as a means to combat the virus. There is no point in so many lives getting lost simply because people are worried about

the safety of the vaccine, but this requires organizing Public awareness campaigns to help in reducing the level of fear and worries concerning the safety of the Coronavirus vaccine.

Comparative constitutional jurisprudence decides that imposing vaccination is in accordance with the Constitution, and that regulatory intervention is reasonable, given the current state of epidemiological conditions and scientific knowledge. It aims to protect public health on the basis of the duty of community solidarity in preventing and limiting the spread of diseases. Furthermore, the shift from a strategy based on persuasion to a mandatory regime is justified in light of the lack of response to voluntary vaccination.

But at the same time, it is necessary to emphasize that the courts should clarify the constitutional limits of compulsory vaccination, and restore the concept of organized freedom, by carefully balancing the competing state interests and the individual constitutional rights contained in vaccine legislation, in the light of reviewing those legislation on the basis of each vaccine separately, Subjected to rigorous scrutiny to provide adequate guarantees of constitutional values such as medical independence and freedom in general, every vaccine has different degrees of safety and efficacy, and every vaccine treats a disease that may or may not pose a real

threat to society. Courts, when balancing, must focus on clearly defined medical facts to decide when and how a state can enforce vaccination. Carefully balancing the interests involved by noting clear medical facts, actual social risks, and the efficacy and safety of a vaccine is necessary to determine the legality of imposing vaccination. This distinction between practical and medical necessity would make it easier for the court to assess the proportionality of vaccination measures with regard to the legitimate aim of ensuring a fair balance of interests. This distinction also helps to ensure that the discretion of states in the field of public health is not unnecessarily expanded at the expense of the individual rights and fundamental freedoms of their citizens, in particular the right of a person to medical self-determination.

The vaccine debate will continue until government vaccine policy is reformed to strike a fair balance between the state's interest in vaccination and the constitutional rights of individuals to choose their own destiny.

Vaccines in general, and compulsory vaccination in particular, will continue to raise many legal questions about the extent to which the state is responsible for the ineffectiveness of the vaccine in protecting society from the spread of the epidemic? Does the state have the responsibility for the damages resulting from the

restriction of the exercise of rights and freedoms by imposing a vaccine proved to be ineffective? Is the state responsible for health damage to individuals as a result of the insecurity of the vaccine, and is the matter different in voluntary vaccination compared to compulsory vaccination?

These Legal issues open research into reconsidering the rules of state responsibility based on error and expanding the scope of responsibility to include responsibility without error, especially in Arab countries where the judiciary is still rejecting - with the exception of some rare applications - state responsibility without error.

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