



# 1<sup>ST</sup> NLUO-PHFI PUBLIC HEALTH LAW NATIONAL MOOT COURT COMPETITION, 2021

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*ORGANISED BY*

**CENTRE FOR PUBLIC HEALTH LAW  
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*IN ASSOCIATION WITH*




**PUBLIC  
HEALTH  
FOUNDATION  
OF INDIA**

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## **MOOT PROPOSITION**

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1. “Union of Diana” (**‘Diana’**), a democratic republic country in South Asia, with 130 crore people is the world’s second most populous country. It is a religiously and ethnically diverse nation. The Constitution of Diana<sup>1</sup> safeguards the interest of each community as it aims to treat everyone at parity and promote fraternity among all. It has adopted a quasi-federal structure and has 15 states and 5 union territories. Diana is one of the five largest producers of pharmaceuticals in the world by volume. It supplies around 20% of the global export of “generic” drugs.
2. A pandemic broke out in January 2020 because of the contagious virus called DARS-CoV-2 or Doronavirus. The disease caused by infection of this virus in humans was referred to as Dovid-19. The first case of Dovid-19 was reported in a country called Mandaria but it quickly spread all across the world. Mandaria shares its borders with Diana.
3. In January 2020, Diana witnessed a rapid increase of Dovid-19 cases, which rapidly spread within its states. Most people infected with the Dovid-19 virus experienced mild to moderate respiratory illness and recovered without requiring any special treatment. However, older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer developed serious illness.
4. Scientific community suggested development of a new vaccine to combat the spread of Doronavirus. However, in case of vaccines globally, there is an inevitable risk of serious adverse events, such as seizures and allergic reactions.

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<sup>1</sup>The Constitution of Diana is *para materiato* the Constitution of India, 1950.

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5. The world was looking up to Diana for developing and manufacturing Dovid-19 vaccines. Diana did not have adequate hospitals to cater the need of a large population and many saw vaccines as the only way out to save the lives of the people of Diana.
6. The Central Government of Diana coordinated and worked with the research institutes, private companies, and leveraged the strength of Diana's vaccine manufacturing capability to meet its domestic requirements.
7. In order to meet the urgent domestic and global requirements, Diana relaxed the regulatory approval process to foster development and distribution of the Dovid-19 vaccine at the earliest. It approved a vaccine named 'Hivovi', developed and manufactured by a private company, Myhealth Pvt Co Ltd on 1<sup>st</sup> January 2021.
8. On 10<sup>th</sup> January 2021, the vaccination process started in Diana at select centres all over the country. The vaccination process was managed by the Central Government which procured doses of Hivovi from Myhealth Pvt Co Ltd. However, the vaccination was available for citizens only above the age of 45 years.
9. During its first phase, one individual, Mr X, who was given a dose of Hivovi on 26<sup>th</sup> January, 2021 developed serious side effects immediately thereafter including nausea, fever and headaches. He was hospitalised for 15 days and lost his memory partially. Thereafter, on 18<sup>th</sup> February, 2021 he sued the vaccine manufacturer, Myhelath Pvt Co Ltd for compensation of one crore rupees in the civil court of Diana. This was widely covered by Diana's media, and several concerns were raised by the print and social media regarding the side effects of Dovid-19 vaccines. This resulted in growing scepticism amongst the people of Diana regarding the viability of the vaccines.

10. Vaccines of other private manufacturers were subsequently approved for emergency use in Diana in the following months. Vaccines were procured by the Central Government of Diana directly from the vaccine manufacturers and the Dovid-19 vaccination was available for free.
11. By 1<sup>st</sup> March, 2021 Central Government of Diana had entered into contracts with various private manufacturers for procurement of sufficient vaccines so as to vaccinate its entire adult population by November 26, 2021.
12. The vaccine manufacturers lobbied for the need to have protection against adverse consequences of the vaccination during the pandemic. Vaccine manufacturers urged the Central Government of Diana to grant immunity from prosecution against any adverse consequences of the vaccination, otherwise they will have to stop the production. The Central Government of Diana was of the view that there was an imminent requirement to protect the vaccine manufacturers in the country against lawsuits for severe adverse effects or any other frivolous claims. It was required to encourage vaccine manufacturers to focus on development and manufacturing of the vaccines. Subsequently, on 05<sup>th</sup> March 2021, vide an Act of Parliament the Epidemic Act, 1897<sup>2</sup> was amended to grant immunity to the vaccine manufactures and provide compensation to any individual who has suffered loss because of the vaccination (“**Annexure A**”).
13. Parallely, vaccination of its citizens at the earliest was one of the primary objectives of Dovid-19 Vaccination Strategy of Diana.
14. In March 2021 a second wave of pandemic stuck Diana and there was a sudden surge of Dovid-19 cases in different states of Diana. New variants of Dovid-19 virus were

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<sup>2</sup>The Epidemic Act, 1897 of the Union of Diana is *para materiato* the Epidemic Diseases Act, 1897 of India.

suggested as one of the reasons for the sudden surge of cases. It was reported that the second wave is more severe and infectious, and likely to affect the younger population. In order to limit the second wave of cases, on 15<sup>th</sup> March 2021, the Central Government of Diana allowed vaccination of all citizens above the age of 18.

15. Despite making the vaccines available to its adult population there was a very low turnout for vaccination. Ariana, a state in the Union of Diana, recorded a constant surge of Dovid-19 cases in the January to March 2021 quarter and high number of deaths because of Dovid-19. On 30<sup>th</sup> March 2021, the Chief Minister of Ariana in a press conference stated that herd immunity through vaccination was the only way to curb the spread of Doronavirus within the state and that his government will ensure that most of the state's population is vaccinated at the earliest. Thereafter, on 03<sup>rd</sup> April 2021, the Government of Ariana exercised its powers under the Epidemic Act, 1897, and issued an appropriate regulation for making vaccination mandatory for performing certain activities (**“Annexure B”**).

16. The aforesaid restrictions imposed by the Central Government of Diana and State of Ariana resulted in huge public criticism. Immediately after the promulgation of the Act (but before issuance of subordinate legislation under the promulgated Act) and imposition of a mandatory requirement for vaccination certificate by the State of Ariana, a non-governmental organisation, “Freedom for All” filed a writ petition before the Supreme Court of Diana challenging the same. The Central Government of Diana and State of Ariana *inter alia* submitted that they undertook these measures to improve public health, and protect the fundamental right to life and health of the people of Diana.

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17. The Supreme Court decided to hear the petition and framed the following questions for consideration:

- I. Whether the writ petition filed by Freedom for All under Article 32 of the Constitution of Diana is maintainable?
- II. Whether the Epidemic (Amendment) Act, 2020 is violative of Part III of the Constitution of Diana?
- III. Whether the regulation issued by the State of Ariana is unconstitutional and *ultra vires* to the Epidemic Act, 1897?

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***Please Note:***

- Apart from the above mentioned issues, the participants are free to include any other issue that they deem fit.
- Subject to the contents of this moot proposition, the laws of Diana are *paramateria* to the laws of India, including the judgments delivered by the courts in India.
- All names, incidents, terminology referred in the moot proposition are purely fictitious and have been used for research and academic purposes only.

**Annexure A**  
**THE EPIDEMIC (AMENDMENT), ACT 2020**  
No. X of 2020  
**MINISTRY OF LAW AND JUSTICE**  
(Legislative Department)  
5<sup>th</sup> March, 2021

The following Act of Parliament received the assent of the President on the 5<sup>th</sup> March, 2021 and is hereby published for general information:—.

An Act further to amend the Epidemic Act, 1897  
BE it enacted by Parliament in the Seventy-second Year of the Republic of Daina as follows:—

1. This Act may be called the Epidemic (Amendment) Act, 2021.

Short title and commencement.

(2) It shall come into force at once.

3 of 1987

2. After section 4 of the Epidemic Act, 1897 (principal Act), the following sections shall be inserted, namely:—

“5. (1) Notwithstanding anything to the contrary contained in any law, a developer or manufacturer as notified by the Central Government, shall be immune from suit and liability under any law for the time being in force with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of their vaccines.

Immunity to vaccine manufactures.

*Provided that* the provisions of sub-section (1) shall not apply where claim against the developer or manufacturer of the vaccine is for death or serious physical injury caused by wilful misconduct of such developer or manufacturer.

(2) No civil court, tribunal or authority shall have jurisdiction to entertain any suit or proceedings in respect of the immunity granted under sub-section (1).

(3) The provisions of sub-section (1) shall apply also in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority before the commencement of this Act.

6. Any person who has suffered loss caused by, arising out of, relating to or resulting from the administration to or the use by an individual of vaccine of a developer or manufacturer notified under sub-section (1) of section 5, may seek compensation from the Central Government in such manner as may be prescribed.

*Provided that* the total compensation for the loss caused to an individual from administration or use of vaccine shall not be more than thirty lakh rupees.”

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**Annexure B**

Government of Ariana  
Public Health Department  
3<sup>rd</sup> April, 2021

**NOTIFICATION**

**No. ABC:** Whereas the State Government is satisfied that the State of Ariana is threatened with the spread of Doronavirus and a sudden surge of Dovid-19 cases, and it is therefore necessary to take certain urgent measures to eradicate the Doronavirus from the State of Ariana by ensuring vaccination of its residents, the Government in exercise of the powers conferred under sections 2, 3 and 4 of the Epidemic Act, 1897 (Act 3 of 1897), prescribes the following regulations having effect from 15<sup>th</sup> May, 2021 until further notice:

1. No individual, except for individuals below eighteen years of age, will be permitted to –
  - (a) avail inter or intra-city public transportation services including buses, railways and airways;
  - (b) enter or leave the State of Ariana either through public transportation services including buses, railways and airways or private transportation including roadways;
  - (c) access commercial establishments like offices and factories, without a valid vaccination certificate.

*Provided that* transport of passengers for accessing emergency, medical services shall be permitted.

*Provided further that* these restrictions shall not apply to individuals rendering services in production and manufacturing units which require continuous process and pharmaceuticals, API etc, and manufacturing units engaged in production of essential commodities like dal and rice mills, food and related units, dairy units, feed and fodder units etc.

2. All the District Collectors, District Superintendents of Police, Commissioners of Police, Municipal Commissioners of Corporations and other competent authorities in respect of the concerned institutions, organisations and establishments are hereby authorized and directed to take all necessary measures in a humane and judicious manner for enforcement and implementation of the aforesaid regulations.
3. Any person, institution, organisation violating any provision of these regulations shall be dealt under the provisions of the Epidemic Act, 1897.

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