

## VIOLENCE AGAINST HEALTHCARE WORKERS: NEED FOR A COMPREHENSIVE LEGISLATION

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### INTRODUCTION

The recent COVID-19 pandemic has highlighted the ever-present issues of misbehaviour and violence against the healthcare workers and disproportionate safety equipment for them. Violence against healthcare workers has been reported in various parts of the country. In response to these attacks, the Central government had passed an ordinance on 22<sup>nd</sup> April in order to protect the healthcare workers. At the same time, various states have also taken several measures, including various enactments and issuing notifications to protect the health care workers. The State Governments are invoking *National Securities Act, 1980* against the individuals causing hurt or grievous hurt to health care workers. Before the ordinance, the attackers were to face prosecution under the India Penal Code 1860.

This variety in the use of legal provisions has pointed out the legal shortcomings which has resulted in inadequate protection of healthcare workers. To offset this, Ministry of Health & Family Welfare, prepared a draft bill titled as “*The Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019*” hereinafter referred as the “draft bill”. Had the same been passed by the legislature, a mechanism would have already been in place to deal with such attacks. This article aims to analyse the available legislative material and provide certain suggestions with regards to a proper legal framework to deal with the protection of health care workers in the long run.

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### **JUDICIAL APPROACH**

Amid the COVID-19 pandemic, Hon'ble Supreme Court and various other High Courts have heard various petitions seeking proper redressal of such attacks. The Hon'ble Supreme Court of India in the case of *Jerryl Banait v. Union of India*,<sup>1</sup> took cognizance of incidents including the ones where medical staff that had gone to screen persons suspected of coronavirus were attacked and stones were pelted on them by miscreants. Similarly, incidents of misbehaviour with medical staff by the patients and forceful eviction of doctors from their homes by landlords due to fear of transmission came to notice of the Court.

The Court held that *"In wake of calamity of such nature all citizens of the country have to act in a responsible manner to extend helping hand to the Government and medical staff to perform their duties to contain and combat the COVID-19. The incidents as noted above are bound to instil a sense of insecurity in Doctors and medical staff from whom it is expected by the society that they looking to the call of their duties will protect citizenry from disease of COVID-19"* and after doing so, it emphasized that it is the duty of the State and the Police administration to provide necessary security to medical staff when they visit places for screening the people to find out the symptoms of disease. The Court also directed the State to take necessary action against those persons who obstruct and commit any offence in respect to the performance of duties by healthcare staff on COVID duty. In the case of *Sanpreet Singh v. Union of India*<sup>2</sup>, High Court of Uttarakhand directed the State Government to ensure proper nourishment and necessary care to the medical workers, who are unable to visit their respective residences. Furthermore, District Magistrates were directed to look into the grievances of health care workers in their respective Districts.

Additionally, in the case of *Registrar v. State of Maharashtra*<sup>3</sup>, the High Court of Bombay observed that obstruction to health care workers can result in the imposition of National Security Act, 1980. The High Court of Madras, in the case of *S Jimraj Milton v. Union of India*,<sup>4</sup> suggested that the State Government shall increase the salary of the health care workers. Further,

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<sup>1</sup> *Jerryl Banait v. Union of India*, 2020 SCC OnLine SC 357.

<sup>2</sup> *Sanpreet Singh v. Union of India*, Writ Petition (PIL) No. 52 of 2020.

<sup>3</sup> *Registrar v. State of Maharashtra*, Suo Moto Public Interest Litigation (St.) No.10541 Of 2020.

<sup>4</sup> *S Jimraj Milton v. Union of India*, W.P.No.7414 of 2020.

in the case of *Azra Usmail v. UT of Jammu and Kashmir*<sup>1</sup>, the court ordered to look into the grievances of the family members of the health care workers who are unable to look after their homes because of commitment to their duties. In the same case, a judicial note was taken that the violence against the healthcare workers is not new and that there is a need for a proper legislative framework. These judicial pronouncements rightly point out to the vacuum of effective legislation to deal with the violence against the healthcare workers.

### **EXISTING REMEDIES**

In the wake of COVID-19 pandemic, the Centre has passed an ordinance<sup>2</sup>, thereby defining the acts of violence against healthcare service personnel and their properties. The ordinance also makes the acts of violence to be a non-bailable cognizable offence. The imprisonment under the ordinance ranges between three months to seven years. The ordinance also raises a reverse presumption against the individuals prosecuted under the same.

Other than this, the provisions of the Indian Penal Code, 1860 would come to the rescue of affected health care workers. Under the IPC, Section 323; for Voluntarily Causing Hurt, Section 325; for voluntarily causing grievous hurt, Section 352; for Assault or criminal force and section 506; for criminal intimidation among others are the provisions for prosecution of the offenders.

The Draft Bill was rejected by the Home Ministry, on the ground of similar provisions coming under the IPC. The draft Bill had increased punishment ranging between six months and ten years along with provisions for compensation. Despite this, the available remedies and the draft Bill do not completely address the issues of healthcare workers in the long term.

### **INSUFFICIENT LEGISLATIVE FRAMEWORK**

The Epidemic Diseases (Amendment) Ordinance, 2020 states that an act of violence includes harassment, harm, injury, hurt, intimidation or danger to the life, obstructing or hindering

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<sup>1</sup> *Azra Usmail v. UT of Jammu and Kashmir*, WP(C) PIL no. 4/2020.

<sup>2</sup> The Epidemic Diseases (Amendment) Ordinance, 2020.

discharge of duties, or causing loss or damage to any property or documents. Thereby, causing or abetting acts of violence against the healthcare professional, a penal offence.

However, there are issues with the present ordinance which make it insufficient to be adopted as long-term legislation. Primarily, the ordinance concerns itself with epidemics only, making it infructuous for general circumstances. Further, as the ordinance came into force keeping COVID-19 in focus, the act of violence lacks an important form of harm. COVID-19 is a highly contagious disease and there have been alleged instances where some suspected patients have been spitting openly, thereby being negligent towards the communicability of the disease. Looking at the severity of the situation, the Ordinance should also include a provision which makes the person liable for transmitting the virus, whether negligently or purportedly, and thereby invoking the principle of strict liability.

The Ordinance raises a presumption of *actus rea* and *mens rea* towards the accused. Even though this reverse onus is fruitful to deal with this pandemic, the same cannot be true in the long run. Generally, these acts of violence are a form of disappointment and sadness caused by the loss of a loved one or some similar situation. This certainly is not true for all the acts of violence, nevertheless a reverse presumption would be unnecessary harassment to the accused and violate principle of fair and impartial trial.

Moving forward to the draft Bill, violence is stated to be causing harm, injury, hurt, grievous hurt, intimidating or endangering the life of the healthcare professional in the discharge of duty. It also includes individuals hindering or obstructing the discharge of duty by the health care workers or causing harm to the clinical establishment. The trouble herein is with the ambiguity attached to the prohibited act of violence. There shall be a description of penalties for different acts, for example: acts of causing hurt by means of weapons, acts of causing grievous hurt by means of dangerous weapons and acts endangering the life of the healthcare worker, or even causing death. Each shall have a different scale of punishment prescribed.

It had been the apparent ground of rejection for the draft bill that these provisions are available under the IPC. However, attacks against medical workers form a different class of offence which need to be addressed specifically in a separate legislation. IPC fails to make this kind of

distinction. Besides this, IPC also lacks the principle of compensation making it insufficient to deal with the issue of violence against the healthcare workers in the long run. Therefore, the vacuum of legislation for the safety of healthcare workers cannot be fulfilled by the IPC. The present ordinance and draft Bill with several modifications and a reformulation can take the shape of a legislation that will be applicable even after the epidemic.

The success of legislation cannot be ensured unless proper enforcement of the same is done. The evidence of poor enforcement is rarely found but one such evidence can be found in a report of Vidhi Centre for Legal Policy<sup>1</sup> which states that in the state of Haryana, no punishment has been ordered between the years 2010-2015. And more often than not, the complaints were not registered as First Information Reports. This raises a serious question over the enforcement of legislation.

A solution to ensure that proper enforcement is done and the grievance of the healthcare workers is not left unheard, it should be mandatory for the head of an institution to lodge a complaint when a written grievance is received from a healthcare provider. Further, it should be made mandatory that details of the complaint are to be shared with the National President of the Indian Medical Association and the General Secretary of the Indian Medical Association. These organisations shall also be directed to keep a record and vigilance over the FIRs so registered.

### **COMPENSATION**

Compensation is an essential factor through which the confidence of the health care workers can be regained. However, the amount of compensation is a topic of wide disagreement. It is advisable that the amount be kept dynamic and no minimum or maximum limit is enforced. The final compensation should be calculated by granting the money spent on the recovery of the health care worker along with the amount which one such worker might have earned but failed to do so because of the harm caused (This factor shall be calculated based upon the average receipt over last one year.) Further, for the loss of properties, the compensation shall be provided based

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<sup>1</sup> *Violence against Healthcare Professionals in India: Recent Legal and Policy Issues*, Vidhi Centre for Legal Policy.

upon the market value of the property including the depreciation over the year and the loss caused for the period till the property is properly functional again (This factor keeps in mind the loss of property in private clinics and hospitals.) Such a hefty amount of compensation will be a proper deterrence against the miscreants.

### **CONCLUDING REMARKS**

While concluding the need for a comprehensive legislation to protect the health care providers from undue harm, the legislative barrier also needs to be addressed. The matter of Public Health falls under Entry 6 of State List, this raises a difficulty in the formulation of central law for the same. However, the Centre may resort to Article 249 in order to frame this law in the national interest. This importance of this legislation is more than clear. Even though several states have enacted a law in this matter, the instances of violence have not reduced. The law is needed for proper deterrence, compensation, enforcement and to bring the confidence of the health care providers in the protection of the law. This law is necessary to assure the health care providers about the sanctity attached to the service and the respect they garner for providing that service.