

## RESEARCH ARTICLE

### REDIFINING THE ROLE OF MEDICAL PERSONNEL IN RIGHT TO HEALTH AS HUMAN RIGHTS

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#### ABSTRACT

The concept of Right to Health as Human Right and incidents of violence against medical personnel is contradictory to each other. The Right to Health as Human Rights has been narrowed in perspective to understand it from a particular dimension that everyone is entitled to basic health care services and the state has to provide for it. But the most important dimension that the medical personnel who are concretising these through the mechanism of state to the ultimate beneficiary are not taken due care of. Such violence within hospital makes vulnerable all the medical staff and even the World Health Organisation has taken the cognizance of this grave situation and drawn out a global action plan to prevent this violence. The research methodology adopted in this paper is purely doctrinal in approach based only on secondary sources. Since there is no standard operating procedure (SOP) these leads to gross Human Rights violation meted out to the medical professionals. One of the important steps in prevention of this violence is to enactment of stringent legislation. Central government as well as many State Governments including State of Rajasthan and Maharashtra have enacted stringent laws against those indulging in violence against Health Care Workers. The need is to implement these Laws both effectively and efficiently to uphold Right to Health as Human Right and that no violence is done towards medical professional.

**Key words:** Human rights, violence against doctors, Indian Medical Association, World Health Organisation, Medical Services.

#### INTRODUCTION

In claiming Human Right from State, typically in the instance of Right to Health, three different stake holders need to be taken in to account, viz, The State, The Medical Personnel and the people of that State or in other words the ultimate beneficiary. The state is duty bound to provide medical services to each and every one of them, but the State has no other mechanism to do it other than utilising the role of Medical Personnel in this regard. In this circumstances, if the Medical Personnel's interest is not given due consideration, the working conditions of them get severely affected and they cannot devote themselves wholeheartedly, taking into account fundamental human psychology. Violence against medical personnel is the primary cause for not achieving the goal of Right to Health for all as these incidents shake the very core for which the medical personnel are dedicated and devoted to. Without securing their interest, right to health could not be achieved in its real terms.

**VIOLENCE AGAINST MEDICAL PERSONNEL:** Though the term violence against medical personnel is not defined anywhere, thus it is to be understood in the common parlance within the meaning of the law of the land. But it need not be limited to the straight jacket formulae as new forms of violence crop up and all these must be incorporated so that the violators could be punished by the law and the right to health as a Human Right could be achieved in its true terms. Moreover, there is a fundamental difference between the terminologies "violence against doctors" and "violence against medical personnel".

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The former implies only the doctor which is only a part of medical personnel and the latter implies the whole of the people involved in the process including office staff, nurses, and ambulance drivers and so on. Thus the focus is widened enough to encompass all of them as violence against any of them resemble violence against the whole community of medical personnel which results in violation of their human right. Moreover, the issue of violence against medical personnel is not only limited to the Indian context, but also is prevalent around the globe<sup>1</sup>. The earliest studies of violence against medical personnel from the USA dates back to the 1980s<sup>2</sup> and the Report suggest that 57% of emergency care workers have been threatened with a weapon<sup>3</sup>, and in United Kingdom, 52% of medical personnel reported violence<sup>4</sup> in one form or the other. A survey of 600 medical personnel in 2008 by the British Medical Association revealed that though one-third respondents had been a victim of verbal or physical attack in the past year, over half of them (52%) did not report the incident<sup>5</sup>. The Indian Medical Association (IMA) suggests that up to 75% of medical personnel have faced some kind of violence at work in the form of telephonic threats, intimidation, and verbal abuse, physical assault causing simple or grievous injury, murder, vandalism, and arson.

<sup>1</sup> Nagpal N. Incidents of violence against doctors in India: Can these be prevented? *Natl Med J India* 2017;30:97-100.

<sup>2</sup> Goodman RA, Jenkins EL, Mercy JA. Workplace-related homicide among health care workers in the United States, 1980 through 1990. *JAMA* 1994;272:1686-8.

<sup>3</sup> Kuhn W. Violence in the emergency department. Managing aggressive patients in a high-stress environment. *Postgrad Med* 1999;105:143-8, 154

<sup>4</sup> Pitcher G. BMA survey finds one-third of doctors attacked physically or verbally in 2007. *Ethics, Health and Safety, HR STRATEGY, Latest News, Occupational Health, Stress, Wellbeing*; 10 January, 2008

<sup>5</sup> Pitcher G. BMA survey finds one-third of doctors attacked physically or verbally in 2007. *Ethics, health and safety, HR strategy, latest news, occupational health, stress, wellbeing*. 10 Jan 2008.

Medical professionals who faced violence have been known to develop psychological issues such as depression, insomnia, posttraumatic stress, fear, and anxiety, leading to absenteeism<sup>6</sup>. Many have lost their clinics, injured themselves, lost lives, and also tarnished their reputation as a professional due to these incidents<sup>7</sup>. The provision for Right to Health is derived from Universal Declaration of Human Rights and Economic, Social, and Cultural Rights under Article 12, Para 1 and it provides that right of everyone to the enjoyment of highest attainable standards and of physical and mental health. Indian Constitution also in Article 39 (e) and Article 42 deals with regarding Health of workers. Moreover, Article 47 also provides that the state shall regard the improvement of public health as among its primary duties. In the case of *Consumer Education and Research Center vs. Union of India*<sup>8</sup> right to health and medical care is regarded as an integral part of right to life under article 21 and in the case of *Pashchim Banga khet mazdor samiti*<sup>9</sup>, it was held that failure on the part of the government hospital to provide timely medical treatment to a person in need of such results in violation of injured medical victim's right. In *CESC Ltd vs subhash Chandra Bose*<sup>10</sup> it was observed that health and strength of worker is an integral part of life under article 21.

### REDIFINING THE ROLE OF MEDICAL PERSONNEL IN RIGHT TO HEALTH AS HUMAN RIGHTS

The analogy on which this Research Paper is based on is the fundamental aspect of human behaviour. If a person's right is not secure, the person cannot work for upholding right of others that too where his own skill and expertise is to be exercised. The vulnerability of that person will affect his working condition and this is true in case of right to health as a Human Right where the role of Medical Personnel is involved. Earlier, the role of Medical Personnel was limited merely to provide medical services and there interest was never given due consideration. It was also understood and interpreted that the Right to Health as Human Rights is to provide for basic Health Care services and the role of medical personnel has not been chalked out clearly. But it is the need of the hour that the role of medical personnel in right to health as Human Rights should be redefined so that their Human Right is also protected and Right to Health could be achieved in its true terms. Thus, Right to Health as Human Right can only be achieved if the Medical Personnel are given due protection from violence against them. The role of Judiciary and particularly Supreme Court also could be discussed at this juncture. Most of the cases pertaining to this arena are of Medical Negligence and the issue of compensation. In recent episode of West Bengal and Bihar, the Apex Court approach was a bit reluctant as could be analysed from the conversation of the Bar and Bench regarding providing security to Hospitals. Thus the only remedy left at this juncture is to redefine their rights so that the sought objective of Right to Health could be achieved.

<sup>6</sup> Hobbs FD. Fear of aggression at work among general practitioners who have suffered a previous episode of aggression. *Br J Gen Pract* 1994;44:390-4

<sup>7</sup> <http://www.indianjpsychiatry.org/article.asp?issn=00195545;year=2019;volume=61;issue=10;spage=782;epage=785;aulast=Reddy> (last accessed on 8.2.2021)

<sup>8</sup> (1995) 3 SCC 42

<sup>9</sup> AIR 1966 SUPREME COURT P. 2426

<sup>10</sup> AIR 1992 SUPREME COURT P. 585. Also: *kirloskar brohers vs employee state insurance corporation* 1996, *state of Punjab vs Mohinder singh chawla* 1997

This redefining of rights could have both positive and negative aspect. As the positive aspects are already highlighted, the negative aspects are thus chalked out. One of the negative aspects could be that the medical personnel rights are so exhaustive and extensive that the sole object of giving them their due right becomes futile and these rights are misused at the cost of the people in general. Such situation could only be settled if the rights and duties of all the stakeholders are properly chalked out properly. At this Juncture the role of Judiciary also becomes prominent but it cannot be the only reason for which they must be deprived of their rights. Similarly all the arguments cannot justify this analogy that for any reason whatsoever may be, the medical personnel rights are not to be recognised and to be at a vulnerable position where their own life is at stake. Thus, Right to Health as Human Right can only be achieved if the Medical Personnel are given due protection from violence against them.

### CAUSES AND TYPES OF VIOLENCE AGAINST MEDICAL PERSONNEL

There are several causes for increasing violence against the medical personnel, firstly because they are regarded highly by the society, but due to some business mindedness of a certain number of them resulted in diminishing image of them. It is also to be taken into account that majority of them are not so. Secondly, insufficient health budget and poor quality healthcare is also a prominent reason. The overcrowding in government hospital along with dysfunctional equipments, shortage of staffs, with poor hygiene and sanitation depicts the ground reality. Violence against medical personnel is only an outer crust of the hollow health care service prevailing in India. Violence could be easily orchestrated in Indian healthcare establishments partly because security staff in hospitals is lacking and insufficient due to lack of funds. Thirdly, in India since the Insurance penetration is very low and the government provide only a limited resource for free healthcare and as such many incidents of violence occur at the time of billing. The increasing cost of health care is also a prominent reason for this. Fourthly, the perception that the over burdened judiciary cannot devote required time for law and order situation will not be given due consideration to grievances of the patient's relative. Moreover, this perception also plays a role that medical personnel being well connected will get away and hence resorting to violence. There is also a perception that the patient's attendants who assault medical personnel will go unpunished. Fifthly, especially the unfortunate death of a patient in some cases is given religious and caste colour by some miscreants, if the doctor belongs to a different caste or religion than the patient. This emotional turmoil due to death of a loved one

unfortunately is also used as an opportunity to demonstrate their political relevance by orchestrating violence at the clinical establishment. Sixthly, Unrealistic expectations due to low health literacy and its resultant in increasing expectation from patient that with modern medicine and technology medical personnel should be able achieve the impossible. Moreover lack of effective and efficient patient-doctor communication is also a reason for creation of mistrust among them resulting in violence against medical personnel. In discussing the type of violence against medical personnel in India it can be broadly classified into immediate violence and remote violence. Immediate violence is those that are accomplished under the heat of the moment and the remote

violence are the premeditated acts. Physical but non-injurious assault, physical assault causing injury in the form of simple and grievous hurt and vandalism and arson comes under the purview of immediate violence and telephonic threats and intimidation are remote in nature, but any of these leaves a dark scar in lives of medical personnel and their families for the rest of their lives and thus effects the realisation of right to health as a human right.

### PROPOSED SOLUTION TO CURB VIOLENCE AGAINST MEDICAL PERSONNEL

To solve this problem, this issue needs to be addressed from several perspectives. The International Bodies and particularly United Nation and World Health Organisation must come up with a convention or any other form of binding documents to be signed by the State parties to that effect that Right to Health as Human Right can only be achieved if the Medical Personnel are given due protection from violence against them. Along with it defining the term violence against doctor must also be concretised so that medical personnel all over the world are aware of their rights and feel secured that the state is bound to protect them. Moreover, the role of respective state parties along with role of Medical Personnel and Hospital Establishment and the modes of detailed Standard operating procedure must be chalked out so that reaction to such situation is lawful without any loss of life and property. The role Insurance in Health Sector must also be made mandatory so that right to health could be achieved effectively and efficiently.

From Governmental perspective, an expert committee should be established to evaluate the situation and to abide by its recommendation. Moreover, the Prevention of Violence against Medicare Persons and Medicare Institutions Bill must be passed in Parliament in urgency basis so that the violators could be punished. The Act must encompass within its purview not only doctors, but also nurses and other Para medic staff including the office personnel also involved in clerical role. The Government must make stringent laws for such violators in the form of non-bailable and cognizable and the terms of imprisonment and fine should also be in the form of deterrent measures. The draft of The Protection of Medical Service Persons and Medical Service Institutions (Prevention of Violence and Damage or Loss of Property) Bill, 2017, circulated to the states, includes clauses on penalty and recovery in case of loss/damage to property. It provides for the following provisions:

- ) Any damage or act of violence against Medicare professionals is an act punishable by law. Medicare professionals include (Doctors, nurses, paramedics, medical students, and hospital attendants/staff)
- ) Any damage to the property or the Institution of Medicare service is prohibited. Destruction of hospital beds, burning of ambulances, smashing medical stores is punishable by law
- ) Imprisonment to lawbreakers for a minimum period of 10 years and fine amount of INR 5 lakhs to be imposed if found guilty.
- ) Offenders of medical professionals/medical colleges can be cognizable or non-cognizable crime depending upon the offences committed.

- ) Damage to any medical devices and equipments is a punishable offence and the offenders are liable to pay twice the amount of the damaged equipment's cost.

In this regard, 19 states have already passed legislation pertaining to it and they are- Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Goa, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Puducherry, Punjab, Tamil Nadu, Tripura, Uttar Pradesh and West Bengal<sup>11</sup>. The Health and Family Welfare department of Gujarat, India submitted a bill in the assembly on "Prevention of violence and damage or loss of property in Medicare services"<sup>12</sup>. Through this bill, the government plans to make violence against doctors a cognizable and non-bailable offence, inviting stiff punishment Express News Service. Government may table bill this week to protect doctors. But enacting legislation is only a part and the effective and efficient implementation is altogether another dimension of it. While most states have similar punitive provisions, laws in Tamil Nadu and Puducherry seek to impose imprisonment for a minimum term of three years with maximum of ten years. The West Bengal Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2009 declares any violent act against doctors as cognizable and non-bailable offence, and imposes a punishment of imprisonment which may extend to three years and with a fine up to Rs 50,000 on those found guilty. But the recent violence against medical personnel in the West Bengal and Bihar speaks for itself as to the efficiency of this legislation and its implementation. It is demanded from Home Ministry by the Indian Medical Association that every hospital should be declared as safe zone with 3 layer security and other facilities of cctv and restricted entry of visitors. The issue of safe zone and 3 tier security depends on the feasibility of the overburdened executive but the minimum requirements of cctvs and restricted entry of visitors can be provided so that law and order situation in emergency basis if arises could be handled effectively and the violators could also be punished accordingly.

The Government must also increase the health budget so that the working conditions of the governmental hospitals could be improved. In Insurance Sector also, though certain governmental insurance are available these needs to be extended and the coverage should also be widened so that the benefits could be reaped by the patient and their relatives. Certain medical personnel such as Nurses and other Para Medic staff especially from North Eastern States are also discriminated against in other parts of the country. Though several enactments are there to protect their rights, these could not be mitigated and thus the only solution to this rampant problem is adopting the human right based approach and declaring that they are an essential component of medical entity and in this way their right could also be protected from gross violations. From the perspective of Medical Personnel and Hospital Establishment, the medical personnel must understand their limitation and must not adventure for experiment. Remaining within one's own capability and experience will not welcome unnecessary question regarding their knowledge and expertise. In this changing medical scenario, innovation and invention of new technology and

<sup>11</sup> <https://thewire.in/law/supreme-court-doctors-safety-petition-ima> (last accessed on 8.2.2021)

<sup>12</sup> The Indian Express 12 March 2012

medicine is rampant, but utilising these without necessary skill and expertise will call for further problems rather than solution. They must also take valid and informed consent from the patient's relative and along with it proper documentation is also required as evidence to be submitted as proof in court of law in case of any unfortunate and unforeseen contingencies. Moreover, restricting the entry of unnecessary and irrelevant public in the conspicuous parts of hospital premises must also be limited and restricted and crowd management techniques should be focused on. The development and working on Standard Operation Procedure (SOP) must be focused by the Hospitals.

Mock Drills also plays a prominent role in this aspect and the entire concerned person must be aware of their roles and duties in case of unfortunate and unforeseen contingencies. The concept of Hospital Insurance can also be worked on for insurance of the establishment as a whole.

## **CONCLUSION**

Thus this is an effort to identify the problems arising where the medical personnel are being met with violence very frequently. The time will be never ripe for this but it is an urgent situation where the world community has to decide to make a systematic change in the Right to Health as Human Right itself to avoid such unfortunate incidents. And the only solution is to redefining the role of medical personnel in right to health as human rights and are given due protection from violence against them.

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