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Original Review Article

Violence, Hate Speech, and Hostility Against the Healthcare Professionals in India: A Contemporary Legal Review

Suvidutt M S[a], Aditya Tomer[b]

[a] PhD Research Scholar (Law), [b]Additional Director, Amity Law School, Amity University Campus, Noida, UP, India. Pin-201313.

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Abstract

Background: Doctors, nurses, and paramedics are mistreated by impatient patients having prejudice, hatred and unruly behaviour. The recent COVID-19 pandemic has highlighted hate speech and hostility against healthcare professionals and workers. **Objectives:** To identify reasons for the abuse and violence. To examine the statutory provisions and judicial interpretations about protecting the rights of the healthcare professionals against hate speech, abuse and violence by the patients and their near relatives. To identify the shortcomings in the existing legal framework. **Methods:** Analysing and reviewing of research papers, articles, judgments, statistical studies, and news reports that are related to hate speech, abuse and violence against doctors and healthcare workers in the past ten years in India. **Results:** Although some states have legislated exclusive law about the present issue, instances of abuse, and violence have not been reduced, rather increased as seen after the COVID-19 pandemic. Therefore, there is a lack of deterrence in the existing penal law. **Conclusion:** Physicians who are victimised face a special kind of occupational vulnerability. Because general physicians work in a variety of therapeutic settings, the possibility of violence, hate speech, hostility is a legitimate issue. Because of the huge emotional, psychological, and financial implications of violence, it is a concern not for policy makers alone, but for everyone.

1. Introduction

The stress of practicing medicine might be exacerbated by the burden of prejudice for physicians who are cultural and religious minorities. Hospitals have procedures in place to safeguard employees against workplace discrimination at the hands of co-workers or superiors. However, when a patient is racist or prejudiced against a physician or other health care professional, there is sometimes

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*Corresponding author: Suvidutt MS, PhD Research Scholar (Law), Amity Law School, Amity University Campus, Noida, UP, India. Pin-201313. Email id: suvidutt@yahoo.com (M): +91-9999778751.

little remedy. Doctors and nurses, as well as paramedical personnel, mess boys, laboratory technicians, ambulance drivers, and security personnel, are among the healthcare professionals. Most of them have faced discrimination in some form or the other. Some might have faced verbal abuse and hate speech, while others faced physical violence, or both. What speech amounts to hate speech and in which context it is said, is a matter of dispute. Hate speech, while not universally accepted in definition, can be understood as the promotion, endorsement, and encouragement of vilification of others based on innate differences. Doctors are abused and at times assaulted; hospitals are damaged after a patient dies, and rioters are seldom prosecuted.[1]

2. Reasons Attributed

Certain internal medicine physicians engaged in the emergency department, on psychiatric wards, in drug misuse programs, and jails, are prospectively at higher risk. However, no matter where one trains or practices, there is always the risk of encountering an aggressive or dangerous individual. Reports of abuses and violence against physicians, sometimes resulting in serious injury or murder, have made headlines throughout the world in recent years. Several comparable incidents have been reported in India as well; nevertheless, this threat has received insufficient attention.[2] The form of such abuse in western countries has evolved subtly during the previous 40 years. In most European countries and Canada, the government pays for healthcare, and the patient's first point of contact with medical services is often with designated general practitioners who make house calls 24 hours a day, seven days a week; thus, there is no financial concern for medical treatment in these countries.[3] However, in the United States, while the grade of medical treatment may be excellent, it is expensive, primarily via payments to insurance and corporations or direct out-of-pocket costs.

A fundamental aspect of abuses against physicians in government and corporate hospitals is the perception that doctors are wrongdoing for financial gain or to evade their responsibilities. Anxiety and long waits before speaking with a doctor and the belief that the doctor is not paying enough attention to his or her patients all contribute to irritation, which can lead to abuse. In India, the majority of hospitals lack an effective complaint handling mechanism. Besides, the legal process takes an abnormal amount of time, mostly in India, aggravating the malady. The general public's perceived lack of respect for the medical profession, a widespread misunderstanding of how a busy tertiary care centre works (particularly triage), and unrealistic treatment expectations were also prominent reasons. If we look at how patient violence is classified in our nation, the majority of the time, it relates to verbal abuse, to the extent of hate speech, vandalism, and physical threat. In 2016, 41% reported being assaulted and 16% reported being battered at some point in their career by either a patient or a patient's relative. Many of these incidents occur during residency training when violence is considered "normal". The prevalence of violence against psychiatrists is highest in emergency rooms, prisons, and state hospital forensic units.[4]

Further, a 2019 study by Indian Critical Care Medicine reveals the extent of violence and its effects. The 2019 statistics show: "Out of 295 HCWs (Health Care Workers), 11 (3.7%) HCWs faced physical violence, whereas verbal abuse was faced by 147 (50%) HCWs. A higher number of incidents of physical violence (91%) and verbal abuse (64%) were faced by HCWs in the age group of 20-30 years. Verbal abuse was faced by 49.3% of nurses, 53% of junior residents, 61% of senior residents and 36% of consultants. Out of 158 incidents of workplace violence (WPV), the maximum occurred in ICUs (62.0%) and emergency (21%)." [5] These numbers only affirm that violence against doctors is not new and had subsisted well before the COVID-19 pandemic as well.[6] However, the recent sharp rise in such incidents is worrisome. It is of utmost importance to safeguard the health of society in the larger interest.[7] Given that our healthcare system is already in a precarious state, violence at this pace will only lead to several medico-legal and ethical consequences.

Multiple ethical issues were arising among healthcare professionals due to the limited supply of resources. As a result, health services have been faced with ethical dilemmas such as deciding whom to treat considering the shortage of resources and incompetence in providing treatment to every individual. This is against the principles of ethics like justice, non-maleficence, autonomy and the right to dignity irrespective of the helpless situation. Proper elucidation of the current situation is extremely essential to defend the treating doctors and paramedical staff who are pushed to serve society in

this vulnerable condition. This pandemic has not only brought significant changes in the lives of people but also for the medical fraternity and exposed the flaws of the healthcare system.[7]

3. Recent Judicial Observations

In the case of Jerryl Banait v Union of India,[8] the Hon'ble Supreme Court of India considered a matter in which physicians who went to test particular patients were assaulted and stoned. It made the following observation and directive: "The virus that is sweeping the country is a national disaster. In the aftermath of a disaster of this magnitude, all inhabitants of the country must act responsibly to provide a hand to the government and medical personnel in carrying out their obligations to control and battle COVID-19." It further held that "Doctors and medical personnel are also given police security when they visit locations to evaluate individuals for illness signs." The Hon'ble High Court of Jammu and Kashmir stated in a recent case of Azra Usmail and Others v Union Territory of Jammu and Kashmir[9] that such violence against doctors during the peak of the pandemic spread has grave repercussions such as the transmission of illness, endangering the lives of healthcare staff, and causing damage to public property. The court observed that "the professionals engaged in the treatment of COVID-19 patients and the prevention of infection would be working beyond the call of their usual tasks, as well as overtime." It further held that "it is vital to keep professionals dealing with COVID-19 concerns free of personal pressures and needs in order to assure their complete focus."

The case of Sanpreet Singh v Union of India[10] was another one in which the Hon'ble High Court of Uttarakhand ordered the Uttarakhand government to provide sufficient nutrition and care to healthcare practitioners who are involved in the fight against COVID-19 pandemic. The Hon'ble High Court of Kerala held in Abdul Naser v State of Kerala[11] that "In addition to causing pain and misery to physicians, assaults and violence against them have a negative impact on the care of all patients. It effectively brings all functions to a standstill, putting many people's health in jeopardy, which is a serious problem." There are always methods to handle these challenges in a balanced manner. The Court further held that three elements must be considered in instances while examining the plea for anticipatory bail. They are: i) The kind and severity of the doctor's/ hospital employee's injury, if any; ii) The amount of any damage to the property, if any; and (iii) The context in which the acts of violence were carried out. No physician, no matter how attentive or cautious, can predict when or which day or hour he or she will not be the target of an unjustified assault, malicious allegation, extortion, or claim for damages. As a result, general physicians are in an ethical dilemma: to perform or not to perform their obligations.

4. Statutory Provisions

Currently, the Indian Penal Code (IPC) establishes the broad criminal law that applies across India. These legal provisions in the existing penal code already address many of the components of "violence". However, it doesn't specifically mention violence against healthcare workers, nor does it define the term "hate speech". The IPC prescribes penalties for both wilfully inflicting harm and serious harm[12] and provides punishment for the same.[13] Besides, it stipulates that assault or the use of criminal force against any person resulting in harm is punishable under the law.[14] In addition, there is a special penalty for criminal intimidation.[15] In terms of property damage, the IPC stipulates penalty for mischief, which includes property destruction.[16]

While there is a dearth of national statistics on the enforcement of state-specific legislation criminalising violence against healthcare workers, information from a few states shows that prosecutions under these laws have been exceedingly rare. A study reveals that no one had been prosecuted under state statutes, and that in many cases, the complaints were not even filed as First Information Reports (FIRs).[17] FIRs were registered in certain situations. However, they were later dismissed after the aggrieved parties reached an agreement and a cancellation report was submitted with the local magistrate. While the Indian criminal court system's well-known sluggish speed has undoubtedly contributed to this predicament, the sheer absence of published judgments also suggests that existing State laws have experienced virtually little enforcement. This may have prompted medical professional groups like the IMA (Indian Medical Association)[17] to call for a federal statute to curb violence. However, it is unclear how enacting a new, central legislation will better address the issue of violence if current state laws are only partially enforced and structural faults in India's criminal justice system are not addressed. As the IPC didn't

define the word 'hate speech' nor any law in India, the Law Commission of India, as per the direction of the Hon'ble Supreme Court, proposed the Criminal Law (Amendment) Bill, 2017 to amend the IPC, and the Code of Criminal Procedure, 1973. It suggested insertion of two new Section (s), namely, Section 153C IPC and Section 505A IPC.[18]

In 2019, as a ray of hope, the Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019 was introduced in the Parliament. All types of violence that the new Bill seeks to criminalise were already covered by current IPC prohibitions. However, the Bill differs from current IPC provisions in terms of enhanced jail sentences and fine amounts. Unlike the IPC, which classified each of the offences (injury, serious harm, property damage, etc.) differently, the Bill classified all acts of violence against healthcare staff and clinical institutions as cognizable and non-bailable.[19] The said Bill sought to punish people who assault on-duty doctors and other healthcare professionals by imposing a jail term of up to 10 years. It was a legislation for the first time addressed violence against healthcare professionals at national level. It criminalised both the commission and incitement to commission of violence against healthcare professionals and damage to the property of clinical establishments.[20] Unfortunately, the Bill was stalled, citing reasons that the existing provisions under IPC already covered the elements of 'violence' as defined in the said Bill and another clarification given was that most of the States are having legislations like the Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2008.

After the COVID-19 pandemic, the Epidemic Diseases (Amendment) Act, 2020 was passed and it defines 'acts of violence' committed by any person against the healthcare service professional serving during an epidemic as one, which may cause, harassment, hurt, injury, a hindrance to services, damage to property or documents in custody. The statute also defines 'health care professional' and 'property', providing a wide ambit for better protection. **Section 2B** provides that no person shall indulge in any act of violence against a healthcare service professional or cause any damage or loss to any property during the epidemic. **Section 3 (2)** provides punishment for commission or abetment of commission of an act of violence. **Section 3 (3)** deals with committing an act of violence against a healthcare service professional, causing grievous hurt as defined in Section 320 IPC. When prosecuting a person for causing grievous harm to a healthcare service professional, the Court will presume that person is guilty of the offence unless the contrary is proved. Moreover, the statute states that in case of damage to any property or loss caused, the compensation payable shall be twice the amount of fair market value of the damaged property or the loss caused.[21]

5. The Way Forward

Doctors, nurses and paramedics are mistreated by certain patients having prejudice; hatred and unruly behaviour. Although no civilization exists without prejudice and hate, the difference could be minimized largely by social actions, the spread of awareness, and legal remedies. Doctors must be able to detect many types of violent conduct, address the clinical and institutional issues that both cause and result from patient aggression, and know what security measures to take in a risky scenario. Granting health care professionals and health care facilities with immunity from suit and civil liability for damages, alleged to have been sustained by an act or omission occurring in the course of providing health care services during the period of the COVID-19 emergency, provided the health care services were provided in good faith and damages were not caused by gross negligence, recklessness, or conduct with an intent to harm or discriminate.[22]

India's healthcare legislation and administration are in desperate need of correction. The current scenario is the result of a number of systemic forces. As previously stated, there are severe worries about public healthcare facilities' capacity to meet the healthcare demands of India's rapidly growing population. This also highlights the need for a deeper look at the government's healthcare policies, which are aimed at improving access and meeting patient requirements, as have been pointed to numerous malpractices in private healthcare facilities that have jeopardized patient rights.[23] While the Clinical Establishments (Registration and Regulation) Act, 2010 establishes basic criteria for healthcare establishments, it is currently only in effect in a few states and union territories.[24] As an outcome, the problem of violence against healthcare workers highlights the need to

delve further into the regulatory and governance difficulties that plague Indian healthcare.

Simultaneously, it is essential to address public perception. While the intricacy of India's healthcare system cannot be articulated in a few words, the day-to-day operations of hospitals and the everyday issues encountered by physicians may be communicated to the general population. This would assist patients become more aware of the limits that most healthcare professionals face today, as well as let them think on their own rights and responsibilities. Thus, media campaigns, public service announcements, and testimonials from doctors about the challenges they face on a daily basis in a hospital, what triage means, the desired etiquette of citizens in a hospital, and the type of punishment that would be applicable to perpetrators of violence in a healthcare setting should be broadcast on popular media.

There is a pressing need for structural reforms in medical education and healthcare delivery systems, just as there is a pressing need for citizens to modify their views. Patients and their kinfolk may be more empathic toward physicians if they are aware of the obstacles they confront, which may help to establish trust in doctor-patient interactions. Several prescriptions for averting violence against doctors have been provided in the literature, ranging from changing the curriculum of study to developing more communication skills, understanding by taking note of patients who may be violent, being cautious at violent venues, preparing to flee the scene if necessary, educating patients and their relatives, improving healthcare, and so on.[25]

6. Conclusion

While concluding the need for a comprehensive legislation to protect 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 laws on this matter, instances of violence have not been reduced. The law is needed for proper deterrence, compensation, enforcement, and to bring the confidence of health care providers in the protection of the law. This law is necessary to assure health care providers about the sanctity attached to the service and the respect they garner for providing that service.[26]

Physicians who are victimised by the individuals, for whom they care, face a special kind of occupational vulnerability. Because general physicians work in a variety of therapeutic settings, the possibility of violence, hate speech, hostility is a legitimate issue. Because of the huge emotional, psychological, and financial implications of violence, it is a concern not for policy makers alone, but for everyone.

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