VIOLENCE ON HEALTH CARE PROFESSIONALS AND ESTABLISHMENTS LEGAL FRAMEWORK

Introduction

- Deficit in Trust between Doctor and Patient
- Frightening New Epidemic
- The doctor to population ratio in India is 1 to 1456, far more than the WHO’s recommendation for 1 to1000

HEALTHCARE VIOLENCE

- Violence is much more common in healthcare than in other industries
- Violence in healthcare may take a variety of forms
- Violent events can happen with anyone
- Doctors are usually unprepared to face the episodes.
- Many ways to reduce the potential for violence & total episodes.
- One of the most serious problems in worldwide healthcare needs to be addressed in channelized way.

IMA STUDY

- key findings of the IMA study are: More than 75 percent of doctors in India have faced at least some form of violence, with 12 percent of such violence occurring in the form of physical attacks
- Escorts of patients have committed nearly 70 percent of such violence
- Nearly 50 percent of such violence has been reported from intensive care units (“ICUs”) or post-surgery
- Peak hours and the transfer of critical patients to other hospitals are most susceptible to violence.

study by Indian Critical Care Medicine

- A 2019 study by Indian Critical Care Medicine reveals the extent of the violence and its effects. The 2019 statistics show:
- *“Out of 295 HCWs, 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), maximum occurred in ICUs (62.0%) and emergency (21%).”*
- These numbers only affirm that violence against doctors is not new and had existed well before the pandemic as well.

Causes of Violence

- Other factors included drug addiction among patients or their relatives, overcrowding in hospitals, shortages of medicines and other hospital supplies, and poor working conditions of doctors. Another study again on violence against resident doctors at a tertiary care hospital in Delhi, asked resident doctors for their opinions on the cause of violent incidents. The most commonly cited cause of violence was ‘negative media guide’
- causes include overworked healthcare professionals who lack good communication skills and a general breakdown of trust between doctors and patients. Inadequate infrastructure at public health establishments and unethical practices within the private healthcare sector have precipitated this breakdown of trust

Legal Framework

- In India, currently, violence against healthcare professionals is addressed through a combination of general and special laws. General law, which applies throughout India, comprises provisions in the IPC while special laws comprise State-specific legislations that solely focus on violence against healthcare professionals
- nineteen States have already enacted their own laws that specifically address violence against healthcare professionals and establishments.

Law applicable during the Epidemic

- **The Epidemic Diseases (Amendment) Act 2020 is an amendment to the Epidemic Diseases Act 1897. The principal Act comes under the State List under Schedule VII and is pre-independence legislation.**
- The 2020 Amended Act 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. S**ection 3A** of the statute provides that the inquiry or trial must conclude within a year.

Who is a healthcare worker?

- According to this bill, healthcare personnel is a person who is at risk of contracting the epidemic disease while carrying out duties related to the epidemic such as caring for patients. They include:

(i) Public and clinical healthcare providers such as doctors and nurses

(ii) Any person empowered under the Act to take measures to prevent the outbreak of the disease and

(iii) Other persons designated as such by the respective state government.

- An ‘act of violence’ includes any of the following acts committed against healthcare service personnel:

(i) Harassment impacting living or working conditions

(ii) Harm, injury, hurt, or danger to life,

(iii) Obstruction in the discharge of his duties, and

(iv) Loss or damage to the property or documents of the healthcare service personnel.

Legislation To Deal With Violence Against Doctors

- Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.
- Addressed violence against healthcare professionals at the national level.
- It criminalised both the commission and incitement to commission of violence against healthcare professionals and damage to the property of clinical establishments
- However, it never saw the light of the day. The bill was stalled, citing reasons that the existing provisions under IPC already covered the elements of ‘violence’ as defined in the Draft Bill.

Overview of the Draft Bill

- The Draft Bill defined violence as meaning the following: “i. harm, injury, hurt, grievous hurt, intimidation to, or danger to the life of, a healthcare service personnel in discharge of duty, either within the premise of a clinical establishment or otherwise; or ii. obstruction or hindrance to a healthcare service personnel in discharge of duty, either within the premises of a clinical establishment or otherwise; iii. loss of or damage to any property or documents in a clinical establishment”
- It criminalised both the commission and incitement to commission of violence against healthcare professionals as well as damage to the property of clinical establishments.
- For violence , a punishment of imprisonment for a minimum term of six months extending up to five years and a minimum fine of fifty thousand rupees extending up to five lakh rupees was prescribed.
- For violence leading to grievous hurt, a punishment of imprisonment for a minimum term of three years extending up to ten years and a minimum fine of two lakh rupees which may extending up to ten lakh rupees was prescribed.
- Therefore, apart from a maximum punishment, the Draft Bill also provided for mandatory minimums. Further, the Draft Bill made the offence cognizable and non-bailable.

Azra Usmail and Others v. Union Territory of Jammu and Kashmir,2020

- *“the professional engaged in the treatment of COVID 19 patients and prevention of the infection would be working beyond the call of their routine duties and also overtime… In order to ensure full attention of the professional addressing the COVID 19 issues, it is necessary that they are kept free of any personal tensions and needs”.*
- *Jerryl Banait v. Union of India April 08,,2020*

- *“The WHO, along with the ILO and Public Service International, has come up with Framework Guidelines (“WHO Guidelines”) to address workplace violence in the health sector. These guidelines clearly lay down the responsibilities of employers and their organisations with respect to providing and promoting a violence-free workplace. These include ensuring the health and safety of workers, elimination of risks, routine assessment of the incidence of violence and its causes, developing policies, plans and monitoring mechanisms.”*

- **Interestingly, the United States has the Occupational Safety and Health Act of 1970 (OSH Act) provide a safer workplace to healthcare employees.** It focuses on preventing such hazards and risks through safety and health training, record-keeping, evaluation etc. And mandates that any failure on the part of the employer should also be met with appropriate consequences.

Recommendations

- Ensuring Accountability at the Workplace
- system for reporting incidents of violence or grievance redressal for doctors
- laws and policies globally are more inclined towards holding employers accountable to prevent and address workplace violence. The WHO, along with the ILO, ICN and Public Service International, has come up with Framework Guidelines (“WHO Guidelines”) to address workplace violence in the health sector
- Reforms in Medical Education
- structured longitudinal programme on attitude, ethics and communication (“AETCOM”)

- The World Health Organisation's **'Framework Guidelines for Addressing Workplace Violence in the Health Sector'** provides comprehensive guidelines to tackle special risks. They include protocols for informing staff that a colleague is away from the base, the approximate or expected time of return, emergency alarm systems, and emergency codes to request help without alerting the assailant.
- It recommends avoiding overworking for professionals. It also suggests maintaining a moderate or balanced approach and time at work, allowing professions to access means of communication.
- Importantly, it also suggests self-defence training for medical workers.

HEALTHCARE VIOLENCE

INTEGRATED APPROACH - Legal

Other useful provisions of the Indian Penal Code are for acts of -

- WRONGFUL RESTRAINT
- CRIMINAL FORCE AND ASSAULT
- OFFENCES AGAINST PROPERTY
- OFFENCE OF DEFAMATION
- OFFENCE OF CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

HEALTHCARE VIOLENCE

INTEGRATED APPROACH

Medical Council Level

MEDICAL CURRICULUM to include

- Team Development – Group Practice Modules
- Communication Skill Developments
- Communications & Documentation Awareness programmes
- Accreditation of Healthcare
- Awareness of Medical Protective Laws
- Inter-Personal Relationship Protocol Awareness