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THE PLIGHT OF HEALTHCARE WORKERS WITH AN EMPHASIS ON THE EPIDEMIC DISEASES (AMENDMENT) ORDINANCE, 2020

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Abstract

The Hippocratic Oath¹, dating back to 5th Century BC, has been considered to be the safeguard for the health of the public since ages now. But do the safeguards to protect the takers of this Oath suffice in their objective, is the real question. According to a study² by the Indian Medical Association, as many as 75% of the Healthcare Workers face violence in their professional lives. This violence isn't limited to their workplaces, but extends to the confines of their households, as seen during the COVID-19 Crisis. In addition to problems like shortage of PPE's, social stigmatization and ostracisation, they still face violence at their place of work.

After symbolic protests by the Indian Medical Association, the Government passed an Ordinance³ to amend the Epidemic Diseases Act, 1897. This paper aims at discussing the various sections of the Ordinance and how effective of a solution it might be for the protection of the frontline workers. It first discusses the terminology that is pertinent to legislations governing healthcare and then goes on to analyse the Epidemic Diseases (Amendment) Ordinance, 2020.

Introduction

India is still in need of a comprehensive legislation for the purpose of protection of Healthcare workers. Previous attempts to counter violence against healthcare professionals have been insufficient or not been passed by the Parliament. The Disaster Management Act of 2005⁴ lacked stringency in punishment, whereas the The Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019⁵ is still awaiting assent in the Parliament. Thus, the Healthcare professionals are left with no recourse other than

¹ https://www.nlm.nih.gov/hmd/greek/greek_oath.html

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7372195/>

³ <http://egazette.nic.in/WriteReadData/2020/219108.pdf>

⁴ <https://www.ndmindia.nic.in/images/The%20Disaster%20Management%20Act,%202005.pdf>

⁵ <https://main.mohfw.gov.in/sites/default/files/Draft%20Bill.pdf>

rebellion. In response to a silent protest by the healthcare professionals and the demand by the Resident Doctors' Association at All India Institute of Medical Sciences (AIIMS), The Epidemic Diseases (Amendment) Ordinance, 2020 was introduced as a temporary solution to the issue. But whether or not this is stringent or comprehensive enough is the question. The purpose of this paper is to discuss the Ordinance in light of the present circumstances and whether it is a permanent solution to the problem. The first section of the paper deals with a comparison of different terminology that is in usage when it comes to legislations governing healthcare professionals. Further, this is followed by a discussion of the Ordinance in brief which finally leads to a critical analysis of the legislation.

A Comparison of differing Terminology

To scrutinize the statutes governing healthcare workers, it is imperative to understand what the terms are inclusive of. Terms like 'Frontline Workers, or 'Healthcare Workers' might differ from the perspective of semantics. According to the World Health Report, 2006⁶ Healthcare Workers have been defined as people who have the common intention of enhancing and improving health, through different means. It is not a restrictive definition as it implies that parents nurturing and looking after their children also comprise of the Health Workforce. As the data pertaining to the Healthcare workers is restricted to people involved in the actual work, therefore it can be said that this definition is not clearly specified and is left open to interpretation. It is practically impossible to include people other than those involved in the actual work in the population of the Health Workforce as it could give rise to ambiguity and vagueness in certain situations where precise data is needed. Further, this would render the medical research pedagogy impractical to carry out as it would not be representative of the real workforce. Even though everyone aiming at enhancing health is worthy of recognition and appreciation, in my opinion, including them under the ambit of 'Healthcare Workforce' might not be the most feasible step.

In the Indian Context, Section 3(b) of the latest Epidemic Diseases (Amendment) Ordinance, 2020 gives a definition of 'Healthcare Service Personnel'. It must be noted that this definition has been given in the context of the prevalent COVID-19 Crisis. It includes anyone who might be at risk due to being in contact with the people affected, while performing their duties in the course of the Epidemic. It is a much more specific definition, unlike the definition by the World

⁶ <https://www.who.int/whr/2006/en/>

Health Organization. It includes Doctors, Nurses, Paramedical or Community Health Workers. It also includes any person empowered to prevent the spread of the disease or any person declared of importance through the Official Gazette. It is a more specific approach to defining Healthcare workers and what it is inclusive of. Overall, it is definitely clear that the 'Healthcare Workers' include frontline workers who aim at enhancing health through their skills and services to those in need of the same. Healthcare workers can also be defined as people who deliver to those with ailments, either directly as doctors and nurses or indirectly through being side helpers, etc.

The Epidemic Diseases (Amendment) Ordinance, 2020

The former Epidemic Diseases Act of 1897, which was enacted to combat the Bubonic Plague in the then Bombay, has evidently become redundant in the present scenario, considering that the needs of the society aren't similar to those 123 years ago. Some of the aspects it failed to consider were international travel by air, great inter-state migration as well as increased urbanization⁷. In the present context, the cases of violence against healthcare professionals are on the rise. In a response to this malpractice, the Resident Doctors' Association (RDA) at the All India Institute of Medical Sciences (AIIMS) wrote to the Home Minister to implement the Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019 which aimed at stringency in punitive measures pertaining to violence against healthcare professionals. While citing instances of violence against healthcare professionals as testament to the gravity of the situation, they went on writing that they were not afraid of the infections being spread, but rather they feared the abuse and assault from the Community they aim to treat. But, as Parliament is not in session, the Cabinet, passed an Ordinance through Article 123 of the Constitution to amend the Epidemic Diseases Act, 1897.

Section 5 of the Ordinance is a provision against violence against healthcare service professionals as well as damage or loss to the property whereas Section 6 provides the punishment for commission as well as the abetment of such acts. According to Section 6 of the Ordinance, a person who commits or abets such an act will be imprisoned for 3 months which may extend to 5 years, along with a fine ranging from 50,000 to 2 lakh rupees. Further, if the person causes grievous hurt to the healthcare personnel under Section 320 of the Indian

⁷ [https://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html#:~:text=The%20Epidemic%20Diseases%20Act%20was,epidemic%20diseases%20E2%80%9D%20\(5\).&text=The%20Governor%20General%20of%20colonial,for%20the%20control%20of%20epidemi](https://ijme.in/articles/the-epidemic-diseases-act-of-1897-public-health-relevance-in-the-current-scenario/?galley=html#:~:text=The%20Epidemic%20Diseases%20Act%20was,epidemic%20diseases%20E2%80%9D%20(5).&text=The%20Governor%20General%20of%20colonial,for%20the%20control%20of%20epidemi) cs.

Penal Code, then he will be subjected to imprisonment ranging from 6 months to 7 years, or a fine ranging from 1 lakh to 5 lakh rupees. State governments have also enacted the Central Ordinance while keeping in mind the punishment of 7 years. Justice Arindam Lodh, while deciding a case⁸ in the High Court of Tripura, held that acts of violence against Healthcare workers is not only detrimental to the safety, sentiment and security of the doctors, but rather the society and nation as a whole. Advocate G.R Mohan, through a Public Interest Litigation in the High Court of Karnataka⁹, argued that the State legislation¹⁰ governing healthcare professionals must be replaced by the Central Ordinance as it provided for a much stricter punishment. The Ordinance has been accepted by many states as it is one of the few legislations governing the abusers of healthcare workers and provides the longest punishment out of them.

Analysis of the Ordinance

Various works pertaining to the Ordinance have lauded it to be an effort by the Government in furtherance of protection of Healthcare Workers, but fail to see the implementation and its repercussions in the long run. Authors have argued that the present Ordinance is better than having no law in place¹¹, but is it really sufficient for our frontline warriors? First and foremost, as the name suggests, the first condition that is required to bring the legislation in action is an Epidemic itself. This undermines the problems that healthcare workers in the usual course of their lives. It is a conditional legislation which implies that it is applicable only in extreme conditions, such as the present one. When this situation subsides, the Act would cease to be in action and the healthcare workers would be left without any recourse in situations of violence and/or discrimination. The provisions before such a catastrophe and after it subsides, have not been taken into consideration. In the Press Release¹² by the Ministry of Health and Family Welfare, dated 22.04.2020, even though condemned violence against healthcare workers and explained the intolerance policy in situations like these, it must be noted that a part of the Release states that:

*‘The current Ordinance is intended to ensure that during any situation **akin** to the current pandemic, there is zero tolerance to any form of violence against healthcare service personnel*

⁸ Karnajit De V State of Tripura

⁹ https://images.assettype.com/barandbench/2020-04/aed7a8f4-7765-43e6-a450-ef5c43c52b18/WP_PIL_on_Epidemic_Diseases_Ordinance_2020.pdf

¹⁰ The Karnataka Epidemic Diseases Ordinance, 2020

¹¹ INVOKING THE EPIDEMIC DISEASES ACT, 1897 IN LIGHT OF THE EPIDEMIC DISEASES (AMENDMENT) ORDINANCE, 2020 (<https://ssrn.com/abstract=3627581>)

¹² <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1617327>

and damage to property.'

It is important to note that the word akin to the current pandemic implies similar situations of crisis. The statement leads to the conclusion that there is a zero tolerance towards violence against healthcare personnel, but, only in situations like the present one. This leaves out the tough situations that they face in everyday life, making most situations, situations of crisis for them. This raises the question as to whether the Government feels like the safety and rights of healthcare workers is not essential in perpetuity or not.

Further, it must be noted that under the Indian Penal Code, 1860, Healthcare Service Personnel have not been defined or included under Chapter II which deals with General Explanations. Even Section 21, which defines a 'Public Servant' does not include Healthcare Personnel within its ambit. This is not justified as the healthcare workers aim at improving lives and towards betterment of the public. Practitioners of such a serious profession determining life and death must be given due consideration and recognition in the legal context. Keeping aside private workers, even those working in Government institutions are not included under this definition, without justification.

This exclusion leads to even worse implications towards other provisions applicable to public servants. All provisions governing offences against Public Servants fail to govern healthcare workers due to this unfair exclusion. Section 333 of the Code, as observed by Mr. Tapesh Kumar Singh¹³, dealing with voluntary causing grievous hurt to deter a public servant from his duty, prescribes a punishment extending to ten years. This provision cannot be applicable to healthcare workers as a result of undue discrimination towards them. Even though Section 6 of the Ordinance provides for Grievous Hurt but the punishment it stipulates is a maximum of 7 years. Section 186 of the IPC talks about obstruction of public servant, but there isn't a similar provision for healthcare workers. Further, even a threat of injury to public servant under Section is punishable by 2 years under Section 189 and there is no similar provision to deal with healthcare workers. Even assault or criminal force to deter a public servant from his duty is punishable by 2 years. These provisions are stringent in dealing with public servants but indiscriminately leave out healthcare workers. The void left must be filled with a comprehensive legislation as stringent as the The Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019, if not more. The

¹³ Livelaw critique of the Ordinance link

unjustified opposition to passing the Bill by the Home Ministry was seen during inter-ministerial consultations¹⁴.

These provisions, even though stricter than the punishment provided under Disaster Management Act of 2005 which prescribes a maximum punishment of two years, are still not as strict as the Health Bill of 2019, which provides the maximum punishment of 10 years.

Even though the suggestive measures and causes for this form of violence have been reinstated¹⁵, the need for a comprehensive legislation and relevance of enacting already existing Bills has not been emphasized enough. Also, the awareness of legislations in the medical fraternity is limited which leads to a poor implementation of provisions¹⁶.

Conclusion:

India is in the dire need of a comprehensive legislation as the Epidemic Diseases (Amendment) Ordinance, 2020 fails to be stringent enough to protect our frontline warriors. It cannot be considered to be a permanent solution to the misfortune that the Healthcare Service Personnel have to face in their day to day lives, once this critical situation subsides. Sections 5 and 6 of the Ordinance, even though stricter than previous state legislations, still does not embark upon the punishment as laid down under The Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019. The Rule of Law must prevail while governing the problems faced by healthcare workers¹⁷.

Further, the World Health Organization provides for guidelines to deal with workplace violence in the Health sector.¹⁸ These are detailed guidelines covering all aspects relating to the issue at hand. The guidelines might prove to be helpful if taken in consideration while framing a separate, comprehensive, and unconditional legislation or policy which helps protecting our protectors.

¹⁴ <https://criminallawstudiesnluj.wordpress.com/2020/05/13/covid-19-xv-atrocities-against-healthcare-workers-why-india-needs-a-comprehensive-legislation/>

¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079199/>

¹⁶ https://corporate.cyrilamarchandblogs.com/2020/06/the-epidemic-ordinance-2020-an-opportune-armour-for-the-protectors/#_ftn8

¹⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079199/>

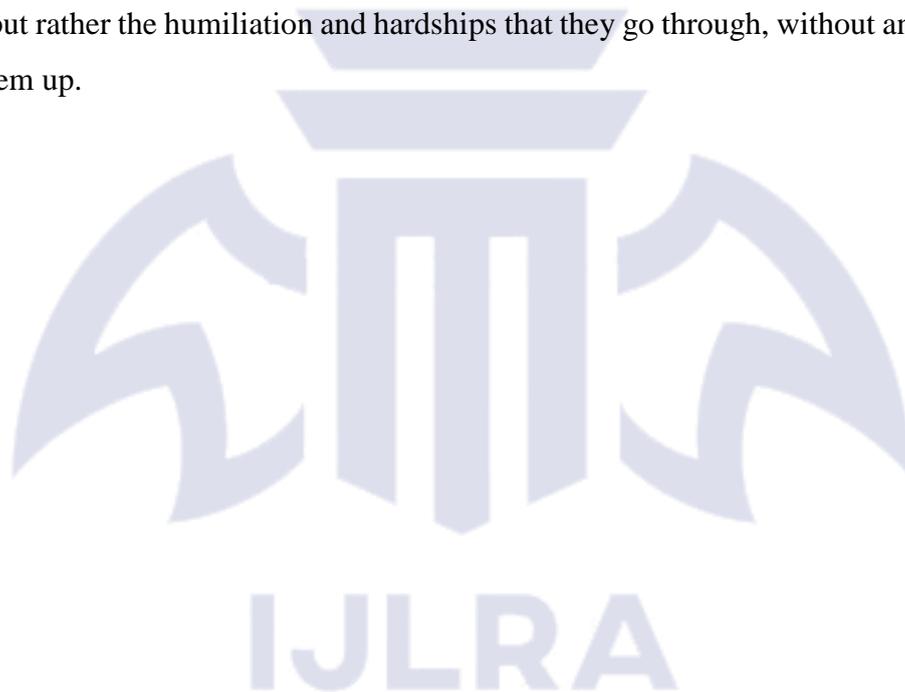
¹⁸ https://www.who.int/violence_injury_prevention/violence/interpersonal/en/WVguidelinesEN.pdf?ua=1&ua=1

Suggestive measures to curb the problem have been discussed in detail¹⁹ but they will all be rendered impractical if they aren't backed up by authority through a detailed legislation for the same. Enactment of the Healthcare Bill of 2019, that is pending before the Parliament presently seems to be the most feasible solution to the problem that other legislations have failed to address.

While criticizing the tyrannical measures by the then Government to deal with the bubonic plague of Bombay, Bal Gangadhar Tilak stated:

'Plague is more merciful to us than its human prototypes now reigning the city.'

This seems to be the case for our warriors within borders who aren't scared of the virus anymore, but rather the humiliation and hardships that they go through, without any legislation backing them up.



¹⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5079199/>