EXIGENCY FOR A PROTOCOL FOR PRODUCING PEOPLE IN CUSTODY BEFORE MEDICAL PRACTITIONERS

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ABSTRACT

A study by the Indian Medical Association (IMA) revealed that more than 75 per cent of doctors have faced violence at work. Physical violence against healthcare personnels in their line of duty is detrimental to the well-being of the society. Not having sufficient protocols to protect the lives of those who work to save the lives of the public is reprehensible.

Assault against medical professionals by those in police or judicial custody is deemed to be a matter of systemic failure. Lately, the murder of Dr. Vandana Das and the attack on the hospital staff in Kerala has gained national attention due to the callousness and misgovernance of the State. There is deep concern about the safety of healthcare personnels as the existing laws, regulations or protocols do not aptly lay down a systematic procedure for producing people in custody before medical practitioners and dreaded criminals are cut loose, endangering the lives of the life savers.

Violence against medical professionals has increased over the years across the world. While some countries and some states within India have enacted laws for protection of medical practitioners, it is hardly utilized by the law enforcement authorities. It also does not explicitly address the manner in which people in custody shall be presented before medical practitioners, thereby risking the lives of the medicos who cater to their health requirements. This establishes the need for a protocol for presenting the people with a criminal or disturbed state of mind before medical practitioners.

Keywords: Medical practitioners; Workplace violence; Healthcare; Criminals; Legislation; Protocol; State; Patient aggression.

CHAPTER 1: General Mentality of People in Custody

An analysis of the mental health of police custody detainees evidences that there is a high rate of mental disorders observed in the detainees. Studies indicate that there is prevalence of mental illnesses such as suicide tendency, substance abuse, anxiety, psychotic disorders etc. among detainees. While a significant proportion of detainees suffer from mental health issues prior to the detention, many develop mental disorders during detention. A disturbed state of mind causes the person to be violent/ aggressive and deviates from the desirable forms of behaviour established legally as well as normatively.

According to the 'Prison Statistics India' report by the National Crime Records Bureau, there is 22% increase in the number of mentally ill jail inmates[1]. It can be inferred that detainees and jail inmates in general experience a distressed state of mind. This causes them to undertake actions that are violent and intolerable. It is observed that detainees and prisoners tend to indulge in violent practices against those in authority, their inmates as well as any other person they encounter. Being detained, the person loses his /her dignity in society. Even if the person is an undertrial prisoner, the society tags him/her as a criminal due to the detention. This instils an aggressive nature, making the person willing to do any act for ulterior motives. As a result, detainees and convicts often indulge in consequent offences.

Studies indicate that prisoners have high level of dependence on drugs or alcohol. Furthermore, people with mental health problems are more likely to be jailed.[2] Therefore, mechanisms should be adopted to address the mental health requirements of the detainees. It is very likely that the detainees may adopt any kind of violent measures to free themselves from the custody of police. Hence, adequate safety protocols shall be implemented to ensure the safety of the people who get in contact with them including police officials and medical practitioners who treat them.

Reports and news channels exhibit numerous instances of violent attacks on police officials by people who are to be arrested or by those already in custody and seeking ways to escape. It is

[1]Ambika Pandit / TNN / Sep 11, 2022, *22% rise in number of mentally ill jail inmates: NCRB: India News - Times of India*, *The Times of India*. Available at: https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/articleshow/94124324.cms (Accessed: 02 October 2023).
[2]Ambika Pandit / TNN / Sep 11, 2022 , *22% rise in number of mentally ill jail inmates: NCRB: India News - Times of India*, *The Times of India*. Available at: https://timesofindia.indiatimes.com/india/22-rise-in-number-of-mentally-ill-jail-inmates-ncrb/articleshow/94124324.cms (Accessed: 02 October 2023).

observable that in many circumstances, despite being armed, the police officials are severely wounded. In this background, it is simply assumable how unsafe medical professionals are while treating the detainees that the police bring before them. The lack of protocols for their protection, endanger the life of 'lifesavers'.

Innumerable incidents of violence against medical practitioners are reported on a daily basis across India. While not all of them are by detainees, the probability of them being grievously injured by those in police custody has increased over time. The harm that can be caused by the detainees is presumably more intense. Therefore, addressing the mental health requirements of detainees and establishing protection framework for medical practitioners is of utmost importance.

CHAPTER 2: Lack of Protection for Medical Professionals Dealing with People in Custody

In India, the inadequate protection afforded to medical professionals when dealing with individuals in custody stands as a critical concern that demands urgent attention. The inherent challenges faced by healthcare workers in such scenarios highlight the pressing need for comprehensive safeguards to ensure their safety and well-being.

The nature of the work undertaken by medical professionals in attending the individuals in custody is inherently complex and fraught with potential risks. Whether attending to inmates within correctional facilities or responding to emergencies involving individuals in police custody, these healthcare providers navigate a delicate balance between their duty to provide medical care and the potential hazards associated with the environment. Unfortunately, the existing framework falls short in providing them with the necessary protections, thereby exposing them to various vulnerabilities.

One glaring issue is the lack of specific guidelines and protocols that address the unique challenges faced by medical professionals in custody settings. The absence of standardized procedures can contribute to confusion and inefficiencies, potentially jeopardizing the safety of healthcare workers. Establishing clear, comprehensive protocols that outline the roles, responsibilities, and safety measures for medical professionals in custody situations is imperative. Such guidelines should not only address routine medical care but also encompass emergency situations, ensuring that healthcare providers are equipped to handle a spectrum of

scenarios with confidence and efficacy.

Furthermore, the issue of insufficient training for medical professionals in custody-related matters exacerbates the risks they face. In many instances, healthcare workers may not be adequately prepared to navigate the complexities of working within correctional facilities or dealing with individuals in police custody. Robust training programs should be instituted to equip medical professionals with the necessary skills and knowledge to handle the unique challenges of providing healthcare in custody settings. This includes training on conflict resolution, de-escalation techniques, and understanding the specific mental and physical health needs of individuals in custody. When India as a country fails to ensure the protection of the lives of healthcare professionals, thereby jeopardizing their right to life under Article 21[3], the most viable solution is the implementation of self-defence training programs. In contrast to the situations of police officials, army personnel, and other public servants who enjoy a protective umbrella, medical professionals appear to be excluded from such safeguards.

While police are considered the first line of defence in conflicts within the territory and the army in border areas, medical professionals function as the first line of defence against medical emergencies to save lives. Despite their critical role, they seem to lack legislative protection. In the absence of dedicated legislation, providing self-defence training akin to police and army personnel becomes imperative. Just like these two groups, healthcare professionals preserve the lives of others by putting their lives at risk. This irony raises a critical question about the necessity for legislative measures to ensure the protection of medical professionals.

The physical safety of medical professionals is also a paramount concern. Inadequate security measures within correctional facilities or the absence of dedicated personnel to ensure the safety of healthcare workers can expose them to unnecessary risks. Implementing stringent security measures, including the presence of trained security personnel, surveillance systems, and emergency response protocols, is crucial to creating a safe working environment for medical professionals in custody situations. As exemplified in the case of Dr. Vandana, despite the presence of security personnel (police), the unfortunate incident unfolded. To address the issue of inefficient security personnel or their unavailability, a potential solution could be the establishment of a dedicated team of healthcare professionals within the police department. Similar to the structure in the army, navy, and air force, this specialized medical team could be

[3] *Ind. Const. art. 21.*

entrusted with the responsibility of treating and conducting medical check-ups for both the undertrials and the convicts.

Moreover, the lack of legal protections for healthcare providers in the event of adverse incidents further compounds the challenges they face. Legal frameworks should be reinforced to explicitly outline the rights and protections afforded to medical professionals. This includes provisions for legal representation, indemnification against unjust legal actions, and a clear delineation of responsibilities between healthcare providers and law enforcement agencies.

The Epidemic Diseases Act, 1987[4] mentions about the prohibition of violence against the healthcare service personnel, but it is a matter of concern that the legislators think that the healthcare personnel face life-threatening situations only during the outbreak of epidemic diseases.

CHAPTER 3: Analysis of the Murder Case of Dr. Vandana Das from Kerala

Dr. Vandana Das, the only child of her parents was a native of Kottayam district in Kerala. She was a house surgeon at Azeezia Medical College Hospital and was working as an intern at the Kottarakkara Taluk Hospital as a part of her training. On 10th May 2023, she was on duty in the casualty ward when Sandeep was brought in by the police.

Early in the morning, at about 4:30 am, Sandeep was brought to the Kottarakkara Taluk Hospital by the police for the examination of a wound he had on his leg. He is an Upper-primary School teacher with a history of alcoholism and substance abuse. Sandeep was taken in custody by the police in connection with a brawl between him and his neighbours. He had sustained injuries in the clash and dialled the police saying that he feared that there was a threat to his life.

The nursing staff and house surgeons on duty took Sandeep to the treatment room for dressing the wound. The policemen who accompanied him to the hospital stayed outside the room. Dr. Vandana was handling Sandeep's case and after dressing his wounds, she had gone to her Senior to update her on the medical case. During her absence, Sandeep turned violent at the dressing table and grabbed surgical scissors from there. He went on to attack his relative Binu, who was standing with the policemen. Sandeep stabbed Binu, Alex Kutty (home guard of

[4] *EDA. § 2B (2020).*

Pooyapally Police Station), Sub-inspector Baby Mohan and Assistant Sub-inspector Manilal. He then went on to attack everyone who came in front of him.

Almost all the people in the hospital ran outside or locked themselves up in one of the rooms there. However, Dr. Vandana who was with the Medical Officer was unaware of the happenings. She along with the Medical Officer came out of the room without knowing what was happening. Sandeep then went on to attack Dr. Vandana who could not escape to safety. She was stabbed 11 times and had 6 serious stab wounds in the neck, head, spinal cord, abdomen and chest. Although Dr. Vandana was shifted to the ventilator, she succumbed to death.

The incident could have been prevented if Sandeep was handcuffed. The new medico-legal protocol that discourages police officials from being present in the treatment room during medical examination of a person in custody also appears to have prevented the police from reacting immediately.

Even though the murder of Dr. Vandana Das is a rare case, attacks against health care workers are not uncommon. On 10th May, a patient attacked a nurse in Kottayam Government Medical College Hospital while administering medicine. On the same day at night, a drunkard stormed into Government Hospital Kasaragod after stabbing a man and created violent scenes. However, the hospital staff did not get any police support. The same night, a man turned violent in Nedunkandam Government Hospital, Idukki. Even in this case, there was a complaint that there was no police protection. Therefore, it is evident that lack of police protection is a severe issue that requires immediate redressal.

The High Court took up the case of Dr. Vandana and slammed the State Government and the police for failing to protect the doctor. The High Court termed the killing as an outcome of "systemic failure" and directed the police to come out with fresh protocols for ensuring safety of those working in the healthcare and health science education fields.[5]

[5] *Dr Vandana Das murder case: Crime branch submits charge sheet, says murder was deliberate* (2023) *English. Mathrubhumi*. Available at: https://english.mathrubhumi.com/news/kerala/dr-vandana-das-murder-case-crime-branch-submits-charge-sheet-says-murder-was-deliberate-1.8781494 (Accessed: 13 November 2023).

CHAPTER 4: Existing Legislations for Protection of Medical Professionals

In ancient tales, it is said that Asclepius, the God of healing in Greco-Roman mythology, met his demise when Zeus, fearing the potential immortality bestowed by Asclepius's healing powers, struck him down with a thunderbolt.[6] Drawing a parallel, contemporary Indian doctors are bestowed with a similar god-like reverence,[7] yet paradoxically find themselves vulnerable to threats from the very people who hold them in high regard. Recent reports highlight a discernible uptick in violence against healthcare professionals, revealing a notable gap in systematic data regarding the frequency, geographical distribution, and specific vulnerabilities of healthcare establishments and personnel. Understanding these dynamics is imperative for devising targeted strategies to address the escalating challenges faced by healthcare practitioners.

In a scenario reminiscent of the Dr. Vandana case, a similar situation unfolded in a government hospital in Kandivli, Maharashtra in 2019. This incident, however, escaped media attention as there were no casualties involved. A 29-year-old woman, reportedly intoxicated, was apprehended by the police following a skirmish with unidentified individuals. Subsequently, she was brought to the hospital for a medical examination, where she proceeded to assault doctors and nurses, attempting to vandalize the emergency ward. Despite warnings, she not only mistreated the medical staff and security personnel but also went to the extent of choking a nurse. As a result, she was sedated, referred for psychological evaluation, and subsequently arrested.[8]

The occurrences in both 2019 and 2023 underscore the imperative need for legislative measures designed to safeguard the welfare of medical professionals. In the context of India, the mitigation of violence against healthcare providers is predominantly facilitated through a dual framework: firstly, under the purview of the Indian Penal Code (IPC), and secondly, through the enactment of state-specific legislations. The sections articulated in the Indian Penal Code

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[6] *Encyclopaedia Britannica, 'Aesclepius'.* Available at: https://www.britannica.com/topic/Asclepius (Accessed: 11 November 2023).

[7] *For testimony about the uneasy neck that wears the stethoscope, see Vijaya Lalwani, 'Patients think we are god': As medicos strike, a doctor and a patient in Delhi share their stories' Scroll.in* (18 June 2019). Available at: 'Poor infrastructure', 'staff shortages': In Delhi, a doctor and a patient tell their tale (scroll.in) (Accessed: 11 November 2023).

[8] Sadguru Pandit, *Strike at Kandivli hospital for 4 hours after 29-year-old woman assaults doctors, staff*, HINDUSTAN TIMES, *Jun. 21, 2019 https://www.hindustantimes.com/mumbai-news/strike-at-kandivli-hospital-for-4-hours-after-29-year-old-woman-assaults-doctors-staff/story-Lt0mTCLnst9MPFXcDkUM1K.html* (Accessed: Nov 11, 2023) https://www.hindustantimes.com/mumbai-news/strike-at-kandivli-hospital-for-4-hours-after-29-year-old-woman-assaults-doctors-staff/story-Lt0mTCLnst9MPFXcDkUM1K.html

(IPC) are broad in nature and do not specifically target instances of violence within the healthcare realm. These encompass general legal terms such as 'hurt,'[9] 'grievous hurt,'[10] 'assault,'[11] and the like. Consequently, there was a burgeoning demand for the establishment of explicit legal provisions that designate acts of violence against healthcare professionals as criminal offenses. In response, almost twenty three states introduced their own laws tailored to address and penalize violence directed at healthcare professionals and institutions.

The Draft Bill, for the first time, tackled the issue of violence against healthcare professionals nationally. It classified both the commission and incitement to commit violence against healthcare professionals, as well as damage to clinical establishments,[12] as criminal offenses. Regarding acts of violence, the specified punishment included imprisonment for a minimum term of six months, extending up to five years, and a minimum fine of fifty thousand rupees, extendable up to five lakh rupees.[13] In cases resulting in grievous harm, the proposed penalty involved imprisonment for a minimum term of three years, extendable up to ten years, and minimum fine of two lakh rupees, extendable up to ten lakh rupees.[14] Thus, beyond stipulating maximum penalties, the Draft Bill also mandated minimum sentencing. Furthermore, it declared the offense as cognizable and non-bailable.

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."[15]

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[9] *IPC, § 319 (1860).*
[10] *IPC, § 320 (1860).*
[11] *IPC, § 351 (1860).*
[10] *§ 5, Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.*
[11] *§5, Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.*
[14] *§5, Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.*
[15] §3(d), Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019.

Therefore, the definition of violence had three main components i.e. physical hurt or harm to healthcare service personnel, obstruction to the discharge of their duties and loss or damage to the property of the clinical establishment.

Shedding light on the evolution and challenges surrounding the 'Draft Bill' is essential, particularly considering its significance in providing a legal shield for medical professionals. Examining the reasons behind the bill's failure to advance provides valuable insights into the precarious situation faced by medics without proper legal safeguards.

In 2019, a draft bill named 'The Healthcare Service Personnel and Clinical Establishments (Prohibition of Violence and Damaged Property) Bill' was introduced by the government, aiming to criminalize violence against healthcare personnel and institutions. Despite its potential impact, the bill was withdrawn before parliamentary consideration due to concerns about future similar requests from other professions and the belief that existing provisions in the Indian Penal Code and Code of Criminal Procedure were sufficient.[16]

The COVID-19 crisis prompted legislative action, resulting in the 'Epidemic Diseases (Amendment) Act of 2020.' However, this act failed to address the comprehensive threats faced by medical professionals, such as inadequate safety, hygiene, prolonged working hours, delayed salary payments, and the absence of provisions for healthcare coverage in case of epidemic-related illnesses.

Responding to these shortcomings, Mr. Shashi Tharoor MP introduced a private bill in the 2023 monsoon session of Lok Sabha – 'The Healthcare Personnel and Healthcare Institutions (Prohibition of Violence and Damage to Property) Bill, 2023.' This bill aims to make all forms of violence, including verbal abuse and property damage against healthcare personnel, non-bailable and cognizable offenses. It broadens the definition of 'healthcare personnel' to include paramedical students, administrative staff, and ASHA workers. Additionally, the bill sets specific timeframes for case investigation and the adjudication process, proposing the establishment of designated special courts in each district for swift trials.Another crucial point

[16] PTI, *MHA opposition puts bill to check violence against doctors on backburner* , THE ECONOMIC TIMES, Dec. 15, 2019, MHA opposition puts bill to check violence against doctors on backburner Read more at: https://economictimes.indiatimes.com/news/politics-and-nation/mha-opposition-puts-bill-to-check-violence-against-doctors-on backburner/articleshow/72677503.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (Accessed: 11 November 2023).

to consider is that this bill was introduced in response to the Vandana Das case. Its potential enactment holds the promise of acting as a deterrent against violence, fostering a secure professional environment for healthcare practitioners. The proposal to name it the Vandana Das Act, in honour of Dr. Vandana, adds a meaningful dimension. Furthermore, it could potentially set a precedent for state-level laws, offering a comprehensive approach to addressing parallel issues.

In addition to the Draft Bills presented in Parliament with the goal of establishing national legislation, several states, such as Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttarakhand, and West Bengal, have enacted legislation to protect healthcare service personnel. Most state Acts define healthcare service personnel to encompass registered doctors, nurses, medical and nursing students, and paramedical staff. Additionally, these Acts characterize violence as actions causing harm, injury, endangering life, intimidation, obstruction to the ability of healthcare service personnel to discharge their duties, and loss or damage to property within healthcare service institutions. Across all states, these Acts uniformly prohibit: (i) any act of violence against healthcare service personnel, or (ii) damage to property within healthcare service institutions. In majority of the states, engaging in these prohibited activities renders an individual liable to imprisonment for up to three years and a fine of up to fifty thousand rupees. Notably, in specific states like Tamil Nadu, the maximum prison sentence may extend up to ten years.

In instances where State-specific laws criminalizing violence against healthcare personnel exist, there is a notable dearth of nationwide data on their enforcement. Limited evidence from certain States suggests an exceptionally low rate of prosecutions under these laws. For example, the Medico Legal Action Group Trust sought information through the Right to Information Act, 2005 from senior superintendents of police in Punjab and Haryana, where such laws have been in effect for over nine years. The inquiries, covering the period from 2010 to 2015, revealed that no individuals had been penalized under these State laws. In many cases, complaints were not even officially registered as First Information Reports (FIRs).[17]

In instances where FIRs were lodged, they often ended in cancellation after a compromise was

[17] Neeraj Nagpal, *'Incidents of violence against doctors in India: Can these be prevented?' (2017) 30(2)*, The *National Medical Journal of India97-100.* (Accessed: 13 November 2023).

reached between the involved parties, leading to the filing of a cancellation report with the local magistrate. Moreover, searches on legal databases like Manupatra yielded minimal reported judgments on State legislations. The few available judgments predominantly focused on bail applications or compensation claims, rather than actual prosecutions under these laws. While the recognized sluggishness of the Indian criminal justice system may contribute to this scenario, the scarcity of reported judgments also suggests that State laws have seen limited enforcement. This circumstance has fuelled calls for a comprehensive Central law to address violence against healthcare professionals, as advocated by medical organizations such as the Indian Medical Association (IMA).[18]

Considering a Central law for addressing violence raises questions about its efficacy, especially when existing State laws have struggled with enforcement.

CHAPTER 5: International Provisions for Protection of Medical Professionals

The World Health Organization, International Labour Organisation, International Council of Nurses and Public Services International jointly developed the "*Framework Guidelines for Addressing Workplace Violence in The Health Sector*[19]" to facilitate the development of policies for prevention of violence against health care workers.

The document outlines the general rights and duties of governments, employers, workers, professional bodies and enlarged community in addressing the issue of violence against healthcare workers. It also details the multi-faceted approaches including preventive, participative, systematic as well as culture /gender sensitive and non-discriminatory approach to tackle the issue. The document explains the process of identifying the people who are at risk and those who are likely to be the perpetrators, analysing the available information and what are the possible interventions to address the problem. All countries, including India are expected to adopt the framework domestically and implement autonomous instruments specifically targeting violence against healthcare workers in a manner suited to the distinct cultures, situations and needs.

In most of the countries, criminals or suspects are normally handcuffed and there are police

[18] Neeraj Nagpal, 'Incidents of violence against doctors in India: Can these be prevented?' (2017) 30(2), The National Medical Journal of India97-100 (Accessed: 13 November 2023).
[19] *Framework guidelines for addressing workplace violence in the health sector*, *World Health Organization*. Available at: https://www.who.int/publications/i/item/9221134466 (Accessed: 13 November 2023).

officials who stay with them during the treatment in ordinary cases. In the US, patients who are in custody are commonly shackled with metal chains and cuffs throughout the duration of their treatment. Healthcare professionals rarely unshackle the patients in custody during regular hospital care. In the UK, such people are treated similarly as in US, with two or more police guards and they are handcuffed whenever possible. This practice is not commonly found in India, thereby posing a threat to the lives of the healthcare workers as can be seen in the case of Dr. Vandana Das.

In China, workplace violence against medical practitioners has been made punishable since 1st November 2015 as per the Criminal Law of China. Additionally, the Chinese government has approved a law to regulate health-care services, which includes provisions for preventing patient-initiated violence against healthcare workers.

Similarly, in 2019, the UK Government introduced the NHS violence reduction strategy. It doubled the maximum sentence for violence against emergency services staff from 6 months to 1 year and provided clarification on organisational responsibilities and improved staff training for dealing with violence and abuse.

In the USA, a handful of States have enacted laws for protection of healthcare workers. Other States have responded to violence against healthcare workers by increasing the criminal penalty for the offence. For instance, in Washington, the Legislature has enacted laws which require development and implementation of a workplace violence plan and maintenance of records of violence against employees in the health-care setting.

It is essential that India draws inspiration from the framework set out by the World Health Organisation and the examples of other countries to establish a protocol for protection of those working in the healthcare system. The numerous cases of attack against medical practitioners in India and its consequences should be seen as a matter requiring immediate redressal.

CHAPTER 6: Possibility of a National Protection Framework and the Need for a Protocol for Protection of Medical Professionals

In the constitutional framework of India, the Union and the States are the architects of governance, meticulously designing their respective domains. The Union constructs legislative frameworks encompassing defence and finance, while the States sculpt foundations in realms

such as police and agriculture. Together, they form a cohesive structure of governance, occasionally converging in the Concurrent List, where their legislative blueprints seamlessly intersect. This intricate collaboration delineates a nuanced interplay of powers within the federal landscape.

The Concurrent List,[20] housing 47 items, includes the authority to make laws pertaining to legal, medical, and other professions. The issue of violence against medical professionals transcends the confines of health; it also assumes a criminal nature. Given that criminal law and procedure are part of the Concurrent List, both the central and state governments possess the legislative prerogative to formulate laws addressing this issue. The Health Services Personnel and Clinical Establishment (Prohibition of Violence and Damage to Property) Bill, 2019, aimed at imposing a prison sentence of up to 10 years for assaulting on-duty doctors and healthcare professionals, faced opposition from the Home Ministry. The ministry argued that a specialized law was not practical as health falls under the jurisdiction of the states. However, it is worth noting that the Union government has already enacted several Central health laws, including the Pre-Conception and Pre-Natal Diagnostic Techniques Act and the Clinical Establishment Act.[21] Presently, 23 states have their own legislations, but there is a pressing need for a robust Central law to safeguard doctors from violence. When considering the Ministry's perspective in a practical context, their arguments seem somewhat unsubstantiated. Treating violence against doctors as merely a health issue rather than acknowledging its criminal nature appears to be a means of avoiding the responsibility of creating a new law. India has instituted the Judges (Protection) Act, 1985 which safeguards both sitting and retired judges of the courts. While there are specific laws in place to shield the legal luminaries, there seems to be a reluctance to enact legislation that could similarly protect medical professionals, providing them with the necessary support to carry out their duties without encountering systemic challenges.

The World Health Organization characterizes workplace violence in the health sector as instances where staff faces abuse, threats, or assaults related to their work, encompassing commuting to and from work. [22]This involves challenges, whether explicit or implicit, to their

[20] *Ind. Const. art. 246.*
[21] PTI, *As Attacks on Doctors Grow, Centre Reminds States of Law for Violence on Medical Staff*, NEWS 18, Jun. 21, 2021, https://www.news18.com/news/india/attack-on-healthcare-professionals-is-non-bailable-offence-health-ministry-to-state-govts-3863672.html (Accessed: Nov 11, 2023).
[22] PREVENTING VIOLENCE AGAINST HEALTH WORKERS WORLD HEALTH ORGANISATION, https://www.who.int/activities/preventing-violence-against-health-workers (Accessed: Nov 11, 2023).

safety, well-being, or health. Between 2007 and 2019, India witnessed 153 reported incidents of violent assaults against healthcare workers (HCWs), a number likely underreported but notably high for a non-conflict zone country. [23]

In response, on April 22, 2020, India implemented the Epidemic Diseases (Amendment) Act (2020), designating violence against healthcare service personnel as a cognizable and non-bailable offense. This Act prescribes imprisonment for perpetrators for a duration ranging from 3 months to 5 years and fines ranging from 50,000 to 2,00,000 INR.[24] However, this is perceived as a temporary and insufficient solution to a systemic problem, as it is set to dissolve once the pandemic concludes, leaving the underlying issue unaddressed.

The Indian Medical Association (IMA) asserts that a specifically tailored law could act as a deterrent against violence targeting healthcare professionals, safeguarding their right to life as enshrined in Article 21 of the Constitution. The concept of deterrence in criminal justice operates under the assumption that individuals, when faced with rational choices, may refrain from criminal behaviour due to the fear of consequences. However, deterrence is typically effective for premeditated offenses and may not be as applicable to acts stemming from sudden emotional reactions, such as violence against healthcare workers often perpetrated by patients' relatives in response to the shock and grief of losing a loved one.

Various factors contribute to such incidents, including inadequate infrastructure, imbalanced doctor-patient ratios, and communication gaps. Research indicates that policies emphasizing enhanced enforcement and swifter consequences are more likely to discourage criminal behaviour.

Echoing recent sentiments from the Bombay High Court, it becomes imperative to shield the medical community. Merely enacting new laws won't suffice; meaningful change requires addressing structural issues. Having benefited from their life-saving efforts, it is now our duty to reciprocate and ensure their well-being.[25]

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[23] Aatmika Nair & Siddhesh Zadey, *Ending violence against healthcare workers in India: A bill for a billion*, THE LANCET REGIONAL HEALTH (2022), https://www.thelancet.com/journals/lansea/article/PIIS2772-3682(22)00080-4/fulltext (Accessed: Nov 11, 2023).

[24] *EDA. § 3 (2020).*

[25] THE LAW DOESN'T PROTECT DOCTORS FROM VIOLENCE IN INDIA, SO HOSPITALS NEED TO STEP UP LSE, https://blogs.lse.ac.uk/covid19/2021/06/18/the-law-doesnt-protect-doctors-from-violence-in-india-so-hospitals-need-to-step-up/ (Accessed: Nov 11, 2023).

While the Epidemic Diseases (Amendment) Act was introduced in light of escalating violence against medical professionals, the Indian Penal Code (IPC), the Epidemic Disease Act, and diverse State legislations have been pivotal in mitigating such incidents. However, the need for a robust central law, explicitly discouraging acts of violence by the public and those in police custody, remains paramount. The recent situation in Maharashtra, where awareness of existing state legislation was lacking, highlights a systemic flaw that requires immediate rectification to avert further tragedies, reminiscent of the unfortunate incident involving Dr. Vandana Das.

CHAPTER 7: Conclusion

The protection of medical professionals from violence by the individuals in custody is a critical and multifaceted issue that demands immediate attention and comprehensive solution. This article explores the various dimensions of this problem, examining the prevalence of violence against the healthcare professionals, the factors contributing to such events, lack of existing legislations, international provisions for the same and the possibility of a national framework or for a protocol for the protection of these heroes without capes.

Effective measures to safeguard the medicos in their professional environment is the need of the hour. Legal reforms and stringent punishments for individuals who engage in violence against the medicos should be introduced to deter such actions and to ensure accountability. The protection of medical professionals is not only a matter of ensuring the well-being of healthcare professionals but also crucial for maintaining social order and ethics.