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Law on Hospital Violence: Can there be a legislative deterrence

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Abstract

Hospital violence is defying a solution, despite several efforts at the hospital level and at the Government level. Some States do have a specific legislation for prevention of violence against healthcare personnel or damage to hospital property, but these have made little difference. Demand for Central law on this has been under debate for some time but one is not sure if that would also help. The authors in this article have suggested a way forward, if the law on this issue (Central or State) has to bring adequate results.

Keywords: COVID-19 epidemic ordinance, doctors' law, doctors protection, violence against doctors, central Act

INTRODUCTION

Does our life matter, does our dignity matter, does our security matter, doctors often wonder. The so-called 'cream of society' is today at crossroads. The recent RG Kar Hospital incident in Bengal has angered not only the medical fraternity across the country but also the general public. Will the sacrifices of the brutalized, deceased young doctor and those who are fighting for the larger justice, bear fruit, one is not sure. There will probably be some tweaking of the law, some guidelines thrown here & there and after the test of patience on both sides is exhausted, the matter will get diffused - till the next such incident provokes another such protest. That cannot be the right approach in a civilized society. While healthcare service personnel are duty bound to serve without discrimination, the cooperation and support from society is a fundamental need for them to perform their duties with confidence.

CURRENT LEGISLATION

The Central & different State Governments have enacted the law against hospital violence at different times. Somehow, these efforts have not succeeded in reducing the frequency and / or magnitude of hospital violence. Doctors have been insisting on a 'Central Law' on the issue, hoping that this might bring some deterrence to such barbaric acts against those who were once equated with second Gods.

Protection of Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, also known as the Medical Protection Act (MPA), is currently available in about 23 states in India. Andhra Pradesh was the first state to implement the MPA in 2007.[1] A study undertaken in two states of Punjab and Haryana revealed that no person was penalized under the Medicare Service Person and Institution Act between 2010 to 2015. In most

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cases, the First Information Report (FIR) was not registered or canceled post a compromise.[2] In Maharashtra, the police were not even aware of the Act. Sensitization measures were initiated in 2017, while the MPA was passed in 2010 in the state.[3] Even though several States have brought out laws against the violence on doctors and hospitals, there is disparity across these laws.[4]

The Health Services Personnel and Clinical Establishments (Prohibition of violence against personnel and damage to property) Bill, 2019 was released for suggestions from the Public, under similar pressure. The medical fraternity welcomed it. Shortly thereafter, the Union Health and Family Welfare Ministry withdrew this draft legislation, which proposed a jail term of up to five years and a fine of up to ₹5 lakh for the offenders.[5] This was withdrawn on the pretext that if this was enacted, it will need to be done for other professions also. Though the reason given is not convincing, yet the fact remains that it was withdrawn.

During the Covid 19 Epidemic, an Ordinance followed by Epidemic Diseases (Amendment) Act 2020 [6] was enacted to amend the Epidemic Diseases Act, 1897, to protect healthcare service personnel and property against violence. The Ordinance provided for making such acts of violence cognizable and non-bailable offenses and for compensation for injury to healthcare service personnel or for causing damage or loss to the property in which healthcare service personnel may have a direct interest in relation to the epidemic. The amendment makes acts of violence cognizable and non-bailable offenses. Commission or abetment of such acts of violence shall be punished with imprisonment for a term of three months to five years, and with fine of ₹50,000/- to ₹2,00,000/-. In case of causing grievous hurt, imprisonment shall be for a term six months to seven years and with fine of ₹1,00,000/- to ₹5,00,000/-. In addition, the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property. Even this effort was futile during the epidemic in preventing hospital violence.

Most efforts at legislation, have been in making the offence cognizable & non bailable and increasing the penalty & jail term for the offenders and providing appropriate compensation to the victims of that violence. Some other changes considered, are providing for the mandatory institutional complaints if the individual victim is hesitant in making the police complaint and in providing for a senior police officer to investigate such a complaint. All these are important & should be part of the Act, but more provisions are required to make it very effective.

The solutions are not easy. However, the solutions have tobe, comprehensive & proactive and not ***'band aid measures'*** undertaken merely to diffuse a situation. We need to have a preventive, anticipatory & therapeutic approach to this menace. These measures have to be at the level of the hospitals, State Governments, the Central Government and society in general. These measures should not only be by way of guidelines but should be enforceable enactment with mandatory regulations, monitored by the regulatory authorities.

Though all the efforts made so far are well meaning yet on the ground, there has been no change whatsoever, neither in the frequency nor in the magnitude of these incidents. This review article examines the reasons for the lack of effectiveness of these laws and suggests a more effective approach.

METHODOLOGY

The methodology of this research is based on a study of published literature in journals, articles, and other online sources. The authors have added their personal experiences & thoughts, discussed among themselves and tried to answer the issue as to what legislative measures are likely to bring a material change in the healthcare ecosystem, with respect to hospital violence. Other laws which have brought about a significant deterrence in crime have also been examined to see if some of those provisions could be adopted in this legislation. The deteriorating doctor patient relationship and the social, political or financial factors leading to such violence is not the focus of the present communication. Efforts at the level of the individual hospitals or at the level of individual doctors to prevent such violence, is also not the subject matter of this article. The main focus is on the legislative action for an effective prevention of this menace, which besides causing physical, mental & financial trauma to the doctors, is already compelling several doctors & hospitals to shut shop and discouraging several bright students from opting for a medical career.

RESULT AND DISCUSSION

Hospital violence occurs in both Government hospitals as well as Private hospitals and no part of the country is immune from it. About 70 % of healthcare in our country, is provided by the

private sector. The public hospitals are poorly equipped, poorly maintained and poorly manned, to deliver quality services, in most cases. The public generally does not trust the public hospitals except for the very basic & preventive healthcare services. This reflectslop-sided priorities of the Government while allocating funds and the apathy & corruption during utilization of the funds so allocated. On the other hand, the Private hospitals are concentrated in the cities and are considered very costly by most people. Healthcare insurance, third party paying facilities and Ayushman Bharat etc. have eased on the healthcare expenses of some, but this has not impacted on the frequency or magnitude of hospital violence.

In an Indian survey it was reported that almost 95 % of doctors have faced verbal abuse, in hospitals, at some time or the other and 75 % had faced physical or serious emotional violence while on duty [7]. Violence is seen relatively more in private hospitals as compared to government hospitals. Another study revealed that the annual incidence of workplace violence in health care and social assistance is four times more as compared to other professions. Moreover, health care related workplace violence remains grossly neglected and under-reported[8]**.** This is an alarming statistic for any civilized society

Unfortunately, in our country, the yardsticks of regulatory authorities for private hospitals are a lot different from those of public hospitals. Regulation of Government hospitals is inadequate as it suffers from a serious conflict of interest because the public hospitals are owned by the government and its own administrators are the regulators of these hospitals. This is a paradox of sorts. The government has huge resources, collected from taxes contributed by all, including doctors & hospitals, yet the public hospitals are treated with kid gloves. The private hospitals with very limited resources have to bear the greater brunt of the regulators. There is no problem with being regulated but the negativity about doctors & hospitals, emanating through leaks in the media, tend to spoil their image and further destroys the doctor-patient relationship. Media & social media are powerful agencies. Being largely unregulated they sometimes add to the problem. Their TRP interests are served better by spreading negativity as compared to any positive content.

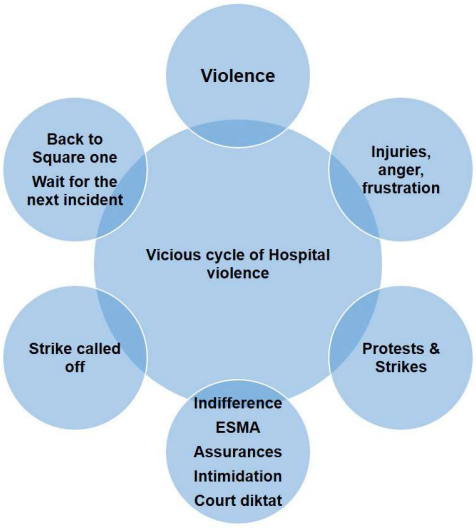
There is no reason why private & public hospitals should be treated differently with respect to hospital violence. Violence of any kind in private or public hospitals must be seen with the same yardstick. Even though the private hospitals are run by private entities, the government authorities regulate every aspect of these hospitals. Moreover, these hospitals are a boon for society where the public hospitals are not able to fulfill more than 30 % of the healthcare needs of society. It is a pity that the doctors, often regarded as the cream of the society or even second Gods, feel so insecure even in their own hospitals.

Doctors & Hospitals are capable of outcomes as good as the best in the world. It is accepted by all, nationally & internationally. It will do our society a lot of good if our doctors are provided with the best working environment so as to get the outcomes better than anywhere in the world. Whereas India needs more doctors & specialists, such a hostile environment against doctors & hospitals is tending to drain away talent from this profession. Some studies have indicated that the span of life of doctors in India is about 5-10 years shorter than the rest of the population. Is it professional stress or neglect of their personal health or both, one is not sure. Many doctors & specialists are leaving medical practice. Most intelligent young boys & girls are inclined to opt for career options other than medicine. These are alarming signals for society to take note of.

Healthcare is indeed an essential service and serves an important public interest. It is for this reason that healthcare comes under the Essential Services Maintenance Act (ESMA), a term which is heard only when the administration wants to 'crush a protest' by doctors. 'Essential services' deserve a special treatment from the society in general and the governments in particular, so that there is no stone left unturned to make the healthcare working environment congenial for the best outcomes, because it is 'essential' service. The doctors &other healthcare providers in private or public hospitals need to be provided with the best working environment, as a part of national priority. If the doctors manning essential services have some grievances or concerns and if they are not addressed well in time or if they are compelled to resort to protests, dharna or strikes, it is a shame for society. It should be considered as gross deficiency and failure of governance and the people responsible should be appropriately made accountable.

We are all familiar with the vicious cycle of hospital violence (Fig. 1). Hospital violence provokes protests, but the governments remain indifferent initially or tend to divide or intimidate the protesting doctors to compel them to discontinue the protest or may even give some assurances but once the protests are defused, everything is forgotten and we are back to square one, till another

incident happens at another hospital somewhere. This vicious cycle needs to be broken.



Flowchart 1: Vicious cycle of Hospital violence

It is therefore incumbent on the legislature to break this vicious cycle through a well-meaning and effective law to ensure the safety of the persons manning such essential services in the best public interest. Some efforts have been made by some State Governments by such enactments but on the ground, these have not had any significant impact. The offence has rightly been made cognizable& non bailable and penalties & jail terms have been raised but this has also been found to be not enough. There are some lacunae in our social ecosystem and in the discharge of our law & order mechanism, which need to be incorporated in the Law on Hospital Violence: Can there be a legislative deterrence. For an important & barbaric offence like hospital violence, there must be effective deterrence, promptness & certainty of action and a lesson for the other potential offenders. Let us examine some of these points.

Central Act

Central Act is required to have uniformity across the country. The doctors are pitching for the Central Act on Hospital violence. However, implementation of a Central Law is difficult because "health" is within the legislative purview of state governments. But there is one central Act in the field of Health which is the PreConception and PreNatal Diagnostic Techniques(PCPNDT) Act, 1994, which is doing well.[9] This is a central Act because authorities saw a unique problem that needs to be monitored and remedied by a central law.[10] One can now draw a parallel with the doctor's violence here. Central legislation together with the existing state level regulations, is more likely to ensure safety and security for doctors & other healthcare workers. The passage of a central law will not only instill fear in the public but also instill confidence in the doctors. It is that which will percolate to all levels of the society – the same way the PCPNDT and the current Epidemic Diseases (Amended) Ordinance Act, 2020 or the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has effectively done today.

Prompt initiation of action

Dilly dallying in filing FIR, even when there is clear CCTV evidence and / or eyewitness account of the violence, is the first obstruction. The Act should include:

1. For the purposes of this Act,
   - (a) preliminary enquiry shall not be required for registration of First Information Report against any person. Prima facie evidence will be enough for registering the FIR.
   - (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act, or the Code shall apply.
   - (c) Appropriate section of BNS shall be applicable if the police officer delays or evades filing the FIR.
2. The provisions of section 438 of CrPC (section 482 of BNSS) related to Anticipatory bail shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

This provision is akin to Section 18A (1) (b) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018.[11] This amendment is necessary to prevent delaying & evasive tactics on the part of the police under influence of local goons or other influential persons or otherwise, to enable the violators to escape the clutches of the law. Also, for such willful acts of violence causing disruption of essential services, provision of anticipatory bail should not apply, as is relevant in SC ST Act.

Presumption of offence

The burden of proof in such cases should shift from the victim to the accused. The accused should be required to prove his innocence & discharge this

burden. A section should be added.

a. the accused reasonably suspected of committing an offence under this Act, the Court shall presume, unless the contrary is proved, that such person had committed / abetted the offence.
b. a group of persons committed an offence under this Act and if it is proved that the offence committed was a sequel to any dispute regarding treatment, care or billing at the complainant establishment, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object

This is akin to a provision as in Section 8 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, under Presumption as to offences.

Non compoundable

Add the word non-compoundable alongwith cognizable & non bailable. This is important as the commission of this offence causes serious disruption of essential services and hospital violence is actually, a crime against the State. Political & other pressures often come into play to affect a compromise & withdrawal of complaint. By making it non compoundable, a strong message will go in the public, against committing such an offence. Secondly, since this offence adversely affects larger public interest, compromise & withdrawal of complaint is not appropriate and so, should not be allowed.

Punishment

Like in Epidemic diseases Act, here also it should provide that the accused shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees."

Preventive action

As in S 17 of the SC / ST Act, there should be provision for preventive action, where situation & circumstances suggest an anticipation of violence in a healthcare establishment. Hospitals & doctors are aware of the situations when a mob action is anticipated but they are not able to convince the police to act at that stage. A district Magistrate or a senior police officer, should have the authority to act on receiving information & if he has reason to believe that a person or group of persons are likely to cause violence, take appropriate steps to declare that area to be sensitive & take appropriate preventive steps.

Right of healthcare establishments to choose whom they would serve

It will be well within the right of the healthcare establishment or its personnel to refuse treatment to the accused, except in life threatening situations for providing initial treatment. Although the right to refuse treatment except in life threatening situation, is an established legal principle yet, its explicit mention in the Act will send a clear message to the public and provide a good & effective deterrence.

Table 2: Medicolegal Riddle in Rhymes for Laws regulating Hospital Violence

Medicolegal Riddle in Rhymes for Laws regulating Hospital Violence
In halls of healing, where mercy resides, A darker shadow, brutal violence, bides. Doctors / Nurses stand, with care in hand, Yet fear takes root across the land. The laws are writ, yet chaos grows, For in these halls, unrest still flows. Shall central law, as doctors claim, Deter the flames or fan the flame? No bail, no ease, the draft appears, But still it fails to quell the fears. Is justice swift, or does it sway, When pressure forces it away? So here's the riddle, bold and clear— Can law alone end this dark fear?

Registry of offenders

A registry should be maintained at central, state and district level, of persons who resort to hospital violence, causing serious public interest hazard. This should be akin to the organ donor registry as maintained by NOTTO under Rule 32 of the Transplantation of Human Organs Rules 2014 i.e. Information to be included in National Registry regarding donors and recipients of human organ and tissue

Debarred from seeking relief

A person taking law in his own hands, needs to be debarred from seeking relief for the same cause of action from which the offence emanated, from the special courts like Consumer courts. He cannot be allowed to have the cake & eat it too and at the same time victim hospital should not be compelled to suffer twice at the hands of the violators of law. They may approach the civil court or the criminal court but should be debarred from approaching the

consumer courts or the SMC / NMC for the same cause of action which resulted in violence from their end. A section be included "Whoever commits violence or abets or incites commission of violence against any healthcare service personnel or abets or incites or causes damage or loss to any property of a clinical establishment, shall be debarred from approaching the Consumer courts or the Medical Council of India or the National Medical commission, for redressal of his grievance on the same cause of action"

Conclusion

Hospital violence is a medico-socio-legal menace, difficult to handle. The solution is not easy. However, 'extraordinary problems require extraordinary solutions', as is rightly said. Solution requires efforts at multiple levels. In the present communication the authors have suggested some amendments in the Law on Hospital Violence: Can there be a legislative deterrence, which can serve as an effective deterrence, as we have seen in SC / ST Act.

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