

AN ANALYSIS OF RIGHTS OF HEALTH CARE WORKERS AMIDST THE COVID-19 PANDEMIC: AN INDIAN PERSPECTIVE

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Abstract

The time of crisis is the best time to assess the effectiveness of anything and COVID-19 pandemic is no exception to this. While the turbulent times of the pandemic has created a hue and cry across the globe, the health care workers also the front line warriors, are one of the most suffering sections of the society as they have been risking their lives in treating the patients of this dangerous disease. The efficacy of the virus was such that within a month of its outbreak, it infected thousands of people across the globe and the cases have been rising ever since then, at an alarming rate. On January 20, 2020, the World Health Organization (WHO) declared the outbreak of COVID-19 as the '*Public Health Emergency of International Concern*'¹. This has reaffirmed the outlook of the pervasiveness of the virus and has created a sense of fear of the repercussions linked with neglecting deadly pathogens from the aspect of the health laws. The WHO along with the experts from across the world and governments have been tirelessly working to strengthen the expansion of scientific knowledge and awareness of this novel virus with an objective to give timely advice and measures that are required to be undertaken to contain the unfurling of this deadly virus. This paper aims at highlighting the hurdles in upholding the right to health care, in particular, of the health care workers amidst the outbreak. Undoubtedly, a person can give his/her best in the work that he/she is doing, if he is permitted to avail of his fundamental rights for they empower an individual to work efficiently. Therefore, in the present pandemic situation, it is only the

¹WORLD HEALTH ORGANIZATION, *Rolling Updates on Corona virus disease (COVID-19)*, (Apr. 16, 2020), www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen .

human rights of health care workers which would add as a catalyst to fight this virus. Hence, the paper will take into account the Human Rights of the Health Workers from the National as well as the International perspectives. Emphasis will also be laid on assessing India's responsibilities towards securing the right of healthcare workers in consonance with the international conventions, the domestic law as well as the Constitution of India. Towards the end, the author seeks to recommend a few suggestions for consideration.

Keywords: COVID-19, health care workers, World Health Organization, Human Rights, Constitution

Introduction:

As per the situation that is prevailing at the moment, it is clear that the novel corona virus (COVID-19) can spread at a rapid rate and has the tendency to transform into a deadly epidemic. The problem arises when the disease spreads in those places where the population lacks the requisite immunity to fight the virus resulting in deaths in large numbers². It is during these times, the effectiveness and resiliency of the modern public health system are tested. Timely treatment and preventive health care measures are essential to minimize the mortality rate and control the spread of the disease which is also hampering the public health care system largely.³ At this juncture, it is necessary to consider the situation which is prevailing in the hospitals at the ground level and assess the

same in comparison to what is provided to be observed.

It is exigently significant to ensure that the health workers are able to fight with their full potential. A person is able to work with his full potential only when he is in a position to avail all his fundamental human rights in toto. Human rights enable a person to realize his real potential and work with efficiency. Thus, in the instant case of confrontations between Human Rights and Corona Virus, it is the rights of the Health Workers that can help them in realising their full potential and consequently enabling them in defeating the Corona Monster. Therefore, it is implacable to do an enquiry as to what exactly are the Human Rights and Responsibilities of the Health Workers to which they are entitled and supposed to dispose off amid the Corona era. Hence, the paper will take into consideration the Human Rights and Responsibilities of the

²Richard M. Krause, *Introduction to Emerging Infectious Diseases - Stemming the Tide* in EMERGING INFECTIONS 7 (Richard M. Krause ed., 1998)

³Michael T. Osterholm, *Preparing for the Next Pandemic*, 84 Foreign Affairs 24, 31 (2005)

Health Workers from two perspectives;
National and International.

The International Public Health Regime: Highlighting India's obligations under International Conventions

In international law, the interplay of the provisions of three instruments, i.e., the Universal Declaration of Human Rights (UDHR)⁴, and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵, the International Covenant on Civil and Political Rights (ICCPR)⁶, forms the International Bill of Human Rights. Instruments like these have been viewed as frameworks that compel member States to fulfill certain basic expectations and entitlements of their citizens, either through procedures of enforcement or by the public pressure upon governments⁷. The right to health is established as a central right in most of the aforementioned instruments, like Article 25 of the UDHR⁸

and Article 12 of the ICESCR⁹. Both of these provisions regard right to health as an extremely significant right which also encompasses the notion of enjoying the greatest standard of mental and physical health¹⁰. It is believed that ICESCR under Article 12 offers the most authoritative understanding of the right to health¹¹. Additionally, the ICESCR also contains provisions which delimit the steps that are to be taken by member States so as to fully achieve the right to health by establishing frameworks catered towards controlling the spread of epidemics¹². In this endeavour, appropriate measures must be taken to ensure decent medical attention and assistance to all at the time of need¹³.

The United Nations (UN) had formulated a body which was responsible for monitoring and enforcing ICESCR, namely, the Economic, Social and Cultural Rights Committee (ESCR). This committee elaborately explained the normative content along with the wider scope of right to health enshrined in the

⁴ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., Pt. I, Res., at 71, U.N. Doc. A/810 (1948).

⁵ International Covenant on Economic, Social, and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3 [ICESCR]

⁶ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [ICCPR]

⁷ C. Onyemelukwe, *Access to Anti-Retroviral Drugs as a Component of the Right to Health in International Law: Examining the Application of the Right in Nigerian Jurisprudence*, 7 Afr. Hum. Rts. L.J. 446, 448 (2007)

⁸ UDHR art.25

⁹ ICESCR art.12

¹⁰ Richard Baker & Vanessa Taylor, *The Right to Health: A Right on the Rise*, 19 J. Juris 275, 277 (2013).

¹¹ Sylvie da Lomba, *Irregular Migrants and the Human Right to Health Care: A Case-Study of Health-Care Provision for Irregular Migrants in France and the UK*, 7 Int'l J. L. Context 357, 360 (2011).

¹² ICESCR art. 12(2)(c)

¹³ Id., Art. 12(2) (d)

General Comment of ICESCR¹⁴. This has helped the stakeholders and policymakers in shedding light on the member states' obligation in respecting, protecting and attainment of the right to health.¹⁵. Incorporation of the General Comment by the ESCRC, it is necessary that each Member State must satisfy the obligation of the minimum level of each fundamental right, including the one under Article 12 of the ICESCR.¹⁶ The General Comment is perhaps the document by the UN which explains the scope of right to health. Essentially, the internal public health law has been founded on the four foundational principles of availability, accessibility, acceptability, and quality. The facet of accessibility has been addressed by the General Comment which prohibits States from limiting access to healthcare/medicines to even non-citizens and illegal immigrants,¹⁷ and the same

concept was reiterated in the UN Committee on the Elimination of Racial Discrimination on Discrimination against Non-Citizens General Recommendation 30¹⁸.

Health workers have been the key players in controlling and treating of the diseases like COVID-19. But the discussion on the rights of health workers has never arisen before and they were only seen as guardians of public health. But the year 2020 has changed the scenario altogether. The whole world is facing a pandemic situation in the year 2020 due to the novel Corona Virus Disease, and this has led to a large number of deaths and severe recession all over the world. COVID-19 as defined by WHO reads, "infectious disease caused by the most recently discovered corona virus. It is a pandemic affecting many countries globally."¹⁹ All the countries throughout the world have taken steps to curtail the spread of the novel corona virus. In these steps, the major role is played by the health workers.

¹⁴ ECSR Committee General Comment No 14: *The Right to the Highest Attainable Standard of Health (art 12 of the Covenant)*, 22nd session, 25 April to 12 May 2000 E/ C.1 2/2000/4.

¹⁵ A Rosas & M Scheinin, *Implementation mechanisms and remedies in ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK* 379 (A. Eide et al. eds., 1995)

¹⁶ U.N. ESCOR General Comment 3, *The Nature of States Parties Obligations* (art. 2, 1 1 of the Covenant), U.N. ESCOR, Comm. on Econ., Soc. and Cul. Rts., 5th Sess., 9, U.N. Doc. E/1991/23 (1990), 10.

¹⁷ A Rosas & M Scheinin, *Implementation mechanisms and remedies in ECONOMIC,*

SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK 34 (A. Eide et al. eds., 1995).

¹⁸ Committee on the Elimination of Racial Discrimination, UN, General Recommendation 30, *Discrimination Against Non-Citizens*, Gen. Rec. No. 30 (General Comments) (1 October 2004)

¹⁹ Q&A on corona virus (COVID-19), World Health Organisation, (May.17, 2020, 10.15 pm), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-acoronaviruses>

Health workers include employers and managers in health facilities. Thus this term includes physicians, nurses, ward boys, Paramedical workers, and other health workers.

In the domain of human rights of health care workers, it is clear that every person is entitled to adequate leisure and time for rest alongside periodic holidays under Article 24 of UDHR.²⁰ But this right of health workers is questioned due to lack of adequate staff, excessive demand for health workers and social pressure, etc. Furthermore, while Article 3 of UDHR provides for liberty, security and right to life of a person²¹, Article 5 protects a person from torture and cruel and inhuman treatment or punishment.²² These two rights become very important now because of the increase in violence happening towards the health workers. Misbehavior, using obscene words, vulgar remarks, attacks has increased during the period Covid. In the recent case *Jerry Banait v. Union of India*²³, the SC held that the COVID-19 is a national calamity which is engulfed the entire country. Hence, during these turbulent times, responsible behaviour and actions which extend a

helping hand to the Government and the Medical staff in discharging their duties is expected from all the citizens. This will ensure smooth co-operation in containing and combating the disease. Irrational behaviour from the citizens towards Doctors and other medical staff instills a sense of insecurity among them as they are expected to protect the citizens from the disease. Hence, the Police Administration and the State authorities must take charge of providing security to the health care workers as well as to the patients infected, at all places and at all times even when they visit different places for screening and providing other medical assistance.²⁴

The WHO has provided the health workers with the access to appropriate security measures for personal safety purposes as their right. Further, to ensure a friendly and a decent work environment Health Workers have been provided a right to have a blame free environment for themselves with a Right to stay home when ill²⁵. To assure health workers'

²⁴ *Id.*

²⁵ CORONAVIRUS DISEASE (COVID-19) OUTBREAK: RIGHTS, ROLES AND RESPONSIBILITIES OF HEALTH WORKERS, INCLUDING KEY CONSIDERATIONS FOR OCCUPATIONAL SAFETY AND HEALTH- World Health Organisation (May 30, 2020, 5:00 PM) <https://www.who.int/docs/defaultsource/coronaviru>

²⁰ UDHR art.24

²¹ UDHR art.3

²² UDHR art.5

²³ Writ Petition (Civil) No(s). 10795/2020

safety, the WHO has advised them to not return to work if there is a continuous or a serious danger to their life or health. They have also been vested with the right of removing themselves from any work situation having a reasonable justification to believe that a serious danger to life and health exists on them. Besides these, they also have the right to access to counseling.²⁶

Assessment of the Domestic Laws amidst COVID-19:

Article 21 of the Constitution of India reads “No person shall be deprived of his right to life and personal liberty except according to the procedure established by law”²⁷. The Hon’ble Supreme Court (SC) highlighted the right to life as not a mere animal existence but a life with complete dignity that includes a healthy environment²⁸. Therefore, it is also a derived fundamental right. In the landmark judgment of *CESC Ltd v. Subash Chandra Bose*²⁹, declaring the right to health as a fundamental right the SC held that Health includes not only the absence of any infirmity or disease, but also includes the

well-being of a person physically, mentally and socially. To illustrate Right to life means a right to dignified life³⁰ having a standard of life including hygienic workplace and adequate leisure³¹ and Right to health³². Thus the right to health extends to health workers too. But the issue of right to health of the health care workers was not so highly debated before the spread of COVID-19. Now, to combat COVID-19 since the frontline of defence in battling this pandemic is the health care workers, they are the most vulnerable to fall as victims to this corona virus, while they protect others from it.

Under the Directive Principles of State Policy enshrined under Constitution of India, the positive guidelines which the State is bound to keep in mind while formulating any policy or law in a way are provided for the reverence of Human Rights only. Under Article 47 of the Indian Constitution, state has been obliged by a primary duty of improving the public health³³. In the midst of Corona Virus this duty has attained prime importance. As it is not only required from the state in the

se/who-rights-roles-respon-hw-COVID-19.pdf?sfvrsn=bcabd401_0

²⁶ *Id.*

²⁷ INDIA CONST. art. 21.

²⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 579; *ParamanandaKatara v. Union of India*, AIR 1989 SC 2039.

²⁹ AIR 1992 SC 573,585

³⁰ *Francis Coralie Mullin v. Union of India*, AIR 1981 SC 746

³¹ *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC.

³² *Vincent Parikurlangara v. Union of India* (1987) 2 SCC 165.

³³ INDIA CONST. art. 47.

larger interest of the people of the country, but also for the benefit of the Health Workers which in turn would lead to the benefit of all.

The Indian Penal Code, 1860 (IPC)³⁴ has provisions to cover assaults on public servants and this applies to health care workers who are public servants. Despite the presence of these provisions in IPC Sections 186³⁵, 332³⁶, 353³⁷ apply only if

³⁴The Indian Penal Code, 1860 (IPC)

³⁵ Indian Penal Code, 1860, §186- Obstructing public servant in discharge of public functions:

"Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

³⁶ Indian Penal Code, 1860, § 332- Voluntarily causing hurt to deter public servant from his duty.

"Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

³⁷ Indian Penal Code, 1860, §353- Assault or criminal force to deter public servant from discharge of his duty: *"Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which*

the victim is within the meaning of term "public servant" under Section 21 of the IPC. For other health care workers, only Section 323³⁸ applies.

The Epidemic Diseases (Amendment) Ordinance, 2020³⁹ was promulgated and came into force on April 22, 2020. This regulation defines health services personnel as "a person that may come in direct contact with and be in danger of becoming affected by the disease while fulfilling his or her role in relation to epidemic-related tasks."⁴⁰ and also provides a list of such persons. A new section 1A (a) was inserted by the ordinance defining the phrase 'act of violence'.⁴¹ Furthermore, Section 3(2)

may extend to two years, or with fine, or with both."

³⁸ Indian Penal Code, 1860, §323- Punishment for voluntarily causing hurt:

"Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

³⁹ The Epidemic Diseases (Amendment) Ordinance, 2020 (Available at: <http://egazette.nic.in/WriteReadData/2020/219108.pdf>)

⁴⁰ Epidemic Diseases (Amendment) Ordinance, 2020, No. 5, Acts of Parliament, 2020 (India).

⁴¹*Id.* §1A- "An act of violence includes any of the following acts committed by any person against a healthcare service personnel serving during an epidemic which causes or may cause : (i) harassment impacting living or working conditions of such healthcare service personnel and

provides that no person shall commit or abet an act which is violent against health service personnel. The penalty for non compliance of this provision is imprisonment for atleast three months which and is extendable upto five years, along with a fine of Rs 50,000 extendable upto Rs. 2,00,000. But, this is classified as a compoundable offence.

Current Position in India – The shortcomings in protection of Human Rights of Health Care Workers:

Despite being heralded as the State that pioneered the incorporation of its international public health obligations within its domestic framework, the country's response towards tackling the spread of COVID-19 has been disoriented, from the perspective of safeguarding its citizens' right to health and the rights of health care workers.

Some of the shortcomings that were witnessed in India are – lack of awareness in terms of disseminating the information

about Corona Virus, IPC and PPE.⁴² As a matter of Human Right all the Health Workers are have the right to necessary and requisite information about the Corona Virus and are also entitle to receive Refresher training about prevention and control of infection along with all the minute details of PPE at the international level⁴³. This also reflects as a fundamental human right under Right to Information enshrined in Article 19 (1) (a) and Right to health under Article 21 of the Indian Constitution. Thus, the right to information and right to health of the health care workers have been violated in this case⁴⁴.

For upholding Right to health of Health Workers arrangements for social distancing have been made but they are inadequate because of the lack of implementation of the same. There is no provision of surveillance of the same⁴⁵.

preventing him from discharging his duties; (ii) harm, injury, hurt, intimidation or danger to life of such healthcare service personnel, either within the premises of a clinical establishment or otherwise; (iii) obstruction or hindrance to such healthcare service personnel in the discharge of his duties, either within the premises of a clinical establishment or otherwise and (iv) loss or damage to any property or documents in the custody of, or in relation to, such healthcare service personnel.”

⁴²<https://www.tctmd.com/news/terrified-healthcare-workers-fear-lack-protection-against-COVID-19>

⁴³Keep health workers safe to keep patients safe: WHO. (2020, September 17). WHO | World Health Organization. <https://www.who.int/news/item/17-09-2020-keep-health-workers-safe-to-keep-patients-safe-who>

⁴⁴<https://www.newindianexpress.com/cities/delhi/2020/apr/07/lack-of-ppe-kits-doctors-suffer-2126776.html>

⁴⁵An analysis of the ethics of lockdown in India. (n.d.). PubMed Central (PMC) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7347396/>

The basic necessities of the Health Workers who persistently keep on coming in contact with the patients suffering from infectious communicable diseases as per the Hospital Infection Control Guidelines, 2017⁴⁶ were not provided to them when the whole nation was under the lockdown. Health Workers at the mass level persistently have been devoid of their Right to get quarantined. As a matter of right the documents at both national and international level have given Right to health to all the health workers, but in terms of implementation, the reality at the ground level is different.

By invoking the colonial-era legislation of the Epidemic Diseases Act (EDA), 1897⁴⁷, which has not been tested on the touchstone of Article 21, the Indian States have disregarded their obligation to safeguard the rights of health care workers. It has been said that although the EDA aims to function as a framework for preventing the spread of diseases, yet, in its endeavour to satisfy its aim, it cannot encroach upon the rights of citizens without establishing a system of checks and balances. Therefore, in its endeavour to tackle the crisis, our State must

undertake additional measures for social protection so that their cooperation can alleviate the quagmire of those who are at the risk of being disproportionately affected by the crisis.

Recommendations and Suggestions:

WHO has enlisted certain guidelines and appropriate measures to be taken for reducing the risk of COVID-19 and also to protect the rights of health care workers.⁴⁸

1. Procedures for occupational safety and health must be strictly followed to avoid risks pertaining to health and safety.
2. Using provided protocols for assessment, triage, and for the treatment of patients and following appropriate procedures of public health reporting of the suspects and positive tested patients.
3. Proper usage and disposal of personal protective equipments along with self-monitoring of signs and self-isolation or reporting of illness to appropriate authorities.

⁴⁶<https://www.mohfw.gov.in/pdf/National%20Guidelines%20for%20IPC%20in%20HCF%20-%20final%281%29.pdf>

⁴⁷ Epidemic Diseases Act (EDA), 1897

⁴⁸ *Corona virus disease (COVID-19) outbreak: Rights, roles and responsibilities of health workers, including key considerations for occupational safety and health*, World Health Organisation, (May.30, 3.30 pm), https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid19.pdf?sfvrsn=bcabd401_0

4. Improving the security for doctors, nurses, medical staff, and other health care workers both at hospitals and places where there visit for prevention and checking of COVID-19 spread.
5. Creating awareness for the family members of health workers as they are equally at risk as these health care workers and providing adequate counselling centres for medical staff.
6. Seeking public co-operation with the medical staff and health care workers during the Pandemic.
7. Ensuring adequate supplies of Personal Protective Equipments including gloves, face shields hand sanitizers available at the doorsteps of the Health Workers.
8. For the protection of Right to information and Right to health together proper mechanism and measures must be undertaken for disseminating requisite information about the Corona Virus, IPC and PPE.
9. Facilities for providing Mental Health Counselling to Health Workers should be made. Adequate water, sanitation, hygienic, waste management and cleaning facilities

should be provided in the arenas of confrontation that is the hospitals.

10. Efforts should be made to segregate the infected persons by doing thermal screenings at the prominent places of the hospitals.

Conclusion:

Human rights are the basic rights that every human being acquires by virtue of his birth. The Constitution of a country or an International Convention can only declare such rights, not provide them as they are birthrights. A healthy environment is a human right for all and the same is applicable for health care workers too. Providing adequate facilities, protection mechanism, treatment with dignity, and cooperation can reduce most of the occupational hazards of health care workers during COVID-19 pandemic. Prevention is better than cure and therefore the creation of awareness and cooperation with health care workers is a better solution than facing the threat later. In war with Corona Virus, the cavalry of the world that is the Health Workers are not getting adequate and apt weapons to fight. Dishonouring the Human Rights of the Health Workers has become so vivid. The need of the hour is to adopt a balancing approach towards the rights and responsibilities of the Health Care

workers. The guidelines have been provided by the WHO at the international level, besides the fundamental rights that are enshrined in our Constitution and the Indian Council of Medical Research's Guidelines and Medical ethics. But the ground realities reflect a completely different story making all these provisions futile. Therefore, what is essentially required is a fair and stringent implementation of the already present Rules, Regulations and Guidelines both at the national and international level with a balanced approach between Human Rights and Responsibilities in mind.