

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 4 | Issue 2

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Violence against Doctors: An Alarming Issue in the Society

ASHMITA BANERJEE¹ AND MUKUL SINGH²

ABSTRACT

With a garb of panic and fear the pandemic year has faced a major tornado in almost all parts of the world after the outbreak of the pandemic disease, covid19. It is the general trait of man that his sanity fluctuates when his mind is either in fear or in anger. Since laws were codified and even before that, the world witnessed various kinds of crime from pick pocketing to even cannibalism. But presently the major issue sticks to the pathetic and unprofessional situations in which the Doctors have to work and the Government which should act for the benefit of the doctors are only praising them and sending heartfelt texts. This paper reflects not only the plight of the doctors in this pandemic period but also ponders upon some previous situations when the doctors were brutally abused and hit in broad day light. There are laws for every person to be accessed when any wrong is done to them. Medical fraternity is also a job profile where doctors and the medical teams are working day and night just like an engineer or a lawyer works so abuse and violence in unethical in a profession as it questions the safety of the doctors or is it that generalizing Indians as emotional and softhearted we often allow these crimes. We often believe that such crimes initiate at a time when someone very close to the offender is under treatment and the offender loses sanity but does this contention stand morally right towards the doctors or do we try to justify an unlawful act. There are laws that safeguard the doctors from facing violence or any kind of aggression but since the laws have been made there are no less of this crime. This means laws are being made but whether those laws are actually posing any benefit is the question of the hour. The nature of violence has also changed timely. Previously doctors faced verbal abuse and aggression from the patient or family of the patient. Drastically this situation changed to physical abuse, assault, kidnapping and coercion. The situation needs to be curbed by stringent laws and for that the psychology behind such act has to be extensively studied. Hence this paper analyses several case studies of this violence in India to study the psychology behind the offenders and determine the reason behind the increase in this offence. This paper also highlights the laws that have been made for the protection of the doctors with respect to the present scenario of widespread epidemic disease resulting from the deadly corona virus. The

¹ Author is a Student at KIIT School of Law, India.

² Author is a Student at KIIT School of Law, India.

country had also witnessed nonviolent protests in many parts. Imagine a day of doctors at strike and so many patients had to undergo distress and panic. It is a seat holding utmost integrity and responsibility and hence this issue needs to be looked after because strikes can be acceptable in any profession but not medical because too many lives will be at stake.

Keywords: *Medical fraternity, Doctors, violence, COVID19, laws, Government, Ordinance.*

I. BACKDROP

Violence in accordance to the World Health Organisation is “the intentional use of physical force or power, threatening against oneself, another person, or against a group or community, which results in or attempts to result in injury, death or mental harm.”³ A study was conducted by the Indian Medical Association, whereby it was found that 75% of the doctors across the country have faced some sort of physical violence in connection with discharge of their duties⁴. India is a developing country where the literacy rates are very low. Too many villages still find faith in supernatural powers, black magic and omen instead of science and medical facilities. In that case education or awareness of the masses is very essential. The countrymen specially from remote villages have to be made aware of the power of medical science and the knowledge of talented doctors in the country. Doctors and scientists have made possible to cure severe diseases like cancer, cholera, tuberculosis which was once upon a time a guaranteed life killing disease. There is another class of people who belong to the same below the poverty line and has immense faith on doctors. They find doctors to be an epitome of god but when these doctors fail to save their loved ones, this idea suddenly crashes in front of them and they resort to violence doubting the credibility of the doctor. India has always been a country with diverse cultures, traditions, beliefs. When a person gives up on all his savings, money or mortgage their every asset just to save someone, that life becomes their only hope. And when that life passes away in the hospital, they lose control of their senses. In these cases, the country should ensure more free medical facilities and medi-claims and all facilities so that economically weaker sections do not have to give up on all that they have. The doctor and the patient or his family simultaneously has the same fear of any suffering which makes both the parties anxious and leads to violence.

³ World Health Organisation, 2002. *World Report On Violence And Health: Summary*, Geneva: Office of Publications, p.4.

⁴ Sarita Singh vs State of Uttarakhand, Writ Petition No. 284 of 2017 (HC Sept. 12. 2018)

II. PRESENT SCENARIO

Presently, the world is amidst an epidemic disease due to the outbreak of novel corona virus which originated from Wuhan, a city in China and then gradually affected the entire country of china. When inhabitants of china or those who were present in China as students, tourists, employees of other countries returned back to their home or diverged to other countries, spread a massacre disease. With this, gradually most of the countries are suffering due to the epidemic situation and countries like Italy and America who are believed to have a highly efficient medical system are on the verge of getting destroyed. In all the countries each and every person is grateful to the medical fraternity. This reflects that doctors, nurses and all hospital staffs are heroes of the hour and their selfless services are a token of blessing to their nation. There are so many doctors who have passed away treating these patients and ultimately getting affected by the virus. Doctors have been there at their service for days and weeks without meeting their families to ensure protection⁵.

Out of all the professions it needs to be believed that medical fraternity and military are the most selfless professions that ensures other's safety before their own. This epidemic outbreak is not similar to the regular diseases people complain of and get treated. It is a disease which still does not have a vaccine or a sure shot treatment. Doctors are treating them with regard to the vast knowledge they have about medicines. In that scenario where they may be shortage of equipment, shortage restrooms, shortage of food, every hospital staff has been working whole heartedly with all honesty and integrity⁶. It is quite obvious that there will be casualties and chances of unsuccessful treatments. Not every age or body has been able to endure the treatment. When on several treatments, medicine and care a patient passes away it leaves a negative impact on the doctor's mind and heart, leaving him demotivated but the doctors and the nurses have to proceed with the other patients.

Irrespective of any disease, a medical practitioner has the burden of saving lives, bringing life out of a mother's womb, bringing smile to so many families and might have treated terrorists for the sake of their oath. Their job is not so easy but what they only expect from people is complete faith and cooperation. It is the hospital staff who are in the frontline working day in and out for the country, putting their best foot forward to secure lives just as the military in the

⁵ Sunalini Mathew, What the Covid-19 pandemic means for the doctors at the frontline, *The Hindu* (March 22, 2020), <https://www.thehindu.com/sci-tech/health/what-the-covid-19-pandemic-means-for-the-doctors-at-the-frontlines/article31135013.ece>

⁶ Vikas Pandey, Coronavirus: India doctors 'spat at and attacked', *BBC News* (April 3, 2020), <https://www.bbc.com/news/world-asia-india-52151141.html>

border⁷. Their families are unaware of the fact that whether their loved ones will come back home safely or not. Even when they come back home there is a constant fear of transmission that, if by any probability a doctor or a hospital staff gets infected, many families have to suffer. Irrespective of that fear, they are on their duty when the entire country is at home with their families.

III. VIOLENT ACTS AGAINST THE MEDICAL FRATERNITY

The issue of verbal abuse is not a present problem. It is an age old issue where the patient's family verbally abuses or misbehaves with the hospital staff when they have conflicts with the hospital. Visiting hours which are restricted to certain time limits in a private hospital serves as a primary conflict. A common thought at a distressing situation is that how can a patient's family not be allowed all the time when it is believed that any disease can be cured with family's affection. The science behind this is that a private hospital has more number of patients than a hospital run by the state so the hospital makes these policies to safeguard any critical patient lying next to the other patients who is claustrophobic or must be kept in a calm state away from too many people. If family members are allowed at all hours, the hospital will not remain a calm place. Also in emergency wards and intensive care units a patient needs to be kept under surveillance and anytime he may need immediate action or immediate treatment. That becomes tough with family members around the patients.

Issues also rise when patient's family do not agree with the procedure of treatment of the doctors or the procedures of the hospital. This can be segregated into two circumstances. Firstly, in a Government Hospital where there are very less doctors specially in the towns and rural areas and treatment or admission to the hospital being a very slow process there, the families of the patient get frustrated and anxious with a critical patient. So they resort to verbal abuse and resort to violence at times. Secondly, in a private hospital which works with so many regulations and procedures adding to a very high expense, leads the family to a state where they feel they are exploited and dejected. This results to verbal abuse or physical violence towards the hospital staff. Patients also resort to physical violence towards doctors or hospital staff when they are told to act against their will which may include change of food habits or change of medicines. Often patients resort to verbal abuse when they are said that they need to be operated. In cases of psychiatric patients or patients who undergo psychological treatment resort to violence when they are told to be admitted to the hospital.

Recently amidst the outbreak of corona virus, the "Tablighi Jammat" members in the

⁷ Sunalini Mathew, *supra* note 4 at paragraph 3.

Tughlakabad Quarantine Centre, Delhi had an unruly behaviour towards the doctors and they started spitting on the doctors.⁸ Some of them ripped off their own clothes in Ghaziabad to disturb the nurses mentally, putting them in an uncomfortable position.⁹

Violence in this circumstance implies to verbal abuse, or physical violence. Physical violence can be categorised as assault leading to hurt or grievous hurt at times there are also cases when doctors are killed by patient's family after the patient passed away. Such situations do not remain under the shell of emotions, rather should be taken up to the judiciary. Violence may also be in the form of outraging the modesty of a women who is a medical practitioner or a hospital staff. Some patients who are not critical and suffering from minor ailments make these moves towards nurses or women doctors by passing untoward comments or indecent actions.

Several doctors and nurses have reported issues against their societies and neighbourhood that they were refused to enter the premises after hospital shifts¹⁰. The localities stated that they would bring the infection to the society and hence they should not be permitted to enter their houses. Doctors work at the risk of their own lives and the repurcation of that service is the abusive and insensitive behaviour that they receive from their landlords and neighbours¹¹.

IV. ROLE OF MEDIA

Eventually before the outbreak of this epidemic disease, media has always been against the doctors. Often the news is portrayed as doctors are not willing to treat patients or doctors have kept patients waiting for hours outside. The media has to understand that a doctor's profession is a very noble profession and they are curbed by an oath which states that they will perform their duties with utmost honesty and will not say no to any patient. The media highlights their action and not their problems. Even they are working in a workplace and they do face problems which are not portrayed by the media. If the media analyses their problems and issues they face while treating patients, the problem could be solved. Media has a big responsibility towards people and posting the opposite end of the news outlines a negative image of the doctors to the people. If more and more people visualises the reason behind the doctor's strikes or frustrations and the condition in which they are working, probably more people would unite with them so

⁸ Vikas Pandey, Coronavirus: India doctors 'spat at and attacked', BBC News (April 3, 2020), <https://www.bbc.com/news/world-asia-india-52151141.html>

⁹ Ibid, paragraph 4.

¹⁰ Deepal Trivedi, Surat doctor harassed by insensitive neighbours; files police complaint, Ahmedabad mirror,(April 6, 2020), <https://ahmedabadmirror.indiatimes.com/ahmedabad/others/surat-doctor-harassed-by-insensitive-neighbours-files-police-complaint/articleshow/75009734.cms>

¹¹ Simrin Sirir, The Resident Doctors' Association of AIIMS wrote to Amit Shah Tuesday requesting action against harassment of medics in the wake of the coronavirus pandemic, The Print (March 24, 2020), <https://theprint.in/india/stranded-facing-eviction-doctors-harassed-over-coronavirus-fear/387410/>

that the government is forced to solve their issues.

The role of media is to gather information and provide it before common man and not to interfere into other jobs. We have witnessed every time there is an investigation on a case of murder or rape, media hovers over the hospital with a series of questions to the doctors and to get pictures of the victim. Is that sensible enough or is that information of how the doctors are treating the victim necessary enough or is it just for winning the competition between news channels. Media has lost the power to judge what is the actual news. It is like they feel every patient's death is due to medical negligence just like they judge the credibility of cricketers after they lose a match.

V. LAWS FORMULATED TO PROTECT DOCTORS AND THE LOOPHOLES IN LAWS

A case of June 2019 in west Bengal made several headlines after a seventy five year old patient died due to heart attack and the patient's family blew up two junior doctors murderously assaulting them, which in turn led to nationwide protests calling for extensive laws for protection of doctors.¹² The hospitals of west Bengal froze to a lockdown to which there wasn't any action by the Government of West Bengal. Different states joined to protest as a mark of solidarity. The centre refused to make any law as 'public health' is a state subject and only the state can make laws on it. Consequently 19 states passed the Medicare service persons and Medicare Service Institutions Act (prohibition of violence and damage to property act) which is also termed as Medical Protection Act but the execution of the laws in the field were never taken place¹³. The issue is that since this sort of violence is neither mentioned in the Indian Penal Code nor the procedure is established in the Criminal Procedure Code, the police may not know about the act or which section of the penal code it complies to.¹⁴

This act has also helped several aggrieved doctors and their families. In the case of Sarita Singh vs State of Uttarakhand in the year of 2018, Dr. Sunil was killed to death by a pistol while he was performing his duties. The High Court directed the government to compensate along with interest annually because he was the sole bread owner of the house and it was the duty of the government hospital to ensure his safety. There on the state Government was directed to enforce the act religiously in the state. Another instance for this statute is the case of Khokan Das vs State of Tripura which attracted section 3 of the Tripura Medicare service persons and

¹² Tamaghna Banerjee and Sumati Yengkhom, Assault sparks Government doctor's strike in Bengal (June 12, 2019), <http://timesofindia.indiatimes.com/articleshow/69781914.cms>

¹³ Simrin Sirur, There is a law to protect doctors from assault but this is why it doesn't work, The Print (June 14, 2019), <https://theprint.in/india/there-is-a-law-to-protect-doctors-from-assault-but-this-is-why-it-doesnt-work/250217/>

¹⁴ Ibid, para 4.

Medicare Service Institutions Act and section 333 of the Indian Penal Code which is non bailable¹⁵. In this case the petitioner who was a female doctor in a hospital at Agartala and a patient with early labour pain was admitted under her treatment and was taken for delivery but the patient expired even after the Doctor tried her best. The patient's family initiated threatening the hospital and on the entry of the security, the family attacked a doctor and dragged him outside along with damaging the property of the hospital.

Besides this act, there are separate provisions of the Indian Penal Code which any hospital staff can resort to when he or she is under some sort of physical or mental trauma due to violence. The Penal Code has provisions of hurt and grievous hurt under section 319 and 320 which guarantees imprisonment of minimum one year to seven years depending on the injury¹⁶. Adding to this, there are provisions of assault under section 352 which guarantees imprisonment for a maximum three months¹⁷. There are special provisions of section 333 which contends that any person who voluntarily hurts grievously to a public servant while he is on duty, the offender will be liable for an imprisonment of ten years¹⁸. At any juncture when a healthcare person from a Government hospital can resort to such provisions of the law in case of violence.

VI. RIGHT TO LIFE UNDER ARTICLE 21

The ambit of Article 21 in The Constitution of India has been given the widest possible interpretation to the term 'personal liberty' by the courts which includes several fundamental rights¹⁹. This article is a fundamental right that serves a significance in both the doctor as well as the patient's life. The doctor has the fundamental right to life which includes his human dignity that rips off during violence against him. Justice Bhagwati had said in her judgement that right to life includes the bare necessities in life which also comprises human dignity and expressing or moving freely²⁰. A doctor is also a human being who has been guaranteed the fundamental rights of the constitution and hence he deserves to live freely.

It is not humanly to look towards the patient's family that a death has caused this act of violence towards the person who tried his best to save a life and let that violence be compromised. Just as the patient is concerned for his sick family member, doctors also have a personal life, a mother who probably anxiously waits for her son or daughter to come back home safely. The

¹⁵ Khokan Das vs. State of Tripura, Criminal Petition No. 17 of 2019 (HC April.04, 2019)

¹⁶ 45, Indian Penal Code, S 319, 320 (1860)

¹⁷ Ibid, section 352

¹⁸ Ibid, Section 333

¹⁹ Maneka Gandhi vs Union of India AIR 1978 SC 597

²⁰ Francis Coralie vs. state of Delhi AIR 1981 SC 746

country must not moralise the death or assault of a doctor because it is done in the fit of rage and helplessness. Fundamental right to health²¹ is given to everyone so that adequate measures are taken to save a person from his ailment but mishaps happen not only due to medical negligence.

VII. RESPONSIBILITIES OF THE HOSPITAL

Both sides need to be addressed to state that in India every day there are cases of cardiac arrests, cancer, psychological disorder, accidents, neurological problems and many more ailments. Patients are also received from foreign countries so there are certain expectations about the medical facilities that the hospital should live up to. The hospitals should have constant communication with the patient's family and their concern should be to solve the problems of family members and not impose unnecessary policies and paperwork's.

What is essential is that there may be corrupt doctors or doctors who have deliberately caused medical negligence but is it necessary that every doctor will lose their goodwill for a handful of the medical fraternity. It is better to take judicial steps for such situation rather than taking the law in hand. This is the responsibility of the hospital to take adequate measures to investigate the matter and if required make a complaint to the police. This is how the bond of trust will grow between a patient and hospital.

More amount of surveillance cameras should be installed to record any untoward incident that may occur. There should be constant communication with the patient's family to gain its trust and faith on the institution. It is the responsibility of the hospital to take care of any problem that the family is going through. This leaves a good image of the hospital.

It is the duty of the hospital to look into the needs of the hospital staff, whether any women staff is being harassed or going through some trauma or whether any doctor is being harassed by any family. The hospital should take care that there are favourable conditions for the doctors or staff to work such that their problems or grievances should also be addressed. They should recruit a requisite amount of doctors and staffs so that nobody is overburdened with work. A committee in the hospital must be set up to check upon any sort of violence in the hospital as that could also affect a patient's condition. There should be requisite security staff trained to handle situations of violence with utmost care and sensitiveness towards the patient's family. The nurses and hospital staff should be trained about soft communication and sensitiveness of their duty. The patient's family should be explained very descriptively the importance of

²¹ *Shantisar builders v. Narayanan Khimalal Totame* (1990) 1 SCC 520

consent and that mishaps do occur during operations or sometimes the patient's body does not respond to the medications. It is even possible that patients of a certain age may get cardiac arrest due to the operation. These are not the effect of negligence. Every unsuccessful treatment is not a result of negligence.

VIII. ROLE OF THE GOVERNMENT

The Government has the burden to look after its people and its safety and to prevent any illegal activities. There are so many cases of murder, assault, harassment registered but hardly there are cases registered of these violence towards a doctor.²² There has been a situation where doctors are bound to perform their duties but are deprived of their basic rights of living a dignified life. When workplace safety has been a significant in other business and manufacturing companies then why is not seen with so much importance in the health sector. There is an essence of advantage of doctors being taken because they cannot opt for strikes for long number days as doctors are not used to leave patients with their ailments. The doctors expect a safer environment to treat patients and their plea should be looked after. The Chief minister of West Bengal had threatened the doctors to call off strike which was on the event of death of two junior doctors who were killed by patient's family²³.

In these cases, the government should show the same empathy which the state shows on any other murder and protest that common man takes. The state does not treat doctors equal to common man on the basis of their duty where every man deserves to live their life with dignity under article 21 of the Constitution²⁴. This sort of violence poses a threat to people who are trying to save the country.

The Indian Medical Association called for lighting candle as a sign against the violence as a protest as one of the doctors who dies due to treating corona patients was denied cremation in Chennai.²⁵ In some places doctors weren't allowed entry to their apartments because they feared doctors may bring the viral disease with them.²⁶ Doctors were wearing black badges at work asking for immediate laws that would ensure their safety and the Indian Medical Association asked the centre for taking action against this violence.²⁷

²² J G Mackin, *Violence against trainee paediatricians*, 84 Archives of Disease in Childhood 106– 108 (2001)

²³ All you need to know about doctors' strike, Times Of India (June 14, 2019), <https://timesofindia.indiatimes.com/india/all-you-need-to-know-about-doctor-agitation/articleshow/69781914.cms>

²⁴ INDIA CONST. art. 21.

²⁵ IMA seeks law to check violence against doctors, The Hindu (April 20, 2020), <https://www.thehindu.com/sci-tech/health/ima-seeks-law-to-check-violence-against-doctors/article31391231.ece#>

²⁶ Ibid para 3.

²⁷ Ibid para 3.

The Government has then amended the Epidemic Diseases Act that was enacted in the year 1897 to provide for laws that would prevent the transmission of any epidemic disease. This statute has added the provision of safeguarding healthcare personnel which includes doctors and nurses.²⁸ With regard to the statute, violence is described as any act that would bring injury, harm, hurt or grievous hurt or harassment as physical violence. If there is any obstruction made to the duties of healthcare personnel or people on whom the act has jurisdiction, it would amount to violence. Other than this damage to property or documents which has direct link to the epidemic is also chargeable under this statute.²⁹

The act punishes its offenders with an imprisonment from three months to five years depending on the intention and quantum of damage and in case of grievous hurt an imprisonment of six months to seven years adding to a fine ranging from fifty thousand to two lakh or one lakh to five lakhs in case of grievous hurt.³⁰ It was a much needed amendment at this time but the doctors would have been free from stress if there would be a separate legislation for the safety of doctors because these laws are on air till the epidemic disaster has its life.

The Government of Uttar Pradesh on an act of the Tablighi Jamaat in the NMG Hospital in Ghaziabad ordered the miscreants to be booked under the National Security Act because of their unruly behaviour towards doctors and nurses. The backdrop to this event was a mosque in Delhi which turned out to be an infection point where thousands of people were hidden who came from Indonesia in the fear of being quarantined. People migrated to and from that place and infected a majority of the country which led the Uttar Pradesh Government to book them under National Security Act.³¹

On the other side of the coin there is article 47 of the Constitution of India which falls under the Directive principles of State Policy which declares, "State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties".³² This poses a responsibility on the government to look after public health and ensure the hospitals have no issues in treatment. The government has to check whether there are adequate doctors and health staffs or whether there are need of more beds or more hospitals if the need arises. It is the responsibility of the state to see if any high technical equipment is necessary and also look after the increasing costs of healthcare facilities.

²⁸ The Epidemic Diseases (Amendment) Ordinance 2020, section 2, clause B, (April 22, 2020)

²⁹ Ibid, section 2.

³⁰ The Epidemic Diseases (Amendment) Ordinance 2020, section 3, (April 22, 2020)

³¹ Covid-19: Tablighi Jamaat members who harassed UP hospital staff to be charged under NSA, The Scroll (April 03, 2020), <https://scroll.in/latest/958109/covid-19-tablighi-jamaat-members-who-harassed-up-hospital-staff-to-be-charged-under-nsa.html>

³² INDIA CONST. art. 47.

numerous hospitals run by the state does not take patients on ventilators, baby birth for C-segment, intense terminal consideration, new-borns conveyed outside with sepsis, and so on. The expenses of critical patients in a decent private medical hospital is very high, which is past the limit of the vast majority. Insurance agencies likewise don't take care of a significant part of the expense. The outcome are examples of violence against medical professionals.

IX. CONCLUSION

The most significant aspect of a doctor- patient relationship is saving life of the patient. The patient's family should realise that resorting to violence or abusing the doctor will not save the patient. It is the treatment that can bring betterment to the patient so there needs to be complete faith on the doctor. It is the doctors that have been working round the clock without rest and they are treating so that there is no risk of life on part of the patient or his family or the society. They deserve respect and cooperation. It is not that the entire responsibility of life is on the doctor. Responsibilities need to be shared for a better bond within the country, a little is on the families to have faith on the doctor and a little is on the doctor to treat with utmost integrity, some amount is on the judiciary to not overlook the violence happening against medical fraternity and to believe that doctors have a fundamental right of a dignified life. Also some responsibilities are on the government to support the doctors and make their work a little easier. Their empathy is needed to make better laws and not their sympathy. The new amendment to the Epidemic Diseases Act 1897 will safeguard the doctors when there need is utmost in the country. The countrymen need to be educated on the fact that human bodies are not machines which will act according to the science behind it. A human body acts involuntarily as per its needs and every human body cannot take medicines and treatments and surgeries so every unsuccessful treatment should not be termed as medical negligence to defame the doctor. If a legislation comes up or amendments are made permanently and the public is made aware about the essence of a doctor's profession, changes would creep to give the healthcare fraternity a safer environment to work.
