



**PAVING THE WAY FOR COMPREHENSIVE LEGISLATION FOR MEDICAL
PRACTITIONERS IN INDIA**

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Abstract:

Laws, Regulations, International Conventions and Human Rights domain has heralded the idea of patient's rights substantially. They have effectively emphasized on the threats to patients rights and about required mechanism to counter it as well. But on other hand, in the post pandemic days it is crucial to evaluate the position about medical practitioner's rights, their protection, and creating awareness about it. COVID-19 has surfaced the new scenarios, new dilemmas, and threatening circumstances for medical practitioners. Responsibility of their health, rights, life and safety is always jeopardized in need of our yet they are not protected in an efficient way. Medical practitioners have struggled to strike a balance between their duties and obligations to patients and their personal right to protect themselves, their families, and their clinical settings. To manage the current crisis, the government and professional regulating authorities have created new policies and amended laws. In the wake of the current pandemic, it is imperative that we remain conscious of the laws that are in place as well as our rights and obligations. To deliver the best care possible in the current unpredictable conditions, cooperative efforts are required.

Healthcare professionals encounter a distinct set of challenges and impasses that necessitate special care. Whatever the case, COVID-19 has changed the game for everyone. Thus, in the light of this new era which has ushered in through pandemic, it is vital to create comprehensive legislation which will safeguard the rights of medical practitioners and will afford protection. With booming technological advancements and in threats of bio weapons safeguarding rights of medical practitioners, their Mental Health and thorough study regarding possible threats and current threats will create a niche for creating law which will be inclusive.

This Article aims to evaluate current legal framework, International Conventions, Mental health of Medical Practitioners and will substantiate the need to create comprehensive legislation for Medical Practitioners in India.

Keyword: Doctors, Health, Mental Health, COVID 19, Medical Practitioners, legislation

1. Introduction

Over the past six months, it has become abundantly evident that doctors and other healthcare professionals are crucial to society. On the front lines of the corona virus pandemic, they have put their lives in danger. It is no secret that India frequently has poor healthcare infrastructure. Their work is just made more difficult as a result. The world has been devastated by the COVID-19 epidemic, and the world is attempting to adjust to the new world. Healthcare workers had to undergo stress in order to combat the pandemic. Doctors worked tirelessly despite numerous movement restrictions, such as curfews and lockdowns. Doctors had to continue working. Doctors' jobs are demanding, which has been made worse by the COVID-19 pandemic. Doctors' health has suffered as a result of the pandemic. Doctors are increasingly subjected to a variety of mental health illnesses, including depression, burnout, and sleeplessness, and poor physical, psychological, interpersonal, and mental health.

But in that testing period, healthcare professionals are also confronted with moral conundrums that they have never encountered before. They are at a high danger of contracting COVID-19, thus there are growing worries about their personal safety. If healthcare workers are impacted, it will put further strain on an already overburdened healthcare system. The number one priority right now for winning this ongoing fight should be providing our healthcare workers with proper access to person's protective equipment and the most basic medical facilities. Healthcare professionals are using the resources at their disposal to protect themselves and provide the best care possible for patients around the nation, despite the lack of personal protective equipment. However, there are increasing reports of medical staff protesting and complaining about the lack of protective gear. Such complaints could have a negative effect on our battle right at the front lines if the issue is not resolved as soon as possible. They are morally obligated to help the community in times of need, but they also lack the most basic resources for protecting themselves and caring for patients.

It is similarly vital to understand that other diseases have continued to spread throughout the COVID-19 crisis and lockdowns. Other illnesses that impact people such as infections, auto-immune diseases, metabolic issues, and malignancies continue to progress naturally. Healthcare practitioners need to handle both the consequences of these diseases and their emergency presentations at the same time. Even without COVID-19, a variety of viral and non-infectious diseases cause a sizable number of fatalities each year, which will continue to raise mortality rates in the present. The developing fetuses won't wait for government unlocking orders before entering our world. When fighting COVID-19, these essential healthcare services are equally crucial.

Changes in clinical practice were required as a result of the scenario, which put medical personnel in a sticky predicament. In order to improve the safety of healthcare practitioners and society at large, the professional bodies accelerated their efforts to identify the problems and changed the current regulations. Both the federal and state governments took notice of the problem, developed plans, and updated the law.[1] Although the pandemic is far from over and will likely continue, it is crucial that the medical community remains aware of both the clinical management and the legal issues connected to it. In the age of the current pandemic, we must all be aware of the laws that are in place as well as our rights and obligations.

Therefore it is vital to understand the current legislative framework, international conventions and policies which will navigate the road to safeguard the rights of medical practitioners in future. In the light of unforeseen circumstances we faced it was crucial to have legislation which will deal with nuances of the circumstances and will afford the protection to the medical practitioners.

2. Current Legal Framework

Through the provision of healthcare services to the general public, medical professionals play a crucial role in society. However, the legal risks that medical professionals face in their work are numerous. Doctors and other medical professionals are given legal protection by the Indian legal system so they can deliver high-quality care without worrying about repercussions from legal proceedings or harassment.

In India, a number of laws, rules, and regulations exist for the legal protection of doctors. The Indian Medical Council Act of 1956 is the fundamental piece of legislation controlling the practise of medicine in India. The Medical Council of India (MCI), which oversees medical education and practise in the nation, was founded by the Act. Doctors in India are protected by a number of regulations in addition to the Indian Medical Council Act, 1956[10].

The same fundamental human rights apply to doctors and other healthcare professionals as to everyone else. However, given the nature of their work as medical professionals, they also have obligations.

The State is required by Article 21 of the constitution to protect each person's right to life. Medical practitioners have the following tasks and obligations in this context:

- The main duty of a medical professional is to give patients the best treatment possible and to make sure that their health comes first. They must ensure that the patient is protected from hazards and problems.
- According to guidelines set forth by the Medical Council of India, every medical professional is required to keep medical records starting at the beginning of treatment. Additionally, a Register of Medical Certificates should be kept by them.
- Every medical practitioner must display the registration number that the State Medical Council or Medical Council of India has assigned to them.
- A medical professional must follow all rules and legislation that are relevant to their line of work. They should be aware of and obey laws like the State Acts like Drugs and Cosmetics Act, 1940; Pharmacy Act, 1948; Narcotic Drugs and Psychotropic substances Act, 1985.
- Regarding the patient's treatment, medical history, personal information, and family history, confidentiality must be upheld. Only in exceptional situations may this information be disclosed with the consent of the recipient.

2.1. Negligence and criminal liability:

A doctor is subject to criminal prosecution if they perform their duties improperly or if any errors are found in their work. They are subject to trial and prosecution in a legal setting. Criminal law is applied differently to doctors than to other people. Because of the nature of their employment, they run the risk of hurting someone while attempting to stop more suffering. Regarding medical professional carelessness, patients have rights under the Consumer Protection Act of 1986. The question of whether the medical industry should be covered by this Act was first up for discussion. The Supreme Court ruled that it must.

Different sections of the Indian Penal Code and the Code for Criminal Procedure cover criminal liability in medical care. However, the criminal code provides three defenses—informed consent, necessity, and good faith—that give doctors some protection.

There have been numerous incidents of doctors and nurses being harassed and mistreated while

performing their responsibilities during the pandemic. Doctors across numerous states and towns staged rallies and strikes in response, calling for improved protection. One instance, which occurred in Pune in 2019 prior to the pandemic, was doctors declining to treat patients who verbally or physically abused them. The Medical Council of India's regulation 2.1.1 states that doctors are free to accept or reject a patient.[2]

2.2.Laws:

- **Protection Of Medicare Service Persons And Medicare Service Institutions (Prevention Of Violence And Damage To Property) Act**

This legislation has been approved by at least 19 states. Both independent practitioners and physicians employed by institutions are covered. Anyone prosecuted under this law faces a maximum three-year prison term and a 50,000 fine. The legal system is not flawless. Because it lacks the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC), it is less effective. As a result, doctors and other healthcare professionals find it difficult to contact the police and lodge complaints[3].

- **Delhi Medicare Service Personnel and Medicare Service Institutions (Prevention of Violence and Damage to Property) Act, 2008**

There is a law to safeguard doctors in Delhi's National Capital Territory. Some of its key elements are as follows:

- It forbids harming a medical care institution's property or committing violent acts against medical staff.
- Violence is defined as acts or behaviors that hurt, injure, intimidate, prevent, hinder, or jeopardize the life of a medical practitioner.
- According to the Act, professionals who provide Medicare services include licensed physicians, registered nurses, nursing assistants, midwives, paramedics, and companies that provide ambulance services, among others.
- The maximum sentence for anyone found guilty and punished under this statute is three years in prison and/or a \$10,000 fine.

- **Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage of Property) Bill**

The Ministry of Health proposes enacting this legislation in 2019. These were its parts:

- Physicians, dentists, nurses, paramedics, medical students, providers of diagnostic services, and ambulance drivers were all included in the definition of healthcare personnel, which was fairly broad.
- Those found responsible for harming a medical professional could spend up to 10 years behind bars.
- A healthcare practitioner can be attacked and fined up to 10 lakh.

The 2019 winter session was the intended time for its introduction. The Ministry of Home Affairs, however, disapproved of it. The justification offered was that there was no need for a separate statute to prevent violence against medical personnel. The IPC and CrPC have sufficient provisions, according to the Ministry, to handle instances.

- **Epidemic Diseases (Amendment) Ordinance 2020**

The Epidemic Diseases Act, 1897, was amended by the law, which was passed in September 2020. Attackers of medical professionals working on the front lines of the epidemic are punished. The law, according to the Health Ministry, is intended to establish a zero-tolerance approach on violence against anyone working in the healthcare industry. It includes a fine of between 50,000 and 2 lakh rupees.

Some opposition leaders, however, criticized the legislation, claiming it gave the Centre the right to meddle in the affairs of state chief ministers. The ordinance is insufficient since it exclusively addresses violent crimes committed during an epidemic. The fact that these occurrences are structural and systematic is not addressed.

There is no centralized record on confirmed cases and deaths of medical personnel related to the pandemic. Dealing with irrational patients and family members is only one aspect of safety and protection. The lack of Personal Protective Equipment (PPE), secure and sanitary quarantine facilities, and mental support have all been mentioned by healthcare professionals. Occupational safety should come first, and existing rules and frameworks should be modified, it would assist in preparing the healthcare industry for a future after Covid that is more resilient.

2.3. Medico-legal challenges

The life of a doctor is not an easy one. It is weighed down by difficult choices that could change your entire life and a demanding schedule with no assurance of a family life. The most crucial point is that, despite their skill in their field of practice, their expertise does not always guarantee success. There are several outside elements that are necessary for doctors to function effectively. Unfortunately, for Indian doctors, these outside factors don't work out well, which affects their performance and leads to chronic stress, which also has a negative impact on their health.

When a patient is admitted to a hospital, the doctor not only assumes responsibility for diagnosing the condition of the patient, but also indirectly for explaining the procedure to the patient's family members who have placed their trust in the medical expert. All eyes and ears are on the doctors as soon as the patient walks into the hospital. Working under such strain is difficult. Additionally, people in India visit doctors with the belief that they will successfully treat their illness. Not that believing in a doctor is incorrect, but doing so might have serious ramifications if a bad or unexpected medical outcome occurs.

We have never seen the level of hostility and violence against doctors that is present today in the history of the medical profession in this nation. In terms of integrity, the public's opinion of doctors is at its lowest point. Ironically, doctors in our country are depicted as being incompetent and subpar, aside from being dishonest, despite the mindboggling medical advances that are being effectively utilised by Indian doctors in treating patients. There is a huge trust gap between patients and doctors, and the medical profession is subject to rigorous public criticism. The amount of hospitals and doctors being sued has increased dramatically.

Huge awards for compensation are being made at the drop of a hat. Society and the State appear to be on the offensive in the eyes of doctors. Therefore, it is even more necessary for us to actively avoid any potential medico-legal issues in order to avoid litigation and its related consequences. There has been a noticeable increase in malpractice claims brought against critical care physicians in recent years. Therefore, it is necessary to recognize the medico-legal challenges faced by critical care medicine practitioners and to take preventive measures.

- **Physical Abuse**

One typical outcome is violent assault on doctors. The Indian medical community is accustomed to these situations and has prepared for them. In February 2018 in Kolkata, relatives of a patient who allegedly died as a result of medical malpractice attacked the medical professionals they believed were to blame. The doctors claimed that the patient had received the necessary care, and they directed the patient to the appropriate medical division. Whether there was medical malpractice or not, it is important to highlight that the patients did not try to harm the doctors by attacking them instead of making a formal complaint.

A 2017 news report by The Hindu quoted a survey by the Indian Medical Association (IMA) which revealed that a massive 82.7% of Indian doctors are "stressed out" in their jobs. The survey results further said that that "the fear of violence" was the central cause of the stress with 46.3% of the surveyed doctors claiming the same. 24.2% of the doctors were scared of being prosecuted while 13.7% of them worried about criminal prosecution[4].

- **Legal Troubles**

According to a study titled "Medical Negligence: Criminal Prosecution of Medical Professionals, the Importance of Medical Evidence: Some Guidelines for Medical Practitioners," it is fairly "common" for doctors to face criminal charges for alleged medical negligence in the case of patient deaths that occurred while they were treating them. According to the report, one should exercise caution while bringing legal action against a doctor because they shouldn't be subjected to "unnecessary harassment." Doctors are urged to retain all patient-related information for at least five years due to the risk of criminal charges, so they may present reliable evidence if and when asked by any law enforcement organization. Doctors won't be able to execute their jobs effectively if they are concerned about facing criminal charges. Doctors often have to take a chance and perform medical procedures that might not be successful, particularly in emergency situations where patients may have low survival rates. In such situations, clinicians might not even attempt to treat patients if they are concerned about being blamed if a patient receives a poor medical outcome.

Patients are not the only ones who have a doctor's obligation to them. Patients' families and society at large should make sure that doctors may work in a dependable and friendly environment where they feel safe, understood, and unconcerned about having to go to court if an operation does not go as planned.

3. International Conventions:

The rights of doctors are covered by a number of international accords, including:

The Universal Declaration of Human Rights: it was adopted by the United Nations General Assembly in 1948, emphasizes the value of medical treatment in realizing everyone's right to the highest practicable standard of health[5].

International Covenant on Economic, Social and Cultural Rights: The United Nations General Assembly adopted the International Covenant on Economic, Social, and Cultural Rights in 1966. This treaty affirms that everyone has the right to the highest attainable level of physical and mental health and calls on states to take action to make medical care accessible to all citizens.

International Labor Organization (ILO) Convention on Occupational Health Services: The ILO enacted this convention in 1985, and it lays forth standards for the delivery of occupational health services, including as physical examinations, health education, and counseling, to workers across all industries[6].

World Medical Association's Geneva Declaration: All doctors are obliged to observe the ethical standards set forth in this proclamation, which was first adopted in 1948 and amended in 2017. It contains clauses that recognize the autonomy and dignity of patients as well as the obligation of professionals to safeguard patient privacy and confidentiality.

World Health Organization (WHO) Global Code of Practice on the International Recruitment of Health Personnel: This code, which the WHO established in 2010, intends to encourage moral hiring practices for medical professionals, especially doctors, and to guarantee the protection of their rights and interests. Fair working conditions, access to education and training, and protection from exploitation are all included [7].

These conventions emphasize the necessity of ensuring that doctors can practice their profession with autonomy, dignity, and respect for human rights while also recognizing the significance of the role of doctors in promoting and protecting health.

3.1. Domain of International Health Law

As states increasingly recognize the need for international cooperation to achieve national public health objectives for which domestic law and other policy responses are increasingly insufficient, treaty law, also known as conventional international law, has gained new prominence as a mechanism or a tool that can be used by states to facilitate multilateral cooperation in this era of globalization. In order to address new challenges to global health, globalization has created the need for new, formalized structures for international collaboration, including international law. For instance, the dynamics of globalization have produced favorable global breeding grounds for the transnational spread of emerging health threats, such as WMDs, including bioterrorism, emerging and reemerging infectious diseases, and the vectors of non communicable diseases like tobacco, alcohol, and obesity.[9]

Because of the momentum of globalization, states must increasingly turn to international cooperation in order to protect and promote domestic health. Consequently, it is likely to see wider use of international legal instruments in this century to control the risks and threats to health associated with globalization and, perhaps, to take advantage of the opportunities to improve world health that have been afforded by global change.

In conclusion, international health law and various international conventions and declarations provide a framework to protect the rights of medical practitioners worldwide. These legal instruments emphasize the importance of ethical medical practice, access to healthcare, fair labor conditions, and the right to work in a safe environment. By upholding these rights, the global community can foster a supportive and conducive environment for medical professionals to provide quality healthcare services and contribute to the improvement of global health

4. Medical Ethics and Medical Practitioners Rights:

Identification, analysis, and resolution of ethical issues that arise in routine healthcare practice are the hallmarks of medical ethics.

Human Rights are unalienable standards of existence that apply to every member of the human family. To give patients and doctors the best care possible, future medical professionals need to be more knowledgeable about Medical Ethics and Human Rights. [10].

The rights granted to healthcare professionals in the practise of medicine include all entitlements and safeguards. Although these rights may differ by nation or place, some features are universal.

Medical practitioners have the right to practise medicine as long as it falls within the scope of their education, experience, and licencing. Medical practitioners have Right to Informed Consent. Before beginning any medical procedure or treatment, doctors have the right to get the patient's informed consent. Along with it it doesn't compromise patient autonomy or access to essential care, medical professionals typically have the freedom to decline to administer treatment or care those conflicts with their ethical convictions.

It is important for medical practitioners to be aware of medical ethics principles and their rights to ensure they provide high-quality care while safeguarding their own well-being and professional integrity. Ethical dilemmas may arise in medical practice, and healthcare professionals should seek guidance and support from their peers, supervisors, or ethics committees to navigate these complex situations.

5. Conclusion:

Thus, the standard of healthcare services offered is inextricably tied to doctors' rights. The healthcare system can keep a trained and motivated workforce by upholding doctors' rights. Better patient care and better societal health outcomes are more likely to result from doctors who are supported well in their professional lives. Along with that for doctors to focus on their duties without worry or interruptions, a safe workplace is crucial. Unfortunately, there have been reports of violent events involving medical practitioners in India. Assuring doctors' rights to operate in a hostile-free atmosphere protects not only their wellbeing but also makes the healthcare system more effective. Doctors should have the right to security against assaults, whether physical or verbal, while carrying out their tasks. The medical community's morale has been negatively impacted by the escalating trend of violence against doctors. The healthcare system can lessen this problem and promote a more positive doctor-patient relationship by protecting their rights.

The typical workday for a doctor includes long and difficult hours. A better work-life balance is made possible by guaranteeing suitable working hours and breaks for doctors. As a result, burnout is decreased and medical workers' general wellbeing is improved. Along with this Doctors ought to be fairly compensated and recognized for the commitment and knowledge they provide to their field. Respecting their entitlement to compensation recognizes their dedication and inspires other people to choose a profession in medicine. In order to keep talented doctors in the nation, adequate compensation is also essential.

Upholding medical ethics and professional integrity is a necessary part of respecting doctors' rights. Doctors must to be allowed to decide on their own accord based only on their medical knowledge and experience. The function of the doctor is strengthened as a result, and people' faith in their medical professionals is also strengthened.

Access to opportunities for ongoing professional growth, education, and research should be available to physicians. By ensuring that doctors are protected in this way, we can improve both the competency of our medical professionals and the standard of the treatment we deliver.

Legal safeguards are necessary for doctors to protect them from baseless claims and false allegations. A more trustworthy doctor-patient relationship is encouraged by the establishment of an effective legal framework, which also discourages false accusations and fosters open dialogue and improved patient care. The foundation of an effective healthcare system in India is doctors' rights. Protecting medical professionals' rights will help the nation develop a qualified and motivated healthcare workforce, enhance patient care, and build a positive workplace culture. In addition to being advantageous for doctors, upholding their rights is crucial for fostering patient

confidence and guaranteeing the general welfare of the populace. A crucial requirement for a healthier, wealthier India is to acknowledge the importance of doctors' rights and actively defend them.

Thus, in the light of various factors we have discussed above it is need of hour to have comprehensive medical rights legislation in India is crucial both domestically and internationally. International norms have been set for the rights of healthcare workers by organizations like the World Health Organization (WHO) and the International Labor Organization (ILO). Being a member of these organizations, India is required to make sure that the laws protecting its healthcare workers adhere to these global standards.

Many overseas patients choose India as their destination for medical care each year, numbering in the thousands. International patients may be more inclined to seek treatment in India if they are certain that their rights will be safeguarded if the country has comprehensive legislation protecting doctors' rights. Global talent pool: numerous overseas employers are interested in hiring India's numerous highly qualified doctors. Comprehensive doctor's rights legislation can assist keep these doctors in the country and stop a brain drain of medical expertise by ensuring that they are protected by the law and treated fairly by their employers. Reputation: In the eyes of the world community, India's healthcare system needs to improve. The reputation of the healthcare system can be enhanced with the help of comprehensive doctor's rights law, which could have a good impact on the economy and status of the nation internationally.

In summary, comprehensive legislation on doctor's rights in India is important in the international scenario to ensure that the country complies with international standards, attract international patients, retain medical talent, and improve the country's reputation.

Along with this there is a need in India for comprehensive medical legislation for a number of reasons such as protecting patients' safety is the main goal of comprehensive law. Legislation can make sure that medical professionals adhere to best practices and protocols in order to fulfill their duty to give patients the best care possible.

Legislation can aid in establishing national standards for medical practices and procedures, ensuring that all professionals are held to the same high standards of care. This can lessen care inequities and guarantee that patients get reliable, efficient care. Legislation can herald accountability. Laws can help to make sure that doctors are held responsible for their acts. This can include regulations requiring the reporting of unfavorable incidents, taking disciplinary action for misconduct, and mandating ongoing professional development. Legislation can assist in enforcing ethical standards among medical professionals, such as respect for patient autonomy, informed consent, and confidentiality. By doing so, it is possible to ensure that patients are treated with respect and dignity and that their rights are upheld. To ensure that patients receive high-quality, safe, and moral care, India has to enact comprehensive medical legislation. Such laws could boost accountability, harmonies medical procedures, and enhance patient outcomes.

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