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LABOUR REGUALATIONS IN HEALTH WORKFORCE – A CRITICAL ANALYSIS

Under the Guidance and Supervision of

Ms Namitha K.L

The National University of Advanced Legal Studies, Kochi

Submitted By:

ALBIN A. JOSEPH

Register No. 10292

LLM (PUBLIC HEALTH LAW)

CERTIFICATE

This is to certify that Mr. ALBIN A. JOSEPH, Register No. 10292, LLM (Public Health Law) has submitted her Dissertation titled **"LABOUR REGULATIONS IN HEALTH WORKFORCE – A CRITICAL ANALYSIS**" in partial fulfilment of the requirement for the award of Degree of Master of Laws in Public Health Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the Dissertation submitted by him is original, bona fide, and genuine.

Namitha K.L

Guide and Supervisor

NUALS, Kochi

Date:

Place: Ernakulam

DECLARATION

I declare that this Dissertation titled **"LABOUR REGULATIONS IN HEALTH WORKFORCE – A CRITICAL ANALYSIS**" is researched and submitted by me to the National University of Advanced Legal Studies, Kochi, in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional Law and Administrative Law, under the guidance and supervision of **NAMITHA K.L**, Assistant Professor and is an original, bona fide and legitimate work. It has been pursued for academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

Submitted By:

Albin A. Joseph

Register No. 10292

LLM (PUBLIC HEALTH LAW)

NUALS, KOCHI

Date:

Place: Ernakulam

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ALBIN A. JOSEPH

ABBREVIATIONS

AIMS	ALL INDIA INSTITUTE OF MEDICAL SERVICE
ASC	ARMY SERVICE CORPS
ASHA	ACCREDITED SOCIAL HEALTH ACTIVIST
CE	COMMON ERA
COVID	CORONA VIRUS DISEASE
ERA	EMPLOYMENT RIGHTS ACT
EU	EUROPEAN UNION
FLSA	FAIR LABOUR STANDARDS ACT
FPRW	FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK
HASAW	HEALTH AND SAFETY AT WORK
HASAWA	HEALTH AND SAFETY AT WORK ACT
HCW	HEALTH CARE WORKER
HEEG	HIGHER EDUCATION ENTREPRENEURSHIP
HIV	HUMAN IMMUNO VIRUS
HSW	HEALTH AND SAFETY AT WORK
HSWA	HEALTH AND SAFETY AT WORK ACT
GDP	GROSS DOMESTIC PRODUCT
IGOT	INTEGRATED GOVERNMENT ONLINE TRAINING
ILO	INTERNATIONAL LABOUR ORGANISATION
ILS	INTERNATIONAL LABOUR STANDARDS
IRPTC	INTERNATIONAL REGISTER OF POTENTIALLY TOXIC CHEMICALS
MOHFW	MINISTRY OF HEALTH AND FAMILY WELFARE
NIF	NATIONAL INNOVATION FOUNDATION
NIOSH	NATIONAL INSTITUTE OF OCCUPATIONAL SAFETY

OECD	ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT
OHS	OCCUPATIONAL HEALTH AND SAFETY
OSHA	OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
PPE	PERSONAL PROTECTIVE EQUIPMENT
PSI	PUBLIC SERVICES INTERNATIONAL
RSC	REGIONAL SUPPORT CENTRE
SoP	STANDARD OPERATING PROCEDURE
SDG	SUSTAINABLE DEVELOPMENT GOALS
SMW	SPECIAL MINIMUM WAGES
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UHC	UNITED HEALTH CARE
UN	UNITED NATION
UNEP	UNITED NATIONS ENVIRONMENT PROGRAMME
UNI	UNION NETWORK INTERNATIONAL
UOI	UNION OF INDIA
WHO	WORLD HEALTH ORGANISATION
WHD	WAGE AND HOUR DIVISION

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LABOUR REGULATIONS IN HEALTH WORKFORCE – A CRITICAL ANALYSIS

CHAPTER-1

INTRODUCTION

Labour Regulations in the Health Workforce are at the centre of this paper's structure. We look at existing healthcare frameworks, the roles that health personnel are assigned, and the labor regulations pertaining to them. Earlier frameworks either ignore or treat health workers as one of several equally important components. We situate the health worker at the core of the health system because every function is either carried out by or mediated via the health worker. Our methodology is beneficial for organising health workforce research and identifying research challenges related to health workers. We address the various research topics related to the health workforce; metrics to measure a health system's capacity to deliver healthcare; international organisations' contributions to health workers in meeting healthcare needs and demands; the appropriate size, composition, and distribution of the health workforce; approaches to meeting health-worker requirements; health workers' adoption and adaptation of treatments; and health workers' training. We provide a framework for placing health workers at the centre of the health system in this paper, and we utilise it to identify research issues related to the health workforce. Existing health-system frameworks either ignore health workers as a vital component of system operation or treat them as one of several equally important components. The identification of research topics on the health workforce becomes more obvious as a result of positioning health professionals at the core of the health system. We'll go through several research areas vital for enhancing population health and patient happiness in the following sections.

The size, character, and dispersion of the health workforce must be assessed when evaluating the possibility of a health system with health workers at its core. Other health-system frameworks, on the other hand, may base their evaluation on financial criteria. In certain studies, health spending per capita or the population density of hospital beds, for example, are relevant measures for a health system's capacity. The amount of health personnel, their education and training, and their geographic distribution will all be important in our approach. Total health-worker density, or the total number of health workers per capita, is a straightforward metric to use. This demonstrates the health system's vast ability to provide healthcare services. On the

other hand, total health-worker density is an overly simplistic measure because it ignores disparities in medical expertise and the wide range of services that health professionals provide. Rather than general health-worker density, physician density could be an alternative, limited to those with specialised training. This metric may be preferred to aggregate health-worker density if doctors are seen as the most important category of health worker, and other health workers cannot easily replace them in extending healthcare services. However, a weighted average of the many sorts of health workers, with the weights representing each type's contribution to the health system's goals, may be required. Of course, determining and estimating the relative contributions of various health workers is required for such a set of weights. This metric may be preferred to aggregate health-worker density if doctors are seen as the most important category of health worker, and other health workers cannot easily replace them in extending healthcare services. However, a weighted average of the many sorts of health workers, with the weights representing each type's contribution to the health system's goals, may be required. Of course, determining and estimating the relative contributions of various health workers is required for such a set of weights. Health personnel, overall, meet the requirements and desires of patients. Demands may or may not be founded on needs, and needs may or may not be voiced. A range of demographic and health circumstances, such as infancy, pregnancy, and illness, create needs. Governments in most nations accept responsibility for meeting needs, but not always demands. In general, we anticipate that the private sector of a healthcare system will fulfil demand while the public sector will meet needs. The government is more likely to prioritise satisfying healthcare needs than meeting healthcare desires. Health workers help to meet healthcare needs by providing health services and assisting in the generation of demand for unmet needs, for example, by teaching individuals about their objective health conditions and risks. Individual and population health can benefit from such supplier-induced demand. This should be distinguished from demand generated just for the benefit of the supplier and not to meet demands. The majority of medical treatment and drugs are delivered by private-sector health workers in many developing nations. The contributions of public-sector health workers, on the other hand, are more likely to be recognised than those of their private-sector colleagues. The public sector has more information and is subject to more immediate and thorough regulation than the private sector.

Workers' rights cover a wide range of human rights, including the right to decent employment and freedom of association, as well as equal opportunity and discrimination protection. In

addition, four key labour laws were merged in the Code on Wages, which was enacted in 2019. The four new Labour Codes were meant to take effect on April 1, 2021, but due to an increase in COVID cases and the probable impact of the new Codes on per-employee costs, the government has postponed their implementation to a later date. The rules have yet to be announced by the federal and state governments. Only after the new legal provisions have been notified will they become effective.

Health workers in the public sector practise in facilities and use inputs that are sponsored and monitored directly by the government. The extent of the treatments they offer is well-known. For example, public-sector physicians in some hospitals are unable to provide critical care because the facilities lack the requisite equipment and wards. A variety of documents, including patient files, drug purchase volumes, and hospital occupancy rates, provide information on actual therapy. In terms of regulation, public-sector health workers are frequently expected to follow specific criteria in their practice; however, physicians in the private sector are frequently unrestricted. As a result, determining and measuring the contribution of private-sector health personnel is more complex. On the other hand, the private sector may assist the public sector in overcoming its limitations. A treatment that is not available in the public sector, for example, may be available in the private sector. The extent to which the government should plan and provide for the healthcare industry is a topic that has yet to be investigated. To answer this question, we should first comprehend the proportional contributions of public and private sector health workers in fulfilling the health system's aims. This issue, in our opinion, has not been thoroughly investigated.

There are some limitations to our paper that should be acknowledged. First, while focusing on health professionals is often beneficial for policy and practice since health workers execute most of the tasks necessary to the health system's functioning, alternate foci may be appropriate in some cases. A framework of financial flows in the national health accounts may be better suited to tracking healthcare spending in the health system than a structure focused on the health worker. Similarly, suppose we want to know how patient preferences affect the structure and delivery of healthcare services. In that case, a paradigm that puts patients first might be more informative than one that puts health staff first. Patient satisfaction, on the other hand, is determined by how patients engage with health care providers. As a result, if the goal is to improve patient satisfaction, our health-worker-centred paradigm, as explained above, can make

a significant contribution. There is no comprehensive review of health-worker research fields in our report. Such reviews are available for some health-worker research issues, but others, such as the effectiveness of alternative training models for health workers and the extent to which health workers impact health outcomes, require them. In some ways, the goal of our study varies from that of a systematic review. A systematic review's goal is to integrate the findings of all studies undertaken on particular research subject to provide access to the evidence, establish consistency and generalizability of findings, identify knowledge gaps, and refine research hypotheses. Our research aims to focus health-system policy and research on the health worker, allowing for the discovery of a broad range of research concerns to increase health-system satisfaction.

It is impossible to turn a blind eye to those who appear to be working day in and day out and being burned out in the process; healthcare personnel, in these times where most of us are quiet bystanders of the world's horrific occurrences. It is also a moral and legal obligation to protect healthcare workers from the infringement they are facing. The violence experienced by our medical services workers is nothing new. However, it appears that perception of excessive work hours, mental and physical fatigue, and all the linked concerns that occur because of Covid-19's ongoing position was anything but a big issue. “The pandemic has demonstrated how important it is to protect health workers in order to maintain a functional health system and society.” It is undeniable that Covid-19 has increased the health hazards for medical personnel and their families. COVID-19 infections among health workers are significantly higher than those among the general population, according to statistics from numerous countries across WHO regions. The World Health Organization's charter, which was released on World Patient Safety Day in 2020, clearly states that governments at both the national and local levels must take five main steps to protect health workers from violence, improve their mental health, protect them from physical and biological hazards, advance national programmes for health worker safety, and connect health and safety. The World Health Organization (WHO) urges all WHO member states and key stakeholders to take action to implement the five guidelines they have presented. In terms of labour laws, the guideline to protect health workers from physical and biological hazards (ensuring adequate environmental services, such as water and sanitation, and providing resources to prevent and treat injuries, harmful radiations, and so on) and, most importantly, the guideline to develop and implement national programmes for occupational health and safety of health workers. This chapter will compare the Indian legislative framework for health workers in

India to the legal framework in the United States and determine whether these recommendations are being followed in terms of occupational safety requirements for health worker personnel in the two countries.

Social cohesion, human development, and inclusive economic growth require health and decent jobs. In the health sector, decent employment is essential for sustaining effective and robust health systems and addressing health workforce shortages, and achieving the aim of equal access to high-quality health care. The health sector is fundamentally about people; there can be no health care without health personnel. Recent global policy initiatives have emphasised the importance of investing in health and the health workforce in achieving sustainable development, emphasising the integrative power of boosting the health sector while targeting many Sustainable Development Goals at the same time. The Sustainable Development Goals acknowledge that decent work is a critical component of achieving inclusive economic growth and social progress. The pursuit of full and productive employment for all women and men and decent work is a key component of the Sustainable Development Goals, which also emphasises the preservation of workers' rights. In the health sector, the Sustainable Development Goals link directly to the call to increase health workforce recruitment, development, training, and retention as part of the Sustainable Development Goals to guarantee that everyone lives a healthy life. In 2012, the United Nations General Assembly supported the concept of Universal Health Coverage (UHC). It urged states to invest in health to achieve universal access to basic health care while safeguarding people from financial hardship.

The International Labour Organization (ILO) and the World Health Organization (WHO) are two UN specialised bodies that are directly concerned with occupational health and safety as a whole (WHO). The International Labour Organization stands out among the United Nations' specialised agencies since it is a tripartite organisation (i.e., its constituents are governments, employers, and workers). The ILO's standard-setting operations are another feature (i.e., the International Labour Conference adopts international Conventions and Recommendations). Because the working environment is regarded to be an integral aspect of the human environment, the United Nations Environment Programme (UNEP) is likewise concerned about the issue, particularly in terms of chemicals. Within the International Program on Chemical Safety, its International Register of Potentially Toxic Chemicals (IRPTC) works closely with the ILO and the WHO (IPCS). The UN Secretary-High-Level General's Commission on Health Employment and Economic Growth

(HEEG Commission), which was established in March 2016, determined in its report that investments in the health workforce are required to achieve the SDGs. The Commission identified the health industry as a key economic sector and job creator, based on fresh research that suggests investments will pay off in increased population health, economic growth, and health security. To solve existing and expected future health workforce shortages, immediate action is required. The Ebola outbreak in West Africa in 2014–15 revealed the devastating effects that inadequate investments in public health systems and its staff may have on societies, economic development, and international health security. Equal access to high-quality health care is contingent on a sufficient number of properly trained health workers where they are required. Various ILO papers have recognised their critical role in safeguarding and promoting population health throughout time. Despite this, global health workforce shortages and imbalances exist. Labour is a concurrent list issue under the Indian Constitution. The Central and State governments can pass legislation on it, subject to specific matters reserved for the Central Government. The Indian Constitution enshrines precise protections protecting citizens' (and other individuals') rights and the "Directive Principles of State Policy," which states must follow in the country's governance. These Directive Principles ensure the health of workers, both men, and women, by ensuring that children are not abused at a young age; citizens are not forced by economic necessity to enter vocations that are not suited to their age or strength; just and humane working conditions and maternity leave are provided; and the government shall take steps, by sui generis, to ensure that children are not abused at a young age. The Government of India defines its objectives, goals, plans, and purpose using its power based on these Directive Principles. It is committed to regulating all economic activities among states and with foreign nations in order to manage occupational safety and health risks and to provide measures for the protection of national assets, general welfare, and to ensure, as far as possible, a safe and healthy working environment for every working man and woman in the country in order to preserve human resources. Like most other countries, India attempts to strengthen occupational health and safety (OHS) by enacting legislation that governs the steps that businesses must take[1]. These Acts provide very basic minimum requirements in order to ensure a suitable level of OHS throughout the country. Differences in the administration of the Act between states can be minimised in this

[1] International, Governmental and Non-Governmental Safety and Health Iloencyclopaedia.org, https://www.iloencyclopaedia.org/contents/part-iii-48230/resources-institutional-structural-and-legal/international-governmental-and-non-governmental-safety-and-health (last visited Aug 31, 2021)

way. Another goal of these specific requirements is to simplify the task of inspectors who must inspect factory working conditions if inspectors have extensive knowledge of the issue. The government shall take appropriate legislative or other measures to ensure employee participation in the management of enterprises, establishments, or other organisations engaged in any industry (Article 43A), and to ensure that no child under the age of 14 is employed in any factory, mine, or other hazardous occupation (Article24)[2]. The reality is that, despite having over 44 separate labour laws, it is complicated, and there is no unique legislation in India to safeguard the health workforce from the dangers they confront. "The Epidemic Diseases (Amendment) Ordinance 2020 amends the Epidemic Diseases Act, 1897 to make violence against healthcare professionals during an epidemic a cognizable and non-bailable offence with heightened penalties."[3]. Despite the fact that such instances constitute a systemic issue that remains outside of the current conditions, the law only protects healthcare personnel from violence during epidemics. Furthermore, the Ministry of Health and Family Welfare's D.O. No. Z-20015/127/2019-ME. I (Pt. I), dated April 20, 2020, enumerates all of the measures taken by the government to protect healthcare personnel during a pandemic, including the Pradhan Mantri Garib Kalyan Package, which promises Accidental Insurance cover of Rs. Fifty lakhs for 2212 lakh people. However, this is only for those healthcare workers who have died as a result of being on covid duty. It is still unclear what the rules are for reaping actual collateral benefits on the ground. Furthermore, while guidelines and training programmes for health personnel to cope with various scenarios are beneficial, gaps in the laws may be better addressed.

Additionally, the Indian government has taken steps to promote worker health and safety. The laws governing occupational health and safety appeared to be all over the place and a bit perplexing. As a result, in 2019, the Occupational Safety, Health, and Working Conditions Code, 2019, was introduced in Parliament, bringing together 13 separate laws covering occupational health and safety in various industries. The Code establishes a broad legal framework for workers' occupational health and safety in every industry, trade, firm, production, or activity that employs ten or more people. Under the Code, the central government shall define occupational safety standards for diverse industries on the suggestion of the National Occupational Safety and

[2] , https://dgfasli.gov.in/sites/default/files/service_file/Nat-OSH-India-Draft%281%29.pdf (last visited Aug 31, 2021)

[3] India's healthcare workers are the most vulnerable, but there is no framework for their health The Print, https://theprint.in/opinion/indias-healthcare-workers-most-vulnerable-but-no-framework-for-their-health/459827/ (last visited Aug 31, 2021)

Health Board. In this sense, health workers will be included by inclusion. However, it is unclear if this applies to healthcare facilities. The researcher believes that healthcare establishments deserve unique regulation in terms of occupational safety and dangers and minimum stipends, wages, and insurance coverage for various types of healthcare staff. Different laws and plans, such as the Indian Public Health Standards and the Clinical Establishments (Registration and Regulation) Act, 2010, that set out the requirements for medical care foundations, should also be updated to reflect the principles that have been discussed above in the form of guidelines proposed by the World Health Organization. Under the Government of India Allocation of Business Rules, Occupational Safety and Health is one of the subjects assigned to the Ministry of Labour and Employment. The Ministry's Industrial Safety and Health division is in charge of making policy choices and establishing criteria for legislative adoption. National authorities do not formulate OHS and environmental policies, priorities, or strategies on their own; they work with social partners, such as employees' organisations, employers' organisations, autonomous and voluntary organisations, the public, and others, to ensure that the set goals/objectives are met. The Indian government is convinced that social justice cannot be accomplished without safe and healthy working conditions and that achieving safety and health at work is critical to economic progress.

The goal of universal health coverage necessitates an assessment of the number, kind, and distribution of health workers needed to meet the population's healthcare needs. The population demographics, including expected or predicted changes, have a role in determining the ‘universal' health and well-being needs. Demography is the study of a population's size, composition, age, and gender structure, as well as its dynamics. The same research and its sound techniques can be applied to the demographics of the health workforce. For example, a significant percentage of the workforce approaching retirement will influence availability, a geographically mobile workforce will have an impact on health coverage, and gender distribution in occupations will have an impact on workforce acceptability and equity of opportunity. In a world where health workers are in short supply and demand is expected to rise as a result of both population expansion in the global south and population ageing in the global north, studying and understanding workforce demographic characteristics can aid future planning. This study analyses how demographic tools and methodologies might be applied to the analysis of the health labour market and discusses the aspects of health workers. As countries

move toward universal health care coverage, the reduction of disparities, and national development goals, a conceptual framework is given as a first step toward applying demographic principles and approaches to health workforce analysis and planning exercises.

Any wide identification of healthcare worker research topics necessitates a subset selection. We've chosen issues that help the healthcare system achieve its objectives. This does not limit the investigation of other relevant health policy and practise issues. In this research, we propose a health-system paradigm centered on health workers. We use our approach to suggest specific research topics for healthcare workers. These include, among other things, measures to assess the health system's ability to deliver healthcare, the contribution of public vs. private-sector health professionals in achieving healthcare objectives, and the proper size, composition, and distribution of the health workforce. The foundation of the health system, as we have stated in this paper, is health workers. Every function of the health system is carried out or mediated by the health professional. Health care professionals have an important role in treatment selection, as well as curative and preventive care. Most health-system funding is channeled to health workers (via wages and related payments), and health workers make the majority of other spending decisions (through prescriptions, referrals, and equipment purchases). The availability of care for diverse populations is determined by the number of healthcare workers, their skill composition, and their distribution. It would be impossible to achieve population health and patient satisfaction goals without health personnel. As a result, our paradigm prioritizes health workers as the foundation of the health system.

OBJECTIVE OF THE STUDY

Health workers, if a definition is to be extended, are all people engaged in actions whose primary intent is to enhance health. This meaning extends from WHO’s definition of the health system as comprising activities whose primary goal is to improve health. This also includes those protectors of health who are unpaid. However, in this dissertation paper, the focus will be on the health workers engaged in paid activities, the risks they are involved in, the labour regulations pertaining to them and the lacunas prevalent in these regulations. The role of health workers, especially in times like these where ‘health is wealth’ is more than just a mere statement. Millions of health workers risk their health on a daily basis, being the ones at the highest risk.

The recent events of health workers strike and agitation, inclusive of the PIL filed before the Honorable Supreme Court with regard to non-adherence of the standards and guidelines by the WHO is a wakeup call to each of us. It is the first responsibility of the state to protect its citizens from the pandemic and while so, protecting the frontline workers, the Suraksha force should be of primary importance.

While the shortage of PPE has been highlighted and addressed to some extent in recent times, it is the incidents of violence against healthcare workers that have received the most attention, both from the public and central and state governments. As a result, passed the Epidemic Diseases (Amendment) Ordinance 2020, amending the Epidemic Diseases Act, 1897 to make violence against healthcare workers during an epidemic a cognizable and non-bailable offence with enhanced punishment. While this is a fair response, it does not address the issue of occupational safety of healthcare workers in an overarching manner. The ordinance is not only inadequate in protecting healthcare workers from the range of occupational hazards they face, but also does not address the issue of violence structurally. The ordinance protects healthcare workers from incidents of violence only during an epidemic, although these incidents are a systemic problem that exist outside of the current situation. It also fails to recognise that deterrence is not the solution to violence against healthcare workers, and that more structural reforms are needed.

While some community health experts have suggested measures like infection control audits across hospitals, they are only short-term measures. These instances in the current public health crisis point towards a larger gap — the lack of a legal framework to guarantee occupational health and safety of healthcare workers. Even though India has more than 50 labor laws in place, there is an ambiguity and difference as to the laws which are being applicable to health workers of different nature. Even though these health workers are being subjected to the similar risks and issues, they are not being given the same rights, which is a violation of Article 14 as there is no reasonable classification in that regard.

The research will analyze the laws prevalent in India as of now in this regard and compare the same with developed countries with specialized laws with regard to health care workers and their labor rights. Further, it seeks to analyze the WHO Protection of Healthcare workers guidelines

along with other International Instruments on this regard and verify if there are laws positively corresponding to the same prevalent in India.

The objective of the research is as follows:

I. To identify the laws which are applicable to the health workers in India and compare it with the laws on the same regard in other countries having specialized laws and the corresponding international guidelines.

II. To examine the role played by the labor laws which are applicable to the health workers, and to examine whether the same is sufficient in protecting the labor rights of these frontline workers.

III. To suggest recommendations on the changes that can be made in the current legal system with regard to the laws applicable to the protection of health workers in the country.

HYPOTHESIS OF THE STUDY

- The current laws in India pertaining to the protection and safeguard of health workers do not adhere to the corresponding international standards
- India is lacking sufficient laws with regard to the protection of the health workforce in the country in comparison with other developed nations having a specialized law in that regard.

METHODOLOGY OF THE STUDY

The method used in the dissertation will be doctrinal research or non-empirical research methodology.

LITERATURE REVIEW

A tripartite step towards improving employment and working conditions in the health services (2017)[4]

Since 1998, the Tripartite Forum on Improving Employment and Working Conditions in the Health Services was the first sectorial meeting of its kind on health services. According to the plan, the purpose of the meeting was to discuss decent work strategies that effectively address health workforce shortages as a prerequisite to providing equal access to health care for all in need, to adopt conclusions on future programme development and inform policy-making on the selected topic at the international, regional, and national levels. The meeting was attended by nearly forty governments, including eight representatives representing the Employers' group. The Workers' group, which included eight official delegates from six PSI organizations and two UNI Global Union units, was led by Rosa Pavanelli, the PSI General Secretary. She emphasized the importance of governments and employers respecting International Labour Standards, discouraging non-standard forms of employment and precarity, safe and effective health staffing, and fair and ethical health work to address these issues and achieve "the goal of equal access to health for all and ensuring that we have the required trained workforce needed to deliver this." Mme Habiba Kherrour, Premier Secretaries of the Algerian Permanent Mission to Geneva, addressed the Governments' group, stating that the meeting was crucial in light of the Sustainable Development Goals. While several governments expressed that the global economic slump has limited government support for public health, nearly every government present agreed that health spending, including health employment, is an investment rather than a cost. This echoes the findings of the United Nations High-Level Commission on Health, Employment, and Economic Growth (CommHEEG). PSI General Secretary Rosa Pavanelli served as a commissioner representing the labour movement and public services. A side session was held, presided over by Guy Ryder, Director-General of the International Labour Organization. Jim Campbell of the World Health Organization led an intelligent debate on the ComHEEG's activities and recommendations. It was pointed out that austerity measures will not assist issues, based on the consensus that investing in the health workforce is of paramount importance. We certainly believe that the dysfunctional taxation system, including tax evasion, tax dodging, and tax loopholes, is a key cause of injustice around the world, said Rosa Pavanelli, speaking on behalf

[4] A tripartite step towards improving employment and working conditions in the health services Publicservices.international, https://publicservices.international/resources/news/a-tripartite-step-towards-improving-employment-and-working-conditions-in-the-health-services---?id=8241&lang=en (last visited Aug 31, 2021)

of the Workers' Party. The Workers' Group was also successful in reducing tripartite support for Public-Private Partnerships. There is a solid case to be made that public-private partnerships are nothing more than government money being utilized to subsidize corporate interests. While private investments should not be disregarded, they must be appropriately regulated and should not be disguised as a collaboration with public health, the foundation of universal health care access. The importance of Occupational Safety and Health (OSH) in the long-term delivery of high-quality health care was also emphasized. The perilous situation health workers face in Liberia without personal protective equipment at the onset of the Ebola outbreak was emphasised as a grisly example of the dangers posed when OSH regimens fail. This is unforgivable. Workers who die as a result of a lack of OSH safeguards are not heroes, according to Pavanelli. While they live, they need to be treated with decency, and they deserve to be kept alive.

In the meeting's conclusion, these options were made in order to provide decent work in the health sector as countries rise to meet the projected global shortfall of 18 million health professionals by 2030 if action is not taken now-

- The International Labour Organization (ILO) will encourage the ratification and effective implementation of international labour standards applicable to the industry and respect for basic principles and rights at work (FPRW). Governments, companies, and labor unions will engage in productive social dialogue to enhance healthcare employment and working conditions.
- The study findings could be used as a starting point for a discussion at an ILO Tripartite Experts Meeting.
- The ILO would provide policy advice and technical assistance in the development of national health workforce policies with a focus on job creation and decent work over the next five years, following the ILO Governing Body's action on the Tripartite Meeting's recommendations; regional tripartite sectorial meetings would be held to promote the robust conclusions of this successful meeting over the next five years, following the ILO Governing Body's action on the recommendations of the Tripartite Meeting.
- The ILO will develop a health workforce research plan in collaboration with other specialized international and regional agencies, conducting comparative analyses to strengthen the evidence, accountability, and action to promote decent work and

productive employment in the health sector, including the development of international recognition and acceptance of health workers' qualifications and certifications.

- As a result, in 2019, the Occupational Safety, Health, and Working Conditions Code, 2019, was introduced in Parliament, bringing together 13 different laws covering occupational health and safety in various industries. The Code establishes a broad legal framework for workers' occupational health and safety in every industry, trade, firm, production, or activity that employs ten or more people.

CHAPTERIZATION

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Chapter-3: The role of international organizations on Occupational health and safety rights of healthcare personnel

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CHAPTER-2

REGULATIONS PERTAINING TO THE HEALTHCARE PERSONNEL IN INDIA

2.1. INTRODUCTION

In the present times where most of us are mute spectators of the horrendous events transpiring in the world, it is impossible to turn a blind eye toward the ones that seem to be working day in and day out and being burned out in the process; the healthcare employees. Furthermore, it is an excellent and lawful obligation to shield the healthcare workers from the infringement they are confronting. It's anything but new that our medical services laborers are going through savagery. However, it seems like it was anything but a significant issue to take perception of the long work hours, the mental and physical burnout, and all the allied issues that arise due to the ongoing situation of Covid-19. "The pandemic has highlighted the extent to which protecting health workers is key to ensuring a functioning health system and a functioning society."[5] It is a fact that Covid-19 had increased the health risks amongst the health workers and their families. Although not representative, data from many countries across WHO regions indicate that COVID-19 infections among health workers are far greater than those in the general population.[6] The charter released by the World Health Organization in 2020 on the World Patient Safety Day requires the governments at the national as well as local levels to take up five main actions to protect health workers from violence; to improve their mental health; to protect them from physical and biological hazards; to advance national programs for health worker safety, and to connect health worker safety policies to existing patient safety policies.[7] The World Health Organization calls on all the member states of the WHO and all the relevant stakeholders to fulfill the five guidelines proposed by them.

In terms of labor laws, the guideline to protect health workers from physical and biological hazards (ensuring adequate environmental services inclusive of water, sanitation, etc., providing

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[5] Available at: https://www.who.int/news/item/17-09-2020-keep-health-workers-safe-to-keep-patients-safe-who . Last accessed on 20.06.2021.
[6] Id.
[7] Supra Note 1.

resources to prevent and tend to injuries, harmful radiations, etc.) and most importantly, the guideline to develop and implement national programs for occupational health and safety of health workers. This chapter will enumerate the Indian legal framework regarding the health workers in India compared to the U.S legal framework and whether these guidelines are being followed regarding the occupational safety standards of the health worker personnel in the respective counties.

2.2. Regulations about healthcare personnel in India

It is to note that there is no specific law pertaining to the protection of healthcare workers. The grim truth is that there is not enough care or protection extended to the healthcare workers, often termed as 'angels of the society.' Mere clapping of hands or utensils showing support to them is far from sufficient to protect them. The Ministry of Health, Government of India, proposed the passing of the 'Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage of Property) Bill,' which had contemplated the imprisonment of up to 10 years and the imposition of a fine of as much as Rs 10 lakh on those who assault healthcare personnel. It had even attributed a reasonably broad definition to healthcare personnel: doctors, dentists, nurses and paramedical staff, medical students, diagnostic service providers in a health facility, and even ambulance drivers.[8] This legislation was due to be introduced in parliament in its Winter Session of 2019. However, the Ministry of Home Affairs gave its thumbs down to this proposed legislation, reasoning that there could be no separate law to protect doctors.[9] The Epidemic Diseases (Amendment) Ordinance, 2020, aimed at protecting healthcare professionals against violence, has been promulgated in 2020, with the due consent of President Ram Nath Kovind only deals with that particular aspect of protection of health workers in terms of violence meted out against them, their property, including their living and working premises, cognizable, non-bailable offenses. The ordinance also provides for compensation for injury and damage to or loss of property in such cases.[10]

[8] Available at https://thewire.in/health/india-health-workers-violence-protection. Last accessed on 20.05.2021.
[9] Ibid.
[10] The Epidemic Diseases (Amendment) Ordinance, 2020.

Yet, there's a lack of a specialized reform of legislation protecting healthcare workers. The five guidelines proposed by the World Health Organization[11] are far from being implemented, especially in the heath sector in India.

Having so many laws is not that there are too many, but that there aren't enough, resulting in complete confusion. In India, medical regulations governing hospitals and nursing homes are burdensome; currently, only two laws exist in Maharashtra and Delhi.

A "significant number" of healthcare workers reported symptoms of anxiety, sadness, insomnia, and discomfort, in addition to the occupational and safety challenges they encounter. Women and nurses in Wuhan and frontline healthcare personnel who dealt directly with COVID-19 patients were more likely to experience symptoms.

In India, there are various regulations governing workplace safety, employment management, occupational environment, etc. The current government introduced the Code of Wages, Industrial Relations, Social Security, and Occupational Safety, Health, and Working Conditions, replacing 44 old labor laws. These laws weakened and eliminated several long-standing legislative safeguards that protected workers' rights and safety.

The problem with having so many laws in place is not the excess recourse but the lack of proper alternative leading to absolute confusion. The medical laws governing hospitals and nursing homes are difficult to find in India. At present, there are only two legislations in force, in the states of Maharashtra and Delhi.

Apart from the occupational and safety struggles faced by the health workers, a "considerable proportion" of healthcare workers reported symptoms of anxiety, depression, insomnia, and distress. The symptoms were more common among women and nurses in Wuhan and frontline healthcare workers dealing directly with COVID-19 patients.

More than 634 participants reported symptoms of wretchedness, 560 showed tension-related side effects, 427 highlighted sleep loss, and 899 specified problems during this study.[12] The investigation also found that medical caregivers, women, and cutting-edge medical care laborers

[11] Supra Note 1.

[12] Mamidipalli Sai Spoorthy, Sree Karthik Pratapa, and Supriya Mahant, Mental health problems faced by healthcare workers due to the COVID-19 pandemic–A review Asian Journal of Psychiatry,Volume 51, 2020, 102119, ISSN 1876-2018, Available at ttps://doi.org/10.1016/j.ajp.2020.102119. Last accessed on 19.06.2021.

and those transported to Wuhan, the underlying focal point of the illness flare-up, had higher degrees of all psychological well-being side effects. A considerable workload itself gives rise to other health-related problems.

* In the western European countries, a doctor sees no more than five inpatients a day.[13]

* Had they ever consulted more; they consider that as overworked.[14]

Indian doctors are overworked and have a lot of mental and physical issues due to the same, which are not being regarded as issues at all.

It's also worth noting that the International Labour Organization (ILO) has at least 18 agreements dedicated to Occupational Safety and Health (OSH). Only three of these treaties have been ratified by India thus far. Important conventions such as Convention 155 on occupational safety and health and the working environment, Convention 161 on occupational health services, Convention 167 on construction safety and health, Convention 176 on safety and health in mines, Convention 184 on safety and health in agriculture, and Convention 187, the promotional framework for occupational safety and health, have yet to be ratified by India.[15]

Even with the 44 legislations laid down for this purpose, it is clear that health workers are not subjected to the same laws despite being exposed to similar risks and issues. Some of the notable legislations applicable to the health workers in terms of labor legislations include, but are not limited to;

The payment of gratuity act, 1972.

Gratuity is defined as a benefit given by the employer to the employee for rendering services continuously for five years or more. It is a monetary reward that is generally offered when an employee leaves or retires from an organization. However, several requirements must be met for an employee to be eligible for gratuity. The fundamental aim and notion of gratuity is to assist the worker after retirement, regardless of whether the retirement is due to superannuation regulations, physical infirmity, or impairment of a critical bodily component. Gratuity is an

[13] OECD/EU (2018), Health at a Glance: Europe 2018: State of Health in the EU Cycle, OECD Publishing, Paris. Available at https://doi.org/10.1787/health_glance_eur-2018-en. Last accessed on 27.05.2021.
[14] Id.
[15] Pandita, Sanjiv, "Status of occupational safety and health in India," Infochange Agenda. Available at http://www.csjpgoa.org/employment-and-livelihoods/status-of-occupational-safety-and-health-in-india/ . Last accessed on 27.05.2021.

amount that is not linked to any kind of compensation and should be viewed as something provided free in exchange for an employee's service of more than five years to the company.

Sec 2 (e) of the Act defines “employee” to mean any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment, to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

- It is applicable for different kinds of workers in public and private sectors. Every factory (as defined in Factories Act), mine, oilfield, plantation, port, and railway.[16]
- Every shop or establishment to which Shops & Establishment Act of a State applies in which ten or more persons are employed at any time during the year-end.[17]
- Any establishment employing ten or more persons may be notified by the Central Government.[18]
- Once Act applies, it continues to use even if employment strength falls below 10.[19]

As for any other labour legislation in India, there is no blanket application to all types of health workers in India. There is no specialised legislation for the same.

The Minimum Wages Act, 1948;

Section 2(h): “wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment[20]

Section 2(i): “employee” means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-work[21]

This includes all types of employees in all spheres, inclusive of all kinds of health workers.

[16] The payment of gratuity act, 1972.
[17] Ibid.
[18] Supra n.16.
[19] Supra n.16.
[20] Minimum Wages Act, 1948.
[21] Ibid.

It is to be noted that the researcher is refraining from mentioning all the acts and giving a brief on the same as that would prove to be a futile exercise. The truth is that there is no special legislation for the health workers in this term. Therefore, all labor legislations that do not specifically exclude the health workers are applicable in this context. However, the argument herein is that the health workforce needs special legislation in this context to avoid immense confusion in such terms.

2.2.1 Epidemic Diseases (Amendment) Ordinance, 2020

Amidst news reports of violence against healthcare workers during the spread of the COVID-19 pandemic, the Epidemic Diseases (Amendment) Ordinance, 2020, was promulgated on April 22, 2020. The Ordinance amends the Epidemic Diseases Act, 1897. The Act provides for the prevention of the spread of dangerous epidemic diseases. The Ordinance amends the Act to include protections for healthcare personnel combatting epidemic diseases and expands the powers of the central government to prevent the spread of such diseases.

The Ordinance defines healthcare service personnel as persons at risk of contracting the epidemic disease while carrying out duties related to the epidemic, such as caring for patients. They include: (i) public and clinical healthcare providers such as doctors and nurses, (ii) any person empowered under the Act to take measures to prevent the outbreak of the disease, and (iii) other persons designated as such by the respective state government.

An ‘act of violence’ includes any of the following acts committed against a healthcare service personnel: (i) harassment impacting living or working conditions, (ii) harm, injury, hurt, or danger to life, (iii) obstruction in the discharge of his duties, and (iv) loss or damage to the property or documents of the healthcare service personnel. Property is defined to include a: (i) clinical establishment, (ii) quarantine facility, (iii) mobile medical unit, and (iv) other property in which a healthcare service personnel has direct interest concerning the epidemic.

The Ordinance specifies that no person can: (i) participate in or commit an act of violence against a healthcare service personnel, or (ii) participate in or cause damage or loss to any

property during an epidemic.[22] A person committing these two offences is punishable with imprisonment between three months and five years and a fine between Rs 50,000 and two lakh rupees. However, for such offences, charges may be dropped by the victim with the permission of the Court. Suppose an act of violence against a healthcare service personnel causes grievous harm. In that case, the person committing the offence will be punishable with imprisonment between six months and seven years and a fine between one lakh rupees and five lakh rupees. All offences under the Ordinance are cognizable (i.e., a police officer can arrest without a warrant) and non-bailable.[23]

Persons convicted of offences under the Ordinance will be liable to pay compensation to the healthcare service personnel they have hurt. The Court will determine such compensation. In the case of damage or loss of property, the compensation payable to the victim will be twice the amount of the fair market value of the damaged or lost property, as determined by the Court.

The Indian Penal Code, 1860, provides for penalties for any harm caused to an individual or any damage caused to property. The Code also prescribes penalties for causing grievous hurt, i.e., permanent damage to another individual.

The Ministry of Health and Family Welfare had released a draft Bill to address incidences of violence against healthcare professionals and damage to the property of clinical establishments in September 2019.[24] The draft Bill prohibits any acts of violence committed against healthcare service personnel, including doctors, nurses, para medical workers, medical students, and ambulance drivers. It also prohibits any damage caused to hospitals, clinics, and ambulances.[25]

Several states have passed special legislations to protect healthcare service personnel. These states include Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttarakhand, and West Bengal.

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[22] Available at : https://prsindia.org/billtrack/the-epidemic-diseases-amendment-ordinance-2020 Last accessed on 15.04.2021.
[23] Ibid.
[24] The Epidemic Diseases (Amendment) Ordinance, 2020.
[25] Anurag Vaishnav and Saket Surya, "Explainer: The Code on Occupation Safety, Health and Working Condition". Available at https://prsindia.org/theprsblog/explainer-code-occupation-safety-health-and-working-condition. Last accessed on 19.07.2021.

Most state Acts define healthcare service personnel as registered doctors, nurses, medical and nursing students, and paramedical staff. Further, they define violence as activities causing harm, injury, endangering life, intimidation, obstruction to the ability of a healthcare service person to discharge their duty, and loss or damage to property in a healthcare service institution.

All state Acts prohibit: "(i) any act of violence against healthcare service persons, or (ii) damage to property in healthcare service institutions."[26] If a person partakes in these prohibited activities in most of these states, they are punishable with imprisonment up to three years and a fine of fifty thousand rupees. However, in certain states such as Tamil Nadu, the maximum prison sentence maybe ten years.

Even though the current administration has amended the Act, it still has to be supported with robust law enforcement measures. Making an ordinance may not have been difficult, but executing it will be a significant issue for the Indian government, as has been the case when there has been a substantial gap in enforcing the law.[27]

2.2.2. Other measures taken by the Government

The Government of India, through its Department of Health and Family Welfare, Ministry of Health and Family Welfare through a D.O.,[28] clarified the measures that have been taken time to time, focusing on the measures taken during the period of Covid-19 for ensuring the safety of the health workers in our country. This included:

a) Human resources: Various workers that may be useful in essential medical services have been identified. Further, an SoP for allocation of Residents/PG students and nursing students as part of hospital management has been issued.

b) Medical safety: Nearly 5.11 lakh PPE's[29] have been supplied to various States/Central hospitals by the Central Government, which have been added to the initial stock of PPE's and

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[26] Id.

[27] Available at https://timesofindia.indiatimes.com/readersblog/forensic-psychology-in-india/laws-to-protect-health-care-workers-33398/ . Last accessed on 20.06.2021.

[28] D.O. No.Z-20015/127/2019-ME.I(Pt.I) dated 20th April, 2020. Available at https://www.mohfw.gov.in/pdf/MeasuresUndertakenToEnsureSafetyOfHealthWorkersDraftedForCOVID19Services.pdf

[29] The numbers may now be higher as the same is taken from the data as of 20th April 2020.

lakhs of n95 masks have been supplied in addition to the initial stock of N95 masks. In collaboration with the Ministry of textiles, the Ministry of Health and Welfare has encouraged domestic production. Further, health workers can get tested for Covid-19 for free in hospitals where they work in.

c) Staffing guidelines and timely payments: The Ministry has released a guideline note mandating timely payments for frontline workers such as ASHA workers and service providers, including those requisitioned from outside of the government sector.[30]

d) psychological support: A dedicated toll-free helpline for providing psycho-social support for health care workers has been created. Health professionals are encouraged to manage stress through various methods, which are available on the website of the MoHFW.

e) Training/capacity-building: 'Advisory for Human Resource Management for Covid-19' has been prepared for all the medical manpower, including non-medical personnel, frontline workers, which may be involved in non-medical duties, surveillance, etc., who are exposed to the same risks as the medical staff and personnel.

Further, online training is provided for infection prevention and control, clinical management, logistics, etc. Online training sessions are being conducted for physicians and nursing personnel by AIMS, Delhi[31]

f) Training material and guidelines have been provided on the Ministry of Health and Family Welfare's website, such as:

i) Frontline worker's

ii) Pocketbook for frontline health workers

iii) Facilitator's guide for trainers and frontline workers

iv) Guidelines for Covid related SoPs

v) Guidelines for infection prevention and control in healthcare facilities

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[30] The guideline note is available at https://www.mohfw.gov.in/pdf/EssentialservicesduringCOVID19updated0411201.pdf. Last accessed on 17.07.2021.

[31] Available at https://www.aiims.edu/en/news/awards-honours/79-about-aiims/6903-free-courses_28.html Last accessed on 17.07.2021.

vi) Other guidelines and training manuals

g) Integrated Government Online Training (iGOT), Diksha platform of the government has been utilized to ensure that uniform trainings can be conducted for healthcare professionals across the country.[32]

h) Life Insurance cover: Under the Pradhan Mantri Gareeb Kalyan Package, the Government has announced an Accidental Insurance cover of Rs. 50 Lakhs for 2212 Lakh healthcare workers who may be drafted for services for Covid-19 patients. But this scheme only includes loss of life or accidental death due to covid-19 on account of Covid-19 duty. The scheme has been sanctioned and premiums paid to insurance companies.

2.3. Issues faced by health workers in India

Several publications from India's various states have highlighted mental health personnel's risks when treating COVID-19 patients. These concerns can be attributed to the disease's severity and clinics' lack of foresight in responding well to the pandemic. Making separation wards and serious consideration offices, ventilators, and other steady hardware, treatment and contamination control conventions, and individual defensive gear for health personnel are a few critical angles for medical clinic preparedness. In India, the provision of various sources of information has differed across public and private clinics. In any case, the most fragile issue has been that of the accessibility of PPEs – that incorporates sanitizers, veils, gloves, and outfits – for wellbeing laborers. Deficiency in such fundamental defensive stuff has influenced specialists, medical attendants, professionals, and sterile laborers in emergency clinics and locally bleeding edge laborers.

The general population and private emergency clinics have faced a lack of medical services due to preparedness. Even at globally accredited tertiary private clinics in Mumbai and Delhi, some medical attendants and experts have tested positive for COVID-19. We didn't have the requisite gear for PPEs at the start of April 2020. Therefore, we had to rely on China's inventory. The PPEs delivered from China must be unloaded since they do not satisfy the required requirements.

[32] Available at https://diksha.gov.in/igot/explore?selectedTab=course Last accessed on 17.07.2021.

A substantial amount of time was spent getting the requisite quantity of PPEs due to the reliance on imports for a range of clinical equipment.[33]

While specialists and attendants expressed concern about the deficiency, experts, nursing orderlies, cleaning personnel, and security faculty in an emergency clinic were also at risk of contracting the infection. The administration claims, however, that the issue of accessibility has been addressed.

The overall health workers today are significantly enduring with respect to manager soundness, wages, capabilities and benefits inferable from expansive contractualisation in the public region.[34] The re-appropriated workers, attributable to the transitory idea of their commitment, don't have a voice at the dynamic table and their issue goes unheard. There is a significant difference and imbalance, which is an unmistakable infringement of Article 14 of the constitution of India in such manner. Since these wellbeing champions are on an understanding, the public power, i.e., the public authority isn't answerable for their shortcomings and risk to COVID-19. This scourge has included the harsh attitude of the public position and individuals overall towards even the clinical overseers. Drawing out the National Disaster Management Act suggests that all agents in facilities are constrained to work autonomous of the risks and dangers introduced. Accordingly, a couple of private crisis centers shut down when their health workers got the infection. The people who have the lower rungs in the work reformist framework face additional risks – low wages, work vulnerability, helpless safeguarding strategies, and extended frailty to infection. The social class level experts like ASHA workers deal with an equivalent issue. They are given the endeavour of making care and recognizing potential COVID-19 cases nonetheless are not being repaid enough for the risks that they need to look reliably.[35]

The COVID-19 pandemic has shown the requirement for reinforcing the health and well-being laws. It is a chance for the Indian government to reconsider general wellbeing by expanding speculations and to address a portion of the abnormalities that have gotten settled in.[36] The importance of Human Rights for well-being is an important factor to consider. Contracting and

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[33] Available at https://www.who.int/news/item/03-03-2020-shortage-of-personal-protective-equipment-endangering-health-workers-worldwide. Last accessed on 15.04.2021.
[34] Ibid.
[35] Available at https://theprint.in/opinion/coronavirus-crisis-is-indias-chance-to-bring-health-reforms-stalled-by-british-colonial-rule/457234/?amp. Last accessed on 20.06.2021.
[36] Ibid.

other complicated corporate systems have created divisions among the labour force, with one group gaining access to government benefits while another struggles with weakness and inadequate salaries. The concerns of medical care workers traveling throughout the progressive system should be addressed with COVID 19 limitations, including lockdowns.[37] The new situation where government medical workers in the public sphere, i.e., in the government sector, didn't get their pay rates throughout the lockdown period embodies the insensitivity of the public authority. The protest of the health workers in the centre for non-payment of wages amongst other human rights concerns and the PIL filed as *Jerryl Banait v. Union of India (UOI) and Ors*.[38] The plight of the workers was The Petitioner prays for issuing a direction to the Respondent, the AIMS Hospital to ensure that guidelines issued by WHO and the guidelines issued by the Ministry of Health and Family Welfare be implemented and Respondents be directed to ensure availability of appropriate Personal Protective Equipment, including sterile medical/Nitrile gloves, starch apparels, medical masks, goggles, face shield, respirators (i.e., N-95 Respirator Mask or Triple Layer Medical Mask or equivalent), shoe covers, head covers and coveralls/gowns to all Health Workers including Doctors, Nurses, Ward Boys, other medical and paramedical professionals actively attending to, and treating patients suffering from COVID-19 in India, in Metro cities, Tier-2 and Tier-3 cities. A direction had also sought for providing security to doctors and other paramedical professionals. It is extremely disgusting that the health warriors, who the citizens were urged to clap for at the time of the lockdown, as a gimmick has to go to such an extent, despite giving their lives to protect lives of citizens. The Supreme Court bench consisting of Honourable justices Ashok Bhushan and S. Ravindra Bhat, JJ. Held, while disposing off the petition that:

(i) It was the first responsibility of the State to protect its citizens from the pandemic.[39]

(ii) The Petitioner had made out a case for issuing following interim directions to the Respondents in this PIL:

(1) All health workers, including doctors, nurses, ward boys, and other medical and paramedical professionals, actively attending to, and treating patients suffering from COVID-19 in India, in

[37] Supra note 32.
[38] Writ Petition (Civil) Diary Nos. 10795, 10830, 10852/2020 (IA Nos. 48243, 48242 and 48249/2020).
[39] Supra note 37.

metro cities, Tier-2 and Tier-3 cities, were directed to ensure the availability of appropriate Personal Protective Equipment, according to Ministry of Health and Family Welfare guidelines.[40]

(2) Doctors and medical staff in hospitals and places where patients who had been diagnosed with COVID-19, patients suspected of COVID-19, or those quarantined were housed were directed to have the necessary Police security provided by the Government of India, respective States/Union Territories, and respective Police authorities. Doctors and other medical personnel who visit areas to perform screenings of individuals to find out symptoms of sickness should also be given the necessary police protection.[41]

(3) The State will also take appropriate measures against anybody who obstructs or commits an offence in the discharge of responsibilities by doctors, medical personnel, and other government officials tasked with limiting COVID-19.[42]

(4) The government will investigate all options, including permitting and expanding local protective clothes and equipment manufacturing for medical professionals. This includes looking at alternative methods of producing such garments (masks, suits, caps, gloves, and so on) as well as allowing raw materials to flow freely. In addition, the government may impose export restrictions on such materials to supplement inventories and domestic supply.[43]

The same was allowed by the Honourable Supreme Court, and direction was appropriately given to the Government in this regard.

2.4. Conclusion

The fact is that despite having above 44 different legislations in terms of protecting the workforce, it is confusing, and there is no special legislation to protect the hazards faced by the health workforce in India. In terms of having legislation for their protection, only the aspect of violence being meted out against them has been addressed in the form of passing the Epidemic Diseases (Amendment) Ordinance 2020, amending the Epidemic Diseases Act, 1897 to make violence against healthcare workers during an epidemic a cognizable and non-bailable offence

[40] Supra note 37.
[41] Ibid.
[42] Ibid.
[43] Ibid.

with enhanced punishment.[44] The law solely protects healthcare professionals against assault during epidemics, despite the fact that such occurrences represent a systemic issue that exists outside of the current circumstances. Further, the D.O. No.Z-20015/127/2019-ME.I(Pt. I) dated 20th April 2020 by the Ministry of Health and Family Welfare makes it a point to enumerate all the measures that have been taken by the Government to protect the healthcare personnel at the time of the pandemic, including the Pradhan Mantri Gareeb Kalyan Package which promises Accidental Insurance cover of Rs. 50 Lakhs for 2212 Lakh healthcare workers who may be drafted for services for Covid-19 patients. But then again, this is solely for those healthcare personnel who have lost their lives due to being on covid duty. At the level of receiving actual collateral benefits at the ground level, it is still unsure what the procedures are in this regard. Further, guidelines and training programs for health workers to deal with different situations are helpful, yet, there are gaps in the legislation that could be addressed better.

The Indian government has also made measures to improve workplace health and safety. The legislations regarding health and safety at the workplace seemed to be all over the place and somewhat confusing. Thus, the Occupational Safety, Health, and Working Conditions Code, 2019, was presented in Parliament in 2019 to bring together 13 distinct laws governing occupational health and safety in several industries. The Code establishes a wide statutory framework for the occupational health and safety of those who work in any industry, trade, company, production, or activity that employs ten or more people. On the recommendation of the National Occupational Safety and Health Board, the central government must set occupational safety standards for various industries under the Code. By inclusion, health workers will also be included in this sense. Yet, it is not clear whether it extends to healthcare establishments.[45] The researcher strongly feels that healthcare establishments deserve special legislation regarding occupational safety and hazards and minimum stipend, wages, etc., for different kinds of healthcare personnel, in terms of insurance cover, etc. For the significant execution of these norms, different laws and plans, which set out the prerequisites for medical care foundations like the Indian Public Health Standards and the Clinical Establishments (Registration and Regulation)

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[44] Available at https://theprint.in/opinion/indias-healthcare-workers-most-vulnerable-but-no-framework-for-their-health/459827/ . Last accessed on 19.07.2021.

[45] Ibid.

Act, 2010, ought to likewise be refreshed to mirror the principles that have been discussed above in the form of guidelines proposed by the World Health Organization.[46]

CHAPTER- 3

[46] Supra note 1.

THE ROLE OF INTERNATIONAL ORGANIZATIONS ON OCCUPATIONAL HEALTH AND SAFETY RIGHTS OF HEALTHCARE PERSONNEL

3.1 INTRODUCTION

Any person's most valuable asset is their health and safety. Furthermore, health is regarded as a key to prosperity, and safety provides the ability to provide a safe atmosphere. Essentially, health, protection, wellbeing, and new working circumstances or environments are critical for worker success as well as the world's monetary development, as a strong workforce is increasingly profitable. Employees are the foundation of any innovation strategy since they give its basic concept strength and texture. Most of the rights offered to workers, as well as the obligations imposed on the employer, are included in the health and safety of workers.[47]. Occupational health services are actions performed in workforce with aim of supporting and enhancing individuals' safety, health, including well-being, along with improving working conditions and workplace atmosphere. Occupational health experts deliver these services as individuals, as part of particular service units within the organization, or as specific tools. Occupational health practise encompasses more than just the operations of welfare facilities. It is an interdisciplinary and holistic activity, including work health & safety professionals, other professionals from within and outside the organisation, and relevant authorities, employers, and workers' representatives. A well-developed and possibly the best workplace framework is required for such participation. All administrative, organisational, and operational processes required to properly perform occupational health practice and assure its orderly development and organizational improvement should be included in the adequate resources[48]. Health personnel involved in pandemic response face a variety of health and safety hazards on job. COVID-19 infection, disorder, and transmitting to someone else; exhaustion from long hours as well as heavy workloads, sleep disturbances or rest, overhydration, and nutritional deficiencies; cardiovascular injury from patient handling and large items; continuous work while wearing protective gear, which can cause thermal discomfort, skin as well as mucosal damage; workplace

[47] International Cooperation in Occupational Health: The Role of International Organizations Iloencyclopaedia.org, https://www.iloencyclopaedia.org/part-iii-48230/resources-institutional-structural-and-legal/international-governmental-and-non-governmental-safety-and-health/item/223-international-cooperation-in-occupational-health-the-role-of-international-organizations (last visited Aug 24, 2021)
[48] Ibid.

violence as well as stereotyping. To operate safely and effectively, all health workers must have the skills and knowledge to protect oneself and many others in the occupational dangers they face.

The primary function of international organisations is to provide structured rules for international collaboration. People have communicated experiences and information in a variety of ways over the millennia. Occupational health services, which are offered at work to meet health care needs of working populations, have also been recognized as a major entity of public health approach. These services can also help with other government goals, such as lowering health inequities, social isolation, and sick leave. By supporting and enhancing the health of the working population, occupational health services can help lessen the overall risk of illness. As the largest single group of health care professionals involved in providing health care at work, occupational health nurses have addressed these new issues.

3.2 WELLNESS AND OCCUPATIONAL HEALTH

Among the most significant issues of human concern are occupational health and wellbeing. Its goal is to adapt the workplace environment to workers to promote and maintain a high level of physical, mental, and societal standing in all jobs. The global issue of occupational health and safety is currently adopting a new direction. The key contributing elements to this idiosyncrasy appear to be the rapid industrial and commercial development occurring in emerging countries and the introduction of new products and market processes as a result of these developments. In many of these countries' primary productive sectors, such as industrial, mining, and agriculture, service mechanisation replaces manual labour. Therefore potential occupational health consequences may be expected. In addition, these countries' unquenchable thirst for technological improvement has resulted in the importation of advanced gear and equipment, not just for industrial production but also for operations and trade[49]. This has always been linked to a shift in the labour force's overall structure, including an increase in women's employment. The health concerns would change as well, as one would expect. For example, in the services business, a greater focus on ergonomics & occupational psychosocial variables is required. This would be a new challenge for most Developing nations' occupational health and safety practices.

[49] Ilo.org, https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf (last visited Aug 24, 2021)

The tools and skills to deal with such issues are not currently as evolved as in industrialised ones. Job injuries and infections kill an estimated 2-3 million people each year worldwide, which is more than the global yearly number of malaria deaths. Job-related ailments, such as cardiovascular disorders, cancer, hearing problems, physical and reproductive disorders, mental and neurological illnesses, affect an estimated 160 million people globally each year. In industrialised countries, an increasing number of workers are complaining about mental trauma and work overload[50]. Insomnia, sadness, exhaustion, and burn-out syndromes have all been linked to these psychological effects, as well as an increased risk for heart disease. With a few exceptions, only 5-12 percent of workers in underdeveloped nations and 20-70 percent of workers in industrial countries have access to effective occupational health treatments. Even in sophisticated economies, many work locations are not assessed for occupational safety on a regular basis.

Every country's workforce health has an immediate and obvious impact on its national and global economies. The total economic losses incurred as a result of workplace sickness and injuries are considerable. A productive, well-trained, and motivated workforce enhances productivity and produces income, essential for the community's overall health.

3.3 GLOBAL HEALTH AND INTERNATIONAL ORGANIZATIONS ON RIGHTS OF HEALTH CARE PERSONNEL

Health-care personnel is defined as healthcare professionals and healthcare workers," including everyone who works in the health-care industry. “Health-care workers are critical to the execution of health-care policies and the delivery of health-care services. On the other hand, their rights are routinely ignored, and many HCWs complain about terrible working conditions, long hours, and low pay. As a result, many nurses, particularly in the public health sector, have chosen to leave.

The International Labour Organization is a United Nations specialised body that deals with labour and social issues. Its Geneva offices are in charge of developing and enforcing international labour rules. The International Labour Office is a group of people who work around

[50] Ibid.

the world to conduct programs and projects[51]. For labour organization, employment policy, work schedules, pay, social welfare, immigrants, and special categories of workers, International Labour Standards (ILS) have also been developed. ‘Nevertheless, OSH is mentioned in more than half of the cases. ILS Treaties, which are legally obligatory on nations that ratify them, and Suggestions, which are nonbinding advice, are adopted and implemented on a tripartite basis at the International Labour Conference. Aside from ILS, OSH-related issues are addressed by Codes of Practice, which are usually developed on an ad hoc basis by a tripartite panel of specialists to recognise specific sectors such as mining, agriculture, or hazards such as machinery, alcohol, and drugs, as well as the risks associated with them at work[52].

According to the ILO Constitution, workers must be guarded against sickness, illness, and injury because of their work. However, the reality for thousands of workers is extremely different. Every year, almost 2 million individuals die as a result of job accidents and diseases. Job diseases affect an estimated 170 million individuals, and 2800 million fatalities and non-fatal job accidents occur each year. Injuries and illnesses inflict immense hardship on workers and their families. According to the International Labor Organization, occupational sickness and accidents cost the world's economy 5% of its annual GDP. Health workers are essential for expanding health care coverage and attaining the rights to the highest possible standard of wellness; their existence, availability, acceptance, and quality are all dependent on them. Building responsive and effective health care systems requires a strong health workforce. Given the importance, it is still the weakest component of many nations' health systems and a major impediment to reaching universal health care targets. One of society's and the economy's most important industries is health care. Because of seriousness of global health issues, no one country or organization can deal with them alone. Several international organizations and agencies help in the creation of global health policy, as well as funding, execution, and assessment of programs. Global multinational organisations collaborate to enhance outcomes[53]. The international labor organization endorsed the essential concepts of the human right to healthcare and personal protection. Individual & public health, economic growth, and development benefit from social

[51] , https://www.researchgate.net/publication/342946396_International_Organizations_as_Drivers_of_Change_in_Occupational_Health (last visited Aug 27, 2021)

[52] Workforcexs.com.au, https://www.workforcexs.com.au/wp-content/uploads/OHS-Handbook-WorkforceXS-Monbulk.pdf (last visited Aug 27, 2021)

[53] Health services sector Ilo.org, https://www.ilo.org/global/industries-and-sectors/health-services/lang--en/index.htm (last visited Aug 26, 2021)

health protection and fair access to high-quality health care. This industry is a large employer with significant job-creation potential[54]. Nonetheless, most countries face difficulties in providing affordable health care. Global scarcity and disparity of competent health staff are a key impediment to universal health care access. Governments and healthcare executives are urged by WHO to deal with regular dangers to health of healthcare personnel and patients.

"No country, hospital, or clinics can protect its patients unless its health personnel is protected. The World Health Organization's Health Worker Safety Covenant is an important prerequisite for ensuring that health care workers receive the workplace safety, training, compensation, and recognition they deserve[55]." The pandemic has also demonstrated how essential it's essential to safeguard health workers to maintain a functional health system and society. Art 23 of UDHR declares that the freedom to work encompasses "just and beneficial working conditions" as a universal human right. Since this pandemic, numerous significant global conventions, resolutions, and instruments have called on governments and policymakers to provide safe, secure, and supportive working environments for all workers, including 2030 Agenda for Sustainable Development and its Sustainable Development Goals.

Given that women make up over 75% of the health care workforce globally, boosting health worker safety directly contributes to eliminating unfair work practices and female empowerment. On April 28, the annual World Day for Workplace Safety and Health emphasizes the prevention of workplace accidents and illnesses around the world. It's a public-awareness campaign aimed at drawing international attention to the scope of the problem and how encouraging and fostering a health and safety culture can help minimise the number of workplace injuries and deaths. Each of us is accountable for preventing workplace deaths and injuries.

The Covenant, which was announced recently in honour of World Patient Safety Day, asserts Governments and people responsible for local health systems to undertake five steps to safeguard health workers in a better way. Steps to safeguard health workers against violence, enhance the quality of life, shield them from physical and biological hazards, promote national health worker safety programs, and link health worker safety policies to existing patient safety regulations are among them. The employment climate for health care employees is constantly changing as a

[54] Ibid.
[55] Who.int, https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401_0 (last visited Aug 28, 2021)

result of comprehensive health system reforms. The workers in the health-care industry have the right to form trade unions. However, government-employed health care professionals are also members of the general public service. As such, are within ambit of the same laws and regulations that apply to the whole public sector. Workers of national agencies and provincial administrations perform a number of public services, including health care, as part of the public service. To deliver effective health care, health personnel must do decent job. Workplaces in health care are distinct and complicated, with inherent opportunities and challenges. Through sectoral labour standards and social discourse, the ILO supports improvements in working conditions and labour relations in the healthcare system and engages with WHO to foster supportive, facilitating, and healthy workplace for health care workers. Early retirements, the loss of competent employees, absenteeism, and expensive insurance premiums are all costs that employers suffer as a result of job accidents and illnesses. However, many of these deaths might be avoided if solid prevention, monitoring, and inspection methods were used. Governments, companies, and workers can use ILO standards on occupational safety and health to create such practices and ensure maximum workplace safety. In 2003, the International Labour Organization (ILO) announced a global strategy to promote health and safety at work, including development and promotion of applicable instruments and technical assistance[56].

3.3.1 The rights of healthcare personnel are listed below-

- In all applications & dealings with the government, the private sector, and others, to equality and the benefit of the law. Family responsibilities, rural areas, historical adversity, and other factors all play equal justice.
- Not to be treated unfairly by any patient, healthcare scheme, medical faculty or school, government, employer, and other person or institution based on race, gender, origin, or other factors. Healthcare personnel has a right to be free of harassment.

[56] International Labour Standards on Occupational Safety and Health Ilo.org, https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm (last visited Aug 25, 2021)

- **The right to life -** includes the right not to be subjected to situations that are disproportionately dangerous to one's life.
- The right to personal security and freedom encompasses physical autonomy and the right to be free against violence.
- In terms of privacy, this encompasses safeguarding personal information, connection, family, & property.
- To freedom of movement and residence, including the right not to be subjected to unjustified restrictions on where doctors are required to work and live.
- To freedom of trade, vocation, and profession, including specialization options when positions are available. This covers Healthcare personnel rights to participate in commercial ventures.
- To fair labour practices, such as the equitable distribution of overtime, leave, and working conditions, as well as the right to have their complaints heard in suitable channels. Healthcare personnel have the right to be supported in disciplinary proceedings, present their case to an impartial chairperson, and have their side of the story heard. Healthcare personnel have the right to labour in an atmosphere free of discrimination based on gender, sexual orientation, or (supposed) race or ethnicity. In circumstances of occupational HIV infection, doctors have the right to post-exposure prophylactics[57].
- To property, which includes the right to fair compensation for services provided and the right to have these and other property rights not infringed upon in any way. Healthcare personnel has the right not to be taxed more or singled out for special attention only because of their presumed financial level.

3.3.2 Art 23, 24, and 25 of the UDHR provide plenty of employment rights.

As there aren't clear mechanisms for implementing OSH rights, one may argue that there isn't any developed jurisprudence of right to protect life and health in workplace except

[57] Supra note 7.

through stretched interpretations of major human rights treaties. “Article 3 of the United Nations' Universal Declaration of Human Rights, for example, specifically cites the need to preserve the right to life, liberty, and security of the person without mentioning the environmental or occupational context in which such rights can or should emerge”[58].

Many nations' basic constitutional principles include safeguarding health rights. Furthermore, there is an international agreement on essence of granting safe and healthy employment, which is represented in several treaties, reiterating legal concepts from several countries, such as domestic laws or constitutionally guaranteed health security measures. In UDHR, there is a major group of rights dealing with employment and “preferable working conditions[59].” The concepts described in 3 successive articles of UDHR are a result of history, which is mirrored in previous laws. From the aspect of OHS, there is one issue that UDHR is a highly prominent and frequently accepted treaty, but it doesn’t accurately deal with issues of OSH[60].

3.3.3 Interim recommendations from WHO 2020

The WHO issued interim recommendations in March 2020 titled Coronavirus disease (COVID19) outbreak- rights, duties, and duties of health professionals, covering critical issues for OSH. Given current and developing evidence, this edition offers advice on occupational safety precautions for health workers and occupational health services regarding COVID-19 pandemic. It also maintains health officials' rights and obligations for workplace health and safety in accordance with International Labour Organization standards (ILO)[61].

Important points-

- With respect to COVID-19, health care workers must continue to have right to adequate, healthy, & safe working conditions.

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[58] Occupational health as a human right - Work Health and Survival Project Work Health and Survival Project, https://whs-project.org/occupational-health-as-a-human-right/ (last visited Aug 25, 2021)
[59] Ibid.
[60] Supra note 2.
[61] WHO releases COVID-19 occupational health and safety guidance for health workers - SHP - Health and Safety News, Legislation, PPE, CPD and Resources SHP - Health and Safety News, Legislation, PPE, CPD and Resources, https://www.shponline.co.uk/occupational-health/who-releases-covid-19-occupational-health-and-safety-guidance-for-health-workers/ (last visited Aug 29, 2021)

- Primary COVID-19 prevention amongst health workers must be based on risk evaluation and the implementation of suitable strategies.
- Other occupational dangers exacerbated by COVID-19 epidemic should be addressed, such as violence, harassment, etc.
- All health workers must have access to health services, mental health and psychological support, along with proper sanitation, cleanliness, and rest facilities.
- Occupational health programmes, along with infection prevention and control programmes, should be implemented in health-care institutions.
- Employers are ultimately responsible for ensuring that all essential preventive and protective measures are implemented to reduce risks to health workers.
- Health care professionals are accountable for adhering to specified guidelines to ensure their health and safety at work.

3.4 COMPONENTS OF THE RIGHT TO HEALTH THAT ARE CRUCIAL

The right to health is a basic right available to all. The right to health is typically associated with hospital construction and access to health care. This is true, but it goes beyond that. It includes a wide set of factors that can help us in living a healthy lifestyle[62]. These are referred to as the fundamental determinants of health by the International Commissions for Economic, Sociological, and Cultural Rights, which monitors the International Covenant on Economic growth, Social, and Cultural Rights.

Facilitate cooperation between plans and practices relating to the safety of health care workers and those relating to the safety of patients-

Patient and healthcare worker safety are intimately related problems in practice. Patient safety concerns, patient harm, and poor patient outcomes can result from hazards to health professionals' health and safety. At the system and point-of-care levels, a shift in mindset is needed to relate health workers' rights to patient safety, continuous improvement, and infection-

[62] Who.int, https://www.who.int/occupational_health/regions/en/oehemhealthcareworkers.pdf (last visited Aug 29, 2021)

control programs[63]. This tactical approach can help patients and communities trust the healthcare system by offering safer care, lowering expenditures due to attrition of health professionals, inadequate productivity, and patient referrals to hospitals[64].

Priority actions and interventions in this area include the need to: Develop links between occupational health and safety, and patient safety-

- Infection prevention and control programmes, as well as quality improvement.
- Include personal and patient safety skills in your health and safety training.
- Health personnel at all levels should get education and training.
- Includes health-care worker and patient safety regulations.
- Develop integrated patient safety, health staff safety, and environmental safety metrics.
- Within health information systems, markers indicate care quality.
- Guidelines for licensure and accreditation in the field of health care.
- Align the monitoring and learning mechanisms for health staff and patients in the event of a safety issue.

3.5 IN THE AFTERMATH OF THE COVID-19 OUTBREAK, WORKERS SHOULD RECEIVE PSYCHOLOGICAL AND SOCIAL SUPPORT.

Many problems are related to the Covid-19 pandemic, such as dread of illness, death, or isolation, loss of a source of revenue, or social exclusion in the case of a Covid-19 infection, and these fears cause depression for employees. Thus mental health care should be offered[65]. The first step in supporting workers' mental health, in addition to psychological and sociological support for all types of workers, is to understand what they feel and the reasons that affect them. Remote workers, workers who have been temporarily suspended, and workers who are

[63] , https://www.osha.gov/coronavirus/control-prevention (last visited Aug 27, 2021)
[64] Keep health workers safe to keep patients safe: WHO Who.int, https://www.who.int/news/item/17-09-2020-keep-health-workers-safe-to-keep-patients-safe-who (last visited Aug 28, 2021)
[65] Ituc-csi.org, https://www.ituc-csi.org/IMG/pdf/occupational_health_and_safety_at_work_during_the_covid19_pandemic.pdf (last visited Aug 25, 2021)

remaining or returning to work at their customary workplace must all be supported[66]. Governments must recognize and emphasize the vital role of personal protective equipment along with infection control practices and water, sanitation, and cleanliness technologies. They must encourage and guide the development of large-scale regional manufacturing. These initiatives must be reinforced by nationwide buffer inventories of personal protective equipment large enough to offset any lacunae in availability caused by substantial supply chain interruptions.

Furthermore, they must develop a detailed approach to PPE sourcing, going beyond lowest cost to support the development of high-quality, unique Protection. WHO must think over including ‘access for PPE as a crucial component of any future nation assessment of readiness? It must also bring together regulators and standards organisations to work on harmonizing medical Protection standards. The ILO also emphasised the requirements of the most vulnerable employees and enterprises, particularly those in the informal economy and migrant and domestic workers. Safeguards to prevent these employees should include, among other things, education and training on safe and healthy work practices, free PPE when needed, access to health services, and alternatives livelihoods[67].

Furthermore, it should define goal product attributes for PPE in order to guide future innovations. Access to financing options and guidance from development banks and banking operations is required to enable large-scale local production and testing capability. Banking institutions could help to build a national supply chain, quality management mechanisms for personal protective equipment. They also should make it easier to invest in personal protective equipment. Industries must collaborate with governments and public health stakeholders to facilitate this shift and engage actively in technology to create inexpensive, safe, and elevated goods that fulfill the demands of health workers.

3.6 RECOMMENDATIONS

For many months, healthcare systems around world may be running at or near capacity. However, healthcare employees can’t be made quickly or run higher capacity for lengthy periods

[66] Supra note 10.

[67] Human rights and health Who.int, https://www.who.int/news-room/fact-sheets/detail/human-rights-and-health (last visited Aug 28, 2021)

unlike ventilators and wards. Fear has gripped healthcare professionals as a result of the worldwide crisis. Healthcare professionals are concerned about their colleagues, family, friends, regions, and country. Although their fears, they stand up and fight to carry out their duties while remaining in a constant survival mode to preserve others around themselves. To win this war over COVID 19, we must all facilitate those on the field of battle. While our healthcare personnel continue fighting, we should assist them in combating any possible short or long-term repercussions of this pandemic. It is critical that authorities view workers as human beings rather than objects only to be used. The safety of healthcare professionals must be assured as part of the worldwide approach. Adequate Equipment provision is only the first move; additional practical steps, such as suspending non-essential functions to prioritize resources, providing food, relaxation, and family support and mental assistance, must also be addressed. Currently, healthcare employees are the most valuable resource in every nation.

CHAPTER-4

COMPARATIVE STUDY ON LABOR REGULATIONS OF HEALTH CARE IN DEVELOPED COUNTRIES

4.1 INTRODUCTION

Labourers are the driving force of a country's economy. This statement undoubtedly needs no elaborate explanation as the same is known to almost everyone. Henceforth, this is why a considerable emphasis is laid on effective labor laws in every country. However, many countries have failed to keep up their labor laws in consonance with the needs of the times. On the other side, there are some nations that have been successful in securing the rights of the laborers,

especially with respect to their health. Health is undoubtedly an asset to not only a person but the nation as a whole. It has rightfully been said that health is wealth. The reason is pretty simple - the healthier a man, the more is their efficiency to work and contribute to a country's GDP. Also, the right to health is a human right recognized under UDHR and has also been granted constitutional legitimacy under several countries' constitutions. Health care workers need protection, and the same is indisputable, especially in times of Covid-19. We shall now be discussing the labor regulations relating to health care workers in developing nations to take a cue from them for our nation.

4.2 USA

There are several statutes in the USA which tend to protect the rights of Health care workers. We shall now be discussing the same.

Fair Labor Standards Act[68]

The FLSA establishes a federal minimum wage, overtime compensation, and child labor safeguards. The legislation was approved by Congress because its features were designed to safeguard employees while also stimulating the economy. It also established the Wage and Hour Division (WHD) under the Department of Labor, responsible for enforcing and administering the law. Employees and businesses involved in interstate commerce are covered under the FLSA. A firm is insured if it generates at least $500,000 in yearly sales or trade. The Act covers hospitals, institutions primarily engaged in the care of the sick, elderly, mentally ill, or disabled who reside on the premises, schools for children who are mentally or physically disabled or gifted, etc.

The FLSA applies to majority of commercial and public sector employees, but not all. Employers must pay covered, non-exempt employees at least $7.25 per hour under Section 6 of the FLSA. The FLSA does, however, contain several subminimum pay rates like disabled workers, etc. Employers can pay special minimum wages (SMWs) to workers with disabilities u/s 14(c) of FLSA. The SMWs are designed to give people with impairments a chance to work. A handicap can be either physical or mental. It might be due to old age or an accident. The Patient Protection and Affordable Care Act amended FLSA to include a new Section 7(r).

[68] Wages and the Fair Labor Standards Act, US Department of Labor (August 30, 2021, 03:00 am) https://www.dol.gov/agencies/whd/flsa

Employers must compensate workers who work overtime at least a half time under Section 7 of the FLSA. The overtime obligations of Section 7 of the FLSA are exempted in numerous ways under Section 13 of the FLSA. As a result, businesses and workers exempt from overtime are not affected by the new Section 7(r).

Covered employers are required to offer nursing mothers break time under Section 7(r). For the first year following the child's birth, break time must be offered. Employers must offer a place that is hidden from view and free from interference from employees and general public, in addition to a restroom. Break periods to express milk are only available to employees who have not been exempted from FLSA's overtime compensation obligations. Employers with less than 50 workers are exempt from the rule if complying would cause them undue hardship. Employers are not obligated to compensate breastfeeding moms for pauses taken to express milk.

The Occupational Safety and Health Act[69]

In 1970, the OSH Act was formulated in order to enhance workplace health conditions. The OSH Act included provisions for a National Institute for Occupational Safety and Health or NIOSH, to undertake research and provide guidance; an Occupational Safety and Health Administration, or OSHA, to adopt and enforce national occupational safety and health standards; and both OSHA and NIOSH to provide consultative assistance to employers. Worker injury, sickness, and mortality have declined since 1970, but not eradicated, from high levels at the turn of 20th century. The Occupational Safety and Health Act is enforced by the Occupational Safety and Health Administration (OSHA). Despite the fact that the law provided OSHA the power to develop industry-specific standards, it also included a "universal responsibility" section that applies to all employers in all businesses. This phrase, officially Section 5(a)(1) of the act, acts as OSHA's mandate, requiring businesses to create a safe working environment for their employees. The act says: "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which is applicable to his actions and conduct."[70] In some areas of the country, an OSHA-approved state agency assists in the development and enforcement of workplace safety regulations. However, these requirements

[69] OSH Act of 1970, US Department of Labor (August 29, 2021, 02:00 pm) https://www.osha.gov/laws-regs/oshact/completeoshact

[70] Supra 23.

must be at least as rigorous as federal rules. Inspections of workplaces and work locations are used by OSHA to enforce its laws and requirements. Penalties and fines are imposed on violators, which are increased annually for inflation.

The Needlestick Safety and Prevention Act[71]

On Nov 6, 2000, the Needlestick Safety and Prevention Act was enacted, revising OSHA's standard regulating occupational exposure to bloodborne pathogens. OSHA issued its regulations reflecting the Act and its requirements in Federal Register. The rules went into force on April 18, 2001. It aims to minimize healthcare employees' exposure to bloodborne infections by putting extra sharps-related regulations on employers, such as hospitals and ASCs. OSHA's rules :

(1) alter meaning of "engineering controls" and include meanings of "sharps with engineered sharps injury prevention" and "needleless systems," in accordance with the Act.

(2) When updating their "exposure control strategy," companies must examine and integrate new technology.

(3) Employers are required to seek employee opinion on suitable engineering controls, and

(4) employers are required to keep a sharps injury log.

4.3 UNITED KINGDOM

Employment Rights Act (ERA) 1996[72]

Many previous labor laws, like the Contracts of Employment Act 1963, the Redundancy Payments Act 1965, Employment Protection Act 1975, and Wages Act 1986, were updated by Employment Rights Act (ERA) 1996. It is applied in the entire UK. The rights of employees in instances like wrongful dismissal, maternity leave, etc., are all discussed under ERA. The Labour govt proposed an amendment to it in 1997, which was later done so by Parliament, thereby

[71] NEEDLESTICK SAFETY AND PREVENTION ACT, Total Medical Compliance (August 30, 2021, 02:00 pm) https://totalmedicalcompliance.com/2018/10/needlestick-safety-and-prevention-act/

[72] The employment relationship, Institute of Employment Rights Journal Vol. 3, No. 1, Rolling out the Manifesto for Labour Law (2020), pp. 62-72

increasing an employee's authority to ask for not so stringent working hours. Among essential rights granted to employees or enhanced by ERA are the following :

1. The right to be given employment particulars

The major agreements between employee and employer are to be documented in written and communicated to employees before employment begins, according to Sec 1(2) as modified by Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018. An employment contract or a shorter "written statement of particulars" might be the document. Between the employee and the employer, signing creates an enforceable contract.

2. Disclosures and detriment

A company's secret or private information may not be disclosed to a third party under the ERA 1996.

3. Dismissal: notice and reason

Before a contract is ended, a "reasonable notice" u/s 86 is required. This is true for both employees and employers. The employee's employment history determines the duration of a reasonable notice period. If an employee has worked for above one month, they are entitled to a one-week notice period before being fired. After two years, the length of a reasonable notice period increases to 2 weeks. It rises from 1 to 3 weeks after three years, and so on, up to a maximum of 12 weeks. If an employee's contract of employment mentions it, he can also give compensation in place of notice.

4. Unfair dismissal

The employee is protected against being fired unfairly under Section 94 of the Act. The cause for employee's dismissal shall be specified by employer. Dismissals connected to following are automatically deemed unjust:

(a) health issues

(b) assertion of legal rights

(c) Seeking permission for not so stringent working

The following are valid (just) reasons for dismissing an employee as stated in Section 98(2) :

(a) refers to the employee's capacity or qualifications to execute work of the type he was hired by the employer.

(b) pertains to the employee's actions.

(ba) is the employee's retirement.

(c) the employee was no longer needed, or

(d) employee couldn’t continuously work in stature he had without violating an obligation or limitation imposed by or under an enactment (either on his own or on the part of his employer).

Furthermore, u/s 98 (1), employer has authority to terminate employee for any other serious issue.

5. Redundancy payments[73]

If an employee's employment gets outdated, they have the right to remuneration u/s 135. They have worked for the employer for a required period of time to become an established employee. The employee must have worked for the same employer for two years to be qualified for redundancy pay out (s 155). Redundancy payments are not available to employees who have attained retirement age (s 156). By terminating the employee for a different cause, such as misconduct or capacity, as indicated above, the company might avoid paying the employee compensation. The length of service and the employee's age are used to determine redundancy compensation. If the employee is under the age of 21, each year will be compensated with half a week's salary. If the employee is between the ages of 21 and 40, each year will be compensated with one week's salary. If the employee is above 40, each year will be compensated with one and a half weeks' salary. The redundancy payment's highest level is about equivalent to the National Minimum Wage per week.

6. Employer insolvency

In event that an employer goes bankrupt and there are zero finances left to pay, Section 182 protects him or her. If the employer is bankrupt, the Secretary of State will reimburse employee on behalf of the government from an NIF.

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[73] https://www.citizensinformation.ie/en/employment/unemployment_and_redundancy/redundancy/redundancy_payments.html#:~:text=The%20statutory%20redundancy%20payment%20is,One%20further%20week's%20pay

Health and Safety at Work, etc. Act 1974 [74]

The Health and Safety at Work etc. Act 1974, often called HSW, HSWA, HASAW 1974, or HASAWA, is an English statute that establishes foundation for regulating workplace health and safeguards. The law specifies broad responsibilities of everyone in most workplaces, from employers (sec 2) and workers (sec 7,8) through owners, managers, and maintainers of work premises (and so on). In a nutshell, HASAWA 1974 mandates that employers provide:

- Proper employee training to make sure that health and safety measures are adhered to.
- Workplace welfare provisions.
- A safe working environment
- Provision of necessary information, education, and monitoring in a timed way

Employers with five or more workers are needed to keep a written record of their health and safety policy and engage with employees on relevant policies.

Workplace (Health, Safety, and Welfare) Regulations 1992[75]

The HSW rules include all aspects of the workplace and require employers to provide an environment that is safe and acceptable for jobs done there. Everything from comfort level and sanitation measures to provisions for acceptable working conditions to workplace safety fall under this category.

Personal Protective Equipment Regulations (PPE) 2018[76]

Some workplaces are harmful to employees' health and safety. In such cases, employers have a responsibility to provide PPE to their employees to limit the risk of injury after other measures have failed. Prior to delivering PPE, a thorough risk assessment must be completed to guarantee that potential risk can't be mitigated through other means.

The following are the most important aspects of PPE regulation:

- Suitable provision - Where PPE is necessary, it must be adequate for job activity and associated risk and be CE registered in line with PPE Regulations 2002.

[74] Health and Safety at Work etc Act 1974, Health and Safety Executive (August 30, 2021) https://www.hse.gov.uk/legislation/hswa.htm
[75] Ibid.
[76] Supra 28.

- Compatibility and efficacy - When more than one item of personal protective equipment is necessary for an activity, the equipment must still be functional when worn simultaneously. When one item is worn, the second item should not be ill-fitting and ineffective, and vice versa.
- Maintenance and storage - PPE must be handled, stored, and maintained appropriately. Reusable items must be cleaned properly and maintained in good operating order. Replacement parts for disposable devices must be compatible with original piece. It's also important to consider having spare PPE on hand and appointing someone to oversee how and when items are maintained.
- Use and training - It is the employer's obligation to ensure that workers receive adequate training on how to use PPE, what degree of responsibility they have for PPE maintenance, and that they are properly educated about the hazards that the PPE is designed to protect them from. It is also the employer's obligation to ensure that any PPE given is appropriately used.
- Employee responsibility - It is employee's obligation to utilize PPE in line with instructions and training. Employees are also accountable for notifying management of any equipment damage, defects, or loss.

It must be emphasized that when PPE is designated as a need of control procedure, it has to be provided at zero cost to employees.

Management of Health and Safety at Work Regulations 1999

According to Management of Health and Safety at Work Regulations, an employer shall analyze work-related activities and adopt any necessary controls to tackle possible hazards to employees' health, safety, and welfare.[77] Employers have a responsibility to:

- Provide staff with appropriate health and safeguarding training.
- Ascertain those appropriate processes are in place in emergency.
- Carry out an adequate evaluation of risks to workers' health, safety, and welfare because of operational operations.

[77] "How can occupational safety and health be managed?", The ILO (August 30, 2021) https://www.ilo.org/global/topics/labour-administration-inspection/resources-library/publications/guide-for-labour-inspectors/how-can-osh-be-managed/lang--en/index.htm

- Carry out particular risk assessments for the vulnerable individual that have been presented to you (s)
- Appoint a qualified individual or persons to be in charge of the workplace's health and safety.

4.4 CANADA

Because Canada is a federal state, law-making is divided among one federal, 10 provincial, and 3 territory administrations. The kind and location of an employer's workplace determine the employer's obligations. The following legislation provide workplace health and safety requirements:

» Canada Labour Code (R.S.C., 1985, c. L-2), Part II (Federal)

» Provincial health and safety legislation

» Canadian Criminal Code, R.S.C., 1985, c C-46

Canada Labour Code, Part II (Federal)[78]

Like the Canadian provincial jurisdictions discussed below, the federal jurisdiction of Canada compels every employer to guarantee that the health and safety of every employee are safeguarded while at work. Whether a federally regulated Canadian business may be held liable for failing to protect the health and safety of its Canadian employees working overseas is contingent on the Canadian regulator's willingness to extend its jurisdiction to acts outside of Canada. “Employers must take all precautions feasible in the circumstances” when assessing risk and creating a program to keep Canadian workers safe. As a result, no matter where an employer deploys personnel globally, all companies should prepare ahead to limit the risk of Canadian authorities exercising authority by making every effort, when reasonable, to practice and comply with Canadian regulations.

Provincial Occupational Health and Safety Legislation[79]

[78] “Canada Labour Code, Part II: An Overview”, CCOHS (August 30, 2021) https://www.ccohs.ca/products/courses/clc_overview/

[79] Supra 32.

If a Canadian employer is not governed by the federal government, it is governed by the province. As previously stated, Canada's ten provinces and three territories each have their own occupational health and safety regulations. This includes, but is not limited to, the provincial industries listed below:

- Healthcare.
- Logistics and warehousing.
- Manufacturers, etc.

Employers subject to provincial regulation must also take all necessary steps to avoid occupational injuries or accidents. Reasonable precautions, also known as reasonable care, refer to the care, caution, or action that a reasonable person would take in comparable circumstances. What is acceptable varies on the circumstances, but in general, documented rules, practices, and processes are the first step. The policies show and document that workplace audits were conducted and that hazardous behaviors and circumstances were identified and remedied through worker training and orientation. Supervisors must also be capable and well-trained to recognize and handle hazards.[80]

While companies subject to provincial regulation may be held liable for failing to protect the health and safety of their Canadian employees traveling or working overseas, a recent interprovincial case is significant and instructive. In Ontario, the Occupational Health and Safety Act[81] not only requires employers to take all reasonable precautions for a worker's safety, but it also protects workers from retaliation if they report a health and safety concern to the employer (also known as "whistle-blower" protection).

In Diversified Transportation Ltd[82]., after bringing health and safety problems to his employer's attention, a worker claimed to the Ontario Labour Relations Board ("OLRB") that he had been fired or reprimanded. The employer was located in Ontario, Canada, while the employee was assigned to British Columbia, Canada. Despite the employee's allegations about a workplace outside of the province, the OLRB decided it had jurisdiction to hear the case. The OLRB, on the other hand, was careful to distinguish between an employer's basic need to take all reasonable

[80] Supra 32.
[81] R.S.O. 1990, CHAPTER O.1 [Act].
[82] [2015] O.L.R.D. No. 2616.

precautions in the circumstances and particular occupational health and safety norms laid forth in provincial legislation.

4.5 NEW ZEALAND

New Zealand labor law sources are legislation (Acts of Parliament) and common law (principles developed by Courts and Tribunals). The "minimum code" is a collection of legislation that is commonly referred to as such. The minimal entitlements of New Zealand employees are outlined in this set of legislation. The Employment Relations Act of 2000, passed on October 2, 2000, is the most important legislation. The Employment Contracts Act of 1991 was repealed by the ER Act. Because it took a traditional contractual approach to the employment relationship and was founded on the idea that employers and employees had equal negotiating power, the ECA drew a lot of worldwide interest. It was implemented in 1991 and afterward. Although certain sectors are split on the importance of the ER Act, the consensus is that it brings a far more conventional and modest approach to labor market regulation. Several other legislations that affects the working relationship and the labor market are complemented by the ER Act.[83]

In New Zealand, the most significant legislation governing the labor market and the employment relationship are:

The ER Act - Freedom of association, recognition, and operation of unions, etc. are all covered.

The Bill of Rights Act 1990 establishes essential freedoms such as freedom of association, peaceful assembly, and expression.

The Holidays Act 1981 establishes minimum entitlements to three weeks of paid annual leave, five days of exceptional leave (for illness, bereavement, and other reasons), and 11 days of public holidays each year for 12 months of work.

Minimum Wage Act 1983 - It establishes employee minimum salary rates.

Privacy Act 1993 lays forth a number of privacy rules, including those governing the acquisition, use, and disclosure of personal data. Employee information is included in the category of personal information.

[83] "Employment rights", New Zealand Now (August 30, 2021) https://www.newzealandnow.govt.nz/work-in-new-zealand/employment-rights

The Equal Pay Act 1972 - It is a law that aims to eliminate and prohibit discrimination in employee compensation rates depending on an employee's gender.

The Health and Safety in Employment Act 1992 - This Act mandates that both employers and workers make efforts to provide a safe working environment. The main goal of the Health and Safety Act is to protect employees, visitors, contractors, and subcontractors from injury while they are on your premises. It does this by placing a wide variety of legal obligations on both employers and employees. It aims to do this in two ways. First, it recognizes that positive work connections lead to safe and healthy workplaces. Those directly involved in the job (employers, workers, etc.) are typically in the greatest position to decide on specific safety precautions for their workplace. The only guaranteed method to do so is to handle all dangers in a systematic manner.

Specific mechanisms are in place to promote these principles:[84]

- Reiterate that the employer or other person in charge of the job has primary responsibility.
- Recognize that workers, like everyone else, have duties to themselves and others.
- Employers and workers must work together in good faith to bring those two sets of obligations together.
- Have the assumption that including employees in health and safety concerns will bring readily accessible expertise to bear on the issues.

Employers and workers are required by the Act to tackle health and safety in a systematic but flexible manner by:[85]

- Identification and Control of Hazards
- Information, Training, and Supervision
- Accident Investigation and Reporting
- Procedures in Case of an Emergency

The Accident Insurance Act 1998 - This Act establishes New Zealand's no-fault system, under which employees who are injured at work are entitled to compensation through a government-

[84] Supra 37.
[85] Supra 37.

funded insurance plan. Employees cannot claim compensatory damages for such injuries under common law as a result of this arrangement.

The Human Rights Act 1993 - Discrimination based on sex, color, family status, political ideology, and other listed factors is specifically prohibited by this Act. These restrictions are explicitly included in the work environment by the ER Act.

4.6 COMPARATIVE ANALYSIS

Depending upon innumerable factors, every country has its own set of requirements and thus has different laws on every topic virtually. No two countries have or can have the same approach to a particular issue. This is why comparative analysis helps address common issues as it brings up unique and different solutions to a problem.

There is no doubt that developed countries have such labor laws that look after the health and safety of their employees, and as a result of this, by use of term “health,” it is meant both physical and mental health and not merely physical health. This is a common factor among all the developed countries discussed hereby. The labor laws look after the mental health also, though indirectly. As far as a special statute on the health care sector is concerned, there is no explicit statute in at least the discussed nations here. However, UK’s Personal Protective Equipment Regulations (PPE) 2018 fairs out on this aspect compared to other nations. Though enacted in 2018, its relevance came to be realized much later in 2020 and 2021 when Covid-19 struck the world, and PPE kits came to have a renewed level of importance. However, this does not mean that other countries discussed lacked behind in looking after the safety of its workforce in workplace. New Zealand has done the best job as far as combating Covid-19 is concerned. Occupational Health and Safety has been taken by in an equally serious manner in all developed nations.

However, the case of Canada seems to be a bit different. The reason is that the health aspect is dealt with by the states and not the centre compared to other countries. This makes things slightly different from province to province. With businesses and trade no longer being limited to one particular country, let alone the question of one particular province or city, this aspect is bound to give rise to several issues related to jurisdiction when cases come up accordingly.

Regarding US, it is essential to appreciate the Needlestick Safety and Prevention Act, which seems to be one of its kind. Virtually no other country discussed or even otherwise before the pandemic of 2020 has a similar law that regulates exposure to some viruses. This puts the US above other countries. Also, in developed nation like discussed, there is a culture of sensitivity and national pride which lacks in developing countries like India. Hence, the Indian govt must ensure to inculcate sensitivity training in medical college syllabus.

Another essential point which the developing countries must learn from all developing nations is governmental accountability. The corporations are responsible for showcasing their efforts in protecting their workers' health annually to the government. This undoubtedly has a positive impact.

As compared to developed nations, India lacks much behind them. The reason is pretty simple - laws are too old and redundant to keep up with the pace of today's times. Only after the current pandemic has health in the workplace taken up as an issue. India has no special statute which on Occupational Health and safety, unlike the countries discussed. Though there are provisions protecting workplace health in the different labor laws, there is no single statute on this issue. This undoubtedly decreases the level of seriousness with which OSH is understood and adhered to in India. During the Covid 19 pandemic, it came to be realized that India has no law like the Needlestick Safety and Prevention Act of USA, which is instrumental in regulating exposure to bloodborne pathogens for everyone working in relevant occupations and professions. India does punish intentionally exposing the public to dangerous microorganisms, but it doesn't have any regulations or strict guidelines. The importance of the same was realized only much recently due to Covid 19. Unlike the UK, India had no statute or regulation which dealt with supply of PPE kits. This made it difficult to handle things during the initial days of a surge in number of coronavirus cases. From the same, India must learn to enact a law that deals specifically with the supply of necessary health equipment and its related aspects.

Another important point that is a must for being mentioned is the granting of compensation in case of workplace mishaps. The statute has a limited scope and unfortunately in our country, hardly anyone prefers litigation for seeking compensation. Thus, there is less precedent in India in this regard. However, in countries like UK and US, this is not the case. Common law remedy

is often invoked for compensation for workplace accidents, and even the statutory guidelines are much clearer and, most importantly, wider in their ambit.

India can take a cue from Canada in order to implement its labor laws and make the necessary changes. This is simply because OSH is more of the state's responsibility in Canada. With labor falling within The Constitution of India, 1950's Concurrent List, both state and Centre can make their relevant set of laws in this regard. However, this would cause jurisdictional conflicts like in Canada. Still, the same will be of almost negligible inconvenience if we consider the emphasis which would be laid on OSH in such a case. States have a better idea of its peculiar issues. Hence since even health is in State List, state laws can play an instrumental role. The states must take a cue from Canada in this regard - how do states manage OSH, prevent jurisdictional conflicts, etc.

Unlike New Zealand, India lacks any comprehensive statute on eradicating and punishing workplace discrimination. The ambit of such discrimination is as wide as possible in New Zealand, but the same is not the case in India. Discrimination is a much-ignored topic when it comes to workplace issues. The Constitution protects us from discrimination, which is undoubtedly true, but it doesn't penalize the wrongdoers. It just states the rights we have. It is important that India takes a lesson from New Zealand in this regard.

CHAPTER - 5

CONCLUSION

5.1 INTRODUCTION

This paper is primarily focused on labor regulations in the health workforce since health workers should be given utmost importance in this era. Ignorance of health workers cannot be justified anymore. Health personnel meets the overall requirements and desires of patients. Likewise, Governments are supposed to take responsibility for meeting the needs of the health workforce. In most nations, governments do so. But are they fulfilling the demands of the workforce? Health workers have got rights too. These cover a wide range of human rights, including the right to decent employment and freedom of association, as well as equal opportunity and discrimination protection. In addition, four fundamental labour laws were merged in the Code on Wages, which was enacted in 2019. The four new Labour Codes were meant to take effect on April 1, 2021, but due to an increase in COVID cases and the probable impact of the new Codes on per-employee costs, the government has postponed their implementation to a later date. The health workforce is

an integral part of this covid situation, but due to covid rise, they are getting denied their rights. This is not all acceptable.

In this horrific situation we have been facing for the past one, and a half years, if at all we have strived, it is majorly because of the health workforce who work day and night continuously. They are not working for their dear and near ones but ours. So, our moral and legal obligation is to protect the health workers from the ill will they face. Those who are most prone to get affected by the virus are the health workers. In a way, they put themselves in danger to take care of others. We talk about the mental health of people during the pandemic since most of the people lost their jobs and everyone is going through a worse stage. It is high time we talk about the mental health of the health workers who work tirelessly for more than their working hours, ignoring physical fatigue. The World Health Organization's charter, which was released on World Patient Safety Day in 2020, clearly states that governments at both the national and local levels must take five main steps to protect health workers from violence, improve their mental health, protect them from physical and biological hazards, advance national programs for health worker safety, and connect health and safety.

The health sector is fundamentally about people; there can be no health care without health personnel. In 2012, the United Nations General Assembly supported the concept of Universal Health Coverage (UHC). It urged states to invest in health to achieve universal access to primary health care while safeguarding people from financial hardship. The International Labour Organization (ILO) and the World Health Organization (WHO) are two UN specialized bodies that are directly concerned with occupational health and safety as a whole (WHO). Various ILO papers have recognised their critical role in safeguarding and promoting population health throughout time. Despite this, global health workforce shortages and imbalances exist. Like most other countries, India attempts to strengthen occupational health and safety (OHS) by enacting legislation that governs the steps that businesses must take[86].“The Epidemic Diseases (Amendment) Ordinance 2020 amends the Epidemic Diseases Act, 1897 to make violence against healthcare professionals during an epidemic a cognizable and non-bailable offence with heightened penalties.”[87]. Healthcare establishments deserve unique regulation in terms of occupational safety and dangers, as well as minimum stipends, wages, and insurance coverage

[86] International, Governmental and Non-Governmental Safety and Health Iloencyclopaedia.org, https://www.iloencyclopaedia.org/contents/part-iii-48230/resources-institutional-structural-and-legal/international-governmental-and-non-governmental-safety-and-health (last visited Aug 31, 2021)

for various types of healthcare staff. Different laws and plans, such as the Indian Public Health Standards and the Clinical Establishments (Registration and Regulation) Act, 2010, that set out the requirements for medical care foundations, should also be updated to reflect the principles that have been discussed above in the form of guidelines proposed by the World Health Organization. The Indian government is convinced that social justice cannot be accomplished without safe and healthy working conditions. Achieving safety and health at work is critical to economic progress.

The guideline to protect health workers from physical and biological hazards ensuring adequate environmental services inclusive of water, sanitation, etc., providing resources to prevent and tend to injuries, harmful radiations, etc. and most importantly, the guideline to develop and implement national programs for occupational health and safety of health workers should be embedded in the labour law.

5.2 INDIAN CONTEXT

During the first wave of covid, the central government asked us to clap utensils to show support towards the health workers. Is this the way of supporting those people who we call “angels”? The Ministry of Health, Government of India, proposed the passing of the ‘Health Services Personnel and Clinical Establishments (Prohibition of Violence and Damage of Property) Bill,’ which had contemplated the imprisonment of up to 10 years and the imposition of a fine of as much as Rs 10 lakh on those who assault healthcare personnel. The Epidemic Diseases (Amendment) Ordinance, 2020, aimed at protecting healthcare professionals against violence, has been promulgated in 2020, with the due consent of President Ram Nath Kovind only deals with that particular aspect of protection of health workers in terms of violence meted out against them, their property, including their living and working premises, cognizable, non-bailable offences. As mentioned earlier, the five guidelines proposed by the World Health Organization are far from being implemented, especially in the health sector in India. Healthcare workers are more likely to show symptoms of anxiety, sadness, insomnia, and discomfort, in addition to the occupational and safety challenges they encounter. Unlike other countries, Indian doctors and

[87] India’s healthcare workers are the most vulnerable, but there is no framework for their health ThePrint, https://theprint.in/opinion/indias-healthcare-workers-most-vulnerable-but-no-framework-for-their-health/459827/ (last visited Aug 31, 2021)

nurses are overworked and have a lot of mental and physical issues due to the same, which are not being regarded as issues at all. In India, there are various regulations governing workplace safety, employment management, occupational environment, and so on. Still, the problem with having so many laws in place is the lack of proper recourse leading to absolute confusion. In terms of having legislation for their protection, only the aspect of violence being meted out against them has been addressed in the form of passing the Epidemic Diseases (Amendment) Ordinance 2020, amending the Epidemic Diseases Act, 1897 to make violence against healthcare workers during an epidemic a cognizable and non-bailable offence with enhanced punishment.[88] The Indian government has also made measures to improve workplace health and safety. The legislation regarding health and safety at workplace seemed to be all over the place and somewhat confusing. Thus, the Occupational Safety, Health, and Working Conditions Code, 2019, was presented in Parliament in 2019 to bring together 13 distinct laws governing occupational health and safety in several industries.

The COVID-19 pandemic has shown the requirement for reinforcing the health and well-being laws. It is a chance for the Indian government to reconsider general wellbeing by expanding speculations and to address a portion of the abnormalities that have gotten settled in. The new situation where government medical workers in the public sphere, i.e., in the government sector, didn't get their pay rates throughout the lockdown period embodies the insensitivity of the public authority.

5.3 INTERNATIONAL PERSPECTIVE

The global issue of occupational health and safety is currently adopting a new direction. The key contributing elements to this idiosyncrasy appear to be the rapid industrial and commercial development occurring in emerging countries and the introduction of new products and market processes resulting from these developments. Every country's health workforce has an immediate and noticeable impact on its national and global economies. Health-care workers are critical to the execution of healthcare policies and the delivery of healthcare services. On the other hand, their rights are routinely ignored, and many health care workers complain about terrible working conditions, long hours, and low pay. As a result, many nurses, particularly in the public health

[88] Available at https://theprint.in/opinion/indias-healthcare-workers-most-vulnerable-but-no-framework-for-their-health/459827/ . Last accessed on 19.07.2021.

sector, have chosen to leave. The essential concepts of the human right to healthcare and personal protection are endorsed by the International Labour Organisation. The World Health Organization's Health Worker Safety Covenant is an essential prerequisite for ensuring that health care workers receive the workplace safety, training, compensation, and recognition they deserve[89].

The pandemic has also demonstrated how essential it is essential to safeguard health workers to maintain a functional health system and society. Art 23 of UDHR declares that the freedom to work encompasses "just and beneficial working conditions" as a universal human right. Through sectoral labour standards and social discourse, the ILO supports improvements in working conditions and labour relations in the healthcare system and engages with WHO to foster a supportive, facilitating, and healthy workplace for health care workers. In 2003, the International Labour Organization (ILO) announced a global strategy to promote health and safety at work, which includes the development and promotion of applicable instruments and technical assistance[90]. Art 23, 24, and 25 of the UDHR provide plenty of employment rights. There is an international agreement on the essence of granting safe and healthy employment, which is represented in several treaties, reiterating legal concepts from several countries, such as domestic laws or constitutionally guaranteed health security measures. In UDHR, there is a significant group of rights dealing with employment and “preferable working conditions.”

The first step in supporting workers' mental health, in addition to psychological and sociological support for all types of workers, is to understand what they feel and the reasons that affect them. Governments must recognise and emphasize the vital role of personal protective equipment along infection control practices and water, sanitation, and cleanliness technologies. The ILO also emphasized the requirements of the most vulnerable employees and enterprises, particularly those in the informal economy, as well as migrant and domestic workers.

Healthcare professionals are concerned about their colleagues, family, friends, regions, and country. We should assist them in combating any possible short or long-term repercussions of this pandemic. It is critical that authorities view workers as human beings rather than objects

[89] Who.int, https://www.who.int/docs/default-source/coronaviruse/who-rights-roles-respon-hw-covid-19.pdf?sfvrsn=bcabd401_0 (last visited Aug 28, 2021)
[90] International Labour Standards on Occupational Safety and Health Ilo.org, https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm (last visited Aug 25, 2021)

only to be used. The safety of healthcare professionals must be assured as part of the worldwide approach. The right to health is a human right recognized under UDHR and has also been granted constitutional legitimacy under several countries' constitutions.

The Fair Labor Standards Act (FLSA) of the United States establishes a federal minimum wage, overtime compensation, and child labor safeguards. The Act covers hospitals, institutions primarily engaged in the care of the sick, elderly, mentally ill, or disabled who reside on the premises, schools for children who are mentally or physically disabled or gifted, etc. The FLSA does, however, contain several subminimum pay rates like disabled workers, etc. The Patient Protection and Affordable Care Act amended FLSA to include a new Section under the Act. Covered employers are required to offer nursing mothers break time

The Occupational Safety and Health Act of the United States was formulated in 1970 in order to enhance workplace health conditions. The Occupational Safety and Health Act is enforced by the Occupational Safety and Health Administration (OSHA). The Act says: "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which applies to his actions and conduct." Penalties and fines are imposed on violators, which are increased annually for inflation.

The Needlestick Safety and Prevention Act of the United States was enacted in 2000, revising OSHA's standard regulating occupational exposure to bloodborne pathogens. OSHA issued its regulations reflecting the Act and its requirements in Federal Register. The rules went into force on April 18, 2001. It aims to minimize healthcare employees' exposure to bloodborne infections by putting extra sharps-related regulations on employers, such as hospitals and ASCs.

The Employment Rights Act (ERA) 1996[91] of the United Kingdom updated many previous labor laws, like the Contracts of Employment Act 1963 and the Redundancy Payments Act 1965. The rights of employees in instances like wrongful dismissal, maternity leave, etc., are all discussed under this Act. The Labour govt proposed an amendment to it in 1997, which was later done so by Parliament, thereby increasing an employee's authority to ask for not so stringent working hours. Several rights were prescribed under the Act, including the Right to be given employment particulars, right to get notice and reason for dismissal, right against unfair dismissal and right to remuneration, etc.

[91] The employment relationship, Institute of Employment Rights Journal Vol. 3, No. 1, Rolling out the Manifesto for Labour Law (2020), pp. 62-72

Health and Safety at Work, etc. Act 1974 of the United Kingdom establishes foundation for regulating workplace health and safeguards. The law specifies broad responsibilities of everyone in most workplaces, from employers and workers through owners, managers, and maintainers of work premises. The Act provides proper employee training, workplace welfare provisions, a safe working environment, necessary information, education, etc.

Workplace (Health, Safety, and Welfare) Regulations 1992[92] include all aspects of workplace and require employers to provide an environment that is not just safe but also acceptable for jobs done there. Everything from comfort level and sanitation measures to provisions for acceptable working conditions to provisions for workplace safety fall under this category.

Management of Health and Safety at Work Regulations 1999 states that an employer shall analyze work-related activities and adopt any necessary controls to tackle possible hazards to employees' health, safety, and welfare.

Personal Protective Equipment Regulations (PPE) 2018 poses a responsibility to provide PPE to their employees to limit risk of injury after other measures have failed. Prior to delivering PPE, a thorough risk assessment must be completed to guarantee that potential risk can't be mitigated through other means.

In Canada, there is Canada Labour Code, Provincial health and safety legislation, and Canadian Criminal Code for the protection of health workers. Canada's ten provinces and three territories each have their occupational health and safety regulations. This includes healthcare. In Ontario, the Occupational Health and Safety Act[93] not only requires employers to take all reasonable precautions for a worker's safety, but it also protects workers from retaliation if they report a health and safety concern to the employer.

The Health and Safety in Employment Act 1992 of New Zealand Act mandates that both employers and workers make efforts to provide a safe working environment. The main goal of the Health and Safety Act is to protect employees, visitors, contractors, and subcontractors from injury while they are on your premises.

5.4 CONCLUDING REMARKS AND SUGGESTIONS

[92] Ibid.
[93] R.S.O. 1990, CHAPTER O.1 [Act].

The legislation regarding health and safety at workplace seemed to be all over the place and rather confusing in India. Rather than having numerous laws regarding health and safety at the workplace, it is necessary to have specific legislation that clearly states the rights and protection granted specifically for the health workers. Thus, the Occupational Safety, Health, and Working Conditions Code, 2019, was presented in Parliament in 2019 to bring together 13 distinct laws governing occupational health and safety in several industries. On the recommendation of the National Occupational Safety and Health Board, the central government must set occupational safety standards for various industries under the Code. By inclusion, health workers will also be included in this sense. Yet, it is not clear as to whether it extends to healthcare establishments. Considering the case of nurses in India, it is a known fact that they are underpaid. Why do nurses from India migrate to other countries? The reason is evident. They get paid more for lesser working hours compared to India. According to statistics, thousands of nurses fly to other countries, not because they don't want to serve the country but to improve their standard of living. Nurses are the vital component of the health workforce. They deserve better than what the country provides after being referred to as angels often. Not only wages but also the physical and mental health of the health care personnel should be given utmost importance since they are the reason we are able to strive through this pandemic. Compared to developed nations, India lacks laws capable of providing what is needed for the health workers. The reason is, laws are too old and redundant to keep up with the pace of today's times. It is only after the current pandemic that health in workplace has been taken up as an issue. India has no special statute which on Occupational Health and safety, unlike the countries discussed. Though there are provisions protecting workplace health in the different labor laws, there is no single statute on this issue. This undoubtedly decreases the level of seriousness with which OSH is understood and adhered to in India. India can take a cue from Canada and make the necessary changes because OSH is more of the state's responsibility in Canada. Discrimination is a much-ignored topic when it comes to workplace issues. Unlike New Zealand, India lacks any comprehensive statute on eradicating and punishing workplace discrimination. Constitutional provisions alone wouldn't do the work. The researcher strongly feels that healthcare establishments deserve special legislation in terms of occupational safety and hazards and terms of minimum stipend, wages, etc., for different kinds of healthcare personnel, in terms of insurance cover, etc. For the effective execution of these norms, different laws and plans, which set out the prerequisites for medical

care foundations like the Indian Public Health Standards and the Clinical Establishments (Registration and Regulation) Act, 2010, ought to likewise be refreshed to mirror the principles that have been discussed above in the form of guidelines proposed by the World Health Organization. However, hope that the four new Labour Codes meant to take effect on April 1, 2021, will be implemented soon.

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- THE INTERNATIONAL COVENANT ON VIVIL AND POLITICAL RIGHTS (ICCPR)
- THE INTERNATIONAL COVENENT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)
- FORCED LABOUR CONVENTION 1930
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