The Impact of COVID-19 on Fundamental Rights of Nurses

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The Impact of COVID-19 on Fundamental Rights of Nurses

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“To do what nobody else will do, a way that nobody else can do, in spite of all we go through; that is to be a nurse.” — Rawsi Williams, RN
During the COVID-19 pandemic, we have realised the value of health workers like never before. Nurses are being appreciated all over the world for the vital role they play during this unprecedented crisis. While serving on the frontlines to contain COVID-19, nurses are paying a heavy toll by bearing the direct risk of infection. In recognition of their contributions, 2020 was designated the International Year of the Nurse and the Midwife by the World Health Organisation.[i] In India too, doctors, nurses, and other health workers are acknowledged as COVID-19 warriors and applauded for their heroic efforts.

It must be said, several inadequacies in the health system have revealed and imposed shortages of resources during the pandemic. As a result, nurses have been facing several issues at the workplace, which directly impinge on their occupation and their fundamental rights. In his press briefing of 29 January 2021 WHO Director-General Dr Tedros emphasized that while healthcare workers have been at the forefront of the COVID-19 response they are often under-protected and overexposed.[ii] In India, as per August 2020 data “More than 87,000 health workers have been infected with COVID-19 accounting for about 74% of the case burden and 63% of death of COVID-19 in India.”[iii] Recent research in the UK finds that compared with non-essential workers, those working in healthcare were over 7 times more likely to have a severe infection.[iv] Clearly, health workers are among those at highest risk of COVID-19 infection. Therefore, it is of essence that they are provided with the provision of all basic occupational safety facilities and related support to protect them from contraction of infection at the workplace.

This has been far from the reality, as a large number of nurses have had to work without basic, essential safety requirements and related measures. There are several reports about the inadequate provision of personal protective equipment (PPE) across India.[v],[vi]. A study on the availability of PPE for health workers during COVID shows inadequate availability of various key components of PPE.[vii] Over the last year, nurses have protested over basic issues such as poor and unsafe working conditions.
conditions, overwork, underpay and lack of safety equipment at the workplace,[vii] despite which their voices seem to have remain unheard.

Protection of Fundamental Rights of nurses

When nurses are contending with the non-availability of basic resources while risking their lives in the battle against COVID-19, it is exceptionally important to protect their rights, including ensuring their occupational safety. Recognising this, India’s National Human Rights Commission has developed an advisory on human rights protection to healthcare workers.[ix] It includes an action advisory related to protection from infection, assured medical care, defined and humane working hours, provision for rest, and paid leave in case of illness due to or during work.

In regard to legal provisions, Article 21 of the Indian Constitution guarantees the fundamental right to life, which has been interpreted to include the right to health through Supreme Court decisions, which have also pronounced that the right to health and medical care while in service or post-retirement is a worker’s fundamental right.[x] Moreover, Article 19 (1)(g) of the Constitution provides every son the “freedom to practise any profession, or to carry on any occupation…”.

If a freedom is denied if working environments are unsafe. The recently issued Occupational Safety, Health and Working Conditions Code, 2020 consolidates and ends the law regulating the occupational safety, health and working conditions of persons employed in an establishment.[xi]

A national policy also provides guidance in this regard. The International Labour Organisation (ILO) Nursing Personnel Convention, 1977 (No. 149) and the accompanying recommendation (No. 157) establish standards for decent working arrangements for nursing personnel.[xii] Recommendations herein contain general provisions about regulation and compensation of overtime work, convenient hours, shift work, and entitlements to weekly rest and paid annual leave.
Short, a legal apparatus is in place that should protect the fundamental rights of health workers. However, whether these rights are actually exercisable and being protected during the pandemic is questionable given the oppressive situation in which nurses have had to work.

Scope of this paper

Support for Advocacy & Training to Health Initiatives (SATHI), Pune conducted a study during September – October 2020, to understand the range of challenges confronted by nurses in Maharashtra during the COVID-19 pandemic. Th study, based on an online survey and a few qualitative interviews, provides critical information about the lived experiences of nurses in their workplace during a major public health crisis. While this study is based in Maharashtra, many findings seem ubiquitous to nursing professionals in the public and private sector from other states as well. This paper draws upon the findings from SATHI’s study. It analyses challenges faced by nurses at the workplace during the COVID-19 pandemic, particularly concerning occupational safety and related issues and contextualises them in relation to fundamental rights of workers in the Constitution. It discusses a range of challenges such as workload, refusal to grant regular or special leave for COVID-19 positive nurses, delays and deductions in salary, denial of COVID-19 allowance, inadequate and poor-quality safety measures, struggles to gain healthcare, and pressure from management. This paper underscores the need to ensure occupational safety while going beyond tokenistic gestures, as a fundamental right of nurses.

Systemic, structural challenges and the rights of nurses

Workload on nurses

The workload on nurses needs to be understood in the context of vacant posts of nursing personnel which has been a long-standing policy issue and...
Implementational gap in the health sector. It has been highlighted due to the immense, unmanageable burden of COVID-19 cases on nurses. ILO's Decent Work Agenda[xiv] ILO promotes decent work time for nursing professionals. ILO's Policy Brief on nursing personnel[xv] stipulates maintaining appropriate staffing levels of nursing personnel as a fundamental precondition for decent working time. However, there is a huge deficit regarding this in Maharashtra around 7000 nursing posts being vacant in the state.[xvi] The SATHI study reports that of the total nurses (367), 58% had extended duty hours having to work more than 8 hours per day.

The Nursing Council[xvii] recommends a nurse-to-patient ratio of 1:3 in a general ward, and 1:1 for the Intensive Care Unit and Operation Theatres respectively.[xviii] However, the reality is far from these norms. While 57% nurses (n=212) handled more than 12 patients per shift, 31% (n=115) handled more than 20 patients per shift. Manual nurses, especially from municipal hospitals attached to medical colleges, reported a nurse-to-patient ratio of 1:40-80 per shift, which is a huge workload. This was found to be comparatively less skewed in the private sector. As shared by United Nurses Association (UNA) Maharashtra representative, manpower is failable in the private sector. However, the workload on nurses from municipal hospitals and rural hospitals was very strenuous during the pandemic due to the huge number of vacant posts. Though the state government had declared that it would fill up posts in the early phase of COVID-19 in March 2020, but for some shortfall in doing so for government hospitals in metro cities, recruitment was not done for other public hospitals. An appropriate staffing level and lower workload is critical for the health and safety of nurses as well as for the provision of quality services in the health sector. According to a 2011 study, the “continued vigilance required of nurses can be affected by excessive work hours, limiting their ability to detect adverse changes in patients in time to address them and prevent consequences; it should have profound consequences for patient safety and health.”[xx] Given the
Elode and serious condition of patients during the pandemic, this became all too crucial to occupational safety and quality health delivery.

**Nursing grant of regular and COVID-19 specific leave**

The issue of not receiving sanctioned leave is closely associated with the issue of workload as discussed above. It is necessary to ensure that after working for extra hours, breaks and time-off are sufficiently given to nurses for recovery, and for the health and safety of both nurses and patients. Of the total nurses who participated in the study, 65% (n=235) reported not getting their leave sanctioned. Many nurses reported that they did not receive leave for months. They also reported the requirement under a standing order that leave should not be sanctioned unless there was an emergency need for health staff. Further, COVID-19 positive nurses should be given special leave for the entire period of treatment, which should not be deducted from their annually entitled leave. The central government and some states have recommended this.[xxi][xxii] This has been observed by government hospitals but nurses in the private sector who had COVID-19 complained that this directive was not followed in private hospitals. Also, the study found that in some hospitals nurses were asked to be on duty even when they had developed COVID-19 symptoms.

**Days and deductions in salary**

Nearly half of all nurses (47%) reported salary deductions during the COVID-19 pandemic. The issue of delayed salaries has been experienced by several nurses working in the public sector from rural as well as from urban health facilities. Contractual nurses probably suffered the most with delayed payments. According to a representative of the nurses’ federation, “contractual nurses faced this more. Their payments have been delayed by nearly 4-5 months and that is humiliating”.

Some nurses working in various types of private healthcare setups also experienced the salary crunch. Some nurses from small private establishments were forced to go without pay for 15 days a month and were only paid for working days. Some hospitals
Corporate hospitals were given a compulsory break of two months and paid a 50% salary. Nurses had gone on strikes to raise these issues. Private sector nurses also complained about poor salary scales. A nurse from a large private charitable trust hospital narrated that “Around 100-125 junior nurses who were permanent employees, left the job due to the poor salary of around 10000-12000 per month as compared to state government hospitals on a contractual basis which paid them around 00 to 40000 per month”![xxiii] In 2016, the Supreme Court had recommended a wage increase across the board in the private health sector.[xxiii] However, it is evident from the study findings that this recommendation has remained largely ignored.

Following a Supreme Court order, on 18 June 2020 the central government directed the states to ensure timely payment of salaries to healthcare workers on COVID-19 duties.[xxiv] Reliance for enforcing these orders and directives were placed on the Disaster Management Act, 2005 and under Section 188 of the Indian Penal Code. It is essential for the state government to abide by these orders in order to uphold health workers fundamental rights.

**Non-payment of COVID-19 allowance**

COVID-19 allowance includes payment of ‘risk and hardship’ allowance, incentives of bonus, and additional salary to health workers serving on the frontline in COVID-19 response. Of the total nurses in the study, only 28.5% of the total nurses reported receiving COVID-19 allowances. Except for nurses from municipal hospitals in metro cities, public sector nurses from sub-centres/Primary Health centres/rural/district/sub-district hospitals as well as state-run medical colleges did not receive COVID-19 allowance despite repeatedly demanding it. Like the public sector, most private hospitals did not pay this allowance. While some hospitals paid the amount was quite variable and nominal. Indeed, when there was a failure in paying even timely and full salaries, non-payment of the allowance is not entirely surprising.

degquate provision and poor quality of safety measures.
017 judgment of the Supreme Court holds that the right to a safe working environment is a part of the fundamental right to life, under Article 21 from which flows the right to health. In its decision, the Supreme Court referred to Directives of State Policy in Articles 39, 41 and 42, which include protection of health strength of workers and just and humane conditions of work.[xxv]

The safety of healthcare workers has become a foremost concern with COVID-19 as they put their own health, lives and families at risk due to close proximity and prolonged exposure to COVID-19 patients. This was succinctly expressed by the representative of the Maharashtra Government Nurses' Federation – that instead of spending money on symbolic gestures like showering flower petals from aircraft on one hospital in Mumbai, the government should ensure adequate provision of PPE for its frontline workers. A significant majority (61%) of nurses reported adequate safety equipment during the pandemic, shortage of which was mainly in the initial months of March and April 2020. While the situation improved subsequently, several nurses raised the concern over sub-standard quality of safety equipment, including PPE suits. This was despite guidelines issued by the Ministry of Health and Family Welfare regarding the rational use of PPE that specify the appropriate PPE for various healthcare settings.[xxvi] According to a recent study on availability of PPE for health workers during COVID-19, 31% of respondents reported that N95 masks were not available for them while 32% reported that supplies of N95 masks were grossly inadequate.[xxvii] This study reveals similar findings regarding other key components of PPE such as face shields, gloves, and goggles as well, illustrating how the right to a safe working environment has been flagrantly ignored during the COVID-19 pandemic. One way of addressing this gap by proving accountability and taking strict action against concerned authorities who failed to follow their legal obligations. Further, it is also important to ensure trans with comorbidities, and those who are pregnant or lactating are not given liberties in COVID-19 wards.
stated earlier, the Constitution guarantees the right to life, which includes the right to health and occupational health and safety as per the Supreme Court. This imposes a legal obligation on hospital managements to ensure the provision of healthcare facilities to safeguard the health of nurses and protect their rights to health and life. SATHI’s research enquired about the provision of testing, quarantine and treatment facilities for healthcare workers. A vast majority (79%) of nurses stated that their respective hospitals did provide or facilitate COVID-19 testing of nurses who showed symptoms. In government hospitals, testing was provided free of cost, while it was reported that some private hospitals charged their nurses for testing. Two nurses from large private hospitals stated that the cost of the test was deducted from their salary.

In respect to a quarantine, while most (69%) nurses affirmed the provision of quarantine facility by the hospital, at the beginning of the pandemic in March-April 2020, public sector nurses struggled greatly to get this facility from hospitals; it was only with relentless efforts with respective hospital managements in metro cities that quarantine arrangements were made. On the other hand, private sector nurses were never provided such a facility by their hospitals; they were asked to quarantine themselves at home if they developed symptoms. In relation to receiving COVID-19 treatment, of the total nurses, 72% mentioned that they were provided treatment facilities in hospitals where they were employed. In many hospitals, nurses fought for a dedicated ward for COVID-19 positive nurses. Some municipal hospitals acquiesced to this demand and a separate ward was assigned for nurses, while such arrangements were not offered to private sector nurses, despite their demands.

**Pressure from management**

When nurses voiced their demands seeking basic facilities such as safety measures, timely salary payment, and reasonable and safe working conditions with adequate staffing, they were pressurised by the hospital management. Of those interviewed, 70% reported having experienced such pressure. Within this, a significant proportion (70%) mentioned their salary payments were withheld.
private-sector nurses (70%) were threatened with a loss of employment through ect termination or forced resignations, while 22% were also threatened with sala.

Besides this, 5% of the private sector nurses reported appalling and usive behaviour of the hospital management in sending male bouncers to their tel to threaten them. As shared by the UNA representative, such exploitative ctices are not rare and are observed in other private hospitals also. Such condu ot just a violation of healthcare workers’ rights but also involves ethical and ious gender-related issues at the workplace.

Conclusion

The above analysis reveals how a plethora of issues faced by nurses during the ndemic amounted to a blatant violation of their Fundamental Rights to health and occupational safety, and to practice their profession. While on the one hand the vernment publicly showered tribute on health workers, on the other serious ortcomings in ensuring their fundamental rights both in the public and private tor were not addressed.

mentioned above, while legal provisions pertaining to the rights of health work in place, the current regulatory landscape is deficient in ensuring effective olementation and actions for noncompliance. Besides an advisory from the RC, specific and comprehensive enforceability to ensure reasonable working nditions, provision of basic facilities, compliance with related legal provisions, Workplace safety and access to healthcare are missing until now.

SATHI study clearly reveals the violation of healthcare workers’ rights on a number of fronts including working hours, leave, payment of wages, safety measu safeguards at the workplace for both public and private sector nurses.

olic sector nurses suffered greatly due to overwork, inadequate supplies of PPE: delayed payments. COVID-19 provided an impetus to fill vacant posts, but the th system miserably failed to address even that. Public sector nurses especially in urban settings raised their demands assertively resulting in obtaining of
Different for nurses from rural settings who were overworked and deprived of basic facilities as well.

Private sector nurses had to contend not only with denial of certain facilities such as special leave for COVID-19, and no provision for quarantine facilities, they also faced serious issues such as pressure from management, with frequent threats of being fired or being forced to resign, salary deductions and other career-related problems. Some nurses also raised the issue of poor salaries, which demonstrated non-compliance of private hospitals to Supreme Court directives regarding increments as mentioned above.

These challenges can be mitigated with actions at multiple levels. The government should issue comprehensive guidelines and ensure reasonable working conditions such as health safety, provision of basic facilities and compliance with related legal provisions. The severity of workload on nurses and its implications for healthcare outcomes clearly calls for urgent attention to improvement in resources and staffing of public health services. As far as the private sector is concerned, given its substantial involvement in COVID-19 care as requisitioned by the state, the state should further intervene and ensure compliance with legal norms along with standardised, secure working conditions to protect health workers rights. This includes health institutions being made accountable for inaction and violation of healthcare workers' fundamental rights, through legally mandated transparent accountability mechanisms.

In the whole, moving beyond symbolic tributes to the health workforce, this need be legislated and implemented robustly. It is imperative to well prepare and protect health workers with their rights for now and beyond the pandemic.

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As per Suman Tilekar, President of Maharashtra Government Nurses Federation (GNF), during webinar on 7 December 2020, co-organised by SATHI and MGNF,ted Nurses Association, Maharashtra and Jan Arogya Abhiyan


The Indian Nursing Council is a national regulatory body for nurses and nurse education in India. It is an autonomous body under the Ministry of Health & Family Iare, Government of India, constituted under section 3 of the Indian Nursing uncle Act, 1947.


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See https://www.indiaspend.com/wp-content/uploads/2020/07/SC-order-on-
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[i] Occupational Health and Safety Assn v Union of India (2014) 3 SCC 547


[ii] Id at vii