The Impact of COVID-19 on Fundamental Rights of Nurses

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he Impact of COVID-19 on undamental 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

ring the COVID-19 pandemic, we have realised the value of health workers like ver before. Nurses are being appreciated all over the world for the vital role play them during this unprecedented crisis. While serving on the frontlines to conta VID-19, nurses are paying a heavy toll by bearing the direct risk of infection. In ognition of their contributions, 2020 was designated the International Year of tl rse and the Midwife by the World Health Organisation.[i] In India too, doctors, ses, and other health workers are acknowledged as COVID-19 warriors and plauded for their heroic efforts.

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

s has been far from the reality, as a large number of nurses have had to work w ck of basic, essential safety requirements and related measures. There are seve orts about the inadequate provision of personal protective equipment (PPE) oss India[v],[vi]. A study on the availability of PPE for health workers during COV hows inadequate availability of various key components of PPE.[vii] Over the la r, nurses have protested over basic issues such as poor and unsafe working

nditions, overwork, underpay and lack of safety equipment at the workplace,[vii
spite which their voices seem to have remain unheard.

otection of Fundamental Rights of nurses

nen nurses are contending with the non-availability of basic resources while
cing their lives in the battle against COVID-19, it is exceptionally important to
tect their rights, including ensuring their occupational safety. Recognising this
ia's National Human Rights Commission has developed an advisory on human
nts protection to healthcare workers.[ix] It includes an action advisory related t
tection from infection, assured medical care, defined and humane working ho
h provision for rest, and paid leave in case of illness due to or during work.

ch regard to legal provisions, Article 21 of the Indian Constitution guarantees the
damental right to life, which has been interpreted to include the right to health
ough Supreme Court decisions, which have also pronounced that the right to
alth and medical care while in service or post-retirement is a worker's
damental 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…".
ch a freedom is denied if working environments are unsafe. The recently issued
cupational Safety, Health and Working Conditions Code, 2020 consolidates and
ends the law regulating the occupational safety, health and working condition
sons employed in an establishment.[xi]

bal policy also provides guidance in this regard. The International Labour
ganisation (ILO) *Nursing Personnel Convention, 1977* (No. 149) and the
ompanying recommendation (No. 157) establish standards for decent working
e arrangements for nursing personnel.[xii] Recommendations herein contain
eral provisions about regulation and compensation of overtime work,
onvenient hours, shift work, and entitlements to weekly rest and paid annual
ve.

short, a legal apparatus is in place that should protect the fundamental rights o alth workers. However, whether these rights are actually exercisable and being tected during the pandemic is questionable given the oppressive situation in ich nurses have had to work.

cope of this paper

pport for Advocacy & Training to Health Initiatives (SATHI), Pune conducted a dy during September – October 2020, to understand the range of challenges ng confronted by nurses in Maharashtra during the COVID-19 pandemic.[xiii] Th dy, based on an online survey and a few qualitative interviews, provides critical rmation about the lived experiences of nurses in their workplace during a maj blic health crisis. While this study is based in Maharashtra, many findings seem ubiquitous to nursing professionals in the public and private sector from other ian states as well. This paper draws upon the findings from SATHI's study. It alyses challenges faced by nurses at the workplace during the COVID-19 ndemic, particularly concerning occupational safety and related issues and ntextualises them in relation to fundamental rights of workers in the Constitutio iscusses a range of challenges such as workload, refusal to grant regular or ecial leave for COVID-19 positive nurses, delays and deductions in salary, denial o VID-19 allowance, inadequate and poor-quality safety measures, struggles to ain healthcare, and pressure from management. This paper underscores the ed to ensure occupational safety while going beyond tokenistic gestures, as a damental right of nurses.

ystemic, structural challenges and the rights of urses

rkload on nurses

e workload on nurses needs to be understood in the context of vacant posts of sing personnel which has been a long-standing policy issue and

olementational gap in the health sector. It has been highlighted due to the ense, unmanageable burden of COVID-19 cases on nurses.

ts Decent Work Agenda[xiv] ILO promotes decent work time for nursing fessionals. ILO's Policy Brief on nursing personnel[xv] stipulates maintaining opriate staffing levels of nursing personnel as a fundamental precondition for cent working time. However, there is a huge deficit regarding this in Maharasht h around 7000 nursing posts being vacant in the state.[xvi] The SATHI study orts that of the total nurses (367), 58% had extended duty hours having to work more than 8 hours per day.

e Nursing Council[xvii] recommends a nurse-to-patient ratio of 1:3 in a general rd, and 1:1 for the Intensive Care Unit and Operation Theatres respectively.[xviii][wever, the reality is far from these norms. While 57% nurses (n=212) handled mo n 12 patients per shift, 31% (n=115) handled more than 20 patients per shift. Man er nurses, especially from municipal hospitals attached to medical colleges, orted a nurse-to-patient ratio of 1:40-80 per shift, which is a huge workload. Thi ue was found to be comparatively less skewed in the private sector. As shared b United Nurses Association (UNA) Maharashtra representative, manpower is fai ilable in the private sector. However, the workload on nurses from municipal spitals and rural hospitals was very strenuous during the pandemic due to the ge number of vacant posts. Though the state government had declared that it uld fill up posts in the early phase of COVID-19 in March 2020, but for some scar ort in doing so for government hospitals in metro cities, recruitment was not do other public hospitals. An appropriate staffing level and lower workload is critica the health and safety of nurses as well as for the provision of quality services in health sector. According to a 2011 study, the "*continued vigilance required of ses can be affected by excessive work hours, limiting their ability to detect verse changes in patients in time to address them and prevent consequences; t ld have profound consequences for patient safety and health.*"[xx] Given the

eload and serious condition of patients during the pandemic, this became all t re crucial to occupational safety and quality health delivery.

nying grant of regular and COVID-19 specific leave

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

lays and deductions in salary

arly half of all nurses (47%) reported salary deductions during the COVID-19 ndemic. The issue of delayed salaries has been experienced by several nurses w rk in the public sector from rural as well as from urban health facilities. ntractual nurses probably suffered the most with delayed payments. According epresentative of the nurses' federation, "*contractual nurses faced this more. The yments have been delayed by nearly 4-5 months and that is humiliating".*

rses working in various types of private healthcare setups also experienced the ary crunch. Some nurses from small private establishments were forced to go o ve for 15 days a month and were only paid for working days. Some hospitals

porate hospitals were given a compulsory break of two months and paid a 50% ary. Nurses had gone on strikes to raise these issues. Private sector nurses also nplained about poor salary scales. A nurse from a large private charitable trust spital narrated that "*Around 100-125 junior nurses who were permanent ployees, left the job due to the poor salary of around 10000-12000 per month a ed state government hospitals on a contractual basis which paid them arounc 00 to 40000 per month"!* In 2016, the Supreme Court had recommended a wag rease across the board in the private health sector.[xxiii] However, it is evident m the study findings that this recommendation has remained largely ignored.

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

n-payment of COVID-19 allowance

VID-19 allowance includes payment of 'risk and hardship' allowance, incentives m 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 nurs orted receiving COVID-19 allowances. Except for nurses from municipal hospita m metro cities, public sector nurses from sub-centres/Primary Health ntres/rural/district/sub-district hospitals as well as state-run medical colleges dic receive COVID-19 allowance despite repeatedly demanding it. Like the public tor, most private hospitals did not pay this allowance. While some hospitals pa he amount was quite variable and nominal. Indeed, when there was a failure in ving even timely and full salaries, non- payment of the allowance is not entirely prising.

dequate provision and poor quality of safety measures

017 judgment of the Supreme Court holds that the right to a safe working
vironment is a part of the fundamental right to life, under Article 21 from which
o flows the right to health. In its decision, the Supreme Court referred to Directi
nciples of State Policy in Articles 39, 41 and 42, which include protection of healt
d strength of workers and just and humane conditions of work.[xxv]

e safety of healthcare workers has become a foremost concern with COVID-19 a
y put their own health, lives and families at risk due to close proximity and
longed exposure to COVID-19 patients. This was succinctly expressed by the
resentative of the Maharashtra Government Nurses' Federation – that instead c
nding money on symbolic gestures like showering flower petals from aircraft c
ne hospitals in Mumbai, the government should ensure adequate provision of
E for its frontline workers. A significant majority (61%) of nurses reported
dequate safety equipment during the pandemic, shortage of which was mainly
ed in the initial months of March and April 2020. While the situation improved
osequently, several nurses raised the concern over sub-standard quality of safet
uipment, including PPE suits. This was despite guidelines issued by the Ministry
alth and Family Welfare regarding the rational use of PPE that specify the
opriate PPE for various healthcare settings.[xxvi] According to a recent study c
availability of PPE for health workers during COVID-19, 31% of respondents
orted that N95 masks were not available for them while 32% reported that
plies of N95 masks were grossly inadequate.[xxvii] This study reveals similar
dings regarding other key components of PPE such as face shields, gloves, and
ggles as well, illustrating how the right to a safe working environment has been
gely ignored during the COVID-19 pandemic. One way of addressing this gap by
proving accountability and taking strict action against concerned authorities w
e failed to follow their legal obligations. Further, it is also important to ensure t
ses with comorbidities, and those who are pregnant or lactating are not given
ies in COVID-19 wards.

stated earlier, the Constitution guarantees the right to life, which includes the
nts to health and occupational health and safety as per the Supreme Court. This
ces a legal obligation on hospital managements to ensure the provision of
althcare facilities to safeguard the health of nurses and protect their rights to
alth and life. SATHI's research enquired about the provision of testing, quarantir
d treatment facilities for healthcare workers. A vast majority (79%) of nurses
orted that their respective hospitals did provide or facilitate COVID-19 testing o
ses who showed symptoms. In government hospitals, testing was provided fre
cost, while it was reported that some private hospitals charged their nurses for
ting. Two nurses from large private hospitals stated that the cost of the test was
ducted from their salary.

ch respect to a quarantine, while most (69%) nurses affirmed the provision of
arantine facility by the hospital, at the beginning of the pandemic in March-Apr
20, public sector nurses struggled greatly to get this facility from hospitals; it wa
e to relentless efforts with respective hospital managements in metro cities tha
arantine arrangements were made. On the other hand, private sector nurses we
ver provided such a facility by their hospitals; they were asked to quarantine
mselves at home if they developed symptoms. In relation to receiving COVID-19
atment, of the total nurses, 72% mentioned that they were provided treatment
ilities in hospitals where they were employed. In many hospitals, nurses fought
edicated ward for COVID-19 positive nurses. Some municipal hospitals acquiesc
his demand and a separate ward was assigned for nurses, while such
angements were not offered to private sector nurses, despite their demands.

ssure from management

nen nurses voiced their demands seeking basic facilities such as safety measure
ely salary payment, and reasonable and safe working conditions with adequate
ffing, they were pressurised by the hospital management. Of those interviewed
% reported having experienced such pressure. Within this, a significant proporti

ductions. Besides this, 5% of the private sector nurses reported appalling and usive behaviour of the hospital management in sending male bouncers to their stel 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.

onclusion

e 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 d occupational safety, and to practice their profession. While on the one hand th vernment publicly showered tribute on health workers, on the other serious rtcomings 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 plementation 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, rkplace safety and access to healthcare are missing until now.

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

blic sector nurses suffered greatly due to overwork, inadequate supplies of PPE d delayed payments. COVID-19 provided an impetus to fill vacant posts, but the alth system miserably failed to address even that. Public sector nurses especiall m urban settings raised their demands assertively resulting in obtaining of

te different for nurses from rural settings who were overworked and deprived c
ic facilities as well.

vate sector nurses had to contend not only with denial of certain facilities such
usal of special leave for COVID-19, and no provision for quarantine facilities, they
faced serious issues such as pressure from management, with frequent threa
eing fired or being forced to resign, salary deductions and other career-relatec
dblocks. Some nurses also raised the issue of poor salaries, which demonstrate
n-compliance of private hospitals to Supreme Court directives regarding increa
vages as mentioned above.

ese challenges can be mitigated with actions at multiple levels. The governmer
uld issue comprehensive guidelines and ensure reasonable working condition
h safety, provision of basic facilities and compliance with related legal provision
e severity of workload on nurses and its implications for healthcare outcomes
arely calls for urgent attention to improvement in resources and staffing of
olic health services. As far as the private sector is concerned, given its substanti
olvement in COVID-19 care as requisitioned by the state, the state should furthe
ervene and ensure compliance with legal norms along with standardised, secu
rking conditions to protect health workers rights. This includes health institutio
eding to be made accountable for inaction and violation of healthcare workers
damental rights, through legally mandated transparent accountability
chanisms.

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

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