

EDITORIAL

Medico Legal Aspect of Strike by Doctors

Strike as a means of protest is given as a fundamental right recognized in most of the democratic countries including India. Although, strike in healthcare sector causes great inconvenience to common man, especially who are in need of immediate healthcare due to danger of loss of life or limb. But due to insensitivity of political leaders doctors are left with no option, but to resort to popular method of protest, i.e. strike.

Strikes are not uncommon in health care sector. Very often doctors, nurses and other staff of the hospital resort to strike, when the management or the authorities concerned do not fulfill their demands. In March 2012, nurses employed in various major private hospitals in south including Apollo, Fortis and Madras Medical Mission Hospital resorted to strike for 7 days demanding hike in their basic salary besides other benefits. As per an RTI, resident doctors in a government hospital in Delhi went on strike five times from 2006 to 2011. ESMA was invoked twice in this period. In Kerala, nurses in hospitals continued their strikes for 115 days.

DEFINITION OF STRIKE

As per section 2(q) of Industrial Dispute Act 1947, strike means cessation of work/suspension of work/or work stoppage by a body of persons employed in any industry acting in combination, or a concerted refusal under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment with a view to persuade, force, or coerce their employer to accept the terms of condition of employment.

COMMON REASONS FOR STRIKE BY DOCTORS

Any industrial dispute, however minor, may sometimes lead to strike if the dispute is not addressed expeditiously or the management is insensitive to the point of view of the staff. Generally the reasons as under leads to strike:

- Dissatisfaction with Government/Hospital Policy
- Salary, increment and incentive problem
- Wrongful discharge or dismissal of employees

- Withdrawal of any concession or privileges
- Hours of works or rest intervals
- Leave with wages or holidays
- Bonus, profit sharing, Provident Fund & Gratuity
- Retrenchment of workers and closure of establishment
- Disputes connected with minimum wages
- Violence by patient and their attendants
- Inadequate budget for healthcare leading to lack of infrastructure and equipments and their maintenance

LEGAL OR ILLEGAL STRIKE

The right to strike in Indian constitution set up is not absolutely right but it flows from the fundamental right to form union. As every other fundamental right is subjected to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions.

Under the Industrial Dispute Act 1947, the ground and condition are laid down for the legal strike and if those provisions and conditions were not fulfilled then the strike would be illegal. Sections 22 and 23 of the Act lay down **Prohibition of strikes** as follows:

- a) Without giving to the employer notice of strike, as herein-after provided, within six weeks before striking; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after conclusion of such proceedings

Contravention of these conditions makes the strike or lockout illegal. Delhi Government has banned strikes in all government hospitals saying that they were against public interest. Divisional bench headed by **Hon Chief Justice M K Sharma** said that strikes by doctors both in central and state government were illegal. Banning strikes would ensure patient's fundamental right to life. Court

has also ruled that doctors, residents, interns, para medical staff or any other person of AIIMS can no longer go on strikes including protests and demonstrations. In Medical Code of Ethics and Regulations, 2002 by Medical Council of India, which is binding on all doctors also strongly prohibits any doctor's strike especially of emergency services. Doctors cannot refuse treatment to any patient who is in **need of emergency care**.

NEED FOR ACTION PLAN FOR HANDLING A STRIKE IN HOSPITAL

As already stated earlier, strikes in hospitals are not uncommon though it is generally presumed that hospital workers are not as union minded as other industrial workers because of the environment under which they operate. When a strike in any hospital starts, initially, it may involve a particular section of employees but other staff members may join in support of the striking employees if the demand made appear to be justified and show solidarity with fellow employees. This has to be kept in mind while making any strategy. A well thought out plan prepared in advance will maintain service's effectiveness.

STRATEGY FOR PREVENTION OF STRIKE

Need to Open All Channels of Communication:

Employees should feel free to communicate so that any dissatisfaction or discord can be nipped in the bud. Complaint arising from any section should not be brushed aside and must be addressed appropriately and promptly.

Regular Electronic Surveillance:

- Through the CCTV covering the entire premises to monitor any usual or untoward incidence.

Regular rounds by the Security Officer:

- To detect any untoward activity and to keep a watch on the activity within the establishment.
- One patient and one attendant norm to be implemented.
- Display of gate passes by the attendants to be made compulsory to deny access to any unsocial elements in the hospital premises.

STRATEGY FOR MANAGEMENT PLAN TO DEAL WITH STRIKE IF PREVENTIVE PLAN FAILS:

- On receipt of the strike notice, all concerned departments such as Labour Department, Ministry of

Health, Local Government (Municipal Corporations, Development Authorities, etc.), Head Quarters and senior officers should be immediately apprised of the situation of the concerned organizations etc. The ready list of all such officials including the formats of report or letters must be available for prompt action.

- Officials for internal coordination must be detailed by name.
- Mechanism for regular update must be in place.
- Management should get involved in negotiations with the representatives of the striking employees. If required top management gets involved so that decisions taken can be implemented.
- All efforts must be made to resolve the conflict. All communication channels must be reinforced.

PATIENT CARE PLAN

The most important part of the strategy is to deal with strike related to patient care, which involves following steps:

- Patient census, particularly patients in high dependency areas like ICU, casualty and other critical areas and bed bound patients.
- Patient evacuation plans in case required. Reduction in the number of the patients and name of the hospitals where patients will be evacuated. The details of staff to be contacted in such contingency.
- **OPD Policy:** whether restricted OPD or attend only emergency patients need to be defined in policy document itself.

Policy for surgical patients:

- Planned surgery to be postponed.
- Identify facilities where patient's referral/transfer will be done. Closest hospital must be identified and agreement between the two hospitals must be in place in advance.

HUMAN RESOURCE PLAN AND STRATEGY

- Identify staff by name that will be overall responsible for all coordination and operations.
- Name and title of the staff which will be on duty during the strike,
- Staffing details for all the three shifts of the staff not on strike.
- Contingency plan for recruiting new staff in case is expected for a longer duration. Support plan of staff from other facility.
- Training and development plan for the new staff.

- Available staff may be given multiple responsibilities besides their own job. Orient the staffs before making them do such task.
- Deployment of senior professionals on duty in case junior doctors is on strike.
- Senior nursing staff, including administrative-nursing staff to be detailed in case of strikes by junior nursing staff.

Security Contingency Plan

- Special security arrangement to ensure safety of patients, attendants, staff not participating in strike.
- Facility safety, which includes building, equipment and all other assets of the establishment.
- Keep local police in loop. Police personnel to be available within the premises.
- Name of officers responsible and the emergency telephone numbers of the departments like fire, water, gas, ambulance, electricity, telephones etc.
- Ensure safe access to the staff willing duty as striking employee may stop them from entering the premises. This may happen far away from the premises.

Logistic Plan

Plan for at least one week's stock of pharmaceuticals and other medical supplies, linen and laundry, fuel and gas, food and beverages supply and review the same on further developments. Aim should be to maintain essential services without disrupting the patient care services. All basic support services should remain functional.

THE ESSENTIAL SERVICES MAINTENANCE ACT (ESMA), 1981

The ESMA provides for the maintenance of certain essential services and normal life of the community and extends to the whole of India. Section 2 of the Act gives the details of services included in essential services, including hospitals or dispensaries. The Act defines strike as the cessation of work by a body of persons while employed in any essential service acting in combination or concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept work assigned, and includes:

- i. Refusal to work overtime where such work is necessary for the maintenance of any essential service.
- ii. Any other conduct which is likely to result in, or results in cessation or substantial retardation of work in any essential service.

POWER TO PROHIBIT STRIKES IN CERTAIN EMPLOYMENTS

If the Central Government or appropriate authority is satisfied that in the public interest it is necessary or expedient to do so, it may, by general or special order, prohibit strikes in any essential service specified in the order. It can also prohibit lockout and layoff if considered necessary. An order made under sub-section (1) of the Act shall be in force for six months only which can be further extended for another period not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient to do so.

Upon the issue of an Order

- a) No person employed in any essential service to which the order relates shall go or remain on strike.
- b) Any strike declared or commenced whether before or after the issue of the order by the persons employed in any such service shall be illegal.

Disciplinary action for participating/instigating an illegal strike

Any person who commences or instigates or takes part in a strike, which is illegal, shall be liable to disciplinary action including dismissal. He or she can be arrested without a warrant and awarded imprisonment for a period extending from 6 months to one year.

SUMMARY AND CONCLUSIONS

The right to protest is a fundamental right of each individual including doctors enshrined in the Indian Constitution. However, the right to strike is only conditional available only when certain pre conditions are fulfilled. Even the appropriate government is authorized to prohibit a strike or its continuance when essential services are affected. The strikes in health care sector are not uncommon being reported from time to time in various parts of India. Any strike in a hospital may severely affect patient care services or even loss of life. An organization needs to develop a strategic plan in advance to handle strikes so that services are not unduly affected.

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