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RESEARCH ARTICLE

RIGHTS CONUNDRUM: A PATIENT'S RIGHT TO MEDICAL CARE VERSUS DOCTOR'S RIGHT TO STRIKE

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Abstract

The Sacrosanct right of a patient to emergent medical care has been established as one of the cornerstones of the healthcare profession. Healthcare service providers as a group is also to be entitled to certain rights like protection against violence at hospitals etc. The brief paper aims at analysing the right or no-right of medical professionals to strike, establishing healthcare service as an essential service, the judgments rendered by the constitutional courts and the changes in the legal regime which strikes a balance between the patient's right to emergent medical care against the backdrop of needs of the medical profession to continue their noble profession with dignity.

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Introduction:-

"The Principal objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. Physicians should merit the confidence of patients entrusted to their care, rendering to each a full measure of service and devotion." –

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002; - Clause 1.2.1

These words engraves the medical Professional's primary obligation towards one's patients. The Medical Council of India framed these code of conduct to ensure the nobility and poise of the medical profession. The Ethical, moral and professional dilemmas posed by Doctor's strike where innocent patients suffer is to be understood in the background of these principles of nobility. Even though Strike as a weapon is available to employees under the Industrial Dispute Act, 1947, the same cannot be extended to a noble profession like medicine. Even if right to strike is accepted as a part of freedom to form association under Article 19(1)(c) of the Constitution of India, when doctors strike, people's fundamental right to health which is a part of life and personal liberty under Article 21 is affected [1]. Whenever there is a conflict between two fundamental rights, the right which advance public interest will be enforced. The Constitutional Courts have consistently held strikes to be illegal [2] and in an essential service like the healthcare which involves providing critical life care, the ethical and moral quandaries fall short to justify strikes.

The Essential Services Maintenance act, 1964 (herein after ESMA) provides for the central government to declare a service as 'essential'; and prohibit strikes or its instigation as an offence punishable with imprisonment upto one year and fine. Various states including Kerala, Uttar Pradesh, and Madhya Pradesh etc have their own state legislations on essential services along the lines of the central act which provides punitive sanction for strikes in essential services. In establishing the medical services as an essential one, the role played by the constitutional

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courts of the country is significant. In *Ahammed Kutty v. State of Kerala* [3] it was held by the Kerala High Court that *“service by doctors is an essential one and if, the doctors of the state strike, the Government would be well within its right to invoke the provisions of the ESMA and take action against them accordingly. In a noble profession which is totally service oriented, strike cannot possibly be resorted to. The members of a noble profession are expected to serve the people and cannot leave the patients in the lurch at the time of their extreme difficulty, pain and suffering. The doctors should remember that they have to render service to the society even at the cost of their agony. In certain cases doctors may be victims of harassment by miscreants, but they require to be aware of the doors of remedial measures that are available to them. They being engaged in a noble profession, should invariably seek remedy from an appropriate forum depending on the issue, instead of going on strike or getting onto streets shouting slogans.”*

The Rajasthan High Court has held that there is neither any legal nor statutory right to strike for professionals like lawyers and doctors nor is there any equitable justification for them to go on strike[4]. The Andhra Pradesh High court has held that *“Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care and, therefore, unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking doctors. Unlike financial losses, the loss of life or limb cannot be recouped”*[5]., " Thus it is established in the canon of rights that the patients have the fundamental 'Right to Life and timely medical treatment which outstrips the collective rights of medical professional's right to strike[6]. Recently, highlighting Clause 2.4 of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, the Madras High Court has held that the Strike by doctors violate the fundamental principle of medical ethics of *“Primum, non nocere”* i.e. first, do no harm. It was held by the Madras High Court that doctors have no right to strike and that the same is *ex-facie* illegal and without any justification. It was further observed by the court that Doctors who lead the strike are instigating or conspiring or inciting an unlawful act violating the right to health of the patients which is an integral part of Article 21 of the Constitution of India. It was further held that *“ Patients cannot be a means to an end. They cannot be mere play things, whose lives can be put on the line to achieve other ends through the medium of strikes”*[7].The Supreme Court have further strived to establish a mechanism to ensure emergency medical help to critically ill patients during doctor's strike [8] thus ensuring that the right to emergency medical care which is established as an integral part of right to life is not compromised notwithstanding any circumstances .

Though the courts of the country have generally frowned upon the practice of strike in health care service sector, certain judgments have been rendered which ensures amicable settlement of disputes endeavouring to strike a balance between ensuring the Human right of emergent medical care as against the rights of the medical professional[9].In analysing the main reason of strike by medical professional, the underlying causes lies in ensuring physical safety during their work and warranting better standards of working environment; while Government doctors resort to strike demanding pay revision. Though the Indian Penal Code which is the general punitive law contains provisions to deal with offences for attacking doctors; patients as well as their relatives attack the hospital and the doctor on the spur of moment as an emotional outburst for which punishment must be proportional to the guilt. Several states have enacted legislations to protect the Medical Service Personnel and their property viz. Delhi Medicare Service Personnel and Medicare Service Institutions Act 2008, Bihar Medical Service Institution and Person Protection Act 2011, Uttar Pradesh Medicare Service Persons and Medicare service Institutions(Prevention of violence and damage to Property Act 2013,Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of violence and Damage or Loss to Property)Act 2008,Karnataka Prohibition of violence against Medical Service Personnel and damage to property in Medicare Service Institution Act 2009,Kerala Healthcare Service Persons and Healthcare Service Institutions (Prevention of Violence and damage to property) Act 2012 etc.

Even though the need of a central act to provide for prevention of violence against hospitals and doctors is the need of the hour and the Ministry of Health and Family Welfare, Government of India had earlier proposed to formulate a legislation titled as *“The Health Care Service Personnel and Clinical Establishments (Prohibition of Violence and Damage to Property) Bill, 2019*, the same has been shelved [10]. But owing to the Corona Pandemic,Epidemic Diseases (Amendment) Ordinance, 2020 has been enacted and it affords for punishment for acts of violence against medical professionals *vis-à-vis* the offences, its commission or abetment is made cognizable and non-bailable and punishable with imprisonment from 3 months to 5 years and with fine ranging from Rs.50,000/- to Rs.2,00,000/-.In cases of grievous hurt to medical professional,the imprisonment shall be for a term of six months to seven years and

with fine ranging from Rs.100000/- to 500000/, in addition to which the offender shall also be liable to pay compensation to the victim and twice the fair market value for the damage of property caused. Thus the earlier grievances of healthcare professionals for ensuring safety at work and preventing violence against them, has been curbed.

Though the Doctor-Patient relationship had undergone colossal changes to the extent of declaring it as a consumption service, the health care system of a country should be efficient in attracting persons of highest intellectual calibre. For that infrastructure for safe working environment, ensuring safety and guarding the dignity and nobility of the profession must be implanted or else the ultimate loss is to the society at large. Ensuring the fundamental right to qualitative medical care while preserving the rights of medical professional by setting up a speedy remedial accessible grievance system to both the healthcare professional as well as the patient; should be the priority of the policy makers.

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2. *T K Rangarajan v. Government of Tamil Nadu*, (2003) 6 SCC 581, *All India Bank Employees Association v. National Industrial Tribunal*, AIR 1962 SC 171, *Kameshwar Prasad v. State of Bihar*, AIR 1962 SC 1166 ; held that there is no fundamental right to strike guaranteed to government employees under Article 19 (1) (a) or as a part of collective bargaining.
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