

ORIGINAL ARTICLES

The Recent Doctors' Strikes in India: A Point of View

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Introduction

“As far as the members of the medical profession themselves are concerned, there can be no doubt that the nature of their calling as doctors, surgeons and nurses imposes on them a moral duty never to strike or to engage in any action designed to reduce the level of service provided, no matter how deep or bitter their sense of grievance”¹

Health-care initiatives in recent years have led to the emergence of new forms of medical practices and new kinds of professional relationships. The relatively unrestricted autonomy that practitioners previously enjoyed has been undermined. Medical professionals in conflict with hospitals, health provision organizations and governmental agencies have translated their discontent with health systems into organized work slowdowns and strikes. These activities have generally been directed against governments for the purpose of preventing undesired structural changes in health-care delivery, preserving professional independence or extracting financial concessions. This paper presents the tale of two Indian cities where doctors have gone on strike. An analysis of the situations that might have induced the doctors to go on strike is made. The duties, obligations and legitimacy of doctors are discussed against a background of ethical, legal and moral concepts. A brief review of literature is made of the

history and evolution of strikes in the modern era of human civilization.

Discussion

Human behavioural actions are generally considered to be either right or wrong. Accordingly, an act may be construed as “good” if, in a given circumstance, it has led to a “greater good” outcome. Life in a democratic country provides its citizens with the right to protest against injustice and the right to a fair trial. But there are situations where one may need to forgo one’s constitutional right in the larger interest of the state, as in the medical profession. A fine balance between rights and legitimacy must be achieved in such situations.

The idea of doctors striking is anathema to many in the medical profession. But doctors in several countries across the globe have taken industrial action in the form of strikes in the past couple of decades. The doctor–patient relationship may be identified by five elements, namely, the physician, the patient, the disease, the art of medicine and “society”.² Society essentially determines the nature of the patient–doctor contract in the form of a political structure, for medicine cannot function without the financial support of Government and institutional managerial authorities. If a doctor is underpaid and forced to work excessively, the quality of medical care and his or her ability to act in the best interests of patients is adversely affected. The responsibility

for the patient no longer rests solely upon the physician. A contract exists too between the patient and society. Depriving physicians of proper wages constitutes a breach of contract and may justify a walkout. Therefore, society must take measures to prevent such a situation from occurring. The wages and working conditions of doctors should be arranged so that doctors are able to act in the best interests of their patients. Then the necessity to strike would not arise.² In the recent past, strikes by doctors in two cities of India have led to alarm all over the country.³ Doctors remained on strike for more than three days, 57 patients were said to have died, and this was directly attributed to the alleged “negligence” of the striking doctors. At a time when the doctor–patient relationship is making a paradigm shift from the traditional healer to the corporate consultant, actions such as striking have led to a serious disruption of the relationship. It has also led the patient community to believe that doctors are no longer a pillar of hope and strength but rather glorified bureaucrats.

The tale of Rajasthan

A trivial incident occurred one weekend in the spring season of 2010, in a Government Medical College affiliated hospital in the state of Rajasthan, India.⁴ A patient’s carers were said to have alleged that inadequate care was being given on the ward and got into a fight with the resident doctor and the nursing staff. The situation was said to have taken a serious turn when both parties exchanged blows and the police were summoned to contain the situation. The situation got out of control and the police were forced to use a baton charge to control the striking doctors, medical students and the general mob. By the next day the trivial incident became an acute health crisis in the state with the involvement of the State Medical Association, leading to a complete shutdown of medical facilities in the state. This action resulted in health-care providers from other government and private health sectors also supporting the strike. Medical support facilities in the state were brought to a complete halt.

The tale of Delhi

On a midweek day in spring 2010, the doctors in a tertiary care teaching hospital in Delhi, India,

decided to go on indefinite strike in response to one of their female colleagues being antagonized by a patient’s carers.⁵ In a hospital with 1800 multi-disciplinary beds and 6000 outpatients, all the attending doctors went on a day’s strike leading to widescale disruption of the health facilities in the city. This was the third such incident to take place in the city within two years. The doctors were quoted as stating that this was a last resort to bring the sorry condition of the working environment to the notice of the government and the authority concerned.

Outcome of the strikes

The outcome of both strikes was disastrous.^{4,5} The strike in Rajasthan was said to have claimed 50 lives before it was called off and the medical facilities returned to normal. However, the figure claimed by the media was not confirmed by the government. It was later affirmed that 37 deaths could have been avoided with timely medical intervention. In Delhi, the emergency services were worst hit. Both the strikes took a heavy toll on lives and created an atmosphere of anger and resentment against doctors throughout the country.

Termination of the strikes

In both regions, the respective State Governments were forced to intervene in the negotiations between the Ministry of Health and the officers of the respective State Medical Teachers’ Associations.^{3–5} But the medical services could only be resumed after three days of negotiations. The cases made against 33 doctors for dereliction of duty were withdrawn and reasonable compensation was promised to the doctors injured in the unrest. Doctors working in emergency departments were also assured that appropriate security measures would be put in place.

Historical aspects of and general views on strike

A strike is the stoppage of work due to mass refusal of employees to work. Major reasons for striking are employees’ grievances against the employer or their working conditions or salaries. By the end of the 20th century in India, striking had become a legal

measure to attain justice or as a vehicle to express the strikers' views. Section 2(q) of the Industrial Disputes Act (India)⁶ defines the term "strike" as:

"a cessation of work by a body of persons employed in any industry acting in combination, or a 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 accept employment."

Whenever employees want to go on strike, they have to follow the procedure provided by the Act, otherwise the strike will be deemed illegal. Section 22(1) of the said Act places certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract.

A strike is illegal, if it is done:

- (a) Without giving the employer notice of the intended strike within six weeks before striking; or
- (b) Within 14 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 duration of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

The Act thus makes it clear that striking is not a fundamental and absolute right of an aggrieved individual, but a conditional right that requires prior fulfilment of conditions in order to exercise that right. The Act in general does not list who can go on strike, thus implying that anyone employed in any industry can prepare for a strike.

Justification given for some of the previous major strikes by the doctors in India were for better salary, better living conditions for resident doctors and to protest against government bills which limit the fee for medical services provided by them. In most of the earlier instances, striking doctors admitted that their action primarily affected the poor and middle classes, who are the main users of government hospitals in India. Yet another concern for Indian resident doctors are high tuition fees coupled with the low pay packages, which make it difficult for them to procure postgraduate text-books and journals.⁷ Some of the strikes were also about the implementation of the

extended "reservation system" in the admission procedure for medical institutions. However, the major cause stated was the absence of adequate provision for the reimbursement of the services provided. There is a need for a policy change to safeguard the interests of doctors and the paramedical faculty and to provide them with sufficient legal aid to combat hostile situations.

In the past couple of decades, doctors from across the globe have protested for various reasons. Thousands of German doctors stopped working to protest against the considerable reduction in the health budget declared by the Government. They were particularly angered by the fact that they would be forced to fund from their own pockets any excess spent on prescription drugs beyond the annual budget assigned to their practices.⁸ Some Australian doctors went on a hunger strike for more than a month with an appeal to the federal government to recognize the skills of overseas doctors without their having to pass the Australian Medical Council (AMC) examination.⁹ At an Irish hospital, doctors resorted to using the country's Freedom of Information Act to find out what overtime payments were owed to them, as they had worked in excess of the contracted 65 hours a week.¹⁰ Members of the French Association of Hospital Emergency Doctors went on an unlimited strike in France, thus bringing the emergency services in the country to a standstill. The striking doctors demanded not only more staff, better working conditions, more beds, and more money, but also a revamp of France's entire emergency care system.¹¹ In a reported incident, an estimated 90% of general practitioners working in Italy's National Health Service went on a one-day strike to protest against the government's proposed devolution of the service. The striking doctors also expressed their concerns about national contracts and the agreement that defines the role and per capita fees of general practitioners working for the National Health Service.¹² Doctors working on temporary contracts in Spain held a strike seeking more job security.¹³

Moral, ethical and legal implications

Society always expects a doctor to be ready to serve it, should there be an emergency crisis. The faith in and expectation of a doctor is so great that any inadequate gesture on the part of the doctor may be

difficult to accept. The general public expects a doctor to be “utilitarian”. Civilized society condemns doctors whose actions bring the entire medical service to a halt and cause the death of many patients who could have been easily saved by timely intervention. But one must realize that the health-care sector has been accorded the status of “industry” in the recent past. While there may be no ethical or moral justifications for a doctors’ strike, as a service provider to an industry, a doctor is entitled to stay away from work for a legally viable cause. Society, in an attempt to glorify the doctor as “utilitarian”, may be ignoring the “humanitarian” needs of medical professionals. According to the principles of labour industry, a worker is entitled to withdraw his labour at any time – except in the medical profession where the first priority shall be the benefit of the people. Doctors do have the right to stay off the work, but any such action should be well planned before execution. Alternative arrangements might be put in place, and it is never acceptable to cease operating emergency services, as the maintenance and saving of human life is of paramount importance to society. If a patient is harmed or dies during a strike, the attending doctor is liable to answer a charge of medical negligence. Moral justification for a strike exists only if the long-term benefits to the physicians are great, the health-care delivery improves considerably as a result, more lives may be saved in the long run, and the benefits are passed on to the general members of the society.¹⁴

Doctors will face widespread criticism if the medical services are brought to a standstill. It could also be argued that doctors who quit working for whatever reasons are rejecting their acceptance of the Hippocratic Oath.¹⁵ The doctor–patient relationship may have been breached by implication, i.e. causing an implicit breach of contract if a doctors’ strike would result in a breach of confidence and trust in the normal relationship that exists between the doctor and a patient. Reducing the patient’s wellbeing to a lower priority than the doctor’s own interests and agenda may be viewed as outrageous.

The key questions in the ethical debate on the right of doctors to strike are:

- (a) Can the long-term benefits to doctors and the public outweigh the short-term costs to the latter, including avoidable death?
- (b) Can immediate needs be set aside in anticipation of future benefits?
- (c) Does the nature of the physician–patient–society contract preclude strike action? and,
- (d) How would a strike affect the public image of doctors?¹⁴

As doctors evolve from healers to technocrats and the doctor–patient relationship becomes less paternalistic, with patients becoming more questioning and litigious, the nature of the contract is likely to be further altered. It is clear that this re-defined concept of the physician–patient contract makes strike action ethically more justifiable, provided doctors are reasonable in their demands. An antiquated myth of sainthood should be replaced by infusing an appropriate dose of realism.

Even though a citizen of a democratic nation reserves the right to strike to seek redress for their grievances, as discussed earlier, certain conditions and requirements need to be met before one can go on strike. Moreover, government employees are partially prevented from active involvement in such acts. The loss of life caused by the negligent behaviour of the attending doctors may be brought under the ambit of s 304-A of the Indian Penal Code, which states:

“Whoever causes death of any person by any rash and negligent act not amounting to culpable homicide shall be punished with imprisonment for a term which may extend to 2 years, with or without fine.”

Strict compliance with The Essential Services Maintenance Act (India)¹⁶ will be expected to prevent such incidents in the future. When faced with the question, “should doctors strike?”, society would respond with a strong “NO”. Society holds striking to be against the very nature and spirit of doctors’ work as a caring profession, and by striking they forfeit the respect that the profession commands. However, in some situations, doctors who laboured under impossible burdens felt that nothing short of “industrial action” would impress upon the Government and the nation their sense of despair. Striking may be ethically justifiable in some situations. Nevertheless, even when called to achieve socially desirable ends, strikes frighten the public, arouse ethical qualms in doctors, have the potential for producing adverse health outcomes and must be avoided if possible.

Precautions to prevent strikes

Doctors' strikes may not always harm society. They may serve as an important catalyst in converting a rigid and conservative health system into a more flexible democratic organization. The prime concern of the medical fraternity should be to ensure continued medical services to society and to make sure they are never brought to a total standstill. This may be achieved by ensuring there are better working conditions for doctors, with assured security round the clock, the setting up of "grievance cells" in all hospitals to address the disappointments of patients and doctors, the provision of quick and timely trials of deserving cases in the district fast-track justice courts, and the formation of a doctors' union to convey their needs and requirements to the authority concerned.

Conclusion

Every profession has its own constitutional rights and civil liberties. Medical professionals do realize the nobleness of their profession while opposing the injustices that they find. The health-care industry should be brought within the Essential Services Maintenance Act and suitable platforms provided to allow the formation of doctors' unions at different levels within the profession, so that doctors can voice their concerns. The threat to medical autonomy comes not only from patients' changing attitudes grounded in consumerism, unrealistic expectations and litigiousness, but also from the new-found strength of third-party players and the rise of bureaucratic forms of medical practice. Doctors could respond to these pressures by striking more often in the days to come. But while strikes would draw attention to their grievances, it would be hard for doctors to convince society at large that their main concern was to achieve better health services for their patients rather than personal gain.

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