

# LAWYERS AND STRIKES: DOES THE END JUSTIFIES THE MEANS

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## **INTRODUCTION**

Lawyers have been prominently important part of the society and practicing law is a legal responsibility of every lawyer. Law brings appreciation for those who conserve it. The legal profession is an independent, holy and noble profession as officers of the court (legal professionals) have the spirit of service for the public. It has been an important limb for the administration of justice. But nowadays the apparent sad truth is that one of the finest profession is downgrading due to lack of professionalism and dedication. The materialistic approach towards what profession pays off has led to the mantle which it possesses now. "A well-organized system of judicial administration proposes a properly equipped and proficient Bar."<sup>1</sup> And for having a proficient bar observation of moral values is necessary so as to preserve the basic ethos of legal profession.

Major contribution in this downgrading is the official misconduct by the lawyers like going on strike. These uncongenial instances have led to severe criticisms for the legal profession coupled with lawyers being looked upon with distrust by society.

## **REASONS FOR STRIKE**

There had been no frivolous reasons for the strike of lawyers but the reason came up were not relevant to the Court's working. In recent times the reasons for strike in different states were like because of bomb blast in Pakistan, earthquake in Nepal, amendment in constitution of Sri Lanka, murder of any advocate, showing solidarity to other Bar Association's advocates, for

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<sup>1</sup><http://www.legalservicesindia.com/article/article/legal-profession-in-india-2192-1.html>

supporting movements by social activists, some religious occasions ( like shraadh, agrasen jayanti etc.), Kavi sammelan etc.

### **JUDICIAL STANCE**

The present scenario of the Courts questions the effectiveness of justice impartation in future. The abstinence from work was not at all justifiable as it has lowered the image of Courts in the eyes of general public. On numerous occasions supreme court held that lawyer's strikes are illegal. It objects the right to speedy trial of litigants as mentioned under Article 21 of the Constitution<sup>2</sup>.

Some cases as mentioned below shows the response of supreme court on lawyers doing strike.

1. In *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra Bombay & Others* [1984], it was stated that:

*“An advocate stands in a loco parentis towards the litigants. Therefore, he is expected to follow norms of professional ethics and try to protect the interests of his client in relation to whom he occupies a position of trust. Counsel's paramount duty is to the client. The client is entitled to receive disinterested, sincere and honest treatment”*<sup>3</sup>

The lawyer is an elite for society and it would be against his professional etiquettes to abstain from his duty towards his client on account of strike.

2. In *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.*<sup>4</sup> [1993] Court stated that striking by the lawyers will lead to the failure of contractual and professional duty which they owe the citizens.
3. In *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.*<sup>5</sup> [1999] the court said that judicial proceedings should not get delayed by the browbeating and the tyrannizing methodology by the advocates. It is the duty of the courts to continue with the proceedings even if there is a call for strike or boycott from any association of advocates or bar in the court hours. No court should yield to filibuster tactics. In appropriate cases,

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<sup>2</sup> Article 21- Right to life and personal liberty.

<sup>3</sup> *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra Bombay & Others*, A.I.R. 1984 S.C. 110.

<sup>4</sup> *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr*, A.I.R. 1993 S.C. 1182.

<sup>5</sup> *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.*, (1999) 1 S.C.C. 37.

the court can even ask the counsel to pay exemplary cost to the litigant which he suffered due to counsel's inconsistency with his work to ensure proper dispensation of justice.

4. In *Ramon Services Pvt. Ltd. v. Subhash Kapoor*<sup>6</sup>[2000] Supreme Court held that if any advocate claims that his right to strike must not bring any loss to him and if there is any loss it should be borne by the litigant then such claim can't be entertained. An advocate holding the brief of client abstains from work on account of strike has to bear the pecuniary cost suffered by the litigant.
5. In *Ex-Capt. Harish Uppal v. Union of India*<sup>7</sup>[2002] Supreme Court held that a lawyer may refuse to engage in new cases but can't abstain from work if he holds vakalatnama on the ground of strike by any group of lawyers of any bar association. If he does so he will be liable to suffer the consequences.

*"... that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour armbands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. ...only in the rarest of rare cases where the dignity, integrity, and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day..."*

There is no fundamental right either in Article 19 or Article 21 supporting strike or abstinence from work by lawyers but the litigant has the right to speedy trial implicit under Article 21 of the Constitution. Court also stated that lawyers should adopt different ways to protest if there is a genuine cause and it shouldn't disrupt the court proceedings.

6. In *Hussain And Anr. v Union Of India* the Court reiterated that strike by the law professionals is illegal and it detracts the dignity of the legal profession and Courts and also erodes the faith of the citizens in the judicial system of the country.

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<sup>6</sup>Ramon Services Pvt. Ltd. v. Subhash Kapoor, (2001) 1 S.C.C. 118.

<sup>7</sup> Ex-Capt. Harish Uppal v. Union of India, A.I.R. 2003 S.C. 739.

*“Condolence references can be once in a while periodically say once in two/three months and not frequently. The problems faced by the witnesses if there statement is not recorded on the prescribed date on which they are summoned and impact of delay on under trials in custody because of the strikes is a matter of great concern. It needs attention of all the concerned authorities the Central government /State government/ Bar associations/ Bar Councils as well as High Court and steps must be taken to tackle this menace so as to avoid jeopardy.<sup>8</sup>”*

### **EFFECT ON JUDICIAL SYSTEM**

Judiciary is consequent in holding our democracy together. There are many loopholes in our judicial system like corruption, delays in judgement or disposal of cases, pending crores of case, staff deficiency etc. and strike by the lawyers has aided to the inefficiency of the judiciary. Judicial delay aggravates many problems for the general public. Though Supreme Court has reiterated that strikes are illegal and has made the lawyers who abstain from the work holding briefs of the client face the dire consequences and to compensate the loss suffered by the litigant, yet the strikes continued on irrelevant subjects and thus it needs much more stringent steps on the part of the Courts to extricate from this problem.

Indian judiciary has 2.5 crores cases pending and the strike causes wastage of valuable time of the court and contributes to the judicial inefficiency. Even after the strikes are over it takes an ample amount of time for the system to realign itself. If the lawyers continue to resort to strikes, considering today's situation it will completely crush the edifice of our judicial system. Strikes have already affected many states, the figures of strikes in Subordinate Courts in 2011-2016 are alarmingly high and Uttar Pradesh is at worst. In Uttar Pradesh District Court on average worked for 150 days a year while the working days were 265 a year, in Tamil Nadu High Court reported it's 220 days a year, a day's strike by lawyers has affected 47000 pending cases in Karnataka on March, 31 and even the responses received from High Court of Madhya Pradesh and Odisha were not satisfactory.

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<sup>8</sup>Hussain And Anr. v Union Of India,

## **Law Commission of India Report**

In the 266<sup>th</sup> report of law commission of India, it suggested comprehensive amendments in The Advocates Act, 1961 to the government and recommended drastic changes in working of the regulatory bodies. The Commission also submitted a draft of Advocate (Amendment) Bill, 2017.

It mentioned some point related to lawyers' strike. It observed that this action is against the moral obligations of lawyer towards his profession. Lawyers are the officer of the Court and it is the prime duty of the lawyers to assist the court in dispensing justice in the most efficient manner. If the lawyers don't perform their duty in a requisite manner, it would lead to the retrogression of the rule of law.

“It also suggested that at every district headquarters, the District Judge may constitute an Advocates' Grievance Redressal Committee headed by a Judicial Officer which will deal with the day to day routine matters, as large number of issues and grievances arise in the smooth working of the advocates. In this regard, the High Court may issue a circular in exercise of its power under Article 235 of the Constitution providing for redressal of grievances of the Advocates which will help in improving their efficiency. In case there is some grievance against a Judicial Officer, the Bar may raise the grievance before the Chief Justice of the concerned High Court.”<sup>9</sup>

In the draft of The Advocates (Amendment) bill, 2017 the commission recommended following amendments in The Advocates Act, 1961.

- 1) Insertion of clauses in sub section 3 of Section 35
  - a. Imposition of fine (upto 3 lakhs) and the cost of proceedings.
  - b. Award compensation (upto 5 lakh) to the person aggrieved by the misconduct of advocate.
  - c. Impose cost (upto 2 lakhs) on complaints if found vexatious, false or frivolous and if the advocate concerned is not cooperating in the disciplinary proceedings under the Act.

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<sup>9</sup> Draft of The Advocate (Amendment) Bill, 2017.

- 2) Insertion of new section 35A after section 35 of the Advocates Act, namely “35A. Prohibition on the boycotts or abstention from court’s work.
- 3) Insertion of new section 45A after section 45 of the Advocates Act, for claiming of compensation in certain cases-
  - a. If any person suffers loss due to the misconduct of the advocate or for his participation in the strike other, such person may make a claim for compensation against the advocate in the appropriate forum established under any law for the time being in force.
  - b. The non-payment of fees, either in full or part, by a person to his advocate, shall not be a defence available for the advocate against whom such claim for compensation is made.

## **CONCLUSION**

Since strikes and boycotts are prohibited by the judgement of Supreme Court in Ex-Captain Harish Uppal’s case and now the Law Commission has also recommended that it should not be resorted to and be declared illegal and therefore it should be deemed as misconduct. Eventually the ultimate sufferers are litigants and the system as a whole. But there are instances where the independence of judiciary is itself at stake, then in such cases a token strike of a day can be observed just to show that there is a large scale resentment against a particular action. For example the recent event of Justice Jayant Patel being superseded and been transferred to Allahabad High court from Karnataka High court, it was a clear case of executive and political interference in the judicial work. Such instances strike at the independence of judiciary and therefore token strikes of one day can be resorted to.

Constitution of India provides for an independent judiciary for the efficient administration of justice. Roscoe Pound, an eminent jurist states that “historically, there are three ideas involved in a profession: organization, learning, and a spirit of public service.”<sup>10</sup> The most important of these three elements is public service. Legal profession also requires adherence to its norms and devotion towards the society. It is the prime duty of a lawyer to answer the call for public

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<sup>10</sup> Roscoe Pound, “What is a Profession - The Rise of the Legal Profession in Antiquity”, 19 Notre Dame L. Rev. 203 (1944), at p. 204.

service on time. Going on strike brings disgrace not only to their profession but to the justice delivering system as whole. Any delay in disposal of cases not only creates disillusionment amongst the litigants but also undermines the capability of the system to impart justice in an effective manner.<sup>11</sup>Justice delayed is justice denied. It infringes the right to speedy trial of litigant which is not admissable on the part of law care taker. One who secure law should ensure law.



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<sup>11</sup> Syed Gulzar Hussain v. Dewan Syed Ale Ramul Ali Khan, (2014) 10 S.CC 825.