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AVOIDANCE OF STRIKE BY LAWYERS*

INTRODUCTION

A person who practises law is called a Lawyer. He is the part of the judicial system. A lawyer plays a vital role in administration of justice. He represents his clients in the court in criminal, civil and other cases. A lawyer acts with integrity and professionalism. He maintains his or her overarching responsibility to ensure civil conduct.¹ Advocacy is a decent and reputable profession in our country.

Strike in layman's language means refusal to work or to perform any activity. Strike can also be defined as gathering of people, making a union and refusing to carry out their work. There can be different types of strikes with different motives. Like hunger strike, general strike, culture strike, etc. Strikes are sometimes used to force government to alter its policy. Most of the time strikes are undertaken by the workers or labours because of payment issues or when their demands are not fulfilled, etc. In *Bharat Kumar K. Palicha v State of Kerala*², the Kerala High Court has underlined the difference between 'Bundh' and 'hurtle or general strike'. Moreover in this case the Court has said that 'calling for Bundh' is unconstitutional.

The Supreme Court in a case in 2002, held that only in case of the 'rarest of rare cases' where the dignity, integrity of Bar is at stake, advocates can call for protest not more than one day. The advocates protest for their needs and demands, meanwhile it the poor people who suffer because of disturbance in administration of justice. In recent years the Bar Council has interpreted the term "rarest of rare cases" in various ways and every time a new group of lawyers call for strike. Though in many cases the Supreme Court has held that call for strike by lawyers is illegal, still there are many cases of strike by lawyers every now and then.

One of the reasons why lawyers have called for strike is violence against the lawyers either by individuals or by the police. Those advocates who make a living by citing India's civil and criminal procedure codes in court have also gone on strike. In many cases advocates have collectively boycotted transfer of specific judges, sometimes in defence of certain judges. Other reasons like, once a working day had fallen in the middle of an extended weekend, sometimes there not being enough chairs for lawyers, etc.

There should be strict avoidance of strike by lawyers. The Bar Council of India, the Courts, and other similar bodies play a vital role in a lawyer's life. They can in some way restrict the lawyers strike. Advocates are officers of the courts and play a vital role in the administration of justice.

Professional Conduct of Advocates

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¹ http://www.advocates.ca/assets/files/pdf/bibliography/Duty_to_Court.pdf

² AIR 1997 Ker 291

Rules on professional conduct and standards that an advocate is bound to maintain, are mentioned in Chapter II, Part VI of the Bar Council of India Rules. These rules are placed in section 49(1) (c) of the Advocates Act, 1961. Chapter II of the Bar Council of India Rules say about the standards of professional conduct and etiquette which should be followed by an advocate. Section 1 of the same describes the “Duty to the Court”. An advocate while presenting his case in the court should conduct it with dignity and self-respect. Secondly, an advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.³ An advocate should not communicate in private to a judge with regard to any matter pending before the judge or any other judge. An advocate should appear in court at all times only in the dress prescribed under the Bar Council of India Rules.

The next section says about the “Duty to the Client”. In this provision the duty of a lawyer towards his client has been mentioned. An advocate is bound to accept any brief in the Courts or Tribunals or before any other authorities in or before which he proposes to practice at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.⁴ This part of the provision clearly says that an advocate should not refuse to attend his brief unless under some justified circumstances. It is the duty of an advocate to attend the court if he has accepted a brief. An advocate should not ordinarily withdraw from serving a client once he has agreed to serve them. He can do so if he has a sufficient cause and by giving reasonable and sufficient notice to the client. Moreover it also says that **an advocate should not misuse or take advantage of the confidence reposed in him by his client.**

In “Roman Services Pvt Ltd v Subhash Kapoor”⁵ the question was when a lawyer goes for a strike call made by the association and boycotted the Court proceeding, whether his litigant should suffer a penalty. It was held by the Court that when an advocate involves himself in strike there is no obligation on the part of the Court to either wait or adjourn the case on that ground. It was held that an advocate has no right to boycott court proceedings on the ground that they have decided to go on a strike.

The term professional misconduct of lawyers is nowhere defined in the Advocates Act, 1961. Though ‘professional misconduct’ is defined as behavior outside the bounds of what is considered acceptable or worthy of its membership by the governing body of a profession.⁶ Chapter V of the Advocates Act, 1961 deals with the conduct of Advocates.

In the case “Noratanmal Chaurasia v M.R. Murli” the Supreme Court held that though misconduct has not been defined anywhere in the Advocates Act, 1961 but misconduct envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "Improper behaviour intentional wrong doing or deliberate violation of a rule of standard or behaviour".

In B.L.Wadhwa v State⁷, the court held that if on the ground of strike a lawyer abstains from appearing in court then he is conducting professional misconduct, a breach of contract, breach of trust and breach of professional duty.

Thus when an advocate ignores his duty or his conduct is such that it is creating nuisance to his clients or the court, such conduct can be called as professional misconduct. When an advocate

³ Section I, Chapter II, Part VI “Bar Council of India Rules”

⁴ Section II, Chapter II, Part VI “Bar Council of India Rules”

⁵ (2001) 1 SCC 118

⁶ www.businessdictionary.com/definition/professional-misconduct.html

⁷ AIR 2000 Delhi 266

goes for a strike call made by the association and ignores or refuses to attend his brief in such situation his behaviour comes under professional misconduct. Moreover the scope and definition of the term 'misconduct' can be understood by keeping in mind the role and responsibility of an advocate. Professional negligence comes under an instance of misconduct.

Strike as Misconduct

Ex Capt. Harish Uppal v Union of India and Another

In Ex.Capt.HarishUppal v. Union of India and Another⁸ various petitions raise the question whether lawyers have a right to strike or give a call for boycott of court or courts.

The petitioners submitted that strike as a mean for any change in the policy or system is recognised only in industrial disputes. Lawyers are the officers of court hence they have a duty towards the court. They cannot use strike as a tool to take advantage of the courts or the clients. The petitioner submitted that the court must take action against the lawyers who call for strike as they have committed contempt of court. A lawyer who has accepted a Vakalat on behalf of a client must attend the Court and if he doesn't do so, that would amount to professional misconduct and contempt of court. He submitted that court should frame rules that should regulate the lawyers to attend their cases regularly. Court should make rules that any lawyer who commits contempt of court by going on strike or boycotting a Court will not be allowed to practice in that Court. The clients and the Courts should not suffer for any actions for which they are not responsible. Even, it was also mentioned that no actions should be taken against those lawyers who don't get them involved in the strike.

On the other hand the respondent submitted that the lawyers had a right to go on a strike or give a call for a boycott. There are many situations where lawyers need to go for a strike. It was submitted on behalf of the respondent that the Court cannot say it as misconduct because the Bar Council has been vested with powers to decide whether or not an advocate has committed misconduct. Court cannot punish an advocate for misconduct because the Bar Council has the power to discipline.

The Court held 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, etc.⁹ No Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike. Only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at issue, courts may ignore to a protest abstention from work for not more than one day. "Further appropriate rules are required to be framed by the High Court's under Section 34 of the Advocates Act¹⁰ by making it clear that strike by advocate/advocates would be considered interference with administration of justice and concerned advocate/advocates may be barred from practising before Courts in a district or in the High Court."¹¹

Role Of Bar Council of India

⁸ (2003) 2 SCC 45

⁹ Ex Capt. Harish Uppal v Union of India and Another, (2003) 2 SCC 45

¹⁰ 1961

¹¹ Ex Capt. Harish Uppal v Union of India and Another, (2003) 2 SCC 45

The Bar Council of India is a statutory body. Section 4 of the Advocates Act¹² has mentioned about the establishment of Bar Council of India. It regulates legal practice and legal education in India. It was created under Advocate Act, 1961, by the Parliament. The Bar Council of India is a statutory body that regulates and represents the Indian bar.¹³ It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as a qualification for students to enrol themselves as advocates upon graduation.¹⁴¹⁵¹⁶ Section 7 of the Advocates Act, 1961 lays down the functions of Bar Council of India. Like to promote and support law reform, to deal with and dispose of any matter which may be referred by a State Bar Council, to Manage and invest funds of the Bar Council, to lay down procedure to be followed by disciplinary committees, etc.

The function of Bar Council of India is to lay down standards of professional conduct and etiquette for lawyers.¹⁷ The Bar Council of India should ensure that lawyers should not involve in strike and other protest during court hours. Though in many circumstances the bar Council itself initiates such protest. The Supreme Court in a case in 2002 held that lawyers have no right to strike and such strike and declaration is illegal. The lawyers are the part of the judicial system. The Bar Council of India should take stern actions against those lawyers who call for strike or give a call for boycott of a court. Either the State Bar council should ensure it or the Bar Council of India should ensure it. The Bar Council should see that there is smooth functioning of the judicial body.

In *Common Cause a Registered Society v. Union of India and Others*¹⁸ In this case it was held that, if any associations of advocates call for a strike, then the State Bar council or the Bar Council of India must take actions against those persons who call for strike. Therefore, the Bar Councils and the Bar Association can never accept any Association calling for a meeting to consider a call for a strike or boycott. The Bar Council has a duty towards the court. The Bar council is represented by the lawyers, hence it is the lawyers' duty towards the court which matters. Even the Bar Council of India has certain rules in Section 1, Chapter II, Part VI of The Bar Council of India Rules, 1975; the duties of an advocate towards the court have been mentioned. The Bar Council should ensure such disciplinary acts of the advocates.

Moreover in *Ex.Capt.Harish Uppal v. Union of India and Another*¹⁹, the contention raised in this case was whether lawyers have a right to strike or give a call for boycott of courts. It was held that call of a strike by lawyers or call for boycott is illegal. It was held 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, etc. No Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike. Only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at issue, courts may ignore to a protest abstention from work for not more than one day. Moreover the court will decide whether the issue involves dignity, integrity, etc. It is the duty of all courts to go on with matters even in the absence of lawyers. The Bar Council of India should make strict rules and regulations in regard to strikes by lawyers. The Bar Council of India and state Bar Councils should issue rules, stating a

¹² 1961

¹³ https://en.wikipedia.org/wiki/Legal_practice_laws_in_India

¹⁴ "About the Bar Council of India". Bar Council of India. Retrieved 3 May 2014.

¹⁵ "The Indian Legal Profession" (PDF). *President and Fellows of Harvard College*. Retrieved June 4, 2014.

¹⁶ "Advocates Act, 1961" (PDF). *Parliament of India. 1961*. Retrieved 3 May 2014.

¹⁷ Section 7(b) Advocates Act, 1961

¹⁸ AIR 2005 SC 4442

¹⁹ (2003) 2 SCC 45

code of conduct for advocates, which should also include banning of advocates strike, or boycotting court proceedings.

Role of Court or the Judiciary

A lawyer shall use tactics that are legal, honest and respectful of courts and tribunals.²⁰ The Judiciary of India administers common law system of legal jurisdiction. The Judiciary has several functions to perform. Such as protection of laws, protection of people from violence, to safeguards the fundamental rights of both the citizens and non-citizens. The judiciary also involve itself in making of new laws. It has advisory functions, administrative functions, etc. The Judiciary of India is also the guardian of the Constitution. Judiciary is an integral part of a Democratic Government. The Judiciary has the power of judicial review. It also involves itself in judicial activism.

In many judgements Judiciary has advanced its disagreement regarding strike by lawyers. In many cases, it has held that strike by lawyers is illegal. 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, or relay fasts etc.²¹ Although the lawyers can protest only in the 'rarest of rare cases' where the dignity, integrity and independence of the Bar and/or the Bench are at issue, for not more than one day.

In *K. John Koshy &Ors v Dr.Tarakeshwar Prasad Shaw*²², one of the question was whether the court should refuse to hear the matter and pass an order when counsel for both the sides were absent because of a strike by the Bar Association. The Court held that the court could not refuse to hear or avoid a case as it would indicate that the court is also a part of the strike and is supporting it.

Article 21 of the Constitution says 'Right to life and liberty' conferred on every citizens of the country. There are many rights which are included under this article. Such as right to livelihood, right to education, etc. One of such right is right to speedy trial. The Supreme Court in "*Hussainara Khatoon v Home Secretary, State of Bihar*, has decided that the right to speedy trial is a fundamental right to under right to life and liberty. When lawyers call for strike, there is disturbance in the proceedings of court which sometimes also results in delay of the trial. Due to this there is infringement of fundamental rights of the people under article 21. Although the lawyers have exercised their fundamental right under Article 19, 'freedom of speech and expression' but such exercise will come to an end if it infringes the fundamental right of another. This was the decision in *Dr.B.L.Wadehra v. State (NCT of Delhi)* and others. In this case it was held ... the lawyers have no right to strike. Right to speedy trial is a fundamental right of every citizen under Article 21 that is Right to life and liberty. Strike by lawyers interferes with the administration of justice that is delay of trial which, means infringement of the fundamental rights of the citizens. The Bar Council of India Rules, 1975 have been cited in the said judgment. The lawyers are the member of the system. They have a duty to cooperate with court in administration of justice.

Every court has a duty to proceed with the court proceedings during the court hour. The court is not obliged to postpone a case because of a strike call. The court is bound to hear and decide the cases which are brought before it. The court cannot avoid it on the ground that the advocates are

²⁰ http://www.advocates.ca/assets/files/pdf/bibliography/Duty_to_Court.pdf

²¹ *Ex.Capt.HarishUppal v. Union Of India and Another*, (2003) 2 SCC 45

²² (1998) 8 SCC 624

on strike. Moreover in *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd*²³ it has been held that no court is obliged to adjourn a case because of the strike call given by associations of advocates or a decision to boycott the courts. It is the duty of the court to proceed with the court proceedings during the court hours. It further held that it is the duty of every advocate who accepts a case to attend the trial.

In *R.K. Anand v. Registrar, Delhi High Court*²⁴, the Supreme Court held that every High Court should have rules framed under Section 34 of the Advocates Act, 1961, in order to meet possibilities of call f strike or boycott of courts. Even though in the absence of any rules, the High Court has the power to take action against those protests. The High Court is not powerless or helpless, if no rules are framed, it can take actions anytime. From this judgement it is very clear that High Courts have powers to take action against those advocates who participate in protest to boycott the court. The High Court should take necessary action at times when strikes are being called by the lawyers.

Constitution of a Separate Body

In recent years there were so many cases of lawyers strike on different issues. These strikes disturb the quick justice-giving system. Lawyers have certain duties towards the court. Lawyers carry a responsibility to carry out their client's case. A client's entire life is dependent on a lawyer's work. If a lawyer ignores the brief or causes any act which is disturbing the client's case then the layer is acting against the norms of his duty. Judiciary is the only body in which the people are dependent upon to seek justice. When lawyers are on strike justice is delayed. Every person has a right to justice. India is a democratic country. Although Supreme Court had decided in 2002 case that strike by lawyers is illegal, still, group of lawyers call for strike on various issues. Call for strike by lawyers should be the last option for the lawyers. "Justice delayed is justice denied". Keeping in mind all these circumstances, it will be wise to set up a body which will look after the matters of the lawyers. Other than the Bar Council, there must be some separate body, a mixture of both judicial and non-judicial members who can discuss the problems of lawyers.

A separate body can be set up to deal with the lawyers cases. The lawyers can put forward their queries, issues, problems to them. That body will only work for the welfare of the lawyers. The body should consist of members of judicial officers. If there is any issue regarding any political or administrative matter, associations of advocates can discuss it with the body. The body will not be entirely judiciary in its taste, it should be little different. It should have both judicial and non-judicial members. In that way the problems of advocates can be solved in a better way. The body should lay down certain rules and regulations which the lawyers should follow. The body should also make strict laws and should forbid strike by lawyers.

There should be a regular meeting to keep a check on lawyer's conduct. The body should make its own decision. It should be set up both in Central level as well as in State level. Its working should not be purely independent of the Advocate Act, 1961. When necessary the body should refer to the Advocates Act. If a deadlock is created among the members of the body, the matter should go to the Supreme Court for further solution or any other mechanism should be followed as prescribed by the members of the body. However this can be used as a mechanism in settling the disputes but then the lawyers under certain circumstances should be allowed to call for strike.

Principles Arise Out of the Lawyer-Client Relationship

²³(1999) 1 SCC 37

²⁴(2009) 8 SCC 106

- Lawyers are in breach of their legal, moral and professional obligations towards their client if they accept a case and fail to appear in court.
- The reason that Bar Association has called a strike prohibiting lawyers to appear in any court is not an appropriate reason for any lawyer to fail to discharge his duty towards the client and the court.
- Where a lawyer has decided not to appear for a client due to a strike call, he must return the clients fees and brief with reasonable notice to the client so that he can arrange some alternative arrangements.
- If a lawyer decides to attain the case during a strike call, no one can intimidate, coerce or threaten him.
- When the lawyer gets the information that due to strike his client will be unable to arrange other alternatives, then it is the professional duty of the lawyer to appear in the case despite the call for a strike.
- If a lawyer ignores a strike call, no professional body should take any actions against him
- Courts have the duty to deliver justice. They must not be prevented from doing so by a strike call by lawyers. Even the judges who are members of the Bar Council should not be intimidated, coerced or threatened by disciplinary actions or otherwise.
- In rare circumstances when the courts may feel that a strike is justified, the Court may agree to an arrangement of permitting adjournment through proxy counsel in some cases. However it should be in rare of the rarest cases as pointed out by the court in “Ex Capt Harris case”²⁵.
- In the event of a counsel wishing to argue a matter, or the Court taking the view that it is in the interest of the justice to do so, the Court shall proceed to hear and decide the matter.

Conclusion

Right to strike is not an absolute right but a conditional right. Under Article 19 of the Constitution of India every person has freedom of speech and expression. However the ambit of Article 19 should be read with certain limitation. When it comes to “strike” it is a wider form of expression to express demands and needs. Lawyers can call for strike in rare of the rarest cases as pointed out by the supreme court of India in Ex Capt Harris Case. In industrial disputes also the workers can call strike only in certain cases and following certain conditions.

There should be some mechanisms which should be followed to settle the disputes of lawyers. The Bar Council and the Courts play a vital role in a lawyer’s life. They should actively decide upon the matters of the lawyers and prohibit them to call for strike. However there can be other mechanism too, like setting up of a separate body or a group discussion etc. The lawyers should not go for strike as it disturbs the entire justice system. They should understand it and cooperate with the system. Moreover the system should also cooperate with them. The clients should not suffer because of any such activities.

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²⁵ (2003) 2 SCC 45