

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Advocates Strike: An Unprofessional Conduct

SHRISHTI DUTTA¹ AND MANI SHANKAR CHOUDHARY²

ABSTRACT

The legal fraternity is one of the most important pillars of our nation. Advocates diligently work to help their client and they need to be very ethical as they represent the clients before the deciding bodies and professional disciplinary committees.³ To ensure peace and harmony, the legal system is responsible for preserving, creating, altering, and even deleting any inconvenient laws that exist in the country's judicial system. However, it is said that this system can come to a halt when those in positions of authority in the judicial system act unlawfully or in ways that are not appropriate for them as a strike. It was declared by the court that such sought of calls for boycott are absolutely illegal. This paper analyses the advocate's rights to strike and evaluates its constitutionality through the judicial contributions by the court on the same issue. According to the law commission of India report no. 266⁴ the word strike has been in discussion, which is in equilibrium with India's judicial system. According to the court the word strike is used for the workers, labourers, employers, employees and it is not suitable for professional such as the advocates of the legal system. This paper critically examines the judicial role and the validity of the strikes by the advocates.

Keywords: Advocates, ethics, strikes, constitutionality, judicial system, legal system.

I. INTRODUCTION

India is a democratic country that opted for the parliamentary form of government. In this form of government, every wing of the government is involved in the process of policy and decision making; this further helps in a fair representation of society. The three wings of our Constitution are the judiciary, legislature, and the executive, which keep a check on the functioning of the government. These pillars ensure the effective and efficient working of the government. Balance in the working of society helps in the smooth functioning of the country, which is essential for public welfare.

The judiciary is one of the most essential organs of our country in which India works. India is

¹ Author is a LLM student at Symbiosis law school, Pune, India.

² Author is an Advocate at Golden I (General manager sales and legal department), India.

³ Nick Robinson, Marc Galanter India's Grand Advocates: A Legal Elite Flourishing in the Era of Globalization, (1st June 2021, 11:54 AM). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2348699.

⁴ The law commission report 266 <https://lawcommissionofindia.nic.in/reports/Report266.pdf>.

a democratic country where advocates have certain roles and responsibilities. Under the Advocates act 1961, it is said that advocacy is a known profession that cannot be compared with any other profession such as a business, trade and so on. Under this act, the advocates are obliged to follow ethics and etiquettes.

II. WHAT ARE STRIKES?

The general definition according to the Cambridge dictionary the refusal of continuing a work due to an argument with the employer for reasons like the salary, working conditions or job security, which is known as a strike.

The Industrial disputes act, 1947 defines the term strike under the section 2(q) “*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 to accept employment.*”. In general, a strike is an effective instrument used by workers, other organizations, or employees to force employers or industry leaders to accept their complaints or concerns. . It is a way of putting a certain amount of pressure which can later be fruitful as can result in fulfilling the demands of the workers⁵. However, the Supreme Court laid down the three primary objectives of the Industrial dispute Act 1947s, which are⁶:

1. To promote and maintain a good relationship between the employer and employee
2. Assisting the workmen’s in the cases of lay off, closure or retrenchment
3. Collective bargaining

The legal profession is known as a noble profession and the standards which are maintained are known as the code of advocates or ethics of the legal profession. Keeping client’s interest confidentially is one the most important reasons why advocates are expected to follow the highest integrity and honour. Section 49(1)(c) of the advocate's act 1961 gives powers to the BCI to lay down rules to propose the standards of professional conduct and etiquette that needs to be followed by every advocate in their jurisdiction. Advocates should conduct themselves with dignity in front of the court. Therefore, the word strike is somewhere not applicable in the legal profession.⁷

⁵ Rajeev Kumar, Right to strike under Industrial Dispute Act, 1947(2nd June 2021 . 12: 36PM) <https://blog.ipleaders.in/right-to-strike-under-industrial-dispute-act-1947/>

⁶ Workmen Of Dimakuchi Tea Estate vs The Management Of Dimakuchitea 1958 AIR 353, 1958 SCR 1156

⁷ Niharika, Conduct/ Duties of Advocate (6th June 2021, 3: 11 PM) <http://www.legalserviceindia.com/legal/article-2374-conduct-duties-of-advocate.html>

III. CONSTITUTIONAL PHILOSOPHY

The Supreme Court correctly stated in *Krishnakant Tamrakar versus State of Madhya Pradesh*⁸ that every strike does irreparable harm to the judicial system, notably to plaintiffs. The right to strike is a fundamental right provided under the right to freedom of association (Part III) of the constitution, which allows a group of individuals who share a common interest to meet and assert their rights (Article 19 (c)). However, freedom of association is not an absolute right under Article 19, and it is subject to certain reasonable restrictions. As a result, whether lawyers have the right to strike is one of the most often questioned questions in the legal profession. The Supreme Court and the High Courts have said categorically that the lawyer's strike is unlawful and that necessary measures must be taken to stem the rising trend of outstanding cases in India in various judgments.⁹

The judiciary's major mission is to assist people who are fighting for justice, and in order to do so, all branches of the system must collaborate and work together. Any defect in the country's judicial system would be a breach of Article 21 of the Constitution, which guarantees the right to a speedy and fair trial. Lawyers in Delhi, who were protesting against the police, and in Odisha, advocates were against the Supreme Court's order, were protesting on a regular basis. Strikes like these drag down the process of trials and cause havoc in the legal system. As a result, the advocates' call for a strike has a negative influence on the ability of the judiciary to function.¹⁰

IV. JUDICIAL CONTRIBUTIONS

(A) *Harish Uppal vs union of India*¹¹

The issue arising out of this case was whether strikes and/or give a call for boycotts of courts. It was declared that such sought of calls for boycott are absolutely illegal. Public notices were issued in the pursuance of the vital question by the bar associations and bar council. An affidavit was filed in the national conference held by the members of the bar council of India and the state bar council by the officiating Secretary of the Bar Council of India. In that argument a note was taken that the bar associations had begun the strikes on several issues in the past, they were statewide; national wide and in all the situations the members of the

⁸ AIR 2018 SC 3635

⁹ Ayush Pandia , Can lawyers go on strike? (23rd May 2021, 6: 07 PM) https://lawtimesjournal.in/can-lawyers-go-on-strike/#_edn2

¹⁰ Rangin Pallav Tripathy Are lawyers right to strike work? (06th June 2021 11:11 AM) <https://www.deccanherald.com/opinion/in-perspective/vaccinate-for-the-sake-of-our-children-993909.html>

¹¹ (2003) 2 SCC 45, <https://indiankanoon.org/doc/1292543/> (5thn June 2021, 3:06 PM)

profession were losers themselves.

In the case, the high court submitted that the bar council of India had made the following points very clear¹²:

(a) Except in the rarest of the rare cases which involve the dignity and independence of the judiciary and the bar, the bar council of India will be against resorting to strikes.

(b) Whenever strikes become unavoidable, it will avoid hardships to the litigant public. It will be short and carried out peacefully.

There were few suggestions which came out after the last hearing which took place on 30th November 1994. Which emerged as an interim measure:

1. In the crucial cases where a lawyer is called upon or advised to abstain from appearing in the courts, it is left upon the individual to be free to appear without let, fear or hindrance.
2. No person who appeared the court or practised his legal profession will suffer an expulsion or threat or any penal consequences.
3. The practising lawyers are allowed to protest which is not hindering or disrupting the court proceedings or adversely affect the interest of the litigants.
4. Office bearers of a bar association will be responsible if any of the above-mentioned clauses are implemented.

In this case, another question that was answered was the reasons behind the strikes by the advocates. Which were as follows:

- 1) Confronting the legal practitioners or police
- 2) Unjust act against the presiding officer
- 3) Grievances against the judgment of the court
- 4) Unjustified laws by the legislature
- 5) Conflict of interest between the groups of lawyers

The court has declared the strike illegal and the call of strikes was not acceptable. It also stated that the bar council and state bar council should monitor strikes within their jurisdiction. All redressals can be obtained by going to the courts rather than going on strikes. It was said that strikes are a mean of collective bargaining which is only recognized under industrial disputes. Strikes cannot be used as a way to blackmail the courts or the clients. It was also submitted that

¹² Ex-Capt. Harish Uppal vs Union Of India & Anr on 17 December, 2002 Writ Petition (civil) 132 of 1988

the executive committee bar council and bar associations will be held responsible for call of strikes and boycotts. Moreover, the courts must take actions against the members for giving such calls under contempt of court.

Under this case, it was defined that a lawyer is someone who has accepted a *vakalat* on behalf of a client. Hence, the lawyer must attend the court. Further, if he does not attend the court it can lead to contempt of court and misconduct of the legal profession. The court should frame rule to regulate the right to appear in the court. Also threatening the advocates who commit contempt of court or misconduct won't be allowed to appear in the courts and the bar council should refuse to call meetings for the purposes of strikes. The bar council can issue mandamus if the following guidelines are not followed.

The Uttar Pradesh bar council opposed the submissions that the lawyers of the court have a right to strike as the section 50 of the Advocates Act. It also added that there are many occasions where the lawyers face injustice and they are left unheard, no other option is left except strikes and/or protests. The UP bar council also stated that no actions will take against the advocated going on a strike or/and protests. The attorney general argued that strikes by lawyers cannot be equated but the strikes made the other professions of the society. As non-appearance of the advocates can lead to miscarriage of justice. It is the duty of every advocate to attend the day In-State of Rajasthan vs Mahavir¹³ the court stated that the concerned advocates will pay half of the cost imposed on the clients if the advocates did not appear due to any strike or protest. It was also added when the court is satisfied that a certain order is passed due to the absence of the Advocate who is in pursuance of any strike or protest that order will be set aside and the party will release the cost charged from advocates themselves without any further action against the advocates. Moreover, It was said that if a particular advocate does not want to appear due to strikes or protest a prior notice should be provided to the council so that they can change their advocates and there is no unjust cause to litigants.

As the strikes and boycotts word turning to be a frequent issue it was necessary to regulate and sustain the profession from loss of social respect. Section 48 (a)¹⁴ of the advocate's act gives the right to the bar council of India to give directions to the state bar council hence the bar council of India has the right to control the conduct of the state bar council. It was concluded

¹³ AIR 1998 SC 3041, 1998 (2) ALD Cri 343, 1998 CriLJ 4064, II (1998) DMC 261 SC, JT 1998 (5) SC 274, RLW 1999 (1) SC 62, 1998 (4) SCALE 365, (1999) 1 SCC 199

¹⁴ 48. Indemnity against legal proceedings.—No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council [or any Committee thereof] for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

that section 34¹⁵ of the Advocate's Act gives power to the high court and article 154¹⁶ gives Supreme Court the power to make rules for the proper conduct of the legal profession. These rules will be binding and valid to the Supreme Court, High Court and other subordinate courts.

(B) Vishwanath Swami vs. bar council India 24th April 2013¹⁷

A writ petition was filed in the public interest. The writ was filed in pursuance of *Harish Uppal Vs Union of India* and another with regards to section 34 of the Advocates act. In many places such as Bangalore, the directions issued by the Hon'ble Supreme Court in *Harish Uppal* and Section 34 of the act was not followed. This writ petition signifies Advocates significant role and responsibilities that are integrated into the system and is very essential during the delivery of Justice in India.

The main question which came into focus in the *Harish Uppal* case was that whether lawyers have a right to strike and or give a call for the boycott of courts. It was held that such boycott's and strikes are illegal.

It was decided that the court will decide whether or not the issue involves integrity, the dignity of the bar or bench at the stake or not better sense will prevail. Hon'ble Shah justice also gives his opinion that the root cause for such strikes or protest must be cured it is not sufficient to just illegalize the strikes for the advocates because during great grievances the court act like having deaf card under grievances are not solved this furthermore continuous the strike is like interfering into the administration of Justice.

Section 34 of the advocate's act give power to the High Court to make rules making it clear that strikes by advocates are illegal and interfere in the administration of Justice

The High Court issued directions in the case *R.K.Anand vs Registrar* in 2019, which were as

¹⁵ 34. Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. 1[(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.] 2[(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.] 3[***]

¹⁶ 154. Executive power of State

(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution

(2) Nothing in this article shall

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor

¹⁷ W.P.No.8155/2012 (GM-RES-PIL). <https://indiankanoon.org/doc/146108805/> (5th June 2021 , 4:09 PM)

follows:

1. Implementation of Bar council should be implemented passed by the bar council of India on 29.09.2002.
2. The High Court can frame rules to take appropriate actions against defaulting advocates under Section 34 of the advocate's act.

In the case of *RK Anand vs Registrar Delhi High Court*,¹⁸ it was stated by the High Court that going on a strike or boycotts of court can lead to grave harm and miscarriage of the fundamental justice which is provided by the court. High Court has the power to make rules for the judicial proceedings carried out in the court according to Section 34 of the advocates act hence Supreme Court declared in this case that High Court decisions made for the bar council of India cannot be declined. In a meeting passed on 29th September 2002 by the bar council of India, a Resolution was passed in which a committee consisting of the Honorable Chief Justice of India, a nominated chairman of the bar council of India, Supreme Court bar association, autonomy General of India or the president was constituted.

Subsection (1) of Section 34 of the advocates act state the high court can make rules subject to which the Advocate shall be permitted to practice in the High Court and the court subordinate to it. Under subsection(1) (a)an amendment was introduced by the in the High Court that the high court can make rules to regulate the taxation and the fees payable to the party or fees with respect to the advocate's proceedings in the High Court or any other Court subordinate to it do in subsection (1)of section 34 uses the word “may” and the subsection (1)(a)uses the word “shall”, hence there is no point of argument and the high court can make rules which needs to be followed by the bar council of India.

It was concluded that the bar association in the state of Karnataka a Resolution was implemented on 29 September 2002 which was passed by the bar council of India as directed by the Honorable Supreme Court in *Harish Uppal* including the establishment of grievances redressal committee within a period of 3 months from today which could take care of all the issues arising out between the advocates which could lead to any kind of strikes or boycott of the court.

V. CONCLUSION

According to the judgements given in *Harish Uppal vs Union of India and Vishwanath Swami vs Bar Council of India*, it was held that lawyers have no right to strike and they cannot abstain

¹⁸ *R.K.Anand vs Registrar,Delhi High Court* on 29 July, 2009

from appearing in the courts if they hold the stand on the *vakalatnama*. In my views, if the Advocate has a *vakalat* for his client and has duly signed to appear in the court he cannot abstain from appearing in the court just due to a strike or a protest. This can lead to unjust and miscarriage of Justice. In the constitution of India, there is no fundamental right that is given to the lawyers to abstain or disagree to appear in the courts. Article 19 and Article 21 of the Constitution of India does not permit abstain the lawyer to appear in the court during the proceedings, if once the *vakalatnama* is signed with the client.

According to article 21 of the constitution which states the fundamental right to life and liberty to each and every citizen of India. If a lawyer abstains from appearing in court it is a violation of the fundamental right of that particular litigant. Many petitions were filed against this rule by the High Court that the fundamental right of the lawyers under article 19 (1)(a) which guarantees freedom of speech and expression was violated. But it was noticed that the right under Article 19 (1)(a) if exercised by the lawyers will infringe the fundamental rights of the litigants to live freely and with Liberty. Litigants also have a right to a speedy trial which can be violated if strikes by lawyers are taken place. Hence, no fundamental rights of the advocates were at risk.

It was made very clear by the High Court, under Section 34 of the Advocate's Act. That going on a strike or boycotting courts is a hindrance with the administration of justice and advocates involved may be barred from practicing before the courts in a district or the High Court. According to my view, the advocates should comply with some other way of protesting which would not abstain them from appearing in the courts. Courts should not adjourn any case only due to a strike because it can lead to unjust and injustice among the litigants. Lawyers should find out some other way of redressing their grievances towards the court.

The relationship between the client and the advocate is expected to be with utmost sincerity. An advocate is under obligation to ensure justice in the public and also act as a Watch Guard of the implementation of laws all over the country. The lawyer is responsible for their own dignity and integrity in the society, they cannot be a part of unjust in the administration of the society. The main duty of the lawyers is to provide proper justice to each and every citizen of the society and if they are themselves not able to provide proper justice it can be against the fundamental duties of being a lawyer. Advocates are the foundation of the judicial system and if they are themselves do not work in a just manner, it can harm society.

In conclusion, the honorable court held that lawyers have no right to go on a strike or give a call for a boycott or not even on a token strike. The protest can take place in other ways such

as press statements, TV interviews or carrying out banners and play cards wearing black or white or any colour armbands. Hence, we can say that nonappearance in the court just because of a strike or a boy caught is not acceptable or is against the administration of justice in society.
