
BALANCING THE SCALES: THE ETHICAL DILEMMA OF ADVOCATES' STRIKES AND THEIR IMPACT ON JUSTICE

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ABSTRACT

The moral conundrum presented by advocates' strikes raises substantial concerns about how the pursuit of justice and professional responsibilities intersect. This paper deals with how strikes by such professional members of judiciary are typically aimed at the want for better working conditions, pay etc., which can inadvertently impact the delivery of justice. The present research is focused on the problem of numerous strikes declared lately by activists in India. The article discusses several facets of the issue and argues that the basic right to organize an association does not extend to the lawyers' ability to strike. It also explains why the judiciary deemed such a call for strikes to be unlawful and unconstitutional. This article throws light on the role and responsibilities of the Indian Bar Council in meeting the challenges in the legal profession. This it does with special emphasis on protests and strikes by lawyers. Various obstacles that are assessed to come in the way of such protests and strikes and their effects on the administration of justice. The article examines past lawyer strikes, as well as the consequences this has on the legal system and the ethical obligation a lawyer has to the public and their clients. Second, recommendations of the Law Commission debate possible remedies to the grievances of the advocates and make sure that harmony is maintained within the legal system. It is such a balancing analysis that provides for equilibrium between these competing ethical considerations and the research yields a balance because integrity in the justice system has to be maintained.

Keywords: Ethics, Advocate, Strike, Law, Justice

INTRODUCTION

The judiciary and advocates play a vital role in helping the society to enforce the rule of law. They serve for the public, welfare, equal opportunities to justice, legal protection, and inclusiveness of all the citizens, irrespective of their background. The judiciary has a very important role in enforcing justice and protecting the rights of its citizens in a democratic country.

While advocates have the right to collective action in an attempt to seek redress for grievances and complain about their work environment, such a move immediately poses an ethical dilemma when it turns into strike action affecting the due process of justice. Strikes and protests result in delays of cases, affect clients especially the vulnerable ones, and then raise resources that strain the justice system. This is the balancing act that lies in pursuit of professional and financial rights with the responsibility to maintain access to justice and uphold the law. That requires an openness to frameworks and solutions that allow the legal profession to pursue such rights with as little negative impact as possible on the judicial system and the public it serves.

The judiciary, as the third pillar of democracy, plays a vital role in upholding justice, with advocates serving as officers of the court who are entrusted with significant responsibilities. However, in recent years, there have been numerous instances where lawyers have gone on strike and engaged in protests, leading to conflicts between the bar and the bench. Despite clear directives from the highest courts, these strikes have continued, revealing a troubling pattern where those expected to uphold legal values and justice are seen defying court rulings. This ongoing discord primarily affects the common people—the true consumers of justice—who find themselves deprived of their fundamental right to a speedy trial as guaranteed under Article 21 of the Indian Constitution.

LITERATURE REVIEW

• ARTICLES

1. “Enhancing the right to strike”- Institute of Employment Rights (2018)¹

- This article talks about the right of employees and other governmental

¹ “Enhancing the Right to Strike.” Institute of Employment Rights Journal, vol. 1, no. 1, 2018, pp. 48–55. JSTOR.

bodies which help deduce a study towards advocates

- It focuses on strengthening workers' ability to strike, advocating for fairer legal protections and policies that support collective action.

2. “Public employee unions and the right to strike”- Anne M. Ross (1969)²

- It explores the challenges and legal restrictions faced by public sector unions in exercising their right to strike, emphasizing the need for balanced reforms.
- "Public Employee Unions and the Right to Strike" explores the challenges and legal complexities public sector workers face in exercising their right to strike, highlighting the need for balanced labour laws.

3. “Public Employee Strikes, Executive Discretion, and the Air Traffic

Controllers”- Bernard D. Meltzer and Cass R. Sunstein.³

- It examines the 1981 air traffic controllers' strike, highlighting the conflict between public employee strikes and government authority in labour disputes.
- "Public Employee Strikes, Executive Discretion, and the Air Traffic Controllers" examines the tension between government authority and workers' rights, focusing on the 1981 air traffic controllers' strike and its implications.

• BOOKS

1. “Right to Strike - A Legitimate Illegality Law Book”- Advocate Surbhi

² ROSS, ANNE M. “Public Employee Unions and the Right to Strike.” Monthly Labor Review, vol. 92, no. 3, 1969, pp. 14–18. JSTOR.

³ Meltzer, Bernard D., and Cass R. Sunstein. “Public Employee Strikes, Executive Discretion, and the Air Traffic Controllers.” The University of Chicago Law Review, vol. 50, no. 2, 1983, pp. 731–99. JSTOR.

Agarwal⁴

- "Right to Strike - A Legitimate Illegality" delves into the paradox of strikes being both a fundamental labour right and often legally restricted, examining the legal and ethical dimensions of striking.
- This book also deals with the complex legal status of strikes, arguing that while often restricted by law, striking remains a crucial, legitimate tool for worker advocacy.

2. "Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective"- Moti (Mordehai) Mironi, Monika Schlachter⁵

- It explores how different countries manage strikes in critical sectors, balancing workers' rights with public safety and service continuity.
- The book also delves into how different countries manage the delicate balance between workers' right to strike and maintaining essential public services.

RATIONALE OF STUDY

This study explores the phenomena of repetitive strike calls from advocates in India owing to the recent situation and its associated nuances. It seeks to answer the questions as to what makes the right to strike, often under the lumped 'right to form associations' more respected than the rights given under the fundamental rights. The article discusses and critiques the position that the courts have taken with regard to these strikes, stating that they were unconstitutional and illegal. It also addresses the way in which the Bar Council of India functions and what it does in respect of this pertinent issue. Furthermore, the article describes the incidents of such strikes and protests that are the utmost hindrances to the justice delivery processes. It has likewise provided insights on the proposals made by the Law Commission and other human rights

⁴ Agarwal Surbhi. "Right to Strike - A Legitimate Illegality Law Book." School of Legal Education, 2017, ASIN: B09RV893G2

⁵ Moti (Mordehai) Mironi, Monika Schlachter, "Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective", Wolters Kluwer, 2018, ISBN-13: 9789041189974

organizations such as stopping problems that advocates complain about in the course of overriding steps that may harm functioning of the legal system in the country.

RESEARCH METHODOLOGY

The methodology that would be applied for carrying out this research is Analytical and Comparative research.

The study will adopt a qualitative research design to explore ethical issues related to the topic. This approach allows for an in-depth understanding of the complexities and nuances associated with ethical dilemmas.

In this research the primary sources of data are the Bar Council Rules, Advocate's Act, Judicial Precedents. The secondary source of data comprises of published books, scholarly articles, print media, online journals, research reports etc.

This methodology provides a clear framework for conducting ethical research, emphasizing rigorous data collection and analysis to explore the research questions comprehensively.

MAIN CONTENT

As court officers with a high social status, advocates also have responsibilities to maintain the efficient operation of the legal system. They cannot use the strike as a means of intimidation because they have obligations to their client and the court. The Supreme Court correctly noted in *Krishnakant Tamrakar v. State of Madhya Pradesh*⁶ that every strike harms the legal system irreversibly, especially for the litigants.

As court employees, advocates' main responsibility is to support the administration of justice. It is deemed a breach of their professional duties for them to participate in boycotts or strikes that interfere with the operation of the legal system or the interests of the legal profession. The integrity of the legal system and the rule of law—two essential tenets of the legal profession—are compromised by such acts. Accordingly, the Advocates Act of 1961 considers "strikes" or "boycotts" by advocates to be professional misconduct.

⁶ *Krishnakant Tamrakar v. State of Madhya Pradesh* 2018 (17) SCC 27

Legal professionals are not allowed to strike in India, and courts have repeatedly declared that strikes are immoral and against the law. The Advocates Act of 1961 forbids lawyers from going on strike.

The Supreme Court declared that strikes by lawyers are unconstitutional due to their violation of plaintiffs' rights and obstruction of the administration of justice. Additionally, the Supreme Court has decided that courts should carry on with their business even in the event that lawyers are not present and are not required to adjourn issues because of a strike.

Indian Bar Council: Striking or abstaining from court proceedings is considered unprofessional misconduct, according to the Bar Council of India's regulations on obligations to clients and duties to the court.

In order to prevent strikes, the Supreme Court has also recommended that a Grievance Redressal Committee handle legitimate complaints from attorneys.

A "strike" by advocates may be deemed professional misconduct under the Advocates Act of 1961. In *Krishnakant Tamrakar v. State of Madhya Pradesh*⁷, the Supreme Court accurately observed that every strike has an irreversible negative impact on the legal system, particularly for the litigants.

In addition, the Act's Section 49(1) (gg) makes it clear that "strikes" or "boycotts" by advocates are regarded as instances of professional misconduct. "If he strikes or takes part in any concerted action including boycott, closure of Courts, abstention from work, etc., on any issue concerning the legal profession or the interest of lawyers."

In accordance with Section 35 of the Advocate Act, the Bar Council of India may form a disciplinary committee to investigate and potentially prosecute an advocate for professional or other misconduct. In *Common Cause a Registered Society v. Union of India*⁸, the Indian Supreme Court made it quite evident that the Indian Bar Council would take severe measures against any advocacy group that advocated for a strike.

Moreover, the Bar Council of India expounded on its stance regarding advocate strikes in a case that was heard by the Delhi High Court. It stated that it opposes strikes unless they are

⁷ Supra n.

⁸ *Common Cause a Registered Society v. Union of India* (2018) 5 SCC 1

necessary to protect the independence and dignity of the court and that, in the event that they must occur, every effort should be taken to keep them short and peaceful in order to prevent hardship for the litigating public.

As the court ruled in *Praveen Pandey v. State of Madhya Pradesh*⁹, the state bar council cannot force counsel in the state to undertake a week-long protest abstaining from all judicial work.

This is due to the fact that it is prohibited by law, defies court decisions, and is unlawful.

It was decided in *Harish Uppal v. Union of India*¹⁰ that the counsel had no legal right to strike. In this instance, the petitioner was a former army officer. The petitioner was assigned in Bangladesh in 1972. There, he was accused of embezzlement and taken to an army court in India, where charges were brought against him. He was court-martialled from his position and removed from office.

Such work stoppages or strikes are obviously unlawful in light of this Court's ruling in *Ex. Captain Harish Uppal v. Union of India*¹¹, and it is past time for the legal community to acknowledge that society comes first. References to condolences can be made sometimes, say once every two to three months, but not often.

He requested a pre-confirmation application in a civil court to examine the case, and after the review's 11-year statute of limitations had passed, he finally obtained a response from the court.

Later on, it was discovered that during a violent advocate strike, documents related to the application were lost. The petitioner filed a special petition to make advocate strikes unlawful. Another objection raised is the frequent suspension of court activity following condolence references, uncalled strikes, and lawyer absences from work that disrupt court procedures.

The Supreme Court noted in *Ramon Services Pvt. Ltd. v. Subhash Kapoor*¹² that an advocate's assertion that his right to strike must come with no financial harm to him and that his innocent client must bear all financial burdens is inimical to ethical standards and any notion of fair play.

⁹ *Praveen Pandey v. State of Madhya Pradesh* AIR ONLINE 2018 MP 632.

¹⁰ *Harish Uppal v. Union of India* (2003) 2. SCC 45

¹¹ *Supra n.*

¹² *Ramon Services Pvt. Ltd. v. Subhash Kapoor* (1984) 1 SCC 722

"The Superior Courts have a duty to protect the reputation of judicial officers of subordinate courts, taking note of the growing tendency of unscrupulous practising advocates to malign the reputation of judicial officers by either failing to secure desired orders or failing to succeed in browbeating for achieving ulterior purpose," the Supreme Court ruled in *Vishram Singh Raghubanshi v. State of Uttar Pradesh*¹³. Such a matter raises concerns about the independence of the judicial officers as well as the need to preserve the institution's overall reputation."

The Supreme Court ruled in *R.D. Saxena v. Balram Prasad Sharma*¹⁴ that the legal profession has a social responsibility to illuminate the people in our nation through their behaviour and deeds. The legal profession, which is undoubtedly regarded as a very reputable one, needs to lend a helping hand to the vast majority of the impoverished, ignorant, and exploited people. Nothing should be done or permitted to be done that would allow a litigant to have his rights—both statutory and constitutional—taken away from him by an attorney simply because of the elevated status that the nation's legal system has bestowed upon him."

*B.L. Wadhera v. State (National Capital Territory of Delhi)*¹⁵. The Delhi High Court ruled in this judgment that an advocate commits professional misconduct if he has vakalatnama for a matter and chooses not to attend in court. In this case, the Supreme Court established certain guidelines that must be adhered to.

A bar on strike does not absolve the attorney from carrying out his duties. If an advocate goes on strike, they must reimburse the client for the costs paid, giving the client enough time to make another arrangement. The advocates should make sure to show up in court if there's a danger the client won't be able to make other plans. By all means, an advocate who chooses to appear in court notwithstanding the strike cannot be dissuaded from doing so. It is not possible to take disciplinary action against an advocate who does not adhere to the strike.

A judge or magistrate cannot be intimidated while carrying out their duties. In rare cases, if the strike is for a genuine reason and is brief in duration, the court may agree to a collective adjournment. Even if the parties have agreed to a collective adjournment, the court must hear an advocate's case if he desires to present it. A court will never review a case in which it made ex-parte ruling due to an advocate's strike. If an advocate accepts a case but fails to appear in

¹³ *Raghubanshi v. State of Uttar Pradesh* Case No. AIR 2011 SC 2275

¹⁴ *R.D. Saxena v. Balram Prasad Sharma* AIR 2000 SC 291

¹⁵ *B.L. Wadhera v. State (National Capital Territory of Delhi)* AIR 1996 (2) SCC 594

court, they violate contract terms, betray confidence, breach professional obligations, and commit professional misconduct.

BAR COUNCIL OF INDIA

If the Bar Council of India has reason to believe that an advocate has engaged in professional or other misconduct, it may form a disciplinary committee under Section 35 of the Advocate Act. In *Common Cause a Registered Society v. Union of India*¹⁶, the Indian Supreme Court stated unequivocally that if anybody of advocates called for a strike, the Indian Bar Council would be notified and strict action would be taken against the association.

The Indian Supreme Court declared in *Ex-Capt. Harish Uppal v. Union of India*¹⁷ that no bar association can announce a strike. In a matter before the Delhi High Court, the Bar Council of India clarified its position on lawyers' strikes. The organization opposes strikes unless they threaten the independence and dignity of the judiciary. If strikes are necessary, they should be limited and peaceful to minimize hardship for litigants.

The Bar Council of India (BCI) has asked State Bar Councils and Bar Associations across the country to refrain from protesting or agitating against the recently enacted criminal laws at this time. The State Bar Councils and Bar Associations have stated that they intend to participate in ongoing agitations and protests if these laws are not postponed and become the subject of substantial national debate, including a comprehensive study by Parliament. Among the concerns stated are that a number of these new laws' provisions are perceived to be anti-people, more oppressive than the colonial-era laws they are intended to replace, and a significant threat to inhabitants' fundamental rights.

State Bar Councils and Bar Associations across the nation have been asked by the Bar Council of India (BCI) to refrain from holding any rallies or agitations at this time in response to the recently enacted criminal laws. The State Bar Councils and Bar Associations have stated that if these laws are not suspended and are the subject of a national conversation that includes a detailed investigation by Parliament, they would take part in the continuing agitations and rallies. Concerns have been raised about the fact that several of the provisions of these new laws are perceived as being anti-people, more oppressive than the laws of the colonial era they

¹⁶ Supra n.

¹⁷ Supra n.

are intended to replace, and a serious threat to the fundamental rights of the locals. In addition, the BCI requested that leading advocates and other bar associations submit particular portions of the "new laws they deem unconstitutional or detrimental" in order to "enable a fruitful dialogue with the government."

After receiving the suggestions, the BCI announced that it will form a committee comprised of "noted senior advocates, former judges, impartial social activists, and journalists to propose necessary amendments to these new laws". Union Home Minister Amit Shah brought up the statement made at the BCI's September 2023 International Lawyers' Conference, "where it was stated that the Government is willing to amend any provision of these laws if valid reasons and plausible suggestions are presented." The statement went on to state that there is "no immediate necessity for agitation, protests, or strikes in relation to this issue" and that there is no reason for immediate alarm.

CONCLUSION & FINDINGS

The prohibition on lawyer strikes is justified, as such actions undermine the judiciary's foundation. However, while ensuring the smooth functioning of the legal system, it is equally important to safeguard the rights and interests of advocates. Section 7(d) of the Advocates Act of 1961 entrusts the Bar Council of India with the responsibility of protecting the rights, privileges, and interests of advocates. Therefore, grievances raised by lawyers should be taken seriously, and appropriate measures must be taken to address their concerns.

The 266th Report of the Law Commission of India recommends the establishment of an Advocates' Grievance Redressal Committee at each district headquarters, to be headed by a Judicial Officer, under the District Judge's guidance. This committee would address day-to-day issues faced by advocates, thereby improving their working conditions. Furthermore, the High Courts, exercising their powers under Article 235 of the Constitution, can issue guidelines to address such complaints effectively. If advocates have grievances against judicial officers, they can approach the Chief Justice of the respective High Court.

Lawyer strikes do not fall within the ambit of Article 19 of the Constitution, as certain professions, like the legal field, bear a responsibility to serve society. The legal profession, in particular, is dedicated to the pursuit of justice, and any disruption through strikes can delay this objective. In the *case of Ex-Capt. Harish judgment*¹⁸, the court stated that lawyer strikes

are unlawful, except only the black day in history, as the Supreme Court has reiterated Lawyer concerns are administrative and lawyers have a right to express them, however not at the loss of clients, their rights being breached when court cases are delayed because of strikes.

Judges and all those in authority are understandably incensed that lawyers would go on strikes and argue such steps should be outlawed to one end, that of preserving the dignity and independence of the judiciary. However, in the due regard that must be placed on these administrative restraints, caution must be taken as not to intrude into advocates' affairs without placing clear guidelines on how their complaints will be addressed.

To this end, four types of activities are potential ones: discouraging dispute resolution violence step by step through regular mediator meetings or enhanced mediation strategies internally within the organization. There is a need for advocacy clusters where enabling education and training to complete their professional and personal life will be provided to professionals.

Undoubtedly, clients should be assisted primarily through provision of legal aid and related activities.

In one way, getting supportive actions for lawyers and improving their professional situation, various steps may be taken, harassment resolution and neutral dispute management to encourage and generate problem solving for compromise for solutions. It is important to provide legal help and services to lawyers who experience difficulties in their work such as high workload, abuses and other behaviour problems or abuse of authority. It can be seen that offering enhancement of profession fulfilment yourself through periodical education, training, workshop and eliciting continuing legal education increases fairness among lawyers and the job satisfaction as well as morale.

The effectiveness of lawyers in practice and their health can be enhanced concretely by encouraging them to focus on work-life balance and mental wellbeing by providing flexible working hours, parental leave benefits, and professional counselling services. In turn, engaging in policy advocacy and reforms that enhance aspects such as legal education, judicial systems, professional standards, and accessing justice will narrow sociological dilemmas and develop a better place for the legal profession.

To sum up, lawyers, strike action is not protected within the confines of article 19 of the

Constitution and the criminal justice sector as a whole is a service to the society rather than an employment. Strikes by lawyers, just like in any other public service oriented non profession, the legal profession will aim at the society first.

In the landmark *Ex-Capt. Harish case*¹⁸, the Supreme Court held that strikes by advocates are illegal and permissible only in the rarest of circumstances. While lawyers have the right to voice their concerns, this should not come at the cost of their clients, who are adversely affected by delays in the justice system caused by such strikes.

Therefore, strikes by advocates are deemed unlawful as they disrupt the functioning of the judiciary in India.

¹⁸ Supra n.

BIBLIOGRAPHY

1. “Enhancing the Right to Strike.” *Institute of Employment Rights Journal*, vol. 1, no. 1, 2018, pp. 48–55. JSTOR.
2. ROSS, ANNE M. “Public Employee Unions and the Right to Strike.” *Monthly Labor Review*, vol. 92, no. 3, 1969, pp. 14–18. JSTOR.
3. Meltzer, Bernard D., and Cass R. Sunstein. “Public Employee Strikes, Executive Discretion, and the Air Traffic Controllers.” *The University of Chicago Law Review*, vol. 50, no. 2, 1983, pp. 731–99. JSTOR
4. Agarwal Surbhi. “Right to Strike - A Legitimate Illegality Law Book.” *School of Legal Education*, 2017, ASIN: B09RV893G2
5. Moti (Mordehai) Mironi, Monika Schlachter, “Regulating Strikes in Essential Services: A Comparative 'Law in Action' Perspective”, Wolters Kluwer, 2018, ISBN13: 9789041189974
6. Ramon Services Pvt. Ltd. v. Subhash Kapoor (1984) 1 SCC 722
7. Raghubanshi v. State of Uttar Pradesh Case No. AIR 2011 SC 2275
8. R.D. Saxena v. Balram Prasad Sharma AIR 2000 SC 291
9. B.L. Wadhera v. State (National Capital Territory of Delhi) AIR 1996 (2) SCC 594
10. Common Cause a Registered Society v. Union of India (2018) 5 SCC 1
11. Praveen Pandey v. State of Madhya Pradesh AIR ONLINE 2018 MP 632.
12. Harish Uppal v. Union of India (2003) 2. SCC 45
13. Krishnakant Tamrakar v. State of Madhya Pradesh Krishnakant 2018 (17) SCC 27

LEGAL DATABASES:

14. www.livelaw.in
15. www.scconline.com
16. www.jstor.org