



Advocate Strikes: An Impediment to Judicial Process

Author Details:

Name: Ankit Chaturbedy

Designation: Student [Pursuing LL.M. (BL)]

Department: Amity Law School (ALSK)

Institution: Amity University, Kolkata

Country: India

ABSTRACT

Law is a noble profession as it helps a person to seek justice amongst all odds and 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. When representing clients before deciding bodies and/or the disciplinary committees, legal professionals work hard to help their clients and must always act ethically. The legal system is in charge of maintaining, making, changing, and even abolishing any bothersome or inconvenient laws that are now in the nation's judicial system in order to ensure peace and harmony. However, it is stated that when individuals in power within the judicial system act illegally or in ways that are inappropriate for them to act, such as resorting to a strike, this system can come collapses. With passage of times the profession of law has seen certain changes in terms of technological inclusion, beefing up of investigation agencies and with that increased a lot of non-judicial acts, and exercise of overt powers. The courts have ruled that such boycott/strike demands are utterly unlawful. This paper analyses the advocate's rights to strike and evaluates its constitutionality through the judicial contributions by the court on the same issue.

Keywords: Advocates, constitutionality, ethical, judicial system and strike

INTRODUCTION

When the advocates resort to strikes to give a message or show their protest against something unfair or unjust, then the key pillar of the State, i.e., Judiciary is definitely in a state of dilemma and decline. Not because that the advocates are deprived of their constitutional right to protest or they are secluded from any ordinary right which an Indian citizen enjoys, but it's a bit of chagrin that all those individuals who are wizards of words, researchers of top quality, personalities so admired, statements and art of arguments which brings down multinational corporations, mafia, terrorists, influential politicians, as well as the State to its knees in judicial procedures, have to stop functioning of the very institution of which they considered to be officers and trample the process of justice.

The Republic of India or the State functions on three key pillars or institutions, such as the Legislature; the Executive; and the Judiciary. The Constitutional mandates keep all the three institutions equally as per their importance, but the common man/woman in dilemma with the State or any private party have Judiciary to raise, address their issues legally, and get justice. The Constitution of India provides for elaborate rights, duties and powers of establishment and functioning of the judicial system in India. The justice system is divided into two key aspects, where one-side are the courts, judges, and judicial infrastructures and on the other hand are the advocates enrolled through Bar Councils. The advocates are the officers of the court and plays important role in understanding, compiling, arguing for the clients before the court of law to ensure proper functioning of the judicial setup in accordance with the objective of law.

From the very beginning of the judicial process the stakeholders such as the judges, the pleaders, the court officers and so forth are seen as persons of integrity, knowledge, reputation and men/women of intellect. With great respect comes great sensitivity towards self-pride and pride for the profession, and we often find advocates resorting to strikes or stoppage of the process of the court to address their protests. Well there are obvious reasons for such as you can expect from legal personnel, but in reality the strikes trample the entire justice system from bottom to top. This is because the three tier judicial system is synchronised and interconnected.

The infrastructure in the existing judicial system is weary, causing various shortcomings in the judicial process. The administration or investigating agencies are often found flouting legal norms in various cases, causing problems for the court cases pleaded by the advocates. The interior politics and political affiliation of members of various Bar Councils is another cause of strife, struggle and issues, leading to the drastic strikes advocated by the advocates – the officers of court. Problem is not with protests – a fundamental right granted under Article 19 of the COI, but the problem is with the mode of protests. A strike in simple language is stoppage of work causing an entire system to stop. Is it really feasible? And a society has only one judicial system to get addressed their grievances and stoppage of such by the very persons obliged to protect the rights of clients through justice system shows lack of depth and judicial thinking. Question is, when you are profound in solving issues mincing the words, why go for the extreme – a STRIKE.

STRIKES BY ADVOCATES – OUTCOME

A total of 4,24,51,206 cases are pending in India as per National Judicial Data Grid for August 2022, where total number of pending criminal cases is numbered 3,15,77,995 and civil cases 1,08,73,251. Combining civil and criminal cases both, a total of 3,63,52,578 cases are pending that of Original Side; 8,44,002 Appeal cases; 30,58,512 Applications; and 15,62,714 Execution cases are pending in breakage¹. The former Union Minister of Law & Justice, Shri. Kiren Rijiju on 4th August, 2022 in his Rajya Sabha speech informed the nation that over 71,000 cases are pending in the SC; over 59 lakh cases combined in various HCs, and out of these there are around 10,491 cases awaiting disposal for over a decade². Well, with a population of over 130 crores approx. the pendency of cases can either seem normal with the availability of infrastructure or it may seem horrendously slower comparing the advancement of India in the world forum both by repute and diplomacy.

Why are these numbers relevant for the current topic at hand? Because, amongst the various reasons for the delay of administration of judicial process, ‘Strikes’ by the advocates and various Bar Councils adds to such. Does it have a great impact? Well yes, the stoppage of judicial process for even a single day in India may affect the hearings of various cases by months and sometimes years. Simply, because the courts are burdened with cases, and dates are fixed for hearings of cases. Once, a hearing or court date is missed due to any reason be it advocate strike it can be rescheduled only when other dates and cases are cleared, unless there is imminent urgency – which by the way in general course of practice is only available for influential persons, politicians, clients with lot of capital to invest on court procedure, and so forth; but seldom for the common man seeking justice. Well, the BCI, which is a body accountable for framing rules and bylaws for the practice, membership, and other related Bar Council works called for All India Strike to oppose “Advocates (Amendment) Bill, 2017;” the hope for other mode of protest by advocates seems meeker in India³.

With Strikes in the Courts of Law, comes various impediments and evils, such as:

- **Inefficient Judicial Work:** The advocates being the officers of courts act as the bridge between the clients and judicial system. It’s the advocates, who ensures that the clerical, documentational and other works are done properly for their clients on the particular day when the client has to come to court, or there is a bail application of an alleged accused, some property matter requiring urgent disposal, and so forth. But if the advocates are on strike the entire judicial and ancillary works of court clerks, associated centres of courthouse economies – small vendors selling court papers, food stalls, documentation offices, clerk works,

¹ Pending Dashboard, NJDG, https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard [Last visited: 6th September, 2023 14:14 PM]

² Livelaw News Network, Over 71,000 Cases Pending in Supreme Court, 59 lakhs in High Courts: Law Minister Tells Rajya Sabha, <https://www.livelaw.in/top-stories/over-71000-cases-pending-in-supreme-court-59-lakhs-in-high-courts-law-minister-tells-rajya-sabha-205784> (Last visited: 6th September, 2022 10:54 AM)

³ Bar Council of India, Nationwide call for the strike in all Courts on 31.03.2017 by BCI to oppose the draconian, undemocratic, anti-lawyer Advocates (Amendment) Bill, 2017 proposed by the Law Commission of India to the Government, <http://www.barcouncilofindia.org/about/about-the-legal-profession/nationwide-call-for-strike-in-all-courts-on-31-03-2017-by-bci-to-oppose-the-draconian-undemocratic-anti-lawyer-advocates-amendment-bill-2017-proposed-by-the-law-commission-of-india-to-the-governm/> [Last visited: 5th September, 2023 15:13 PM]

and almost everything is affected. And above all the person who has only one vocation to seek justice, he/she is failed by the failure of judicial systems⁴.

- **Pendency of Cases:** The number of pending cases in the Indian courts are provided above and as we observe the already long shelf life of cases due to slower procedures and judicial tricks played by counsels of law is hampered tremendously where advocates in connivance or under guidance of various Bar Councils goes for strikes ranging from a day to even several months. This leads to significant delay and backlog of cases in the courts. Recently, in the year 2020 the SC warned Uttarakhand lawyers to stop illegal practice of strikes every Saturday for last 35 years⁵! 35 years to give a direction? Isn't that slow enough!
- **Violence in Strikes:** The process of justice or functioning of the judicial system deflecting all allegations of partiality till now has been a dignified process. The court of law should be a place of integrity and peace. But often we find advocate strikes ending up causing violence within and outside the premises of the courts, mostly when the police administration tries to evict the protestors forcefully. Usually, a person who can defeat any other with profound speaking ability and repute are overpowered by the persons who are duty bound to maintain the law and order in the society. We often find violence in such strikes and images of advocates being dragged by police makes the mockery of the entire judicial fraternity⁶.
- **Affected Individual Freedom:** Are all the advocates earning enough to go for a strike on a daily basis? The answer is a big NO! Because, the freshers getting Bar Council certification for practice as advocates being members of State Bar Councils, and Advocate on Record (AoR) for SC, the juniors working as employees of firms and practitioners under renowned senior counsels, the advocates who are practicing but without hefty earning, and so forth have to oblige the might of Bar Council decisions of which they are member of, cause immense trouble to them. The myth, that advocates are big earners was shattered when some practicing advocates had to sell vegetables for earning livelihood and sustaining a family during the COVID-19 Pandemic period in India⁷. BCI should “*Consider assisting its brethren*” were the comments of the Hon'ble SC on hearing a plea seeking financial assistance to advocates of Bar Councils during the Pandemic period. While, several of the Bar Council's provided financial assistance in terms of cash (INR 10,000 – 20,000 approx.) – followed by Bar Council of Jharkhand HC; Tax Advocates Association of Bengal (TAAB); and other various Bar Councils across India, whereas, in Tamil Nadu, the credit facilities for payment of EMIs, rent were provided. But in several states the financial assistance through several State Bar Councils weren't provided and advocates had to resort helping out each other in needs. Various news of advocates succumbing to heart attacks arising from hyper-tension, depression, high blood pressure came

⁴ Crisis24, India: Lawyers' group calls for shutdown strike, likely to stage associated protests in Jammu, <https://crisis24.garda.com/alerts/2022/08/india-lawyers-group-calls-for-shutdown-strike-likely-to-stage-associated-protests-in-jammu-aug-29> (Last updated: 28th August, 2022 04:22 AM) [Last visited: 8th September, 2023 16:30 PM]

⁵ PTI, For 35 years, strike on every Saturday by lawyers in Uttarakhand, <https://www.telegraphindia.com/india/for-35-years-strike-on-every-saturday-by-lawyers-in-uttarakhand/cid/1749573> [Last visited: 8th September, 2023 17:12 PM]

⁶ Rica Roy, Lawyers On Strike In Bengal, Want Justice After Police Crackdown, <https://www.ndtv.com/kolkata-news/lawyers-on-strike-in-bengal-want-justice-after-police-crackdown-2034416> [Last visited: 9th September, 2023 17: 45 PM].

⁷ The Indian Express, Odisha, Lawyer sells vegetable in front of Orissa HC as protest for no financial assistance amid Covid-19, <https://www.newindianexpress.com/states/odisha/2020/jul/10/lawyer-sells-vegetables-in-front-of-orissa-hc-as-protest-for-no-financial-assistance-amid-covid-19-2167845.html> [Last visited: 9th September, 2023 18: 25 PM]

up during the pandemic; several suicides⁸ were also reported. All these because of the pressure of sustaining a family and proper livelihood. Do strikes justify? NO! The same colleagues who comes in support when a wrong is commenced upon you, can be the very barrier for your practice – for livelihood, as you are human – social animal, and being advocate, an highly organised intellectual class.

VIEW OF THE JUDICAIARY ON ADVOCATE STRIKES

The SC, various HCs have unanimously held that right to protest is fundamental but trampling of entire judicial process by strikes of the advocates and Bar Councils are illegal, impermissible, and unethical for the officers of court. Various judgements through ratio and obiters have held that strikes by the advocates are not justified by the law and few are discussed as follows:

- **B.L. Wadhwa vs State**⁹, the Delhi HC held that an advocate abstaining from appearing before the court on dates affixed for hearings are conducting, (i) professional misconduct; (ii) a breach of contract; (iii) breach of trust; and (iv) breach of professional duty;
- **Emperor vs Rajini Kanta Bose**¹⁰, the special three judge bench of the Calcutta HC held that an advocate undersigned under a Vakalatnama cannot abstain from appearing because of boycotting of the case by other lawyers, boycott against the judges and any other irrelevant issue;
- **Lt. Col. S.J. Chaudhary vs State (Delhi Administration)**¹¹, the SC observed that it is the duty of every advocate to appear in court each and every day of hearing in every criminal case. It was also observed that any advocate abstaining from court process in pursuance of any joint movement of lawyers collective or boycott of court amounts to professional misconduct and against the professional ethics of an advocate.
- **Rajinder Singh vs UOI**¹², the Division of the Punjab and Haryana HC observed that there is no legal blockade in the way of the court to not administer justice when the advocates abstain from appearing on dates of hearing in courts, or they seem to refuse to assist the court in the administration of justice, the CPC provides provisions for proceeding with cases when parties or their counsels fail to appear.
- **Ex-Capt. Harish Uppal vs UOI**¹³, the current case portrays some of the key reasons as stipulated by the Bar Council of India that are some of the resultant causes of lawyers abstaining from work are which includes mostly local issues viz., lawyer/lawyers coming in conflict with the police or other authorities or where there are instances of misbehaviour and/ or corruption on the part of the judicial officers, or be it lack of proper infrastructure in the courts. The other issues are one relating to conflict between sections of the Bar with regards to transfer of jurisdiction to other courts or its withdrawal (both pecuniary and territorial) and/ or Conflicts involving the rival District and other Bar Associations. Issues relating to integrity, bar, and judicial independence; passage of legislation without informing the bar councils; national and regional

⁸ TNN, 65-year-old lawyer shoots himself in West Bengal's Dum Dum, <https://timesofindia.indiatimes.com/city/kolkata/65-year-old-lawyer-shoots-self-in-west-bengals-dum-dum/articleshow/76504143.cms> [Last visited: 9th September, 2023 19:10 PM]

⁹ AIR 2000 Del. 266

¹⁰ ILR (1992) Cal. 515

¹¹ 1984 (1) SCC 722

¹² 1993 (2) SLR 450

¹³ (2003) W.P. (Civil) No. 132/1998

concerns that affect the general public and the insensitivity of all concerned are some of the other key concerns. It has been reiterated in various previous judicial pronouncements cited in the current judgment have laid emphasis on the fact that the Except in the rarest of rare instances endangering the dignity and independence of the judiciary as well as the bar, the Bar Council of India opposes going on strike; and When strikes are unavoidable, every effort should be made to keep them brief and calm to save the litigant public any inconvenience.

The case also cites various interim measure consistent with the Bar Council of India's view point, in the rarest of rare cases when a strike is resorted to by lawyers.

(1) It shall be allowed for any individual member or members of that association to be free to appear in court without restriction, fear, or hindrance, or any other coercive measures, in the extremely rare case where any association of lawyers, including statutory Bar Councils, feels it necessary to call upon and/or urge members of the legal profession to abstain from appearing in courts on any occasion.

(2) No such member who appears in court or otherwise practises law shall be subject to any adverse or criminal action by any association of lawyers and shall not be subject to expulsion or threat of expulsion therefrom.

(3) Nothing stated above shall prevent practising attorneys from using other types of protest in court, such as wearing armbands or other non-interruptive forms of protest that do not jeopardise the interests of the litigant. However, any such protest must not be disparaging of the law or of the profession.

(4) Bar association (including the bar council) who are in charge of making the decisions referred to in (1) above must see to it that they are carried out in accordance with the spirit of the all aforementioned clauses (1), (2), and (3)¹⁴.

WHY DO THE ADVOCATES CALL FOR STRIKES?

In recent times we often find that bar councils calling for strike on occasions of frivolous issues, for example a police officer behaving nasty with an advocate, or some advocate not satisfied with decisions of judge have successfully conducted boycott of certain judge – obviously under political influences and so forth, there remains various prudent reasonings for the calling of strikes, such as:

- Conflicts between advocates and administration or investigating authorities. The investigating authorities often resort to unethical and non-judicial process of conducting investigations. This leads to conflicts between the officers of court and the agencies as both want to establish themselves superior and correct;

¹⁴ Juscorpus, Advocates Right To Strike In Light Of Ex-Capt. Harish Uppal V Union Of India, <https://www.juscorpus.com/advocates-right-to-strike-in-light-of-ex-capt-harish-uppal-v-union-of-india/> (Last visited: 9th September, 2023 12:15 PM)

- Mannerless judicial officers are often cause of strikes in India. Often we find some clerk or magistrate found dehumanizing or misbehaving with some senior counsel or practicing advocate, resulting in resentment and boycott of court of such judicial officers¹⁵;
- Poor infrastructure of courts, heated rooms, clogged premises, lack of ventilation, improper maintenance of amenities, sanitation and ancillary reasons leading to boycott of courts and strikes to register the protest against the judicial system and the state;
- Constitution of benches is another cause of strikes by the advocates. There might be some illogical reason that some judges are considered strict or not favourable for the advocates and their cases. The judges are interpreters of law and providers of justice and hence boycotting because of their inclination towards any ideology acts as an excuse for certain sections of motivated lawyers – often politically motivated, to conduct strikes;
- Strikes against the state, or any law or bill proposed by the state for the judiciary or in general, some direction of the Law Commission, some regulation of the Ministry of Law and Justice, and so forth are some key reasons for advocate strikes and these are the most frequent and popular strikes in India¹⁶.

A WAY OUT FROM THE NON-PRODUCTIVE STRIKES

The view of judiciary that advocates' resorting to strikes are unjustified and unethical is valid as the boycotting of courts by advocates would not only diminish the sanctity of the courts but also the perception of the society towards the legal profession as whole. The common man/woman cannot trust their way out against all odds for justice through the judicial system if they find their protectors – advocates themselves resorting to strikes. The 266th Law Commission Report suggested incorporating in every district an 'Advocates Grievance Redressal Committee' constituted under a District or Sessions Judge and managed by a judicial officer to address the grievances of lawyers. The HCs have the power to issue circulars u/A 235 of the COI for constituting committees of similar nature under them. Sec. 7 (d) of the Advocates Act, 1961, provides for the power of BCI to protect the rights, privileges, and interest of advocates. However, the change in pattern of strikes occurring in the legal system by the advocates can be brought down under following manner:

- There are other modes of protests, such as putting on black arm bands, deputations, placards, debates, and so forth apart from strikes – an extreme measure. An being officers of law and holding repute in society the advocates should abstain from taking the extreme manner of protest or easy way out;
- The state must recognise that without filling vacancies, providing good ambience in courts, adequate technology, breathable rooms, and work satisfaction, the resentment of advocates against the legal setup won't change and such anger is justified. The govt. must bring in immediate reforms in judicial system and infrastructure for making the process of justice a smoother road;

¹⁵ Kirty Ranjan, Strikes By Advocates In India, <https://www.legalserviceindia.com/legal/article-582-strikes-by-advocates-in-india.html> [Last visited: 9th September 2023, 21:15 PM]

¹⁶ Sarthak Gupta, Do advocates have the right to strike, <https://blog.ipleaders.in/do-advocates-right-strike/> (Last visited: 20th September, 2023; 14:05 PM)

- Advocates should realise that they bear both respect from society and reputation of intellect, and hence should refrain from political affiliation in matters of justice judicial process. Often troubles between various factions of Bar Councils are cause of strikes in India;
- The executive administration, police, and other investigating agencies are often found misbehaving with advocates resulting in strikes and violence in furtherance of that. In any and all conditions the behaviour towards advocates by such agencies and towards agencies from advocates must be respectful and coordinative;
- Lastly, advocates are called intellect, they bear superior reputation, they are wizards of words and holders of justice, and thus they should be more empathetic than reactive.

CONCLUSION

Law is a noble profession as it helps a person to seek justice amongst all odds and hence the novelty should be kept firm. With passage of times the profession of law has seen certain changes in terms of technological inclusion, beefing up of investigation agencies and with that increased a lot of non-judicial acts, and exercise of overt powers. The established repute of this profession may have declined due to various reasons but the objective of advocates to provide and fight for justice in court of law is intact since time the beginning of the legal profession.

There are various issues for which the advocates and Bar Councils of various states, and on several occasions the BCI have come up to strikes to protest. But protests have several other modes and strike is the extreme of such. The advocates holding repute of profound wordings and speeches and negotiations shouldn't resort to strikes as way of protest. This shows the weaker character of the entire judicial system of the country. So, there can't be any strikes to register protests? Well, there should not be any. Because the advocates are not only contracted with clients but act as officers of court. And in the current situation where the shelf life of an average case is approx.. 3-5 years, there are 4.4 crores of cases pending in lower courts, SC having 71,000 cases pending, the call for strikes seems like blackening the already greyish turned white cape of justice system.

Not all is the fault of advocates resorting to strikes. Although, strikes as protests by advocates are not justified, but several issues like poor infrastructure in the courts of law, illegal processes followed by the investigating agencies, the vacancies in judicial posts causing delays, improper regulations, circulars, bylaws passed by the State legislatures or the Parliament, and other reasons are causes for strikes by the advocates.

The solution is debate, discussion, negotiation, development, integrity, coordination, synchronisation between the advocates, State Bar Councils, BCI, Ministry of Law and Justice, Law Commission, Courts of Law, to figure out the problems resulting in drastic strikes in legal system, causing irreversible harm. But which of them are ready to bow before the other or sit in a table with open mind for resolution remains a cause of concern till now.