

Analyzing the Lawyer's Right to Strike in India

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Abstract

“The right to strike is necessary to support collective bargaining. Without the right to strike, collective bargaining is no more than collective begging “, this was the understanding of John Hendy, the QC, president for International Trade union rights. The right to strike is an important right as it provides workers to outline and display their complaints to either the public or to their management or higher authorities. Striking, as a right, is essential as it allows for workers and employees to display their dissatisfaction with the treatment or with the way of conduct of the management. Strike is defined as per section 2(q) of the Industrial Dispute Act 1947, as 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 accept employment.¹ This is an essential right as it gives workers and groups of people the voice to complain and note out issues which need re-dressal. The right to strike allows workmen to voice out their problems, be it in regards with their workplace environment, working conditions or wages of the same. Many employees face outrageous working conditions and inhumane treatment from their employers and after all that they are subjected to pennies for wages. Such problems can only be outlined by radical ways such as strikes. The absence of essential workers will surely raise alarm to the employers and the managing authorities which would ultimately lead to positive change in the disputed areas. However the right to strike has been termed to be outside the ambit of the rights provided for under Article 19. In the Madhya Pradesh and Chhattisgarh Civil service rules 1965 strikes and demonstrations were prohibited to government servants and directed the competent authorities to treat the duration as unauthorized absence.² For lawyers, not only does it rain but it pours, as the code of conduct expected from the Advocates bans and frowns upon strikes as they are not in accordance to the dignified profession. Thus, the right to strike is not available for lawyers and is even considered illegal. This paper will focus on the provisions, availability and punishment of lawyer's strikes in India in line with their discharge of duties as the key agents of administration of justice.

Keywords: Prohibited, collective bargaining, code of conduct, dignified

Introduction

Striking, in layman's terms, refers to the refraining from assigned duties, or general duties by employees. Section 2(q) of Industrial Dispute Act defines the term strike, as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal,

¹<https://www.legalserviceindia.com/articles/dispute.htm#:~:text=In%20India%2C%20right%20to%20protest,the%20industrial%20dispute%20Act%2C%201947.>

²<https://www.insightsonindia.com/2021/08/07/insights-into-editorial-no-fundamental-right-to-strike/#:~:text=The%20right%20to%20strike%20is,the%20Industrial%20Disputes%20Act%2C%201957.>

under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment.³ Article 19 of the Indian Constitution provides the right to form unions, unfortunately, article 19 does not provide the right to strike. In the case of All Indian Bank Employees Association vs I.T the Supreme Court gave the verdict that the right to strike was to be governed by any other appropriate industrial legislation and the validity of such legislation would not be tested by provisions of article 19. Thus, excluding the right to strike from the provisions of article 19 of the Indian Constitution.

In India the right to work has not been recognized as an enforceable right. The right not to work could be comprehended as right to strike where the word "strike" has been defined as the act of stopping work by a body of workmen for the purpose of coercing their employer to accede to some demands they have made upon him. A perusal of various provisions of the Industrial Disputes Act, 1947 would reveal that workers have no absolute right to go on strike. Section 22 of the Industrial Disputes Act, 1947 lays down circumstances in which strike in public utility services is prohibited. Under Section 23 there are restrictions imposed on workmen from going on strike in the circumstances enumerated therein. Section 24 on the other hand lays down that a strike shall be illegal, if it is commenced or declared in contravention of Section 22 or Section 23 or is continued in contravention of an order made under sub-section (3) of Section 10 or sub-section (4-A) of Section 10-A. It is regarded as a powerful weapon for collective bargaining though.

A perusal into the provisions of the Advocates Act and the Legal Practitioners Act, evidently shows that the position of advocates is quite different from an employee. In the legal profession, a fixed code of conduct is expected from the advocates and certain behaviors and activities which do not conform to this code are deemed to be professional misconduct. The legal profession is a dignified profession which is nothing similar to other forms of trade. Advocacy comes with various rules and guidelines which are to be followed at all times to promote the public image and the conduct of the profession. Any contradiction or inconsistencies would lead to punishment as subjected by the Advocates Act 1961, which included suspension, removal from the State roll or fine or both.

The legal profession being a dignified profession of high standards frowns upon delay, denial or deprivation of justice thus, the legal profession does not acknowledge the right to strike for those in the legal profession field. It is in this background that one has to look into the problems created by lawyers' strikes. The questions usually raised are: Can we afford lawyers' boycott of courts any more? Whether lawyers' boycott is justified? Who suffers the most on account of boycott? Among various duties required to be discharged by the lawyers, one of the duties to the court is that an advocate shall maintain towards the court a respectful attitude bearing in mind that the dignity of the judicial office is essential for the survival of an independent judiciary, and thus of constitutional Government.

The Right to Strike

The right to strike, according to International human rights and labour law, is a fundamental right and its protection is necessary to ensure just, stable and democratic societies. The right to strike in International law has been recognized in various instruments such as the ILO Convention 87 in articles 3,8 and 10, the international Covenant on Economic, Social and Cultural rights in article 8, the International convention on Civil and Political rights in article 22, the European Convention on Human

³ Vijendra Vikram Singh Paul, *India: Right to strike under Industrial dispute Act 1974*, 09 March 2004

rights in article 11, the American Convention on Human rights in article 16, It has also been included in Constitutions of over 90 countries.

The right to strike is an important tool for survival for numerous women and men of the world. The United Nations Human Rights office of the High Commission aims to protect such a right and ensure that everyone can benefit from its protection

The right to strike protects and ensures other rights in the workplace. It provides for the right to favourable working conditions, and to work in dignity and without fear of intimidation and persecution. The right to strike enables workmen to be able to voice out or showcase their grievances in the workplace and assists in bringing about positive change. According to the United Nations Human Rights office of the High Commission, The right to strike puts a check on the concentration of power.⁴ This right supports democracy and the idea of equitable societies as it leaves room for others to speak out.

Right to Strike in India

The right to strike is not expressly recognized by the Indian Constitution. In the case of *Kameshwar Prasad vs The State of Bihar 1958*, the Supreme Court held that the right to strike is not a fundamental right. Despite all the importance bestowed upon protection of the right to strike by the United Nations High Commission, the right to strike was unable to qualify among the list of the fundamental rights. The Indian Constitution outlined 6 fundamental rights which, unfortunately, did not include the right to strike. Article 19 came close towards the acknowledgment of the right to strike but was regrettably insufficient to the cause of right to strike.

The right to strike was initially provided admittedly in the Trade Unions Act 1926. This act only legalized partial activities which counted as strikes or which were in support of strikes.

The right to strike is given to be under the Industrial Dispute Act 1947. The Industrial Dispute Act 1947 in section 2(q) defined strike as 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 work or accept employment.

A legal strike has to follow the provisions of section 22(1) of the Industrial Dispute Act 1947 which states that no person employed in public utility services shall go on strike in breach of contract:

1. Without giving employer notice of strike within six weeks before striking or
2. Within 14 days of giving such notice or
3. Before the expiry of the date of strike specified in such strike notice as aforesaid or
4. During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

The provisions of the Industrial Dispute Act 1947 apply to public utilities and by the name of the Act seem to be governing industries despite it not being expressly mentioned. The provision of notice before strike was considered not to be necessary in instances where there is already lockout in existence in the case of *Mineral Miner Union vs Kudremukh Iron Ore Co Ltd*.

Lawyers Right to Strike

The legal profession is a dignified profession which is unlike any other trade. It comes with certain righ-

⁴ <https://www.ohchr.org/en/press-releases/2017/03/un-rights-expert-fundamental-right-strike-must-be-preserved>

ts and duties as well as regulation for behaviour. The legal profession has a code of conduct which differentiates it from all the other professions. Advocacy is a noble profession and an advocate is to be the most accountable, privileged and erudite person of the society and his act is a role model for the society, which are necessary to be regulated. Professional misconduct is the behaviour outside the bounds of what is considered to be acceptable or worthy of his membership by the governing body of a profession.⁵

Striking does not fall under the code of conduct for lawyers and hence it is frowned upon by the regulations of the codes of conduct. Delaying or denying clients of justice is not a noble act and as such it is not expected from advocates. Advocates have to carry out various duties, which include duty to the client, duty to the court, duty to their fellow advocates and duties to the society. All the duties of the advocate entail that the advocate should, with all his strength and skills, seek to represent his client and promote justice and the name of the court in all his actions. The advocate should ensure speedy, expert and competent delivery of justice. Striking does not promote the delivery of competent and speedy delivery of justice and as such does not have any room in the code of conduct of advocates.

The court has a reciprocal duty to perform and should not only not be discourteous to a lawyer but should also try to maintain respect in the eyes of his clients and the general public with whom he has to deal in his professional capacity. Hypersensitiveness on the one side or rudeness on the other must be avoided at all costs. Both the Bench and the Bar are the two arms of the same machinery and unless they work harmoniously, justice cannot be properly administered. The need for mutual understanding and respect between the Bench and the Bar was emphasized by many a writer on the subject.

In India the Supreme Court held that lawyers have no right to go on strikes or to give calls for boycott, not even on token strike. The protest, if any is required can only be by giving press statements, Television 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.⁶ It was also held by the Supreme Court that lawyers strike and suspension of court is illegal and it is high time that legal fraternity realizes its duty to the society which is foremost.⁷ Thus, lawyers do not possess the right to strike given the noble nature of their profession and the duties which they owe to the society, clients, courts and other advocates. If lawyers were to be granted the right to strike, there would be a sharp decline in the speedy delivery of justice.

Lawyer's right to strike would ultimately mean ignorance to justice and suffering of the innocent as well as degradation of the legal profession as a noble profession. The right to strike for lawyers compromises the code of conduct for lawyers as it removes the noble attribute of the profession. The right to strike in the legal profession would also cease the difference between advocacy and other trades. The differentiating factor between the legal profession and other trades is the noble nature of the legal profession. The legal profession is noble to the provision of justice and is set to confirm a positive picture to the public.

Had the right to strike been granted to the legal profession, the noble nature of the profession would be lost and the public image of the legal profession will be tarnished. The legal profession is looked up to in the society for its diligent pursuit of providing justice, thus, if the right to strike was awarded to them it

⁵ Dr Elbe Peter, *Professional misconduct of lawyers in India*, <http://www.legalservicesindia.com/article/1665/Professional-misconduct-of-lawyers-in-india.html#:~:text=The%20expression%20professional%20misconduct%20in,ethics%20for%20his%20selfish%20ends>.

⁶ Ex-Capt. Harish Uppal v Union of India and another

⁷ Hussain v Union of India

would drawback the provision of justice. Advocates are bound to follow the rules prescribed under chapter 2 part 4 of the Bar Council of India Rules. These rules further outline the need for advocates to comply with their duties towards their clients, courts, fellow advocates and the society. Awarding the right to strike to lawyers will give rise to questions like, whether the client should suffer when the advocate goes for a strike?⁸

When we consider the role of lawyers in the administration of justice, we ought to remember that the profession of law is not a mere trade or business. It is a vocation to be pursued to meet the challenge of times. In this view it is difficult to concede a right to boycott courts to the lawyers on the analogy of conceding right to strike of employees. Moreover, the right to strike work in India is admittedly not absolute. This is so in the industrial sector as well as in public service sector. The members of the Bar Association thus have no right to boycott courts in view of the duties which they are required to discharge. It is true that under the Constitution of India, freedom of association is guaranteed as a fundamental right, but this right is subject to reasonable restriction in the interest of public order or morality.

Thus, the lawyers right to strike, if granted, would lead to suffering of those whose duties are owed by advocates, for example clients, the fellow advocates and the society. The grant of the right to strike, despite giving a voice to the advocates to showcase their grievances, would ultimately do more bad than good. This is due to the fact that the strike by advocates would be felt more harshly on the clients and the society as they would be subjected to unjust conditions and treatment. Advocates are entrusted by the clients and the society to provide justice to the nation and if they exercised the right to strike this would mean a whole change to how the advocates are viewed and their standing will be compromised as well as they would be presenting themselves as barriers to the provision of justice.

In the landmark judgment given by the supreme court in case of Ex-Capt. Harish Uppal v Union of India and Another, 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 color armbands, peaceful protest marches outside and away from court premises, etc.

In another landmark case, Hussain v Union of India the court had clearly stated that the lawyers strike and suspension of the court is illegal and it is high time that legal fraternity realizes its duty to the society which is foremost.

The prohibition against strikes by lawyers is inbuilt in the Advocates Act, 1961. The duties to the court and duties to the clients prescribed by Bar Council of India go to prove that strike or boycotting of courts is antithesis to practise in the court, and is a professional misconduct. An advocate being an officer of the court and thus bound to submit to its authority cannot join in an action to boycott the court or a particular judge because of any grievance - real or alleged. Advocates are bound to maintain rules on professional conduct and etiquette which has been laid down in chapter II part IV of the bar council of India Rules. Under this section, the advocates are abide by the certain duties towards the court and their client.

In Roman Services Pvt Ltd v Subhash Kapoor 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

⁸ Roman Services Pvt Ltd v Subhash Kapoor

part of the Court to either wait or adjourn the case on that ground. It was held that advocate has no right to boycott court proceedings on the ground that they have decided to go on a strike.

In *B.L.Wadhera v State*, 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.

In *Emperor v. Rajani Kanta Bose* a Special Bench of the Calcutta High Court consisting of three Judges opined that a pleader being an officer of the court is bound to submit to its authority and thus cannot join any action to boycott the court or a particular judge because of any grievance - real or alleged, whether touching the court or of political or other character. The pleader accepting the vakalatnama cannot divest himself of his duties arising from such acceptance without leave of the court. If he desires to discharge himself from a case, he must give his client reasonable notice of his intention. It is not difficult to realize that serious uncertainties and inconveniences might arise in the conduct of judicial proceedings if the appointment of a pleader made in writing and lodged in the court where the case was to be tried could be revoked without the knowledge and sanction of the Court. If the practitioner wants to withdraw he must always give reasonable notice of his withdrawal from the case to his client.

Right To Strike For Lawyers Punishment

It was held that iron the grounds of strike a lawyer abstains from appearing in court then he is conducting professional misconduct, a breach of contract, a breach of trust and breach of professional duty.⁹

According to section 35 of Advocates Act 1961, which provides for the punishment of advocates responsible for profession misconduct, the disciplinary committee shall, after hearing both parties:

1. Dismiss the complaint or where the proceedings were initiated at the instance of the State Bar Council direct that proceedings be filed
2. Reprimand the advocate
3. Suspend the advocate from practice for such a period as it deems fit
4. Remove the name of an advocate from the State Roll of advocates.¹⁰

Recently in Odisha, 29 protesting lawyers who had participated in the strike had their licenses suspended for 18 months by the Bar Council of India. Thus showing that no tolerance will be given to lawyers who decide to exercise the prohibited right to strike.

Conclusion

The Indian Constitution provides for the right to unions under article 19, however, it does not accommodate the right to strike within this ambit. The right to strike is indeed essential as it allows for better workplace management as it gives the workmen a chance to freely express their concerns. It also puts a check to the management as it allows for other people to be heard as well. The UN through the United Nations High Commission, established the importance to protect the right to equality in order to ensure betterment of the workplace and the men and women within it. The legal profession is a noble profession which is renowned for its role in speedy delivery of justice and its code of conduct. Any action or activities which are not within the code of conduct or do not promote the speedy delivery of justice will attract punishment under the definition of professional misconduct under section 35 of the

⁹ *B.L. Wadhera v State*

¹⁰ *Sreeraj K.V, Professional Misconduct Under the Advocates Act 1961*, 24 July 2016



Advocates Act 1961. It is important that advocates give all their effort to meeting the duties they owe to the clients, courts, fellow lawyers and the society. It is imperative that advocates continue their work without unnecessary stoppages so as to maintain their noble outlook and continue their provision of justice to their clients and the society as a whole.