
ADVOCATE'S RIGHT TO STRIKE WITH THE ANALYSIS OF THE CASE: EX-CAPT. HARISH UPPAL V. UNION OF INDIA

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ABSTRACT

Right to strike is a Fundamental Right as provided under Article 19(1)(c) of the Indian Constitution. Under the umbrella of this Freedom Advocates also go on to strike. This right of strike of Advocates is always in question and debated hotly. An advocate is considered as the person who helps people to achieve justice. And this right of advocate to go on strike usually strive general public from getting Justice. It is usually said that Bar Association have no right to strike and boycott courts. Judiciary is the third pillar of Democracy. And this right of strike of advocates many a times have led to conflict between Bar and the Bench. There have been many judgements regarding this matter and for this research paper I am going to deal with one of the landmark judgements which is "Ex-Capt. Harish Uppal v. Union of India¹". And in between all these conflicts only and only the Justice seekers are really suffering which we can also find in this particular case. Though many attempts from time to time have been made to resolve this problem but then also it exists till date. Both the Bar and the bench share a common duty towards each other as if Bar have the duty to be courteous so as it is the duty of the court to be courteous and listen to the problems of its members².

¹ (2003) 2 SCC 45.

² AR Rastogi and SS Srivastava, 'Is there a right to strike?', 2015.

I. Aim and Objectives

Judiciary is the third pillar of Democracy and so as to the advocates are the load bearing pillars of the Judiciary. If they don't work properly then the whole judicial system will collapse. And the Advocates are bound by the law to work with professionalism and etiquettes. The present article makes an attempt to understand why Advocates call for strike and is it legal to make a such call. And along with this I will also try to do case analysis of a case which is termed as the landmark judgment with the conduct and behavior of Advocated with regards to the matter of Right to Strike

II. Research Methodology

I am going to use the Doctrinal method along with Qualitative method for my whole Article. The study focuses on extensive study of secondary data collected from government websites, various national journals and articles, publications, government reports, newspapers, magazines which focused on various aspects of Right to strike of legal fraternity.

III. Research Limitations/Implications

The present study provides a starting-point for further research in this field. This study can further be explored with respect to changes which are or which can be brought to deal with situations like this.

IV. Research Questions

- i. Do advocates have right to strike.
- ii. What is the opinion of Supreme court with regards to advocate's right to strike?
- iii. What is the role of BCI in controlling such matter?
- iv. What laws are required to stop such kind of strikes?
- v. Are only advocates behind this menace or the authority or the law is also playing a major role?

Advocate's Right to Strike

Before discussing the Advocates Right to strike first we have to understand that why do advocates go on strike, what demands they want to get fulfilled, mainly the reason why this all happen. The answer to this question is most of the times advocates go on for strike due to:

- i. Some kind of conflict between the interests of Advocates and the investigating authority.
- ii. Any Misbehavior done by the Judicial Officer.
- iii. Any law passed by the parliament or state government which is against the interest of the Bar.
- iv. Some discrepancies in the constitution of the Benches of the court.
- v. Or when there is some issue related to national or state importance which impacts public at large.

Now as we are now aware about the reason behind the call of strike by the Advocates, so now we can deal with their right to strike. According to our Indian constitution Article 19(1)(c), People of India have the freedom of association which includes right to strike under its ambit, but along with this freedom there are also certain restriction attached to it, which are mentioned under Article 19(4), which states that such associations should not harm the public order, morality or sovereignty. Hence the question arises that whether Advocates have the right to Strike under this particular law. To answer this the question the Hon'ble Supreme Court and High Courts have time to time in its various judgements have held that Advocates don't have the right to go on strike and instead of letting them to go on strike it should be taken care that their issues should be heard and tried to be resolve on time. The Right to Strike is not available to the Advocates is because of their crucial role in the administration of Justice. If the source by which people have access to justice goes on to strike then how people will be able to exercise their right to Justice provided under Article 21 of the Constitution. "It is the duty of an Advocate to protect the interest of their client by using all fair and reasonable means without thinking of any consequences to anyone."

Case Analysis: Ex-Capt. Harish Uppal v. Union of India³

1. Facts of the Case:

- i. The petitioner was an ex-army officer who was posted in Bangladesh in Indo-Pak

³ (2003) 2 SCC 45.

War in the year 1972, where he was accused of some embezzlement and was brought to military court in India.

- ii. And after the courts investigation he was court-martialed from his post and was imprisoned for 2 years.
- iii. Aggrieved by the courts order he filed a pre-affirmation application in the civil court to audit his matter and after a long stretch of 11 years he got reply from the court when the limitation period of the survey expired.
- iv. Later it was found that the documents of the survey along with his application got misplaced due to intense strike by the Advocates.
- v. And due to this particular reason, the petitioner field a writ petition in the High court and further appealed to Supreme court to declare Strike by the advocates as illegal.

2. Issues of the Case

Whether the lawyers have a right to call for strike?

3. Judgement of the Case

- i. The Hon'ble Supreme Court while deciding upon the matter concluded that strike by an advocate is unlawful and hence, they have no right to call for the boycott of court, and not even symbolic strike.
- ii. The court also held that a strike is permitted only when the integrity, respect and working of the Bar Association is at stake and that too comes under the ambit of rarest of the rare case such as grievances against the presiding office or Judgment of the court or some confrontation with the administration or there happens any clash of interest between groups of lawyers etc.
- iii. And that protest should be done by doing press explanation, TV Interviews, additional issuance of notices, by wearing dark or white bands, by walking outside the premises or away from the court, etc., but that all should also not disturb the working of the court.
- iv. The court further held that the lawyers who are willing to work in the court should not be stopped from working and forced to be part of boycott on the pretext of some pressure such as putting threat of expulsion on them.
- v. The court along with all above said that an Advocate holds an uncommon status in the court and act as its officers in front of public. And hence, they are obliged to

their commitments and obligations of guarantying Justice to the public by making the court to function smoothly.

- vi. And in the view of all the statements stated above court held that strikes by advocates disrupt the smooth functioning of the court and also put the interest of public aside, and with this reason court has imposed ban on strikes.

4. Analysis of the Judgment

The Hon'ble Supreme court have held that the Advocates have no right to go for strike and this act is an unlawful act. But in the Judgement court also held that in the rarest of the rare situations it can be allowed and that too court have mentioned when such situation arises. Along with all this it was held by the court that Advocates are the officers of the court and hence, if such officers do acts like this then it will create a hurdle in the smooth functioning of the court and also in the way of Justice. If Court have closed the door of strike for the advocates, then they have also opened many other doors for them to show their disagreement which is discussed under point number 3. And those things should also be done only if it does not affect functioning of the court.

Bar council of India and Right to Strike

In the above discussed Judgement, it was held by the Supreme court that no Bar Association has the right to call for strike. Section 7 clause (b) it is mentioned that the BCI has the power to lay down certain standards of professional conduct and etiquettes which should be followed by the advocates. In many cases it has been held that it is the fundamental duty of the judiciary to protect the interests of people who are seeking justice. And Supreme court have confronted this duty on BCI and the state bar councils to solve the issue of the advocates and stop them from going on strikes. Chapter II part IV of the Bar council of India Rules states clearly states that Advocates are bound to maintain rules of professional conduct.

Section 35 of the BCI Act, gives the power to BCI to form a disciplinary committee against an advocate if they find that he has done some breach of his professional duties and have done any misconduct. Supreme Court in case *Common Cause a Registered Society v. Union of India*⁴ held that it is the duty of Bar Council of India to take stringent actions against any kind of actions which disturbs the functioning of the court.

⁴ AIR 2005 SC 4442.

I. What's the Solution?

The main reason behind the advocate's strike is what we have discussed above and if those reasons are removed then these strikes can be stopped. Ban by the court can lead to the suppression of voice. And hence, we have to safeguard the interest of advocates. And if we follow the Advocate's Act, 1961 then the Advocates have the rights, privileges and interest which are to be safeguarded and for that particular reason a proper grievance cell should be established where these advocates should be heard and some proper steps should be taken to safeguard their interest.

According to the 266th Report of Law Commission, it has been suggested there that each and every district headquarters should establish a grievance redressal cell which are constituted by the District Judge and should be headed by the Judicial Officer who will listen to the matters of Advocates, and who will also deal with the day-to-day work of addressing issues for ensuring smooth functioning of the court. It was also stated in this report that High courts may issue circulars under Article 235 of the Constitution of India, to provide redressal grievance of the advocates and will also ensure efficiency of the Judicial System, and in cases where some judicial officers conduct is in question then the grievance should be dealt by the Chief Justice of that particular High court.

Further in the year 2017 a draft of Advocates (Amendment) Bill⁵, was tabled in the Parliament where the Law commission have suggested certain amendments to the Advocates Act, 1961, by adding some punishment clauses. It was said that in the Section 35(3) the fine of 3 Lakh along with the cost of proceedings should be added for the misconduct of an advocate. Further to this an award of compensation of upto 5 Lakh should be provided to the person who is aggrieved by the misconduct of an Advocate. And also, a fine of upto 2 Lakh should be imposed on such advocate who is not cooperating in the disciplinary proceedings.

It was also said in this bill that a new section 35A should be included which will deal with the Prohibition on the Boycotts or abstention from court's work. Along with that Section 45A should be added which will provide compensation claiming authority to the person aggrieved from the misconduct of his advocate and also protect him from such situation where the advocate tries to take defence of non-payment of his fees.

⁵ The draft of Advocates (Amendment) Bill, 2017.

However, the above stated amendment faced a lot of opposition from the law fraternity due to its un-favorable clauses as stated by the Advocates that this bill will take away freedom of lawyers to act fearlessly in the court proceedings and also takes the freedom of Speech and Expression from the Advocates. It is really a matter of concern now for the law maker that how to control advocates from going to strike and also not letting their fundamental rights crushed. And not only this it is also a matter of concern for the lawyers to as to how these kinds of strikes effect the justice mechanism of court and how many people who are seeking justice are suffering because of them.

Conclusion

The Landmark judgement of Ex-Captain Harish Uppal gives a rough idea about the thinking of Supreme Court. It is well evident from the past few years that if a small incident also happen the Bar Association calls for strike. Just in the recent past in the Union Territory of Jammu and Kashmir the Bar Council of Jammu went on strike to show its anger for the decision of the union government in make Jammu and Kashmir as an UT and also demanded for the restoration of Statehood. Just like that in Karnataka also in the year 2009 the prospective first women CJI was locked up in the High court room by the group of protesting lawyers. And from these incidents we can find out that it is very important to control the Advocates and stop them to call for strike.

The above incidents also suggest that we need a proper law to have a proper mechanism to solve the grievance of these aggrieved Advocates. The advocates have the right to demand solutions of their problems but that too have to be asked in proper sophisticated manner with the use of proper channel. And these strikes should not be done by keeping the rights to justice of their clients at stake. As it is the normal public who will be suffering the most at last and due to these kinds of strikes the courts proceedings gets disturbed and the just delivery get delayed. It is also a big truth that advocates are the person who are responsible for the functioning of the court and that if they are kept in dark by the court or the authorities then they also have the right to speak and express their concerns. The statutory provisions are inadequate to deal with such matter and the advocates who are master in this profession have to take up their matter on their own no matter who will suffer in this time period. And hence we require a proper law which will not take away rights from the advocates and also not make the court functioning suffer.