# RECONCILING ETHICS AND THE INDIAN CONSTITUTION: A VINDICATION OF THE PROHIBITION ON LAWYERS' RIGHT TO STRIKE

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***Abstract***

*The right to strike has not been recognized as a fundamental right by the Supreme Court of India and remains a legal right. Our judicial position is definitively clear on maintaining the prohibition. Courts have held that the freedom of speech and of association under our Constitution cannot possibly include strikes and boycotts by lawyers. This paper seeks to expose the conflation of the 'right to protest', and the right to strike/boycott, with only the latter being impermissible. Bringing in the ineluctable ethical ramifications of the legal profession being placed at a higher pedestal, the responsibility that lawyers have cannot be overlooked. Even so, this paper concedes that serious reform is needed to address the concerns of advocates. Most strikes have ended up causing immense damage to the justice delivery system in their application. Notwithstanding existing problems, our legal ethos demands the adoption of means that are not disruptive.*

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**Keywords:** boycott, constitution, ethic, freedom, protest, strike

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## 1. Introduction

The right to work has been overwhelmingly recognized in a host of international instruments[3]. Despite its roots deeply embedded in these instruments[4], the right to strike[5] was not effectively protected either by common law or by legislative means.[6] India has not ratified the ILO Conventions 87 and 89 of 1948 (dealing with the freedoms of association and collective bargaining) despite being its founding member.[7] Strike is a form of protest to voice any work-related grievance.[8] Constituting a method of collective bargaining, collective action in the form of a strike aims to put pressure on the employer. It compels them to act in a way that is conducive to the employee.[9] Whether pre-meditated or spontaneous, this concerted action is a cessation of work, irrespective of the duration.[10] Its importance was emphasized by Justice Chinnappa Reddy in *Andhra Pradesh State Road Transport Corporation Employees Union v. Andhra Pradesh State*

[3] Most notably, the International Labor Organization (ILO) Constitution of 1919 and the Declaration of Philadelphia of 1944.
[4] These include ILO Convention 87, which provides the basis for Article 8 of the International Covenant on Economic, Social and Cultural Rights of 1966 and the Universal Declaration of Human Rights of 1948, among others.
[5] T. Novitz, *International and European Protection of the Right to Strike*, (Oxford University Press, 2003).
[6] Rajeev Dhavan, 'Arguments, Protests, Strikes and Free Speech: The Career and Prospects of the Right to Strike in India', 34(1/2) *Social Scientist* 33-5 (2006).
[7] B.P. Rath and B.B. Das, 'Right to Strike: An Analysis', 41(2) *Indian Journal of Industrial Relations* 254 (2005)
[8] Halsbury's Laws of England, (4th edition, 1973-1987), vol. 57, 469.
[9] Hugh Collins and others, *Collective Bargaining and the Right to Strike* in *Labor Law*, (Cambridge University Press, 2nd ed., 2019), 706.
[10] Rath and Das, Supra note 5, at 249-50.

*Road Transport Corporation*[11] where the Andhra Pradesh High Court saw it as "labor's ultimate weapon". He was of the view that it was the kernel of the collective bargaining principle and belonged to every worker as an intrinsic right.

At the outset, when we speak of strikes in the legal profession, two opposing strands of arguments emerge. On one level, lawyers are seen as workers providing intellectual labor and ought to have some say in the power structure operation of the legal profession. They thus argue for their right to collectively voice their displeasure to bargain for action. They see it as difficult to see no avenue for expressing disenchantment. Expression of such claims must be allowed, denial of which is morally unsustainable. The present leeway is only seen as the right to strike in name despite actively restricting the real right to strike. A moral hazard also creeps in here, given that the *locus* of the discomfort lies with the judge itself. Such a compromise leaves the right neither alive nor dead, since judges themselves decide. It becomes a neither-here -nor-there response. As Rajeev Dhavan asserts, the narrative being put forth is that "protestors subvert law and order; dissenters undermine governance and strikers wreck the economy"[12]. However, successive judicial dictums have stressed the need for strikes to operate within the legal framework of within the forms of protest that are permissible.[13]

On the other hand, such actions by lawyers disproportionately impact people. Chief Justice G.B. Pattanaik rightly observed that, "the weapon of strike does more harm than good". Lawyers are duty-bound to follow high ethical standards of the profession. With the responsibility of being

[11] 1970 Labor and Industrial Cases 225.
[12] Dhavan (n 4) 23.
[13] ibid [27].

'officers of the court', these considerations are derived from "common law, statutory provisions, principles of professional etiquette and the lawyer's own ethical decision-making framework".[14] The "hardships or inconvenience"[15] caused to the general public cannot be discounted. Upendra Baxi expresses his solicitude at the plight of "desolate" people who are abandoned by striking lawyers.[16] Continued involvement is essential as it is different from the broader right of collective action that people involved in other métiers enjoy. Reconciliation of the interests of the litigant with the those of advocates is expected in the justice system. Outside of the permissible protected action in the legal profession (which it does provide), lawyers cannot other lawyers into complying. To counter the charge of whether a one-day token strike is even a strike, courts have adopted the correct approach in balance strikes under the veneer of allowing them. The enormity of even a one-day strike is incalculably large, affecting the already mammoth backlog of cases and increasing pendency of suits. Thus, we must view this issue from the lens of the disproportionate macro-impact on the profession.

Innumerable court decisions have laid down how the freedom of speech and of association under Part III of the Constitution cannot possibly include strikes and boycotts by lawyers. This paper seeks to show how the considerable support behind strikes by lawyers have resulted in boycotting the courts to remonstrate against inaction and bring their grievances to the fore. In the process, the legal considerations of inefficiency, pendency and client disadvantage and other such problems have been ignored. Whilst their right to voice their concerns cannot be denied, such strikes result in a dereliction of their ethical duties towards the profession. By no means is this prohibition aimed

[14] Anthony Marinac, *The Ethical Lawyer* in *Learning Law*, (Cambridge University Press, 2018), 226, 233.
[15] Rath and Das, Supra note 5, at 249.
[16] Upendra Baxi, 'Justice and Care', 37(2) *India International Center Quarterly* 127 (2010).

at quelling their right to express themselves. However, an extra layer of responsibilities is entrusted upon legal practitioners and professionals.

In its first segment, it uses the dictum in Ex-Cap Harish Uppal v. Union of India & Anr.[17] (*Harish Uppal*) as a pivot. It then explores the scope and ambit of Article 19 insofar as freedoms are concerned. Against this backdrop, the aim is to debunk the conflation of the 'right to protest' and the non-absolute 'right to strike'. The contours of the latter phrase are examined to show how it is not a feasible option for the legal profession. The 'right of association' guaranteed by Article 19 of the Constitution cannot be taken away from anyone, including lawyers. For this reason, while they have every right to air their problems; they cannot be allowed to sit in abeyance such that the vehicle of justice dispensation is brought to a complete halt. This causes severe, and at times, irreversible damage to litigants whose basic rights are imperiled or have been infringed. Only the 'right to strike' has been proscribed for this exceptional category, with other platforms remaining available. It thus strives to present the correct interpretation of this right by recognizing its concomitant limitations.

In its second segment, the paper explores how a host of rulings since *Harish Uppal*) have reiterated, and indeed expanded, the position of 'no right to strike', and for right reasons. If at all, this form of action is allowed for 'rarest of rare' cases. Despite the ambiguity surrounding this, it demonstrates how this carved out category constitute an exception to balance the interests of lawyers *vis-à-vis* society as a whole to maintain ethical standards. Accordingly, it has spelt out the repercussions of activities that stymie justice dispensation.

[17] (2003) 2 SCC 45.

In defending the *status quo*, this paper does not intend to ignore the plight of aggrieved lawyers. Instead, it uses this opportunity to highlight their concerns. The shortcomings (in terms of the value-judgments) of the seminal decision are also brought to the fore. It would be outrageous not to consider the host of problems that exist within the profession. Serious reform in the existing mechanisms of addressing recourse are needed, given that the current setup. A catena of judgments has been explored to bring out these very problems. However, at no cost can adjudication be stalled. The Constitution cannot function at the expense of professional ethics. Instead, a cogent line of constitutional reasoning is needed to ensure a harmonious preservation of ethical values.

Given that a strike can be a powerful weapon in the hands of lawyers, such a cessation of work can be deleterious for the profession as a whole. Critics may argue that such an ethical responsibility essentially denies them equal use of fundamental rights. Judicial dictums have made it abundantly clear that the right to freedom of association under Article 19(1)(c) is qualified. However, we must look at the overall picture. Lawyers are employed to help meet the ends of justice.

This is never to deny them the rights to voice their concerns. In fact, lawyers are encouraged to bring forth any grievances, personal or professional. It is only the medium here that becomes the subject-matter of contention. Had there been no other form of redressal and no alternate avenue to pursue, lawyers would have been well within their rights to come out. We must not forget that putting them on an ethical pedestal cannot be used to deny them rights other citizens take for granted. However, this is fortunately not the case in India. To foster mutual trust and deliberation

between the bar and the bench, it is essential that courts not be bullied into acceding. This is especially when a third-party, mostly clients, are caught in the crossfire.

## 2. Setting the Tone: Early Dictums

The Industrial Disputes Act of 1947 defines 'strike' under Section 2(q). It differentiates between legal and illegal strikes by setting down rules to be followed while declaring a strike (Section 22). A general prohibition on strikes has also been imposed if dispute resolution is ongoing (Section 23). Nonetheless, it allows for a strike provided there is complete compliance with the statutory requirements.[18] From these provisions, its legislative intent can be gleaned, which never contemplated strikes.[19] In addition to these, a Code of Ethics was framed after the passing of the Advocates Act of 1961 (specifically, the Preamble and Chapter II[20] of Part VI on "Rules Governing Advocates"). However, change has mainly been brought in through the public interest movement wherein constitutional provisions under Part III and Part IV were expansively interpreted to undergird court intervention.[21]

The court assumed the power to regulate the by conduct of lawyers and their assistants by framing rules in as early as 1960.[22] The court had excluded the right to strike from Part III even in its application to other professions. In this context, it is essential to note the observation about the

[18] Rath and Das, Supra note 5, at 252-3, 257.
[19] Sandeep S. Desai, 'Right to Strike: A Conceptual and Contextual Anathema', 47(2) Journal of the Indian Law Institute 228-9 (2005).
[20] *See* Rules I, II, 12, 15 and 24.
[21] These included right to life and liberty (Article 21), protecting workers from exploitation (Articles 23 and 24), emphasizing the importance of the Directive Principles of State Policy (Article 37), a string of worker rights (Articles 38, 41-43A) and even nutrition and public health (Article 47) (*see* Dhavan, Supra note 4, at 35).
[22] *Sant Ram, In re,* AIR 1960 SC 932.

scope of Part III rights made in *All India Bank Employees Association v. National Industries Tribunal*[23]. The question was whether the right to strike (in pursuance of collective bargaining) came under the freedom of association under Article 19(1)(c). Expanding the ambit of fundamental rights was distinguished from creating additional rights to reach the object of that particular right. The latter construction was expressly rejected, as this "series of ever-expanding concentric circles" would lead to an "almost grotesque result". Even though a liberal reading of the Constitution was used, it did not allow for the giving of a "unnatural and artificial meaning to the expressions used based on ideological considerations". It was observed that even on a liberal interpretation, this right of collective bargaining in the form of strike could not be recognized.

Rajeev Dhavan, to this limited point based on the decision, pointed out that Article 19(1)(c) had a limited scope. It was confined to the right to form of associations or unions to fulfill a lawful object. Moreover, Article 19(4) allowed for reasonable restrictions on this right.[24] Even so, the court was right when it said that the prohibition on strikes in protected industries under the Industrial Disputes Act of 1947 was a reasonable restriction [Article 19(1)(c)] on this collective bargaining right. No "guaranteed" right to strike was recognized, with "appropriate industrial legislation". Sadly, the court did not elaborate on how the validity of these laws could be challenged. It mentioned that these would be tested on the anvil of "totally different considerations" and not Article 19(4). Justice Ayyangar, in *Kameshwar Prasad v. State of Bihar*[25], tweaked the position a bit. While largely following the previous position, the right to demonstration (and not the right to strike) was protected under 'free speech and expression'. This

[23] (1962) 3 SCR 269.
[24] Dhavan, Supra note 4, at 39-40.
[25] (1962) Supp. 3 SCR 369.

was reaffirmed in *O.K. Ghosh v. E.X. Joseph*[26], with the slight variation that demonstrations in connection with strikes did not axiomatically imply that the party directly participated in the strike. Ultimately, the recognition of the right to strike not being covered by Part III was made in *Radhey Shyam Sharma v. Postmaster General*[27]. This string of judgments affirmed the position of non-recognition.

Moreover, in *Bar Council of Maharashtra v. M.V. Dabholkar*[28], the rules of professional conduct were highlighted. Lawyers were expected to protect the "integral bond" between lawyers and litigants. With legal practice being a "public utility of great implications", observance of norms was necessary to achieve immaculate scruples and preserve community confidence. These cannons, instead of being "rigid rules", had to be felt as a "collective conscience" by legal practitioners.

## 3. A Continuation

The above position was strongly affirmed in *Lt. Col. S.J. Chaudhary v. State (Delhi Administration)*[29] (Lt. Col. S.J. Chaudhary). Advocates had a professional duty, being the *loco parentis vis-à-vis* litigants.[30] Each advocate was duty-bound to attend every day of the case. Avoidance of this duty by engaging in strikes was unethical and constituted professional misconduct.

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[26] 1963 Supp (1) SCR 789.
[27] (1964) 7 SCR 403.
[28] AIR 1976 SC 242.
[29] (1984) 1 SCC 722.
[30] *Pandurang Dattatraya Khandekar v. Bar Council of Maharashtra, Bombay & Ors.*, AIR 1984 SC 110.

However, a minor concession was allowed by the Andhra Pradesh High Court, which discussed this stance in detail in *State of Andhra Pradesh, Hyderabad v. J. Venkataratnam*[31]. It adverted to the earlier decision in *Common Cause v. Union of India*[32], where the Bar Council of India made its position on strikes abundantly clear. It was against boycott by lawyers except in "rarest of rare cases involving the dignity and independence of the judiciary as well as of the bar". Even if it was carried out, it would be according to clearly laid down guidelines that aimed to keep it peaceful and not hassle litigants. Nonetheless, it relied on the writings of stalwarts of the legal profession, including the likes of K.K. Venugopal[33], P.P. Rao[34], H.M. Seervai[35] and Fali S. Nariman[36], all of whom criticized strikes by lawyers. Even R.D. Sharma wrote for *The Pioneer* (09.08.1994), in which he emphasized that courts belonged to the people too. Thus, the realization of the misery caused to litigants had to drive a revamp of the image of lawyers in the interests of "freedom, democracy and the rule of law". It would lead to the dereliction of the contractual and professional responsibilities.[37] The judgment of Justice Srinivasan *Madras Sugars Ltd. v. State of Tamil Nadu*[38] was also mentioned, where he condemned these boycotts. In the end, Justice D. Reddappa Reddi

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[31] 1997 SCC OnLine AP 219.

[32] (1995) 1 SCALE 6 (SC).

[33] K.K. Venugopal, 'The Legal Profession at the turn of the century', 1 *National Law School Journal* 121 (1989). He was of the view that it amounted to contempt of court.

[34] P.P. Rao, 'Strike by Professionals', XXIII(I) *Indian Advocate* (1991). He opined that it amounted to professional misconduct.

[35] H.M. Seervai, 'Lawyers', Strike and the Duty of the Supreme Court', XXIII(I) *Indian Advocate* (1991). He was outspoken in his criticism of this unbridled power to commit illegal conspiracy in the form of strikes. With the legal recourse available for grievance redressal, there was no reason to impede the administration of justice. This squarely fell within the domain of criminal contempt due its infringement of liberty. Such interference was opined to be a violation of the Constitution.

[36] Fali S. Nariman, 'Boycott – A Lawyer's Weapon', XVIII(1-2) *Indian Advocate* (1978). Such strikes led to an erosion of confidence and jeopardized the system. Such delays undermined the rule of law and subverted the Constitution by "holding justice to ransom".

[37] *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.*, AIR 1993 SC 1182.

[38] 1995-2 LW 932.

expressed the need to maintain the "honor" of the profession through "exemplary conduct". Lawyers were seen as "leading members of intelligentsia of society" and were required to behave responsibly to serve as models for the general public, since "ideal behavior" was "expected" of them.

Such abstinence was non-excusable and was clearly not protected under Articles 19 or 21, as held in *B.L. Wadehra v. State (N.C.T. of Delhi)*[39]. Such professional misconduct when holding a *vakalatnama* for his client breached the contract and trust towards the client. In *R.D. Saxena v. Balraj Prasad Sharma*[40], Justice R.P. Sethi mentioned the social duty that lawyers had with respect to their client. Their comportment had to be in line with their status as officers of the court. Further, they had to ensure that access to justice by litigants remains unimpeded. Reform within the profession was needed to strengthen the faith, confidence and belief that the common man had for the judiciary. Encouraging a volitional insulation, the aim would be "audit" these "indulgences" (that have been accommodated for so long) for "appropriate remedial measures", such that strikes are not countenanced and the advocate is held responsible for restitution with respect to the client who has suffered injury.[41]

Further, in *Ramon Services Pvt. Ltd. v. Subhash Kapoor*[42], the consequences of non-appearance by lawyers was spelt out. It was held that "law is no trade and briefs of the litigants not merchandise". Adjournments were purely due to the helplessness of not having the presence of a

[39] AIR 2000 Del 266.
[40] (2000) 7 SCC 264.
[41] Shantimal Jain, 'Of Advocates' Strike', *The Practical Lawyer: The Practical Legal Information Service* (May 13, 2006).
[42] (2001) 1 SCC 118.

counsel to decide the *lis* and was not to be viewed as a sign of sympathy. The client, for this inequitable action, was allowed to sue the lawyer and realize the costs from the advocate. After an opportunity of hearing, the lawyer would be held liable if the reason for disruption of court proceedings was strike-related. The pecuniary loss to the client due to the boycott of the court by advocates was a betrayal of confidence, as it was against the "principles of fair play and cannons of ethics". In a service-based profession, these were seen as the "antithesis of peace, prosperity and development". Abstinence by lawyers, being bound by statutes and by contract, would result in hampering the process for "consumers of justice". Furthermore, the court expressed its disapprobation of courts that tacitly sympathized with strikers. This inaction was seen as a dereliction towards the preservation of high legal traditions. Judges were beseeched to "rise from their slumber" to protect ethical values, failing which would amount to contempt. In pursuance of the above position and exercising its inherent powers under Section 482 of the Criminal Procedure Code of 1973, the Delhi High Court, in *IKM Investors Services Ltd. v. Kiranpal Kapoor*[43], held that (resulting in dismissal of a complaint) amounted to a breach of trust. The litigant was allowed to recoup the costs from the advocate.

Professional misconduct amounted to contempt of court in *Supreme Court Bar Association v. Union of India*[44]. It overruled the decision in *In Re: Vinay Chandra Misra*[45] to hold that power to debar was with the Bar Council and not the court.[46] In fact, in *Supreme Court Bar Association v. State of U.P.*[47], the Attorney General, directed by the court, consulted stakeholders and came up

[43] 2007 (97) DRJ 360.
[44] (1998) 4 SCC 409.
[45] (1995) 2 SCC 584.
[46] G. Geethisha, 'Disciplining the Lawyers: Law and Professional Ethics', *Cochin University Law Review* 170 (2003).
[47] Writ Petition No. 554/94.

with the suggestion of a Standing Committee to handle complaints. The very concept of a strike was found fault with in *T.K. Rangarajan v. Government of Tamil Nadu*[48]. Here, Justice Shah observed that there was consciously no fundamental right to strike. In case of any grievance, the aggrieved had to use the machinery provided, such as statutory provisions. It was observed that strikes were "mostly misused" and resulted in "chaos and total maladministration". He was of the view that it did more damage than good, the recipients of which was society. In *Bank of India v. T.S. Kelawala*[49], it was held that the legality of a strike was a question of fact that had to be decided based on the evidence presented. The court took this opportunity to implore workers to concentrate on their work and resort to the machinery provided in case of any grievance. Further, in *George Kurian v. State of Kerala*[50], the court observed that in the event that a strike took place, there would be no compulsion to participate through any force or coercion. In addition, the fundamental right of others to move would not be fettered, through means like obstruction of traffic.

## 4. The Final Position

As we see, traces of this overwhelming opinion had been expressed earlier. However, this unwavering position was confirmed for the legal profession as well by the Supreme Court in *Harish Uppal*. This dealt with the reconciliation of fundamental rights and the impact of decisions due to strikes. The prime causes of strikes by lawyers (seen as impermissible) was due to grievance with the statutes, judicial decisions or the administration in general. The basic argument was that lawyers were trying to negotiate with authorities who were not listening. The Attorney General

[48] (2003) 6 SCC 581.
[49] (1990) 4 SCC 744.
[50] (2005) 1 LLN 263 (Ker) (FB).

had seen that the legitimate objective of collective action was rendered futile when concerns were not heeded to. This was used to necessitate a substantial break in the provision of legal services by disruption to make them comply. Despite signaling that there were problems, the choice of emphasis was thus key. The court rightly held that this limited fundamental right of lawyers [including that of 'speech and expression under Article 19(1)(a)] ended when the rights of others were being infringed. No "strike", "boycott" or "token strike" was allowed, with all meetings from councils or associations related to this purpose to be ignored. It was clarified that lawyers had every right to discontinue the profession but had no right to abstain from appearing in court or hold on to court documents[51] (such as the *vakalatnama*[52]). In fact, subsequent decisions by High Courts across the country have held the view that a lawyer has an ethical obligation *vis-à-vis* the client.[53] The Bar Council of India Rules, 1975 were used to highlight the responsibilities entrusted upon advocates. In lieu of the "nobility and tradition of the legal profession", it was opined to be "below the dignity, honor and status" of advocates to "organize and participate in strikes". The fiduciary relationship of the lawyer and client was seen to be directly impacted by these strikes, given the frequency of these "unruly and unbecoming conduct". It was seen as an encumbrance to the

[51] In *Damodardass Agarwal & Ors. v. R. Badrilal & Ors.*, AIR 1987 Andhra Pradesh 254, it was held that if a lawyer holds papers of a client (as lien) for recovery of fees, the client could recover the losses from the lawyer for negligence of non-appearance owing to a strike.

[52] *See Emperor v. Rajani Kanta Bose*, ILR 1922 Cal 515. A pleader has no right to divest himself of the duty of representation (on a real or alleged grievance) without the leave of the court; and is required to apprise his client of this intent with a reasonable notice. This was followed in *Atul Chunder Ghose v. Lakshman Chunder Sen*, ILR (1909) 36 Cal 609. This was affirmed by the Supreme Court in Lt. Col. S.J. Chaudhary (n 27), where absenteeism in lieu of a strike was seen as amounting to professional misconduct, as the pleader is duty-bound to attend the trial through its entire course once the brief is accepted, as the client does not engage another counsel based on this trust.

[53] The Calcutta High Court took this position in *Tarini Mohan Barar*, AIR 1923 Cal 242. It held that non-cooperation amounted to dereliction of duty and was "high handed" and "unjustified". They could have made a representation to the District Judge or the High Court before deciding not to collectively appear before the Subordinate judge. The Punjab and Haryana High Court took this view in *S. Maharaj Baksh Singh v. Charan Kaur*, AIR 1987 P&H 213 (where it held that such abstinence was against the "manner and norms of this great and noble profession", and "reason" could be most effectively expressed only by "dignity wrapped in humility") and *Rajinder Singh v. Union of India*, (1993) 2 SLR 450 (where courts upheld the firm stance of continuing their functioning even if lawyers did not appear or in any manner, refused to cooperate). The Allahabad High Court, *vide* its decision on 22.07.1994, held that lawyers had no right to strike.

"administration of justice", including the "fundamental right of litigants for speedy trial[54] of their cases". It has been argued that this constituted a blanket prohibition on the right to strike. However, it must be clarified that the court only disapproved of this form of strike. It expressly stated that this was not an "acceptable mode of protest". In fact, they exhorted lawyers to adopt "other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interests of the litigant". From an ethical standpoint, lawyers were seen as paragons of rectitude, and could set an "example to other sections of the society in the matter of protest and agitations". Even a one-day exception to this was carved out, as the court stated that they would turn a "blind eye" for that day, on which a "strong protest" could be lodged to remonstrate. Reliance was placed on *Mahabir Pratap Singh v. Jacks Aviation (P) Ltd.*, (1999) 1 SCC 37[55], to hold that a strike or boycott was seen to be "*ex facie* bad in law".

It cited the B.L. Wadehra decision to note that the speedy trial of litigants was being impacted by non-appearance. The right under Article 19(1)(a) ended when the similar right of someone else was affected. The court could thus proceed with the matter in the event of non-appearance and were duty-bound not to be complicit in adjourning.

Enjoining the pursuance of other avenues, the court noted –

"*It must immediately be mentioned that one understands and sympathizes with the Bar wanting to vent their grievances. But as has been pointed out there are other methods e.g. giving press*

[54] *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81.

[55] In this case, "stonewalling", "browbeating" and "bullying methodology" was discouraged, since judicial function was to be protected from "boycotts or tactics of filibuster". The "apathy" on part of the High Court was also called out.

*statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any color arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. More importantly in many instances legal remedies are always available. A lawyer being part and parcel of the legal system is instrumental in upholding the rule of law. A person casts with the legal and moral obligation of upholding law can hardly be heard to say that he will take law in his own hands. It is therefore time that self-restraint be exercised.*"

The conclusion was that even for a one-day strike, the head of the Bar Association had to meet the judge, appraise him/her of the matter and let them decide if this was a legitimate reason. Judges were free to disagree, in the event of which the strike would be impermissible.

## 5. Broadening the Ambit of *Harish Uppal*

Since the definitive *Harish Uppal* verdict, High Courts have upheld its *ratio decidendi in toto* and expanded on certain aspects further. In *Om Prakash v. Murti Devi*[56], it was observed that once professional fees were charged, no provision or rule allowed for non-appearance due to strike. In *Shri Arunangshu Chakrabarty v. The A. & N. Administration and others*[57], it was hoped that strikes and boycotts would not take in this spirit of "self-restraint". Under Section 34 of the Advocates Act of 1961, High Courts were required to frame rules. Further, bar associations were to implement the resolution/s of the Bar Council of India[58]. In *Basabi Raichaudhary v. State of West Bengal &*

[56] 2007 SCC OnLine Del 1322.
[57] 2011 SCC OnLine Cal 2800.
[58] This was also seen in *Vishwanath Swami v. Bar Council of India & Ors.*, 2013 SCC OnLine Kar 4421.

*Ors.*[59], no penal action could be taken against any person who continued to work and ignored the call for strike/boycott pursuant to the resolution of the state Bar Council. In *In re Government of Andhra Pradesh and others*[60], it was decisively held that courts would react to injustice and not remain passive spectators to this 'forced closure' (*dies dominions non est juridicus*). It was seen that they caused "immeasurable injury" in dividing the bar through "violent scuffles". Closure of courts due to strike was thus illegal. In *O.P. Sharma v. High Court of Punjab and Haryana*[61], the ethical, value-based roles and duties were laid down in great detail. They had a relationship of trust towards their clients and had a role in society in terms of seeking justice. The Harish Uppal decision was affirmed in *In Re: In the Matter of Initiating Contempt Proceeding in Connection with the Obstruction of Court of Justice at Civil Court, Patna City, Patna v. Gopal Prasad Singh & Ors.*[62].

More recent decisions solidify this no-tolerance approach. In 2017, the Bombay High Court, in *Adv. Manoj Laxman Shirsat v. Bar Council of India & Anr.*[63], reiterated the Harish Uppal dictum to expect lawyers to abide by it and not abstain from work due to their roles and responsibilities and in the interests of justice. Similarly, in *Manoj Oswal v. State of Maharashtra & Ors.*[64], *suo moto* cognizance of a criminal contempt petition was taken on allegations of abstinence from work based on a resolution. There was a massive delay in disposal of cases due to strikes/boycotts, which was impacting bail proceedings or cases requesting *ad-interim* reliefs. The court strongly equated

[59] 2013 SCC OnLine Cal 11667.
[60] 2010 SCC OnLine AP 940.
[61] AIR 2011 SC 2101.
[62] 2014 SCC OnLine Pat 8041.
[63] 2017 SCC OnLine Bom 551.
[64] 2017 SCC OnLine Bom 8415.

these acts with both civil and criminal contempt. Members of the Kolhapur Bar Association had even mocked the funeral of the then Chief Justice, which was pointed out with disgust. Nonetheless, the court pardoned the lawyers pursuant to an apology. This could be equated with the decision of the Supreme Court in *Common Cause, A Registered Society & Ors. v. Union of India & Ors.*[65]. The court reiterated the legal position but took no action due to no repetition of the events a couple of years prior. Nonetheless, it was clarified that the Bar Council could take action against the lawyer/s or the association that conducted the strike.

In *Praveen Pandey v. State of M.P.*[66], the Madhya Pradesh High Court struck down the week-long protest issued by the state Bar Council as unconstitutional. It referred to *Arunava Ghosh & Ors. v. Bar Council of West Bengal and other*[67], which entrusted the state Bar Council with ensuring not just that the courts were a safe place for lawyers, but also that the administration of justice was not stymied. However, this power could not be "unbridled and uncontrolled" and had to be non-arbitrary and reasonable. Being statutory bodies under Article 12 of the Constitution, they could do nothing which was illegal or opposed to public policy, merely in the spirit of doing what they thought was necessary. They could not call upon lawyers to stop working under Section 6(1)(i) of the Advocates Act of 1961. This violated not only their right to practice under Section 14 of the Indian Bar Council Act of 1926 but also their fundamental right under Article 19(1)(g). Based on this precedent, it held that the state Bar Council, being a body-corporate under the Advocates Act of 1961, could not engage in impermissible acts of misconduct. Non-appearance was a clear case of misconduct by way of negligence, amounting to contempt of court. No statutory provision gave

[65] (2006) 9 SCC 295.
[66] 2018 (4) M.P.L.J.
[67] AIR 1996 Calcutta 331.

the Bar Council any power or jurisdiction to call for or compel abstinence. Resumption was ordered to ensure legal assistance to all those in urgent need of it.

The Calcutta High Court, in *Sanjay Agarwal v. State of West Bengal*[68], came out strongly against cessation of work by lawyers that had resulted in a delay in witness examination. Referring to *Hussain v. Union of India*[69], it took stringent measures in response to suspension of work after condolence references that resulted in the obstruction of justice. Hardships to litigants due to non-recording of evidence unnecessarily protracted the trial length. They issued a show-cause notice to the heads of the concerned Bar Associations. In *Aijul Gharami, In re*[70], it also cited *Krishnakant Tamrakar v. State of M.P.*[71] (where frequent strikes obstructed justice-delivery and was thus seen as illegal due to the "irreversible damage" caused) to support its decision of police investigation for the cognizable offence committed by the Bar Association office-bearers, since every resolution that hindered access to justice violated the right to speedy trial (as per a reasonable, fair and just procedure) under Articles 14 and 21 of the Constitution, and amounted to contempt.

The Supreme Court has, in turn, cemented this position in a string of judgments. In *Mahipal Singh Rana v. State of U.P.*[72], the Supreme Court called for restructuring of the Bar Council of India in line with other regulatory bodies in professions. In addition to calling the Law Commission to prepare a report on the same, it also constituted a Sub-Committee on 'Strikes, Boycotts &

[68] 2018 SCC OnLine Cal 16572.
[69] (2017) 5 SCC 702.
[70] 2019 SCC OnLine Cal 5529.
[71] (2018) 17 SCC 27.
[72] (2016) 8 SCC 335.

Abstaining from Court Works'. Additionally, the Union Ministry of Law and Justice was asked to present at least quarterly reports on proposals of related to containment of strikes/boycotts.

In *R. Muthukrishnan v. Registrar General of the High Court of Judicature at Madras*[73] . Interestingly, it struck down the amendment to Rules 14A-D in the Rules of High Court of Madras, 1970 (which debarred an advocate from appearing in court). It clarified that the "court had overstretched and exceeded its powers" by usurping the autonomy of the bar in disciplinary matters. A "sycophant and fearful bar" was not seen to be in the spirit of "fair administration of justice". A strike is permissible only if "democracy is in danger" or if "the entire judicial system is at stake". The bar was seen as the "spokesperson of the judiciary since Judges do not speak". Advocates had to ensure that the reputation of honest judges are not tarnished, and that corrupt judges are brought under the scanner. The narrow exception to the general rule of prohibition was if the "dignity, integrity and independence of the Bar and judiciary" in the one-day window. However, it would ordinarily amount to contempt. It repeated how courts would frame rules if there was no exercise of "self-restraint" by counsels. Nonetheless, the independence of the bar was protected.

In *PLR Projects Pvt Ltd. v. Mahanadi Coalfields Ltd & Ors.*[74], there were strikes in the form of abstaining from work over the collegium clearing some names and not others, due to which the High Court and many District Courts had been brought to a standstill. Opining that it amounted to contempt, notices were issued to the Chairman, Bar Council of India (to apprise the court of the

[73] 2019 SCC OnLine SC 105.
[74] (2019) 10 SCC 306.

steps to be taken apropos to the conduct of advocates) as well as the heads of the state Bar Council and Bar Association.

Lastly, in the 2020 case of *District Bar Association, Dehradun through its Secretary v. Ishwar Shandilya & Ors.*[75], strikes/boycotts by lawyers on working Saturday's were seen as an obstruction to the access to justice. No right of freedom of speech and expression under Article 19(1)(a) could be exercised at the cost of litigants and justice-delivery. Notices were issued to the Bar Council of India and all state Bar Councils (who the BCI could direct under Section 48 of the Advocates Act of 1961) to provide "concrete suggestions" to solve the problem of strikes/boycotts in order to regulate standards and etiquette of lawyers, a disregard of which would amount to contempt.

Equating non-appearance with breach of professional duty seems to be reasonable[76], given the motive of the strike was to delay a criminal trial. In fact, the court not hearing the matter due to non-appearance by lawyers would mean that the court itself had become "privy to the strike".[77] The court thus was duty-bound to work during court hours and not yield to browbeating tactics. Such a boycott could not conceivably entail the right to withhold case documents, as the party had to be free to engage another counsel in such events.[78]

In fact, the decision in *Common Cause v. Union of India*[79] represents the forbearance the court has chosen to show in dealing with a situation of 1994 (where lawyers refused to heed to the decision

[75] 2020 SCC OnLine SC 244.
[76] Lt. Col. S.J. Chaudhary (n 27)
[77] *K. John Koshy & Ors. v. Dr. Tarakeshwar Prasad Shaw* (Koshy), (1998) 8 SCC 624.
[78] *Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.*, (1999) 1 SCC 37.
[79] AIR 2005 SC 4442.

not to strike). The court held that post the Harish Uppal decision, there had not been any major incidents. Hence, there was no need to pass any further order and only chose to reiterate the settled position. Nonetheless, there is a repetition of the anxieties that were present in Harish Uppal, showing that problems have not gone away.

## 6. Problems with Strikes by Lawyers: The Ethical Dilemma

The 230th Report of the Law Commission of India[80] had recommended that lawyers abide by the Harish Uppal dictum and not resort to strikes. The 266th Report of the Law Commission of India[81] attributed pendency and delays to lawyer's strikes by presenting state-wise statistics, particularly when most of them had "no relevance to the working of the courts" and "hardly for any justifiable reasons". It noted the need for a "compelling circumstance" to justify strikes. The Advocates (Amendment) Act, 2017 recommended the setting up of grievance redressal committees at the district and state level. The High Courts, under Article 235 of the Constitution (which gives it control over subordinate courts), could issue a circular for this purpose.

Justice Verma noted that approximately 10,000 cases would be pushed back by a minimum of 4 months with each strike. [82] In a lawyer's strike in 2004, almost 35,000 cases were adjourned, for a strike ironically in support of the writ petition challenging the right to go on strike. Most of these strikes were not even related to court functioning. Most recently, lawyer's went on strike against the Advocates (Amendment) Bill, 2017 that prohibited strikes by lawyers. Valuable time of the

[80] Law Commission of India, *Reforms in the Judiciary: Some Suggestions*, (Report No.230, August 2009), 7, 37.
[81] Law Commission of India, *The Advocates Act: Regulation of the Legal Profession*, (Report No. 266, March 2017), 13-14.
[82] Justice J.S. Verma, 'Justice Shankar Prasad Bhargav Memorial Lecture: The Role of the Bar in Preservation of the Rule of Law', 1 *Supreme Court Cases Journal* J-15 (1995(.

court is wasted on strikes for "mundane reasons". Most of these are in wanton disregard of Rule 15[83] of the Bar Council of India Rules on Professional Standards and Etiquette. Given the "peculiar nature" of the profession, the ethical duty is similar to that of a medical professional. This duty is amplified in criminal cases where individual liberty is at stake, say final arguments in a *habeas corpus* petition. Most of the reasons for strikes have been labelled "trivial" by the President of the Supreme Court Bar Association himself.[84] Moreover, a host of cases have seen *ex parte* orders being passed, with the litigant suffering for subsequent applications for recalling of orders (as seen in *Nawal Kishore & Sons Jewellers v. CIT*[85]).[86]

The one-day exception for rare cases is not simply a conferment that has been provided. We must see this grant in the Indian context. Our experience with strikes shows a grim picture and does not make a good case for optimism towards future boycotts.

The 266th Law Commission Report noted the following unnecessary situations that led to strikes –

> "*bomb blast in Pakistan school, amendments to Sri Lanka's Constitution, interstate river water disputes, attack on/murder of advocate, earthquake in Nepal, to condole the death of near relatives, to show solidarity to advocates of other State Bar Associations, moral support to*

[83] It places the responsibility upon every lawyer to "fearlessly uphold the interest of his client by all fair and honorable means without regard to any unpleasant consequences to himself or any other".
[84] Khagesh Gautam, 'Judicial Delays, Mounting Arrears and Lawyers' Strikes, 52(32) *Economic and Political Weekly* 23-5 (2017).
[85] (2011) 131 ITD 480.
[86] Marmik Shah and Agrima Awasthi, 'Lawyers' Strike in India: Unconstitutional/anti-competitive?', 5(2) *GNLU Journal of Law Development and Politics* 88 (2015).

*movements by social activists, heavy rains, or on some religious occasions such as shraadh, Agrasen Jayanti, etc. or even for kavi sammelan.*"

It also expressed its concern over the "astonishing" number of working days of subordinate courts in states such as Tamil Nadu[87] and Uttar Pradesh[88].[89] This represents a colossal failure rising from misuse of these powers.

Despite the factual on-ground reality that the 266th Law Commission Report exposed, not much has changed since it was published. Many of these strikes are not even for just causes. For a separate bench of a High Court, there are scheduled strikes on set days every month on a regular basis. Other ludicrous excuses include strikes due to the unfortunate death of a clerk and even for due to the passing away of a dog in the court compound. This is not to undermine the loss itself, but only to point out that strikes are not the remedy. In a pendency-heavy country, this is done mostly by lawyers who can afford to abstain from working due to deficient amount of work in the first place. Such besieging results in the complete paralysis of the justice dispensation system.[90] However, these lead to inordinate delays which add pressure on our burdened judicial system.[91]

[87] They worked for an average of 220 days per year. Between 2011 and 2016, courts in Kacheepuram were non-functional for 687 days. Similar trends were seen in Kanyakumari (585), Madurai (577), Cuddalore (461) and Sivaganga (408).
[88] The situation is even more severe here. Courts function for only 265 days in a year, despite a staggering 2.7 crore pending cases.
[89] Krishnadas Rajagopal, 'Why lawyers go on strike', The Hindu (March 27, 2017), available at https://www.thehindu.com/news/national/why-lawyers-go-on-strike/article17668482.ece
[90] M. Jagannadha Rao, 'Law Students, Lawyers and Judges in the New Millenium, 8 *Supreme Court Cases Journal* J-6-7 (2000).
[91] Jagadeesh Chandra T.G., 'Delays in Subordinate Judiciary as an Impediment in Materializing the Right to Speedy Justice – A Review', 7(2) *Gujarat Journal of Law Development and Politics* 63 (2017).

Even if courts go on with criminal appeals (Sections 385 and 386 of the Criminal Procedure Code, 1973) in the absence of a lawyer, clients are unable to present their case in the best possible way owing to a lack of training or expertise.[92] Advocates are blamed for negligence for this very reason.[93] Many are coerced into participating, with the threat of disqualification from the bar for any omission.[94] Dr. N.R. Madhava Menon wrote about how successful senior advocates were apathetic to the grievances of other lawyers, which he described as the "tragedy of the Indian bar".[95]

Lawyers have been entrusted with the task of leading the masses in reforming the current position.[96] These are no longer one-off incidents and mar the image of the profession. Between February 2015 and 2016, around 26 strikes on a range of issues took place. Insufficient oversight of state Bar Councils and the Bar Council of India is a major cause. While the latter frames the rules of administration, it is the former which initiates disciplinary action for malpractices. However, incidents of violence go unpunished as the members of these councils have to solicit votes from these very errant lawyers. Moreover, Bar Associations (rather than Bar Councils) with unlimited memberships largely control the affairs of advocates and are often complicit in strikes and boycotts. Given that self-regulation has been a monumental failure, it points to a systemic failure. With the increase in the number of lawyers, it remains disorganized and fragmented and is largely skewed in favor of a few senior advocates and firms. It thus functions on a "winner-takes-all model", where the reward of the profession that are accrued later on are at the expense of those

[92] Shah and Awasthi, Supra note 83, at 89.
[93] K. Gururaja Chari, *Advocacy and Professional Ethics*, (Wadhwa and Co., 2005).
[94] Shah and Awasthi, Supra note 83, at 93.
[95] Dr. N.R. Madhava Menon, 'Raising the Bar for the Legal Profession', The Hindu, (September 15, 2012).
[96] I. Mallikarjuna Sharma, 'Right to Strike', 46(4) *Journal of the Indian Law Institute* 533 (2004).

who do not succeed. The "dim prospects" of the large chunk of lawyers only fuels "lumpen elements". Serious reform of this profession is needed.[97] Although Bar Councils should discuss issues that lead to boycotts in order to protect the rights of litigants[98], the aforementioned instances raise doubts over whether the profession continues to be noble or not.

Justice Banumathi condemned the refusal to attend court by a lawyer (holding a *vakalat*) due to a strike, which she saw as "unprofessional and unbecoming" of a lawyer. The advocate would be personally liable for costs owing to non-appearance. Only in exceptional cases would this be allowed, and subject to the permission of the Chief Justice. In any case, there was no obligation to adjourn matters on this count. Nonetheless, strikes were seen as a hindrance to "smooth" judicial functioning and "pervaded" the system. Lawyers were thus entreated to "rise to the occasion" and uphold the dignity of the courts and the majesty of the law".[99]

## 7. Need for Reform

Lawyers are exasperated. This cannot be denied. Rather than simply blaming them for creating encumbrances, we must understand the stultifying experiences they encounter. This is not to deviate from the settled position of the adverse effects. Even so, weighing their problems against the scales of ethics is important. We must empathize with why lawyers go on strike, provided the

[97] Alok Prasanna Kumar, 'Flailing and Failing at Self-Regulation: The Indian Legal Profession', 51(12) *Law and Society* 10-11 (2016).

[98] Pana Chand Jain, 'Lawyers and the Boycott of Courts', 5 *Supreme Court Cases Journal* J-26 (1995)

[99] Justice R. Banumathi, '"Socio-Economic Revolution" Agenda of the Constitution of India: The Role of Law Colleges and Judicial Academies', Seminar at National Judicial Academy, Bhopal, 3 *LW (JS)* 13, 18-9 (June 12-13, 2010).

reasons are right. It must be a collaborative reform approach, as opposed to an adversarial one. The key is to differentiate real issues from dilatory ones to move forward.

Those resorting to strikes face financial precarities during this period. They are not covered by insurance, and no trade union covers their expenses. With an overloaded system, there was an estimated pendency of around 1.3 lakh cases at the close of the 20th century. With the added wait once a case climbs the judicial ladder of appeal and languishes there, the time-period from a mere reference to an order of the Supreme Court was approximated to 3-4 years.[100] To reduce pendency of cases[101], prohibition of strikes is a significant move.

Another problem is the chasm between government and private lawyers, with the latter being termed as the "orphans of legal ethics". With ambiguity regarding their role, official codes also do not address their situation and treat them at par with private lawyers, despite the disparity. Their predicaments need to be re-evaluated in lieu of their differences. As Charles Fried puts in, lawyers who are ethical are considered to be "special purpose friends" to their client/s.[102] Keeping in mind the traditional duties and responsibilities of a lawyer in an adversarial system, government lawyers get lesser returns for work which they are expected to discharge even more zealously than private lawyers. An overhaul of the system is required to place them on the same footing. Democratic society is also ethically behooved with advocating for this parity.[103]

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[100] Dhavan, Supra note 4, at 55-7.

[101] Rahul Hemrajani and Himanshu Agarwal, 'A temporal analysis of the Supreme Court of India's Workload', 3(2) *Indian Law Review* 141 (2019).

[102] Charles Fried, 'Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation', 85 *Yale Law Journal*, 1060 (1976).

[103] Allan C. Hutchinson, ''In the Public interest': The Responsibilities and Rights of Government Lawyers', 10(7) *German Law Journal* 981-1000 (2009).

Moreover, the courts have not come to their rescue to the extent expected. Mass dismissals were struck down and the employees were reinstated in *Swadeshi Industries Ltd. v. Its Workmen*[104]. However, the court failed to deal with the draconian statute that was being employed to suppress worker rights. An example is the alleged arbitrary detention of the President of the Kashmir Bar Association under the draconian Public Safety Act of 1978. The response of the lawyers was commendable in certain respects. They peacefully marched in support of the writ petition challenging this detention. Their responses have been within the legal framework and have included filing petitions, initiating independent investigations, creating local awareness groups and creating awareness. This has significantly helped influences the responses by civil society. However, they also staged a strike and abstained from working (except for human rights cases). But for this minor aberration, they serve as an example of how lawyers can advocate their concerns based on local leadership and without being dictated by political parties.[105]

When we talk of mere stalling instances, another instance in Jammu and Kashmir shows this recurrent blithe disregard. A bench of Chief Justice Gita Mittal and Justice Rajesh Bindal came down heavily on a 43-day strike. It was seen not just as an infringement of the Jammu and Kashmir Advocates (Regulation of Practice in the High Court and Subordinate Courts) Rules, 2003 but also a complete disregard for the law laid down by the Supreme Court. This *suo moto* cognizance of two public interest litigations was taken to penalize those who remained absent due to the strike and prevented others (other lawyers and clients) from entering the court premises to obstruct the

[104] (1960) 2 LLJ 78.
[105] Haley Duschinski and Bruce Hoffman, 'On the frontlines of the law: Legal advocacy and political protest by lawyers in contested Kashmir', 27(5) *Anthropology Today* 8-12 (2011).

functioning of courts. The central armed police force had to be brought in for all courts, given the incapacity of the local state forces. This was in the aftermath of suicide attack threats on the courts were made by putting posters on the walls of the premises. Given that the transfer of land registration powers from one authority (the idea of moving the High Court to a forest area was retracted) was the root issue, the longevity of the boycott was in no way commensurate with the severity of the demand.[106]

The move toward settlement of differences is ideally the correct path forward. Nonetheless, it is fraught with ineffectiveness. More so, it is crucial to strike at the heart of the concept itself. Justice Sawant cautioned against the frequent use of strikes due to rightful fears of "lawlessness, anarchy and chaos" in *Syndicate Bank v. K. Umesh Nayak*[107]. It held that it must be used only as a last resort as it impacted society as a whole. With the legal machinery was in place, it was to be used "sparingly" and to address "urgent and pressing grievances". Otherwise, there would be misuse of strength in numbers to compel employers to give into all demands.

## 8. Glaring Incidents of Misuse

In *Court of its Own Motion v. B.D. Kaushik*[108], the outrageous conduct of a group of lawyers was deprecated. They entered courtrooms at regular court hours, stood up on chairs and shouted slogans against judges, affecting the litigants and threatening judges through vituperative rants. *Suo moto* cognizance under Article 215 of the Constitution was taken to express their disapproval of grave

[106] Pushp Saraf, 'Lawyers' Strike: A Wrap on the Knuckles', India Legal (December 21, 2019), available at https://www.indialegallive.com/constitutional-law-news/courts-news/lawyers-strike-a-rap-on-the-knuckles-79417.
[107] LLJ 1994 (2) S.C. 836-849.
[108] (1991) 4 Del Law 316.

contempt by officers of the court. The egregious conduct of lawyers in *Government of A.P., In re*[109] witnessed forcibly entered courtrooms shouting slogans and disrupted court decorum and the ongoing proceedings. These acts of vandalism to create panic cannot be tolerated. The strike by lawyers in the Rajasthan High Court also lasted for more than two months.[110]

The agitation ensuing from the initial handcuffing of an advocate at the District court at Tis Hazari in New Delhi shows how strikes can convulse the entire justice system. Despite a flagrant flouting of legal procedures and the lathi-charge by the police, the situation quickly escalated and was uncontrollable soon after. With the Supreme Court Bar Association joining in, the strike became counter-productive. In a separate incident around that time, thousands of workers with alleged political affiliations party came in and beat up the lawyers. This led to the lawyers announcing an indefinite strike, which eventually did not materialize. Such instances are particularly injurious for litigants who approached the court.[111] Another striking incident occurred more recently. Lawyers' clashed with the police in the Tis Hazari District Court over a parking dispute, going on strike for 11 long days. [112]

Another incident that is noteworthy in this regard was the events following the arrest of a young lawyer. Instead of resorting to legal remedies, lawyers abstained from working for months *en masse*, bringing mofussil courts to an abrupt halt. Under the Commission of Inquiry Act of 1952, the Wadhwa Committee Report (1990) was submitted. These represent instances of blatant non-

[109] (2011) 1 ALT 534.
[110] Shah and Awasthi, Supra note 83, at 87-8.
[111] Anil Nauriya, 'Agitation by Advocates: Meaning and Purpose', 23(13) *Economic and Political Weekly*, 623-626 (1988).
[112] 'After 11 days, lawyers call off their strike', The Hindu (November 16, 2019), available at https://www.thehindu.com/news/cities/Delhi/after-11-days-lawyers-call-off-their-strike/article29987738.ece.

fulfillment of contractual obligations (to the client) which affects the quality of justice. It is suggested that calling out lawyers for non-appearance, dismissing the suit, rejecting restoration applications and imposing financial costs on the lawyer will act as a deterrent.[113] However, the process of justice delivery is detrimentally impacted in the process.

As Sushant Chandra points out, lawyers in Jodhpur[114] and Meerut[115] resorted to strikes over the creation of special benches (in Jaipur and Allahabad respectively). Most of them go on strike simply because it is the most "convenient" way of getting their voices heard. Although they were aware of the legal prohibition, most of them did not know of the punishment. It becomes clear that lawyers and judges view strikes very differently, with the former being largely "insensitive" to the needs of their client and do not appreciate the objective of expeditious justice. This leads to a case of a "lack of integrity" of members of the bar towards legal ethics.[116]

A grave situation arises when the *locus* of the discomfort is with the judges itself. A clear double-standard was also seen by the bench, when 25 judges of the Punjab and Haryana High Court went on a casual one-day leave. In response to a public interest litigation, they conveniently brushed the contentions aside by saying that the ban on strikes was in applicable to judicial functionaries holding constitutional posts.[117]

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[113] J.K. Mittal, 'Legal Profession: Some Reflections', 33(2) *Journal of the Indian Law Institute* v-vii (1991).
[114] 'Jodhpur Lawyers Protest Demand for HC Bench in Udaipur,' The Times of India (August 15, 2009), available at http://timesofindia.indiatimes.com/city/jaipur/Jodhpur-lawyers-protest-demandfor-HC-Bench-in-Udaipur/articleshow/4895325.cms.
[115] 'Can the SC Do Anything about Frequent Strikes by Lawyers?', Mint, October 6, 2015 (Feb. 20, 2017), available at http://www.livemint.com/Politics/DIQyJ9qcsdrC9k99DDO0VJ/Can-the-SC-do-anythingabout-frequent-strikes-by-lawyers.html.
[116] Sushant Chandra, 'Indian Regulations on Ethics and their Impact on Court Case Backlogs', 4(1) *BRICS Law Journal* 77-79, 83 (2017).
[117] Times of India – Bhubhaneshwar National (Wednesday, July 28, 2004) 7.

Chief Justice Khare expressed his umbrage over this "trade unionism" that would cause "irreparable damage" to the entire legal profession.[118] While the court dismissed the petition filed by a Kerala-based NGO seeking a review of the decision, a subsequent petition filed by the All India Trade Union Congress (Andhra Pradesh unit) is pending.[119]

Judicial decisions have rightly stated that despite their role, they could never be conferred the importance of a 'right'. Since it denotes the stoppage of work, it violates the employment dynamic and also negatively effects production. In extreme cases, it could lead to the employees browbeating employers into accepting all their demands by the threat of strike. In theory, labor legislations have obviated the very need for a strike by regulating the relationship. In a sense, they have become archaic. They emerged mainly as a reaction to the blithe disregard by employers and have since become obsolete. However, the affiliation of trade unions with political parties has given the former considerable clout. [120] There has to be mutual respect and understanding between members of the bar and bench, being the two arms of the judicial machinery. It is not just a business or trade but is an engagement of public service. For this reason, strikes or boycotts on the basis of a conditional Article 19 is the "antithesis of practice" that amounts to "professional misconduct". The relationship of lawyers with the client emanates from a position of trust due to their status. Proper discharge of this contractual responsibility is thus essential, since it impacts not just the

[118] Deccan Herald, (27.7.2004) 6.
[119] Rath and Das, Supra note 5, at 258.
[120] Desai, Supra note 17, at 225, 227, 233-4.

client, but society at large.[121] A higher level of rectitude is expected of lawyers to sustain confidence in the courts and expectation from the courts.[122]

## 9. Conclusion

Justice V.R. Krishna Iyer had famously remarked – "Law, without lawyer, loses its locomotion. Lawyer without law, misses its function"[123].[124] In the concurring opinion in the Harish Uppal dictum, Justice M.B. Shah and Justice Dharmadhikari, while agreeing with the prohibition, called for "curing" the "root cause" for the "malady". They acknowledged that this course of action is taken since the administration has "deaf ears" to the problems and difficulties faced by lawyers.

The ethical standards of the legal profession have been repeatedly emphasized by the courts.[125] Members of the bar can play a beneficial role by propelling social reform in furtherance of a legislation. They can also engineer movements towards creating unions and groups for advancement of rights. Thus, they can contribute as social change agents. Strikes play a counter-productive role and do not help solve the embedded problem of maladministration. Their conduct can thus be reviewed by the Supreme Court under Article 145 of the Constitution.

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[121] Jain, Supra note 95, at J-23-24, 26

[122] *U.P. Sales Tax Service Association v. Taxation Bar Association*, (1995) 5 SCC 716. *Also see* the Koshy (n 74) and *Koluttumottil Razak v. State of Kerala*, (2000) 4 SCC 465

[123] Justice V.R. Krishna Iyer, *Law, Lawyers and Justice*, (D.K. Publishers Distributors, 1989).

[124] Justice M.Y. Eqbal, *Adjournments: Duty, Responsibility and Accountability of Courts/Lawyers*, (2011) 4 *LW (JS)* 37, 44.

[125] *Ministry of Information and Broadcasting, In re.*, (1995) 3 SCC 619. *Also see R.K. Anand v. Delhi High Court*, (2009) 8 SCC 106.

In such a highly charged environment, employing the principles of civil disobedience (deliberate and wanton contravention of a law to arouse the conscience of the public)[126] would be highly unethical. Dr. B.R. Ambedkar called for the usage of constitutional methods and expressed his disapproval of civil disobedience".[127] Even Justice Krishna Iyer was circumspect about its use, calling for its restricted use in a way that was legal. He went on to attribute blame to its advocates for any "violent deviances and improper evasions" that were inevitable.[128] Lira Goswami described it as a form of "dictatorship".[129]

Lawyers are seen as professionals "pursuing a learned art as a common calling in the spirit of public service" as their "primary purpose". On the other side, judges too have a "reciprocal duty to perform". The bar and the bench are "two arms of the same machinery" that must work "harmoniously".[130] However, strikes have led to devastating episodes that have resulted in the annihilation of fundamental rights of others, thereby serving as the basis for this prohibition.[131] Such inefficiency due to violence and troubles only adds to the existing problem of pendency. Moreover, these associations try to take undue advantage of the system and hector it into conceding to their demands by threatening disruption.

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[126] K.C. Sunny, 'Right to Civil Disobedience: Is it Justification for Strike by Government Servants', 50(4) *Journal of the Indian Law Institute* 692 (2008).
[127] 11 Constituent Assembly Debates (November 25, 1949)
[128] V.R. Krishna Iyer, *Jurisprudence and Jurisconscience a la Gandhi*, 47 (Gandhi Book House, 1976). *Also see* V.R. Krishna Iyer, *Human Rights and the Law*, Vedpal Law House (1984).
[129] Lira Goswami, 'Legal Obligations and the Limits of Civil Disobedience', 29 J*ournal of the Indian Law Institute* 164, 178-180 (1987).
[130] Jain, Supra note 95, at J-23-24.
[131] Desai, Supra note 17, at 232.

Trust and confidence in the judiciary is low due to these incidents having gone by without any punishment.[132] Many lawyers may not even agree to such strikes/boycotts but stay silent as they prefer not to fall out with those who organize these strikes. Resistance is also met with intimidation and violent behavior. Only those who convene strikes are benefitted as they are able to consolidate power. The very institution where demands and concerns are voiced is held to ransom. It leads to the erosion of trust from the ordinary legal recourse.[133] A moral obligation is violated with strikes and boycotts, which disillusions litigants and makes them question the court apparatus. This concern was also echoed *in Syed Gulzar Hussain v. Dewan Syed Ale Ramul Ali Khan*[134].

The courts have recognized the 'right to protest' but not through the medium of strikes and boycotts. Non-coercive airing of demands keeping the judicial workload in mind will help assuage concerns about the judiciary. Reasonable restrictions on the constitutional freedom of association is perfectly legitimate. For the preservation of judicial independence, it is essential for lawyers to come to the aid of judges, who face immense pressure. Having said that, the lacunae in the existing system should be rightfully questioned and criticism. However, a moral code of conduct, apart from the legal system in place, is crucial for this instrument of justice to be free of the bar-bench conflict and operate smoothly.[135] A bench of Justice Arun Mishra and Kurian Joseph asked the Bar Council and Bar Associations to help the court in fostering an environment of "self-discipline".

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[132] Pallavi Mohpal, 'Problems with the Advocates (Amendment) Bill, 2017', 6(6) *International Journal of Science and Research* 2066-7 (2017).

[133] Sriram Panchu, 'When lawyers stay away from courts', The Hindu (June 19, 2013), available at https://www.thehindu.com/opinion/op-ed/when-lawyers-stay-away-from-courts/article4827463.ece.

[134] (2014) 10 SCC 825.

[135] Geethisha, Supra note 44, at 214-5, 221-3

The concerned stakeholders were implored to come together and evolve a mechanism to tackle this problem.[136]

[136] 'Lawyers don't have the right to go on strike: SC', Times of India (November 28, 2015), available at https://timesofindia.indiatimes.com/india/Lawyers-dont-have-the-right-to-go-on-strike-SC/articleshow/49955588.cms.