

Legal profession and strikes: A study on causes and consequences of lawyer's strike in India

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Abstract: *The present study is about the increasing strikes undertaken by the lawyers and advocates of India. These strikes are taking place in almost each and every part of the country. In the study it was revealed that the lawyers of India are time and again facing violence hence undertaking strike action as a means of protest but many a times strike action are undertaken for useless and absurd reason. This have contributed to delay in legal proceedings of the court. Therefore, Supreme court and BCI are working to minimize these strike actions and move towards smooth functioning of the court.*

Key Words: *violence, incident, protest, justice.*

1. INTRODUCTION:

Strike action has been used by professionals and workers time and again in India to show their grievances, for pressurizing the employers and the government to fulfill their demands. In recent years personnel of legal profession started using the mechanism of strikes in order to protest against the violence taking place toward the lawyers. But, the other side of the coin is that these strikes by the lawyers brings a halt in the legal proceedings and workings of the court which usually have serious consequences.

2. LITERATURE REVIEW: Books like 'The Indian Constitution : Cornerstone of a Nation' by G. Austin and 'Introduction to the Constitution of India' by D.Basu are some of the important books which provides information about the rights and freedom guaranteed to the Indian citizen by the constitution of the country. The article 'Essential Services. Workers' Freedom, and Distributive Justice' by Cristian Perez Munoz provides information about the essential services and the impact of strike by the workers of such services on online articles like 'Bar council tells SC it has called meeting to frame rules for curtailing strikes by lawyers', 'Those who live by the law, should keep the law', 'Murders in Court : Lawyers strike in Jharkhand Today', 'Odisha Lawyers call off strike after 78 days, He resumes duties' are the articles which provides information about the violence that took place against the lawyers in India in recent years.

3. BACKGROUND SOURCES: There are articles published in websites which provides useful information and news to formulate an idea about the growing strikes in India. Articles like ' Bar Council tells SC it has called meeting to frame rules for curtailing strikes by lawyers' available in www.newindianexpress.com, 'Those who live by the law, should keep the law' by E.M. Madhar, 'Murder in Court: Lawyers Strike in Jharkhand Today' available in www.ndtv.com, 'Odisha lawyers call off strike after 78 days available in Indianexpress.com, 'Lawyers' strike in West Bengal : SC terms situation 'extraordinary' available in timesofindia.com discusses certain important aspects of the lawyers strike in India, Judgement given by the Supreme Court and the actions taken by the Bar Council to curtail the strike actions by the lawyers.

4. METHOD: Analytical methodology has been used to complete the work. In this study internet has been used as the main source for collecting relevant information.

5. DISCUSSION: In the year 2016, JMM leader Upendra Singh, who once unsuccessfully contested the assembly election west seat was murdered by a group of assailants. This incident occurred in the firing that took place on the second floor of the bar association of Jamshedpur. Bar association of Jamshedpur observed the strike after its member escaped this indiscriminate firing. In solidarity to its local unit Bar Association of Jharkhand also observed a pen down strike demanding adequate security to lawyers as well as for the court premises following the killing of JMM leaders. ("Murder in Court", 2016) The bar association even once decided to continue the strike for indefinite period that is until their demands of installation of CCTV cameras, metal detector in the Bar Association Building and

intensified checking of visitors including lawyers were fulfilled. The members held a meeting with Deputy Commissioner Amit Kumar, senior superintendent of police Anoop T Mathew and sub-divisional officer Suraj Kumar in this regard. Finally, the strike was withdrawn as the demands of the lawyers were fulfilled. (ibid) However, this strike action by the lawyers have seriously hampered the workings of the court, as the president of Bar Association of Jamshedpur, Ratim N Das reported that the court's functioning was broadly affected due to the strike. (ibid) In June, 2018 lawyers abstain from work in order to show protest against substandard law and order situation in Delhi. ("Lawyers Abstain from Work", 2018) An attack was done on the residence of Shahdara Bar Association president Promod Nagar in Bhajanpura in Northeast Delhi. Advocate Jaiveer Chauhan, Secretary- general of coordination committee of Delhi Bar Association, upheld the opinion that this incident have raised question of the safety and security of the lawyers as Promod Nagar's house was attacked with stones and gun shots by forty-fifty person in retaliation to his request to four drunk persons not to make noise outside his residence at late night. Hence, the lawyers took to strike and demanded actions against the culprits. The judicial work at Patiala house, TizHazari, Saket, Rohini, Karkardooma and Dwarka was badly affected. (ibid) Another strike took place in Odisha on august 2018, lawyer Debi Prasad Pattnaik was beaten up in public by policemen following an argument. This incident took place in Cuttack. Hence, the lawyers across Odisha began a protest that brought a halt in court's works. They demanded that the policemen should be arrested under IPC section 307. C R Das, Odisha high court judge has been monitoring the issue. The strike was called off only after the policemen who allegedly assaulted the lawyer, issued an unconditional apology. As the president of the bar court association reported the policemen responsible for sparking the strike stood in court and apologized with folded hands to the lawyers. This strike which continued for a seventy eight days period was disadvantageous for the workings and proceedings of the court. (Patnaik, 2018)

Lawyers of West Bengal similarly started a strike on April 29, 2019. Around 15000 lawyers across eighty five courts in West Bengal have called for a strike over the alleged attack on them by the police. The strike continued for a longer period and was termed as extraordinary by the Supreme Court in West Bengal. This strike was responsible for badly jerking the proceedings of the court, impacting the fundamental right of life and liberty of citizens to even seek bail from court. ("Lawyers Strike in West Bengal",2019) In support of lawyers in West Bengal, advocates in Uttar Pradesh also went on strike and demanded for increasing security for all lawyers following the killing of Uttar Pradesh Bar Council president Darvesh Yadav. Even the Lawyers in Madhya Pradesh demanded the enactment of the Advocate Protection Act. (Mandhar, 2021) Providing the advocates with adequate safety both inside and outside the court premises becomes the need of the hour, before the cases of violence against the lawyer increases compelling the lawyers to indulge in more strike action, which in effect stops the judicial working of the court creating trouble for the common citizen. Once proved guilty, the culprits who dared to indulge in violence against the lawyers should be provided with long-term imprisonment. This to an extent will help to increase lawyer's safety and security. But concern arises when lawyers undertakes strike action which are seldom for justiciable reason. The essential service argument states that essential service workers should not be allowed to strike because this form of collective bargaining can likely inflict imminent and substantial harm on society at large.(Munoz, 2014).Referring to the law commission's report, the Uttarakhand Court found that the strikes by advocates have no relevance to the workings of the courts. For e.g. lawyers are taking up strike for issues like- bomb blast in Pakistan school, amendments to Srilanka's constitution, inter-state water disputes, earthquake in Nepal, condoling the death of near relatives of advocates and moral support to movements by social activists. ("Bar council tells SC it has meeting to frame rules", 2021)

On 28th February, 2020 the Supreme Court was disappointed by lawyers holding strike every Saturday for thirty five years in Uttarakhand district courts. The Supreme Court had thus, warned the advocates of condemn action if the strike goes on like this. To deal with the problem of strike/abstaining from work by the lawyers, the Supreme Court have sought suggestion from bar council of India and all the states bar council within six weeks. But, it is to be noted that no response has been received from BCI and other state association. Supreme Court have upheld the view that in a period when the judiciary is already facing serious problem of pendency and delay in disposal of cases, the judiciary can't at all effort four days strike in a month. It also said that boycotting court every Saturday in the districts of Dehradun, Haridwar and Udhamshighnagar in Uttarakhand in not justiciable. The Dehradun bar association filed an appeal challenging the Uttarakhand High court order of 25th September, 2019, which warned the lawyers to stop the strikes in district courts and warned them of condemn action. This appeal was dismissed by the Supreme Court.(ibid) Article 19(a) provides for the right to freedom of speech and expression.(Austin,2010).But, the apex court have time and again insisted that such action of strikes is affecting the litigants and those strikes are unjustifiable even under the guise of right to freedom of speech and expression under article 19(1)(a) of the constitution because such a right as well can't affect the right of others. (Bar council tells SC it has call meeting to frame rules",2021). Article 14 and 21 provides for the right to speedy justice of the litigants.(Basu,2012).In case of the strikes undertaken by the lawyers, the

right of speedy justice of the litigants guaranteed under article 14 and 21 of the constitution is getting affected. (“Bar council tells SC it has call meeting to frame rules”, 2021)

6. ANALYSIS: As we know justice delayed is justice denied hence, speedy action is to be taken by the Supreme Court and the BCI on finding solution to problems of frequent strikes undertaken by the lawyers. In India, the criminal as well as civil cases goes on for years. Though in 1979, in the case of Hussainara Khatoun v. Home secretary, state of Bihar, the Supreme Court held that” right to a speedy trial is a fundamental right “ is a fundamental right implicit in the right to life and personal liberty provided under article 21 of the Indian constitution. Hence, here the cooperation on the parts of the advocates in proving speedy trial and justice to the litigants becomes important. Speedy trial and justice is one of the principal features of judiciary. As in Abdul Rehman Antuley V.R.S. Nayak 1992, the Supreme Court held an important judgement that article 21 is available at all stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.

7. FINDINGS: Lawyers strike often are taking place for the prevention of violence against the lawyers but many a times strikes action are organised for worthless reason, the consequences is delay in getting justice by the victims .Hence, the supreme court and BCI are working on curtailing down such strike actions.

8. RESULT: The supreme court have time and again upheld the view that the strike actions by the lawyers is badly effecting the judiciary system of India. Such actions are responsible for unnecessary delay and pendency in disposal of cases. Supreme court is concern about the protection of article 14 and 21 of the constitution, which provides for the speedy justice of the litigants.

9. RECOMMENDATIONS: Lawyers are protector of the law and order situation of a country. It is high time that they come out with a solution where the justice is not delayed and denied to the victims. They should minimize their strike actions. The BCI could come into negotiation with the lawyers of the country, understand their problems and find solutions as early as possible. A platform could be formed for the lawyers where they could express their grievances without resorting to strike. Supreme court as the apex court have time and again insisted the lawyers to stop strike action but more strict action is the need of the hour .

10. CONCLUSION: Violence against the lawyers have risen in the given time and the question of their safety and security is truly a matter of concern. This issue is needed to be taken care of immediately and possible actions that can be taken to reduce the violence has been discussed in the article. But, the other side of the coin is that such strike action by the lawyers are effecting article 14 and 21 which provides for the rights of speedy justice by the litigants. As has been pointed out in the article many strike action taken by the lawyers in the recent times were neither related to their own safety and security nor were related to the workings of the court. Hence, such strike actions becomes a matter of criticism . Therefore, working towards preventing such actions becomes important.

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