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E.MBA, LL.M, Ph.D, PGDSAPM

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**LAWYER'S RIGHT TO STRIKE**  
**EX-CAPT. HARISH UPPAL VS. UNION OF INDIA**  
**AND ANR. 2003 AIR SC 43**  
**CASE COMMENTARY**

AUTHORED BY: DIVYANSHI KHEMKA

**Introduction**

A strike is a powerful tool in the hands of employees to exercise their rights and assert their demands before their employers, as provided under the Industrial Disputes Act, 1947. The right to strike is considered to be within the ambit of the right to freedom of speech and expression enshrined in Article 19 (1) of the Indian constitution. However, advocates' right to strike is a subject of many debates and discussions, primarily owing to the nature of the legal profession.

In this regard, the Supreme Court of India's decision in the matter of Ex-Capt. Harish Uppal v. Union of India and others decided on December 17, 2002, is a landmark. In this case, the crucial question of whether lawyers may go on strike is addressed, weighing the right to a speedy trial against other considerations. The case is notable for its in-depth analysis of the functions and obligations of legal professionals as officers of the court and the effects of their decisions on the administration of justice.

**Facts of the case**

- The case originated with the experiences of retired army officer Ex-Captain Harish Uppal. In 1972, while serving in the Indo-Pak War in Bangladesh, he was accused of embezzlement. This led to a court-martial, which was followed by imprisonment for 2 years and his discharge from the military.
- Aggrieved with the court's ruling, he filed a pre-affirmation application in the civil court to have his case audited. Eleven years later, when the survey's statute of limitations had passed, he received a response from the court.
- It was later discovered that the vigorous strike by the Advocates was the reason for the loss of the survey records that were attached to his application.



- Due mostly to a lawyer strike, his attempts to seek legal remedy were hampered by prolonged postponements and misplaced paperwork. For this specific reason, the petitioner filed a writ in the High Court and then appealed to the Supreme Court, seeking the court to determine that the lawyers' strike was unlawful.

## **Issues**

In Ex-Capt. Harish Uppal v. Union of India and Anr., the key issues addressed were:

1. Whether Article 19(c) of the Indian Constitution protects lawyers' right to strike.
2. Whether lawyers' strikes were valid in light of their effects on the rights of clients and the administration of justice.
3. The rationale behind prohibiting lawyer strikes and weighing the interests of lawyers against the effective functioning of the legal system.
4. The meaning of "rare of rarest cases," wherein it may be acceptable for lawyers to call a strike.
5. Ensuring that the right to a speedy trial under Article 21 of the Indian Constitution is respected.

## **Arguments**

The petitioner claimed that lawyer strikes are illegal because they interfere with the administration of justice and put the interests of their clients at risk. As representatives of the court, lawyers have an obligation to ensure that the legal system runs smoothly. He argued that the use of strikes as a means of collective bargaining was limited to labour issues and that legal professionals serving as advocates were not permitted to use strikes as a means of coercion against the courts or their clients. He also argued that the call for a strike by lawyers was really an attempt to violate the contracts that lawyers have with their clients.

According to Article 19(c) of the Constitution of India, the respondents—including the Union of India—argued that the freedom of association is impacted by the right to strike. The legal community argued that in rare circumstances, lawyers should have the right to go on strike to protect their interests if they were mistreated.



## **Judgment**

The Hon'ble Supreme Court held that lawyers have no right to call for a boycott or go on strike, not even a symbolic strike. It was asserted that every lawyer must adamantly decline to comply with any demands for a boycott or strike and that the courts are not required to adjourn cases when lawyers are on strike.

The court provided that if a protest is necessary, it must be conducted in the following ways: by providing explanations to the media, appearing on TV while adhering to the standards of the court, posting notices, donning arm groups that are dark, white, or any other colour, taking peaceful protest walks outside and away from the court premises, holding dharnas or relaying facts, and so forth. The Court further declared that no lawyer could be subjected to any negative action by the Association or the Council, and that no form of coercion, including threats of expulsion, could be used against a lawyer who refuses to participate in a strike or boycott.

## **Ratio decidendi**

The interpretation of the function of lawyers as court officers, the right to a speedy trial under Article 21, and the reasonable restriction of fundamental rights under Article 19, all formed the basis of the ruling in *Ex-Capt. Harish Uppal v. Union of India*.

The court observed that:

- It is essential that the public's trust in statutory or court power, as well as the authority itself, not be weakened or damaged if the rule of law is to have any significance or content. Members of the legal profession have long enjoyed great respect and have contributed greatly to public life. Strike breaches the litigant's fundamental right to a speedy trial, and the court must do anything except watch silently or raise its hands in surrender when this fundamental right is persistently violated.
- It is the responsibility of the Bar Council of India to establish guidelines for advocates' professional behaviour and norms of conduct. To address the complaints of advocates at all levels, Grievances Redressal Committees should be established at the District, Taluk, High Court, and Supreme Court levels. Appropriate rules need to be formulated by the High Courts

under Section 34 of the Advocates Act, 1961, which specify that a strike by an advocate or advocates will be viewed as interfering with the administration of justice and that the advocate or advocates in question may be prohibited from appearing before District or High Court courts.

- A strike is only allowed in situations where the Bar Association's reputation, integrity, and operations are in jeopardy. These situations fall under the category of rarest of the rare cases, and include things like complaints against the presiding officer, court rulings, conflicts with the administration, and conflicts of interest between groups of lawyers.
- Although Article 19 (c) of the Constitution of India guarantees the freedom of association, this right is not absolute and may be subject to reasonable restrictions. Given the special function that lawyers play as court officers, the court decided that the ban on lawyer strikes was appropriate. The court stated that an advocate has a unique position within the court and stands for it in public as one of its officers. As a result, they must fulfill their duties to ensure that the public is given justice by ensuring that the court runs efficiently.
- The court cited previous decisions that had maintained the ban on lawyer strikes. The court's ruling had a legal foundation thanks to these precedents.

## **Conclusion**

As has been affirmed in the analysis above, the court has repeatedly laid emphasis on the critical role that an advocate plays in the justice system of a country. That is not to say that advocates are not entitled to any rights whatsoever. The rights and duties of an advocate are internationally recognized as well, through various charters such as the Universal Declaration of Human Rights (UDHR) and the International Convention on Civil and Political Rights (ICCPR). However, owing to the nature of the profession, certain reasonable restrictions are legitimate to be imposed on the advocates. The rights may be exercised within the confines of these reasonable restrictions.

I find myself to be in complete consonance with the Hon'ble Supreme Court's ruling. The profession of a lawyer emanates from the need to establish justice in society. It is the interest of the society which is at stake and the undertakings of an advocate have a direct bearing on the interest of their clients. There already exists a massive backlog of cases in our Indian courts and the safeguard of the right to strike of lawyers cannot be an additional reason for further delays, especially considering that the personal interests of a layman, ranging from financial to familial, are often at stake. In certain rarest

of rare cases where the integrity and functioning of the profession are at stake, the right of strike may be retained and exercised in a sophisticated and diligent manner. Even then, the duty of an advocate is to avoid harming the interest of their client in pursuit of their rights.

If the duty of an advocate is to be summed up in one line, it would be 'to serve the society'. The right to strike of an advocate becomes antithetical to their own duty when this right is exercised over frivolous demands. Therefore, the Hon'ble Supreme Court has made it clear that this right is to be exercised in only the rarest of the rare cases, and that too in a manner that is assertive but not detrimental.

Ex-Capt. Harish Uppal vs. Union of India and Anr. Proves to be a landmark judgment wherein the bench took all aspects and arguments into consideration and provided a reasoned clarification once and for all. It delved into the social, legal, and operational aspects of this discourse and elucidated upon the court's stance. The reasoning and decision in this case have been relied upon in various judgments subsequently.

