LEGAL PROFESSION IN INDIA: PAST, PRESENT AND FUTURE

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INDIA is an ancient and a diverse country. People of India have however held great faith in being just and fair to each other. Pandit Nehru the first Prime Minister of India, in his speech to the Constituent Assembly spoke about 5000 years of Indian History. After 2 years of debates and deliberations thereafter emerged the Constitution of India. The constituent assembly very thoughtfully tried to sprinkle the constitution with the essence of the past and merged it with the present to give India a direction for its future.

Amongst the many institutions which were very carefully dealt with was the legal institutions. Ancient India was the land of continuous activity. First the Vedic laws and then diverse legal practices co-existing with one another. With the advent of the French, Portuguese and English on the shores of India, old practices were given up and a new era of establishment of western jurisprudence had laid its foundation in India.

Establishments of Courts during the 17th and 18th Century led to establishment of the common law. The East India Company expanded itself into the heart of India. Its influence grew beyond the presidency into Mofussil Courts. The *Sadr Diwani Adalat* and *Sadr Nizamat Adalat* applied the existing local laws.

The political upheaval of 1857 changed everything. The Era of codifying the Indian Common Law began. The beginning of Colonial High Courts and separate princely state's led to the establishment of Allahabad, Bombay, Calcutta and Madras High Courts. High Courts were also established at Lahore, Nagpur and Patna. These Courts paved the advent of the first Indian legends of the Bar and also the Bench such as Justice

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Syed Mahmood (Allahabad), Moh. Ali Jinnah (Bombay), Badruddin Tyabji (Bombay), Rashbehari Ghosh (Calcutta), Sir Ashutosh Mukherjee (Calcutta), and T. Muthuswamy Iyer (Madras) who all rubbed shoulders with great British Barristers of the day such as J.D. Inverrarity and Thomas Anstrey. The Bar at these Courts also played a crucial role during the freedom struggle.

Some of the princely states continued with their own legal system. But final appeals came to be decided by the Privy Council from the British Indian Courts. This later led to the formation of Federal Court, which came to be established in 1937 and held the flag until the establishment of the Supreme Court of India. The Constitution of India finally integrated the legal system in India. In India there are large numbers of lawyers who are practicing in Trial Courts upto the Supreme Court of India. The most important pillar of Judiciary in India is the trial Courts/City Civil and Criminal Courts, and thereafter the District Courts/Sessions Courts, later the High Courts and finally the Supreme Court of India.

For a long time the legal education in India continued on the pattern as it was prior to Independence. Most of the legal luminaries emerged from well to do or middle class families. Very few became lawyers from families of farmers or working class. Most of the Court staff did comprise of persons who were little educated and did not possess decrees from colleges but with their keen understanding and intelligence they became an important facet of the justice system as they became assistants to lawyers or in the colloquial *"Munshis"*.

Leading Lawyers had already made a huge impact on the Indian psyche. Some of the leading trials in the Indian Legal history started from, Mughal Emperor Bahadur Shah Zafar, 1858, Trial of Bal Gangadhar Tilak, Mahatma Gandhi, Shaheed Bhagat Singh and soldiers of Indian National Army. The Courts in India with the able assistance of lawyers began to develop the law, the Nanavati Trial and the Mathura rape case have led to various legal reforms. Supreme Court in its journey on occasions held and provided very valuable material for law reforms.

The Law Commission of India came to be established in the year 1834 by the Charter Act of 1833. The first Law Commission of independent India was established in 1955. All India Bar Committee was established in the year 1951, by the Government of India, under the Chairmanship of Justice S.R. Das. The Committee submitted its report in 1953. The Committee recommended abolition of all grades of legal practitioners, creation of one integrated and autonomous All India Bar. Preparation of a Common Roll of Advocates, who would be entitled to practice in all Courts in the Country and thus the compilation and maintenance of one Common

Roll of Advocates began. It further recommended single grade of legal practitioners. In the interest of unification of the Bar, it recommended that there was no need for non-graduate pleaders or Mukhtars. It also recommended the creation of an All India Bar Council and State Bar Councils. The power of enrolment, suspension and removal of Advocates was to be vested in the Bar Councils. No need was felt for a separate Bar Council for Supreme Court. All India Bar Council alone was to maintain a Common Roll, and only those *Advocates who were enrolled with the Bar Council were allowed to practice.*

In 1952 the Supreme Court further clarified the scope of right to practice in the case of Aswini Kumar Vs. *Arbindo Bose.*[1]

While interpreting Section 2 of the Bar Council Act, 1926, it was held that the word "Practice" as applied to an Advocate in India includes both the functions of acting and pleading and there is nothing in Section 2 to warrant to cutting down of that statutory right to pleading on the Original Side of the Calcutta High Court. The Court nullified any Rule which any Court in India may have made to restrict the right to Practice.

The Law Commission of India in its 14th report in 1958, fully endorsed the recommendation of the Bar Committee, 1951 and the Advocates Act, 1961 came into existence. The Act repealed the India Bar Council Act, 1926, the Legal Practitioners Act, 1879, and all other connected enactments. The Indian Bar Council Act, 1926 for the first time provided for establishment of an autonomous Bar Council of India (BCI) and the State Bar Council.

BCI is responsible for many functions of the Bar, *e.g.* laying down standard of professional conduct and etiquette of Advocates. To safeguard the right, privilege and interest of Advocates, to promote legal education and to lay down the standards for advocates, in consultation with the Universities imparting legal education and the State Bar Councils. To recognize Universities whose degrees in law would be qualification for enrolment as an Advocate, to visit and inspect Universities for this purpose. To exercise general supervision and control over state bar councils. To promote and support law reforms and to organize legal aid for the poor. The Act emphasises single category of practitioners *i.e.* "Advocates". An Advocate enrolled in State Bar Council is entitled to practice as of right before any Tribunal or Court in India including the Supreme Court of India. However Advocates are classified into two categories "Senior Advocates" and "other Advocates". A Senior Advocate

1. AIR 1952 SC 369.

is designated according to his ability, special knowledge or experience in law by the Supreme Court or High Courts, with the consent of the Advocate.

From 1977 the dual system of Advocates and Attorneys practicing in Calcutta and Bombay High Courts on the original side was given a go by.

A dual system does exist in the Supreme Court, where there exists three types of Advocates, Advocate on Record (AOR), Senior Advocates and Advocates. A Senior Advocate cannot act on behalf of a client and can appear and address the Court, with the assistance of an Advocate on Record. In High Court a Senior Advocate can appear and address the Court with an instructing Advocate. Any Advocate can appear in the Supreme Court but only with the assistance/instructions of an AOR. An Advocate can appear before High Court and Tribunals without the mandatory assistance of another Advocate. While an AOR can both act and appear in the Supreme Court.

According to Supreme Court Rules, 1966 (Order IV), An AOR has to practice for four years after his/her enrolment as an Advocate and then undergo one year training under a Senior Advocate on Record and then sit in the exam conducted by the Supreme Court. There are several restrictions upon an AOR such as he must maintain an office with 16 km of the Supreme Court and employ a registered clerk.

Although clearly a well organized system is in place to achieve the ultimate goal of justice for all, there was emerging a dissatisfaction amongst the litigating public and the Courts relating to the role of Advocates at various levels. Legal education played a very important role in making of the lawyers in India. Just after the enactment of the Advocates Act, 1961 it became clear that things were not going smoothly with the Bar. In 1964 the matter of *P. J. Ratnam* Vs. *D. Kanikaram*[2] came before the Supreme Court. The said case was an Appeal by way of Special Leave Petition by which the Judgement of High Court of Andhra Pradesh was challenged by the Appellant Advocate, who was held guilty of professional misconduct and had been suspended for five years under the Indian Bar Councils Act, 1926. The Advocate Appellant in this case had accepted money on behalf for the Client from the Opposite Party and then swindled the money. Supreme Court held as follows :

> *"Lastly, it was urged that the order directing the suspension of the appellant for a period of five years was too severe and that we should reduce the period of suspension even on the basis that the charge against the appellant be held to be established.*

2. AIR 1964 SC 244.

We can only express surprise that Counsel should have made bold to make this submission. The appellant had got into his hands a considerable sum of money belonging to his clients and, on the finding of the High Court, had failed to, pay it back when demanded. Not content with this he had put forward a false defence of payment and had even sought to sustain his defence by suborning witnesses. In the circumstances, even, if the learned Judges of the High Court had struck off the name of the appellant from the roll of advocates we would have considered it a proper punishment having regard to the gravity of the offence. The order now under appeal therefore errs, if at all, on the side of leniency and there is no justification for the request made on behalf of the appellant."

As time went by, it became clear that the standards of Bar, which at one point used to be very high and leading lawyers in India used to rub shoulders with the Barristers of England fell drastically. The falling standards of the Bar became a cause of concern.

Supreme Court in *M. Veerabhadra Rao* Vs. *Tek Chand*[3] noted the following including observation of Justice Krishna Iyer in *Bar Council of Maharashtra* Vs. *M. V. Dabholkar*:

"Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. In the words of Justice Krishna Iyer in Bar Council of Maharashtra Vs. M. V. Dabholkar etc. etc the role of the members of the Bar can be appreciated. He said:

"The Bar is not a private guilt, like that of barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and pro bono publico service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice ('The Practice of Law is a

3. 1984 Supp SCC 571.

Public Utility. The Lawyer, the Public and Professional Responsibility' by Raymond Marks et al-Chicago American Bar Foundation, 1972, p. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will service society and keep of canons of ethics befitting an honourable order. If pathological cases of members misbehavior occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about ? The official heads of the Bar i.e. the Attorney General and the Advocate-General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices."

The decline in standard of the legal profession, had to be rectified, and the correction had to start at the bottom. For a long time the qualification for enrolment at Bar remained LL.B. degree from a recognized University and the only requirement for a LL.B. degree was a Bachelors Degree in any subject.

By the late 1980's there was a outcry for reforms. The stakeholders including the Bar Council of India and others responded. The Bar Council of India to improve the legal education standards and to promote legal education created a charitable trust called the Bar Council of India Trust which in turn registered a Society known as the National Law School of India Society, in Karnataka, (Act No. 22 of 1986).

The Society framed necessary rules to manage the National Law School of India with powers to confer degrees, diplomas, etc., and requested the State Government to assist it, by establishing the School as a University by a statue so that it could carry out its objects effectively.

Thus National Law School of India University (NLSIU) came into existence and the first batch of students were selected through a National Entrance Test, and regular academic activities began on 1st July, 1988.

The objective of the NLSIU created under the Act is enshrined in Section 4 of the Act which is as follows :

(1) The Objects of the School shall be to advance and disseminate learning and knowledge of law and legal processes and their role in national development, to develop in the

student and research scholar a sense of responsibility to serve society in the field of law by developing skills in regard to advocacy, legal services, legislation, law reforms and the like, to organise lectures, seminars, symposia and conferences to promote legal knowledge and to make law and legal processes efficient instruments of social development, to hold examinations and confer degrees and other academic distinctions and to do all such things as are incidental, necessary or conducive to the attainment of all or any of the objects of the School.

(2) The School shall be open to all persons of either sex irrespective of race, creed, caste or class of all religions and it shall not be lawful for the school to impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or a student or to hold any office therein or to graduate thereat or to enjoy or to exercise any privilege thereof.

NLSIU now for a number of years has been ranked as number one amongst Law Colleges in India by various organizations.

RECENT CHANGES IN BAR EDUCATION

The Supreme Court in *Bar Council of India* Vs. *Board of Management, Dayanand College of Law,*[4] clarified that while appointing Principal of a Law College the Universities and the State Government must adhere to the requirement of the Advocates Act, 1961 and the rules of the Bar Council Rules. The Supreme Court also noted that Bar Council of India should ponder over and consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate degree in law.

Relevant Paragraph is as follows :

"13. According to us therefore, notwithstanding the procedure to be followed under the University Act and Statute 11.14 as amended, it is necessary for the Recommending Authority and the State Government when concerned with the appointment of a Principal of a Law College, also to adhere to the requirements of the Advocates Act and the rules of the Bar Council of India. This would ensure a harmonious working of the Universities and the Bar Council of India in respect of legal

4. 2007 2 SCC 202.

education and the avoidance of any problems for the students coming out of the Institution wanting to pursue the legal profession. ...

15. It was stated during the course of arguments that the Bar Council of India itself has watered down the requirement that the Principal of a Law College must have a Postgraduate degree in law and has now provided that it is enough if he has a mere degree in law. This again is a matter for the Bar Council of India to ponder over and to consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate degree in law. We are sure that what was envisaged as the body of Peers would seriously consider this question. Similarly, the argument by learned counsel for the respondents that the Bar Council of India takes no interest in legal education or in keeping up the standards of the profession, is something that the Bar Council of India should take note of so that it could take steps to rectify the situation, if there is any substance in that submission."

ALL INDIA BAR EXAM

The Supreme Court of India in *Bar Council of India* Vs. *Bonnie FOI Law College & Others.*[5] noted as follows:

"This petition filed by the Bar Council of India raises very serious questions regarding affiliation and recognition of Law Colleges by the Bar Council of India. It is a matter of common knowledge that before granting affiliation proper exercise is not carried out. No serious efforts have been made by the concerned authority to learn about the Infrastructure, Library, faculty before granting affiliation or recognition."

The Supreme Court in furtherance of the above objective, constituted a Three Member Committee to examine issues relating to affiliation and recognition of law colleges.

The above committee by its report made the following recommendations:

I. Constitution of National Legal Knowledge Council:

For *the purpose of formulating the policy vis-à-vis legal education India at a national level and by due consideration of experts from*

5. S.L.P. (C) No. 22337 of 2008.

various fields, it is recommended that a National Legal Knowledge Council be established under the orders of this Hon'ble Court comprising legal luminaries as well as experts from various socially relevant fields. The functions of the National Legal Knowledge Council would include continuing reform of legal education in the country, including of matters pertaining to inspection and recognition of law colleges as well as appointment of suitable faculty to various institutions imparting legal education across the country. The Council would have the power to constitute expert groups / sub-committees for the purpose of assisting the Bar Council of India in matters regarding inspection and recognition of colleges, as well as for the purpose of identifying and selecting competent and qualified faculty.

II. Establishment of Legal Aid Clinics/Centres:

Apropos the principle enshrined under Article 39-A of the Constitution of India, the Bar Council of India, vide Resolution dated

October 24, 2009, resolved that all law schools/colleges should establish a legal aid clinic/centre for the purpose of providing inexpensive and efficient justice to the needy sections of our society. It was also resolved that a lecturer shall be the faculty incharge of a legal aid clinic/centre, and that final year students would be trained at such legal aid clinics/centres in imparting professional legal advice and client interaction. This Committee unreservedly endorses the Resolution passed by the Bar Council of India and recommends that establishment of such legal aid clinics/centres be made a pre-condition to the recognition of law colleges by the Bar Council.

III. Faculty remuneration should, at least, be in accordance with the recommendations of the 6th Central Pay Commission

The terms and conditions of service of the faculty members employed at institutions imparting legal instruction must be standardized on a priority basis. Since law is a very important professional stream, it may be necessary to offer higher and better emoluments and more attractive conditions of service. In particular, the remuneration accorded to the faculty at all legal institutions must be, at the very minimum, in conformity with the recommendations of the 6th *Central Pay Commission, which have already been adopted by the Ministry of Human Resources Development and the University Grants Commission with respect to Central Universities. Similar pay-scales should also be made applicable to faculty teaching at law colleges, irrespective of the status of the institution i.e. statutory or private.*

The Bar Council may also consider the stipulation of higher salaries to make imparting legal education attractive and thoroughly professional.

IV. Chapter IV of the 2008 BCI Rules to be strictly enforced:

Chapter IV of the 2008 BCI Rules contains provisions vis-à-vis the Directorate of Legal Education, the responsibility of which include:

(a) *Continuing Legal education,*

(b) *Teachers training,*

(c) *Advanced specialized professional courses,*

(d) *Education programme for Indian students seeking registration after obtaining Law Degree from a Foreign University,*

(e) *Research on professional Legal Education and Standardization,*

(f) *Seminar and workshop,*

(g) *Legal Research,*

(h) *Any other assignment that may be assigned to it by the Legal Education Committee and the Bar Council of India. Considering the importance of the functions to be performed by the Directorate of Legal Education, as well as the recommendations made by this Committee in the draft report submitted to this Hon'ble Court on October 6, 2009, the Bar Council of India has, vide Resolution dated October 24, 2009, appointed Prof. Satish Shastri, Former Dean, Faculty of Law, Rajasthan University, Jaipur as the Director of Legal Education. Further, the Bar Council has also resolved that two young academicians who are capable of pioneering legal research should be appointed to the posts of Professor (Research) and Professor (Academic) in the Directorate. The Central Government has assured the Bar Council of its steadfast support to the Directorate, including provision of adequate functioning space as well as grants to enable the Directorate to perform its functions. The constitution of the Directorate would give a much needed impetus towards research oriented reform in India. It is, therefore, imperative that adequate funds are earmarked towards the constitution and functioning of the Directorate and the provisions of Chapter IV of the BCI Rules are strictly complied with. Further, it should be ensured that only academicians and researchers of the highest quality are associated with the Directorate.*

V. A Bar Examination should be introduced for the purpose of admitting law graduates to the Bar:

As discussed supra, the introduction of a bar examination would ensure maintenance of standards in the legal profession, as well as standardization and constant innovation in the standards of curriculum, teaching methodology etc. The Committee is, therefore, of the opinion that qualifying a bar examination should be made a requirement prior to admission to the Bar by all State Bar Councils across the country. In light of the decision of the Supreme Court in the V. Sudeer case, such a requirement may be introduced in the Advocates Act, 1961 by means of a statutory amendment. The said examination will be a professional examination conducted by BCI in accordance with the recommendations of the Parent Committee.

The Bar Council of India accepted the recommendation of the Committee for All India Bar Exam and the first All India Bar Examination was held in March 2011. Thereafter till dated 10 Exams have taken place, last being AIBE-X held on 26/03/2017. After clearing the All India Bar Exam a Certificate of Practice is issued by the Bar Council of India. Through the said AIBE the Bar Council of India ensures that the Advocates joining the Bar has minimum qualification and knowledge to enter this Noble profession.

BAR COUNCIL OF INDIA, VERIFICATION PROCESS

In order to ensure that the Roll of Advocates maintained by the Bar Council of India were up to date and the registered Advocate were duly complaint of all the necessary rules and regulation the Bar Council of India enacted Bar Council of India certificate and place of Practice (Verification) Rules, 2015 and BCI (Certificate of Practice) Verification Rules, 2015. The said Rules has been challenged in *Ajayinder Sangwan* Vs. *Bar Council of India and Others,*[6] and other Writ Petitions. Supreme Court vide order dated 01/03/2017 directed the Universities as follows:

> *"We further direct that the order which has been passed in the matter should be given effect to by the concerned Universities in respect of verification of degrees which has been asked for by the Bar Council of India and respective State Bar Councils without charging any fee for the present, and the exercise of verification of the degrees shall be completed within a period of four weeks from the date of request so to be made by the Bar*

6. Transferred Case Civil No. 126 of 2016, order dated 01/03/2017.

Council of India and State Bar Councils, if it has not yet been made."

Amongst the various issues which have been noted and discussed above one issue which has led to a major setback to the legal profession is the issue of lawyers strikes. The Supreme Court at various times has dealt with the issue in its various forum, whenever it has struck the normal working in the courts throughout the country.

In Common Cause, *A Registered Society* Vs. *Union of India*[7] the Supreme Court while dealing with the remedy for ordinary litigant issued notices to all the Bar Associations in the Country and the Attorney General. The following observations of the Supreme Court in its order as reported above in (1994) 5 SCC 557 are very significant.

"This petition, brought under Article 32 of the Constitution, raise vital issues in regard to the duties and obligations of the members of the legal profession relating to the judicial system in general and the litigating public in particular and seeks the Court's intervention to arrest the harm allegedly caused to the image and dignity of the judiciary and the interest of the litigants on account of the members of the Bar proceeding on strike from time to time in different parts of the country. The petitioner contends that the lawyers constitute the intelligentsia of the country and their striking court work on one pretext or the other, sometimes on trivial matters, thereby paralysing the judicial system results in untold misery to the litigants both in terms of avoidable harassment and expenses. By striking work, contends the petitioner, lawyers fail in their professional duty to appear and conduct cases for which they are engaged and paid and thereby interfere with the course of justice. Since litigants have a fundamental right to speedy justice as observed in Hussainara Khatoon Vs. *Home Secretary State of Bihar it is essential that cases must proceed when they appear on board and should not ordinarily be adjourned on account of the absence of the lawyers unless there are cogent reasons to do so. If cases get adjourned time and again due to cessation of work by lawyers it will in the end result in erosion of faith in the justice delivery system which will harm the image and dignity of the Court as well. On this refrain the petitioner has sought certain directives from this Court as enumerated in paragraph 15 of the petition. These include laying down of*

7. (1994) 5 SCC 557.

guidelines, standards of professional conduct and permitting non-lawyers to appear as provided by Section 32 of the Advocates Act, 1961."

The above matter has been disposed off by Order dated 28/09/2005, where in the Supreme Court noted that the concerned events took place in 1999 and 2000 and since then there has been no repetition.

In *K. John Koshy* Vs. *Dr. Tarkeshwar Prasad Shaw.*[8] the Supreme Court held that if on the date of hearing of a case members of the Bar in the High Court were on strike and the Counsel for both the Parties were not present.

"7. We do not propose to express any opinion in regard to the merits of the case nor do we desire to dwell on events preceding the making of the order dated 13-3-1995, We also do not desire to say anything on the question whether circumstances did or did not exist for making the order of 13-3-1995. It is an admitted fact that since the members of the Calcutta Bar were on strike, the counsel for both sides were absent and hence the Court passed the order after hearing the respondent. If the matter was urgent and the respondent who was present in person insisted on being heard and orders being passed on his application as his career was at stake, could the Court refuse to take up his application for hearing and refuse to pass an appropriate order on merits? The answer must obviously be in the negative because to do so would tantamount to the Court becoming privy to the strike. The court is under an obligation to hear and decide cases brought before it and cannot shirk that obligation on the ground that the advocates are on strike. Therefore, the Division Bench was fully justified in proceeding to hear the respondent and in passing orders on merits. We must also mention that at the relevant point of time, the interim order passed by this Court in the Common Cause, A Registered Society Vs. Union of India, pending in this Court against lawyers proceeding on strike was in force whereunder the Bar Associations were precluded from dismembering any member of the Bar who appeared in court despite the strike call. Under the circumstances the fear of being debarred from membership also did not exist. We are, therefore, of the opinion that despite the same if counsel did not appear, they are only to blame. The

8. (1998) 8 SCC 624.

Court in the circumstances did the right thing to proceed to hear the case. In Ramon Services Pvt. Ltd. Vs. Subhash Kapoor and Others, (2001) 1 SCC 118, The Supreme Court discussed at length the evil of strike by lawyers. It categorically held that strike by lawyers cannot be equaled with industrial strikes. It was further noticed on a matter of regret that the Courts have been contributing to the continuance of strikes on account of their action of sympathizing with the Bar and failing to discharge their legal obligations obviously under the threat of public frenzy and harassment by the striking lawyers. The Supreme Court then came to the conclusion that strikes by lawyers are illegal. By striking work, the lawyers fail in their contractual and professional duty to conduct cases for which they are engaged and paid."

Thereafter in *Ex-Captain Harish Uppal* Vs. *Union of India and Another*[9] a Constitution Bench of the Supreme Court categorically held that lawyers have no right to strike. No action be can be taken against lawyers who refuse to participate in strikes. The Court went further in holding that the Bar Council of India must implement its resolution and take disciplinary action against the striking lawyers and all High Courts should frame necessary rules to enable taking action against defaulting Advocates. If the Advocates participate in boycott or a strike, then it is *ex-facie* bad in the view of the decision in *Mahabir Prasad Singh* Case.[10] The Advocates would be answerable for the consequences suffered by their clients if the non-appearance was solely on grounds of a strike call.

The wider question whether member of the legal profession can resort to the extensive step of abstaining from appearing in cases in which they are engaged and which are listed before the Court was left open due to the consensus which emerged in the case of common cause, *A Registered Society* Vs. *Union of India and Others.*[11] Bar Council of India made its position clear by stating that:

"(a) Bar Council of India is against resorting to strike excepting in rarest of rare cases involving the dignity and independence of judiciary as well of the Bar; and (b) whenever strikes become inevitable, efforts shall be made to keep it short and peaceful to avoid causing hardship to the litigant public."

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9. (2003) 2 SCC 45.
10. (1999) 1 SCC 37.
11. (2006) 9 SCC 304.

The Court finally on suggestion of Counsel evolved the following formula :–

"(1) In the rare instance where any association of lawyers including statutory Bar Councils considers it imperative to call upon and/or advise members of the legal profession to abstain from appearing in courts on any occasion, it must be left open to any individual member/members of that association to be free to appear without let, fear or hindrance or any other coercive steps.

(2) No such member who appears in court or otherwise practices his legal profession, shall be visited with any adverse or penal consequences whatever, by any association of lawyers, and shall not suffer any expulsion or threat of expulsion therefrom.

(3) The above will not preclude other forms of protest by practicing lawyers in court such as, for instance, wearing of armbands and other forms of protest which in no way interrupt or disrupt the court proceedings or adversely affect the interest of the litigant. Any such form of protest shall not however be derogatory to the court or to the profession.

(4) Office-bearers of a Bar Association (including Bar Council) responsible for taking decisions mentioned in clause (1) above shall ensure that such decisions are implemented in the spirit of what is stated in clauses (1), (2) and (3) above."

The Bar Council of India's Counsel in the above matter stated that he would suggest to his client the BCI to incorporate the aforementioned Clauses in the Bar Council of India (Conduct and Disciplinary) Rules.

Do lawyers go on strikes in other countries ? This question used to bother me a lot. So I went looking around and against my belief I discovered that they do.

Best is to read the Article published by Jonathan Goldsmith in the Law Society Gazette on Lawyers' strike[1]

Historically there have been lawyers strike in Belgium.[2,3]

Lawyers have often been on strike in Pakistan. The Popular mass protest movement which started against the regime of Parvez Musharaff action dated 9th March, 2007, when he unconstitutionally suspended Iftikar Muhammad Chaudhry as Chief Justice of Pakistan Supreme Court.[4]

See Footnote 1-9 in LINKS.

In Cameroon lawyers went on strike in Battle for English against imposition of French as the Court Language.[5]

Lawyers, Notaries protested in Quebec cities in January 2017 against the policies of the Governement.[6]

Lawyers strike work in Minya (Egypt) after Nine Lawyers wereissued sentences for defaming the Judiciary. Seven were jailed, two were sentenced in absentia by the Minya Criminal Court in March 14th, 2017.[7]

In May 2016 it was reported in Mail online that Criminal Trials were put back until 2032, effectively no one in Greece could get a divorce, inherit property, sue for wrongful dismissal or carry out any transaction without Court approval due to the ongoing lawyers strike.[8]

In United States the Lawyers went on strike in tandem with the General Strike against Trump Administration.[9]

Therefore lawyers striking work is a world-wide phenomenon. But the question whether lawyers can go on strike is yet not answered anywhere with authority except in India by the Supreme Court of India in the case of Harish Uppal (supra).

Apart from striking work on trivial matters and facing the criticism of the entire system there have been certain other factors as well, which in present times are prevalent and are contributing to the downfall of this wonderful profession. Lawyers charging astronomical fees is one other issue which has and is causing a lot of problems as no one has a permanent solution to this. In other professions like the architects, the chartered accountants. Fee is charged according to percentage of the money spent on the projects (Architects) on the time spent on audits and the size of the Company, etc (Chartered Accountant) but that's not the case in the Legal Profession.

Although Fee in the Supreme Court of a Senior Advocate was fixed by convention upto late Eighties. Senior Advocates were paid Rupees 1040/- for each appearance before the Court for an admission hearing, and Rupees 1680/- for final hearings. But that was given a go by. Even the Supreme Court Rules, 2013 give a very dismal structure of fee to be charged. Please see Second Schedule to the Supreme Court Rules,1966 (as amended upto date).

No doubt, Lawyers on the original side in Bombay and Calcutta High Court were very highly paid but after the advent of globalization in the 1990's there is no rule to be followed for charging the fee. In Higher Courts like Supreme Court and some High Courts there are fantastic stories of lawyers charging phenomenal amounts for appearance in Courts.

There is a lot of discontentment in fixing of fee paid to lawyers by Government departments, which needs a drastic change. Government and its authorities are also responsible for another factor which has led to grave concern amongst lawyers all over the Country which relates to making appointments on their Panels. Law officers are often chosen for their loyalty to the political masters and not on their merit. The other factor which has led to the downfall in the image of the profession is the children of judges and bureaucrats right at the beginning of their career being associated with High Profile cases, and reaching the Highest Forums of Judicial hierarchy simply because they have a parent who is holding a judicial office.

It will also be important to mention here another important case which established the decline of ethical and professional standards among lawyers. In *R.K. Anand* Vs. *Delhi High Court.*[12] Supreme Court in Para 331, 332, 333 and 334 of its judgement on pages 205-206 observed the following regarding falling standards among the lawyers:

> ***"331.*** *The other important issue thrown up by this case and that causes us both grave concern and dismay is the decline of ethical and professional standards among lawyers. The conduct of the two appellants (one convicted of committing criminal contempt of court and the other found guilty of misconduct as Special Prosecutor), both of them lawyers of long standing, and designated Senior Advocates, should not be seen in isolation. The bitter truth is that the facts of the case are manifestation of the general erosion of the professional values among lawyers at all levels. We find today lawyers indulging in practices that would have appalled their predecessors in the profession barely two or three decades ago. Leaving aside the many kinds of unethical practices indulged in by a section of lawyers we find that even some highly successful lawyers seem to live by their own rules of conduct.*
>
> ***332.*** *We have viewed with disbelief Senior Advocates freely taking part in TV debates or giving interviews to a TV reporter/anchor of the show on issues that are directly the subject matter of cases pending before the court and in which they are appearing for one of the sides or taking up the brief of one of the sides soon after the TV show. Such conduct reminds us of the fictional barrister Rumpole, 'the Old Hack of Bailey', who self deprecatingly described himself as an 'old taxi plying*

12. (2009) 8 SCC 106.

for hire'. He at least was not bereft of professional values. When a young and enthusiastic journalist invited him to a drink of Dom Perignon, vastly superior and far more expensive than his usual 'plonk', 'Chbteau Fleet Street', he joined him with alacrity but when in the course of the drink the journalist offered him a large sum of money for giving him a story on the case; 'why he was defending the most hated woman in England', Rumpole ended the meeting simply saying :

"In the circumstance I think it is best if I pay for the Dom Perignon."

333. *We express our concern on the falling professional norms among the lawyers with considerable pain because we strongly feel that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a bar that enjoys the unqualified trust and confidence of the people, that share the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.*

334. *We are glad to note that Mr. Gopal Subramanium, the amicus fully shared our concern and realised the gravity of the issue. In course of his submissions he eloquently addressed us on the elevated position enjoyed by a lawyer in our system of justice and the responsibilities cast upon him in consequence. His Written Submissions begin with this issue and he quotes extensively form the address of Shri M. C. Setalvad at the Diamond Jubilee Celebrations of the Banglore Bar Association, 1961, and from the decisions of this Court in Pritam Pal Vs. High court of Madhya Pradesh, 1993 Supp (1) SCC 529 (observations of Ratnavel Pandian J.) and Sanjeev Datta, In Re, (1995) 3 SCC 619 (observations of Sawant J. at pp 634-635, para 20). We respectfully endorse the views and sentiments expressed by Mr. M.C. Setalvad, Pandian J. and Sawant J."*

Recently in *State of Punjab and Another* Vs. *Brijeshwar Singh Chahal and Another*[13] the Supreme Court dealt with the issue of appointment procedure of Government Counsel. It concluded that the procedure should be based on merit and should be fair, reasonable, transparent and non-discriminatory. The Ad-hocism in appointment of law

13. (2016) 6 SCC 1.

officers must end. After noticing several ills which are prevalent in making government appointments of lawyers, the Supreme Court had directed the concerned states of Punjab and Haryana in the matter to undertake a realistic assessment of their needs in each category in which the state counsel are to be appointed. States were directed to constitute a selection committee. Further to call for application from suitable candidates on the basis of norms and criteria which the state Government was held free to formulate. The Supreme Court also directed the same method to be followed by other states as well.

The Bar Council of India as noted by the Supreme Court has an ardous task ahead of it in dealing with the decline in standards of the legal profession. The Courts and the Bar together have a big role in dealing with the prevailing situation. But with recent changes made in the education rules and the effort to get the best talent in the country into the legal profession, the collective effort of the Law Commission of India, Bar Council of India, the Courts and the Bar Associations, the legal profession has a great future and the lawyers of this country will be second to none in getting justice delivered to all.

LINKS

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3. https://www.lawgazette.co.uk/analysis/lawyers-right-to-strike/65705.article, Paragraph 3
4. https://en.wikipedia.org/wiki/Lawyers%27_Movement
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