Abhay S. Oka
Chief Justice
High Court of Karnataka

High Court of Karnataka
Bengaluru - 560 001
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22954602

APPEAL TO THE MEMBERS OF THE BAR

It is distressing to note that the members of some of the Bar Associations in different parts of the State of Karnataka are frequently resorting to acts of abstaining from or boycotting the Courts for various reasons. Such acts of abstaining from the Courts cause interference in the administration of justice. Such acts also cause inconvenience and prejudice to the litigants.

Reports received from the District Courts show that some of the reasons for boycott/abstaining were amendment to Motor Vehicles Act, police atrocities, assault on advocates, death of advocates, demand for formation of district, implementation of irrigation project, encroachment of Court property, arrest of ministers, demise of Ram Jetmalani, Sushma Swaraj, Arun Jetley etc. During last few months, large number of such incidents have been reported to me. The reports and the chart prepared by the Registry gives a clear picture of the number of working days lost together in all districts. About 357 Court working days have been lost during the period 27-05-2019 to 24-10-2019 due to boycott by the lawyers.

Dr. B.R.Ambedkar in his famous last speech in the Constituent Assembly 25th November 1949 stated as follows :-

> *"If we wish to maintain democracy not merely in form, but also in fact, what must we do? **The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and Satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods.** These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us."*
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> (emphasis supplied)

It is a settled position of law that the acts of abstaining from Court work or boycotting the Court proceedings and the acts of the office bearers of the Bar Associations calling upon the members of the Bar to abstain from the Court work or to boycott the Court proceedings amounts to interference with administration of justice.

Advocates are the officers of the Court and enjoy special status in society. They have obligations and duties to ensure smooth functioning of the Court.

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The constitution bench of the Hon'ble Supreme Court of India, in the matter of ***Ex-Captain Harish Uppal vs. Union of India and others***, reported in ***(2003) 2 SCC 45***, has held as follows:-

> *"35) In conclusion **it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike.** The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of Court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot refuse to attend Courts in pursuance of a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocates decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because Lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be in addition to damages which he might have to pay his client for loss suffered by him.*
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> *36) It is now hoped that with the above clarifications, there will be no strikes and/or calls for boycott. It is hoped that better sense will prevail and self restraint will be exercised. The Petitions stand disposed off accordingly."*

(emphasis supplied)

Further, the Hon'ble Supreme Court of India, in the matter of ***Krishnakant Tamrakar vs. State of Madhya Pradesh***, reported in ***(2018) 17 SCC 27***, has held as follows:-

> *"50. Accordingly, we consider it necessary, with a view to enforce fundamental right of speedy access to justice under Articles 14 and 21 and law laid by this Court, to direct the Ministry of Law and Justice to present at least a quarterly report on strikes/abstaining from work, loss caused and action proposed. The matter can thereafter be considered in its contempt or inherent jurisdiction of this*

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Court. The Court may, having regard to the fact situation, hold that the office bearers of the Bar Association/Bar Council who passed the resolution for strike or abstaining from work, are liable to be restrained from appearing before any Court for a specified period or until such time as they purge themselves of contempt to the satisfaction of the Chief Justice of the High Court concerned based on an appropriate undertaking/conditions. They may also be liable to be removed from the position of office bearers of the Bar Association forthwith until the Chief Justice of the High Court concerned so permits on an appropriate undertaking being filed by them. This may be in addition to any other action that may be taken for the said illegal acts of obstructing access to justice. The matter may also be considered by this Court on receipt of a report from the High Courts in this regard. This does not debar report/petition from any other source even before the end of a quarter, if situation so warrants."

The members of the Bar are very much aware that the High Court has fixed a time bound schedule to dispose of all 10 years old cases in our Civil and Criminal Courts. The High Court is closely monitoring the disposal of the 10 years old cases. The High Court's aim is to ensure that not a single 5 years old case remains pending in our Civil and Criminal Courts by the end of the year 2020. If we can achieve this goal, the Judiciary in Karnataka will be first to achieve this milestone in the entire country.

Hence, I hereby appeal to all the members of all the Bar Associations in the state to refrain from abstaining from the Court work or from boycotting the Court proceedings, irrespective of the genuineness of the cause and not to indulge in such illegalities.

November 12, 2019

(ABHAY SHREENIWAS OKA)

To:

Presidents & Office Bearers of
Bar/Advocates Associations in
Karnataka