

RESERVED JUDGMENT

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

WRIT PETITION (PIL) No. 31 of 2016

Ishwar Shandilya ...Petitioner

Vs.

State of Uttarakhand and others ...Respondents

Mr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioners.

Mr. Amit Bhatt, learned Deputy Advocate General with Ms. Prabha Naithani, learned Brief Holder for the State of Uttarakhand.

Mr. Piyush Garg, learned counsel for the State Bar Council of Uttarakhand.

Mr. B.S. Adhikari, learned counsel for the Bar Council of India.

Mr. Rajesh Joshi, learned counsel for the Uttarakhand High Court Bar Association.

Mr. Yogesh Pacholia, learned counsel for the Almora Bar Association.

Mr. Tapan Singh, learned counsel for the Dehradun Bar Association.

Judgment Reserved : 31.07.2019

Judgment Delivered : 25.09.2019

Chronological list of cases referred :

1. (2003) 2 SCC 45
2. AIR 2019 SC 849
3. AIR 2018 SC 3635
4. (2016) 8 SCC 335
5. (2005) 8 SCC 771
6. (1995) 1 SCC 732
7. (1976) 2 SCC 291
8. (1998) 4 SCC 409
9. AIR 2000 DELHI 266
10. 1922 (35) CLJ 403
11. (1995) 5 SCC 716
12. (2001) 1 SCC 118
13. (1984) 1 SCC 722
14. (1980) 1 SCC 81
15. (1981) 3 SCC 671
16. (1981) 3 SCC 610
17. (1986) 4 SCC 481
18. (1995) 3 SCC 619
19. (2017) 5 SCC 702
20. Order of the Supreme Court in Civil Appeal No. 6710 of 2019 dated 26.08.2019
21. (2011) 6 SCC 86
22. AIR 1954 SC 557
23. (1999) 1 SCC 37
24. (2000) 7 SCC 264
25. (1912) 1 KB 302
26. (2018) 5 SCC 497
27. (2002) 4 SCC 638
28. AIR 1966 SC 334
29. AIR 1962 SC 1210
30. (1973) 1 SCC 485
31. (1977) 4 SCC 145
32. AIR 1962 SC 1183

33. (2015) 3 SCC 220
34. (1994) 5 SCC 557
35. Order of the Supreme Court in Contempt Petition No. 550 of 2015 filed in Writ Petition (C) No. 821 of 1990 dated 04.07.2019
36. (1984) 2 SCC 324
37. (1972) 1 All ER 801
38. (1995) 1 SCC 259
39. (1993) 3 SCC 29
40. (2001) 2 SCC 186

**Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.**

Ramesh Ranganathan, C.J.

Advocates have been boycotting Courts on all Saturdays, for the past more than 35 years, in the entire District of Dehradun, and in several parts of Haridwar and Udham Singh Nagar districts. The genesis of this peculiar form of protest is traceable to Western Uttar Pradesh, of which the aforesaid districts formed part of, before the State of Uttarakhand was created on 09.11.2000. Advocates from Western Uttar Pradesh have been on strike on all Saturdays, for the past three and half decades, in pursuit of their demand that a High Court Bench be established in this region. This problem, which commenced in these parts more than 15 years before the State of Uttarakhand came into being, continues to prevail in several parts of the aforesaid Districts of the State of Uttarakhand for the past nearly two decades even after creation of the State. The Rule of law is being, thereby, undermined. (**Ex-Capt. Harish Uppal v. Union of India and Anr.**^[1]; and **R. Muthukrishnan v. Registrar General of the High Court of Judicature at Madras**^[2]).

2. The Law Commission in its 266th Report, after analyzing the data on loss of working days on account of strikes, opined that the conduct of advocates, in boycotting Courts, affects the functioning of Courts, and contributes to the ever mounting pendency of cases. The information sent by the High Court to the Law Commission, with respect to the State of Uttarakhand for the years 2012-2016, showed that, in Dehradun District, Advocates were on strike for 455 days during 2012-2016 (on an average, 91 days per year). In Haridwar District, 515 days (103 days a year) were wasted on account of strikes. (**Krishnakant Tamrakar v. State of Madhya**

Pradesh^[3]; and **Mahipal Singh Rana, Advocate v. State of Uttar Pradesh**^[4]). The Law Commission, thereafter, noted that strike by advocates, or their abstinence from Courts, varied from local, national to international issues, having no relevance to the working of the Courts, and were seldom for justifiable reasons. To mention a few, bomb blast in a Pakistan school, amendments to Sri Lanka's Constitution, inter-state river water disputes, attack on/murder of an advocate, earthquake in Nepal, condoling the death of near relatives of advocates, expressing solidarity to advocates of other State Bar Associations, moral support to movements by social activists, heavy rains, religious occasions such as shraadh, Agrasen Jayanti, etc and even for kavi- sammelans. (**Krishnakant Tamrakar**^[3]; and **Mahipal Singh Rana**^[4]). To add to this long list of flimsy reasons for resorting to strikes, is, as is evident from the material placed on record before us, the strike on 25.02.2013 as the Dehradun Collectorate had a holiday on account of Sri Ravidas Jayanti; and on 29.05.2015, because the railway station was shifted from Dehradun to Harrawala.

3. In Dehradun, Haridwar and Udham Singh Nagar districts of the State of Uttarakhand, there are frequent strikes, seriously obstructing access to justice to needy litigants. Even cases of persons languishing in jail / judicial custody are delayed on that account. By every strike, irreversible damage is caused to the judicial system, particularly to those who are denied access thereto. Tax payers' money is wasted on account of judicial and public time being lost. No one is being held accountable for such loss and harassment. (**Krishnakant Tamrakar**^[3]).

4. The Information furnished to the petitioner, under the Right to Information Act on 22.03.2013, regarding strike by members of the Dehradun Bar Association from April, 2010 to February, 2013, reads thus:

The Advocates of Dehradun remained on strike / abstained from work on the following dates from **01.04.2010 to 25.02.2013**:-

01.04.2010	23.06.2010	20.09.2010	18.12.2010
02.04.2010,	05.07.2010	25.09.2010	22.12.2010
03.04.2010	07.07.2010	30.09.2010	23.12.2010
17.04.2010	27.07.2010	07.10.2010	24.12.2010
24.04.2010	07.08.2010	15.10.2010	
27.04.2010	21.08.2010	10.10.2010	
01.05.2010	28.08.2010	22.10.2010	

15.05.2010	01.09.2010	23.10.2010
21.05.2010	03.09.2010	26.10.2010
22.05.2010	03.09.2010	26.10.2010
05.06.2010	18.09.2010	24.11.2010

Year 2011

06.01.2011	15.04.2011	27.08.2011	26.11.2011
11.01.2011	22.04.2011	29.08.2011	01.12.2011
13.01.2011	23.04.2011	01.09.2011	03.12.2011
14.01.2011	29.04.2011	03.09.2011	16.12.2011
15.01.2011	30.04.2011	06.09.2011	17.12.2011
29.01.2011	03.05.2011	08.09.2011	20.12.2011
05.02.2011	20.05.2011	15.09.2011	21.12.2011
08.02.2011	21.05.2011	17.09.2011	22.12.2011
11.02.2011	28.05.2011	24.09.2011	23.12.2011
17.02.2011	31.05.2011	27.09.2011	24.12.2011
18.02.2011	04.06.2011	28.09.2011	
21.02.2011	18.06.2011	01.10.2011	
22.02.2011	29.06.2011	04.10.2011	
23.02.2011	02.07.2011	10.10.2011	
24.02.2011	16.07.2011	11.10.2011	
25.02.2011	18.07.2011	13.10.2011	
10.03.2011	23.07.2011	15.10.2011	
21.03.2011	30.07.2011	22.10.2011	
26.03.2011	06.08.2011	24.10.2011	
30.03.2011	09.08.2011	29.10.2011	
02.04.2011	18.08.2011	05.11.2011	
04.04.2011	17.08.2011	09.11.2011	
08.04.2011	20.08.2011	19.11.2011	
13.04.2011	26.08.2011	24.11.2011	

Year 2012

06.01.2012	06.04.2012	22.09.2012
07.01.2012	07.04.2012	26.09.2012
10.01.2012	21.04.2012	29.09.2012
11.01.2012	28.04.2012	06.10.2012
13.01.2012	05.05.2012	15.10.2012
18.01.2012	05.05.2012	15.10.2012
18.01.2012	19.05.2012	17.10.2012
20.01.2012	25.05.2012	18.10.2012
21.01.2012	26.05.2012	19.10.2012
27.01.2012	31.05.2012	20.10.2012
28.01.2012	02.08.2012	23.10.2012
04.02.2012	16.06.2012	29.10.2012
14.02.2012	23.06.2012	03.11.2012
15.02.2012	30.06.2012	03.11.2012
16.02.2012	05.07.2012	09.11.2012
17.02.2012	07.07.2012	01.12.12
25.02.2012	21.07.2012	11.12.2012
27.02.2012	28.07.2012	15.12.2012
28.02.2012	04.08.2012	21.12.2012
29.02.2012	15.08.2012	22.12.2012
03.03.2012	17.08.2012	24.12.2012
06.03.2012	18.08.2012	
17.03.2012	25.08.2012	
23.03.2012	01.09.2012	
24.03.2012	01.09.2012	
27.03.2012	17.09.2012	

31.03.2012 20.09.2012

Year 2013

01.01.2013	06.02.2013	22.02.2013
03.01.2013	08.02.2013	23.02.2013
05.01.2013	12.02.2013	23.02.2013
10.01.2013	13.02.2013	26.02.2013
11.01.2013	16.02.2013	27.02.2013
19.01.2013	18.02.2013	28.02.2013
02.02.2013	19.02.2013	02.03.2013
04.02.2013	20.04.2013	11.03.2013
05.02.2013	21.02.2013	16.03.2013

(B)

For last thirty-three years, advocates of Dehradun are abstaining from work / going on strike on every Saturday in the Courts of Dehradun district.

5. The aforesaid information shows that members of the Dehradun Bar Association have remained on strike for thirty-seven days in the year 2010, fifty-five days in the year 2011, eighty-one days in the year 2012, and twenty-seven days in three months of the year 2013, besides on every Saturday, from the mid-1980s, continuously.

6. A Division Bench of this Court, by its order in this very writ petition dated 14.11.2018, had called upon the District Judges of Dehradun, Haridwar and Udham Singh Nagar districts to furnish details of the Saturdays in which advocates, practicing in different Courts in their respective districts, had abstained from attending court duties during the period commencing from 01.01.2018 till 30.11.2018. The information furnished by the District Judge, Dehradun, by his letter dated 14.01.2019, details the Saturdays, in which Advocates practicing in different courts in Dehradun District, had abstained from work during the period from 1st January 2018 till 30th November, 2018.

1. January 2018	06.01.18, 20.01.18, 27.01.18
2. February 2018	03.02.18, 17.02.18, 24.02.18
3. March 2018	17.03.18, 24.03.18, 31.03.18
4. April 2018	07.04.18, 21.04.18, 28.04.18
5. May 2018	05.05.18, 19.05.18, 26.05.18
6. June 2018	02.06.18, 23.06.18, 30.06.18
7. July 2018	07.07.18, 21.07.18, 28.07.18

23	November, 2018	03.11.2018	Saturday
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At out lying Court Roorkee, District Haridwar.

S.N.	Month	Date	Day
1	March, 2018	31.03.2018	Saturday
Total		01 Day	

At Out lying Court Laksar, District Haridwar

S.N.	Month	Date	Day
1	February, 2018	03.02.2018	Saturday
2	March, 2018	24.03.2018	Saturday
3	June, 2018	16.06.2018	Saturday
4	July, 2018	28.07.2018	Saturday
5	August, 2018	04.08.2018	Saturday
6	October, 2018	27.10.2018	Saturday
7	November, 2018	24.11.2018	Saturday
Total		07 Days	

”

8. The information, furnished by the District Judge, Udham Singh Nagar in his letter dated 23.01.2019, regarding abstention of Advocates from court duties on all Saturdays (other than second Saturday of the month which is a holiday) during the period 01-01-2018 to 30-11-2018, reads as under:-

Sr. No.	Name of Bar Association	Date	Reasons for abstaining from Court work by lawyers
1	District Bar Association, Udham Singh Nagar	06.01.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
2		20.01.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
3		27.01.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
4		03.02.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
5		17.02.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
6		24.02.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)

7	District Bar Association, Udhham Singh Nagar	17.03.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
8		24.03.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
9		31.03.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
10		07.04.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
11		21.04.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
12		28.04.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
13		05.05.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
14		19.05.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
15		26.05.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
16		02.06.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
17		23.06.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
18		30.06.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
19		07.07.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
20		21.07.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
21		28.07.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
22		04.08.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
23		18.08.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
24		25.08.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
25		01.09.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
26		15.09.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
27		22.09.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
28		29.09.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
29		06.10.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar

		Weekly proposal (Saturday)
30	20.10.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
31	27.10.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
32	03.11.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
33	17.11.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)
34	24.11.2018	CRC camp court, Kumoun Anticorruption ALC cases, Commissioner court shifting at Headquarter U.S. Nagar Weekly proposal (Saturday)

9. It is evident, from the aforesaid tables, that Advocates practicing in several Courts in the aforesaid districts, have been boycotting Court, on one pretext or the other, every Saturday; and Judicial Officers, instead of taking action against the errant advocates and ensuring that their Courts hear and decide cases on working Saturdays, have been turning a blind eye to such acts of illegal abstention from Courts by Advocates.

10. Writ Petition (PIL) No. 31 of 2016 is filed against the unwarranted, unlawful and illegal strikes / abstention from work on various occasions, by members of the Bar Associations of the District Courts in the State of Uttarakhand, as a result of which several litigants continue to suffer disruption and delay in the process of dispensation of justice in the State. The relief sought for, in the writ petition, is for a mandamus to the Bar Council of Uttarakhand to take appropriate steps to ensure strict compliance with the Constitution Bench judgment of the Supreme Court in **Harish Uppal**^[1]; and a mandamus directing the Registrar-General of the High Court of Uttarakhand to frame Rules, under Section 34 of the 1961 Act (for short the “1961 Act”), in compliance with the Constitution Bench judgment of the Supreme Court in **Harish Uppal**^[1].

11. It is the petitioner’s case that he had appeared, before the Principal Judge, Family Court, Dehradun, in connection with Case No. 410 of 2012; the matter was directed to be decided by the Supreme Court within nine months commencing from 15.06.2012; though he used to come regularly, members of the Bar Association were on strike most of the times; the case took thirty-four months to be decided because of the strike by

lawyers, and the willing participation of judicial officers thereto; hundreds of litigants, who came to attend Courts, were forced to return because of strikes, by members of the Bar Associations, in almost every district of Uttarakhand; members of the District Bar Association of Dehradun have remained on strike every Saturday for the last thirty-four years; and as a lot of money is spent by litigants, in payment of professional fees to their counsel, they feel cheated when they reach the Court premises, and learn that Courts are not functioning because Counsel were on strike for no reason or cause. The petitioner refers to similar acts of the District Bar Association of Udham Singh Nagar.

12. It is the petitioner's case that when he reached the Court, from Mumbai to Dehradun on 25.02.2013 to attend his case, he came to know that members of the District Bar Association, Dehradun had called for a strike for the reason that the Collectorate at Dehradun had a holiday on account of Ravidas Jayanti; as he came from Mumbai, he requested the Court to hear his matter, but the Presiding Officer of the Family Court refused to hold Court; such occasions had occurred with remarkable consistency for nearly thirty dates in his own case; he was never given a date on Saturdays by the Presiding Officer, evidencing the complicity of judicial officers in the strikes; and the Registrar-General of the High Court had informed him, by letter dated 15.10.2015, that no rules have been framed in compliance with the directions of the Supreme Court in **Harish Uppal**^[1]. The petitioner claims to have made a representation to the Chief Justice of India on 15.04.2013 and to have been informed, by letter dated 21.05.2013, that, since subordinate Courts are under the control of the High Court under Article 235 of the Constitution of India, he could take appropriate steps as permissible in law. He claims to have made a representation to the Chief Justice of the High Court of Uttarakhand requesting him to intervene in the matter, as also to the President / Chairman of the Uttarakhand Bar Council.

13. The petitioner contends that the information, furnished to him on 15.01.2014, showed that members of the Dehradun Bar Association remained on strike for sixty-seven days from 25.02.2013 to 23.12.2013; and

the information, provided to him by letter dated 05.01.2015, showed that they remained on strike for ninety days from 22.12.2013 to 23.12.2014.

14. In the counter affidavit filed by the Secretary, Bar Council of Uttarakhand, it is stated that no writ petition would lie seeking a prayer for legislation; the petitioner cannot seek execution of the judgment of the Supreme Court by way of a writ petition; and the petitioner has pleaded his personal cause / interest in the writ petition which disentitles him from invoking the public interest litigation jurisdiction of this Court.

15. In the additional counter-affidavit dated 16.07.2019, the Secretary, Uttarakhand State Bar Council submits that the extended term of the elected members of the Bar Council of Uttarakhand expired on 10.05.2015; the Bar Council of India had constituted a special committee, consisting of the Advocate-General of the State as its Chairman and two other members, to take charge of the office of the State Bar Council, as election could not be held to elect members of the State Bar Council; elections, for members of the Bar Council of Uttarakhand, could not take place for a long time; the term of the special committee, so constituted by the Bar Council of India, was extended from time to time; elections were held on 18.01.2018, and results were declared on 04.05.2018; election to the post of Chairman, Vice Chairman and members of the Bar Council of India were held on 06.05.2019; the Election Tribunal, by its order dated 27.05.2019, set aside the election for the post of Chairman, and directed re-election; while the election was again held on 25.06.2019, both the Election Tribunal and the Bar Council of India have not yet granted approval for publication of the result of the post of Chairman; the Bar Council of Uttarakhand is presently functioning under the Chairmanship of the Advocate-General of the State of Uttarakhand; it does not have a functional committee of elected members; for want of an elected Board, no decision could be taken in the matter; and once elections of the Chairman of the Bar Council of Uttarakhand is approved, by the Bar Council of India and the Election Tribunal, and the complete Board of the Bar Council of Uttarakhand comes into existence, the issue involved in the writ petition would be placed before the members of the Bar Council of Uttarakhand for

consideration; and, thereafter, an appropriate decision / resolution would be taken by a majority vote.

16. It is further stated that the Bar Council had issued a show cause notice dated 12.07.2019 to all District Bar Associations of the State of Uttarakhand, calling upon all of them to show cause why they should not be de-recognized / dissolved for acting contrary to the directions of the Supreme Court in **Harish Uppal**^[1], and for acting contrary to the resolution of the Bar Council of India restraining advocates from calling for strikes; and to show cause why disciplinary proceedings should not be initiated against the office-bearers and leaders of the Bar, and why they should not be disqualified from contesting any election in future. The said show cause notice, issued by the Bar Council of India, has been circulated by the Bar Council of Uttarakhand, and sent to all recognized Bar Associations in the State of Uttarakhand by registered post on 16.07.2019; the matter is under active consideration of the Bar Council of India, and the Bar Council of Uttarakhand; and a reasonable time is required to consider the issue, and to pass an appropriate resolution, after the Board comes into existence.

17. In the counter affidavit, filed by the Uttarakhand High Court Bar Association, it is stated that, if the petitioner has any grievance, he should have filed a writ petition in his personal capacity, and not through a public interest litigation; as the petitioner's personal grievance is against a particular Bar Association, it can only be agitated before the competent authority, and not against all Bar Associations; and since no relief was sought against the answering respondent, they be deleted from the array of respondents.

18. In the counter affidavit, filed on behalf of the 8th respondent (District Bar Association, Chamoli), it is stated that their Association does not go on strike on Saturdays, and are complying with the directions of the Court; they move condolence resolutions on the days when any member of the Association, or their family members, expire; and they request the Court not to pass any adverse order in the absence of counsel.

19. In the counter affidavit, filed on behalf of the Dehradun District Bar Association dated 14.07.2019, it is admitted that the members of the Association have been on strike every Saturday for the last thirty-four years. It is stated that, since the general house of the Dehradun District Bar Association had taken a decision to remain on strike every Saturday, the answering respondent was duty bound to follow the decision of the general house; the Chief Justice of the High Court had given an assurance to the answering respondent that, if the answering respondent postponed the strike on Saturdays, then needful would be done in the interest of the answering respondent; the general house, on the assurance of the Chief Justice, had postponed the Saturday strike for a period of four weeks; if any directions were issued by the High Court then the answering respondent would follow the directions issued by the Bar Council of India, as per the orders passed by the Court in the present writ petition; their association was duty bound to follow the directions of the Bar Council of India; and they would follow the direction, if any, issued by the High Court. It is also admitted that the General House of the District Bar Association, Dehradun had taken a decision to go on strike, in public interest, because of shifting of the Dehradun railway station to Harrawala.

20. While this affidavit of the Secretary of the Dehradun District Bar Association is dated 14.07.2019, another affidavit dated 26.07.2019 was filed by him stating that he had written about the assurance of the Chief Justice due to some confusion; the Chief Justice had said that calling off the Saturday strike would be beneficial to the answering respondent; and he tendered his unconditional apology for having written about the assurance given by the Chief Justice.

21. Attempts were made by the High Court, on the administrative side, to persuade Advocates in the three major districts, of Dehradun, Haridwar and Udham Singh Nagar, in the State of Uttarakhand to call off strikes / boycott of Courts each Saturday, and to attend Court. The office bearers of these Associations were invited to come to Nainital, and a meeting was held with them by the Chief Justice and the Administrative Judge of the district. Their grievances were heard, and the request made by

the office bearers of the Dehradun Bar Association, for the vacation bench of the High Court, to sit at Dehradun during winter, was duly noted. They were informed that their request would be examined but they should desist from boycotting Courts, and start attending Courts on Saturdays also. Their request for a vacation Court being held at Dehradun, during the winter recess of 2020 (Mid January to Mid February), was deliberated in the Full Court meeting. On their views being sought, the Uttarakhand High Court Advocates Association vehemently opposed such a move. While the Dehradun District Bar Association withdrew its boycott, and started attending Courts on Saturdays for a few weeks, they decided to withdraw their earlier decision, and again started abstaining from Courts on Saturdays. Similar inter-actions were held with the Haridwar and Udham Singh Nagar Bar Associations and, after noting their grievances, they were also informed that their grievances would be examined, and they should withdraw their boycott and avoid abstention from Courts. The attempts of the High Court, to persuade these District Bar Associations, were not successful and, while some Courts are no doubt functioning in these districts on Saturdays, the continued boycott by Advocates has resulted in abysmal disposal of cases on Saturdays, and on days when a condolence reference is held in various Courts in these three districts.

22. While strikes on Saturdays are largely confined to the aforementioned three districts, Courts are boycotted by several other Bar Associations at their mere whim and fancy, and for mundane reasons such as shifting of a railway station, traffic curbs on election day, etc.

23. The two wheels of the chariot, on which the administration of justice runs, are the Bench and the Bar. Since strike by Advocates, and boycott of courts by them, have a deleterious effect on the administration of justice, urgent steps need be taken to curb these illegal practices. Before suggesting the measures to be taken to ensure that Courts discharge their judicial functions unhindered and the recalcitrant advocates, who resort to strikes and boycott of Courts, are brought to book, it is useful to take note of the obligations of different stake-holders, in the Justice dispensation system, to desist/prevent Advocates from going on strikes. Besides the High Court,

which exercises superintendence over district and subordinate courts under Article 235 of the Constitution of India, the other stake-holders are the District and Subordinate Courts, the Advocates who appear on behalf of their clients before such Courts, the Bar Associations of which these Advocates are members, the Uttarakhand State Bar Council, the Bar Council of India, as also the State Government. It is convenient to examine the obligations which each of these stake-holders have, in ensuring that dispensation of justice is not obstructed by such illegal acts of strikes / boycotts of Courts, separately.

24. Since strikes / boycotts are resorted to by Advocates, we shall first examine the obligations which they owe to their clients and to the Courts. Before doing so, we must examine the preliminary objections raised by the respondents to the maintainability of the writ petition, and their claim that their right to go on strike / boycott Courts is traceable to their fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India.

I. MAINTAINABILITY OF THE WRIT PETITION:

25. Mr. Rajesh Joshi, learned counsel for the Uttarakhand High Court Bar Association, would submit that the writ petition as filed is not maintainable; the petitioner has espoused his personal cause, and the writ petition has not been filed in the interest of the public at large. Mr. M.C. Pant, learned counsel, would submit that Section 48 of the 1961 Act provides indemnity to members of the Bar Council, as also the Bar Council, against any suit or legal proceeding; the present writ petition is, therefore, not maintainable; if a Judge can recuse himself from hearing a case, an Advocate too can recuse himself from appearing in a Court or in a case; and, therefore, the decision taken by an Advocate, not to appear in a matter, cannot be considered to be a strike.

26. On the other hand Dr. Kartikey Hari Gupta, learned counsel appearing on behalf Mr. Mani Kumar, learned counsel for the petitioner, would submit that the High Court can entertain a Writ Petition under Article 226 of the Constitution of India, if the State Bar Council fails to perform its

statutory functions, under Section 35 (1) of the 1961 Act, to prevent strikes by lawyers; in **R. Muthukrishnan**^[2], the Supreme Court has held that it is for the High Court to entertain a writ petition, under Article 226 of the Constitution, if the Bar Council fails in its functions to discipline advocates for misconduct; and the High Court is duty bound to entertain writ petitions, and issue appropriate directions to the Bar Council to take action.

27. Section 48 of the 1961 Act relates to indemnity against legal proceedings and, thereunder, no suit or other legal proceeding shall lie against any Bar Council or any committee thereof, or a member of a Bar Council, for any act done in good faith or intended to be done in pursuance of the provisions of the Act or of any rule made thereunder. The protection conferred by Section 48 is for any act done in good faith in pursuance of the provisions of the 1961 Act or the Bar Council of India Rules, neither of which confer any right on Advocates, even if they be the members of the Bar Council, to go on strike or to boycott Courts. Such illegal acts cannot also be said to have been done in good faith. In any event, the indemnity conferred by Section 48 of the 1961 Act is only on the Bar Council and its members, and not on Bar Associations or its member advocates. Reliance placed on Section 48 is, therefore, wholly misplaced.

28. Recusal by a Judge to hear a particular case is if he is even remotely connected either with the *lis* or with any of the parties thereto, for justice must not only be done, but must also be seen to be done. An Advocate, who has entered appearance on behalf of a particular litigant, is bound to appear on his behalf in Court. While he may, for just and valid reasons, give up his Vakalat, he cannot abstain from appearing in the case because of a call by the Bar Association for a strike or for boycott of Courts. Recusal by a Judge to hear a case cannot be equated to the abstention of an Advocate, appearing in Court on behalf of his client, on the ground that the Bar Association, of which he is a member, has given a call for a strike or for boycott of Courts.

29. Since the duty of a lawyer is to assist the Court, in the administration of justice, the practice of law has a public utility flavor. (**Sri**

Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N.^[5] and **Indian Council of Legal Aid and Advice v. Bar Council of India and another**^[6]. The central function of the legal profession is to promote administration of justice. If the practice of law is thus a public utility of great implications, and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice — social justice. (**Bar Council of Maharashtra v. M.V. Dabholkar and others**^[7]).

30. All the State Bar Councils and the Bar Council of India have a public duty to perform, namely, to ensure that the monopoly of practice granted under the Act is not misused or abused by a person who is enrolled as an advocate. (**Indian Council of Legal Aid and Advice**^[6]). In case the Bar Council is not taking appropriate action against the advocate, it would be open to the High Court to entertain a writ petition, and to issue appropriate directions to the Bar Council to take action in accordance with law in the discharge of the duties enjoined upon it. (**R. Muthukrishnan**^[2]). The Bar Council, which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette, is also obliged to act “in aid of the Supreme Court” (**Supreme Court Bar Association v. Union of India and another**^[8]) which would include ensuring that the law declared by the Supreme Court, (holding that resort to strikes by Advocates is illegal), is adhered to.

31. While the petitioner is, no doubt, personally aggrieved by the boycott of Courts on Saturdays, by members of the Dehradun Bar Association, since it had resulted in his case being needlessly dragged-on, despite the directions of the Supreme Court, the cause he has espoused is also in larger public interest, since his endeavour is to ensure that the District Courts function on Saturdays also, and thereby secure the fundamental rights of litigants to speedy justice. Since the practice of law has a public utility flavor, and the State Bar Councils and the Bar Council of India have a public duty to ensure that no advocate misuses and abuses the privileges conferred on him, failure on the part of the Bar Councils to

discharge their statutory duties would also justify this Court exercising its jurisdiction, under Article 226 of the Constitution of India, to interfere.

II. CAN RESORT TO STRIKES/BOYCOTT OF COURTS BY ADVOCATES BE JUSTIFIED ON THE GROUND THAT THERE IS NO LAW PROHIBITING STRIKES ?

32. Mr. Yogesh Pacholia, learned counsel appearing on behalf of the Almora Bar Association, would submit that strike is not prohibited under any State or Central Law; it is only the Industrial Disputes Act which recognizes and legalizes “Strike”, and does not debar all forms of strike; unless strike is prohibited by legislation, it cannot be said to be illegal; strikes, since early history, have been accepted as a collective mode of peaceful representation of grievances; and the right to strike is covered within the fundamental right of speech and expression, and is an integral part of democracy. Mr. M.C. Pant, learned counsel, would submit that the judgments, cited by petitioner, do not constitute law imposing any restriction on an Advocate to go on strike; and judgments should not be read as statutes.

33. Strike by lawyers is not an acceptable mode of protest, irrespective of the gravity of the provocation, and the genuineness of the cause. Lawyers can adopt other modes of protests which will not interrupt or disrupt court proceedings or adversely affects the interest of the litigant. Thereby lawyers can also set an example to other sections of society in the matter of protest and agitations. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhwa v. State of (NCT of Delhi) and others**^[9]).

34. Lawyers cannot go to the streets, or go on strike, except when democracy itself is in danger, and the entire judicial system is at stake. (**R. Muthukrishnan**^[2]). If Advocates think they have a just cause for complaint, they have two courses open to them — to make a representation to the District Judge or to the High Court. Boycotting Court is high-handed and unjustified. (**Emperor v. Tarini Mohan Barari**^[10]; and **U.P. Sales Tax Service Association v. Taxation Bar Association, Agra and others**^[11]). Lawyers have no right to go 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 armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **Ramon Services Pvt. Ltd. v. Subhash Kapoor**^[12]).

35. Only in the rarest of rare cases, where the dignity, integrity and the 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 will be for the Court to decide whether or not the issue involves the dignity or integrity or independence of the Bar and/or the Bench. 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 should be abided by the Bar. (**Sri Jayendra Saraswathy Swamigal**^[5]; **Harish Uppal**^[11]; and **R. Muthukrishnan**^[2]).

36. The law declared by the Supreme Court is binding under Article 141 of the Constitution of India. The mere fact that there is no legislation (plenary or subordinate) prohibiting strikes/boycott of Courts by Advocates does not give them a license to resort to such illegal acts, and in violation of the law declared by the Supreme Court. As held by the Supreme Court, in the judgments referred to hereinabove, there are other means by which Advocates can express their anguish/grievance, apart from strikes or boycott of Courts.

37. It is the duty of every Advocate, who accepts the brief, to appear in Court. (**Lt. Col. S.J. Chaudhary v. State (Delhi Administration)**^[13]). There is no fundamental right, either under Article 19 or Article 21 of the Constitution, which permits or authorises a lawyer to abstain from appearing in Court in a case in which he holds a vakalat. (**B.L. Wadhera**^[9]; and **Sri Jayendra Saraswathy Swamigal**^[5]). Even if ventilation of grievance through strike is assumed to be protected by the fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, exercise of such a right ends when it

threatens to infringe upon the fundamental right of another. As such a limitation is inherent in the exercise of the right under Article 19(1)(a), lawyers cannot go on strike infringing the fundamental right of the litigants for a speedy trial. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhera**^[9]).

38. The right to practice any profession or to carry on any occupation, guaranteed by Article 19(1)(g), does not include the right to abstain from appearing in Court while holding a vakalat in the case. Similarly, exercise of the right to protest by lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhera**^[9]). The right to a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. (**Hussainara Khatoon and others (I) v. Home Secretary, State of Bihar**^[14]; **Kadra Pahadiya and others (I) v. State of Bihar**^[15]; **State of Maharashtra v. Champalal Punjaji**^[16]; and **Raghubir Singh and others v. State of Bihar**^[17]). Infringement of this fundamental right of a litigant, for a speedy trial of his case, caused as a result of a strike by lawyers, cannot be permitted. (**Sri Jayendra Saraswathy Swamigal**^[5]; **B.L. Wadhera**^[9]). Even if the right of an Advocate to go on strike is presumed to form part of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India, such a right cannot extend to violating the fundamental rights of litigants to speedy justice under Article 21 of the Constitution of India. Boycott of Courts or Calls for strikes by Advocates cannot, therefore, be justified on this score.

39. While judgments of Courts should, undoubtedly, not be read out of context or as Statutes, the law declared by the Supreme Court necessitates adherence; and as the Supreme Court has, in the judgments referred to hereinabove and in those to be referred to later in this order, repeatedly held that the lawyers cannot go on strike except when democracy itself is in danger or the entire judicial system is at stake or the dignity, integrity and independence of the Bar and the Bench is at stake, resort to strikes is impermissible, apart from the extreme situations referred to

hereinabove, that too for a day and that too with the approval of the Chief Justice or the District Judge. The mere fact that there is no law made by the Parliament or the State Legislature, prohibiting strikes, does not give Advocates the license to resort to such strikes or to boycott Courts.

40. Before spelling out the measures required to be taken to ensure that Courts function on all Court working days including Saturdays, it is necessary to detail the legal obligations, of different stakeholders of the judicial dispensation system, to avoid/prevent strikes by Advocates. As the issue under consideration is the illegal acts of Advocates in resorting to strikes/boycott of Courts, let us first examine the obligation of Advocates to ensure smooth functioning of Courts, and avoid strikes/boycotts.

III. OBLIGATION OF ADVOCATES TOWARDS COURTS AND THE LEGAL PROFESSION:

41. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that, as strikes by lawyers are illegal, necessary steps should be taken to curb this growing tendency; strikes cause loss of material submissions which, otherwise, should have been made in Courts; strike by lawyers has lowered the image of the Courts in the eyes of the general public; and strike by advocates are in violation of Part VI Chapter II of the Bar Council of India Rules.

42. The Bar is not a private guild but, by bold contrast, a public institution committed to public justice. The grant of a monopoly license 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 who will perform that function, and (3) His performance as a professional is regulated by himself, not 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 Public Utility’ — ‘The Lawyer, The Public and Professional Responsibility’ by F. Raymond Marks et al — Chicago American Bar Foundation, 1972, p. 288-89**). The Bar has the tradition of placing their professional duty, of assisting access to

justice, above every other consideration. (**Krishnakant Tamrakar**^[3]). The legal profession cannot be equated with any other traditional profession. The independence of the Bar, and the autonomy of the Bar Council, has been statutorily ensured so that the judiciary remains strong. (**R. Muthukrishnan**^[2]).

43. Law is no trade, and briefs of litigants no merchandise. (**Ramon Services Pvt. Ltd.**^[12]). Law courts do not belong to the lawyers alone. They belong to the people. Lawyers must realise the untold hardship and misery to which the litigants are subjected to, and the extent to which the cause of justice suffers, on each day they boycott Courts on one pretext or another. (**U.P. Sales Tax Service Association**^[11]).

44. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of civilised society. Both as a leading member of the intelligentsia of society, and as a responsible citizen, the lawyer should conduct himself as a model for others, both in his professional and in his private and public life. The society has a right to expect of him such an ideal behaviour. (**In Re : Sanjiv Datta, Deputy Secretary**^[18]). As the foremost duty of the legal fraternity is to society, (**Hussain and Anr. v. Union of India**^[19]; and **Krishnakant Tamrakar**^[3]), members of the legal profession must endeavour to improve the quality of the service they render both to the litigant-public and to the courts, and to brighten their image in society. (**In Re : Sanjiv Datta, Deputy Secretary**^[18]).

45. The role of a Lawyer is indispensable in the system of delivery of justice. He is bound by professional ethics and to maintain high standards. His duty is to the court, to his client, and to the opposite side. What may be proper for others in society, may be improper for him. As he belongs to a respected intellectual class of society, and a member of a noble profession, the expectation from him is higher. Litigants repose faith in a lawyer, and share with him privileged information. (**R. Muthukrishnan**^[2]).

Lawyers owe a duty not only to the legal system, but also to society and the country. (**Oudh Bar Association v. State of Uttar Pradesh**^[20]). An advocate's duty is as important as that of a Judge and they play a vital role in the preservation of society and the justice system. In all professional functions, the conduct of an advocate should be diligent, and must conform to the requirements of the law. An advocate is under an obligation to uphold the rule of law, and ensure that the public justice system functions to its full potential. (**O.P. Sharma and others v. High Court of Punjab and Haryana**^[21]).

46. An advocate should have integrity in abundance, and should never do anything that erodes his credibility. An advocate should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules. (**O.P. Sharma**^[21]). As a rule, an advocate, being a member of the legal profession, has a social duty, and his conduct and actions, rather than being adamant on an unwarranted and uncalled for issue, should be exemplary. (**O.P. Sharma**^[21]).

47. An Advocate is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards, which that profession has set for itself and demands of him in professional matters, he is liable for disciplinary action. (**Mr. 'G' a Senior Advocate of the Supreme Court**^[22]). Advocates have no right to go on 'strike'. It is unprofessional as well as unbecoming of a lawyer, who has accepted a brief, to refuse to attend Court pursuant to a call for strike or boycott by the Bar Association or the Bar Council. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]). Any violation of the principles of professional ethics by an advocate is unacceptable. Ignoring even a minor violation / misconduct militates against the fundamental foundation of the public justice system. (**O.P. Sharma**^[21]). Participation of a lawyer, in a Bar Association's boycott of Courts, is ex-facie illegal in view of the clear declaration of law by the Supreme Court. Even if there is a boycott call, a lawyer should boldly

ignore the same. (**Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd.**^[23]; **Sri Jayendra Saraswathy Swamigal**^[5]; and **Ramon Services Pvt. Ltd.**^[12]).

48. The Law Commission, in its 266th report, observed that dispensation of justice must not stop for any reason; and strike by lawyers had lowered the image of Courts in the eyes of the general public. Lawyers' strike results in the denial of these rights to the citizens in the State (**Krishnakant Tamrakar**^[3]; and **Mahipal Singh Rana**^[4]), and unless there are compelling circumstances, and approval for a symbolic strike of one day is obtained from the Bar Council concerned, advocates should not resort to strike or abstention from Court work. (**Krishnakant Tamrakar**^[3]; and **Mahipal Singh Rana**^[4]).

49. It is unethical for members of the noble profession of law to organize and participate in strikes (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhera**^[9]), or to abstain from Court when the cause of his client is called for hearing. (**Ramon Services Pvt. Ltd.**^[12]). If the legal profession is to survive, the judicial system must be vitalized for, if people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within, before it is wrecked from outside. (**In Re : Sanjiv Datta**^[18]; **Ramon Services Pvt. Ltd.**^[12]; and **Sri Jayendra Saraswathy Swamigal**^[5]).

50. Attempts, to persuade Advocates to start attending Courts on Saturdays, have failed and, despite repeated pronouncements by the Supreme Court that Advocates should not abstain from attending Courts merely on a call for a strike/boycott given by the Bar Associations, large-scale abstention of Advocates from Court continues. As noted hereinabove, several working days were lost, and continue to be lost, because Advocates have given unto themselves an unofficial five day week with an unofficial holiday on Saturday. Judges, in some of these Courts, have conveniently turned a blind eye to such abstention, since it also suits them not to have a working Saturday. As attempts, at persuading Advocates to attend Courts

on Saturdays, have met with little success, necessary measures must be taken to bring an end to this illegal and unwarranted practice.

(A) DOES RESORT TO STRIKES AND BOYCOTT OF COURTS BY ADVOCATES AMOUNT TO MISCONDUCT?

51. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that there is no statutory definition of “misconduct” under Section 35 (1) of the 1961 Act; similar provisions existed in the Indian Pleaders Act, 1879 regarding misconduct of advocates; and Courts, from the beginning, have interpreted deliberate abstention from court work /strike as the worst form of misconduct.

52. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable, and the vital role of the lawyer depends upon his probity and professional lifestyle. The Bar cannot behave with doubtful scruples. Canons of conduct cannot be crystallized into rigid rules but felt by the collective conscience of the practitioners as right. (**M.V. Dabholkar**^[7]). Having acquired a right to practise, a lawyer incurs certain obligations in regard to his conduct as a member of the noble profession. (**Indian Council of Legal Aid and Advice**^[6]). A lawyer is under an obligation to do nothing that would detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at, all times, pay deferential respect to the Judge, and scrupulously observe the decorum of the Court-room. (**Warvelle’s Legal Ethics, at p. 182; Lt. Col. S.J. Chaudhary**^[13]; **R. Muthukrishnan**^[2] and **Mahabir Prasad Singh**^[23]).

53. The legal profession should evolve a code for themselves in addition to the mandate of the 1961 Act, the Rules made thereunder and the Rules made by various High Courts and the Supreme Court, to strengthen the belief of the common man in the judicial institution in general, and in the legal profession in particular. Creation of such faith and confidence

would not only strengthen the rule of law, but also result in achieving excellence in the legal profession. (**R.D. Saxena**^[24]).

54. Advocates must strictly and scrupulously abide by the Code of Conduct befitting the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. (**Sri Jayendra Saraswathy Swamigal**^[5] and **Indian Council of Legal Aid and Advice**^[6]). If it is shown that an advocate, in the pursuit of his profession, has done something which would be reasonably regarded as disgraceful or dishonourable, by his professional brethren of good repute and competence, it can then be said that he is guilty of professional misconduct. (**In re : A Solicitor ex parte Law Society**^[25]; and **R.D. Saxena**^[24]). An Advocate, who abstains from Court, commits professional misconduct, a breach of professional duty, because of a strike call, besides a breach of trust; and is liable for all consequences thereof. (**B.L. Wadhwa**^[9] and **Sri Jayendra Saraswathy Swamigal**^[5]).

55. Chapter V of the 1961 Act relates to the conduct of Advocates, and Section 35 thereunder relates to punishment of advocates for misconduct. Under Sub-Section (1) thereof, where, on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. Section 35(3) of the 1961 Act enables the disciplinary committee of a State Bar Council, after giving the Advocate concerned an opportunity of being heard, to make an order, among others, namely: (c) suspend the Advocate from practicing for such period as it may deem fit; (d) remove the name of the Advocate from the State roll of Advocates.

56. In the exercise of the powers conferred on it by Section 49(1)(c) of the 1961 Act, to prescribe standards of professional conduct and etiquette to be observed by Advocates, the Bar Council of India made the Bar Council of India Rules (hereinafter called the "BCI Rules"). Part VI of the BCI Rules govern Advocates. Chapter II in Part VI relates to standards of professional conduct and etiquette. Under the preamble thereunder, an

advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an Advocate. Without prejudice to the generality of the foregoing obligation, an Advocate shall fearlessly uphold the interest of his client and, in his conduct, conform to the Rules mentioned thereafter both in letter and spirit, which contain canons of conduct and etiquette adopted as general guides. Yet the specific mention thereof shall not be construed as a denial of the existence of other equal imperatives, though not specifically mentioned. Section 1 thereunder relates to the duty to the Court and, under clause (1) thereof, an advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and, whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to the proper authorities. Clause (2) requires an advocate to maintain towards the Court a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community. Clause (4) obligates an advocate to exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

57. The disciplinary jurisdiction over Advocates, now conferred on the State Bar Councils and the Bar Council of India under the 1961 Act, was earlier conferred on the High Courts under Sections 12 to 14 of the Legal Practitioners Act, 1879 (the “1879 Act” for short”). It was, thereafter, vested in the High Court under Sections 10 to 13 of the Indian Bar Councils Act, 1926 (the “1926 Act” for short). It is useful, in this context, to refer to the reasons which weighed with Parliament in conferring such a power on bodies constituted by the Advocates themselves, instead of on the High Court.

58. The Government of India, by its proceedings dated 15.12.1951, constituted the All India Bar Committee, under the Chairmanship of Justice

S.R. Das (Judge, Supreme Court of India), with seven eminent members including Sri M.C. Setalvad (the first Attorney General of India), and Justice Bakshi Tek Chand, to examine and report, among others, on the desirability and feasibility of a completely unified Bar for the whole of India, and for establishing a single Bar Council (a) for the whole of India, or (b) for each State; and on the consolidation and revision of various enactments (Central as well as State) relating to legal practitioners, etc. In its report dated 15.12.1951, the Committee, after tracing the genesis of the demand for an All India Bar, recommended constitution of a State Bar Council in each State consisting of two Judges of the High Court to be nominated by the Chief Justice, the Advocate-General and fifteen elected members.

59. Among the functions, which the Committee recommended for these State Bar Councils, included entertaining and determining all cases of professional misconduct against advocates on its Register, and to pass such orders of punishment as it deemed fit. The Committee also recommended constitution of an All-India Bar Council, which was to consist of two Judges of the Supreme Court, the Attorney General of India, delegates from the State Bar Councils and three members to be elected by the Supreme Court Bar Association. Among the functions, recommended to be discharged by the All India Bar Council, included withdrawing any disciplinary proceedings pending before any State Bar Council; to entertain and determine all cases of misconduct of advocates in relation to the proceedings in the Supreme Court; and to exercise general supervision over the functions and working of the State Bar Councils. The Committee recommended that a consolidated Act be made incorporating the provisions of the existing Acts as modified by its recommendations. It is on the basis of the recommendations of the All India Bar Committee, and after taking into account the recommendations of the Law Commission on the reforms in judicial administration, was a bill introduced, and the 1961 Act enacted. The demand for peer's justice led to the conferment of disciplinary jurisdiction on the Bar Council, under Chapter V of the 1961 Act, extinguishing the jurisdiction of the High Court thereupon.

60. Reservations were expressed on the exercise of disciplinary jurisdiction by the Bar Council, and it was suggested that the disciplinary jurisdiction be restored to the High Court. This aspect was examined by the Law Commission of India, with Justice H.R. Khanna as its Chairman. In its 75th report on the disciplinary jurisdiction under the 1961 Act – submitted in October, 1978, the Law Commission opined that the trend of legislation in India had been gradually moving towards greater autonomy in the field of disciplinary proceedings against members of the legal profession; it would be a retrograde step if this trend was reversed, and the disciplinary jurisdiction was sought to be restored to the High Courts; a few isolated instances, in which aggrieved parties were dissatisfied with the action taken by the disciplinary body, should not be regarded as constituting adequate justification for a change in the law; reversion to the previous position was, therefore, out of question; the alternative suggestion for involvement of the Judges of the High Court, in the Disciplinary Committee of the State Bar Council, was also unacceptable, as Judges of the High Court would be reluctant to be associated with the Disciplinary Committee of the State Bar Council; and the question of association of Judges of the Supreme Court, with the Disciplinary Committee of the Bar Council of India, did not arise as an appeal, from the order of that Disciplinary Committee, lay to the Supreme Court. As a result the disciplinary jurisdiction over Advocates continues to be exercised by the Bar Councils. It is possibly because the ineffectiveness of these statutory bodies, that recalcitrant Advocates continue to flagrantly violate the law laid down by the Supreme Court, directing them not to go on strike, with impunity safe in the knowledge that, save possibly a rap on the knuckles, nothing more would happen to them, as the very continuance in office of the Chairman and members of the State Bar Council, and the Bar Council of India, depends on their electoral support.

61. The word “misconduct” has not been defined in the 1961 Act. Section 13(b) of the Legal Practitioners Act, 1879 enabled the High Court, after such inquiry as it thought fit, to suspend or dismiss any pleader, who was guilty of grossly improper conduct in the discharge of his professional

duty. In the matter of **Tarini Mohan Barari**^[10] a pleader had boycotted the Court in compliance with the resolution passed by the Bar Association asking its members not to appear as pleaders before a particular Judge. The Division Bench of the Calcutta High Court held that they regarded it as a very serious matter; the pleader had deliberately abstained from attending the Court, and had taken part in a concerted movement to boycott the said Court, a course of conduct which could not be justified or tolerated; the pleaders had duties and obligations to their clients in respect of the suits and matters entrusted to them, which were pending in the Court; there was a further and equally important duty and obligation upon them to co-operate with the Court in the orderly and pure administration of justice; by the course which they had adopted, the pleaders had violated and neglected their duties and obligations in both these respects; and such conduct could not and would not be tolerated. Boycott of Courts by Advocates, undoubtedly, amounts to misconduct.

62. The disciplinary jurisdiction conferred on the High Courts under the Legal Practitioners Act, 1879 has now been conferred on the State Bar Council under the 1961 Act, Since strike or boycott of Courts by Advocates is a misconduct, the State Bar Council has a statutory obligation under the 1961 Act to take action against the errant Advocates, and refer the matter to its Disciplinary Committee directing them to initiate disciplinary action against them (the office bearers of the Dehradun, Haridwar and the Udham Singh Nagar Bar Associations) within a specified time-frame, failing which the High Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, can always issue a mandamus directing them do so.

(B) ADVOCATES CANNOT ABSTAIN FROM THE CASE MERELY BECAUSE OF A BOYCOTT CALL:

63. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that Advocates are duty bound, under the Civil Procedure Code, the Criminal Procedure Code, and the Allahabad High Court Rules, 1952 (applicable to the Uttarakhand High Court), to appear in the case in which they are

engaged; strikes, which prevent Advocates from discharging their duties, are illegal; dispensation of justice must not stop for any reason; it is unprofessional and unbecoming of a lawyer to refuse to attend Court merely because of a boycott call by the Bar Association; and absence from Courts is both unfair to the Client as well as to the Court.

64. Part VI of the Allahabad High Court Rules, (which Rules are applicable in its entirety to this High Court), relates to legal practitioners and contains Chapter XXIV to XXVI. Chapter XXIV of the Rules were made under Section 34(1) read with Section 16(2) of the 1961 Act. Rule 6 of the said Rules relates to appointment of Advocates in civil or criminal cases. Under sub-rule (1), appointment of an Advocate in civil cases, unless otherwise limited, shall be deemed to be in force to the extent provided in that behalf by Rule 4 of Order III of the Code of Civil Procedure, 1908. Order III CPC relates to recognized agents and pleaders. Rule 4, thereunder, relates to appointment of pleaders. Sub-rule (2) thereof stipulates that every appointment of a pleader shall be filed in Court, and shall be deemed to be in force until determined with the leave of the Court by writing signed by the client or the pleader, as the case may be, and as filed in Court, or until the client or the pleader dies, or until all proceedings in the suit have ended so far as regards the client. The obligation of the Advocate, who has entered appearance on behalf of his client, is to continue to represent him in the Suit till his appointment is either determined with the leave of the Court or till either he or his client dies or until all proceedings in the Suit come to an end. Continuance of his appointment, in terms of Order III Rule 4(2) CPC, obligates the Advocate to represent the accused on each date on which the case is listed before the Court, and not to abstain from attending Court, and thereby refrain from representing his client in the case.

65. Rule 6(2) of Chapter XXIV of the Allahabad High Court Rules stipulates that, in criminal cases, the appointment of an Advocate, unless otherwise limited, shall be deemed to be in force until determined with the leave of the Court by writing signed by the party or the Advocate, as the case may be, and is filed in Court or until the party or the Advocate dies, or until all proceedings in the case have ended. Section 309 of the Code of

Criminal Procedure, 1973 relates to the power to postpone or adjourn proceedings and, under sub-Section (1) thereof, in every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same, beyond the following day, to be necessary for reasons to be recorded. The obligation placed on the Court, under Section 309(1) Cr.P.C, to continue trial on a day-to-day basis, would be defeated by the abstention of Advocates from Court due to strikes/boycotts, thereby denying the accused the right of a speedy trial. Boycott of Courts and strikes by Bar Associations impinge on this obligation of an Advocate towards his client and to the Court. The concept of a 'free trial' takes within its sweep the concept of a speedy trial, and a speedy trial meets the purpose when the trial is held without grant of adjournment as provided under Section 309 Cr.P.C. (**Mohd. Akhtar v. State of Jammu & Kashmir**^[26]). It is evident from a conjoint reading of Rule 6(1) and (2), in Chapter XXIV of the Allahabad High Court Rules, read with Order III Rule 4(2) CPC and Section 309 Cr.P.C., that the obligation of an Advocate to represent his client continues throughout the case, and is only brought to an end either by death of the Advocate or his client, or on the case itself coming to an end.

(C) **ABSTENTION FROM COURTS ON ACCOUNT OF CONDOLENCE REFERENCES :**

66. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel of the petitioner, would submit that condolence references are resorted to at the drop of a hat; such references are held in the morning and, thereafter, Court work is boycotted; these references, in most districts, are not confined merely to Advocates but also extends to their family members; references for Judges are held only at 03:30 P.M; and, despite a Circular having been issued by the High Court, such unwarranted practices still continue.

67. Advocates strike work and boycott Courts at the slightest pretext overlooking the harm caused to the judicial system in general and the litigant public in particular, and to themselves in the eyes of the general public. (**U.P. Sales Tax Service Association**^[11]). Frequent suspension of

court work, after condolence references, is clearly illegal. The legal fraternity must realize its duty to society. Condolence references can be held once in a while, say once in two/three months and not frequently. Hardships faced by witnesses if their evidence is not recorded on the day they are summoned, and the impact of delay on undertrials in custody on account of such avoidable interruptions of court proceedings, are a matter of concern for any responsible body of professionals, and they must take appropriate steps. (**Hussain and another**^[19]; and **Harish Uppal**^[1]).

68. Court work in several districts, mainly in District Udham Singh Nagar, is hampered by condolence references, not just on the demise of an Advocate member of the Bar Association, but also of his family members. These condolence references are called at 11:00 A.M. and, after expressing their grief on the demise of the relative of the Advocate, all Advocates abstain from Courts on that day. A circular was issued by the High Court on 12.03.2019 directing all District Judges that they may close Courts only after 03:30 P.M. and only in the following circumstances (1) when a sitting or a retired Chief Justice or a Judge of the Supreme Court or a sitting or a retired Chief Justice or a Judge of the High Court or a sitting or a retired Judicial Officer or a senior or prominent member of the Bar dies, and (2) when the death or cremation or funeral of such a person takes place in the district; and, if the death or cremation or funeral of such a person has taken place early or in a different district, the Court should not be closed at all. It does appear that the circular of the High Court dated 12.03.2019 has not had the desired effect.

69. The Circular issued by the High Court dated 12.03.2019 should be strictly implemented, and periodic reports may be called to ascertain whether such unhealthy practices of abstention from Courts, by resorting to condolence references on the demise of the family member of an Advocate still continues. The District Judge of the concerned districts shall ensure that Court work proceeds unhindered, notwithstanding abstention of Advocates from attending Courts on this score. Monitoring of these aspects, both by the District Judge and the High Court, is essential to curb such unhealthy practices.

70. Periodic reports may be called by the High Court, from all District Judges, to ascertain the number of Court working days lost because of strike/boycott of Courts or condolence references. No condolence reference should be permitted, except in terms of the Circular issued by the High Court dated 12.03.2019. Condolence reference for family members of Advocates, or abstention of Courts on that score, should not be permitted. Periodic reports, specifically regarding condolence references, may also be called by the High Court from the District Judges; and their explanation sought, in case Court work is suspended on that account.

IV. STATUTORY OBLIGATIONS OF THE STATE BAR COUNCIL:

71. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that non-presence of elected members is no justification for not taking appropriate action, under Section 35(1) of the 1961 Act, against striking lawyers; the Bar Council of the State has failed to perform its statutory functions under Section 6(d) and (dd) of the 1961 Act; it has also failed to discharge its statutory obligations under Section 35(1) of the 1961 Act; the Bar Council need not wait till a complaint, on the professional misconduct of a lawyer, is received; and lawyers on strike, in Dehradun, Haridwar and Udham Singh Nagar districts, every Saturday is enough reason to hold the participating Advocates guilty of misconduct.

72. On the other hand Mr. Piyush Garg, learned counsel for the Bar Council of Uttarakhand, would submit that the term of the elected body of the State Bar Council expired on 10.05.2015; ever since then, the State Bar Council has been functioning under a Special Committee which was entrusted with the work of verification; the rules were challenged before several High Courts of the country; all the matters were transferred to the Supreme Court which, by its order dated 23.03.2018 passed in Transfer Case (Civil) No. 126 of 2015, issued certain directions regarding the manner in which elections should be conducted to the State Bar Councils; elections, for members of the State Bar Council, were conducted on 28.03.2018; after

approval of the Tribunal, the election results were published in the official gazette on 15.02.2019; on the directions of the Bar Council of India, fresh elections, to the post of Chairman of the State Bar Council, was conducted on 25.06.2019; election to the office of the Chairman of the Bar Council has not yet been approved; the State Bar Council is, presently, functioning with the Advocate General as its Chairman and Ex-officio member; for want of an elected body since 2015, no decision could be taken; and, once the elected body takes charge, the State Bar Council will take an appropriate decision in the matter.

73. Under Section 5 of the 1961 Act, every Bar Council shall be a body corporate, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may by the name, by which it is known, sue and be sued. Section 6 of the 1961 Act relates to the functions of the State Bar Council and, under sub-section (1) thereof, the functions of a State Bar Council shall, among others, be (a) to admit persons as Advocates on its roll; (c) to entertain and determine cases of misconduct against advocates on its roll; (d) to safeguard the rights, privileges and interests of advocates on its roll; (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in Section 6(2)(a) and Section 7(2)(a); (h) to perform all other functions conferred on it by or under the 1961 Act; and (i) to do all other things necessary for discharging the aforesaid functions. Section 9 of the 1961 Act relates to disciplinary committees and, under sub-section (1) thereof, a Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members, and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified under Section 3(2), and who are not members of the Council.

74. The Bar Council acts as the custodian of the high traditions of the noble profession (**M.V. Dabholkar**^[7]), and has a vibrant and responsible role to play at the State level. ‘Lawyer-power’ lasts through the high comport and ethics of the many, screening and weeding deviants and

delinquents. (**M.V. Dabholkar**^[7]). The legislature has reposed faith in the autonomy of the Bar, while enacting the 1961 Act, which provides for an autonomous Bar Council at the State level. As the obligation to uphold ethical standards, of the legal profession, have been assigned to it, the State Bar Council should maintain the dignity of the legal profession, and the independence of the Bar. (**R. Muthukrishnan**^[2]).

75. The Bar Council has been created at the State level not only to protect the rights, interests and privileges of its members, but also to protect the litigating public, ensuring that the high and noble traditions are maintained so that the purity and dignity of the profession is not jeopardized. (**Indian Council of Legal Aid and Advice**^[6]). The general superintendence of ethics and etiquette of the profession is the responsibility of the State Bar Council created under the Act, and they have been charged with the duty to punish their members for misconduct. While disciplinary jurisdiction is conferred on the State Bar Councils to punish its members for misconduct, it is at the same time charged with the duty to safeguard their rights, privileges and interests. (**Indian Council of Legal Aid and Advice**^[6]).

76. The State Bar Council is the collective representative of the lawyers and the public, in regard to the observance of professional ethics by persons belonging to the profession. (**M.V. Dabholkar**^[7]). Its interests are the maintenance of standards of professional conduct and etiquette, and it has the statutory duty to ensure that the rules laid down by the Bar Council of India, in relation to professional conduct and etiquette, are upheld and not violated. The State Bar Council acts as the sentinel of the professional code of conduct, and is vitally interested in the purity and dignity of the profession. (**M.V. Dabholkar**^[7]).

77. Since, the jurisdiction to grant a licence to a law graduate, to practise as an advocate, vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body. (**Supreme Court Bar Association**^[8]). The constitution of State Bar Councils is to ensure that the

standards of professional conduct and etiquette, laid down by the Bar Council of India, are observed and preserved, and it therefore entertains cases of misconduct against advocates. One of its principal functions is to receive complaints against advocates, and if the State Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee. (**M.V. Dabholkar**^[7]; **Supreme Court Bar Association**^[8]).

78. The State Bar Council has the power to discipline lawyers and maintain the nobility of the profession, and that power carries with it great responsibility. (**R. Muthukrishnan**^[2]). The State Bar Council has a very important part to play, first, in the reception of complaints, second, in forming the reasonable belief of guilt of professional or other misconduct, and finally in making a reference of the case to its Disciplinary Committee. The Bar Council of a State, which initiates disciplinary proceedings, may also of its own motion, if it has reason to believe that any advocate has been guilty of professional or other misconduct, refer the case for disposal to its Disciplinary Committee. (**M.V. Dabholkar**^[7]; **Supreme Court Bar Association**^[8]). Disciplinary authorities are set up under the Act to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from practise as well as removal of the name from the roll of advocates. (**Indian Council of Legal Aid and Advice**^[6]).

79. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffers a mayhem and who, but the State Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? (**M.V. Dabholkar**^[7]). The State Bar Council is duty bound to protect the Bar itself by taking steps against the black sheep, and cannot belie the expectations of the Bar in general and spoil its image. The very purpose of conferring disciplinary control on the Bar Council cannot be frustrated. (**R. Muthukrishnan**^[2]).

80. The justification given for the failure of the State Bar Council to discharge its statutory obligations, of taking disciplinary action against

the errant Advocates of the concerned District Bar Associations, is that the term of office of the elected body of the State Bar Council expired on 10.01.2015 i.e. four years ago. As noted hereinabove, boycott of Courts, on Saturdays, is not a recent phenomenon, and has been prevalent in these districts for around 30 years prior to 2015. Members of the State Bar Council need the support of these Bar Associations, and of its members, for their re-election. These factors seem to deter them from taking action against their colleague Advocates who are the office bearers of these District Bar Associations. As a statutory obligation is placed on them, under the 1961 Act, to take action against those Advocates responsible for calling for the boycott of Courts/strikes, the State Bar Council cannot shirk their responsibility of initiating disciplinary action against the errant office bearers of these District Bar Associations.

81. The State Bar Council also has the power to take action against the Bar Associations under the Advocates Welfare Fund Act, 2001. Chapter IV of the said Act relates to recognition of any association of advocates, and Section 16 thereunder relates to the recognition by a State Bar Council of any association of advocates. Sub-sections (1) and (2) of Section 16 permit any association of advocates, registered as an association, to apply for recognition to the State Bar Council. The explanation below Section 16(4) defines the word 'registered', for the purposes of Section 16, to be registered or deemed to be registered under the Societies Registration Act, 1860. Section 16(4) enables the State Bar Council, after such enquiry as it deems necessary, to recognize the association and issue a certificate of recognition in such form as may be prescribed. Section 16(5) stipulates that the decision of the State Bar Council, on any matter regarding recognition of an association under sub-section (4), shall be final. In view of Section 21 of the General Clauses Act, 1897, the power conferred on the State Bar Council, to issue a certificate of recognition, would include the power to rescind the certificate issued by them, which power they can exercise in exceptional circumstances. We may not be understood to have held that the Uttarakhand State Bar Council should rescind the certificate of recognition issued earlier to these District Bar Associations. We merely remind the Uttarakhand State

Bar Council of its powers to control recalcitrant Bar Associations which continue to flout the law, and indulge in acts which adversely affects the functioning of Courts, besides violating the fundamental rights of litigants to speedy justice.

82. A vague promise, of the matter being examined once a Chairman of the State Bar Council is elected and takes office, would not suffice. The State Bar Council is a body corporate having perpetual succession. Its existence is independent of, and is not contingent upon, elected members holding office. In the absence of an elected body, the Special Committee constituted, under Section 8A of the 1961 Act, is competent to discharge the functions of the State Bar Council and can, therefore, constitute disciplinary committees for action to be taken against the errant Advocates, who continue to boycott Courts in complete defiance of the law declared by the Supreme Court, and their obligations, as members of a noble profession, to protect the fundamental rights of litigants, and ensure that access to speedy justice is not denied to them.

83. A writ of mandamus can be issued where a statutory authority fails to discharge its statutory functions. Mandamus is a command issued to direct any person or corporation or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. (**Director of Settlements, A.P. v. M.R. Apparao and another**^[27]). The chief function of a writ of mandamus is to compel performance of the public duties prescribed by a statute. (**Lekhraj Satramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay and others**^[28]; **Dr. Rai Shivendra Bahadur v. Governing Body of the Nalanda College, Bihar Sharif and others**^[29]; **Umakant Saran Dr. v. State of Bihar**^[30]; and **Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh and others**^[31]). The duty that may be enjoined by a mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. (**M.R. Apparao**^[27]; and **Kalyan Singh v. State of U.P.**^[32]). As

abstention of Courts by Advocates amount to a misconduct on their part, failure of the State Bar Council, to take disciplinary action against them in terms of the statutory provisions of the 1961 Act would justify a writ of mandamus being issued directing them to discharge their statutory obligations.

V. OBLIGATIONS OF THE BCI:

84. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that the Bar Council of India has failed to perform its statutory functions, mandated under Section 7 (1) (b) of the 1961 Act, to lay down standards of professional conduct and etiquette for advocates; it is the duty of the Bar Council to maintain the credibility of advocates; a lawyer is a perpetual retainer of truth and justice; the Bar Council is duty bound to protect the Bar itself; it is the duty of the Bar Council, and other related bodies, to take action against strikes; the Bar Council of India, instead of following its own resolution in **Harish Uppal**^[1] case, had called for a nationwide strike of lawyers in India on 29-03-2017; as a result it is left with no moral authority to stop other Bar Associations from going on strike; and the expression of hope by the Supreme Court, in **Harish Uppal**^[1] (Para – 30), still remain unfulfilled by the Bar Council of India.

85. On the other hand Mr. B.S. Adhikari, learned counsel appearing on behalf of the Bar Council of India, would submit that the Bar Council of India is following the directions issued by the Supreme Court in **Harish Uppal**^[1]; and, pursuant thereto, a show cause notice dated 12.07.2019 has already been issued to all District Bar Associations in the State of Uttarakhand, through the State Bar Council. Mr. Piyush Garg, learned counsel for the Bar Council of Uttarakhand, would submit that the show-cause notice dated 12.07.2019, issued by the Bar Council of India, has been forwarded and communicated to all Bar Associations of the State on 15.07.2019.

86. The issue regarding strikes / boycott of Courts by Advocates, needs to be addressed by all concerned-the Central Government/State

Governments/ Bar Councils/ Bar Associations as well as the High Court, and ways and means ought to be found to tackle this menace. (**Hussain and Anr.**^[19]; **Krishnakant Tamrakar**^[3]; and **Harish Uppal**^[1]). Functions, relating to the regulation of the profession, are divided between the State Bar Councils and the Bar Council of India. Rule-making power has been conferred on the State Bar Councils under Sections 15 and 28, and on the Bar Council of India under Section 49 of the 1961 Act. (**Indian Council of Legal Aid and Advice**^[6]).

87. The 1961 Act, besides highlighting the essential functions of the Bar Council of India, provides for its enforcement. Section 7 of the 1961 Act relates to the functions of the Bar Council of India. Under sub-section (1) thereof, the functions of the Bar Council of India shall, among others, be : (b) to lay down standards of professional conduct and etiquette for Advocates; (d) to safeguard the rights, privileges and interests of Advocates; (g) to exercise general supervision and control over State Bar Councils; (l) to perform all other functions conferred on it by or under the 1961 Act; and (m) to do all other things necessary for discharging the aforesaid functions. Section 49(1)(ag), when read with Section 24 of the 1961 Act, confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates.

88. The Bar Council of India is enjoined with the duty to act as the sentinel of professional conduct, and should ensure that the dignity and the purity of the profession is in no way, undermined. Its duty is to uphold the standards of professional conduct and etiquette. (**Indian Council of Legal Aid and Advice**^[6]). The functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **Indian Council of Legal Aid and Advice**^[6]). Besides safeguarding the rights, privileges and interests of Advocates, its functions include the supervision and control of the working of the State Bar Council, and to perform all other functions conferred by or under the Act, and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above, it too is required to

exercise discipline and control over members of the profession. (**Indian Council of Legal Aid and Advice**^[6]).

89. In a joint meeting held on 29.09.2002, between members of Bar Council of India and the Chairmen of various State Bar Councils, cases, which resulted in lawyers abstaining from work, were examined, and it was resolved to constitute a Grievance Redressal Cell. Resolution (V) records the Bar Council's view that abstention of work in Courts should not be resorted to except in exceptional circumstances; even in exceptional circumstances, abstention should not be resorted to normally for more than one day in the first instance; and the decision for going on abstention should be taken by the general body of the Bar Association by a majority of two-thirds members present. Resolution (VI) was that in all issues, as far as possible, legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilising public opinion etc. In terms of Resolution VII, in case the Bar Associations deviate from the above resolution, and proceed with cessation of work in spite or without the decision of the concerned Grievances Redressal Committee, except in the case of emergency, the Bar Council of the State should take such action as it may deem fit and proper, the discretion being left to the Bar Council of the State concerned as to enforcement of such decisions; and, in the case of an emergency, the Bar Association concerned should inform the State Bar Council. The Bar Council of India further resolved that this resolution should be implemented strictly, and the Bar Associations and individual members of the Bar Associations should take all steps to comply with the same, and avoid cessation of work except in the manner and to the extent indicated therein. (**Harish Uppal**^[1]).

90. The Bar Council of India has failed to ensure that the Resolution passed by it on 29.09.2002 is adhered to. Though the Bar Council of India has been entrusted, under Section 7(1) of the 1961 Act, with the functions of laying down standards of professional conduct and etiquette for Advocates, and to exercise general supervision and control over the State Bar Council, they have failed to take action against the errant Bar Associations for resorting to uncalled for strikes/boycott of Courts on

Saturdays, or against the State Bar Council for their failure to take disciplinary action against the errant Advocates or the Bar Associations. It is now stated that a show-cause notice has been issued to all the District Bar Associations in the State of Uttarakhand on 12.07.2019, which the Uttarakhand State Bar Council claims to have been communicated to all the Bar Associations on 16.07.2019. No action appears to have been taken, thereafter, against them. The Bar Council of India is, therefore, directed to exercise its statutory functions, and take action against the errant Bar Associations, at the earliest and, in any event, within three months from today.

VI. OBLIGATION OF BAR ASSOCIATIONS :

91. Mr. Tapan Singh, learned counsel appearing on behalf of the Dehradun Bar Association, would submit that the Dehradun Bar Association was following the mandate of the general house i.e. the members of the Association; and they would follow the directions of the Bar Council of Uttarakhand and the Bar Council of India.

92. Bar Associations are not supposed to settle their demands by resorting to strikes which may lead to nothing but delaying justice to the litigants. Responsibility lies on the Office Bearers of the Bar Association to behave in a more responsible manner, and to ensure that Courts are not closed even for a day, and work is continuously done. Bar Associations should not indulge in a strike at all, as Courts are meant for delivering justice, the doors of which cannot be shut down to the litigants whose life, liberty and property are in danger. (**Oudh Bar Association**^[20]).

93. It is for each and every Bar Association to be vigilant in implementing the resolution passed by the Bar Council of India of ensuring that there are no further strikes. All Bar Associations in the country should implement the resolution dated 29-9-2002 passed by the Bar Council of India. (**Sri Jayendra Saraswathy Swamigal**^[5]). As the Bar Council of India, in the said resolution, has stated that the resolution passed by it would be implemented strictly, the Bar Associations and individual members of the Bar Associations should comply therewith, and avoid cessation of the work

except in the manner and to the extent indicated in the resolution. (**Sri Jayendra Saraswathy Swamigal**^[5]). No Bar Association can permit the calling of a meeting for purposes of considering a call for a strike or boycott and the requisition, if any, for such meeting must be ignored. (**Sri Jayendra Saraswathy Swamigal**^[5]).

94. Bar Associations must ensure that litigants who approach Courts are provided speedy access to justice. There is no justification in the Bar Association resorting to strikes and boycott of Courts, that too on Saturdays, for the past thirty five years. The Resolution passed by the Bar Council of India must be adhered to by the Bar Associations in its letter and spirit, and they should forthwith call off their strike/boycott of Courts, including on Saturdays, failing which the office-bearers of the Bar Associations, and the Bar Associations themselves, shall be liable for disciplinary action being initiated against them by the State Bar Council and the Bar Council of India. In case any Advocate seeks to prevent Courts from functioning, and in disposing of cases including on Saturdays, they may also be liable to be proceeded against under the Contempt of Courts Act.

VII. OBLIGATION OF COURTS IN THE EVENT OF A STRIKE / BOYCOTT :

95. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that Courts are obligated to hear and decide cases brought before it, and cannot adjourn matters merely because lawyers are on strike, as otherwise it would become privy thereto.

96. Strikes are illegal and Courts must take a very serious view of strikes and calls for boycott. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]). Legal and judicial service are missions for serving society, which cannot be achieved if a litigant, who is waiting in the queue, does not get his turn for a long time. (**Hussain and another**^[19]). The duty of the Court is not only to ensure that the interest of the accused is protected as per law, but also that societal and collective interest of the public at large is safeguarded (**Vinod**

Kumar v. State of Punjab^[33]; and **Mohd. Akhtar**^[26]). It is within the jurisdiction of the Court to regulate the right of appearance in Courts. (**Harish Uppal**^[1]; and **Krishnakant Tamrakar**^[3]).

97. Since litigants have a fundamental right to speedy justice, it is essential that cases must proceed when they appear on board, and should not, ordinarily, be adjourned for absence of lawyers unless there are cogent reasons to do so. Needless adjournments, caused due to cessation of work by lawyers, will result in erosion of faith in the justice delivery system, and cause undue harm to the image and dignity of the Court as well. (**Common Cause, A Regd. Society v. Union of India**^[34]; and **Ramon Services Pvt. Ltd.**^[12]).

98. No Court is obliged to adjourn a case because of a strike call, as it has a solemn duty to proceed with judicial business during Court hours which it cannot shirk. If Counsel or/and the party do not appear, the necessary consequences contemplated in law should follow. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhera**^[9]). If adjournments are granted in a casual manner, it would tantamount to violation of the rule of law. It is legally impermissible and jurisprudentially abominable. No Court should yield to requests of counsel, for grant of adjournments, for unacceptable reasons. (**Vinod Kumar**^[33]; and **Mohd. Akhtar**^[26]).

99. Courts must not be privy to strikes or calls for boycott. Its duty is to proceed with matters on its board even in the absence of lawyers. (**Sri Jayendra Saraswathy Swamigal**^[5]). No court should yield to pressure tactics or boycott calls or any kind of brow-beating. (**Mahabir Prasad Singh**^[23]). If the rule of law is to have any meaning and content, the authority of the Court, and the confidence of the public in them, should not be allowed to be shaken, diluted or undermined. (**U.P. Sales Tax Service Association**^[11]).

100. Members of the legal profession should be alive to the possibility of Judges refusing requests for adjournment on a strike call, and in insisting on proceeding with cases. Courts cannot remain mute spectators

or express helplessness in the face of such continued onslaught on the fundamental right of litigants for a speedy trial of their cases. (**Sri Jayendra Saraswathy Swamigal**^[5]; and **B.L. Wadhera**^[9]). An advocate has no right to stall court proceedings on the ground that they have decided to go on a strike. (**Ramon Services Pvt. Ltd.**^[12]; and **Sri Jayendra Saraswathy Swamigal**^[5]). Lawyers are answerable for the consequences suffered by their clients if their non-appearance is on grounds of a strike call. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]).

101. An advocate, who opts to strike work or boycott Court, must be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted him the brief. (**Ramon Services Pvt. Ltd.**^[12]). A litigant, who suffers entirely on account of his advocate's non-appearance in court, can sue the advocate for damages. (**Ramon Services Pvt. Ltd.**^[12]; and **Sri Jayendra Saraswathy Swamigal**^[5]).

102. The Court, on being satisfied that the ex-parte order (passed due to the absence of the advocate pursuant to any strike call) should be set aside on terms, may also permit the party to realise costs from the advocate concerned, without driving them to initiate legal action against the advocate. (**Ramon Services Pvt. Ltd.**^[12]; and **Sri Jayendra Saraswathy Swamigal**^[5]). However, such directions can be issued only after affording the concerned Advocate an opportunity of being heard. While an Advocate can be absolved from liability for a justifiable cause, he cannot be let off merely on the ground that he did not attend Court as he, or his association, were on strike. (**Ramon Services Pvt. Ltd.**^[12]).

103. A peculiar feature of boycott of Courts on Saturdays is that several Judges in the aforesaid districts, evidently with a view to accommodate Advocates, had stopped listing cases on Saturdays or, at best, were listing bail and a few other interlocutory applications in which Advocates, themselves, were seeking urgent orders. This illegal practice, of abstention of Courts, can be easily curbed by ensuring that sufficient number of cases, like on all other working days, are also listed on Saturdays. Those matter, which are listed on Saturdays, should be heard and decided by

Courts, if need be, even in the absence of Counsel. Courts should also consider proceeding with the matter *ex-parte*, if absence of Counsel is not for bonafide reasons, but is in furtherance of the illegal boycott/strike call given by the Bar Association.

VIII. OBLIGATIONS OF THE HIGH COURT:

104. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that the High Court can always invoke its inherent powers of Contempt, as well as the powers under the Contempt of Courts Act, to punish Advocates on strike for misconduct.

105. Judicial process must run its even course unbridled by any boycott call of the Bar, or filibuster tactics adopted by its members. The High Court is duty bound to insulate judicial functionaries within their territory from being demoralised, because of such onslaughts, by giving them full protection in discharging their duties without fear. (**Mahabir Prasad Singh**^[23]). It is the constitutional responsibility of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases. (**Hussain and another**^[19]). The High Courts must strictly monitor the aspect of strikes, and take such stringent measures as may be required in the interests of administration of justice. (**Hussain and another**^[19]; **Harish Uppal**^[1]; **Krishnakant Tamrakar**^[3]). The High Court can also draw attention of the State Bar Council to a case of professional misconduct of a contemnor advocate to enable it to proceed in the manner prescribed by the Act and the Rules framed thereunder. (**Supreme Court Bar Association v. Union of India and another**^[8]).

106. Section 2(c) of the Contempt of Courts Act defines “criminal contempt” to mean the doing of any act which (i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any Court; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. Section 10 of the Contempt of Courts Act relates to the power of the High

Court to punish for contempt of subordinate courts and, thereunder, every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it as it has and exercises in respect of contempt of itself. Section 15 of the Contempt of Courts Act, 1971 relates to cognizance of criminal contempt and under Sub-Section (2) thereof, in the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General.

107. On a conjoint reading of the aforesaid provisions, it is evident that for criminal contempt of a subordinate Court, the High Court can, on a reference made to it by the subordinate Court, exercise its powers under Sections 10 and 12 of the Contempt of Courts Act to punish for contempt of Court. While disciplinary jurisdiction over Advocates, no doubt, lies with the State Bar Council, the power to regulate proceedings in Court is to be exercised in accordance with the prescribed procedure, and the power to take action for Contempt of Court is to be exercised by the High Court under the Contempt of Courts Act, which power is distinct from the power conferred on the State Bar Councils, under the 1961 Act, to take disciplinary action against Advocates.

108. The contempt jurisdiction is not only to protect the reputation of the Judge concerned so that he can administer justice fearlessly and fairly, but also to protect “the fair name of the judiciary”. (**R. Muthukrishnan**^[2]). Strikes are in violation of the law laid down by the Supreme Court, and amounts to contempt. The office bearers of the associations, who gave the call for the strike, cannot avoid their liability for contempt. Every resolution to go on strike, and to abstain from work, is per se contempt. (**Krishnakant Tamrakar**^[3]).

109. Article 235 of the Constitution of India vests control over District Courts and Courts subordinate thereto, (including regarding posting, grant of leave, promotion etc), on the High Court. Judicial Officers, in the District and Subordinate Courts, are also amenable to the disciplinary

jurisdiction of the High Court. The High Court, on the administrative side, would be justified in monitoring listing of cases in subordinate Courts on Saturdays, and the disposal of cases on that day, which would show whether or not that particular Court in the district is effectively functioning on Saturdays. Judicial Officers, who fail to conduct Courts on Saturdays or willy-nilly co-operate with the Bar Associations and refrain from holding Court because of the strike/boycott call, can be subjected to disciplinary action.

(A). **RULES TO BE MADE UNDER SECTION 34 OF THE ADVOCATES ACT:**

110. Dr. Kartikey Hari Gupta, learned counsel appearing on behalf of Mr. Mani Kumar, learned counsel for the petitioner, would submit that the right of advocates to practice is not unfettered, but is subject to the rules framed by the High Court under Section 34 of the 1961 Act; and this Court should consider framing such rules at the earliest. On the other hand Mr. Piyush Garg, learned counsel for the Bar Council of Uttarakhand, would submit that the prayer in the writ petition, for rules to be made under Section 34 of the 1961 Act, is, in effect, a direction for legislation; in a writ petition under Article 226 of the Constitution of India this Court would not issue a mandamus to legislate; and the Supreme Court, in **R. Muthukrishnan**^[2], has held that the autonomy of the Bar, in disciplinary matters, cannot be taken over by the Court.

111. Section 34 of the 1961 Act relates to the power of the High Courts to make rules and, under sub-section (1) thereof, the High Court may make rules laying down the conditions subject to which an Advocate shall be permitted to practice in the High Court, and the Courts subordinate thereto. The right to practice is, no doubt, the genus of which the right to appear and conduct cases in Court is the species. But such a right is a matter on which the Court has a major supervisory and controlling power. Hence Courts cannot be divested of control or supervision of conduct in Court merely because it may involve the right of an advocate. Conduct in Court is a matter concerning the Court, and hence the Bar Council cannot claim that what should happen inside the Court can also be regulated by them in the

exercise of their disciplinary powers. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]).

112. Section 49 of the 1961 Act empowers the Bar Council to frame Rules laying down conditions subject to which an advocate shall have a right to practice. Section 34 of the 1961 Act clearly shows that an advocate does not have the absolute right to appear in a Court. An advocate appears in a Court subject to such conditions as are laid down by the Court. The right to appear in Court is subject to complying with the conditions laid down by Courts, just as practice outside the Courts are subject to the conditions laid down by the Bar Council of India. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]). While the High Court has no power to exercise disciplinary control as it would amount to usurpation of the powers of the Bar Council, conferred under the 1961 Act, it may punish an advocate for contempt, and then debar him from practicing for such specified period as may be permissible in accordance with law, but, without exercising contempt jurisdiction, by way of disciplinary control no punishment can be imposed. (**R. Muthukrishnan**^[2]).

113. A Rule framed under Section 34 of the 1961 Act would be valid and binding on all. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]). The High Courts should frame necessary rules so that appropriate action can be taken against the defaulting advocate/advocates. (**Sri Jayendra Saraswathy Swamigal**^[5]). Appropriate rules can be framed by the High Court, under Section 34 of the 1961 Act, making it clear that strike by advocate/advocates would be considered interference with the administration of justice and the advocate/advocates concerned may be barred from practising before Courts in a district or in the High Court. (**Sri Jayendra Saraswathy Swamigal**^[5]; **Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]).

114. A rule can stipulate that a person who has committed contempt of court, or has behaved unprofessionally and in an unbecoming manner, shall not have the right to continue to appear and plead and conduct cases in Courts. The Bar Councils cannot overrule such a Regulation concerning the

orderly conduct of court proceedings. On the contrary, it is their duty to ensure that such a Rule is strictly abided by. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the Court would erode the dignity of the Court, and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the Courts. (**Harish Uppal**^[1]; and **R. Muthukrishnan**^[2]).

115. An Advocate can be debarred from appearing in Court even if the disciplinary jurisdiction for misconduct is vested with the Bar Council. (**Mahipal Singh Rana**^[4]; and **Krishnakant Tamrakar**^[3]). The duty of the Court, to maintain its decorum within the Court premises, can be achieved by taking appropriate steps under the Contempt of Courts Act in accordance with law, and by the Rule making power under Section 34 of the 1961 Act. An advocate can be debarred from practicing in the Court until and unless he purges himself of contempt. (**R. Muthukrishnan**^[2]).

116. The Allahabad High Court Rules (Rules of the Court, 1952) (hereinafter called the “Rules”), continues to apply, in the Uttarakhand High Court, even after the State of Uttarakhand was created on 09.11.2000 as they were made prior thereto. Part VI thereof relates to legal practitioners and contains Chapter XXIV to XXVI. Chapter XXIV relates to the Rules framed under Section 34 (1) read with Section 16 (2) of the 1961 Act. Under the head “Rules Framed under Section 34(1)”, Rule 10 relates to suspension of an advocate, under the Code of Civil Procedure, 1908, and stipulates that no advocate, who has been debarred or suspended or whose name has been struck off from the Roll of Advocates, shall be permitted to act as a recognised agent of any party within the meaning of Order III of the Code of Civil Procedure, 1908. Rule 11 relates to appearance of an advocate after committing contempt and, thereunder, no advocate, who has been found guilty of Contempt of Court, shall be permitted to appear, act or plead in any Court unless he has purged himself of contempt, either by tendering apology which is accepted or by suffering punishment imposed on him or where, in the case of an appeal, a stay order is in operation.

117. By Notification dated 04.06.2016, Chapter XXIV Rule 11 of the Allahabad High Court Rules was substituted. Rule 11 does not apply to the Uttarakhand High Court, as it was made long after the Uttarakhand High Court was established. Section 11(1), after its substitution, enables the Chief Justice to prohibit any advocate, involved or engaging in strike or otherwise interfering with the administration of justice, from practicing in the High Court or any Court subordinate thereto, and the District Judge to prohibit such an advocate from appearing in his judgship for the period specified in the order. However such an advocate, aggrieved by the order of the District Judge, may represent to the Chief Justice. In terms of the explanation thereunder, strikes resorted to in Court, or abstention of work from Court, by way of protest by an advocate, or a group of advocates, or any Bar Association, shall be deemed as an act which tends to interfere with the administration of justice.

118. Rule 11(2) stipulates that the High Court, initiating proceedings for criminal contempt against an advocate, may prohibit such an advocate from practicing in the High Court, or in any Court subordinate thereto, during the pendency of contempt proceeding against him. Rule 11(3) enables the Court, convicting an advocate for criminal contempt, to prohibit him from practicing in the High Court, and in any Court subordinate thereto, for the period specified in the order. Under the proviso thereto, before passing an order of debarment, the Court should put the concerned advocate on notice of the proposed action. Rule 11(4) stipulates that, notwithstanding the provisions of sub-rule (3), the Chief Justice may prohibit any advocate, found guilty of criminal contempt, from practicing in the High Court, or any Court subordinate thereto, and the District Judge may, in the like manner, prohibit an advocate from practicing in his judgship for the period specified in the order. Rule 11(6) stipulates that the powers, exercisable under sub-rules (2), (3) and (4), shall be in addition to the powers inhering in the High Court under the Contempt of Courts Act, 1971.

119. On the issue of strikes by advocates, Rule 12(A) of the Bombay High Court Rules stipulates that strikes, resorted to in Court, or abstention of work from Court, by way of protest by an advocate or a group of

advocates or any Bar Association shall be deemed as an act which tends to interfere with the administration of justice. Rule 12(B) provides that any advocate, resorting to strike as per Rule 12(A), would be dealt with in accordance with law. Rule 17 of the Gauhati High Court Rules stipulates that strike by advocate /advocates may be considered interference with the administration of justice, and advocate(s) participating in the strike may be barred from practicing before the High Court and the Courts subordinate to it. Rule 16 of the Punjab and Haryana High Court Rules stipulates that strike by advocate / advocates would be considered interference with the administration of justice, and advocate(s) participating in the strike may be barred from practicing before the High Court and the Courts subordinate to it.

120. Though we may not be justified in issuing a mandamus to the High Court to frame rules under Section 34 of the 1961 Act to prohibit strikes, as no mandamus can be issued to the Rule making authority to make Rules, the need to prevent administration of justice from being subverted by avoidable strikes and boycotts, would require the High Court to bestow its serious consideration to the need to make rules to prevent Court work from being hampered by such illegal and unwarranted acts. We have no reason to doubt that the High Court would examine this matter at the earliest.

IX. OBLIGATION OF THE STATE GOVERNMENT:

121. Yet another important stakeholder is the State Government. It is the obligation of the State Government to aid the Court in effective dispensation of justice. Any attempt by anyone, including Advocates, to stop the functioning of Courts, and in obstructing other Advocates from arguing their briefs before the Court, must be prevented. As and when a District Judge/Judge of the concerned Court apprehends the possibility of interference in Court proceedings, or of attempts to prevent the holding of Court pursuant to a call for strike/boycott, he/she may request the District Superintendent of Police, and other police officials, to provide adequate security to ensure that no interference is caused to the functioning of Courts. Whenever any such request is made, the law and order machinery of the

State shall be duty bound to provide adequate security to ensure smooth and undisturbed functioning of Courts. It is unnecessary for us to dwell further on this aspect, since Mr. Amit Bhatt, learned Deputy Advocate General appearing for the State Government, would submit that necessary instructions would be issued to the concerned police officials to act promptly on any request made by a judicial officer seeking police security in his Court, and necessary measures would be taken to ensure that Court proceedings are conducted without disturbance from Advocates pursuant to a call for a strike/boycott of Courts.

X. SHOULD THE HIGH COURT DEFER HEARING OF THIS CASE?

122. Mr. Piyush Garg, learned counsel for the State Bar Council of Uttarakhand, would submit that the issue of the rights of an Advocate, or of the Bar Associations, has already been settled by the Supreme Court in its various pronouncements, and is not res-integra; what the petitioner is seeking, in the present writ petition, is for remedial measures in the case of such strikes; the issue, with regards the remedy for lawyers going on strike, is under the active consideration of the Supreme Court in **Common Cause (A Registered Society) v. Shri Abhijat and others**^[35]; the Supreme Court has, as late as on 04.07.2019, directed the Bar Council of India to furnish data in respect of periodic strikes taking place in various parts of the country, as also whether the State Bar Council has initiated disciplinary action against lawyers for indulging in strikes; since the issue on hand is under consideration before the Supreme Court, hearing of the present writ petition should be deferred till the said matter is disposed of; in **Krishnakant Tamrakar**^[3], the Supreme Court has considered that part of the Law Commission Report which refers to strikes in District Dehradun and Haridwar; while issuing certain directions in para 53, to check the malady of frequent and uncalled for strikes, the Ministry of Law and Justice has been asked to compile information and present a quarterly report on strikes, for the matter to be considered thereafter in the inherent jurisdiction of the Supreme Court to punish for contempt; the Supreme Court has recognized that legislation in this regard is yet to be passed, and has

provided a mechanism to be adopted till legislation takes place; issuance of any other directions, in the present writ petition, would be contrary to the directions issued by the Supreme Court; and the remedy, if any available to the petitioner, is only to approach the Supreme Court in the matter pending before it.

123. Instead of discharging its statutory obligations of bringing recalcitrant Advocates/Bar Associations to book, and taking action against them for their blatant violation of the law declared by the Supreme Court in **Harish Uppal**^[1] and other judgments referred to hereinabove, every conceivable objection, to the Writ Petition being heard, has been taken on behalf of the Uttarakhand State Bar Council. While the initial objection was that no Writ Petition would lie seeking execution of the judgment of the Supreme Court, and the petitioner had pleaded his personal cause in the Writ Petition which disentitled him from invoking the public interest jurisdiction of this Court, the submission later has been that, since the Supreme Court has exercised its contempt jurisdiction for violation of its directions that Advocates should not go on strikes/boycott of Courts, hearing of this Writ Petition, which has been pending on the file of this Court for the past three years, should be deferred till the contempt case is finally heard and decided by the Supreme Court.

124. While these defences, put forth on behalf of the Uttarakhand State Bar Council, are evidently to avoid taking action against the Advocates from the District Bar Associations of Dehradun, Haridwar and Udhan Singh Nagar, we must nonetheless deal with the objections. The law laid down by the Supreme Court, in **Harish Uppal**^[1], and the other judgments referred to hereinabove, is binding under Article 141 of the Constitution of India. Judicial discipline requires, and decorum known to law warrants, that the directions of the Supreme Court should be followed. In the hierarchical system of Courts which exists in this country, it is necessary for each lower tier to accept loyally the decisions of the higher tiers. The judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted. (**Smt. Kausalya Devi Bogra and others v. Land Acquisition Officer,**

Aurangabad and another^[36]; **Cassell & Co. Ltd. v. Broome**^[37]). The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India -towards it, mandate the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court.

125. The order of the Supreme Court is a judicial order, and is otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its order worked out. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all courts within the territory of India. (**Spencer & Co. Ltd. and another v. Vishwadarshan Distributors (P) Ltd**^[38]; **M/s Bayer India Ltd. and others v. State of Maharashtra and others**^[39]; **E.S.P. Rajaram v. Union of India**^[40]). The High Court has an obligation, in carrying out the Constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country. (**M/s Bayer India Ltd.**^[39]; **E.S.P. Rajaram**^[40]; **Spencer & Co. Ltd.**^[38]). Acting in aid of the Supreme Court, the High Court should ensure that the law declared by the Supreme Court, in the aforesaid judgments, is adhered to by all, both in letter and spirit.

126. It is true that the Supreme Court is examining, in the exercise of its contempt jurisdiction, violation of its order prohibiting strikes/boycott by Advocates throughout the country. While strikes/boycott of Courts, in the State of Uttarakhand, may also form part of such an examination, the jurisdiction which the Supreme Court is exercising is to punish for contempt for violation of its orders and the mere fact that a contempt case is pending before the Supreme Court would not disable the High Court from examining the peculiar issue of strike/boycott of Courts on every working Saturday by several District Bar Associations, and abstinence from Courts after condolence references not just for the deceased Advocate but also for his family members. The obligation of the High Court is to act in aid of the

Supreme Court, and in ensuring that the law declared by the Supreme Court is implemented by all concerned. We find no merit, therefore, in the submission that pendency of Contempt Petition No. 550 of 2015 before the Supreme Court would bar exercise of jurisdiction by the High Court under Article 226 of the Constitution of India.

XI. CONSTITUTION OF GRIEVANCE REDRESSAL COMMITTEES:

127. Mr. Rajesh Joshi, learned counsel for the Uttarakhand High Court Bar Association, would submit that Section 6 (d) of the 1961 Act provides that the Bar Council has, as one of its functions, the duty to safeguard the rights, privileges and interests of Advocates on its rolls; in para 8.21 of its 266th Report, the Law Commission has suggested that, at every District Headquarters, the District Judge may constitute an Advocate's Grievance Redressal Committee headed by a Judicial Officer; it further suggested that the High Court may issue a circular, in the exercise of its powers under Article 235 of the Constitution of India, providing for redressal of grievances of Advocates, which would help in improving their efficiency; no such committee exists for redressal of grievances against a Judicial Officer; there is neither any forum available to the Advocates nor is there any remedy available on the ground of independence of the judiciary; and going on strike, in such an eventuality, is permissible.

128. Mr. Yogesh Pacholia, learned counsel appearing on behalf of the Almora Bar Association, would submit that taking away the right to strike from Advocates will render them ineffective in raising their grievance in case of emergent and extraordinary situations, including against a judicial officer; and no protection is available to lawyers under law in case of unlawful and untoward incidents which they may face.

129. Mr. M.C. Pant, learned counsel, would submit that, though they are considered officers of the Court, there is no protection available to the lawyer community; they are also deprived of their liberty to raise their grievance; and strike is a mode of peaceful representation to ventilate grievances for which no other forum is available.

130. Both the Bench and the Bar are two inextricable wings of the judicial forum, and mutual respect is the sine qua non for the efficient functioning of the solemn work carried on in Courts of law. (**Mahabir Prasad Singh**^[23]). The Bar is an integral part of judicial administration. In order to ensure that judiciary remains an effective tool, it is necessary that the Bar and the Bench maintain dignity and decorum. The Judges must be respected by the Bar, and they in-turn should equally respect the Bar. (**R. Muthukrishnan**^[2]). But that does not mean that any advocate or a group of them can boycott Courts or any particular Court, and ask the Court to desist from discharging judicial functions. (**Mahabir Prasad Singh**^[23]).

131. As the Bar Council of India is conferred the duty, under Section 6(d) of the 1961 Act to safeguard the rights, privileges and interests of Advocates, it should examine any suggestions put forth by Advocates and take remedial measures in accordance with law. It true that there is no forum for ventilation and redressal of Advocates grievances against judicial officers. It is beneficial for grievances redressal committees to be established at the district level and the High Court level, so that grievances of advocates at all levels can be addressed. Genuine grievances should be acted upon. If grievances are found not to be genuine, it should then be made clear so that there may not be any further misunderstanding. (**Sri Jayendra Saraswathy Swamigal**^[5]). The High Court, on the administrative side, is requested to examine the feasibility of introducing a grievance redressal mechanism, both at the district level and at the High Court level, to enable Advocates to ventilate their grievances, and for their redressal to the extent permissible.

XII. SUMMARY :

132. To summarise :-

- i. Resort to strikes/boycott of Courts by Advocates is illegal. It is also a misconduct for which disciplinary action can be taken by the State Bar Council and its Disciplinary Committees.

- ii. Advocates owe a duty both to the Court and to their Client. They are also obliged to safeguard the fundamental rights of all litigants, under Article 21 of the Constitution of India, for a speedy trial.
- iii. The issue regarding strikes / boycott of Courts by Advocates, needs to be addressed by all concerned including the State Governments / State Bar Councils / Bar Associations as well as the High Court, and ways and means should be found to tackle this problem.
- iv. Irrespective of the genuineness of the cause, strike by lawyers is not an acceptable mode of protest. Other modes of protest, which do not disturb Court proceedings or adversely affects the fundamental rights of litigants to speedy justice, can be resorted to.
- v. In case of a just cause, Advocates can make a representation to the District Judge or to the High Court. Protest, if any required, can be resorted to by other means such as giving press statements, TV interviews, carrying banners and/or placards out of court premises, wearing black or white or any colour armbands, peaceful protest marches outside and away from court premises, going on *dharnas* or relay fasts etc.
- vi. Where the dignity, integrity and the independence of the Bar and/or the Bench is at stake, abstention from work, for not more than one day, may be resorted to.
- vii. Even for such abstention, the President of the Bar must first consult the Chief Justice or the District Judge, and the decision of the Chief Justice or the District Judge would be final.
- viii. Resort to strikes is unprofessional and unbecoming of an Advocate who, having accepted a brief, cannot refuse to attend Court pursuant to a call for strike or boycott.

- ix. Participation of lawyers, in boycott of Courts, is ex-facie illegal. Even if there is a boycott call, a lawyer should boldly ignore the same.
- x. Unless there are compelling circumstances, and approval for a symbolic strike of one day is obtained, Advocates should not resort to strikes or abstain from Court work.
- xi. It is unethical for an Advocate to organize and participate in strikes, or to abstain from Court, when the cause of his client is called for hearing.
- xii. An Advocate, who abstains from Court because of a strike call, commits professional misconduct, a breach of professional duty besides a breach of trust, and is liable for the consequences.
- xiii. Boycott of Courts and strikes by Bar Associations impinge on the obligation of an Advocate towards his client and to the Court.
- xiv. Suspension of court work, after condolence references for family members of Advocates, is illegal.
- xv. Abstention of Courts, after condolence references for family members of Advocates, should not be permitted.
- xvi. Condolence references for Senior Advocates, or for Advocates practicing regularly in Courts, can be held once in a while, say once in two/three months and not frequently.
- xvii. Periodic reports may be called by the High Court, from all District Judges, to ascertain the number of Court working days lost because of strike/boycott of Courts or illegal condolence references. No condolence reference should be permitted except in terms of the Circular issued by the High Court dated

12.03.2019; and the said Circular should be strictly implemented.

- xviii. The High Court may call for periodic reports to ascertain whether or not such unhealthy practices of abstention from Courts, resorting to condolence references on the demise of family members of an Advocate, have been curbed by all District Judges and Subordinate Courts in the State.
- xix. The District Judge shall ensure that Court work proceeds unhindered, notwithstanding Advocates having abstained from attending Courts on this score. The explanation of the concerned Judicial Officer may be sought, in case Court work is suspended on this account.
- xx. The general superintendence, of the ethics and etiquette of the members of the profession, is the responsibility of the State Bar Council created under the 1961 Act, and a statutory duty is imposed on it to ensure that the rules laid down by the Bar Council of India, in this regard, are upheld and not violated.
- xxi. The State Bar Council is duty bound to enforce discipline among its members, and to take disciplinary action for acts of misconduct by the concerned Advocates. As calls for strikes/boycott of Courts amounts to misconduct, any such call, given by the Bar Associations, would require the State Bar Council to initiate disciplinary action against the office bearers of such a Bar Association who, by giving such a call, have instigated and encouraged other Advocates to follow suit.
- xxii. One of the principal functions of the State Bar Council is to receive complaints against advocates, and if it has reasons to believe that any advocate has been guilty of professional or other misconduct, it shall then refer the case for disposal to its Disciplinary Committee.

- xxiii. The State Bar Council's role in this regard is first to receive complaints, second, in forming the reasonable belief of guilt of professional or other misconduct, and finally in making a reference of the case to its Disciplinary Committee.
- xxiv. The Bar Council of a State, which initiates disciplinary proceedings, may also of its own motion, if it has reason to believe that any Advocate has been guilty of professional or other misconduct, refer the case for disposal to its Disciplinary Committee.
- xxv. The State Bar Council is obligated, with a view to maintain discipline, to complete the disciplinary proceedings, initiated against the errant Advocates; and, if the Advocate concerned is found guilty of having indulged in, or in calling upon others to go on, strike/boycott of Courts, to impose appropriate punishment upon them within a reasonable time frame of around three months.
- xxvi. The State Bar Council also has the power to take action against the Bar Associations under the Advocates Welfare Fund Act, 2001, and to de-recognize errant Bar Associations.
- xxvii. Section 7(1) of the 1961 Act obligates the Bar Council of India to lay down standards of professional conduct and etiquette for Advocates, and to exercise general supervision and control over the State Bar Council.
- xxviii. Besides its duty to supervise and control the working of the State Bar Council, the Bar Council of India is required to exercise discipline and control over members of the profession.
- xxix. When it is made aware that the concerned State Bar Council has not taken action against Advocates, who have gone on strikes, prompt action should be taken by the Bar Council of

India both against the State Bar Council and the concerned Advocates.

- xxx. In its Resolution dated 29.09.2002, the Bar Council of India has held that abstention of work in Courts should not be resorted to, except in exceptional circumstances; and, even in such exceptional circumstances, abstention should, normally, not be resorted to for more than one day.
- xxxi. The said Resolution also provides that, as far as possible, legal and constitutional methods should be pursued such as representation to the authorities, holding demonstrations and mobilizing public opinion etc.
- xxxii. It also provides that, in case the Bar Associations deviate from the said resolution dated 29.09.2002 and proceed with cessation of work, except in the case of emergency, the Bar Council of the State should take necessary action.
- xxxiii. Bar Associations, at the district/taluk level, are formed not only to safeguard the rights and privileges of its members, but also to ensure that its Advocate members do not resort to strikes/boycott of Courts. If, instead of curbing such unhealthy and illegal practices, the Bar Associations themselves indulge in such illegal and unwarranted acts of boycott of Courts/strikes, action should be taken against them.
- xxxiv. Bar Associations should not indulge in strikes, as Courts are meant for delivery of justice, the doors of which cannot be shut to litigants whose life, liberty and property are in danger.
- xxxv. The resolution of the Bar Council of India dated 29.09.2002 should be strictly implemented by all the Bar Associations of the State, including the High Court Advocates Association and all District Bar Associations, and individual members of the

Bar Associations; and, in compliance therewith, abstinence from appearing in Court should be avoided.

- xxxvi. The Bar Council of India is yet to take action against these errant Bar Associations for resorting to uncalled for strikes/boycott of Courts on Saturdays, and in resorting to needless and illegal condolence references.
- xxxvii. As resort to strikes by Bar Associations results in delaying justice to litigants, it is the obligation of the Bar Council of India and the State Bar Council to ensure that Courts are not closed even for a day, and that Court work continues unhindered.
- xxxviii. No Bar Association can permit the calling of a meeting for the purposes of considering a call for a strike/boycott and the requisition, if any, for such meeting must be ignored.
- xxxix. Courts exist to provide access to justice to needy litigants. Judicial officers are, therefore, duty bound to ensure that Courts function unhindered, and their turning a blind eye to the call for strikes/boycott by Advocates, and in accommodating them by not holding Court, may amount to a misconduct warranting initiation of disciplinary action against such judicial officers.
- xl. It is open to the Court, if it is satisfied that the absence of an Advocate is because of the call of a strike/boycott, to decide the case even in the absence of counsel, if need be *ex-parte*.
- xli. No Court is obliged to adjourn a case because of a strike call, as it has a solemn duty to proceed with judicial business during Court hours, which duty it cannot shirk. If Counsel or/and the party do not appear, the necessary consequences, contemplated in law, should follow.

- xlii. It is legally impermissible and jurisprudentially abominable for Courts to grant adjournments. Unnecessary requests for adjournments, for unacceptable reasons, should not be acceded to by Courts.
- xlili. Courts must not be privy to strikes or calls for boycott. Its duty is to proceed with matters on its board even in the absence of lawyers, and despite the request for adjournment on account of strikes.
- xliv. No court should yield to pressure tactics or boycott calls or any kind of brow-beating by lawyers. Courts cannot remain mute spectators or express helplessness in the face of such continued onslaught on the fundamental right of litigants for a speedy trial of their cases.
- xlv. An advocate, who opts to strike work or boycott Court, must be prepared to bear the pecuniary loss suffered by the client who entrusted him the brief.
- xlvi. Courts may consider proceeding with the matter *ex-parte*, if absence of Counsel is not for bonafide reasons, but is in furtherance of the illegal boycott/strike call given by the Bar Association.
- xlvii. A litigant, who suffers entirely on account of his advocate's non-appearance in court, can sue the advocate for damages.
- xlviii. The Court, on being satisfied that the *ex-parte* order passed due to the absence of the advocate pursuant to any strike call, should be set aside on terms, may also permit the party to realise costs from the advocate concerned, without driving them to initiate legal action against the Advocate. Such directions can, however, be issued only after affording the concerned Advocate an opportunity of being heard.

- xlix. The illegal practices, of abstention from Courts because of strikes/boycotts, can be curbed by ensuring that sufficient number of cases, like on all other working days, are also listed in each of the District Courts and Subordinate Courts on Saturdays. Those matters, which are listed on Saturdays, should be heard and decided by the Courts, if need be, even in the absence of Counsel on account of strikes/boycotts.
1. Conduct in Court is a matter concerning the Court, and hence the Bar Council cannot, in the exercise of their disciplinary powers, regulate what should happen inside the Court.
 - li. The right of an Advocate to appear in Courts is subject to complying with the conditions laid down by Courts, just as practice outside the Courts are subject to the conditions laid down by the Bar Council of India.
 - lii. Strikes are in violation of the law laid down by the Supreme Court, and amount to contempt. The office bearers of the Associations, who gave the call for the strike, cannot avoid their liability for contempt. Every resolution to go on strike, and to abstain from work, is *per-se* contempt.
 - liii. In case any attempt is made by any Advocate to enter the Court hall to stop Court proceedings, or in preventing other Advocates from entering Courts to argue their cases, action may be initiated by the Court, under the Contempt of Courts Act, against the erring Advocate by sending a report to the High Court.
 - liv. The High Court may punish an Advocate for contempt, and then debar him from practicing for such specified period as may be permissible in accordance with law. However, without exercising contempt jurisdiction, no punishment can be imposed by the High Court by way of disciplinary action.

- iv. It is the constitutional responsibility of the High Courts to monitor the functioning of subordinate courts to ensure timely disposal of cases.
- lvi. The High Courts must strictly monitor the aspect of strikes, and take such stringent measures as may be required in the interests of administration of justice.
- lvii. The High Court is duty bound to insulate judicial functionaries within their territory from being demoralised, because of onslaughts by Advocates resorting to strikes/boycotts, by giving them full protection in discharging their duties without fear.
- lviii. The High Court can also draw the attention of the State Bar Council to a case of professional misconduct of a contemnor advocate to enable it to proceed in the manner prescribed by the 1961 Act and the Rules.
- lix. The High Court, on the administrative side, may consider monitoring listing of cases in subordinate Courts on Saturdays, and the disposal of cases on that day, which would show whether or not that particular Court in the district is effectively functioning on Saturdays.
- lx. Periodic reports may also be called for from the District Judge regarding listing of cases on Saturday in each Court in his judgeship, and the number of cases disposed by each of these Courts.
- lxi. Judicial Officers, who fail to conduct Courts on Saturdays or willy-nilly co-operate with the Bar Associations and refrain from holding Court because of a strike/boycott call, are liable for disciplinary action.

- lxii. The High Court should bestow its serious consideration to the need to make rules, under Section 34 of the 1961 Act, to prevent Court work from being hampered by such illegal and unwarranted strikes/boycott.
- lxiii. The High Court may examine the feasibility of making Rules, under Section 34 of the 1961 Act, that strike by advocate/advocates would amount to interference with the administration of justice and the advocate/advocates concerned may be barred from practising before Courts in a district or in the High Court.
- lxiv. Such Rules may, if considered appropriate, also stipulate that a person who has committed Contempt of Court, or has behaved unprofessionally and in an unbecoming manner, would not be entitled to continue to appear and plead and conduct cases in Courts till he purges himself of contempt
- lxv. As and when a District Judge/Judge of the concerned Court apprehends the possibility of interference in Court proceedings, or of attempts to prevent the holding of Court pursuant to a call for a strike/boycott, he/she may request the District Superintendent of Police, and other police officials, to provide adequate security to ensure that no interference is caused to the functioning of Courts.
- lxvi. Such a request by a judicial officer shall be made only with the prior approval of the District Judge and, in case of an emergency, on intimation to the District Judge.
- lxvii. Whenever such a request is made, the law and order machinery of the State would be duty bound to provide adequate security to ensure smooth and undisturbed functioning of Courts.
- lxviii. The High Court is obliged to act in aid of the Supreme Court, and in ensuring that the law declared by the Supreme Court, in

several of its judgments that strikes/boycott of Courts are illegal, is implemented by all both in letter and spirit.

- lxix. The High Court can, therefore, examine the issue of strike/boycott of Courts on every working Saturday by several District Bar Associations of the State, and their abstinence from Courts after condolence references not just for the deceased Advocate, but also for the family members of Advocates.
- lxx. While the obligation, to protect the rights and privileges of Advocates, is on the Bar Council of India, the High Court may also consider framing appropriate guidelines providing for a grievance redressal mechanism both at the level of the High Court, and at the level of the District Courts.
- lxxi. The High Court may also consider providing a mechanism for redressal of grievances of Advocates against judicial officers; and for action to be taken if such complaints are found to be genuine and valid.

XIII. CONCLUSION :

133. The District Bar Associations of Dehradun, Haridwar and Udham Singh Nagar shall, forthwith, withdraw their call for a strike, and start attending Courts on all working Saturdays. All the District Bar Associations in the State shall forthwith refrain from abstaining from Courts because of condolence references for family members of Advocates, or for other reasons. In case they do not start attending Courts, as directed hereinabove, the District Judges concerned shall submit their respective reports to the High Court for it to consider whether action should be initiated against the errant Advocates under the Contempt of Courts Act.

134. The Bar Council of India shall at the earliest, and in any event within three months from today, take action against the recalcitrant Bar Associations pursuant to its show-cause notice dated 12.07.2019, and ensure that these Bar Associations desist from continuing such strikes/boycott of Courts.

135. The Uttarakhand State Bar Council shall, within a period of four weeks from today, initiate disciplinary action against the office bearers of the aforesaid District Bar Associations for their having given a call for illegal strikes/boycott of Courts on Saturdays in the judgeship of Dehradun, Haridwar and Udham Singh Nagar.

136. The District Judges of these districts shall ensure that Courts function on Saturdays, and sufficient cases are listed and are disposed of by Courts, under their judgeship, on all working Saturdays.

137. The Commissioner of Police/Senior Superintendent of Police, of the concerned districts, shall, as and when requested by the District Judge or a Judicial Officer, regarding the possibility of Court proceedings being impeded because of strike/boycott of Courts by Advocates, forthwith provide necessary police protection to ensure smooth functioning of Courts, and thereby prevent any impediment to Court proceedings because of strikes/boycott by Bar Associations/Advocates.

138. The High Court is requested to consider taking appropriate measures to ensure functioning of Courts on Saturdays, that judicial work is not hampered by such illegal strikes/boycott of Courts and wholly unjustified condolence references, and that the Circular issued by it earlier on 12.03.2019 is implemented.

139. The Writ Petition is allowed. However, in the circumstances, without costs.

(Alok Kumar Verma, J.)
25.09.2019

(Ramesh Ranganathan, CJ.)
25.09.2019