

# RIGHT TO WORKMEN STRIKE IN LIGHT OF CONSTITUTION

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## INTRODUCTION

The IDA <sup>1</sup> defines a “strike” as “a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment”. In India, there is no specific right to strike. Instead such right flows from the fundamental right to form a trade union contained in Article 19(1)(c) of the Constitution, which, like all fundamental rights, is subject to reasonable restrictions. In *All India Bank Employees Association v. N.I. Tribunal* <sup>2</sup>, the SC held, inter alia, that “the right to strike or right to declare lockout may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 of the Constitution but by totally different considerations.” Therefore, legislation can and does restrict the right to strike by deeming certain strikes illegal. The IDA restricts strikes and lockouts equally. Various restrictions are contained in sections 22, 23, 24, 10(3) and 10A (4A) of the IDA. Furthermore, the IDA also lays down certain activities that may be deemed as “unfair labour practices of workers or workers’ trade unions pertaining to strikes such as advising or actively supporting or instigating any illegal strike or staging demonstrations at the residence of the employers or managerial staff members.”<sup>3</sup> It should be noted that a strike that was in existence at the time of reference to

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<sup>1</sup> Section 2(gg)(q) of the IDA

<sup>2</sup> *All India Bank Employees Association v. N.I. Tribunal* (1962 AIR 171) at para 292

<sup>3</sup> Fifth Schedule of the IDA

a board, arbitrator, court or tribunal may be continued, provided it was legal at the time of its commencement.<sup>4</sup> Furthermore, a strike staged in response to an illegal lockout shall be legal.

<sup>5</sup>A worker who is involved in an illegal strike may be penalized with imprisonment of up to a month and/ or fine. As per the IDA <sup>6</sup>, no person shall provide any sort of financial aid to any illegal strike.. Furthermore, the SC has held that workers shall only be entitled to wages during a strike which is not only legal, but also “justified”. A strike shall be deemed unjustified where “the reasons for it are entirely perverse and unreasonable [which is] a question of fact, which has to be judged in the light of the fact and circumstances of each case the use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would [also] disentitle them to wages during the strike period.”<sup>7</sup> The SC has also held that whether or not a strike is “unjustified depends on such factors as “the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the IDA or the contract of employment or the service rules and regulations etc.”<sup>8</sup>

Conflict is an inherent and necessary „evil“ which streamlines the powers of industrial relations parties especially business (employers). Causes or sources of conflict are important to be identified, as they become the basis to the determination of the method(s) that could be used to resolve that conflict which could manifest into a retrogressive situation such as creating an uncondusive working environment or „fuelling“ emotions that could end up with confrontation e.g. strikes Conflict is inevitable but it is also necessary and should not be viewed as destructive or harmful only. The traditional view of conflict views it as undesirable and can be avoided contrary to the modern view. Conflict levels range from intra-personal, inter-personal, intra-group and inter-group. Conflict brings change, creativity and adaptation. Conflict in its „nasty“ state culminates in industrial action such as boycotts, stay-aways and strikes. Conflict

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<sup>4</sup> Section 24(2) of the IDA

<sup>5</sup> Nishith Desai Associates India : trade unions and collective bargaining 2015

<sup>6</sup> Section 25 of the IDA

<sup>7</sup> Crompton Greaves Ltd. v. Its Workmen (AIR 1978 SC 1489) at para 4

<sup>8</sup> Syndicate Bank v. K. Umesh Nayak (1995 AIR 319) at para 27

management strategies including third party intervention strategies namely conciliation, mediation and arbitration are discussed in detail.

## **CAUSES OF STRIKE**

- Dispute relating to minimum wages.
- Salary and incentive issues.
- Increment is not up to the performance.
- Dissatisfaction with the policies of the company.
- Hours of work and interval timings.
- Holidays and leaves with pay.
- Bonus, Provident Fund, and gratuity.
- Withdrawal of any facility or allowance.
- Wrongful dismissal of workmen.

The most obvious reason of strike is the non-payment of wages or salaries to the workers of the factory by the employers.

There are two major forms of industrial action, that is, the unorganized individual forms of action and organized collective forms of action. Both forms of action express discontentment about certain issues at the workplace. The unorganized conflict is the way open to them as individuals, while organized conflict is part and parcel of collective forms of consciousness that is utilized to change the situation which is unacceptable within the employment relationship. The different forms of action which workers take when confronted by difficult circumstances according to Sambureni (2001) are.

1) Unorganized forms of action – These include absenteeism, theft, high labour turnover, go slow, deliberate destruction of property or machinery, feigned illness, self-inflicted injuries, lack of commitment to the organisation, loafing, job-hopping etc. These forms of action are

what we normally call hidden forms of resistance, which have always tended to be hidden and silent rather than dramatic and articulate).

2) Organised forms of action – employee discontentment may be expressed in a variety of organized collective action that includes withdrawal of co-operation, work to rule, overtime ban, collective go slows, strike action, work-in/sit-in, etc.

There are three main indices that are used to assess strike activity (Sambureni & Mudyawabikwa,2003). 1) number of stoppages 2) number of workers involved 3) number of working days lost It is important to state that the statistics measure the extent rather than the effect of strike activity. However, we could possibly talk about the causes of strikes here in order to broaden our understanding of the issues involved.

Then it comes the duty of third party to resolve the dispute as If the parties cannot resolve a dispute on their own, a third party can be called upon to help them determine the appropriate thing to do. Third parties are often used in both commercial and labour disputes. Third parties are people outside the conflicting parties who are called in or who offer to harmonise the tense relations of the negotiating parties. They come in either as arbitrators, or mediators or process consultants at the time when the negotiation gets rough. They are the go-betweens whose main task is to see the conflicting parties back on the negotiation table (Uzhenyu, 2016 ; Sambureni; 2001)

- Poor quality or quantity of communication, resulting in a negotiation impasse
- Misconceptions or stereotypes that hinder productive exchanges
- Frequency of negative behaviours e.g name-calling, use of abusive or hate language.
- Serious disagreement over the importance, collection or evaluation of data
- Disagreements on the number, order and combinations of issues under dispute.
- Actual or perceived incompatible interests that the parties are unable to reconcile
- Unnecessary value differences that are divisive
- Absence of a clear, common negotiation protocol or procedure

- Difficulties to initiate negotiations or “bargaining through” an impasse.

The unions represent several million workers in a country of 1.3 billion people. But the changes they are seeking would have the greatest effect on those who toil in India's vast informal economy, which by some measures includes 90% of the workforce.

"The strike is significant in that it clearly articulated the unfulfilled grievances and the demands of the working class, which have not been given any kind of a patient and concerted hearing by the government," said K.R. Shyam Sundar, a professor of human resources management at the Xavier School of Management in Jamshedpur, India.

## **TYPES OF STRIKE**

### ***An economic strike***

is a situation in which there is a strike, lockout, or dispute between an employer and an employee over usual mandatory issues such as wages, hours, benefits, unfair practices of employer or working conditions of the employees. Such economic strikes are often resolved by collective bargaining of the employees or the wage labors. An economic strike can also be understood as an event in which the operations of producing goods and services are temporarily shut down due to walkout of the employee who usually manage the task which are necessary for running the production process. An economic strike may also be called voluntarily by the employees associated with any specific employer at a local level or it might also include the labor union. For example a worker may start an economic strike in the protest for the health benefits, lack of sick pay and choose to stop working in the company until the employer takes notice of it and work towards coming to some sort of compromise with the employees. Most of the unions have particular regulations, which allows them to see if there is actually any need for economic strike or not.

The economic strike should always be focused on the welfare of the employees. There are certain countries in which such kind of strike activities are discouraged and in some countries it is banned or illegal by the governments, so the labor union have to do any such activity within the legal compliance of the nation they belong to. For example, some strategies such as work

slowdowns, sit-ins, wildcat strikes are prohibited by some unions as they are considered illegal and against the law in some of the nations.

In simple terms it is Strike which is the cessation of work by the labors with an aim of imposing their economic demands like wages and bonus.

In such strike, the workers raise their voices to increase their pay, improve working conditions, facilitate them with allowances, perquisites, and add-on benefits.

### ***Sympathy Strike***

A sympathy strike is when one union strikes in support for another involved in a dispute, even though the first union has no disagreement with the employer. It is a labor strike that started by workers in one industry and supported by workers in a separate but related industry.

Some courts have held that a sympathy strike or walkout is not in violation of a no strike clause in an employment contract. A refusal to work by one worker or group of workers to support the efforts of another group of strikers is a sympathy strike. Honoring a picket line is the most common form of sympathy strike. A worker who honors a picket line at his or her primary place of employment has the same rights as the pickets.

### ***Some legal considerations include:***

- A worker who honors an illegal picket line is engaged in unprotected activity and may be subject to discipline by the employer.
- Workers who honor legal primary pickets at their place of employment may be replaced but not disciplined. A worker who honors a primary, economic picket may be permanently replaced.
- The rights of workers who honor "stranger" picket lines are not as clearly defined. Refusal to cross a legal picket line at a facility other than that of the worker is recognized as protected activity by the Board and courts.
- Disciplining a worker in retaliation for honoring a stranger picket line is an unfair labor practice. However, disciplinary action against a stranger sympathy striker may be upheld if the

employer establishes a legitimate or compelling business justification for taking such disciplinary action.

- Workers covered by the Taft-Hartley Act who honor a picket line of exempted workers are engaged in unprotected activity.
- The right of railroad workers to honor a picket line is regulated by the Railway Labor Act, not Taft-Hartley.

### ***General strike***

Stoppage of work by a substantial proportion of workers in a number of industries in an organized endeavour to achieve economic or political objectives. A strike covering only one industry cannot properly be called a general strike.

The idea of a general strike, as a deliberate part of the tactics of collective bargaining, apparently originated in Great Britain, where the term had entered the language by the 1830s. Later in the century in France, syndicalist thinkers believed that workers could achieve a social revolution by using a general strike to directly overthrow the owners of industry.

General strikes first became possible with the growth of large trade unions late in the 19th century. Two large general strikes occurred in Belgium in 1893 and 1902 in support of universal manhood suffrage. A large-scale strike took place in Sweden in 1902 over similar issues and was followed by one in Italy in 1904 protesting the use of soldiers as strikebreakers. The general strike that gripped Russia during the Revolution of 1905 forced the tsar to issue the October Manifesto, in which he promised to create a constitution and a national legislature. In 1909 another general strike was staged in Sweden, this time in response to the wage-freeze and lockout policies adopted by employers who faced falling profits. Nearly half of the country's total workforce struck, and the stoppage lasted a month before the strike was settled. The Swedish general strike showed that major economic reforms could be achieved without resorting to violence.

A general strike in Berlin thwarted a right-wing takeover of the German government in 1920. In 1926 Britain faced one of the largest of all general strikes, which was undertaken by



the Trades Union Congress (TUC) in support of the nation's coal miners, who were in a bitter dispute with the mine owners. About three million of Britain's five million trade union members joined the strike, which was intended to force the government to intervene in the coal dispute. The strike lasted only nine days and ended on May 12, however, after the TUC realized that it was unable to disrupt the government's essential public services.

### ***Slow down strike***

Otherwise called as a slow-down strike, is one in which the workers do not stop working, but slow down the entire process by deliberately delaying the production, which results in the reduction of output.

This amounts to a serious case of misconduct, whereby the workmen pretend to be engaged in the work and entitled to full wages. It is more harmful than the complete cessation of work by employees, as the resources get wasted, due to delayed working of employees.

At 8 p.m. on December 30, 1936, in one of the first sit-down strikes in the United States, autoworkers occupy the General Motors Fisher Body Plant Number One in Flint, Michigan. The autoworkers were striking to win recognition of the United Auto Workers (UAW) as the only bargaining agent for GM's workers; they also wanted to make the company stop sending work to non-union plants and to establish a fair minimum wage scale, a grievance system and a set of procedures that would help protect assembly-line workers from injury. In all, the strike lasted 44 days.

### ***Hunger Strike***

Strike in which the employees go on fasting, near the workplace or at the residence of the employer, to force him/her redress their grievances is called hunger strike.

A hunger strike is a time-honored but desperate way for prisoners and political activists to attract attention to their cause.



Of the 166 prisoners being held at the U.S. military detention facility in Guantanamo Bay, Cuba, 84 of them — more than half — are now on a hunger strike to protest their treatment, NPR reports.

And 16 of those prisoners are being restrained and force-fed through tubes inserted into their noses and down to their stomachs, according to Reuters.

To respond to the mass hunger strike, a team of almost 40 medical personnel —including a doctor, nurses and medics — has been flown in to complement the 100 health-care professionals already working in Guantanamo.

And if a person also refuses all fluids, including water, "deterioration is very rapid, with death quite possible within seven to 14 days, especially during hotter periods of the year."

## **STRIKE WHETHER LEGAL**

Strikes are not per se illegal. The legality or illegality of a strike must depend on the means by which it is enforced and on its objectives. Lord Shaw said in case *Russel v Amal Society of Carpenters and Justice*.<sup>9</sup> "Strikes may be perfectly legal or they may be illegal. It depends on a nature and mode of constructed cessation of labour. If this concerted cessation is in breach of contract then it could not be said to be within law any more than could a breach of contract by a single workman. If on the other hand, a strike be cessation of labour on the expiring of contract. There is no necessary illegality there any more than in the case of an individual workmen completing their bargain and choosing to remain idle. But of course, in this later case, the concerted cessation of a labour may be for the sole of deliberate off obvious purpose of the refraining tread in which case different legal consequences might ensure." It was held in the case of "*Cox and Kings Limited v. Their Employees*"<sup>10</sup> that a strike is considered justified if it is in connection with a current labour dispute or directed against an unfair labour practice of the employer. It was also held justified when undertaken only after remedies provided in the statutory machinery of the Industrial Disputes Act have proved futile in the case of

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<sup>9</sup> (1910) I KBP 506.

<sup>10</sup> (1949) LLJ 796 (I.T.).

Chandramouli Estates v. Its Workmen,<sup>11</sup> likewise if the employer discharges its union officers, or causes a union official to be assaulted. The resultant strike is considered to be justified. Refusal to recognise a union or to consult it are considered valid reasons for a strike. In the case of 'Bihar Fire Works and Potteries Workers Union v. Bihar Fire Works and Potteries',<sup>12</sup> it was held that it is not proper to judge from the result of the adjudication of the demands whether a strike was not justified or not it can't be said to be unjustified unless the reasons for it are also lately preserve and unsustainable. Union is such it does not appeal to an ordinary common man, the strike is held to be unjustified.. A strike to be justified should be launched or the economic demands. It was held in the case of 'Swadesh Industries Ltd v Their Workmen',<sup>13</sup> the first and foremost requirement of a justified strike is that it should be launched only for economic demands of workmen like basic pay, dearness allowance, bonus, provident fund, gratuity, leave and holidays etc., which are the primary objects of a trade union. The political considerations cannot supply and good answer to legal obligations. The economic demands should be prima facie reasonable. The demands should not be raised frivolously or on ulterior reasons. Even some of employees are discharged. The workers cannot go on strike in haste. The workers cannot insist that a particular employee should work with particular batch of workmen and their demands can't justify the strike as was held in the case of 'Sri Kanyakaparameswari Groundnut Oil Mills contractor's company v their workmen" by the industrial tribunal.<sup>6</sup> In the case of 'Dabir (Et. S.K. Burman) Pvt. Ltd., v Their Workmen',<sup>14</sup> it was held that justification of strike depends upon (a) the conduct of the employer also, the employee which includes provocation on the part of employer by high, handed action and unsustainable reasons for the strike on the part of workmen (b) the nature of the strike whether the peaceful of violent and (c) whether the strike was resorted to after exhausting all the means of redress.

The strike itself cannot be treated as misconduct. The employer cannot dismiss an employee forgoing on justified strike because in that case the recognised weapon of strike will be rendered ineffective. Even in case legal, but unjustified strike, the employer cannot given right to dismiss employees. The power to dismiss depends upon the reasonableness of the demands will, therefore, restrict the field of industrial bargaining. In case of 'Ram Kishan Iron Foundry,

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<sup>11</sup> (1960) KK LLJ 243-246.

<sup>12</sup> (1953) I LLJ L.AT. (Cal.) 49 at 52

<sup>13</sup> (1960) AIR SC 1250

<sup>14</sup> (1961) II FLR (I.T.) Calcutta. 10

Howrah v their workmen<sup>15</sup>. It was held when the strike is resorted to with the real object of compelling the employer to reopen a demand settled by adjudication or when it is resorted to frivolously and frequently with a dominant motive of running the industry or when it is on the account of extraneous considerations, then there will be misconduct and the employer will have the right to dismiss the employees.

**Illegal Strikes** All strikes are not ipso facto unlawful or illegal. Industrial Disputes Act, 1947 however, makes certain strikes illegal under section 24. This section specifies the events on the happening of which, strike is to be treated as illegal and the plain meaning of this is that, those strikes which do not fall in that category are not illegal, another way strike may be unjustifiable, but it is not illegal unless it is illegal according to the provision of the Industrial Disputes Act, 1947. Thus a strike which is not illegal under Section 24 of the Industrial Disputes Act, 1947 can never be treated as illegal under the Act.

Hence in **India**, right to protest is a fundamental right under Article 19 of the Constitution of **India**. But right to **strike** is not a fundamental right but a **legal** right and with this right statutory restriction is attached in the industrial dispute Act, 1947.

<sup>16</sup>Article 19 (1) (g) confers a broad and general right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in any particular post under a contract of employment. In *Fertilizer Corporation v. Union of India*<sup>30</sup> the workmen challenged the validity of sale of certain plants and equipments on the ground that they will be deprived of their employment and their constitutional right under Article 19 (1) (g) will be violated. The court held that Article 19 (1) (g) does not protect the right to work in a particular post under a contract or employment as such Article 19 (1) (g) can not be invoked against the loss of a job or removal from service. But this does not confer the right to do anything considered illegal in the eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person.<sup>31</sup> Further Article 19 (1) (g) does not mean that conditions be created by the

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<sup>15</sup> 1954 II LLJ (L.A.T.) 372

<sup>16</sup> Professor Dr. Bernd Waas, Strike as a Fundamental Right of the Workers and its Risks of Conflicting with other Fundamental Rights of the Citizens general report III

State or any statutory body to make any trade lucrative or to procure customers to the business/businessman .32 Moreover Eviction of a person in unauthorized occupation or premises belonging to Municipality or Panchayat is not illegal as a citizen whose occupation at a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawful discharging its statutory functions.<sup>33</sup>

Locus Standi: In *A.B.S.K. Sangh (Rely) v. Union of India* <sup>36</sup> it has been held that even an unregistered association can maintain a petition for relief under Article 32 of the Constitution if there is a common grievance i.e. Article 32 is not to protect only individual's fundamental rights but is capable of doing justice wherever it is found and the society has an interest in it. In the historic judgment in *Judges' Transfer case* <sup>37</sup>, the seven judges Constitution Bench of the Supreme Court has set at rest the controversy whether a person not directly involved can move the court for the redressal of grievances. The court held that any member of the public having 'sufficient interest' can approach the court for enforcing constitutional or legal rights of such persons or group of persons even through a letter. In the same case the Hon'ble Court has held that it can not be said that lawyers only have the right of locus standi to file a petition in respect of every matter concerning judges, courts and administration of justice. Again in *Rice and Flour Mills v. N.T. Gowda* <sup>38</sup> the Supreme Court held that a rice mill owner has no locus standi to challenge under Article 226 for setting up of a new rice mill even if the setting up of such rice mill is in contravention of the rule because no right vested in the applicant has been infringed.

Article 19 (1) (g) Read with Clause (6) of Article 19 of India Constitution's Provisions Analogous with Other Countries.

Costa Rica: Article 56 postulate: Work is the right of the individual and an obligation towards society. The state must ensure that all have an honest and useful occupation which is properly paid and must prevent such occupation from giving rise to conditions, which in any way impair the liberty or dignity of the individual or reduce labour to the level of mere commodity. The state guarantees the right to a choice of employment.

Czechoslovakia: Article 26 states: 1. All citizens have the right to work. 2 His right to work in particular is secured by organization of work and the state is directed in accordance with the

planned economy. Article 27 Further states:- 1 All working members of the population possess the right to just remuneration for the work done. 2. This right is secured by the state wages policy, which is administered with the united trade Union Organization and directed towards the constant raising of the standards of the working population. 3 Remuneration shall be governed by the quality and quantity of work and by the benefit, which it brings to the community. 4 In equal conditions, men and women are entitled to equal remuneration for equal work.

## CONCLUSION

Strike can be legal at various cases when worker follows proper format of strike, the reason for strike should be valid and illegal strike can be held but reason for strike cannot be fulfilled. Though strike is supported by constitution of India but **strike** is not a fundamental right but a **legal** right and with this right statutory restriction is attached in the industrial dispute Act, 1947. Hence