

# **WORKMEN RIGHT TO STRIKE UNDER THE INDUSTRIAL DISPUTE ACT, 1947**

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## **INTRODUCTION**

Strike from the past has been used as a continuous weapon of choice, be it reservation, desired wages, proper conditions, state passing any unwanted bill or make legislature pass the bill etc. People go on strike for a plethora of reasons but one characteristic that remain common is that the strike is always undertaken by the weak part of section or community to put up their issues and unsatisfied demands against the people who have the authority and power to resolve such issues and meet their demands. In Industrial Dispute Act, 1947 the situation is not that different either, the labours have to take the advantage of their numbers and the dependency of the managerial staff upon them, in order to meet their reasonable demands or at least grasp the attention of the employer.

‘Right to Strike’ of workmen or trade unions derived from the fundamental right provided under Article 19 (1) (c) of the Constitution of India i.e. FR to form associations or unions. Therefore, this right is merely a legal right and not a fundamental right<sup>1</sup> which is sufficient to give a voice and teeth to these unions or associations. Also, it is pertinent to know that such a right has not been expressly mentioned in the law.

## **‘RIGHT TO STRIKE’ AND INDUSTRIAL DISPUTE ACT, 1947**

Like every other right, this Workmen ‘Right to Strike’ is also not an absolute right and have restriction imposed by this act, which makes this right limited in application and only to invoke in certain cases and as a last resort. Mahatma Gandhi also once said that workmen have inherent right to strike but only comes at the surface after the fulfilment of certain conditions such as

fair purpose, practical unanimity among the workers, non-violent and last resort. In a similar way, a strike has been considered as a legitimate tool under this act and recognize the same, only when certain conditions flow, which will be discussed in depth in this paper later.

‘Strike’ has been defined under section 2(q) of the act, which stands upon 3 elements, 1) cessation of work, 2) by the body of persons employed in any industry and 3) in lieu of dispute or refusal on the part of workmen. Also, under Industrial Dispute Act, 1947 section 24 read with section 22 and section 23 of the act, laid down with the intent to act as regulation which on the basis of certain grounds and conditions segregate the term ‘strike’ into two parts 1) legal strike and 2) Illegal strike. Now the bigger question to ask is what is the difference between the two, the need to segregate and the effect of such segregation? To which the statute does not provide any satisfactory answers.

## **ILLEGAL STRIKE**

The above laid down sections provide that the difference between illegal and legal strike is merely of procedural in nature, the definition of section 24 is of exhaustive in content, so every strike which does not fall under section 24 of the act is in fact legal strike. The main reason for such distinction was that to give employer adequate time to prepare for the strike because of notice and came up with an alternative remedy which benefits both the workers and employers. Therefore, the workers when engage in lightning strikes or other illegal strikes snatch such opportunities from the hands of the employer and left them in a more vulnerable position and also limit the scope of other alternate methods. In the case of *Caltex (India) Ltd. v. Certain workmen*, the Supreme Court held that a strike is a legitimate tool in the hand of the workers to redress their grievances. However it has been held that it should be used as a "last resort" when all other avenues have proved futile and so long as it is used in a restrained, peaceful manner of good and justifiable reasons, it cannot be punished.<sup>ii</sup> This is the reason why ‘right to strike’ does not extend to illegal strike because in most of the cases other avenues are not availed. In such illegal strikes a disciplinary action can take place and also the workmen will not be entitled to wages (striker pay)<sup>iii</sup>.

## JUSTIFIED AND UNJUSTIFIED STRIKES

It is established that every Illegal Strike amount to punishment and penalty depending upon the nature of such strike<sup>iv</sup> but this does necessary imply that every type of legal strike is to be covered under the defense of 'Right to Strike'.

To further limit the misuse of the concept of 'Strike', within legal strikes, it was divided into two parts justified and unjustified strikes. Because it may be the case that a strike completely satisfies the provision of section 22 and 23 of the act, but such technical 'legal strike' still be highly reprehensible, violent and to attain immoral purpose. The reason behind such differentiation was that in the case of Chandramalai Estate, Ernakulum v. its workmen<sup>v</sup>, it was held that indiscriminate and hasty use of strike should not be encouraged. Strike must run on the principles such as fair and reasonable.

Such distinction of justification and un-justification is to be dependent upon the purpose lies behind the strike in different-different cases. In the case of Swadeshi Industries Ltd. v. It's Workmen, the strike with purpose such as securing improvement on matters like basic pay, dearness allowance provident fund, bonus and gratuity, leave and holidays considered to be justified.<sup>vi</sup> Whereas the purpose for the unjustified strike is totally perverse and unsustainable.

In the case of Smanshahi Mills Ltd. v. Its workmen<sup>vii</sup>, which shed a clear light on the debate of Justified-unjustified strike and the reason behind it, it state that the term 'justified strike' will not meant that there is complete justification of strike but that the employer is not entitled to take actions asa consequence of strike which he/she will be generally entitled to if it was an illegal or unjustified strike. The common reasons for which a strike will treated as 'unjustified strike'<sup>viii</sup> are as follow:-

1. The demands to be pitched unreasonably high or
2. The employer has adopted reasonable measures such as conciliation or arbitration to address the alleged grievances or
3. The demands were not bonafide but with the ulterior oblique motives or
4. Did workers try a little less extreme steps before going on a strike etc.

## CONCLUSION

'Right to Strike' is although not a fundamental right nor an absolute right, but it plays an important role in safeguarding the interest of workmen or trade unions by providing limited freedom to these entities. To ensure that no one side overpower and exploit the other side and also if 'Strike' starts running unregulated, it will seriously hamper the growth of the industry. However, it is still not enough to make sure that no one class is dominated by the other. This conditional right is still yet to evolve properly, lack of statutory provisions in the act create confusion regarding justified and unjustified strikes. Although, it is appreciated that the court through case precedents introduce such classification within legal strikes, but in a way ignored the same concept that will be present in illegal strikes also, because there may be a situation where the intention behind the strike is 'justified' but merely does not fall under the statutory provisions of the act, some leniency must be taken while taking into consideration such cases. Also, wages as striker pay must be awarded to the workmen who took part in justified strike although illegal.

As laid down above justifiability and un-justifiability depends absolutely upon the facts and therefore facts such as most of the trade unions are comprised of workmen who mostly have no contact with the Indian education system and perform unskilled work should be taken into consideration, and assuming them capable enough to understand the intricacies of law and that also mainly procedure law will somehow find a way to defeat the purpose of the whole act which is equity and justice.

## REFERENCES

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<sup>i</sup>Kameshwar Prasad And Others vs The State of Bihar And Another on 22 February, 1962 (<https://indiankanoon.org/doc/687159/>)

<sup>ii</sup> Caltex (India) Ltd. v. Certain workmen, (1954) (II) LLJ.516 (520)

<sup>iii</sup>United Commercial Bank Ltd., v. A.C.Kakkar and Others 1954 L.A.C. 498

<sup>iv</sup>M/S Burn & Co. v. Workmen AIR 1959 SC 529

<sup>v</sup>Chandramalai Estate, Ernakulum v. its workmen 1960(II) LLJ 243 at p.246

<sup>vi</sup> Swadeshi Industries Ltd. v. Its Workmen, (1960) (II) LLJ 78 at 81.

<sup>vii</sup> Smanshahi Mills Ltd. v. Its workmen, (1959) (I) LLJ. 187

<sup>viii</sup> West Bengal Flour Mills Mazdoor Congress v. Hooghly Flour Mills Co. Ltd. 10 F.J.R. 240(L.A.T)