

LEGALITY OF RIGHT TO STRIKE IN INDIA WITH SPECIAL REFERENCE TO THE INDUSTRIAL DISPUTE ACT, 1947

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ABSTRACT

The labour and capital are considered to be the backbone of industries and their co-operation is essential for the wellbeing and growth of the economy, yet the capital class tends to have an upper hand over the labour class. Therefore, to redress the grievances and to safeguard the interests of labour class, some kind democratic weapons are used by them. Strike is nothing but a cessation of work to coerce or persuade the employer to accede to their demands and give them their legitimate rights. Article 19(1) (c) of the Constitution of India guarantees fundamental right to form unions or associations. But this right, by no stretch includes the right to strike. Though right to strike is not elevated to the position of fundamental right under Constitution of India, yet it holds a statutory recognition under Industrial Disputes Act, 1947, and is regarded as an ordinary right of social importance, thus makes it legal in the Indian scenario. The right to strike is regulated by imposing reasonable restraints statutorily in order to achieve the object of harmonious relations between the workers and the management. The strikes become illegal if resorted to without complying with the statutory requirements as mentioned in the industrial dispute act. Resorting to illegal strikes is a punishable offence under the Act. Thus, this article deals with: Legality of strikes, status of right to strike in India, Justiciability of strikes and Illegality of strikes.

Keywords: Strike, Lockout, Workmen, Employer, Employee, Legality.

INTRODUCTION

Rights and duties are two faces of a same coin i.e., every right comes with a duty. Powerful rights have more duties attached to them. Today, in each and every country, whether it is democratic, capitalist, socialist, the workers are entitled with the right to Strike. But this right must be used as the weapon of last resort, if this right is misused, it will create a problem in the production and financial profit of the industry which would ultimately hamper the development of the nation's economy as a whole. Currently, most of the countries, specifically the developing countries like India, are dependent upon foreign investments and under such circumstances it is necessary that countries who seeks foreign investment must provide for some kind of safeguard and security mechanism in their respective industrial laws so that there will be no misuse or reckless usage of a vigorous weapon like right to strike. In India, right to protest is recognized as a fundamental right under Article 19 of the Constitution of India. But right to strike is not considered to be fundamental right but a legal or a statutory right and with this right certain statutory restriction are also attached in the industrial dispute Act, 1947 and retorsion to strikes in violation of rules mentioned in the Industrial Dispute Act are considered to be punishable offences.

DEFINITION AND MEANING OF STRIKE

Strike as defined under Section 2(q) of the Industrial Dispute Act as:

1. Cessation of work by a body of persons, who are employed in any industry acting in combination; or
2. A concerted refusal of any number of persons who are or who have been employed in any industry to continue to work or to accept employment; or
3. A refusal under a common understanding of any number of persons who are or have been employed in any industry to continue to work or to accept employmentⁱ

Thus, the definition given in the act draws out integral ingredients of strikes, they are:

→Industry

→ Cessation of work or refusal to do a particular work in any industry by the workmen acting in a body or combination.

→ The industry must constitute an Industry within the meaning of section 2(J) of the industrial dispute act 1947.

→ Concerted refusal.

→ The strike must relate to employment, non-employment or with respect to the terms of employment or with the conditions of labour of the workmen.ⁱⁱ

➤ According to Ludwig Teller: “the word strike in the broad significance has a reference to a dispute between an employer and his worker in the course of which there is a concerted suspension of work.”

➤ According to Halsbury's: “A strike is a general concerted refused by workmen to work in consequence of an alleged grievance”.ⁱⁱⁱ

In other words, a strike is an extremely powerful weapon used by the trade unions or other associations or workmen to put across their demands or grievances caused by employers or management of industries. It is basically the stoppage of work, caused by the mass refusal in response to grievances. The labour class tends to put pressure on the employers by refusal to work till fulfilment of their demands. Strikes may either have a fruitful result for workers' welfare or it may cause economic loss to the nation.

The meaning of the term strike was defined by the court in the case of *Indian Iron & Steel ltd. v. its workmen*^{iv} as a “Mere cessation of work does not come within the preview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.”

TYPES OF STRIKES

Based on the phenomena of strikes across the globe, strikes can be categorized into economic strike, sympathy strike, general strike, sit down strike, slow down strike, hunger strike and

wildcat strike.

- I. Economic Strike: Under this type of strike, the workmen stop their work to enforce their economic demands like increment, wages and bonus. In an economic strike, workmen demand for a hike in wages, allowances such as house rent allowance, traveling allowance, dearness allowance, bonus and other facilities including increase in privilege leave and casual leave.
- II. Sympathetic Strike: When workmen of one unit go on strike in sympathy with workmen of another unit or industry who are already indulged in a strike, it is called a sympathetic strike. The members of various other unions involve themselves in these kinds of strike to support or express their sympathy with the members of unions who are on strike in other undertakings.
- III. General Strike: It a strike by members of all or most of the Trade unions in a particular region or an industry. It may be a strike of all the workmen in a particular region or industry to force common demands in the interest of workers. These strikes are usually intended to build political pressure on the ruling government, rather than on a single employer.^v
- IV. Stay in Strike: In this case, workmen do not absent themselves from their place of work during the strike period rather they keep a control over production facilities and yet, not work. Such a strike is also known as ‘tool down’ or ‘pen down’ strike. In other words, Workmen show up to their place of employment, but they refuse to work. In the case *Mysore Machinery Manufacturers v. State*^{vi} it was held that “Where dismissed workmen were staying on premises and refused to leave them, did not amount to strike but an offence of criminal trespass.
- V. Slow Down Strike: Workmen remain on their jobs under this type of strike. They do not stop work, but restrict the rate of production in an organized manner. They adopt go-slow tactics in order to put pressure on the employers. In the case of *Sasa Musa Sugar Works Pvt. Ltd. v. Shobrati Khan & Ors*^{vii} it was held that: “Go-Slow strike is not a “strike” within the meaning of the term in the Act, but is serious misconduct which is insidious in its nature and cannot be countenanced.”
- VI. Sick-Out (Or Sick-In): In this kind of strike, all or a significant number of union members call in sick on the same day. They don’t break any rules or regulations, as they just use their sick leave that was allotted to them on the same day.^{viii}

VII. Wild Cat Strikes: These strikes are conducted by workmen or employees without the authority and consent of unions.

ROLE OF INDUSTRIAL DISPUTE ACT, 1947

Industrial Disputes Act, 1947 plays a significant role in sorting out the dispute by conciliation or award. It is designed in order to settle disputes amicably between employees with the management of industries. The objective of the act is to investigate and settle industrial disputes in a peaceful and amicable manner. The apex court has refused to undertake fresh cases of industrial disputes as the act of empowering the Industrial Disputes Tribunals to address the same.^{ix}

Section 22 of V chapter of the Industrial Disputes Act provides clarification regarding Prohibitions on right to strike:

The section provides that no person employed in a public utility service shall go on strike in breach of contract –

1. Without providing to the employer a notice of strike, as hereinafter provided, within six weeks before the commencement of strike; or
2. within a period of fourteen days of giving such notice; or
3. before the expiry of the date of strike specified in such notice as aforesaid; or
4. during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of any such proceedings.^x

The Significance of section 22 are as follows:

- It must be taken into consideration that above regulations for strike are applicable for employees who work for public utility service in Industry.
- It is mandatory to provide the employer with a notice with or without strike date.
- In case date of commencement of the strike is not mentioned in the notice, then

such notice will be valid only for a period of six weeks from the date of notice. If the employees do not go on strike within the period of 6 weeks, then it is necessary to give fresh notice of strike by the employee if they are still willing to go on strike.

- In case the date of strike is mentioned in the notice then employees cannot go on strike before the expiry of a period of 14 days from the date of the notice.
- Employee are forbidden from going on a strike during the pendency of any conciliation proceedings before a conciliation officer and seven days after the completion of such proceedings.^{xi}

Section 23 – General prohibition of strikes and lock-outs:

Section 23 of the Industrial dispute act deals with General prohibitions of strikes it is applicable to both public as well as non-public utility services. It lays down general guidelines for prohibitions of strike however Section 22 deals only with services with respect to public utility.^{xii}

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out, in the following cases:

- That is, during the pendency of conciliation proceedings in front of a Board and seven days after the completion of such proceedings; or
- during the pendency of proceedings before a Labour Court, National Tribunal or Tribunal and two months after the completion of such proceedings; or
- during the pendency of arbitration proceedings in front of an arbitrator and two months after the completion of such proceedings; or
- during any period in which an award or a settlement is in operation, in respect of any of the matters covered by an award or settlement.^{xiii}

Section 24 deals with Illegal strikes and lockouts:

According to Section 24 of the Act, strike or a lock-out shall be considered to be illegal in the following cases —

- In case a strike or a lockout is commenced or declared in contravention of section 22 or section 23 of the Industrial dispute Act; or
- In cases where it is continued in contravention of an order made under sub-section (3) of section 10 or sub- section (4A) of section 10A of the Industrial dispute act.

In case where a strike or lock-out in pursuance of an industrial dispute has already began and is existing at the time of the reference of the dispute to a Board, a Labour Court, an arbitrator, Tribunal or National Tribunal, the continuance of a strike or lockout of such nature shall not be considered illegal, provided that such strike or lock-out was not commenced in contravention of the provisions of the Industrial dispute Act or the continuance thereof was not prohibited under sub-section (3) of section 10 or under sub-section (4A) of section 10A.

A lock-out which has been declared in consequence of an illegal strike or a strike has been declared in consequence of an illegal lock-out shall not be deemed to be illegal.^{xiv}

In the case of *Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd*^{xv}. It was held that “when a strike is commenced before the expiry of a period of 14 days’ notice, it will be considered illegal but only for the unexpired notice period and thereafter, the strike would be legal”.

Section 24^{xvi} of the Act distinguishes between a legal strike and an illegal strike. It states that legal strikes are those in which procedures for going on strikes are as mentioned under section 22 or section 23 are followed.

Section 26 of the Act deals with; Penalty for Illegal strikes and lockouts:

This section prescribes penalties for commencement and involvement in an illegal strike. As per the act any employee who was involved in a strike which was deemed illegal, will be punished with imprisonment which might be extended to the term one month, or they have to pay fine up to fifty rupees, or both. It’s mainly aims at the establishment of a balancing situation among industries, workers or unions.^{xvii}

CURRENT POSITION OF STRIKES IN INDIA

In India, unlike in the United States right to strike is not expressly recognized by the law. The Trade Union Act, 1926 for the very first time provided limited right to strike by legalizing certain specific activities of a registered trade union in furtherance of a trade dispute which otherwise would be considered as breach of common economic law. Now a days right to strike is recognized only to a limited extent permissible under the limits laid down by the law. It is now recognized as a legitimate weapon of Trade Unions.^{xviii}

The right to strike in the Indian constitutional set up is not an absolute right neither is it expressly mentioned, it flows from the fundamental right to form union. As every other fundamental right is subject to some reasonable restrictions, it is the same in the case of forming trade unions and to give a call to the workmen to go on strike as well, the state is entitled to impose reasonable restrictions. In the case of *All India Bank Employees Association v. I. T*^{xix}. The Court observed that, "the right to go on strike or right to declare lock out may be restricted or controlled by appropriate industrial legislation and the validity of such legislation would have to be put to test not with reference to the criteria laid down in clause (4) of Article 19 but by different considerations."

Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike it is rather a statutory right or a legal right. Under the Industrial Dispute Act, 1947 the ground and condition with respect to legal strikes are laid down and if those provisions and conditions are not fulfilled then the strike will be considered to be illegal.

Few Instances of Strikes in India: In March 2012, nurses employed by different hospitals across Chennai went on strike for a period of 7 days demanding from hospital management a hike of basic wages to Rs 15000/-, apart from leave benefits and also annual increment. All the well-known hospitals such as Apollo, Fortis, Max etc. had come to a standstill because of the strike.^{xx} In September 2016, millions of Indian workmen of public sector had gone on strike demanding higher wages. Banks, power stations were kept shut and public transportation systems froze in some of the states as an outcome of the strike. Later the government had to consider their

demands and increased the wages. It is noted to the world's largest-ever strike.^{xxi}

LEGALITY AND JUSTICIABILITY OF STRIKE

In the case of *Gujarat Steel Tubes v. Its Mazdoor Sabha*^{xxii}, Justice Bhagwati observed that “right to strike is an integral aspect of collective bargaining. He further held that the right is a process recognized by industrial jurisprudence and supported by social justice.”

In the case of *Kairbitta Estate v Rajmanickam*^{xxiii}, Justice Gajendra Gadkar opined that, “in the struggle between capital and labour, the weapon of strike is available to labour and is often used, weapon of lock-out available to employer”.

Though the right to strike is not expressly recognized as a legal right under Industrial Disputes Act, 1947, strikes not resorted to in contravention of the provisions of Section 22 and 23 of the said Act are considered as legal as enunciated by Section 24 of the said Act. The Indian economy demands more production. The indiscipline in the industry and the tendency towards violence and vandalism demands industrial pacification.

Although strike is a legitimate weapon in the hands of workers and may be resorted in order to secure their demand and to improve their conditions, yet the justifiability of a strike has to be witnessed from the standpoint of fairness and reasonability of the demands made by workmen and not merely from the standpoint of them exhausting all other legitimate means available to them for getting the demands fulfilled^{xxiv}. In order to consider a strike justiciable in should pass the below mentioned test:

1. The cause of the strike must be just and reasonable;
2. There should be practical unanimity among participants of the strike;
3. No violence should be used against non-participants of the strike;
4. Strikers should be capable of maintaining themselves during the strike without falling short on the union funds and therefore, should engage themselves in some productive and useful temporary occupation.^{xxv}

In the case of *Chandramalai Estate, Ernakulum v. Its workmen*^{xxvi}, Justice K.C. Gupta observed that “while on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to note that hasty and indiscriminate use of this weapon should not be encouraged. It will not be considered right for the workmen to hold a thought that, for any kind of demands a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There might be cases where the demand is of such a serious and urgent nature that it would not be considered reasonable to expect labour to wait till after asking the government to make a reference. In such cases, strike even before such a request had been made might well be justified”.

Collective bargaining for securing improvement on matters such as basic pay, more conducive working conditions, basic infrastructure facilities, provision for safety of the workmen, annual leave with wages, etc., providing standard working conditions for the workmen, provision of benefits such as medical benefit, maternity benefit, sickness benefit, disablement benefit, and dependents benefit are to be provided under the Employees State Insurance Act, 1948. Dearness allowance, bonus and gratuity, provident fund, leave and holidays is the fundamental object of a trade union and when demands of these are put forward and thereafter, a strike is resorted to in an attempt to induce the employer to accept the demands or at least to open negotiations, the strike must prima facie be considered to be justified unless it could be shown that the demands were put up frivolously or for any malafide purpose.

In the case of *Andhra Pradesh State Road Corporation Employees Union .v Andhra Pradesh State Road Transport Corporation*^{xxvii}, it is held that the justiciability should not also depend upon the percentage of demands meeting with success, nor it should be judged by the measure of the results of the strike, though it is certainly a relevant matter in determining the justiciability of the strike.

In the case of *Swadesi Industries Limited v. Its workmen*^{xxviii}, the Apex court held that strike resorted to for the settlement of economic conditions like wages, D.A, bonus, provident fund, gratuity, leave and holiday would prima facie make it justiciable. Whether a strike is

justiciable or not is a mere question of fact depending upon the circumstances in each case.

STRIKE-ILLEGAL AND UNJUSTIFIED

A strike is to be termed illegal when it contravenes any of the provisions of the law. Section 24 of the Industrial Disputes Act prescribes the ground on which a strike can be held illegal. If a strike is resorted to and it doesn't violate the norms mentioned in Section 24, then the strike can be construed to be legal.

Resorting to strike or concerted stoppage of work by body of works in contravention of Section 22 or Section 23 of the act or in contravention of an order made under sub-section (3) of Section 10 or sub-section (4A) of Section 10A will be construed to be illegal.

In the case of *Syndicate Bank and Others v. Umesh Nayak*^{xxix}, it was held that “the strike resorted to as a direct action in breach of contract of employment, law or service rules, when machinery is provided under that to resolve the disputes, is prima facie”

A strike may be considered legal if it is commenced in harmony with the statutory provisions and it may be justified if it is bonafide, resorted to for the wellbeing or betterment of the conditions of service of the works or in order to any other reasonable demands. A strike may be legal and justified during the time of its commencement but as it progresses, the strikers may resort to acts of violence or sabotage. Though such strike may not be illegal but certainly they are unjustified in resorting to such acts by the workers. While illegal strikes irrespective of the objects are prima facie considered to be unjust, the question of justification of an illegal strike is irrelevant. This presumption has further been clarified by the SC in the case of *India General Navigation and Railway Co Ltd. v. Their workmen*^{xxx}.

The law has made a distinction between strikes, which are illegal and legal, but it has not made any distinction between an illegal strike which may be said to be justified and the one which is not justiciable. This distinction is not warranted by the Act and will be wholly, misconceived especially in case of employees in public utility services.

Section 10(3) of the Act empowers the appropriate government to prohibit continuance of industrial strike, if it is referred to one of the authorities as stated in Section 10(1). The order of prohibition may be issued simultaneously to the order of reference, or afterwards. The

question which arises here is if a series of demands are made by the workmen or union but only few issues or disputes are referred to the authorities under Section 10(1), does the restriction under Section 10(3) prohibit continuance of strike for other demands. This came for reference to the Supreme Court in *Delhi Administration, Delhi v Workmen of Edward Keventers*^{xxxvi}. The court held in regard to such disputes as are not referred under Section 10(1), Section 10(3) does not operate. Thus, on principle and text of law Section 10(3) will come into play only when the basis of strike is covered by Section 10(1).

Similar power is given under Section 10A (4A) to the appropriate government to stop the continuance of strike if the dispute is referred to voluntary arbitration under Section 10A and notification is issued under Section 10 (3A). When strike is carried out by workmen violating the prohibitors' orders by the appropriate government, it will render the strike illegal under Section 24. The reason for such provision is to have calm and peaceful atmosphere for the expeditious and impassionate settlement of the disputes. Any workmen resorting to illegal strikes shall be punishable with imprisonment for a term which may extend to one month or fine of 50 rupees or both^{xxxvii}.

Those who instigate or incite others to take part in furtherance of the strike shall be punishable with imprisonment which may extend to 6 months or fine of 1000 rupees^{xxxviii}. Those who knowingly give financial assistance in furtherance or support of an illegal strike shall be punishable with imprisonment which may extend to 6 months or fine which may extend to 1000 rupees or both.

RIGHT TO WAGE OF WORKMEN DURING A STRIKE

It was held by the Apex court in *Bank of India v. T.S. Kelawala*^{xxxiv} that for workers to be entitled to wages during strike period, the strike has to be both legal and justified. Whether the strike is legal and justified is a matter of fact, which needs to be decided by the industrial adjudicator in each case.

In *Crompton Greaves Ltd. v. Workmen*^{xxxv}, Justice Krishna Iyer held in order to entitle them to wages for the period of strike, it must be both legal and justified. A strike is legal if it is in accordance with the procedure laid down under the Act. It is justified if the reasons are not so unreasonable. Thus, it is held use of force, coercion, violence, etc., resorted to by the workmen

during the period of strike which is legal and justified would disentitle them to wages during the strike period.

CONCLUSION

Strike, though not a fundamental right in India it is yet a legal right with statutory immunity in the hands of the working class over the capital class in order to protect their interests and have their grievances redressed. Though strike is a legitimate and unavoidable weapon in the hands of the labour class, reckless and hasty use of this weapon should not be encouraged, as it is hindrance to peaceful existence of the industries. Right to strike is a conditional or qualified right only available after fulfilment of certain pre-condition. If the Constitution makers had intended to confer on the citizen, the right to go on strike as a fundamental right, they would have expressly mentioned so. On the basis of the assumption that the right to go on strike has not expressly been conferred under the Article 19(1) (c) of the Constitution of India. We can conclude that right to strike is not a fundamental right grantee to the citizens of India, rather it is a legal statutory right on which the Industrial Disputes Act, 1947, imposes reasonable restraints, which if not followed would resort to illegality, which is punishable under the provisions of the Act. Right to strike in India is very much limited and regulated under the Industrial Dispute Act.

ENDNOTES

- ⁱ Industrial Dispute Act, § 2(q) (1947).
- ⁱⁱ No name, Legality of strikes, SRD law notes (jun.22,2016, 12:33p.m), <https://www.srdlawnotes.com/2017/10/meaning-definition-and-essential.html>
- ⁱⁱⁱ 38, Edward Jenks, Halsbury's laws of England, 59 (3rd ed. 2016).
- ^{iv} Indian Iron & Steel Ltd. v. Its Workmen, ILLJ, 381 (Pat. HC: 1967).
- ^v Vaishali D, Types of industrial disputes: 7 major types, Economic discussion (Jan.12, 2017, 01:00pm), <http://www.economicdiscussion.net/industrial-disputes-2/types-of-industrial-disputes-7-major-types/31632>. [hereinafter D]
- ^{vi} Mysore Machinery Manufacturers v. State, AIR, 51 (Mys. HC:1966).
- ^{vii} Sasa Musa Sugar Works Pvt. Ltd. v. Shobrat Khan & Ors, AIR, 923 (SC:1959).
- ^{viii} D *supra* note 5.
- ^{ix} D *supra* note 5.
- ^x Industrial Dispute Act, § 22 (1947).
- ^{xi} Industrial Dispute Act, § 22 (1947).
- ^{xii} Industrial Dispute Act, § 23 (1947).
- ^{xiii} Industrial Dispute Act, § 23 (1947).
- ^{xiv} Industrial Dispute Act, § 24 (1947).
- ^{xv} Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd, ILLJ 319 (Bom. HC: 1989).
- ^{xvi} Industrial Dispute Act, § 24 (1947).
- ^{xvii} Industrial Dispute Act, § 26 (1947).
- ^{xviii} Deepak Raju, Right strikes under industrial dispute act 1947, Legal service India (Dec.17, 2015, 10:50am), <http://www.legalserviceindia.com/articles/dispute.html>.
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- ^{xxi} Id.,
- ^{xxii} Gujarat Steel Tubes v. Its Mazdoor Sabha, 2 SCR 146(SC:1980).
- ^{xxiii} Kairbitta Estate v. Rajamanickam, 3 SCR 371 (SC:1960).
- ^{xxiv} National Transport General Co Ltd. v. Their Workman 3 SCR 144 (SC:1960).
- ^{xxv} M.N. Kaushika, An Analysis of workmen's Right to Strike under Industrial Disputes Act, NJLIL 13,17, 2018.
- ^{xxvi} Chandramalai Estate, Ernakulum v. Its workmen, AIR 902 (SC:1960).
- ^{xxvii} Andhra Pradesh State Road Corporation Employees Union v. Andhra Pradesh State Road Transport Corporation, 3 ALT 173 (AP.HC :2008).
- ^{xxviii} Swadesi Industries Limited v. Its workmen, AIR 1258 (SC:1960).
- ^{xxix} Syndicate Bank and Others v. Umesh Nayak, AIR 319 (SC:1995).
- ^{xxx} India General Navigation and Railway Co Ltd. v. Their workmen, ILLJ 13 (SC:1960).
- ^{xxxi} Delhi Administration, Delhi v. Workmen of Edward Keventers, AIR 976 (SC:1978).
- ^{xxxii} Industrial Dispute Act, § 10 (1947).
- ^{xxxiii} Crompton greaves ltd v. its workmen, AIR 1489 (SC:1978).
- ^{xxxiv} Bank of India v. T.S. Kelawala, 4 SCC 744 (SC:1990).
- ^{xxxv} Crompton greaves ltd v. its workmen, AIR 1489 (SC:1978).