

WHAT IS A STRIKE UNDER INDUSTRIAL DISPUTE ACT, 1947

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WHAT IS A STRIKE?

Section 1 (q) of the Industrial Disputes Act, 1947 (ID Act) defines strike as 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.

RIGHT TO STRIKE?

The right to strike in the Indian constitution set up is not absolute right but it flows from the fundamental right to form union. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unionsⁱ to give a call to the workers to go on strike and the state can impose reasonable restrictions.

In *All India Bank Employees Association vs. I.T.*, Supreme Court held that "the right to strike or right to declare lock out 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 but by totally different considerations."

Thus, it is a fundamental right to form association or Labor unions but there is no fundamental right to go on strike. Under the ID Act, the ground and condition are laid down for the legal strikeⁱⁱ and if those provisions and conditions are not fulfilled then the strike will be illegal.

GENERAL PROHIBITION OF STRIKE:

The provision of Section 23 of ID Act imposes restrictions on declaring strike in breach of contract in the following circumstances mainly:

- a) during the pendency of conciliation proceedings before a Board and till the expiry of seven (7) days after the conclusion of such proceedings;
- b) during the pendency of proceedings and 2 months' after the conclusion of such proceedings before the Labor Court/Tribunal or National Tribunal;
- c) during the pendency and 2 months after the conclusion of arbitration proceedings, when a notification has been issued under sub-section 3 (a) of Section 10 A; and/or
- d) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

It is pertinent to point out that a conciliation proceeding before a conciliation officer is no bar to strike under Section 23 of ID Act and unless otherwise prohibited or regulated by the Standing Orders of the establishment or any existing negotiation or conciliation proceeding is going on, workmen can go for a strike, except the same is in breach of their contract.

JUSTIFICATION OF STRIKE

Justification of a strike is a question of fact and has to be determined for each case. Justification means “whether the reason for which a strike has been called is serious enough or have enough potential to significantly affect the conditions of labor or terms of employment or employer employee relationships.”

However, any use of coercion or violence by the workers/union during a strike negates whatever justification a strike may have.

WHAT IS ILLEGAL STRIKE?

Section 24 provides that a strike in contravention of section 22 and 23 shall be deemed illegal.

- 1) A strike or a lockout shall be illegal if,
 - a) It is commenced or declared in contravention of section 22 or section 23; or
 - b) It is continued on contravention of an order made under sub section (3) of section 10 or sub section (4-A) of section 10-A.

WHAT IF STRIKE IS ILLEGAL?

If the strike is illegal, the workers guilty of illegality are liable to be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both as stipulated under Section 26 of the ID Act.

Besides the penalty prescribed under Section 26 of the ID Act, another consequence of an illegal strike is the denial of wages and initiation of proceedings against the workers who were involved in such strike.

PAYMENT OF WAGES DURING STRIKE:

Since, the ID Act is silent upon the wages during the period of strike the issue of denial of wages during the period of strike has been under constant judicial scrutiny in various courts or tribunals across the country.

CASE LAWS ON PAYMENT OF WAGES DURING STRIKE

- a) In *Crompton Greaves vs. the Workmen*ⁱⁱⁱ, Hon'ble Supreme Court held that "It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statutes. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.
- b) In case of *Bank of India vs. T.S. Kelawala*^{iv}, the Hon'ble Supreme Court had a different view and held that "*where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed.*"

The Hon'ble Court further held that "...whether the strike is legal or illegal, the workers are liable to lose wages for the period of strike. The liability to lose wages does not either make

the strike illegal as a weapon or deprive the workers of it. When workers resort to it, they do so knowing full well its consequences."

- c) In *Syndicate Bank vs. K. Umesh Nayak*^v, the Hon'ble Supreme Court, held that "to be entitled to wages for the strike period, the strike has to be both legal and justified."

WHETHER THE STRIKE IS LEGAL OR JUSTIFIED ARE QUESTIONS OF FACT TO BE DECIDED ON EVIDENCE BY THE INDUSTRIAL ADJUDICATOR.

Basis the above referred observations of the Apex Court, it is clear that:

- a) If a strike is not in contravention of any statutory provision and is not illegal nor is unjustified:
- there is no reason to deprive the workmen of their wages during the period of strike.
- b) However, if the strike is either illegal or unjustified:
- the workmen are not entitled to any wages for the period of strike.

Additionally, the question of whether a particular strike is justified or not depends upon the facts of each case by taking into consideration factors such as:

- a) service conditions;
- b) nature of demands;
- c) the cause which led to the strike; and
- d) *reason for not resorting to the dispute resolving machinery under the Act*"

RIGHT OF EMPLOYER IN STRIKE:

a) Right to claim compensation for loss caused by strike

- In *Rothas Industries v. Its Union*^{vi}, the Supreme Court held that the remedy for illegal strike has to be sought exclusively in Section 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act.

b) Dismissal of workmen

- In *M/S Burn & Co. Ltd. V, Their Workmen*^{vii}, Hon'ble Supreme Court held that, mere participation in the strike would not justify suspension or dismissal of workmen, however if the strike was illegal, the only question of practical importance would be the quantum or kind of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.
- In *Punjab National Bank v. Their Employees*^{viii}, it was held that in the case of strike, the employer might bar the entry of the strikers within the premises by adopting effective and legitimate method in that behalf. The employer may call upon employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper inquires according to the standing order and pass proper orders against them subject to the relevant provisions of the Act.

c) Dismissal on account of misconduct

In case of '*Ram Kishan Iron Foundry, Howrah v their workmen*^{ix}, Hon'ble Court 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 reported 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"

CONCLUSION:

Therefore, basis the above mentioned observations of Apex Court it can be resolved that, the resort to strike can only be taken when no means are available or when available means have failed to resolve it. However, if the strike is illegal and is resorted to strengthen the bargain power, then the employer has right to take action against the workers or employees who had taken part in the strike.

REFERENCES

ⁱ Article 19(1)(c) of the Constitution of India gives everyone an enforceable right "to form associations or unions". The Trade Unions Act 1926, amended in 2001, contains rules on governance and general rights of trade unions

ⁱⁱ Restrictions to strike are found in sections 10(3), 10A(4A), 22 and 23 of the ID Act. Any strike which is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of an order made under Section 10(3) or 10A(4A), is considered illegal as per Section 24 of the ID Act.

ⁱⁱⁱ (1978) 3 SCC 155

^{iv} (1990) II LLJ 39

^v AIR 1995 SC 319

^{vi} AIR 1976 SC 425

^{vii} AIR 1959 SC 529

^{viii} AIR 1960 SC 160.

^{ix} 1954 II LLJ (L.A.T.) 372

