

An Analysis of Workmen's Right to Strike under Industrial Disputes Act, 1947

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Abstract

The labour and capital are the backbone of industry and their co-operation is essential for the wellbeing of the economy, yet capital class has an upper hand over the labour class. Thus, to redress the grievances and to safeguard the interests of labour class, some democratic weapons are used by them. Strike is cessation of work to coerce or persuade the employer to accede to their demands and give them their legitimate rights. Article 19(1)(c) guarantees fundamental right to form unions or associations. But by no stretch, this right includes right to strike work. Though right to strike is not elevated to the position of fundamental right under Indian Constitution, yet it gains a statutory recognition under Industrial Disputes Act, 1947, as an ordinary right of social importance, thus making it legal in the Indian scenario. This right is regulated by imposing reasonable restraints statutorily in order to achieve the object of harmonious relations between the workers and the employers. The strikes become illegal if resorted to without complying with the statutory requirements. Persons resorting to illegal strikes are punishable under the Act. Thus, this article deals with: Legality of strikes, Justiciability of strikes and Illegality of strikes.

Keywords: Legality, illegality, strike, requirements, restraints, labour class

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INTRODUCTION

The country's economy depends upon the production and financial profit of the industry. Labour and capital are the backbone of industry and their cooperation is essential for the wellbeing of the economy, yet capital class has an upper hand over the labour. Thus, to ventilate the grievances and to safeguard the interests of labour class, some democratic weapons are used by them like right to form associations or unions, and collective bargaining by the trade unions. Strike is one such weapon is granted to them as a matter of last resort. Right to strike though not elevated to the position of a guaranteed fundamental right under the Indian Constitution, gains a statutory recognition to coerce or persuade the employer to accede to their demand and give them their legitimate rights, thus making it as legal in the Indian scenario. Though maintenance of industrial peace is important, it should not be secured by putting lid on the legitimate right to strike. Thus, the right to strike, legitimate weapon in the hands of workers in the industrial field, has been

regulated by imposing reasonable restraints statutorily in order to achieve the object of harmonious relations between the workers and the employers.

STATUTORY DEFINITION OF STRIKE

The strike is statutorily defined as "cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or 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" [1].

Ludwig Teller enunciates four essential ingredients to constitute strike:

- There must be an established relationship between the strikers and the person against whom strike is called for.
- The continuance of such relationship must be one of employer and employee.
- In strike, although the work ceases, the contention advanced by workers must be related to employment.

- There must be an existence of dispute and the weapon of concerted refusal to continue to work as a method of persuading or coercing compliance with workers' demand [2].

Legal definition of strike: In *Uden v Schaeffer* [3] a comprehensive fair definition has been given in the following words:

'Strike is act of quitting by a body of workmen, for the purpose of coercing their employer to accede to some demands they have made upon him and which he has refused; but it is not a strike for workmen to quit work, either singly or in a body, when they quitted without intention to return to work, whatever may be the reason that moves them to do so' [4].

Right to Strike, a Legal Right and Not a Constitutional Right

Collective bargaining is a legally recognized tool for workmen to negotiate with their employers relating to wages and better working conditions, whereby their problems are resolved amicably and peacefully. Strike is an extreme form of collective bargaining by which employees collectively secede to work to impose pressure on the management until their demands are considered by them. Thus, right to strike is a potent weapon for the labour class to safeguard their interests and to have their grievances redressed [5].

There is a guaranteed fundamēt alright to form associations or union sunder Article 19 (1) (c). This is subject to reasonable restrictions in the interest of public order, morality, sovereignty, integrity of India under Clause (4) of Article 19. This right carries within itself various scope including all sorts of associations like political parties, clubs, trade unions, etc. But this fundamental right to form trade unions should not lead to the conclusion that they have a guaranteed right to collective bargaining or to strike [6].

In *All Indian Bank Employees association v I.T.* [7], the Apex court held that, "Even by broad interpretation of Article 19(1)(c), it cannot be held that trade unions have a guaranteed right to an effective collective bargaining or fundamental right to strike. 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 need to be tested not with reference to Clause (4) of Article 19 rather with totally different considerations."

Further in *Kameshwar v state of Bihar* [8], it is held that though there is a guaranteed right to form associations or labour unions, there is no fundamental right to go on strike. The right to strike is not expressly recognised in India unlike in the U.S.A. For the first time in Indian history, Trade Union Act, 1926, legalized limited right to carry on strike by registered trade unions in furtherance of the trade disputes. Industrial Disputes Act, 1947, recognized the right to strike as a mode of legitimate weapon of the workers by imposing reasonable restrictions to ventilate their grievances. Thus, in India, the right to strike though not raised to the status of fundamental right, has still been granted statutory recognition as a legal right of social importance to the working class to resolve industrial conflicts [9].

Cessation of work apparently results in economic pressure as it brings down production or services. It is not a mere exchange of pleasantries, rather it is embarrassing for the industrialists and it disrupts the running of the enterprise. But if this agitational method is not permitted to be carried out by the workmen or trade unions, the bargaining strength of the trade unions would be considerably reduced. All democratic countries recognize legal right of workmen to undertake strikes, but it varies according to socio, legal, political, and economic variants in the country [10].

The essential ingredients of strike as defined in Industrial Disputes Act, 1947, are:

- Industry
- Cessation of work by the workmen acting in a body or combination
- Concerted action
- Contract of employment [11]

Industry

The words "employed in any industry" enunciate that there should be an industry within the definition of Section 2(J), in which

the concerted workmen are employed. Unless the establishment, in which the strike is carried on, is an industry, though the other essential ingredients are satisfied, it will not be an industrial strike within the meaning of Section 2 (Q).

Cessation of Work

Cessation may be variedly expressed as abandonment or stoppage of work or omission of performance of duties of their posts. Thus, the most essential characteristic of strike is that there must be stoppage of work or refusal to perform duties that is refusal to work which they are required to do. The cessation needs to be done voluntarily. Cessation of work should be of temporary and not permanent nature as it would lead to cessation of contract of employment which is foreign to the underlying sanction of strike retaining contractual relationship during strike period. Cessation of work can be even for a few hours. In *State of Bihar v Deodhar Jha* [12], it is held that duration of time has nothing to do with the meaning of strike as given under the Act. Stoppage and refusal to work even for a few hours also would amount to strike if there is concert and combination of the workers in stopping and refusal to resume work [13]. Further, in *Buckingham and Carnatic Mills v their workman* [14], it was held that duration of cessation of work for few minutes or few hours is irrelevant.

Concerted Action

It implies cessation of work by a number of employees under common understanding. Unless common intention of a number of workmen is proved, it would not amount to strike [15].

Cessation Should Be the Result of Industrial Dispute

The cessation of work must be preceded by an industrial dispute. Industrial dispute is defined as a dispute or difference between

- Employers and employers
- Employers and workmen
- Workmen and workmen,

Which is connected with:

- Employment
- Non-employment

- Terms of employment
- Conditions of service of any persons [16].

Thus, the dispute as contemplated in Section 2(K) must be a real dispute between the parties as indicated in the first two parts of this Section, so as to be capable of settlement or adjudication by one party to the dispute giving relief to the other.

The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour, and the parties to the dispute must have the substantial direct interest [17].

In the case of *Model Mills v Dharam Das* [18], workers requested for deputing three workers on a calendar machine in Model Mills Ltd. as used to be deputed; instead two persons were asked to work. Since the management refused to employ three persons as requested, the workers refused to work. Here the dispute is connected with industrial matter thus the cessation amounts to strike.

Relationship of Employment

The definition [19] uses the expression 'persons employed' which implies there should be a contract of employment between the striking employees and the industry.

Workmen

The employee of any industry would be a workman if he falls within the categories provided under the definition clause [20] of the Act. The inclusive part enumerates different categories of employment manual, unskilled, skilled, technical, operational, clerical, supervisory work for hire or reward, and imbibes within its ambit such persons who are dismissed, discharged, retrenched in connection with strike or consequence of strike. The exclusive part excludes categories of persons including persons engaged in managerial, administrative, supervisory capacity, employed in police service or as an officer or employee of a prison or who is subject to Air Force Act, 1950, Army Act, 1950, or the Navy Act, 1957. Unless the employee falls within the inclusive part, he is not the workman of the concerned industry.

Legality of Strike

In *Gujarat Steel Tubes v Its Mazdoor Sabha*, Justice Bhagwati opined 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 *Kairbitta Estate v Rajmanickam*, Justice Gajendra Gadkar opined, 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 [21].

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.

Sections 22 and 23 should be read as restrictions and not as prohibition of the strike. It reads about certain conditions which are to be fulfilled to settle disputes by mediation or conciliation before moving on to direct action [22]. Further Section 24 streamlines for legal strikes:

- If not in contravention of Section 22,23
- If their continuance was not prohibited by the appropriate government under Section 10(3), 10-A(4-A) Section 23 imposes general restrictions on resorting to strikes in both public and non-public utility services.
- During pendency of proceedings before the conciliation officer and until the expiry of 7 days after the conclusion of such proceedings
- Pendency before labour courts, tribunal, national tribunal and 2months after the conclusion of proceedings
- Pendency and 2months after the conclusion of arbitration proceedings
- Period in which settlement or award is in operation [23].

The Act distinguishes industry as public utility services [24] and other industry which doesn't

fall under public utility services. It is mandatory to give notice of strike in public utility services; non-compliance will make it illegal. Section 22 imposes certain restrictions on workers in industry on public utility services to go on strike. Strike cannot be resorted:

- Without giving to employer notice of strike within 6weeks before striking
- Minimum of 14 days should have expired between the giving of such notice and the date of strike
- Before the expiry of the date of strike specified in any such notice as aforesaid
- During the pendency of any conciliation proceedings before the conciliation officer and 7 days after the conclusion of such proceedings.

Thus, the notice of strike must be given by the workmen to the employer in accordance with the above said conditions. If the notice is validly served, the strike by them is legal.

In *Mineral Miner's Union v Kudremukh Iron Ore Co. Ltd.* [25], it is held that in public utility services, the workmen under law are required to give notice of strike to the employer, intimating the exact date of the intended strike and must not resort to strike before the expiry of period of 14 days from the date of issue of notice and if the conciliation proceedings commenced and ended in failure and the period of 6weeks has expired when it has been intimated to the workmen by the state government, a fresh notice is required to be given for resorting to strike in a legally recognized manner. The court ruled that on issue of such notice once again, the provisions of Section 20(1) and Section 12(1) shall not be applicable. Any such view leads to incongruous results as it would lead to commencement of purposeless conciliation and continued prohibition of strike, and the same cycle repeating itself would result in total prohibition of strike, which is not intended by Section 22 [26].

The notice of strike should be given to the concerned authority under Industrial Disputes (Central) Rules [27]. However, the restrictions will apply only if the strike is not in violation of breach of contract of service [28].

The scope of Section 23 has been widened by the SC in *Chemical and Fibres of India Ltd. v D.G. Bhoir and others* [29], a case relating to the dismissal of a worker, M.S. Bobhate was pending before the labour court. Subsequently, the employer discharged three other workmen, which led to the strike in the industry. The question that needed to be considered was whether resorting to strike when a case was pending between the employer and a workman would put a lid on the right of other workmen to go on strike when the origin of strike has nothing to do with Bobhate case? The SC held that pendency of a dispute between an individual workman as such and the employer doesn't attract the provisions of Section 23. Though the maintenance of industrial peace is important, it cannot be secured by putting a lid on the legitimate grievances of the general body of labour because the dispute relating to individual workman is pending under Section 2A. [30].

Justiciability of Strike

Although strike is a legitimate and unavoidable weapon in the hands of workers and may be resorted to for securing their demands, to improve their conditions, yet the justifiability of a strike has to be viewed from the standpoint of fairness and reasonableness of the demands made by workmen and not merely from the standpoint of their exhausting all other legitimate means open to them for getting the demands fulfilled [31]. It should pass the below mentioned test:

1. The cause of the strike must be just;
2. There should be practical unanimity among strikers;
3. No violence should be used against non-strikers;
4. Strikers should be able to maintain themselves during the strike period without falling back upon union funds and should, therefore, occupy themselves in some useful and productive temporary occupation.

In *Chandramalai Estate, Ernakulum v. Its workmen* [32], Justice K.C. Gupta stated 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 remember that

indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demands a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an urgent and serious nature that it would not be 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 may well be justified.

Collective bargaining for securing improvement on matters like basic pay, more conducive working conditions of service, infrastructure facilities, provision for safety, annual leave with wages, etc., providing standard working conditions for the workmen, benefits such as medical benefit, sickness benefit, maternity benefit, disablement benefit, and dependents' benefit are provided under the Employees State Insurance Act, 1948. Dearness allowance, provident fund, bonus and gratuity, leave and holidays is the primary 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 agree to the demands or at least to open negotiations, the strike must prima facie be considered to be justified unless it can be shown that the demands were put up frivolously or for any ulterior purpose [33].

In *Andhra Pradesh State Road Corporation Employees Union v Andhra Pradesh State Road Transport Corporation* [34], it is further 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 [35].

In *Swadesi Industries Limited v Its workmen* [36], 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 illegal if it contravenes any of the provisions of the law. Section 24 declares the ground on which a strike can be held illegal. If the strike is resorted to and it doesn't violate the norms of Section 24, then the strike can safely be construed to be legal.

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

In *Syndicate Bank and Others v Umesh Nayak* [37], 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* unjustified [38].

A strike may be legal if it is commenced without contravening the statutory provisions and it may be justified if it is bonafides, resorted to for the wellbeing or betterment of the conditions of service of the workmen. A strike may be legal and justified at 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 workmen. While illegal strikes irrespective of the objects are *prima facie* unjustified, the question of justification of illegal strike is irrelevant. This presumption has further been clarified by the SC in *India General Navigation and Railway Co Ltd. v Their workmen* [39].

“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” [40].

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* [41]. 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) [42].

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 prohibitory 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 [43]. Those who instigate or incite others to take part in furtherance of the strike shall be punishable with imprisonment which may extend to 6months or fine of 1000 rupees [44]. Those who knowingly give financial assistance in furtherance or support of an illegal strike shall be punishable with imprisonment which may extend to 6months or fine which may extend to 1000 rupees or both [45].

Are Workers Entitled to Wages during Strike Period?

It was held by the Apex court in *Bank of India v T.S. Kelawala* 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 [46].

In *Crompton Greaves Ltd. v Workmen*, 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

Thus strike, though not a fundamental right is yet a legal right with statutory immunity in the hands of the working class over the capital class to protect their interests and have their grievances redressed. Though strike is a legitimate and unavoidable weapon in the hands of the labour class, indiscriminate and hasty use of this weapon should not be encouraged, which is hindrance to peaceful existence of the industry. Thus, Industrial Disputes Act, 1947, imposes reasonable restraints on the workmen's right to strike, which if not followed would resort to illegality, which is punishable under the Act.

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