



## RIGHT TO STRIKE IN INDIA

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- strike within 6 weeks before striking; or
- b) Within 14 days of giving such notice; or
- c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) During the pendency of any proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

## INTRODUCTION

### STRIKE AND ELEMENTS TO CONSTITUTE A STRIKE

In general terms, stoppage of work because of mass refusal of workers or employees to work is known as strike. A strike generally takes place in response to the grievances of the employees.

Strike is 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 no. of persons who are or have been so employed to continue to work or accept employment. Whenever employees want to go on a strike they have to follow the procedure provided by the Industrial Dispute Act, 1947, otherwise the strike will be considered as illegal.<sup>1</sup>

There are some certain restrictions on the Right to Strike.<sup>2</sup> It is defined as that no person employed in public utility service shall go on strike in break of contract.

- a) Without giving to employer notice of

These restrictions do not restrict the workers to go on strike; rather they have imposed some certain requirements that are supposed to be fulfilled before the workmen go on strike. These provisions are only applicable to the public utility service. The industrial dispute act, 1947 has not specifically mentioned as to who can go to a strike. Whereas, the definition of strike itself defines that the strikers must be the persons, employed in the industry to do work. Moreover, notice to strike within 6 weeks before striking is not mandatory when there is already a lockout in existence.

In **Mineral Miner Union V. Kudremukh Iron Ore Co. Ltd.**<sup>3</sup>, it was held that the provisions of sec.22 are mandatory and the date on which the workers proposed to go on strike should be specified in the notice. If meanwhile the date of the strike specified in the notice of strike expires, workmen have to give fresh notice. Therefore, if a lockout is already in existence and employees want to restore the strike, it is not

<sup>1</sup> Sec. 2(q) of Industrial Dispute Act, 1947

<sup>2</sup> Sec. 22(1) of Industrial Dispute Act, 1947

<sup>3</sup>ILR 1988 KAR 2878



necessary to give such notice as is otherwise required.

The following can be drawn out of the definition:

1. Strikers are persons employed in any industry to do work
2. A strike is called against an employer of labour.
3. Strike is a concerted action under common understanding by the strikers to refuse to work or accept employment
4. Notice must be given to the employer before going to a strike.

resort to strike or lock – out and in some cases the duration of either subject to rules and regulations or voluntarily agreed to by the parties or statutorily imposed this has been criterion underline the earlier legislation for regulating industrial relations in the country. The strikes and lock – outs are useful and powerful weapons in the armory of workmen and employers and are available when a dispute are struggle arises between them. Threats of their use even more than their actually use, influence the course of the contest. The threat is often explicit much more often tacit but not for that reason less effective.

#### NATURE OF THE RIGHT

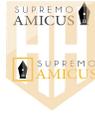
There is a fundamental right to form association or labour unions but there is no fundamental right to go on strike.

Every right has a duty to perform. The more powerful the right, higher the duties attached with it. Right to strike must not be misused; otherwise it will create problems in the production and financial profit of the industry. This will eventually affect the economy of the country.

The Right to Strike has been recognized in all democratic societies. Reasonable restrain use of this right is also recognized. Similarly the employers also have the freedom to use the weapon of lock – out in case workers fail to follow the rules of contract of employment. The degree of freedom granted for its exercise varies according to the social, economic and political variants in the system for safe guarding the public interest, the

Trade unions and employers will have to use very skillfully these weapons strike and lock – out by way of threatening or actual may help one party to force the other to accept the demands, or at least to concede something to them. But reckless use of this weapon creates the risk of unnecessary stoppages. The stoppages hurt both parties badly create worse tensions and frictions and violations of law and order and above all, from the public point of view they retard the Nation’s Economic Development. A strike could be defined 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 English law, there is no comprehensive legal definition of strike or industrial



action. Perhaps the closet we come to is Lord Denning's attempt in Court of Appeal in 1975, when he said that "a concerted stoppage of work by men done with a view of improving their wages or conditions, or giving vent to a grievance or making a protest about something or other, or supporting or sympathizing with other workmen in such an endeavor". Strikes are, in other words, weapons in the hand of the workers and their organizations to promote and protect their economic, occupational and social interests in the broad sense of the term.

#### FACTORS THAT GIVE RISE TO A STRIKE

- Refusal to recognize a union or workers group as a collective bargaining party
- Refusal to accede to Unions demand/failure of negotiation
- Failure to Implement Collective Agreement

#### RIGHT TO STRIKE IN CONSTITUTION OF INDIA

With the constitution coming into force there was an attempt made to bring in the theory of a concomitant right, as was inferred in **RomeshThappar's**<sup>4</sup> case to infer the Right to Strike within the confines of Article 19(1) (c)<sup>5</sup>. As every other fundamental right is subject to reasonable restrictions,, the same is also the case to form trade unions to give a call to the workers to go on strike and the state

can impose reasonable restrictions. In the case of **All India Bank Employee's Association vs. National Industrial Tribunal and others**<sup>6</sup> held as follows:

The right guaranteed by Art 19(1) (c) of the Constitution of India does not carry with it concomitant right that unions formed for the protection of the interests of labor shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) of the Indian Constitution as being in the interest of public order or morality. The right under Article 19(1)(c) extends to the formation of an association or union concerned or as regards the steps which the union might take to achieve its object, they are subject to such laws and such laws cannot be tested under Article 19(4) of Indian Constitution.

In another case **B.R. Singh vs. Union of India**<sup>7</sup>, justice Ahmadi was of the view that the Right to Strike cannot be equated to that of a fundamental one. "Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g. Go-slow, sit in, work to rule, absenteeism, etc. and work. Strike is one such mode of demonstration by the workers for their rights. The right to demonstrate and therefore the Right to Strike is an important weapon in the armory of the workers. The right has been recognized by almost all democratic countries. Though not raised to the high

<sup>4</sup>RomeshThappar V. State of Madras, 1950 AIR 124

<sup>5</sup> Constitution of India

<sup>6</sup> AIR (1962) SC 171

<sup>7</sup> (1989) LLJ SC 591



pedestal of a fundamental right, it is recognized as a mode of redress for resolving the grievances of the workers. But the Right to Strike is not absolute under our industrial jurisprudence and restrictions have been placed under it”.

In the case of **Communist Party of India (M) Vs. Bharat Kumar and others**<sup>8</sup>, the Supreme Court adjudicating on the legality of strikes held that the “Fundamental rights of the people as a whole cannot be subservient to claim of an individual or only a section of the people”.

Two sections of the society namely lawyers and government servants come under the scrutiny of the Supreme Court. In the case of **Ex-captain Harish Uppal vs. Union of India and another**<sup>9</sup>, the court held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike. The Apex Court further opined that strike as a weapon in any field does more harm than any justice.

Strikes resorted to by different sections or groups in any society at one time or other have created hardships or inconvenience for the public. In India, at times, the sufferings of the public have roused their fury against the striking employees and also attracted the attention of the courts of law. In November 1997, the Supreme Court upheld a verdict of the Kerala High Court which held that calling and enforcing a band by any association,

organisation or political party is "illegal and unconstitutional".

(1) The Kerala High Court had made a distinction between a bandh and general strike and held that "As understood in our country and certainly in our State, the call for a bandh is clearly different from a call for general strike or a hartal." The Court said that the word bandh conveyed an idea that everything is to be blocked or closed. It also observed that the organisers of a bandh clearly implied that all activities should come to a standstill on the day of the bandh. The decision had no direct bearing on strike but was a ban imposed on the bandh declared by the political parties. But there is a degree of similarity as it is a ban on the right to protest. However, in recent past when the government employees in Tamil Nadu resorted to strike, the Supreme Court observed that government servants have no right, fundamental or statutory or moral, to go on strike.

(2) The judgment generated sharp reaction from all the trade union federations. In the backdrop of this judgment and reaction of the trade unions, an attempt is made here to analyze the prevalent legal provisions of strike and their bearing upon the industrial workers.

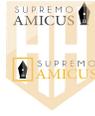
Right to strike as a fundamental right is a function of the society and its laws. In India, this consideration emanates from Art. 19(1) (e)<sup>10</sup>, which provide for right to



<sup>8</sup> (1998) (1) SC 201

<sup>9</sup> (2003) (2) SLL 45

<sup>10</sup> Constitution of India



form associations or union. However, the right provided to Indian citizen above was limited by clause 4 of the same Article which empowers the state to restrict the right conferred in the interest of sovereignty and integrity of the country. And so this right in Art. 19 can only be exercised in as much as or to the extent that it does not adversely affect others or the public interest.

The question then is what kind of right does freedom of speech, expression and association guarantee to unionism? Does it include the Right to Strike? According to one author this question depends on the basis of theoretical and legal interpretation theoretical view based on the literature suggesting the way trade union came to be, and the objectives they are supposed to pursue. On the other, the legal view is hinged upon the judgments delivered by the High Court and Supreme Courts.

From the history of Trade Unionism, it is common knowledge they come into being to deflect the exploitative practices of the employers against the employee who is vulnerable due to imbalance in his bargaining power with the employer. Trade Union came therefore to substitute this individual bargain/power with collective bargaining power conceived upon the balance of power between concerned parties. With each empowered with threat of withdrawal where

agreement cannot be reached. This power of withdrawal acts to compel the other or both parties to make concessions.

It therefore follows that the threat to withdraw services by a union called – strike, is a useful tool/weapon which compels the employers to come to the bargaining table and which if removed, turns a trade union to collective begging rather than a collective bargainer. Therefore collective bargaining, freedom of association and Right to Strike have been recognized in the being history of struggle over the world and have come to be recognized by many of the European countries as a fundamental right in their respective constitutions.

However, the judicial view in some of the European countries and India has remained that strikes is not a fundamental right. In the Indian case of Tamil Nadu<sup>11</sup>, the Indian supreme court held as such viewing the question - whether the right to form a Union would carry with it the concomitant right of collective bargaining and strike.

In All India Bank Employees' Association v National Industrial Tribunal<sup>12</sup> the court ruled that "on the consideration of the Art. 19(1) (c) we have reached the conclusion that even a liberal interpretation of sub – clause (c) of clause (1) of Art. 19 cannot lead to the conclusion that the trade unions have

<sup>11</sup>(2003) 6 SCC 581

<sup>12</sup> All India Bank Employees' Association V. national Industrial Tribunal, AIR, 1962, SC P. 171



guaranteed right to an effective collective bargaining or to strike either as a part of collective bargaining or otherwise

The author also observed that in *Radheshyam Sharma v. Post Master General Nagpur*<sup>13</sup> the Indian Supreme Court referring to the British Law report observed that in Hapsburg's Law of England (12<sup>th</sup> Ed, Vol. VI, P. 392) the Right to Strike or the right of the subject to withhold his labour so long as he commits no breach of contract or tort or crime, is enunciated as one of the important liberties of a British subject which may be regarded as a fundamental character. "But under our constitution the Right to Strike is not fundamental right although it may be legal rights"<sup>14</sup>.

Also as noted by the author, in *BR Singh & Ors v Union of India*<sup>15</sup>, the Supreme Court held that "though Right to Strike is not raised to the high pedestal of a fundamental right, it is recognized as a mode of redress for resolving the grievance of workers"<sup>16</sup>

It therefore can be summed up that Right to Strike under the India constitution is not a fundamental right. And so an

association's right to associate may be extended to the right to protest through demonstrations provided it does not disturb public order.

However to avoid incessant and the misuse of the right, Industrial Dispute Act 1947 of India, set conditions. This made distinction between legal and illegal strikes.

For example a set of rules was established by the Indian Act,<sup>17</sup> which must be followed by workers employed in Public utility service before declaring a strike, while it set out a general prohibition of strikes in all establishments during the pendency of reconciliation, arbitration and adjudication and also during the period of operation of settlements and awards<sup>18</sup>.

Earlier we have seen from the judicial pronouncement in the Indian courts that a strike though not a fundamental right but has a legal right. The courts have held that in proper cases the weapon of strike is open to all<sup>19</sup>. In other circumstances strike has been recognized as a legitimate weapon for the purpose of ventilating their demands<sup>20</sup>.

<sup>13</sup> (1964) (1) SCR 369

<sup>14</sup>Radhashyam Sharma V Post master General, Nagper, AIR 1965, S.C. p.311

<sup>15</sup> (1989) LLJ SC 591

<sup>16</sup> B.R Singh and others V. Union of India, (1989) LLJ SC 591, P. 591

<sup>17</sup> S.22 of the Industrial Dispute Act, 1947

<sup>18</sup> S. 23 of the Industrial Dispute Act, 1947

<sup>19</sup> Buckingham Carnatic Mills V. Their workmen, LLJ 1951(2), P.314; Bihav fire Works V. its workmen, LLJ 1953(1), P. 49

<sup>20</sup> Gwalior rayon Silk manufacturing co. V. District collector, LLJ 1982(1) P. 367, (Kerala),



The legality and justifiability of strikes here also be examined. The Indian supreme court in a case held that “it is a little difficult to understand how a strike in respect of a public utility service, which is clearly illegal could at the same time be characterized as perfectly justified. These two conclusions cannot in law co-exist”<sup>21</sup>

In a later case it held that “this court did observe that if a strike is illegal it cannot be called perfectly justified... (but) between the perfectly justified and unjustified strike, the neighborhood is distant.... Mere illegality of the strike does not per se spell unjustifiability”<sup>22</sup>.

**ILLEGAL STRIKE**

Any strike that is in contravention of sec. 22 as well as sec. 23 is illegal.<sup>23</sup>

- 1) A strike or lockout shall be illegal if
  - a) It is commenced or declared in contravention of sec 22 or sec. 23.
  - b) It is continued on contravention of an order made under sub sec. (3) of sec.10 or sub sec. (4-A) of sec. 10-A.
- 2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, a] Labour Court, Tribunal or National Tribunal], the continuance of such strike or lock- out

shall not be deemed to be illegal, provided that such strike or lockout was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub- section (3) of section 10<sup>1</sup>or sub- section (4A) of section 10A].

- 3) A lockout declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock- out shall not be deemed to be illegal.

**CONSEQUENCES OF ILLEGAL STRIKE**

**1. DISMISSAL OF WORKMEN:**

Mere participation in the strike would not justify suspension or dismissal of workmen. Where the strike was illegal, the SC held that in case of illegal strike 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.<sup>24</sup>

The employer might prohibit 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 inquiries according to the standing order and pass proper orders against them

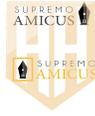
Ramakrishna Iron Foundry V. their workman, LLJ 1954(2), P. 371, (LAT)

<sup>22</sup>Gujurat Steel tubes V Gujurat Steel Tubes MazdoorSabha, LLJ, 1980(1), SC P. 137

<sup>21</sup> India General Navigation and Railway Co. Ltd Their workmen LLJ, 1960(1) SC P22

<sup>23</sup> Sec. 24 of Industrial Dispute Act, 1947

<sup>24</sup> M/S Burn & Co. Ltd. V. Their Workmen



subject to the relevant provisions of the Act.<sup>25</sup>

## 2. WAGES:

In order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. It must not violate any provisions of the statute. It cannot be said to be unjustified unless the reasons for it are entirely preserve or unreasonable. The question of fact in these cases are whether the strike is justified or not and it can only be judged by the facts and circumstances of the case. Any kind of use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.

<sup>26</sup>

A strike may be illegal if it violates any provisions of the Act or any other law or the terms of employment depending upon the facts of the case. Correspondingly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve dispute, resort to strike or lockout as a direct is prima facie unjustified. This is particularly so when the provisions of

the law or the contract or the service rules in that behalf are breached. For then, the action is also illegal.<sup>27</sup>

## 3. RIGHT OF EMPLOYER TO COMPENSATION FOR LOSS CAUSED BY ILLEGAL STRIKE

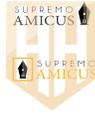
The remedy for illegal strike has to be sought exclusively in sec. 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act.<sup>28</sup>

<sup>25</sup>Punjab National Bank V. Their Employees

<sup>26</sup> Cropton Greaves Ltd. V. Workmen

<sup>27</sup> Syndicate Bank V. K. Umesh Nayak

<sup>28</sup>Rothas Industries V. Its Union



## RIGHT TO STRIKE BY GOVERNMENT SERVANTS AND EMPLOYEES

Whether the government servants and employees are having the right to go on strike was debated since long period. The dispute came before the Supreme Court of India in the case of T.K. Rangarajan vs. State of Tamil Nadu<sup>29</sup> this case deals with the action of Tamil Nadu Government, whereby it had terminated the services of all employees who had resorted to strike for the fulfillment of their demands. The said decision was challenged before the High Court of Madras by filing writ. Learned single judge by interim order, inter alia, directed the State Government that suspension and dismissal of employees without conducting enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government of Tamil Nadu by filing writ appeals. On behalf of the Government Employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No.3 of 2003.

The Division Bench of the High Court set aside the interim order and arrived at the conclusion without exhausting alternative remedy of approaching Administrative Tribunal, writ petitions were not maintainable. The petitioners came up on appeal against the said order

and for the same reliefs; writ petitions under Article 32 of the Indian Constitution the petitioner approached the Supreme Court.

**In the above case the Court set about to answer two important questions namely:** (a) Is there a fundamental right to go on strike? (b) In the instant case, do the employees have a statutory right to go on strike?

### (a) Is there a fundamental right to go on strike?

The Apex Court in the process of answering the same referred the judgments of previous cases of Kameshwar Prasad and others Vs. State of Bihar<sup>30</sup> and another wherein the Supreme Court held that there exist no fundamental rights to strike.

The Supreme Court quoted another judgment in the case of RadheySham Sharma Vs. The Post Master General, Central Circle Nagpur<sup>31</sup>. The fact of the case that the employees of the Telegraph Department of the Government went on strike from the midnight of July 11, 1960, throughout India and the petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed on him. The same was challenged before the Honorable Court. In that context it was contended that Sec.3,4 and 5 of Essential Service Maintenance Ordinance No.1 of 1960 were violative of Fundamental Rights

<sup>29</sup> (2003) 6 SCC 581

<sup>30</sup> AIR (1959) P. 187

<sup>31</sup>(1964) (1) SCR 3.69.



guaranteed by clauses (a) and (b) of 19 (1) of the Indian Constitution.

The court considered the said ordinance and held that Sections 3, 4 and 5 of the ordinance did not violate Fundamental Rights enshrined in Art 19(1)(a) and (b) of the Constitution of India. The Supreme Court of India relied on the decisions of Ex-Capt. Harish Uppal v. Union of India<sup>32</sup> and Communist Party of India (M) v. Bharat Kumar and others<sup>33</sup> in coming to the conclusion that there is no fundamental Right to Strike.

**(b) In the instant case, do the employees have a statutory right to go on strike?**

The Supreme Court of India observes that there is no statutory provision empowering the employees to go on strike. Further it observes that there is prohibition to go on strikes under the Tamil Nadu Government Servants' Conduct Rules, 1973. Rule 22 provides that "no government servant shall engage himself in strike on incitements there to or in similar activities". The Hon'ble Supreme Court of India did not impose a blanket ban on all strikes. The court further declares that the said strike to be illegal in view of Rule 22 which prohibits government servants from going on strikes. Several decisions of the various High Courts in India as well as the Supreme Court itself have adverted to and positively affirmed the Right to Strike in so far as workmen are concerned.

The Trade Unions and the political parties of India have strongly contend that without Right to Strike, right to form association of Trade Union as guaranteed by the Constitution of India is an empty or paper right. With the impact of globalization, making the trade unions to come to a naught so far the bargaining is concerned. In some occasion the appeasement policy by the employers, suppressing the movement of Trade Unionism. The very existence of the Trade Union movement was in danger.

**CONCLUSION**

In India, Article 19 of the constitution of India expands the scope by giving the right to protest. Whereas, Right to Strike is a legal right, rather than a fundamental right, and with this right statutory restriction is attached in the industrial dispute Act, 1947.

The Right to strike is an absolute right in India. This is a conditional right only available after certain requirements are fulfilled. It was held in a case that the strike as a weapon has to be used sparingly for redressal of urgent and pressing grievance when no means are available or when available means have failed to resolve it. Neither the 14<sup>th</sup> amendment to the federal constitution nor the common law confers an absolute Right to strike. It was in this case where the court held that the right to strike is not a fundamental right, rather a mere legal right. Every dispute between an employer and employee has to take into

<sup>32</sup> (2003) (2) SLL 45

<sup>33</sup> (1998) (1) SC 201



consideration the third dimension, the  
interest of the society as whole.

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