



RIGHT TO BANDH AND JUDICIAL RESPONSES: A CRITICAL STUDY

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ABSTRACT

The right to express dissent against the State is important, but how you express that is equally important. Bandhs are a form of protest where all day-to-day activities come to a standstill. It, more often than not, results in violence, vandalism of public property and disturbance to public order. Bandhs have a huge impact on citizens' fundamental rights and also cause a huge loss to the economy. Any yet, the right to protest cannot simply be crushed. Expression of dissent is vital in the working of a democracy where citizens have the right to criticize the government. It is only by opening up to criticism that our system of governance can work efficiently. It is essential for us to weigh the positives and negatives of the right to bandh in order to critically analyse its need. This research paper aims to differentiate between bandh and strike as forms of protest, review judicial decisions made with regard to the constitutionality of bandhs and understand the impact that bandhs have on the society. It also assesses if there is, indeed, a need to have the right to bandh and expresses the need to have legislation to define and regulate

different forms of protest.

Keywords: *Bandh, Strike, Protest, Rights, Constitutionality*

INTRODUCTION

The right to bandh is a very contested issue in the political sphere. Currently, bandhs are deemed to be unconstitutional and illegal. Bandh, in Hindi, means “closed” or “shutdown”. A call for bandh by political parties generally means a complete shutdown of regular activities. The whole nation, during a bandh, comes to a halt. All the shops, offices, schools, colleges and public transportation systems are closed off. Due to this shutdown of almost everything in a nation, a bandh is extremely detrimental to a country and a society in a lot of aspects. Considering the negative effects a bandh has, the Supreme Court and various High Courts, by way of different judgements and case laws, have banned bandhs and denied the right to bandh. However, the right to strike is still available to the general populace.

A lot of the times, the words bandh and strike are used synonymously. However, bandh and strikes are different from each other. A strike is also a form of protest against employers, but the difference arises in the very nature of protesting: bandhs can get extremely violent, and almost always have some casualties and damage and loss to property and life. Bandhs also violate the rights of the general populace that isn't taking part in the bandh, as the protestors in a bandh generally block roads and modes of transport. This restricts the movement of the general population and even if there are certain people on their way to their workplace or to buy something, protestors do not allow them to move freely.



This is extremely violative of the rights of the general population.

As previously mentioned, bandhs are essentially a complete shutdown of the regular functioning in the country. This includes jobs and occupations, shops, stores, schools and colleges. A complete shutdown on a nationwide scale is extremely detrimental to the economy. A complete shutdown of all work not only delays every process, but also leads to a steep decline in the economy and the stock market, leading to a lot of loss.

RESEARCH QUESTIONS

For the purpose of the instant research paper, the following research questions will be answered throughout the research paper:

1. What is the right to bandh and strike?
2. Why is it important to differentiate between the right to bandh and hartal/strike?
3. What is the impact of a bandh?
4. Is there a need for having a right to strike?
5. What was the judicial response to the demand for a right to bandh?
6. Should the definition/constitutionality of bandh be defined by the Court of law or should proper legislation dictate that?

RESEARCH OBJECTIVES

The purpose of the instant research paper is to establish the exact extent of the right to bandh and exploring its legality and the intricacies in establishing the constitutionality of bandh. Taking into

account the same, the following are the research objectives:

1. Understanding the right to bandh and its history in India,
2. Establishing the constitutionality of the right to bandh,
3. Marking a difference between bandh and hartal or strike,
4. Measuring the impact of a bandh,
5. Examining the judicial response to the calls for a right to bandh.

SCOPE OF THE STUDY

The instant research paper is about the right to bandh and the judicial response to the same. It will also examine the existing case laws on the same. The instant research paper will also delve into measuring the extent of the impact that a bandh has on a country and a society. Therefore, the scope of the study has been limited to an Indian context, with the cases and a majority of the sources being from an Indian origin as well.

RESEARCH METHODOLOGY

The research methodology for the instant research paper is analytical and qualitative. The research methodology will also be empirical. The researchers have taken multiple forms of secondary sources into account while conducting the research, such as newspaper sources, journal articles and other reports. The researchers have also referred to multiple case laws.

LITERATURE REVIEW

Right to Strike: An Analysis, B. P. Rath and B. B. Das¹

¹ B. P. Rath & B. B. Das, *Right to Strike: An Analysis*, 41, Indian Journal of Industrial Relation, 248, 248-260, 2005.



This journal article goes over the definition and meaning of strike. The authors also trace the history of strikes and then deliberate over the legality of the right strike. The authors also ponder over whether or not striking should be made a fundamental right or not. The authors talk about how the idea of having the right to strike as a fundamental right originates from Article 19(1)(c), which talks about the freedom of association. Cases are referred to and the judicial vision of the Supreme Court is also discussed.

Strike By Government Employees: Law and Public Policy², Arjun P. Aggarwal

This research paper goes over the historical background of strikes in India, going back to 1903 when there was a protest against the Madras Government and 1905 when the workers of the Government of India Press demanded for better working hours or for overtime pay. The research paper also goes over the right to strike in India with reference to multiple cases and the judicial view on the same. The article then goes over the prohibitions in law against some aspects of strikes and protests.

Is "Bandh" Constitutional or Unconstitutional in India³, S. K. Jahangir Ali & Shantanu Sen

This is a research study conducted to find the exact status of the constitutionality of bandhs in India. The researchers take the example of multiple bandhs held over India to assess the exact impact and effects that bandhs have. The research work then assesses the exact economic impact that the bandhs have had

and the resultant loss to GDP. The research work then goes on to examine the currently available case laws and judgements and recommendations from the K. T. Thomas and the Narain Committees. The research work ends with the conclusion that bandhs are, in fact, unconstitutional and that bandhs are not a good or appropriate means of protesting or expressing dissent.

The Right to Strike⁴, Moorfield Storey

This is a research paper written with the purpose of assessing the right to strike under law and the Constitution. The author goes over the need to have a right to strike and what exactly the right to strike curtails. The author then goes on to analyse multiple cases and examples to better understand what the right to strike exactly entails. The research work ends with the conclusion that the right to strike is a right to quit work without facing the consequences.

CHAPTER 2

BANDH AND STRIKE

Bandh is a Hindi word for "closed." In the political context, Bandhs are a means of protest and civil disobedience. A bandh is a call for a public shutdown. During a bandh, people are expected to close their shops and retail stores and block roads and public transport, causing a complete halt in the regular functioning of the country, leading to the name "bandh". Generally, bandhs are called when political parties or organizations want to be heard or put forth their resentments or protest against the

² Arjun P. Aggarwal, STRIKE BY GVERNMENT EMPLOYEES: LAW AND PUBLIC POLICY, 14 Journal of the Indian Law Institute 358-382 (1972).

³ S. K. Jahangir Ali & Shantanu Sen, Is "Bandh" Constitutional or Unconstitutional in India?, SSRN Electronic Journal (2013).

⁴ Moorfield Storey, The Right to Strike, 32 Yale L.J. 99-108 (1922).



government. It has also been said that bandhs are organized to exploit a political issue by the opposition party. The concept of bandh can have originated in South Asia, with countries such as India and Nepal seeing the most bandhs.

The right to strike, on the other hand, is a statutory right under the *Industrial Disputes Act, 1947*⁵. A strike is considered to be one of the most effective weapons in the hands of the employees or the workers for justice. A strike is usually called and carried out in a peaceful manner. A strike is a complete cessation of work as well, done for the fulfilment of some demands made by the employees from the employers. The right to strike is not, however, a fundamental right. Further, the status of government employees' strikes is left undecided in the Constitution. For industrial workers, the right to strike has been given in the *Industrial Disputes Act*, government employees do not have such privileges. In fact, in the *T.K. Rangarajan v. Govt. of T.N.* case⁶, the Supreme Court held that government employees have no right to strike.

“There is no statutory provision empowering the employees to go on strike. Further, there is prohibition to go on strike under the Tamil Nadu Government Servant Conduct Rules, 1973. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare state, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances.” The Supreme Court also stated

that there is no moral or equitable justification to go on strike.

The key difference between strikes and bandhs, therefore, becomes the legality of the concept itself in India, and the way that these protests are conducted. In the case of bandhs, society always suffers. Bandhs tend to get violent and have a wide societal and economic impact on the country as a whole. Strikes, in contrast, are limited to the employees of that particular office or organization, which is not as damaging as a bandh would be. Furthermore, government employees are also prohibited from going on strike for the larger benefit of the society as it has been held by the Supreme Court that government employees going on strike is largely detrimental to the society.

The Supreme Court has held that strikes as a weapon have been greatly misused, resulting in chaos in society, and consequently, has a greatly negative impact on society as a whole. If public transport employees go on a strike, a number of people face a horde of difficulties, if teachers go on a strike, the entirety of the educational system is affected. Furthermore, more often than not, bandhs also lead to destruction of public property and lead to bitterness amongst the people in society.

Another key difference pointed out by the Supreme Court in various judgements is that bandhs are violent. While violence is not a prerogative for the calling of bandhs, the Supreme Court has observed that there is an underlying condition where when people are asked not to open their shops or not to go to their jobs, they will be prevented if they try to do so. In this situation, bandhs become

⁵ The Industrial Disputes Act, Act 14 of 1947, § 22(1)(a), (India).

⁶ T.K. Rangarajan v. Govt. of T.N., (2003) 6 SCC 581.



extremely unconstitutional as this underlying threat has always led to a complete stoppage of work and daily functioning of the country in the past and has caused a great deal of loss and damage to the country.

It is also important to set a clear distinction between bandhs and strikes as strikes and hartals became widely called after the banning of bandhs. It is in this context that we must deliberate: are strikes just a replacement for bandhs? If so, are they also just as unconstitutional as bandhs?

In 1997, a full bench of the Kerala High Court in the *Bharat Kumar K. Palicha v. State of Kerala*⁷ banned bandhs. The Kerala High Court also held that organizers of bandhs are liable to compensate the government and the public and private citizens who may have suffered losses from a bandh. This was challenged in the *Communist Party of India (M) v. Bharat Kumar*⁸, where the Supreme Court upheld the Kerala High Court's judgement and deemed bandhs to be unconstitutional. Similarly, in the *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*⁹, the Supreme Court held that there is no right to bandh.

In this context, strikes become exceedingly important as the only mode of protest against the employers or for a fulfilment of their demands. While bandhs are seen to be violent and a source of loss for the country, strikes are comparatively more peaceful protests. Therefore, strikes have been held to be lawful and the right to strike and protest has been guaranteed to the people.

JUDICIAL DECISIONS

In the *Bharat Kumar K. Palicha v. State of Kerala*¹⁰ case, the petition sought the declaration of holding bandhs to be unconstitutional. The Kerala High Court held that, "*The Court is reminded that its duty is to protect fundamental rights and not to abridge them and any imposition of restriction on the right of a political party to call for a bundh would be the violation of the fundamental right of the political party or organisation.....Even if there is no express or implied threat of physical violence to those who are not in sympathy with the bundh, there is clearly a menacing psychological fear instilled into the citizen by a call for a bundh which precludes him from enjoying his fundamental freedoms or exercising his fundamental rights.*" The Court declared 'bundhs' to be unconstitutional and set a precedent for other cases in this regard.

It is to be noted that the court also held that The Court also held that in the absence of a legislative definition for the word "bandh", the legality of the same, or for calling for a bandh, cannot be tested by the Fundamental Rights of the citizens under Articles 19 and 21. Here, the court has pointed out the obvious difficulty of defining and regulating forms of protest without legislation to dictate the same.

The Supreme Court of India upheld the Kerala High Court's decision in *Communist Party of India (M) v. Bharat Kumar*¹¹, by stating that there cannot be any right to call or enforce 'bundh' as it interferes with the fundamental rights of other citizens in the

⁷ Bharat Kumar K. Palicha v. State of Kerala, 1997 SCC OnLine Ker 134

⁸ Communist Party of India (M) v. Bharat Kumar, (1998) 1 SCC 201

⁹ Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, (1980) 2 SCC 593

¹⁰ Supra 8.

¹¹ Supra 9.



country, apart from causing national loss in several ways.

In the case *James Martin v. State Of Kerala*¹², a question was raised about whether or not Private Defense could be availed by the appellant for the actions he committed in defense when the accused entered into the property of the appellant during the 'bharat bandh'. The Supreme Court held that private defense was available to the extent of death in this situation.

The Court furthered this by stating that no person has the right to destroy another's property under the pretense of a bandh, irrespective of any such claimed reasonableness or of questionable legal sanctions. In such cases where destruction of property has occurred during a bandh, or under the guise of a bandh, those who organize must be confident in their abilities to manage and enforce effective control before diving into such ventures threatening public peace and order. The Court also went on to recommend that such acts should be dealt with an iron hand by the law-enforcing authorities.

In the case, *Re: Destruction Of Public & Private Properties v. State Of A.P.*¹³, the Supreme Court initiated suo moto proceedings as it felt that there was need for change in the Prevention of Damage to Public Property Act, 1984 which was inadequate in dealing with actions committed during agitations, bandhs, hartals and other forms of protest. The court formed two committees, namely the K.T.Thomas Committee and the F.S. Nariman Committee.

After taking into consideration the recommendations of the committees, the Court issued guidelines that whenever these forms of protest lead to destruction of public property, the High Court of that particular place should initiate suo moto proceedings, and if the incident were to happen in multiple states, the Supreme Court would undertake that responsibility. The court held that the "*The liability will be borne by the actual perpetrators of the crime as well as organisers of the event giving rise to the liability*". While this case did not contribute to establishing the constitutionality of bandhs, it is certainly important in understanding the attitude of Indian courts towards bandhs.

In *George Kurian vs State Of Kerala*¹⁴, the Kerala High Court held that, "*voluntary hartals and strikes are different from bandh, political parties and certain organizations started to call bandhs in the guise of hartals or general strikes. In such notices also, as in the bandhs, it is stated by the organizers that milk supplies, newspapers, hospitals, medical shops, media etc. will be exempted.....nobody can create a bandh like situation or obstruct the fundamental rights of others.*"

In the *S.Sudin v. Union of India*¹⁵ case, the Kerala High Court assessed whether broadcasting information about declaration of bandh is allowed as bandhs have been deemed unconstitutional by preceding judicial decisions. It held that while declaration of bandh is illegal and unconstitutional, the prohibition of

¹² James Martin v. State Of Kerala, 2004 (1) KLT (513).

¹³ Re: Destruction Of Public & Private Properties v. State Of A.P., (2009) 5 SCC 212.

¹⁴ George Kurian vs State Of Kerala, 2004 (2) KLT 758.

¹⁵ S.Sudin v. Union of India, AIR 2015 Ker 49.



publishing, broadcasting or telecasting news of such declaration cannot be imposed.

IMPACTS OF BANDH

Bandhs have been seen to be exceedingly detrimental to a country's daily functioning and economy. Furthermore, it has also been seen that bandhs are violative of the general public's rights. When a bandh is called, people are asked to not go to their workplaces and suspend all daily activities. There is also the underlying condition that if people do not comply, they will be forced to comply, i.e., they will be forcibly prevented from going to their jobs, for example. This is extremely violative of an individual's right to life. It is also one of the major reasons why bandhs are deemed to be unconstitutional by the courts, because of the violation of the general public's rights and the hindering to the daily life.

The organization of a bandh can have multiple harmful effects on a country. The first of these is that to daily wage workers and the section of society whose income depends on small trade on a daily basis. Bandhs call for a complete halt and a closure of shops and construction work, etc. Therefore, daily wage workers cannot find work or income and small shop owners and traders also lose their income, violating their rights and harming the economy of the country simultaneously.

Sometimes, bandhs also call for a shutdown of daily essential services, like water and electricity supply. Water is an essential amenity for everyone, and thus, the stoppage of water supply is not only unjust but also extremely worrying. Furthermore, roads and public transport systems are also blocked and people trying to get to their workplaces or buying something are not allowed to pass through. This is extremely hurtful to the

country when understood along with the fact that government workers are not allowed to bandh nor would they have a holiday because of a bandh. The organizers and protestors in a bandh also take to roads and forcibly stop people traveling or close down shops that are open. This often leads to extreme violence: protestors stoop down to breaking shop windows, burning cars and destroying furniture or buildings to ensure that no work gets done. This causes a lot of loss and property damage, especially taking into account that its hard to make someone liable for these acts because of the mass participation.

Bandhs also make bank branches close down, leading to huge loss. Even though some branches try to stay open and resume work like normal, there is barely any turnover. During the Maharashtra bandh in 2020, there was a decline of 37% in the Bombay Stock Exchange, from Rs. 4,554.87 to Rs 2,857 crore. The same bandh also caused the National Stock Exchange to fall down by a steep margin of 34%, from Rs 11,827.61 crore to Rs 7,765.05 crore. It is, thus, clear that bandhs have a very harmful impact on the economy, leading to huge losses in less than a day. The Bharat Bandh on July, 2020 caused an estimated loss of Rs. 3,000 crores, as estimated by the Confederation of Indian Industry. Thus, the economic loss of a bandh is clearly evident. In this situation, a bandh cannot be supported and cannot be deemed to be lawful when a simple 12-hour bandh can cause a loss of 3,000 crores and forces an entire nation like India to come to a standstill.

Bandhs also block roads and force people to not travel. The July, 2020 bandh forced more than 80 flights to be cancel in just Mumbai alone, and at least a hundred flights were cancelled all over India. Furthermore, many



long-distance trains were also interrupted and detained due to agitations. Around 700 bus services were disturbed in the state of Andhra Pradesh alone. In Kerala, there were no running taxis or autos. This causes an immense and widely incalculable loss that is extremely detrimental to society and the country.

A bandh also leads to excessive violence, protests and deaths. The Maratha Bandh in July, 2020 witnessed two youths jumping and drowning into rivers. Public transport was disrupted all over the nation, leaving commuters stranded. Further, around a hundred buses were pelted and stoned in Mumbai, leading to the utter destruction of the buses, a severe loss and a widely unnecessary property damage. The Karnataka State Road Transport Corporation and the Bangalore Metropolitan Transport Corporation, which services buses and public transport, were forced to withdraw their buses as they were getting stoned and destroyed.

It is, thus, clear just how damaging and detrimental a bandh is to a nation, in all aspects – it affects both the economy and the society at a nationwide level and leads to severe damage and loss to both private and public property.

ASSESSING THE NEED TO HAVE A RIGHT TO BANDH

In order to assess the necessity of having the right to bandh, we need to look at the causes for the same. While the Industrial Disputes Act¹⁶ provides the legal right to strike, bandhs are not recognised as an acceptable form of protest. The economic impacts of

bandh are too high, which is what sets bandhs apart from other forms of protest. But, it is also because of this reason that the response of the authorities, in satisfying the terms of the bandh.

It is a fact that bandhs will not have any effect if there isn't enough participation in the bandh.¹⁷ This is why the organisers of the bandh try to make sure that people are taking part in the bandh by forcefully blocking roads, closing down shops and not letting people carry on with their everyday life. This disruption is violative of people's rights. It is necessary for people to be able to express dissent against the State through protest, but it cannot be at the cost of violating the rights of other citizens of the country who do not have a stake in the subject matter of the bandh, but still have to suffer the consequences.

The economic impact of bandhs are so strong that the nation faces several thousand crores of loss every day that the bandh is staged. This kind of economic impact is not good for the nation in the long run. If people are given the right to bandh, it is expected that we will definitely see an increase in the use of bandhs as a form of protest and our nation's economy cannot sustain that. It will be detrimental to the economic development of the nation.

Taking into consideration these adverse consequences of using bandhs as a form of protest and understanding that people have the right to protest against the State, the researchers believe that, while the right to strike should be guaranteed, there is no need to have the right to bandh.

¹⁶ The Industrial Disputes Act, 1947.

¹⁷ Understanding the Bandh, 45 Economic and Political Weekly 7-8 (2010).



THE NEED FOR PROPER LEGISLATION TO REGULATE DIFFERENT FORMS OF PROTEST

While judicial decisions have given us some clarity on the constitutionality of bandhs, the question remains if this issue should be dependent on the court of law or if a proper legislation should be created to define and regulate the same. Bandhs are a form of civil disobedience and Indian courts don't approve of the same. But they are still organised, regionally and nation-wide, and judicial decisions don't seem to deter that. When the efficiency of the judicial decisions is not good, there is definitely a need for legislation to be created for the same.

Legislation should be created to define and regulate the right to strike and declare bandhs, as a form of protest, unconstitutional. Bandhs create a fear in the minds of people of not participating in the protest, which is a violation of the fundamental rights of the citizens. Hence, the right to bandh cannot exist at the cost of fundamental rights.

Legislation should be created, keeping in mind that the citizens of India have rights guaranteed under Art 19(1) subclause (a), (b) and (c) which gives citizens the right to protest against the government in a peaceful manner. The main purpose of the legislation is to ensure that the rights of citizens are not affected by the protest and that there is no disturbance to public order.

It should also be the aim of the legislature to ensure that important services like medical care and other emergency services are not affected by the right to strike. While voluntary closure of businesses and shops cannot be regulated, we can ensure that the same is not done due to pressure, coercion or fear. Bandhs also often lead to violence, which is highly condemnable. At the same

time, the State, through such legislation, should not try to clamp down on all forms of dissent, but only those that would affect the greater good of the public.

While judicial decisions certainly play an important role in ensuring that the right to strike is used properly, a structured legislation would give more clarity on the forms of mass protests that are tolerated and recognised. 'The Kerala Regulation of Hartal Bill, 2015' is a great attempt at introduction of legislation in this regard. Unfortunately, this bill hasn't been passed yet, which leaves little hope for legislation regarding the same in the future.

SUGGESTIONS AND CONCLUSIONS

Bandhs have been deemed to be unconstitutional in India and the right to bandh is not recognised, for good reason. Bandhs affect the everyday life of people, the economy and often result in violence. Such a form of protest is, in fact, detrimental as it shifts the focus of the Government from the cause of the protest to the acts of the protest. This clearly shows us that bandhas are not an effective form of protest. It is found that the terms 'strike', 'hartal' and 'bandh' are often interchangeably used, which is actually inaccurate. It is essential to identify and differentiate between bandhs and strikes as different forms of protest and by doing that, the researchers believe that it is important to have the right to strike, but not the right to bandh. The view of the Judiciary in this subject matter is definitely rigid as the impact of bandhs is harmful for everyone in the society. The researchers conclude that there is no need for the right to bandh and that proper legislation declaring its unconstitutionality and guaranteeing and regulating the right to strike should be introduced.



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