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Is right to strike a Fundamental Right?

Shivani Upadhyay

Strike means a concerned stoppage of work by workers done with a view of improving their wages or conditions, or giving vent to a grievance or making a protest about something or the other, or supporting or sympathizing with other workers in such endeavour.¹

Statutorily, a strike is 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””.² The Industrial Disputes Act, 1947 provides for the ingredients which constitutes a strike:

- a) The workmen must be employed in an **industry**.
- b) There must be **cessation of work** or refusal to perform duties
- c) **Concerted Action**, i.e. the cessation of work by workers must be done under a common understanding.
- d) **Cessation** should be the result of an Industrial Dispute.
- e) Presence of a **Contract of Employment**.

The definition of the term ‘strike’ has been undergoing constant transformation around its basic concept, i.e., putting of work by workmen in their economic struggle with capital.³

A strike is when labours fight to protect their dignity. It is considered as workman’s weapon which gives him the ability to stand up against his master, who consider himself as a ‘slave-owner’ to remove the trace of unfair behaviour done towards him. It is a weapon which is used as exasperation when it is the only option left. There has always been a presumption that employers dominate their employees and imposes cruel terms and conditions of employment upon them. Therefore, a tool or a weapon was needed for the workers to safeguard their liberties and seek redressal. However, Justice KC Gupta⁴ stated that even when strike is a legitimate weapon for the workers, it should not be encouraged. Workmen should never think that they can get whatever they want by commencing a strike.

THE RIGHT TO STRIKE AND INDUSTRIAL DISPUTES ACT, 1947

Before Independence, there was no law which prevailed with regards to industrial conflicts, but after the Industrial Disputes Act, 1947 came into being, right to strike started gaining recognition.

¹ Lexis Nexis, Halsbury's Laws of England, 4th edition, Vol. 47 (469)

² Industrial Disputes Act, 1947, Sec. 2 (q)

³ Vijay M. Gawas, *Analysis the provision for right to strike of workers under the industrial dispute act 1947 and other provisions of laws*, Volume 4; Issue 5, ISSN: 2455-2194, IJL, 25-30, September 2018.

⁴ Chandramalai estate, Ernakulam v Its Workmen, 1960(II) LLJ 243

But, Industrial Disputes Act, also recognized the circumstances under which a strike can be called illegal.⁵ The act implies a right to strike in only industries, where the term 'industry' is broadened and includes hospitals, education centres, clubs and government departments. Section 2 (q)⁶ of the Act defines 'strike'. Sections 22⁷, 23⁸, and 24⁹ all recognize the right to strike. Section 24 differentiates between a 'legal strike' and an 'illegal strike'.¹⁰ It should be noted that Section 22 and 23 of the Act do not prohibit strikes, but imposes certain restrictions. Section 22 expressly specifies certain conditions to be followed by the workers in order for their strike to be legal,¹¹ i.e., a strike cannot be resorted:

- Without giving employer a notice of strike within six weeks before striking
- Within minimum of 14 days of giving such a notice, or
- 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.

If the notice of strike is given by the workmen to the employer according to these above mentioned conditions such notice is deemed to be validly served, and thus, the strike by them is legal.

Also, whether a strike is justiciable or not depends upon the circumstances of each case, for example, strikes resorted with reference to wages, bonus, D.A., gratuity, provident fund, leave and a holiday would make a strike justiciable.¹²

In *Gujarat Steel Tubes v. Its Mazdoor Sabha*¹³, the court said that a strike can be both, legal and illegal and even an illegal strike can be a justified one. Thus, it is the duty of the Judiciary to determine whether a strike is legal or illegal.

The right to strike and the right to collective bargaining are two sides of the same coin. Justice Bhagwati was of the opinion that the right to strike is a process which is recognized by industrial jurisprudence and supported by social justice.¹⁴ Collective bargaining would be a success only if right to strike is provided to the Trade Unions. A strike is important for workers so that the terms of employment imposed upon them can be rectified.

⁵ Industrial Disputes Act, 1947 Section 22

⁶ "strike" means 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.

⁷ Prohibition of strikes and lock-outs

⁸ General prohibition of strikes and lock-outs.

⁹ Illegal strikes and lock-outs

¹⁰ Vishnu S. Warriar, *Right to Strike and Article 19 (1) of the Indian Constitution*, (6) 25 August 2010

¹¹ *Mineral Miners' Union v. Kudremukh Iron Co. Ltd.*, (1986) 1 LLJ Karn

¹² *Swadesi Industries Limited v. Its workmen*, n, 1960 11 LLJ 78 (SC)

¹³ (1990) Lab IC 389 SC

¹⁴ *Id.*

THE RIGHT TO STRIKE AND ARTICLE 19(1) OF THE CONSTITUTION

Right to Strike is not recognized as a Fundamental Right under our constitution. Strikes gained recognition as a statutory right when Industrial Disputes Act, 1947 came into force. It recognized the right to strike as well as the right to lock-outs of the workmen.

Strike is a modified form of Protest but still Article 19(1) do not include the fundamental right to strike but includes the fundamental right to protest, right to form associations and trade unions. Right to strike is considered as a legal right and necessarily involves three fundamental rights mentioned under Article 19 which are: Right to Speech and Expression, Right to assemble peacefully and Right to Move Freely. However, in the case of All India Bank Employees Association v. National Industry Tribunal¹⁵, it was held that “even a very liberal interpretation of Article 19 (1) (c) of the Indian Constitution cannot lead to the conclusion that the trade unions have a guaranteed right to collectively bargain in an effective manner or to strike as a part of collective bargain or otherwise.” Ahmadi J. in B.R. Singh case¹⁶ observed that “Right to strike is a legal right and cannot be considered as a fundamental right.” Workers cannot go to strike assuming that it is their fundamental right to do so.¹⁷

Right to Strike is considered as a legal right with its own restrictions mentioned under the Industrial Disputes Act, 1947. The Trade Unions Act, 1926 highlights that the trade unions can also pursue their activities peacefully¹⁸. Furthermore, the act also recognizes Right to Strike and confers immunity under Section 19 and 19 upon the trade unions. There is a right to form association or unions, but right to strike is not recognized by our Constitution. However, the Industrial Disputes Act, 1947 as discussed above, does makes a distinction between legal and illegal strikes.

Judicial decisions has always emphasized on the legality and illegality of strikes, which needs to be decided with the help of evidence on record¹⁹ but never made any judgment banning strikes. The Court in Kameswar Prasad v. State of Bihar²⁰, stated that “The rule in so far as it prohibits a strike cannot be struck down since there is no fundamental right to resort to a strike.” The court in T.K. Rangarajan v. Government of Tamilnadu and Ors.,²¹ said that the government employees have no

¹⁵ AIR 1962 SC 171

¹⁶ B.R. Sing v. Union of India, 1990 AIR, 1 1989 SCR Supl. (1) 257

¹⁷ Radhey shyam sharma v. Post Master General central circle Nagpur, 1965 AIR 311; 1964 SCR (7) 403

¹⁸ Indian Express Newspapers (Bombay) Pvt.ltd. v. T.M. Nagarajan, 1987 (15) DRJ 212; 1988 LabIC 1067; 1988 RLR 194

¹⁹ Bank of India v. Kalewala, 1990 SCR (3) 214; 1990 SCC (4) 744

²⁰ 1962 AIR 1166,

²¹ 2003 SOL Case No. 429

legal or moral right to go on strike. Our judiciary recognizes that strike is a weapon for the employees against the employer so that the employer is forced to look at the employees' point of view and accept his demands.²² Judiciary believes that a strike is legal if the situation is just and reasonable and if such a strike doesn't violate any provision of the statute.²³ Like in a very recent case²⁴, the court held that doctors cannot deny medical treatment of patients on the ground that they are on strike or protest.

Workmen should not misuse this right and create a nuisance out of it because it would lead to maladministration. In case of a strike by workmen of transport services, the whole country comes to a standstill. In case of strike by workmen in educational institutions, students suffer. In case of strike by medical professionals, the patients suffer. Right to strike is absolute and not a relative right.

Where the courts has realised strike as a weapon of the workmen, it has also declared that absence of strike may lead into lawlessness in the society. Fundamental rights determine to other rights, but the act of strike does not give right to any other right, therefore cannot come under the ambit of fundamental rights. Strike is an activity that can just be perceived by senses, but Fundamental rights are intangible and incorporeal in nature.

- a) **Strike as a Legal Right:** Workmen have attained a right to strike after a long battle with their industries. They took strike as an industrial action so that their demands and rights are acknowledged by the industries. A workman is forced to come to negotiate when the actions of the industry do not meet and his demands are not heard. To raise a voice, is the only option he has. And if his voice is not heard, he has to act in a certain way, i.e. by striking, to seek some recognition. Thus, the judiciary realises that workmen come together with a common objective to form a Trade Union and the Trade Union with sufficient membership strength is able to bargain and put forward their demand more efficiently and easily than an individual workman ever could.²⁵ Also, the workmen are entitled to wages during the period of strike if the strike is legal and justified,²⁶ which is to be decided by the industrial administration.²⁷
- b) **Strike as a Statutory Right:** The Industrial Disputes Act, 1947 gives recognition to strike as a statutory right. It interprets the term 'industry'²⁸ and 'strike'²⁹ widely and the statutory

²² Kotagiri v. Rajamanickan, 1960 AIR 893; 1960 SCR (3) 371

²³ Crompton Greaves Ltd v. Workmen, , AIR 1978 SC 1489

²⁴ Moti Lal Yadav and Ors. v. State of UP, Writ C No. 35594 of 2016

²⁵ B.R. Singh v. Union of India, (1990) Lab.IC 389 SC 396

²⁶ Bank of India v T.S. Kelawala, 1990 (4) SCC 744

²⁷ *Id* at 4.

²⁸ Bangalore Water Supply & Sewerage Board v. A. Rajappa, AIR 1978 SC 548

²⁹ Industrial Disputes Act, 1947, Sec. 2(q)

provisions differentiates between a legal and an illegal strike³⁰ as mentioned above. 'Illegal strikes' as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23.

Other than Industrial Disputes Act, 1947, Trade Unions Act, 1926 also recognizes the right to strike as a statutory right under sections 18 and section 19 and confers immunity upon Trade Unions on strike in case if civil liability arises.

CONCLUSION

Inevitably, every right comes with its own duties. Right to Strike must be the weapon of last resort because if this right is misused, it will affect the whole economy by creating problems in the production and financial profit of the industry.

In India, right to protest is a fundamental right under Article 19 but right to strike is a legal right and its statutory restriction is attached in the Industrial Dispute Act, 1947 as mentioned above. The violation of provisions of this Act will make the strike an illegal strike. Thus, if a right has so many restrictions, it can never be a fundamental right. Every worker has the right to strike peacefully and make needful and legitimate demands. It is a very important weapon for wage bargaining as well as for the worker to seek redressal and safeguard his liberties. However, this right is provided only if certain conditions are fulfilled. However, government employees in India have no legal or statutory right to strike.

Lastly, Fundamental rights determine to other rights, but the act of strike does not give right to any other right, therefore cannot come under the ambit of fundamental rights. Strike is an activity that can just be perceived by senses, but Fundamental rights are intangible and incorporeal in nature.

³⁰ Industrial Disputes Act, 1947, Sec. 24