



Analysis the provision for right to strike of workers under the industrial dispute act 1947 and other provisions of laws

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Abstract

The Industrial dispute Act 1947 has given right to every worker's i.e Right to Strike. The Act was specified that every trade unions and employers has right to engage in the collective bargaining. According to the Industrial dispute Act, it specially enacted to give the effect to the right to strike and also lay down the procedures by way for the exercise of this right. According to this Act, it does not provide for the duty to bargain. There are certain issues which are two or more things that have been affected on each other between the workers and the employer. This paper tries to discuss about some of the determinants of Industrial disputes, such as Right to strikes is the vital significance of resolving or minimizing such disputes.

Keywords: constitutional rights, labour law, industrial disputes act, right to strike, collective bargaining

1. Introduction

The Industrial Disputes Act, 1947 came into existence in 1947, and it was enacted to make provisions for investigation, settlement of Industrial Disputes and providing for certain safeguards to the workers. In order to analyze the various provisions of law and to determine the correct legal position of the rights of workmen to go on strike. It is necessary to consider some of the vital definitions given by the Industrial Disputes Act, and some of the other provisions of law. As per Section 2(k) of Industrial Disputes Act, 1947, an industrial dispute is defined as industrial dispute to mean any dispute or difference between employees and employers, or between employers and workmen, or between workmen and which is connected with the employment or Non-employment or the terms of employment or with the conditions of labour, of any person^[1].

The definition of Industrial Disputes may be defined as a conflict or difference of opinion between management and workers on the terms of employment. It is a disagreement between an employer and employees' representative. When an industrial dispute occurs, both the parties, that is the management and the workmen, try to pressurize each other. The management may resort to lockouts while the workers may resort to strikes, picketing or gheraos.

Strike is one of the oldest and the most effective weapons of labour in its struggles with capital for securing economic justice. The word of strike derived in origin to old English words "strican to go". In common parlance it means hit, impress, and occur to, to quit work on a trade dispute. In fact, the meaning is traceable to 1768 and later on it varied to strike of work^[2]. The definition and use of the word strike has been

undergoing constant transformation around the basic concept of stoppage of work or putting of work by employees in their economic struggle with capital. The term strike has been defined in a wide variety of branches of human knowledge, viz. etymology, sociology, political economy, law and political science. According to Webster's dictionary defines the term strike as "the act of quitting work done by mutual understanding by a body of workmen as a means of enforcing compliance with demands made on their employers; a stopping of work by workmen in order to obtain or resist a change in condition of employment"^[3].

The Right to Strike to the workmen is to help them in negotiating and getting their demands fulfilled by the employer. It also helps the trade unions and workers union to fight for the rights of their workmen and get justice for themselves in case of violation of their rights. Therefore, the Strike is an important weapon in the hands of the workmen and Strike could also be to compel the employer to get economic concessions such as higher wages, better working conditions, shorter hours etc.

As per Section 2(q) strike has been defined under Industrial Disputes Act, 1947, that 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^[4].

The workmen must be employed in any industry. The stoppage of work by workers individually does not amount to strike. The cessation of work by a body of persons employed in any industry in combination is a strike. It also pointed out in this clause a cessation of work or refusal to work is an essential element of strike. There can be no strike, in case if

¹ Dr. V.G. Goswami, (Ninth Edition 2011), Labour and Industrial Law, Vol-2, (Law of Industrial Relations in India) published by central Law Agency, Allahabad-2, at p.212

² Ibid 1 at 276

³ Ibid

⁴ Ibid 3 at 277

there is no cessation of work. However, it must be proved that there was a cessation of work or stoppage of work under common understanding or it was a concerted action of the workers or there was cessation of work by workers acting in combination is a strike. Therefore, it mere absence from work is not enough, but there must be a concerted action for refusal to work, to constitute a strike.

In this case the workers of a company wanted to celebrate "May Day". They requested the employers to declare that day a holiday. They were also ready to compensate the loss of work by working on a Sunday. On the company's failure to declare "May Day" as a holiday the workers as a whole applied for a leave. It court was held that there was no cessation of work or a concerted refusal to work and the action of the employees to apply for casual leave as a whole did not amount to strike"^[5]. The strike occur for number of reason such as dissatisfaction of company policy, working hours.

Generally, the Strikes occur for a number of reason regarding the dissatisfaction with company policy, Salary, incentive problems, Increment not up to the mark, Wrongful discharge or dismissal of workmen, Withdrawal of any concession or privilege, Hours of work and rest intervals, Leaves with wages and holidays, Bonus, profit sharing, Provident fund and gratuity, Retrenchment of workmen and closure of establishment^[6] and Dispute connected with minimum wages.

Whereas, the strike have classified into two types i.e. primary strike and secondary strike. There are various types of strike i.e. stay-away strike, stay-in, sit-down, pen down or tools-down, go-slow and work-tot-rule, token or protest strike, cat-call strike, picketing or boycott. The strike are name are given on various circumstance. In such strike, workmen peacefully enter the premises of establishment or the office without indicating their indication to go on strike.

But having the entered the premises, they generally stay at their places of work or sit down there. When clerical workmen refuse to do their work, such refusals generally known as pen down strike. The court held that a pen down strike falls within the ambit of the definition of strike in the act^[7]. On a plain and grammatical construction of definition in section 2(q) it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work.

So the pen down strike cannot be treated as illegal but if it is found to be illegal because it was commenced in contravention of section 23(b), mere participation in such an illegal strike cannot necessarily involve the rejection of the strike's claim for reinstatement. The general hypothetical consideration that pen down strike may in some cases lead to rowdy demonstration or result in disturbance or violence or shake the credit of the employer would not justify the conclusion that even if the strike are peaceful and non-violent and have done nothing more than occupying their seats during office hours, their participation in this strike would by itself disqualify them from claiming reinstatement. Whereas, the secondary strike are also called the sympathy strike.

⁵ Standard vacuum oil co. Madras V Gunaseelam M.G (1954) 11 LLJ 1956 (LAT)

⁶ See <http://www.whatishumanresource.com/strikes> dated 12/08/2018

⁷ In the case of Punjab National Bank Ltd v. their workmen AIR1960 SC160.

2. Industrial Disputes Act Clarifies the Prohibition of strikes

The Industrial dispute act 1947 under Section 22 deals with the prohibition of strikes. Similarly, the Strikes deal with the industries caring on Public Utility Services. The Strike is not completely prohibited but certain requirements which needs to be fulfilled by the workmen before resorting to a strike have been laid down

It also laid down the Conditions under section 22(1) need to be fulfilled in case of strike for Public Utility Services. The legislature also laid down certain types of conditions, which was to provide sufficient safeguards against sudden strikes for Public Utility Services. The legislature also laid down certain types of conditions, which was to provide sufficient safeguards against sudden strikes for Public Utility Services which would also result in great inconvenience not only to the industry but also to the general public and society at large.

Similarly Section 22(1) No person employed in a public utility service shall go on strike, in breach of contract-(a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or(b) Within fourteen 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 conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings^[8]. It pretends to be noted that these provisions do not prohibit a workmen from going on a strike but are conditions required to be fulfilled before striking.

Where a strike has commenced during to pendency of conciliation proceedings, and the workmen, pleaded that the strike was provoked by the employer, it was held that the fact that the strike or lockout was provoked by the opposite party will not absolve the person, going on strike or lockout of the duty of complying with the requirements of section 22 and section 23 of the act^[9]. The workmen went on a strike without serving a notice under section 22. They claimed wages for national holiday which fell within the strike period. The supreme court held that they were not entitled to wages because they themselves brought about the situation by going on a strike without serving a notice whereby the management was deprived of their Right to take work from them"^[10].

The court view the provisions of section 22 are mandatory and it should be specified the date in the notice on which the workmen proposed to go on strike. In case, the date of strike is expires, fresh notice has to be given. Further held that deduction of wages for the days of illegal strike would be justified^[11]. The Bombay High Court held that once the strike is held to be illegal the question of justifiability does not arise and the workmen in Public Utility service are not entitled to seek wages for the strike period unless they prove the strike legal and justifiable^[12]. It was further stated that the strike is a form of demonstration and right to strike or right to demonstration is not a fundamental right. It is recognized as a

⁸ Ibid 4 at 289

⁹ Colliery Mazdoor congress v Beerbhum coal co [1952 LAC 29(LAT)]

¹⁰ Madurai coats ltd v Inspector of factories Madurai [(1981) 1 LLJ 255 (SC)]

¹¹ Mineral Minors Union v Kudremukh Iron Ore Co Ltd [(1988) 1 lab LJ 277 (karn)]

¹² ANZ Grindlays Bank v SN Khatri and Others [(1995) 11 LLJ 877 (BOM)]

mode of redress for solving the grievances of the workers. It is not an absolute right and is restricted by the provisions of Industrial Dispute Act 1947^[13].

3. General prohibitions of illegal strikes

General provisions on the prohibition of strike are mentioned in section 23 of the Industrial dispute Act. It provides that no workman who is employed in any industrial establishment shall go on strike in breach of a contract and no employer of any such workmen shall declared a lockout is prohibited in the following cases:(a) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;(b) During the pendency of proceedings before [a Labour Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings;(b) During the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or(c) During any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award^[14].

According to section 24 of the Industrial dispute act, provides that a strike and lockout shall be illegal^[15]. The workers have a right if not a fundamental right, to go on strike. The penalties are contained in section 26 to 29 of the Industrial disputes act, 1947^[16]. Even in case of illegal strikes a distinction has been attempted to be made between illegal but justified strike and illegal and unjustified strike.

The effect of an illegal strike on the demand of workmen to wages or compensation and their liability to punishment according to one view is based on the strike being justified. Mere illegality of a strike does not matter. It means if the strike is illegal and at the same time unjustified the workmen have no claim to wages and must also be punished. If the strike is justified they have the right to claim wages.

The Right of striking workmen to reinstatement after termination of strike: If the strike is the result of unfair labour practice on the part of the employer, the workmen have a right to be reinstated. If the employer is not guilty of unfair labour practice and he has also engaged other workmen in the interim period to continue the work, the striking employees have no right to reinstatement. In the former case the employer must put his employees back to their work after the strike.

The Right of employer to compensation for loss caused by illegal strike in the case of Supreme Court held that the remedy for illegal strike has to be sought exclusively in section 26 of the Act. The award granting compensation to employer for the loss of business through illegal strike is illegal because such compensation is not a dispute within the meaning of section {2(k)} of the act^[17].

The rights of a government servant to go on a strike are different from the workmen employed in Private concerns. There are different rules which prohibit him to go on strike.

Central government employees are governed by the central civil service (conduct) Rules, 1955. The Industrial dispute act 1947 under Section 25 of the Act prohibits financial Aid to illegal strikes. It has been provided under section 25 of the Act that no person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lockout. It means that financial aid is prohibited in direct furtherance of illegal strike and lockouts^[18]. The important element here is mens rea. The person spending or applying money should have the knowledge that the strike is illegal. Punishment for violation of the provision is provided in section 28 of the Act. It also specified penalty for Financial Aid to Illegal Strikes under Section 28 imprisonment for a term which may extend to 6 months or with a fine which may extend to thousand rupees or with both^[19]. It is only the spending of money in support of strike which is prohibited under the section. Therefore, assistance for the strikers in any other form, for example supplying them with clothes, food, etc. is not prohibited under section 25 of the Act.

4. Right to strike is not fundamental right under constitution of India

The Right to strike is universally recognized as fundamental human right, but Indian constitution has not recognized as fundamental right. The right to strike has not been specifically covered by any of the entries in the seven scheduled of the Indian constitution. It makes reference to some of the provision in this context.

The government of Indian Act, 1935, entry 29 in list III, (Concurrent list) of the VIIth schedule, empowered the central as well as the provincial and presidency legislatures to legislate on trade unions, industrial and labour dispute.

Besides, Indian constitution the entry 55 in list-I (union list) of the VIIth scheduled, empowers the parliament to legislate on the subject of Regulation of labour and safety in mines and oil field; entry No.61, deals with the industrial disputes, concerning union employee; entry 97 gives the residuary power to the parliament to legislate on any other matter, Not enumerated in the list II or III.

In the state list (II) does not contain any entry pertaining to labour or Industrial dispute. According to concurrent list it specified that the trade Union, Industrial and Labour disputes related to entry 22; entry 23 deals with social security and social insurance, employment and unemployment and entry 24 deals with welfare of labour, including condition of work, provident funds, employers liability, workmen's compensation etc..Thus, both the parliament and legislature have the competence to legislate on this subject.

Similarly, article 19(1) the constitution of India guarantees the protection of certain freedoms as fundamental right. The constitution of Indian has specified that all citizen shall have the right i: e, To freedom of speech and expression, To Assemble peaceable and without arms, To from associations or union, To move freely throughout the territory of India, To reside and settle in any part of the territory of India, and to practise any professional, or to carry on any occupation, trade or business. However, strike is not expressly recognized in the

¹³ B.R Singh v Union Of India [(1989) 11 lab LJ 591 (SC)]

¹⁴ Ibid 8 at 297

¹⁵ Ibid 14 at 307

¹⁶ Ibid 15 at 317

¹⁷ Rohtas Industries v Its Union {(AIR) 1976 SC 425}

¹⁸ Ibid 16 at 318

¹⁹Ibid 18 at 317

constitution of India. In the case of *Kameshwar Prasad v. The State of Bihar* ^[20], the court held that the strike is not a fundamental right. Government employees have no legal or moral right to go on strike. Similarly, the Court views that the right to strike is an important weapon in the armory of employees as a mode of redress. It is a right earned by the employees as a form of direct action during their long struggle. It is a weapon to safeguard and preserve the liberty. It is an inherent right of every employee ^[21]. According to the court, the right to strike is central to collective bargaining. It further stated that the right to strike is a legal right though not elevated to the status of a fundamental right ^[22]. The court held that there is no fundamental right for workers to go on strike ^[23]. It was held that the right to form an Association guaranteed under Article 19(1) (c) of the Constitution, also carried with it the right to strike otherwise the right to form an association would be rendered illusory. The Supreme Court in many of its cases has recognised the right to strike of the workers as a legal right but has not said that it is a fundamental right ^[24].

The right to protest is a fundamental right as specified under Article 19 of the Constitution of India. Similarly, the Right to strike is not recognised as a fundamental right in the Indian constitution but it is recognised as a legal right. According to the Industrial Dispute Act 1947, the right to strike is subject to statutory restrictions. In the case, the court observed that the significance of the right to strike is core of significance to the principle of collective bargaining of each worker ^[25].

According to Justice Krishna Iyer, the strike could be legal or illegal and even an illegal strike could be a justified one ^[26]. The court views that the right to go on peaceful strikes but this right cannot be interfered with except on sufficient grounds. The workers have the right to make legitimate demands, which if not met, they can go on legal but peaceful strike. Trade unions also have the right to pursue their trade union activities in peaceful methods ^[27].

The strike is a form of demonstration and every worker has a right to demonstrate but the right to strike cannot be done anyway. The strength of a trade union depends on its membership and its ability to bargain more effectively with management rather than the individual. The bargaining strength depends upon demonstration by way of adopting agitation by workers such as strike.

Thus, from the cases discussed and judgements delivered, it is very much evident that the right to strike is available to the workers as a legal right and they can resort to peaceful strikes if their demands are not fulfilled by the management. The courts have also said that the right to strike and collective bargaining go hand in hand as it persuades the mighty and the

rich powerful employer to come in common terms and negotiate with the working class. But the right to strike as a fundamental right still remains a controversy and the Indian constitution does not recognise the right to strike as a fundamental right ^[28]. The right to strike is an implied statutory right which has various limitations and it must be used as a weapon of the last resort.

5. International law recognises as right to strike

The International Labour Organisation came into existence in 1919, and its recommendations and conventions form a part of international labour law. In the conventions of the International Labour Organisation, every member is obliged to adhere to the provisions of such conventions by virtue of their membership. However, in the convention on the Freedom of Association and Protection of the Right to Organise, the International Labour Organisation passed the Freedom of Association and Protection of the Right to Organise Convention ^[29]. There are several other conventions that also promote the right to organise and collective bargaining ^[30] of such associations; provide the Labour Regulation (Public Service) ^[31] and Collective Bargaining ^[32].

The Universal Declaration of Human Rights has provisions to protect the interests of workers and it states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment. Similarly, everyone has the right to form and to join a trade union for the protection of his interests ^[33]. It means the right has recognised the right to form a trade union of the working class, and the right to go on strike for the purpose of securing proper working conditions is the sequel of the right to form an association.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, that the state parties to the covenant that recognises the right of everyone to enjoyment of just and favourable conditions of work ^[34] and it also ensures the right to strike provided that it is exercised in conformity with the laws of the particular country ^[35].

The country like India had ratified an obligation to respect the law of international provisions related to the protection of workers' interests. Even after India being a member to the above-mentioned international conventions and treaties, India has still refused to accept the right to strike as a fundamental right even though the preamble of the ILO places great importance on the right to strike as being fundamental to collective bargaining power of the workers.

As per the international conventions, the right to life should have been a fundamental right in India. According to the Supreme Court decision in various cases, it well points out to the fact that international law should be abided with and respected and the constitutional laws should also be such that they are abided.

In fact, the right to form an Association and Right to

²⁰ AIR 1962 SC 1166

²¹ B.R. Sing case, (1990) Lab IC 389:air 1990sc 1

²² T.K. Rangarajan v Government of Tamil Nadu {2003(6) SCALE 84}

²³ In *Radhey Shyam Sharma v Post Master General central circle Nagpur* {1965 AIR 311, 1964 SCR (7) 403}

²⁴ *All India Bank Employees Association v National Industrial Tribunal and others* {AIR 1962 SC 171}

²⁵ *Andhra State Road Transport Corporation employees' union v the Andhra State Road Transport*

²⁶ *Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Majdoor* {AIR 1980 SC 1896}

²⁷ *Indian Express Newspapers (Bombay) Pvt.Ltd. v. T.M. Nagarajan* {1987 (15) DRJ 212, 1988 Lab IC 1067, 1988 RLR 194}

²⁸ B.R. Singh v Union of India (1990) Lab.IC 389 SC 396

²⁹ Convention No.87 ILO

³⁰ Convention No.98 ILO

³¹ Convention No.151 ILO

³² Convention No.154 ILO

³³ Article 23 of the Universal Declaration on Human Rights.

³⁴ Article 7

³⁵ Article 8(1)

demonstration being part of the fundamental human right, but the Indian law does not recognise the right to strike as a fundamental right. It need to take the certain steps towards bringing about reconciliation between the international law and the India law on this matter and the balance lies in recognising the right to strike as a legal Right.

This is implicit from Article 51 (c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution^[36]. Similarly, the Court must followed the norms of International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR) and International Labour Organization's Conventions, to interpret and expand the ambit of Article 21 of the Constitution^[37]. The court was held that fundamental rights are subject to the directives enshrined in Part IV of the Constitution, the UDHR, the European Convention of Social, Economic and Cultural Rights, and other international treaties such as the Convention on Rights to Development for Socio-Economic Justice. It is thus settled that the reason deter of Article 51 (c) is to introduce and implement various international instruments particularly the UDHR, ICCPR and the ICESCR in the interpretation of fundamental and legal rights. Therefore, the right to strike as contemplated by these Covenants and the ILO conventions is well within the ambit of constitutional (Articles 19 & 21) as well as legal provisions (Trade Unions Act, 1926 & Industrial Disputes Act, 1947). Thus, the decision in Rangarajan stands in disrespect to the provisions of international law^[38].

6. Suggestion and conclusion

The power has given to the Labour Court, Tribunals and National Tribunals in terms of section 11(A) Industrial Dispute Act 1947. In India, the most important factors are lead to strikes to demand of higher wages because the cost of living standard was high. Similarly, the employer also seeks to make the profit with balancing of the interest of workers. It also ensures to respect the interest of workers and protect their current legislative provisions on the right strike. According legislative framework relating to strike does not succeed to find the optimum solution of the problems of workers.

In spite of all the controversies related to the right to strike as to whether it should be a fundamental right, it still continues to have a legal or statutory status. Right to strike is one of the greatest weapons available to the workers to fulfilling their demands. Every worker has the right to peaceful strike and makes legitimate and reasonable demands. According to the Indian law is not specified the Government employees have a right to strike. Apart from this India member of the ILO has fails to give recognition to the right to strike as a fundamental right. The Indian judiciary clarified that right to strike though a legal right has many restrictions and not a exclusive right.

The violation of any of the provisions would make the strike illegal. Therefore, the right to strike is not fundamental right in India. Similarly the Government employee have no right to go on strike. According to the industrial dispute Act, 1947 has given the legal right of going on strikes as stipulated in section 22, 23, and 24. Hence, the rights of strikes under industrial dispute Act, 1947 is very much limited and regulated because this act, has limits of rights to strikers.

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³⁶ Vishaka v. State of Rajasthan [(1993) 6 SCC 241 P. 249]

³⁷ In People's Union for Democratic Rights v. Union of India[AIR 1982 SC 1473 P. 1487]

³⁸ Life Insurance Corporation of India v. Consumer Education and Research Centre[(1995) 5 SCR p.482]

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