THE STATUTORY PROTECTION OF WORKMEN'S RIGHT TO STRIKE AND ITS NECESSITY TO OBTAIN CONSTITUTIONAL RECOGNITION

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ABSTRACT

The paper enunciates the legislative framework of the "Workmen's Right to strike" in the Indian legal system, whereby the major provisions of "Industrial Dispute Act, of 1947" and "Industrial Relation Code, of 2020" have been thoroughly interpreted and legally analysed. The paper discusses about the mandatory conditions that needs to be satisfied for considering a strike to be a "legal strike" along with discussing the consequential effect of an illegal strike. The judicial take on "Workmen's Right to strike" as an integral legal right has also been talked about in length. The author's very aim of writing this paper, is to draw the attention of the readers towards the need of constitutional protection of the "Workmen's Right to strike" for wholesome enjoyment of "Fundamental Right of Freedom to form associations or unions", guaranteed under "Article 19 (1)(c)" of the Indian Constitution.

Keywords: "Workmen's Right to strike", "Collective Bargaining", "Industrial Dispute Act, of 1947", "Industrial Relation Code, of 2020", "Legal and Illegal Strikes", "Freedom to form associations or unions "and "Article 19 (1)(c) of the Constitution of India"

INTRODUCTION

To arrive at a common understanding, the act of Negotiation is done, whereby both the parties agree upon a particular set of terms and conditions which fulfils the requirements of both the sides. In the Industrial sector as well, such negotiation takes place between the worker's union and employer so as to decide upon the "terms of employment". Such a negotiation is termed as "Collective Bargaining". This comes with the "Right to strike" (which is available to the Worker's union) and Right to lockout (which is available to the employer) as its two important tools. This paper basically deals with the former right i.e. "workmen's right to strike".

"Strike" is when a group of employees of an industry (generally forming a union), having a "mutual understanding", cease or refuse to perform their industrial work or "accept the employment" provided by the employer, against an unfulfilled basic demand pertaining to "terms of employment" or against a "breach of contract" on the part of the employer. The "right to strike", although not an expressed "Fundamental Right" protected under the Constitution, was first recognized as a "statutory right" in the "Industrial Dispute Act, of 1947". The said right cannot be enjoyed in an absolute manner and thus has various conditions to be fulfilled, failure to which ceases the legal validity of the strike, making such a right unenforceable.

The cardinal objective of this paper is to ascertain the following: -

- The "Indian Legal System" and "International Conventions" on "workmen's right to strike".
- The provisional difference between the "Industrial Dispute Act, of 1947" and "Industrial Relation Code, of 2020" with regard to "Right to strike".
- The classification of "Legal" and "Illegal Strikes".
- The consequences of an "illegal strike".
- Whether or not "workmen's right to strike" is a "fundamental right" under the "Indian constitution".
- The Judicial Recognition of "workmen's right to strike" as a "Constitutional Right and as Statutory Right".

LEGISLATIVE FRAMEWORK FOR WORKMEN'S RIGHT TO STRIKE

In the Indian legal system, the "workmen's right to strike" as a statutory right has been guaranteed under "Industrial Dispute Act, of 1947" and "Industrial Relation Code, of 2020". These enactments provide the workmen the right to conduct a "peaceful strike", with an aim to ensure "social justice" in the industrial sector.

"Section 22(1) of the Industrial Dispute Act, of 1947" is applicable only to the individuals who are working in "public utility services" who can go for a strike on account of "breach of service contract", only on the mandatory fulfilment of the following essential requirements: -

- A "Notice" shall be given by the employee to the employer as per the prescribed mode.
- The gap between the Notice and the Strike shall not be more than 6 weeks i.e. the strike shall take place within 42 days of providing the notice.
- The strike shall take place only after the completion of 14 days from the days of the notice given i.e. the strike shall take place in the last 4 weeks (of the given 6 weeks). These 14 days are given so that the employer gets reasonable time period to find out ways for turning away (avoiding) the strike or negotiating a compromise with the employees.

The above mandatory conditions are imposed on the public utility servant in the wake of going for a strike, with an aim to prevent inconvenience to the general public or society and thus can be considered as a "public policy".

Further, "Section 23 of the Industrial Dispute Act, of 1947" provides for "General Prohibition of strikes" which is applicable to all type of industrial establishments i.e. both "public and non-public utility services". It Provides for four instances in which an employee cannot initiate a strike and these are as follows: -

- If the "final judgement" of a "conciliation proceeding" before the "Board of Conciliation" has not yet arrived (i.e. the case is pending), then no strike can take place. But, if the final judgement has already arrived, then the party against whom the conclusion stands, can go for a strike only after the completion of 7 days from the date of the final conclusion.

Note- *A "conciliation proceeding", pending before a "conciliating officer", furnishes no bar on employees to go for a strike.*

- If a case is unresolved before any "Labour court (LC)", "Industrial Tribunal (IT)" or "National Industrial Tribunal(NIT)" and if at all, the final conclusion has arrived, the affected party(employee) cannot go for a strike before the completion of 2 months from the date of such conclusion.

- If an "Arbitration Proceeding" is pending before an "Arbitrator" and before the expiry of 2 months from the date of conclusion (in case the conclusion has already arrived), no strike can take place.

- There is a bar on strike during the operation of "Settlement" or "Award" in LC, IT and NIT.

Similar provisions with a slender distinction (which is discussed in the later part of this paper), are enumerated under "Section 62 of the Industrial Relation Code, of 2020" which also provides for basic conditions that need to be fulfilled for a strike to be considered a s a legal strike.

The recognition of "Workmen's Right to strike" can also be traced from International law as well. International labour organisation (ILO) provides for two mandatory rights to every employee (or workmen) i.e. "Right to Organize" and "Right to Collective Bargaining" and according to the expert committee of ILO, "Workmen's Right to strike" is an integral part of both of these rights. The employees' "Right to form trade union and association", of which Right to strike is a subset, is considered to be a basic right under the "Universal Declaration of Human Rights, 1948". Even in "Article 8 (1) (d) of the International Covenant of Economic, Social and Cultural Rights, 1966" concedes Right to strike as a vital right of an employee, provided that, it takes place in compliance with the laws of the member states. India is a member of all of the above-mentioned International Conventions and therefore these laws get automatically applied to the Indian legal system in addition to the other laws discussed earlier. This is in adherence to the principles enshrined under "Article 51 (c) and Article 253 of the Indian Constitution".

THE PROVISIONAL DIFFERENCE BETWEEN THE "INDUSTRIAL DISPUTE ACT, OF 1947" AND "INDUSTRIAL RELATION CODE, OF 2020".

"Industrial Dispute Act, of 1947" is a central legislative Act enacted by the parliament whereas, "Industrial Relation Code, of 2020" is a labour code enacted by the central government (executive enactment) i.e. by the "Ministry of Law and justice (legislative department)" which summaries the provisions of the three major Acts by the parliament namely, "Industrial Dispute Act, of 1947", "The trade unions Act, 1926" and the "Industrial Employment (standing orders) Act". The code deals with provisions for settlement of "Industrial dispute" and arrangements pertaining to "collective bargaining".

The contents of "Section 22 and Section 23 of Industrial Dispute Act, of 1947 have been summarised under "Section 62 of Industrial Relation Code, of 2020". Similarly, the contents of "Section 24 of Industrial Dispute Act, of 1947" is provided under "Section 62 of Industrial Relation Code, of 2020". But the only difference that can be drawn out is: - while "Section 22 of IDA,1947" states that the strike shall take place within 6 weeks i.e. 42 days from the date of giving of the notice, "Section 62 of the IRC,2020" provides for 60 days' gap between the giving of the notice and the actual commencement of strike. The IRC,2020 has merely extended the time period from 42 days to 60 days for a strike to take place after the producing the notice, keeping the rest of the provisions unchanged. Another difference that can be derived from analysing both the enactments is that "Section 22 of IDA,1947" is mainly concerned with workers employed in Public utility services only while "Section 62 of the IRC,2020" is made applicable to all type of Industrial establishments, irrespective of whether it is an establishment of Public Utility services or not. Thus, "IRC,2020" provides for a more general provisions for all type of Industrial establishment.

LEGAL AND ILLEGAL STRIKES

"Section 24 of the Industrial Dispute Act, of 1947" and "Section 63 of Industrial Relation Code, of 2020" distinguishes Legal strikes from that of the illegal ones. The strikes that are considered legal are as follows: -

- If the strike takes place within 6 weeks and not before 14 days of giving of the notice for strike i.e. strike done in conformity with "Section 22(1) of the Industrial Dispute Act, of 1947".

OR

If the strike takes place within 60 days and not before 14 days of giving of the notice for strike i.e. strike done in conformity with "Section 62 of Industrial Relation Code, of 2020".

- If strike take place in conformity with "Section 23 of the Industrial Dispute Act, of 1947" or "Section 62 of Industrial Relation Code, of 2020" i.e. not during pendency of case before the board of conciliation, LC/IT/NIT or Arbitrator and not during the operation of settlement or award. If at all, the conclusion has already come, then not before the expiry of the said time period as prescribed by the above-mentioned provisions.

- If the strike has not been prohibited by Govt. Order in accordance to "Section 10(3) and section 10A(4A) of the Industrial Dispute Act, of 1947" Or "Section 42(7) of Industrial Relation Code, of 2020". It will still be a legal strike if such an order has been given by an inappropriate government, in contravention of which, the strike has been commenced - "Section 24 of the Industrial Dispute Act, of 1947" and "Section 63 of Industrial Relation Code, of 2020"

- If a strike is declared as a consequence of an "Illegal Lockout"- "Section 24 of the Industrial Dispute Act, of 1947" and "Section 63 of Industrial Relation Code, of 2020"

The strikes that are considered illegal are as follows:

- If the strike is commenced during the prohibited time period i.e. in contravention of the mandatory conditions as provided under "Section 22(1) of the Industrial Dispute Act, of 1947" or "Section 62 of Industrial Relation Code, of 2020".

- If the strike takes place during pendency of case before the board of conciliation/LC/IT/NIT/Arbitrator or during the operation of settlement or award i.e. in contravention to "Section 23 of the Industrial Dispute Act, of 1947" or "Section 62 of Industrial Relation Code, of 2020".

- If the strike has been prohibited by an order of an Appropriate Govt.

- If a strike is declared as a consequence of an "legal Lockout".

CONSEQUENCES OF AN ILLEGAL STRIKE

The following are the "consequences of an illegal strike"-

1. **IMPACT ON WAGES OF THE WORKMEN**- In case of illegal strikes i.e. in contravention to the statutes governing it, **the employees cannot claim for wages for the "strike period"** but the same can be claimed in case of legal strikes. This was held in "**Cropton Greaves Ltd. V. Workmen"**[1].

2. **PUNISHMENT FOR "ILLEGAL STRIKE"-** Now, coming to the punishment available in case of illegal strikes, **the employees are subject to Imprisonment up to 1month or fine of Rs.50 or both** (According to "Section 26 of the IDA,1947").

3. **LIABILITY OF THE INDIVIDUALS OTHER THAN THE STRIKERS**

   THEMSELVES: - It is an **offence** under "Section 25 of the IDA,1947" **if any person, with his utmost knowledge, provides "direct support" in the form of "financial aid" in commencement of an illegal strike**. Even **persuading someone for annexing an "illegal strike" is an offence** under "Section 27 of the IDA,1947"

4. **THE POWER OF THE EMPLOYER: -** In the case of **"Punjab National Bank v. Their Employees",** it was held that the **employer can**, in the case of illegal strikes, **restrict the entry of the employees involved in such a strike to the industrial premises, order them to evacuate the premises** and take further necessary steps if they deny to follow such order and **can also suspend them from employment**.

5. **THE RIGHT OF THE EMPLOYER TO CLAIM FOR COMPENSATION: -** In

   "**Rothas Industries v. Its Union"**[2]**,** It was held that **the employer is entitled to claim for award that would compensate the "loss of business" on account of "illegal strike" conducted by its employees.**[3]

[1] AIR 1978 SC 1489
[2] 1976 AIR 425, 1976 SCR (3) 12
[3] Deepak Raju, Right to strike under Industrial Dispute Act, 1947, LEGAL SERVICE INDIA (Mar.13,2022), https://www.legalserviceindia.com/articles/dispute.htm

6. **WEAKENING OF THE "EMPLOYER-EMPLOYEE RELATIONSHIP"-** Illegal strikes **hampers the relationship between the employer and the employee** because of the unnecessary "cessation of work".

JUDICIAL TAKE ON "WORKMEN'S RIGHT TO STRIKE" AS A "LEGAL RIGHT"

The Indian Judiciary has recognized Right to strike as an integral right of any employee. In the case "**B.R. Singh v Union of India"[4],** it was held that "Right to strike" is an "inherent right" of every employee which ensures their liberty to demand for a set of favourable terms and conditions of employment. The said right would also help the workmen to enhance their "bargaining strength". In "**Indian Express Newspapers Bombay Pvt. Ltd. v TM Nagarajan"[5],** it was held that workmen's "Right to strike" is a "legitimate right" in the form of a weapon to oblige the employer to fulfil their reasonable demands.[vi]

"WORKMEN'S RIGHT TO STRIKE" AS A "FUNDAMENTAL RIGHT": THE NEED OF THE HOUR

In the present legislative scenario, the "workmen's right to strike" has been given no "Constitutional status" or of a "Fundamental Right" guaranteed under the "Constitution of India" and is still a mere statutory right. The said right, although not explicitly mentioned in the "Indian Constitution", can be implicitly derived from the "Fundamental Right of Freedom to form associations or unions" which is well guaranteed under "Article 19 (1) (c) of the Constitution of India". The "employees' right to strike" forms a major subset of the said fundamental right and for its efficient enjoyment, the "Right to strike" must be given a constitutional status. This is one of the basic right that an employee must retain to ensure favourable work environment and enhance his "standard of living" along with building up scope for his "personal development". This will in turn develop better relationship between the employer and the employees. The Indian judiciary has time and again failed to recognize the same. In cases like "**Kameshwar Prasad v. State of Bihar"[6][7]** and **"All India Bank Employees Association V. National Industrial Tribunal"[8],** It was held that even if "Article 19 (1) (c) of the Constitution" is interpreted in the most liberal manner, it cannot include "Right

[4] 1990 AIR, 1 1989 SCR Supl. (1) 257
[5] 987 (15) DRJ 212, 1988 LablC 1067, 1988 RLR 194
[6] Nishka Prajapati, Right to Strike - A Fundamental Right or not? LEGAL SERVICE INDIA (Mar.13,2022), https://www.legalserviceindia.com/legal/article-2904-right-to-strike-a-fundamental-right-or-not-.html
[7] 1962 AIR 1166, 1962 SCR Supl. (3) 369
[8] 1962 AIR 171, 1962 SCR (3) 269

to strike" within its ambit and thus it cannot be given "fundamental status". Also, in "**T.K. Rangarajan vs Govt. Of Tamil Nadu and Ors.,"**[9] it was held that the employees have no Fundamental "right to Strike" and the decision, when read in its totality, attempts to nullify any types of strikes whether it be "hartals" or "bundhs". However, in the case of "**Bharat Kumar K. Palicha and Anr. Vs. State of Kerala**[10]**"**, although, the SC has declared "Bundhs" to be unconstitutional, has at least differentiated "Bundhs" from that of "Hartals" or "general strike" and considered the latter two to be legal.[11]

CONCLUSION

The workmen's right to strike has been given legal recognition by one of the major central legislative enactments i.e. "Industrial Dispute Act, of 1947", the provisions of which have been efficiently subsumed in the present labour code i.e. "Industrial Relation Code, of 2020". Non fulfilment of the essential conditions as enshrined under the above-mentioned enactments makes a strike an illegal strike. Illegal strikes have adverse effect on employeremployee relationship along with causing "business loss" because of the unnecessary "cessation of work". Although the said right has been given statutory recognition and has been considered as an important right in the hands of the employees, it has still not been given constitutional status in the Indian legal system. Even the judiciary has failed to derive the same. It is therefore the need of the hour to give it a "fundamental status" which would help in efficient enjoyment of "Fundamental Right of Freedom to form associations or unions".

[9] 2003 (5) SCALE 537
[10] AIR 1997 Ker 2911
[11] Aarif Shah, Right to Strike: Proposed Amendment in the Indian Constitution, IPLEADERS (Mar.13,2022), https://blog.ipleaders.in/right-to-strike-proposed-amendment-in-the-indian-constitution/