
AN ANALYSIS OF STRIKES IN INDIA

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ABSTRACT

The strike is a powerful weapon in the hands of the worker. It is considered an ordinary right of the worker to address their grievance and resolve industrial conflict. The paper attempts to highlight the decreasing trend of strikes in the country. Furthermore, it analyses legal and illegal strikes, the impact of such strikes on the workers, and the penalty prescribed under the statutory provision of the Industrial Dispute Act, 1947. Also, it will highlight the contradictory cases to illuminate the system's various issues.

Keywords: Strike, industrial dispute, grievance

Introduction

Labour and capital are the backbones of industry, and their cooperation is essential for the economy's well-being, yet capital class has the upper hand over the labour. Whenever there is a dispute or any clash of interest in an industrial relations, it results in dissatisfaction among the parties and leads to industrial disputes. These disputes turn into various forms such as strike, protests, lock-outs etc. The industrial disputes Act, 1947 provides for peaceful settlement of these disputes and promotes harmony between the employer and employee. The study seeks to analyse the legality and illegality of strikes under the Industrial dispute act, 1947 and the present scenario of strikes in India.

Workers may strike for many reasons such as low wages or bad working condition. But the constant dispute always remains on wages. The study is being conducted to make people aware of the impact of strikes mainly pertaining to the issue of wages and the present scenario of strikes in our country. The analysis is also being done to comprehend the true sense of legal but unjustified strikes and illegal but justified strikes by citing relevant case law, thereby suggesting to prevent further strikes.

The study is being conducted by referring to various Journals, case study, news articles, reports and Bare acts.

Strikes

The black law dictionary defines it as “the act of a body of workmen employed by the same master, in stopping work all together at a prearranged time, and refusing to continue until higher wages, or shorter time, or some other concession is granted to them by the employer.”

Industrial Dispute Act 1947¹ defines strikes under section 2(q) as:

“a cessation of work by a body of persons employed in any industry acting in combination or who are or have been so employed to continue to work or to accept employment”

It is usually the consequences of the employees' grievance that are not addressed by the employers promptly. Cessation of work or refusal to work is the essential element of the strike.

¹ https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf

Mere cessation of work only comes within the preview of a strike if it can be shown that such cessation of work was a concerted action to enforce industrial demand².

In the case of *Standard vacuum oil co. Madras v. Gunaseelam*³, the company workers wanted a holiday on the occasion as they wanted to celebrate “May Day. The company workers even requested the employers to declare it as a holiday and assured them they would compensate for their loss by working one Sunday. The company did not give them a holiday on occasion of May Day and hence, they all applied for leave. The court in this case held that there was no cessation of work or a concerted refusal to work, hence, the actions done by the workers won’t be considered as a strike.

In *Ram Sarup & Another v/s Rex*⁴ it was held that, Mere absence from work is not enough but there must be concerted refusal to work, to constitute a strike.

Instances of strikes in India:

- The first-ever strike by the industrial worker occurred in 1862, when 1200 Railway workers of Howrah went on strike demanding an eight-hour work day.⁵
- In March 1974 1.7 million railway workers formally began a strike that lasted for 20 days to demand a need for minimum wages, social security, and the formalisation of jobs.⁶
- In January 2019, twenty crore workers from several organised and unorganised sectors successfully participated in the ‘Bharat Bandh’. They claimed that the government’s policies, such as fixed-term employment were against the workers.⁷
- In January 2020, 25 crore workers, employees, farmers, rural labourers, and private sector employees stopped work, hitting the streets to protest against the Modi government’s economic policies and divisive politics. Demands of the striking

² *Indian Iron and steel co. Ltd v. Its workmen* (1967) 1 LLJ 381 (Pat)

³ *Standard vacuum oil co. Madras v. Gunaseelam*, (1959) 11 LLJ 771 (Mad)

⁴ *Ram Sarup & Another v/s Rex*, A.I.R 1949 H.C. 218(All)

⁵ D P Buxi, *Indian Working Class Celebrates A Hundred Years Of Its First Political Strike*, CPIML (Apr., 2008), http://archive.cpiml.org/liberation/year_2008/april/working_class_hundred_years.html

⁶ Jyotishman Mudiari, *Why the 1974 All India Railway Strike Is Relevant Today*, The Wire, May 8, 2021

⁷ Mohua Chatterjee, *Bharat Bandh: Despite SC stay, tribal outfits stick to bandh call*, T.O.I, Mar. 4, 2019

workers/employees include increases in minimum wages, reining in rising prices, policies to curb raging joblessness, rollback of hostile labour law changes, end to public sector sell-off, curbing contract and casual work.⁸

No. of Strikes and Lockouts and Man-days lost during 2017-2021⁹

Year	Strike	Lockout	Total	Man days lost
2017	87	25	112	5,233,467
2018	69	17	86	3,149,554
2019	95	10	105	2,782,546
2020	56	5	61	1,353,717
2021 (Jan to Nov)	15	2	17	550,994

The spatial/industry-wise dispersion of the number of strikes and lockouts and the workers consequently affected is not uniform. Man-days lost is a direct measure of the impact of industrial unrest on industrial production.

Most of the industrial unrests, as indicated by strikes and lockouts, are primarily caused by issues relating to indiscipline & violence, wages & allowances, and personnel matters.¹⁰

⁸ Subodh Varma, *Largest Ever Strikes In India Shakes Up Modi Govt*, News Click, Jan. 8, 2020

⁹ https://labour.gov.in/sites/default/files/annual_report-21-22.pdf

¹⁰ https://labour.gov.in/sites/default/files/annual_report-21-22.pdf

Causes for the decline in Strike rate over the period

In recent times only a little is heard about the labour unions. The labour union a salient feature of post-liberalisation has witnessed changes that have led to the structural transformation of the service sector. The strikes used to be a weapon to bargain with the management for their welfare. But with the passage of time, the laws and processes have drastically diluted the union's ability to go on strike.¹¹ There also may be a possibility that the union strike rate might have declined due to the low success in achieving outcomes and reduced negotiating power. Also the industrial relation code 2020, which is yet to be notified by the government has imposed stricter rules for the labourers to go on strike.

Strikes can it be valid?

Section 22(1) of the Industrial dispute act states that 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.

However, the prohibition mentioned under section 22(1) of the act does not mean that the workers cannot go on strike, but it means that the conditions must be followed. The only exception to this is if a lock out is already existing then the need of notice is not required as specified under section 22(3)

In *Madhura coats Ltd v Inspector of factories Madurai*¹², the workman went on strike without serving a notice under section 22 of the act. They claimed wages for the national holiday which

¹¹ Sitakanta Panda, *Why Labour Union Are On Decline*, The Hindu Business Line, July 14,2021.

¹² *Madhura coats Ltd v Inspector of factories Madurai* (1981) 1 LLJ 255 (India).

fell under the strike period. The Supreme Court held that they were not entitled to wages as they did not follow the condition under section 22.

In the case of *Mineral Miners' Union v. Kudremukh Iron Ore Core Ltd.*¹³ It was held that, the provisions of section 22 are mandatory and the date of notice should be specified on which the workmen proposed to go on strike.

Prohibition of strikes

The prohibition against strikes contained in Section 23 is general in nature. It applies to both public utility as well as non-public utility establishments.

A strike in breach of contract by workmen and lock-out by the employer is prohibited in the following cases:

(i) During the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings

(ii) During the pendency of conciliation proceedings before a Labour Court, Tribunal, or National Tribunal, and two months after the conclusion of such proceedings

(iii) 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 (3-A) of section 10-A, or

(iv) During any period in which a settlement or award is in operation in respect of the matters covered by such settlement or award

This provision aims to facilitate the process of conciliation or arbitration smoothly. However, a conciliation proceeding before a conciliation officer is no bar to a strike under this section, it is only a conciliation proceeding before a Board mentioned in this Act. In the *Ballarpur Collieries vs. H. Merchant* case¹⁴, the Patna High court held that Section 23 did not apply to the strike declared during the pendency period.

¹³*Mineral Miners' Union v. Kudremukh Iron Ore Core Ltd*, (1989) ILLJ 277 (Kant).

¹⁴ *Ballarpur Collieries vs. H. Merchant*, (1967) IILLJ 201 (Pat).

Illegal Strikes

When a strike is carried out against the orders given by the government violating the prohibition order, the strike will be considered an illegal strike under section 24 of the Industrial disputes acts. Such provision was made so that the strike carried out should have a peaceful atmosphere for the impassionate settlement of any of the disputes.

According to Section 24(1), Strike shall be illegal if it is:

(1) if it is declared or contravenes section 22

(2) Commenced and contravened section 23

(3) Continued in contravention of an order made by the appropriate Government under section 10(3) or sub-section (4-A) of section 10-A of the Act

Maharashtra General Kamgar Union v/s Balkrishna Pen P. Ltd,¹⁵ it was held when a strike is commenced before the expiry of 14 days' notice, it will be illegal, but only for the unexpired notice period, and thereafter, the strike would be legal.

Penalties for illegal strikes

If a strike is illegal, the party guilty of the illegality is liable to punishment under Section 26 of the Act.

Section 26(1) prescribes a penalty which can be imposed on any worker who commences, continues, or otherwise acts in furtherance of a strike that is illegal under this act. Thus to penalize a workmen under Section 26(1), two conditions must be fulfilled, namely,- (1) A worker must commence, continue, or in some other manner act in furtherance of a strike and

(2) Such strike must be illegal under the act. Any worker found guilty of participating in an illegal strike shall be punishable with imprisonment of a term which may extend to one month or with a maximum fine of rupees fifty or with both.

¹⁵ Maharashtra General Kamgar Union v/s Balkrishna Pen P. Ltd, (1989) 1 LLJ 319 (Bom)

In case of an illegal strike the guilty party has to undergo punishment. A distinction is made between illegal but justified strikes and legal but unjustified strikes.

In the case of *India General Navigation*¹⁶, the court held that the question of justified or unjustified is to be acknowledged in legal strikes only. Only in the case of the legal and justified strike are the workers entitled to wages.

In the case of *Crompton Greaves ltd v. Workmen*¹⁷, apart from reiterating what was held in the *India General Navigation* case, the court held that the strike should not be considered unjustified unless the reasons for the strike are entirely unreasonable.

*Bank of India v/s T. S. Kelewala*¹⁸ The Supreme Court held that where the contract or standing orders or the service rules/regulations are silent on the issue of workers' entitlement to wages during the strike period, the management has the power to deduct wages for absence of duty when the absence is concerted action on the part of the employees and the absence is not disputed, irrespective of the fact whether the strike was legal or illegal.

Impact of illegal strikes

1. If the strike is illegal, the workmen are not entitled to wages or compensation and they are also liable to punishment by way of discharge or dismissal

In the case of *Punjab National Bank v. Their Employees*¹⁹, the court held that the employer may adopt legitimate and effective methods in order to stop the entry of employees into the premises, or force them to vacate it, if they are taking part in the illegal strike. The authorities may also begin an enquiry or suspend the wrong doers based on the provisions in the Act.

2. The effect of illegal strike is the workman cannot claim wages for that period.

In the case of *Crompton Greaves ltd v. Workmen*²⁰, The Supreme Court has observed that it is well settled that in order to entitle the workmen to wages for the period of the strike, the strike should be legal as well as justified.

¹⁶ *India General Navigation v. Workmen*, A.I.R 1960 S.C. 219 (India).

¹⁷ *Crompton Greaves ltd v. Workmen*, A.I.R 1978 SC 1489 (India)

¹⁸ *Bank of India v. T. S. Kelewala*, (1990) 3 SCR 214 (India).

¹⁹ *Punjab National Bank v. Their Employees*, A.I.R 1960 SC 160 (India)

²⁰ *Crompton Greaves ltd v. Workmen*, A.I.R 1978 SC 1489 (India).

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In *Syndicate Bank vs. K. Umesh Nayak*²², the Supreme Court, held that "to be entitled to wages for the strike period, the strike has to be both legal and justified."

Conclusion

The labour law objectives are for the welfare of the workers. Strikes can only be resorted when no means are available or the available means have failed to resort it. Strikes are the legitimate resort the employees can turn to when any issues arise, guaranteed it does not result in violence or destruction. Strikes may be justified, unjustified, legal or illegal, it depends on the circumstances of the case. Strikes are the signal of power from the employers to the unions. The employer has the right to retrench the worker but the right to not come to the place of work is with the union. Some union also use strikes to unite its members and send a strong signal to the management. Also, strikes are used to regain any lost support of the workers. The evolution of trade union which helps to keep check on possible exploitation by the employers on the workers, strikes are regarded as important framework to help the workers against misuse of their vulnerability.

Suggestion

We need to realise that laws are ultimately made for our betterment and it would be much better if we regulate things willingly and not forcefully. There must be cooperation and understanding between the employers and employees. The employers must have empathy towards the genuine needs of the employees, such that no strike ever occur. The effort to improve the relationship is on both sides employees and employers so that they live with peace and harmony.

²¹ *Bank of India v. T. S. Kelewala*, (1990) 3 SCR 214 (India).

²² *Syndicate Bank and Ors. v. K. Umesh Nayak*, A.I.R (1995) SC 319 (India).