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# THE CONCEPT AND LEGAL FRAMEWORK OF STRIKES IN INDIAN LABOUR LAW

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## ABSTRACT

Each and every Person has the right to live a life that fulfils their basic necessary requirements, and if they are deprived of these, then they should have the right to obtain them. Labourers are the most exploited class who are harassed and are sometimes forced to work as beggars (without wages or salaries); even if they are paid their wages, then it is inadequate. At this point, the only option left for them is strikes, which is a more often and peaceful way to protest and demonstrate their needs and demands. The complex phenomenon of strikes involves countless legal, economic, social, and political dimensions in the Indian system of industrial relations. This holistic research undertakes an analysis of strikes as a complex socio-economic phenomenon, not just the 'usage' of work stoppages, but as advanced expressions of collective self-initiative of workers, power struggle within organizations, and change of social structure. Although sometimes the way the strike took place became a negative tactic to manifest the demands and needs, it took a very ugly turn and became more and more in violent form and instead of fulfilment of their needs, they get suppressed by the police force or removed from the factories. The Indian Labour Law Strikes is an analysis of its legal, historical, economic, and social contexts and examines the complex frameworks as well as the historical and socio-economic factors that affect industrial relations while focusing on the legal nuances of strikes. The study delves deeply into the conceptual basis, legal outlines, and the current issues surrounding strikes, providing a detailed analysis of strikes as an utmost tool of social communication and workforce representation.

**Keywords:** Labour Law, Strikes, exploited, industrial relations, beggars, legal, economic, social, and political dimension.

## INTRODUCTION

According to **Section 2(q) of the Industrial Disputes Act, 1947**, the word 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*”. It means the workers, because of the conditions of the work, wages, terms of employment, or other policies, refuse collectively to work in the factory until their grievances are addressed and their demands for either better wages or conditions are not fulfilled and receive the compensation or any other relief arising out of that grievance.

The right to strike is indeed an ultimate weapon if utilised as per the law, rules, and regulations mentioned in the specific statutes. It creates pressure on the employer to provide them with better and sustaining conditions and adequate wages to achieve the basic needs of life. In countries like India, where a mixed economy prevails with more power in the hands of the capitalist class whose main objective is profit earning and not the social welfare which is the objective of the socialist class and they have a very little say in the above scenario makes the strikes frequently used yet powerful way to make the employer to agree on their terms.

If the workers have been given rights like the right to form associations and collective bargaining, then denial of the Right to strike will make the above rights as a toothless tiger. The foremost objective of forming the association is the protecting of the interest and the needs of the workers and to represent them, if the right to demonstrate through strikes were not allowed then the formation of associations were also useless. Refusal of such rights means more exploitation of the labourers and workers in the form of forced labour, beggar, or working according to the arbitrary will of the employer, and depriving them with their freedom from such exploitation. However, its nature and importance are subject to variations according to the place and how it has been used in a particular industry. Like if it is used as a general protest or used to organise the industry or as a political or economic manifestation, or as a part of collective bargaining. The **International Labour Organisation** also adopted a resolution on contending the same on **January 28, 1993**.

## ESSENTIAL REQUIREMENTS OF STRIKES

There must be some necessary conditions that need to be present to constitute a strike. These

are:

- Firstly, there must be a cessation or stoppage of work by the workers, which must be voluntary and temporary in nature. It is the most important requirement for a strike to take place.
- Secondly, the strike must take place due to a common consensus and acceptance, which implies a shared understanding between the workers and a unified view.
- Furthermore, the strike must arise out due to an industrial dispute, which is defined in **Section 2(k) of the Industrial Disputes Act, 1947** as, "*any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person*".
- In addition to it, the dispute must be substantial and real and must be continued till the grievances are solved.
- Lastly, the person who is initiating or taking part in the strike must be employed in the industry in respect to which dispute has taken place.

If all the mentioned essentials are fulfilled, then only it will be considered as a strike according to **Section 2(q) of the Industrial Disputes Act, 1947**, and will be dealt according to the provisions of the said Act.

### **IS A STRIKE A FUNDAMENTAL RIGHT?**

It is a very important question as it can solve many disputes and queries emerging between an employer and worker as more often this right to strike is misused by the workers to intimidate the employers so that they will make the latter to manipulate the rules or regulation according to their demands and requirements. Before finding the answer to the same, let's check **Article 19 of The Indian Constitution**, which states that;

*(1) All citizens shall have the right—*

*(a) to freedom of speech and expression;*

*(b) to assemble peaceably and without arms;*

*(c) to form associations or unions or co-operative societies;*

*(d) to move freely throughout the territory of India;*

*(e) to reside and settle in any part of the territory of India;*

*(g) to practise any profession, or to carry on any occupation, trade, or business.*

Although the Constitution guarantees the right to form associations and union under **Article 19(1)(c)**, the right to freedom of speech and expression under **Article 19(1)(a)**, and the right to assemble peacefully under **Article 19(1)(b)** but organising a strike is not a fundamental right under The Indian Constitution.

However, it is a **legal right** and is sometimes considered a **statutory right** under certain laws with certain guidelines and restrictions, such as, Industrial Dispute Act, which deals with the provisions of strikes and also puts the general prohibitions and penalties on the same, which we will discuss further in the article.

There are certain Case Laws that also upheld the above-mentioned arguments. They are:

***1. Kameshwar Prasad v. State of Bihar<sup>1</sup>:***

The Supreme Court explained that workers do not have an absolute right to strike. In addition, there is a prohibition on strikes in the Conduct Rules for Government Employees of Tamil Nadu, 1973. So, in short, there is no moral or legal right to go on strike.

***2. T.K. Rangarajan v. Government of Tamil Nadu<sup>2</sup>:***

The Supreme Court ruled that the employees do not have an absolute right to go on strike as there is a prohibition under the Conduct Rules for Government Employees of Tamil Nadu, 1973.

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<sup>1</sup> AIR 1962 SC 1166

<sup>2</sup> (2003) 6 SCC 581

### 3. *Delhi Police v. Union of India*<sup>3</sup>:

The Supreme Court Limited the right to free association by non-gazetted ranks of the police after the Police Force (Restriction of Rights) Act, 1966, and the subsequent amendments marked by the Rules Amendment Rules of 1970 came into force.

It has been elaborated in industrial laws that the right to strike is not a basic freedom granted to any individual. The government authorities and judiciary have curbed this right repeatedly for services deemed vital like law enforcement, medical services, and civil services.

#### TYPES OF STRIKES

There are various types of Strikes depending upon the nature, reason, types of industry, gravity, and the method chosen by the workers to demonstrate their needs and demands. These are:

- 1) **General Strike:** In a general strike, 'workers perfect an understanding amongst themselves, causing a standstill at their place of employment, creating havoc for the employer.' Such strikes in Labour Law are often seen when there is a need to improve economic concerns like wages, bonuses, leaves, holidays, etc. Typically seen in the Railways, Post and Telegraph Department, and general government employees tend to indulge in these kinds of strikes.
- 2) **Mass Casual Leave:** Mass casual leave is another technique that could be seen as a workers' grievance. With this technique, each and every employee absence themselves from their workplace on the same day, which violates their contract. Employees can take leave but following the set policy; however, workers resort to mass casual leave as a means to force management to address their demands and sit on the negotiation table.
- 3) **Stay in, Sit Down, Pen Down Strikes:** In this type of strikes, workers come to the workplace but do not perform any productive work—neither do they leave the workplace. The legal aspect of this becomes tricky when they refuse to leave the place—they have locked themselves in the area. This can be viewed as a type of crime, that is, civil trespass.

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<sup>3</sup> 1987 AIR 379

- 4) **Go-Slow:** This is a strike of workers who, while staying within their workplace, reduce the rate at which they carry out work. This can be categorized as a type of deception.
- 5) **Token Strike:** The grievances of the workers are addressed in token strikes, which are symbolic. These strikes usually last no more than a few days.
- 6) **Lightning or Quick Strikes:** As implied in the description, a flash or quick type of strike occurs immediately, without prior notice. As the name suggests, the ones with lightning speed.
- 7) **Sympathetic Strikes:** As a show of solidarity with other union members already on strike with the management, these are organized sympathetic strikes. The intention of sympathetic strikes is not to air one's grievances. Rather, they are done to support other unions fighting on behalf of a different cause.
- 8) **Hunger Strike:** Ceasing work as a protesting measure by refusing to eat turns out to be a hunger strike. A famous hunger strike was led by Mahatma Gandhi for the noble goal of truth, known as 'satyagrah.' Otherwise, the goal of other workers' hunger strikes is mainly to achieve financial goals.
- 9) **Work-to-Rule Strike:** This is a relatively new form of a strike in Labour Law, which is used by disgruntled workers in an attempt to capitalize on gaps in the policies that govern their employment conditions, often referred to as a work-to-rule strike. In this work-to-rule strike, workers who are on strike follow every procedure to the letter to render the service in a manner that disrupts the public.
- 10) **Mass Resignations:** Another example of a mass strike is when all the employees within a certain sector or branch of an industry resign collectively.
- 11) **Gherao:** originating from restricting someone's movement, which needs further explanation as capturing a target physically prevents them from moving actively. In essence, gherao means physically surrounding a specific target of a certain manager or managing director or even some member from the management. While performing gherao, the surrounded workers block the target, who is either bound to stay at a certain location or move freely, such as a workshop or a factory.

**12) Economic Strike:** This type of strike happens when there are economic demands of the workers like proper and adequate wages, increments, and allowances.

## **STRIKES UNDER INDUSTRIAL DISPUTE ACT, 1947**

**Chapter V, Section 22- Section 25** deals with the **strikes and illegal strikes**. We are going to discuss the provisions one by one.

**Section 22** deals with the **Prohibition of strikes:**

*(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.*

**Section 23** deals with the **General prohibition of strikes and lock-outs:**

*- No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-*

*(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]*

*(bb) [ 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]*

*(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.*

**Section 24 deals with the Illegal strikes and lock-outs:**

*(1) A strike or a lock-out shall be illegal if-*

*(i) it is commenced or declared in contravention of section 22 or section 23; or*

*(ii) it is continued in contravention of an order made under sub-section (3) of section 10 [or sub-section (4-A) of section 10-A].*

*(2) Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, [an arbitrator, a] [Labour Court, Tribunal or National Tribunal, the continuance of such strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under sub-section (3) of section 10 [or sub-section (4-A) of section 10-A.*

*(3) A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.*

**Section 25 deals with the Prohibition of financial aid to illegal strikes and lock-outs:**

*- No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.*

These are the provisions that deal with legal and illegal strikes in India. It doesn't prohibit the workers from engaging in strikes to manifest their problems but provides guidelines under which one needs to act and behave so that this peaceful and ultimate weapon doesn't convert into a violent and destructive defence. Even if someone tries to contravene these mentioned provisions, then the Act also inflicts punishments and penalties as mentioned in **Chapter VI** in the following section;

**26. Penalty for illegal strikes and lock-outs.** — *(1) Any workman who commences, continues, or otherwise acts in furtherance of a strike which is illegal under this Act shall be punishable*



*with imprisonment for a term which may extend to one month, or with a fine which may extend to fifty rupees, or with both.*

**27. Penalty for instigation, etc.**—*Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*

**28. Penalty for giving financial aid to illegal strikes and lock-outs.** —*Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to one thousand rupees, or with both.*

## **REASONS BEHIND THE STRIKES**

There were always some reasons or causes that ignited the workers or labourers to step out of their work zone and confront the employer for their misbehave and abuse of their powers. These reasons are as follows:

**Economic Causes:** The first and most important reason is Economic issues, which include the following points such as; low and Inadequate Wages, bonuses and allowances, Retrenchment by the employer, Unbearable working conditions, Issues related to working conditions, and Inconsistent terms of employment. These are certain reasons that affect the workers and lead them to dispute with their employer and other workers.

**Managerial Causes:** Sometimes, management is at fault in managing and supervising workers, like unfair labour practices, not recognizing and enforcing the Trade Unions or the provisions of Collective Bargaining, defective recruitment and other welfare and beneficiary policies, and misconduct and the abuse of powers by the officials.

**Political Causes:** We are well aware that political parties play a very important role in governing the country, and for that, they require votes, and they use to play their tactics by gaining sympathy from the distressed and distended workers by providing them with their support and in return asked for the favour of the votes. All the Labour or Trade Union were somehow connected with any of the political parties and mutually support and corporate each

other. Sometimes, these strikes are politically motivated and not for real and substantial grievances.

**Other Causes:** Harassment and exploitation at the workplace, bullying, discrimination, and unethical behaviour are also some of the reasons for the increasing number of strikes.

## **INSTANCES OF THE STRIKES IN INDIA**

### **1. The Great Indian Railway Strike (1974)**

The Great Indian Railway Strike in 1974 signifies a prominent labour escalation in Indian history, spearheaded by George Fernandes of All India Railwaymen's Federation (AIRF). Over one and a half million railway employees participated to demand improved wages, increased bonuses, and better working conditions. After declaring the strike illegal, the Indira Gandhi government initiated large-scale arrests and faced violent conflicts with the police, resulting in the dismissal of thousands of railway workers. Although the government repressed the strike after 20 days, it profoundly changed the perception of workers' rights, leading to subsequent negotiations for wages and other welfare reforms in the railway industry.

### **2. Bombay Textile Strike (1982)**

The 1982 Bombay Textile Strike, also known as the Datta Samant led strike, saw participation from over two hundred and fifty thousand textile workers from more than fifty textile mills in Mumbai. The workers opposed the refusal of mill owners to recognize the independent trade unions alongside poor working conditions and wages. The non-stop and unresolved worker agitation led to the closure of several mills, with many textile workers succumbing to unemployment and informal work. The failed outcome of the strike marked the downfall of Mumbai's textile industry and the end of sustained large-scale industrial strikes.

### **3. All India Bank Strike (2020)**

The All-India Bank Strike of 2020 was a concerted action from January 31 to February 1, 2020, whereby approximately half a million bank employees participated in a strike opposing the Indian government's policy of privatizing public sector banks and amalgamating certain public sector banks. The event caused widespread disruption of ATM and banking services across the country. The government proceeded with its banking reforms, including the privatization of

state-run banks, which negated the purpose of the strike, and in general, the strike achieved very little. Nonetheless, the protest did underline the power of bank trade unions in opposing privatization policies.

#### **4. General Strike Against Farm Laws (2020-21)**

The General Strike Against Farm Laws (2020-21), regarded as one of the largest protest movements in the history of India, rallied millions of farmers from all over the nation to challenge three agrarian legislations put forth by the central government. Predominantly, farmers from Punjab, Haryana, and Uttar Pradesh believed that these laws would lead to the abolishment of Minimum Support Price (MSP) and invite corporate takeover of the agriculture sector. The protests consisted of the Delhi Chalo movement, Bharat Bandh, and the tractor rally on Republic Day. After a year of uninterrupted protests and several clashes with law enforcement, the government agreed to retract the laws.

#### **5. Kingfisher Airlines Strike (2012-2013)**

The Kingfisher Airlines Strike (2012-2013) was a major labor dispute triggered by the non-payment of salaries for over six months to employees of Kingfisher Airlines, which was facing a severe financial crisis. Protests intensified as the company failed to pay wages while accumulating over ₹7,000 crore in debt. The airline's operating license was suspended in October 2012, and by 2014, it had permanently shut down. The strike highlighted mismanagement and financial irregularities by Vijay Mallya, who later fled to the UK in 2016, facing legal proceedings for unpaid loans.

### **IMPORTANT CASE LAWS**

#### ***All India Bank Employees' Association v. National Industrial Tribunal*<sup>4</sup>**

The Supreme Court held that while it is within the constitutional rights of employees to establish unions under Article 19(1)(c), such rights do not encompass an unqualified right to strike. Furthermore, the Court also stated that the government is allowed to place reasonable restrictions on strikes, particularly within banks, which must be continuously operational for

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<sup>4</sup> 1962 AIR 171

the economy. There is no other employment relationship than that of unionization — that is a basic right granted — but to strike is an option that is restrained by law.

***Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union***<sup>5</sup>

The Supreme Court held that all workers of Bharat Petroleum must observe the regulations outlined within the Industrial Disputes Act of 1947, as the entire strike would be considered unlawful. In this particular situation, the workers of Bharat Petroleum went on strike, but in this instance, the legal prerequisite was completely ignored. The Court further stated that notice must be given before action is taken, which makes it possible for employers to act in defense of their interests. This ruling should support discipline in the imposition of law, no matter whether labor peaceful or otherwise.

***Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha***<sup>6</sup>

In this ruling, the Supreme Court analyzed if the matter of a strike could be adjudged legal or illegal depending on the situation at hand. If a wage-enhancing strike offers some want like restriction activities with service lawfully follow, then they certainly can expect it to be legal. To the extent considered necessary by law without requisition provisions, all other omissions grant the opposite side controls situations considered highly reasonable to operate in surrounding contrary – far to him ugly if surrounded. This emphasized wanting.

***Bank of India v. T.S. Kelawala***<sup>7</sup>

The Supreme Court held that employers have the right to withhold wages for the duration of a strike, even if it is not formally classified as illegal. The ruling supports that all strikes under “no work, no pay” applies to strikes.

***Crompton Greaves Ltd. v. Workmen***<sup>8</sup>

In this matter, the Supreme Court decided that taking part in an unlawful strike gives just cause for dismissal, albeit an equitable sanction must be applied. This was a case where employees

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<sup>5</sup> 1999 (1) LLJ 1161 SC

<sup>6</sup> 1980 AIR 1896

<sup>7</sup> (1990) 4 SCC 744

<sup>8</sup> 1978 AIR 1489

performed a work stoppage with no legal framework and subsequently were dismissed from work. The Court decided that it is within the employer's rights to act against unlawful strikes, but the discipline cannot be overly severe. This case upheld the growing jurisprudence on the principle of disproportionality in labor relations.

## **CONSEQUENCES OF THE STRIKES**

If there is a fire, there is smoke; similarly, if strikes are happening, then again, the result, whether good or bad, proper or improper, appropriate or not, has to be faced by the workers, industry, and other people associated with it.

The major consequences faced by them are:

Firstly, the industry faces a major breakdown due to the strikes, as the production goes slow, which affects the sale and profit ratio of the industry, making it weak, and this ultimately leads to losses and bankruptcy. Even the employees face economic collapse as they are also not able to get their wages.

In addition to this, Loss of wages and livelihood curtail the standard of living of the working class. Their consumption, expenses, and way of surviving were get affected by this. Similarly, employers were also affected by this as their production and profit both faced a downfall.

Furthermore, if the strikes are illegally commenced and continued and without the fulfilment of the provisions mentioned in the Act, then it will lead to legal consequences such as, fine, imprisonment, or both. It will also be applied to those who are aiding or instigating the same.

Lastly, the consumers were also the victim of these strikes as they were not able to receive the goods and services timely and affordably. There is also a threat to public peace, law and order, and security, as sometimes these strikes take a violent form.

All in over, the growth and development of the economy are also going to be hindered because the contribution of industries in the economy is very significant, and if there is any problem that happens in the industrial sector, then it will sabotage the entire economy of the nation.

## **CONCLUSION**

In shaping industrial relations and labor rights in India, strikes have had and still have an

impact. Although not a fundamental right, the right to strike is recognized as a legitimate means through which workers can raise issues. Nonetheless, a number of Supreme Court decisions state that strikes must follow certain procedures, such as providing notice in accordance with the Industrial Disputes Act of 1947. Unauthorized or illegal strikes, especially in crucial services, invite disciplinary measures, dismissal from work, or salary cuts.

Numerous Cases reaffirm that while workers have collective bargaining rights, the maintenance of industrial calmness and the welfare of the public take precedence.

It is welcoming to note that there has been a change in the labor policies of the banking sector, transport, and even government in recent years, as there seems to be an inclination towards dialogue rather than confrontation. While strikes are still an important aspect of labor movements, their effectiveness is largely contingent upon adept coordination, public sentiment, and legislative endorsement. As such, remaining deftly within boundaries of workers' rights and economic viability, strikes, as part of protests, should be balanced in order to be reasonable and constructive.

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