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KEY WORDS:

A CRITICAL MONOGRAPH ON RIGHT OF WORKMEN TO STRIKE IN INDIA

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ABSTRACT

Strike is valuable weapon of workmen in the process of collective bargaining process. Historically, workmen have attained valuable rights and humane working conditions resorting to strike. Right to withdraw one's labour is globally recognized. Strike, on the other hand, has some negative consequences for all concerned parties, such as loss of production, unemployment and deprivation of goods and services to general public. The right to strike is, therefore, regulated by legislature and judiciary. The present paper is intended to critically analyze the restrictions on right to strike under labour legislation in India. A brief overview of right to strike in general has also been presented.

INTRODUCTION

Industry may, by analogy, be compared to bicycle of which capital and labour are two wheels. Just as a bicycle cannot be contemplated without either of wheels so industry cannot be contemplated without capital and labour. In a real world, majority employers wish to make maximum profit and labour wants to secure working conditions to its best advantage. Therefore, interests of workmen and employers often conflict with each other resulting in industrial disputes. Even though, employers may have legitimate grievances against workmen, more often victims of violation of rights are workmen because they are weaker party in contract of employment with resourceful employers. Mahatma Gandhi, father of nation, applied principles of truth, non-violence and non-cooperation in industrial sphere. Gandhi believed that workmen should exhaust all methods of peaceful and honorable methods of settlement of industrial disputes before resorting to the extreme action of strike. Subject to these restrictions Mahatma Gandhi recognized strike as "inherent right of workmen for the purpose of securing justice".[1] The view of Father of Nation is at the core of Industrial Jurisprudence in India.

Since individual workman cannot effectively bargain with employer, mainly due to his need of work for survival, workmen organize in trade unions for collective bargaining. Collective bargaining is a process whereby workers seek to have better terms of employment and living conditions and their legitimate right in fruits of their labour. Strike is a weapon of workmen in the process of collective bargaining with employer as Lockout is a weapon of employer. Strike is "withholding of labour by workers in order to get better working conditions or work stoppage caused by mass refusal by employees to work" which "takes place in response to employee's grievances".[2] Industrial Relations Code, 2020 defines Strike as cessation of work by body of persons employed in any industry acting in combination, or a concerted refusal or refusal under common understanding . It Includes concerted casual leave by more than fifty percent of workmen.[3] Trade Union movement arose in circumstances when individual worker had no power to bargain with his employer. A Trade Union, having substantial number of workmen, is in a better condition to bargain with employer. This bargaining power will be substantially reduced if workers do not have right to demonstrate. Since strike is one of different forms of demonstration, complete prohibition of strike will violate fundamental rights of workmen.[4] If, the relationship between employer and workman is purely contractual in nature, workman is, in all probability, likely to be exploited in the sense of deprivation of justifiable right to decent standard of living and working conditions. In the process of collective bargaining, if workmen are totally deprived of right to strike, they will have very little power to enforce their legitimate demands against employer. On the other hand, strike costs heavily to general public, sometimes putting normal life of community to a halt. The rights of workers, therefore, have to be reconciled with rights of members of society. The questions whether working class should have Right to strike is especially relevant in the age of Globalization because their rights are more likely to be abridged in the name of free trade and privatization.[5] In order to attract foreign investment and ease the doing of business Governments tend to tilt the balance of labour relations policies in favor of employers.

Right to Strike Whether a Human Right?

Human rights are rights inherent in every person merely because he is a human being. When a right has been recognized as a human right, each state and its instrumentalities are expected to honor such a right and not to violate it by any act or omission. One of the key questions of labour law is whether workmen have "human right" to strike. International conventions and declarations have avoided express mention of the term "right to strike". However, right to Strike has been described as "intrinsic corollary of fundamental right of freedom of association".[6] Universal Declaration of Human Rights, 1948 mentions right to work, just and favorable conditions of work, equal pay for equal work, just and favorable remuneration as human rights. It further recognizes right to form and join trade unions for the fulfillment of these rights.[7] Article 11 of the European Convention on Human Rights declares right to freedom of association and clarifies that restrictions on this right can be imposed only upon grounds which are necessary in a democratic society.[8] Thus, right to form trade unions and freedom of association are clearly mentioned in international human rights conventions but right to strike as such has not been expressly stated. One of the possible reasons for avoidance of express terminology in international conventions may be that right to strike may, in some cases, conflict with other human rights of general public. For example, if armed forces or fire services are allowed to go to strike, right to life and property of public will be at great risk. Therefore, right to strike is regulated by law.

Right to Strike Whether Fundamental Right?

Part III of the Constitution of India, enumerates several rights as fundamental rights. Citizens of India, and in some cases even non- citizens can invoke these rights against violation of these rights by "State" as defined in Article 12 of the constitution of India. "Right to Strike" has not been expressly mentioned in the chapter of Constitution related to fundamental rights. So, the question arises, whether the right is implied from other provisions of Part III of the Constitution.

In All India Bank Employee's Association v. National Industrial Tribunal,[9] Supreme Court of India held that industrial legislation may restrict right to strike and validity of such legislation shall not be tested on the criteria laid down in Article 19(4), but on totally different considerations.

In Kameshwar Prasad v. State of Bihar[10] Seven Judge Bench of Supreme Court while upholding right to demonstrate peacefully, unless such demonstration is noisy and unruly, as

Constitutional Right held that Right to Strike is not a Constitutional Right. In Gujrat Steel Tubes Ltd v. Gujrat Steel Tubes Mazdoor Sabha,[11] Supreme Court of India interpreted the right to strike from the point of view of social justice. In his judgement, Justice Krishnaiyer held that right to strike is a part of collective bargaining and it is only subject to "Legality and humanity of the situation". The court, however, clarified that striking workmen, in the name of collective bargaining, cannot hold the society at ransom and they are required to "obey civilised norms in the battle".[12] In the age of privatization and globalization, Supreme Court of India has taken harsher view on right to strike, especially with reference to Government employees. In T. K Rangarajan v State of Tamil Nadu,[13] while dealing with an extraordinary situation of dismissal of two lakh Government Employees by the Government of Tamil Nadu, Supreme Court reiterated that there is no fundamental, legal or even moral right to strike. The Court opined that strike results in disruption of essential services such as education, medicine and transport and create bitterness in the mind of society towards those on strike.[14] Courts in India have deprecated strike in industries due to enormous cost which it inflicts, not only to parties but also to society in general. In Management of Sny Infotech v. Inspector of Police,[15] Madras High Court observed that financial loss is only one aspect of various losses caused by strike in an industry. Strike effects goodwill of the industry and employers have to take steps to remedy effects to strike. When the production stops, market may go into the hands of rival concern.

Thus, we see, that in earlier cases, Supreme Court of India, having regard to considerations of social justice, has shown more liberal attitude towards right to strike. The decisions, especially those after the era of liberalization, depict Court's strict reservations towards right to strike and the right has never been implied as a corollary of as a Constitutional or Fundamental Right by the Supreme Court of India.

Statutory Regulation of Right to Strike

In India, Trade Unions Act, 1926, for the first time provided legitimacy to certain activities of trade unions registered under the act which would have been crime or civil wrong in the absence of legal immunities provided under the Act. The obvious condition was that activities must have been carried out in pursuance of "trade disputes".[16] Industrial Dispute Act, 1947, now repealed by Industrial Relations Code, 2020 had been enacted to regulate the process of collective bargaining. Industrial Disputes Act, 1947 laid down elaborate provisions related to Conciliation, Arbitration, Adjudication and Settlement of Industrial Disputes. The intention behind these provisions was to avoid Strikes and Lockout as far as possible and to resolve dispute, if possible, by non-adjudication settlement, or through adjudication by Labour Courts and Tribunals. Strikes are not banned even in public utility services. Thus, there can be no doubt that "the act recognizes strike as a legitimate weapon in the matter of industrial relations".[17] In the interest of society, the Act laid down restrictions on the exercise of right to Strike as well as Lockout. The restrictions are laid down by appropriate Government who represents the interest of society in general.[18] The Act prohibits strike in public utility services without issuing notice.[19] In general, strike is prohibited during pendency of proceedings before the adjudicatory and non-adjudicatory authority to which the dispute has been referred by the appropriate government[20]

In Rohtas Industries Ltd. v. Rohtas Industries Staff Union,[21] Supreme Court of India held that illegal strike is a creation of statute and any remedy against strike lies only within four walls of statute. Thus, the decision of arbitrators which made workmen liable for damages to employers for conducing strike which was illegal in their view was held illegal and erroneous in law. While holding so, Apex Court observed that Common Law tort of conspiracy evolved in England when laissaiz faire was common and pre-dominant political philosophy and the same cannot be extended to modern welfare state like India.

Recently enacted Industrial Relations Code, 2020, has further strengthened and extended the restrictions on Right to Strike of workers. The Code has extended the requirement of notice period to all industries whether they are public utility services or not. Further, the period of notice has been extended to sixty days. It is worth notice that Standing Committee of Lok Sabha in its report on Industrial Relations Bill, 2019 had opposed the idea of extending the requirement of notice to units other than public utility services.[22]

The Question of "Justification" of Strike

Strike is commonly classified as legal and illegal. Another classification of strike is from the point of view of justification of strike. Workers are, generally, entitled to wages during strike period if strike is justified i.e. there are reasonable grounds for workers to resort to strike. The question whether strike is justified or not is a question of fact to be decided by court Supreme Court of India has observed that merely because a party to industrial dispute has superior power, it does not justify its action to resort to strike or lockout[23] Where workmen, immediately after the failure of conciliation proceedings gave notice of strike, and actually went to strike, without waiting for Government to make reference to Industrial Tribunal, Strike was held by Supreme Court to be wholly unjustified depriving workmen from of wages during the period of strike.[24] In other case, where the evidence produced by management proved use of violence by striking workmen and management was always ready for conciliation, Supreme Court held that strike was unjustified and workmen are not entitled to wages for the period of strike.[25]

CONCLUSION

It is often argued that in a democratic country disputes should be settled by having resort to legitimate institutions created by legislature. The argument is not without merit but there may be circumstances when legitimate rights of workers may not be addressed by adjudicatory or non -adjudicatory mechanism provided by law. In order to address such situations, wholesale prohibition on strike should not be imposed, though it may be reasonably regulated by law. It is further submitted that restrictions on right to strike imposed by Industrial Relations Act, 2020 have made the exercise of right to strike much more difficult that under previous law.

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