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Right to Strike: Comparative Study of strike under the IR Code, 2020 and ID Act, 1947

Dr. Harsha Suryawanshi
Asso. Prof., Shri Shivaji Law College, Parbhani

***Abstract*-- Strike is not only weapon but is the last form of expression of workers against employers. Employer and employee are two swords in one sheath, who cannot live together or leave each other without friction. Employer and employee have common but conflicting interests against each other having modes and modalities to coerce each other one important is lockout and strike respectively. Strike, legally is stoppage of work but otherwise it is manifestation of labour grievances, expectations. Strike under the Industrial Disputes Act is cessation of work by body of persons under common understanding. The Industrial Relations Code, 2020 which repealed the ID Act, 1947 improvised the definition of strike and now common leave by employees might also amount to strike. However, dichotomy of whether strike is right of workers or not remains still uncertain.**

***Keywords*--Strike, Right, Employee, Employer, work**

I. Introduction

Employer-employee relationship is multi-faceted having diverse approaches, economically, fiscal interest of both, politically it is matter of ideology, socially it impacts its basic unit that is family, legally it is breach of contract, psychologically it drains off grievances of workers, etc. Employer and employee have common and conflicting issues and one of it is strike. In legal sense, strike is cessation of work by body of persons employed in industry attributable to employment. Strike has many forms such as hunger strike, go-slow strike, sympathetic strike, lightening strike, work-to-rule strike, etc. having same intention, to seek attention to the grievances of labour. Strike is age old weapon used by body of persons for common goals showing power of unity. Indian economy is pillared on agriculture primarily and on industry secondly, any unrest in industry might affect the economy and hence strike is very sensitive issue in this regard also. Hence, legal recognition and regulation of strike is necessary. Present research work is aimed to study the action of strike as a right, its effect and its transformation post IR Code, 2020 compared to the ID Act, 1947.

II. Research Problem

Strike is cessation of work temporarily by body of persons. Strength of employer is in his prerogative to terminate employment of employees while strength of employees in in their unity. Strike is unified activity of stoppage of work by group of employees for common purpose but to lodge strike is merely a statutory right subject to compliance of conditions by employees. Strike may be justified but due to technical reasons, it becomes illegal culminating into disciplinary action against employees. Again, strike causes loss of wages as 'no work no pay' is recognized principle of industrial jurisprudence. Hence, the workers are reluctant in lodging strike. The workers had option to go on concerted leave in stead of strike but the new definition includes concerted leave by fifty percent or more employees in the concept of strike. In contemplation of this, the present research has following problem, 'Whether the new IR Code, 2020 intends to prohibit strike from the labour world or make the statutory right of strike defunct or this weapon as blunt?'

III. Aims And Objectives Of Study

Present research work intends to have following aims and objectives-

1. To study the action of strike as right;
2. To study the revised concept of strike under the IR Code, 2020;
3. To analyze the altered structure of strike in contemplation of changed labour form;
4. To scrutinize strike before IR Code, 2020

IV. Hypothesis

Journey of research commences with certain assumptions that is hypotheses. Present research work is also an attempt to unearth the world of unorganized workers who are far away from the theory of rights of employees and their inability to understand these rights and combat for the rights.

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The assumption behind this research is,

H1- Weapon of strike has become blunt in view of changed labour structure and law;

H2- The provisions of strike are indicative of theory of liberty that is 'laissez faire'

V. Research Methodology

Present research is based on secondary data of statutes, judicial decisions, scholarly articles, blogs, etc. Present research is comparative study of law of strike before the IR Code, 2020 and after it. Doctrinal research methodology is being used for this research and involves study of various principles, theories, doctrines prevalent in industrial jurisprudence.

VI. Strike Under Indian Law

Strike has many forms such as hunger strike, general strike, go-slow strike, sympathetic strike, work to rule strike, pen down or tool down strike, etc. Prior to British era, Indian labour world was mostly scattered in unorganized sector, agriculture being the primary economic institution and all other forms of labour were associated with agriculture. With advent of industrialization and subsequent mechanization, labour got associated and formed very small fraction of organized labour. This happened with origination of industry in India by British. Unequal distribution of land, unavailability of employment and lack of formal education and training resulted in exploitation of workers. The workers were oblivious about their exploitation and consequently resistance to it and hence strike or other forms of combat were strange to them. Organization of labour also gave rise to organized resistance and in the end of nineteenth century Indian industrial world saw turbulence in labour world ensuing series of strikes and lockouts creating industrial unrest. This led the then British government to legislate on industrial relations culminating into the Industrial Disputes Act, 1947. The ID Act, 1947 defines strike and lays down conditions for valid strike in Public Utility Services. The Act differentiated between strike in Public Utility Services and non-Public Utility Services.

VII. Strike And Conditions Of Strike Under The Id Act, 1947

Strike is cessation of by body of persons employed in any industry acting in combination or concerted refusal, or refusal under common understanding of any number of persons who are or have been so employed to continue to work or accept employment.[i1] Plain reading of the definition requires following essentials of strike-

a. Cessation of work
b. By body of persons
c. Under common agenda/Concerted action
d. In industry

a. Cessation of work

Stoppage of work by employees is gist of strike. Cessation of work means abandonment, stoppage, omission of performance of duties, hampering or reducing normal works or discontinuing the employment or breaking their contract of service. It may be temporary but must be voluntary.

Buckingham And Carnatic Company Limited vs. Workers[ii2]

On 1st November 1948, night shift workers of the carding and spinning department of Carnatic mills stopped work; some at 4 p.m. some at 4:30 p.m. and some 5 p.m. Subsequently workers resumed to work one after other and the stoppage of work ended at 8 p.m. in both the departments. By 10 p.m. the strike ended completely. The prima facie reason for strike was that management refused to declare forenoon of 1st November as a holiday due to solar eclipse. On 3rd November the management gave a notice for illegal strike and decided that the workers who had participated in said strike would not be entitled to holidays which pay. Matter was referred to the Industrial Tribunal. The adjudicator gave award to the effect that there was strike and it was illegal since textile industry was notified as a public utility service. However, the adjudicator held that the workers would be deprived of only half their holiday. There was appeal to Labour Appellate Tribunal. It held that what happened on the night of 1st November was not strike. Special leave petition was filed in Supreme Court and it was held that stoppage of work for a period of two to four hours and non-permitted absence from work amounts to strike.

b. Strike must be by body of persons

Stoppage of work by individual worker does not amount to strike, for strike cessation of work must be by body of persons employed in industry. The definition of strike under the Act contemplates engagement of body of persons in strike. Again, the words 'under common understanding' and 'concerted refusal' clarify that stoppage of work by individual worker does not amount to strike. Similarly, stoppage of work by an individual worker does not affect the mighty employer and to use strike as weapon against employer, strength of unity must be manifested.

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c. Concerted action

The cessation of work must be by a body of persons employed in any industry or the cessation must be action in combination. Such cessation of work must be under common understanding that the workers under strike must share common purpose for the strike. Stoppage of work by workers individually does not amount to strike. Again, formal meeting or discussion on mutual consent is not required and common understanding can be shown from similar acts and course of conduct.[iii3]

d. Strike must be in industry

Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman[iv4]. Strike is breach of contract of service by which the employee commits breach of his duty to perform services. To seek relief from action against breach of contract of service, strike must be in industry as defined in the Act.

VIII. Impact Of Strike

Strike may be legal or illegal and may be justified or unjustified, both legal and illegal. Legal strike may be unjustified if workers on strike undertake unfair labour practices while an illegal strike may be justified if the strike has become illegal merely because of technical reasons. Employers have a right to take appropriate disciplinary action against workers participating in illegal strike. Legal unjustified strike and illegal strike do not confer immunity to trade unions or protection to workers.

Bank of India Bombay vs. T.S. Kelawala[v]

The question was whether workman proceeding on strike with the legal or illegal are entitled to wages. In the present case there was wage revision of the bank employees in June 1977. However, in consequent to wage revision unsatisfied employees declared strike. Circular was issued by Bank management on 27th December, 1977 directing the employees not to go on strike. However, the workmen went on strike on 29th December, 1977. A circular was issued by the bank to deduct wages of employees who went on strike on 16th January, 1978. It was held by the court that strike whether legal or illegal the workers are not entitled to receive wages and the basic principle behind this is '*no work no pay*'.

IX. Strike-Fundamental Right?

The question whether strike is fundamental right or not has been in debate in many cases. Article 19(1)(a) guarantees right to freedom of speech and expression to every person. Person may express explicitly or otherwise and the term 'otherwise' is wide enough to umbrella all forms of expressions of human kind. Workers or employees always claim that strike is also form of speech and expression by which they attempt to compel the employers to look at their grievances and redress accordingly while employers consider strike strictly as breach of contract of service. In *CPI vs. Bharat Kumar*[vi] the Supreme Court confirmed the decision of the High Court that 'bundh' by political parties or other organizations are not in the interest of the Nation, but lend to retard the progress of the Nation by leading to national loss of production.

In *Kameshwar Prasad vs. State of Bihar*[vii] constitutional validity of Rule 4-A of Bihar Govt. Servants Conduct, 1956 was challenged which prohibited the government employees from participating in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service." The Court held that the provision is violative of Article 19(1)(a) and (b). "…..demonstration is a visible manifestation of the feelings and sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression because speech need not be vocal since signs made by a dumb person would also be a form of speech and expression…" However, the Court further held that demonstration which is noisy or disorderly for example stone pelting, violent and disorderly is not within the ambit of Article 19(1)(a) and (b). However, the Court refused to hold strike as fundamental right.

X. Strike Under The IR Code, 2020

In literal sense, the definition of strike has not gone radicle changes except with one addition of concerted leave. Strike means cessation of work by body of persons employed in any industry acting in combination, or a concerted refusal or refusal under common understanding of any number of persons employed or have been so employed to continue to work or accept employment and also includes casual leave on a given day by fifty percent or more workers in an industry.[viii5] The definition of strike provided in the IR Code, 2020 is verbatim reproduction of definition in the ID Act, 1947 with addition of prohibition of leave.

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XI. Comparison Of Strike Under The Act And Code

Under the ID Act, strike did not cover action of concerted leave by fifty percent or more employees on given day. By including concerted leave under strike, the Code, 2020 intends to make the provisions more stringent than the Act. Similarly, the Act provided conditions for valid strike for only public utility services[ix6] but the Code does not differentiate between public utility and non-public utility services. This yet again is an attempt to regulate all employees in all sectors for strike, making strike highly impossible for workers in unorganized sector (In India around ninety three percent workers belong to unorganized sector).

XII. Leave And Strike

According to the IR Code, now if fifty percent or more employees go on leave on given day, such leave shall be presumed as strike and not leave. By going on leave, employees have dual purpose, firstly, participating in and strengthening the strike and secondly, escaping from the doctrine of 'no work no pay.' While presumption of casual leave by fifty percent or more workers by the Code might be to deprecate this practice of employees to participate in strike in the guise of leave. This in a way is depriving the right of employees to participate in strike or go on strike and ultimately making the weapon of strike blunt. Denial of right of strike is as good as denial of right to speech and expression.

XIII. ILO On Strike

Right to strike is not explicitly set out in any of the Conventions or Recommendations of ILO. Preamble of the Constitution of ILO declares 'recognition of the principle of freedom of association to be means of improving conditions of labour and of establishing peace.

Declaration of Philadelphia reaffirms that freedom of expression and of association are essential to sustained progress. Workers and employers without distinction whatsoever, shall have a right to establish subject only to rules of the organization of their own choosing without previous authorisation.[x7]

Workers and employers' organization shall have the right to draw up their constitution and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs.[xi8]

Whether strike is right or not was the question before the ILO which was referred to the ICJ for its advice. In its advisory jurisdiction, the ICJ opined that ILO Convention No. 87 does not include definitions of terms 'activities' and 'programs' both of which are referred in Article 3,The ordinary meaning of the term 'activities', which generally encompasses any action taken to pursue an objective, and of the term program', which generally means a set of planned actions pursued to achieve a result, is broad and encompasses the various dimensions of the activities and programs of workers organizations. The term 'strike' generally means an activity consisting of a work stoppage or slowdown wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing or supporting grievances

Thus, on the basis of opinion of ICJ one can conclude that strike is genus of species 'activity' comprising temporary stoppage of work or slowdown wilfully effected by one or more groups of workers to enforce or resist demands or express or support grievances.

XIV. Conclusion

Strike isn't sheer cessation or stoppage of work, it is expression of workers anguish, unrest, unfulfilled demands, fear of future, uncertainty of present and losses in the past. Strike is the threshold of workers patience sometimes. It is point of revolution against exploitation. Strike is said to be weapon in the hands of workers used against employer while converse is about lockout. Making provisions of strike is recognising strike as statutory right but at the same time making the provisions very stringent is equivalent to denial of statutory strike. It is obligatory to control the occurrences of strike or lockout but it does not mean to have absolute control over activities of labour.

[i] S.2(q) Industrial Disputes Act, 1947
[ii] 1953 AIR 47 SC
[iii] Ibid.
[iv] S. 2(j), Industrial Disputes Act, 1947
[v] 1990 SCC (4) 744
[vi] AIR 1998 SC 184
[vii] AIR 1962 SC 1166
[viii] S. 2(zk) IR Code, 2020
[ix] S. 23 ID Act, 1947
[x] Art. 2 Declaration of Philadelphia
[xi] Art. 3 ILO Convention No. 87