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Legal perspectives on right to strike: An appraisal

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The question of legality of strike has always been a matter of debate among people and the public forums. The framers of Constitution, however, have ensured the fundamental freedom of citizens including the rights to dissent and protest at work place. So the right to freedom of speech and expression, right to form association and union, and right to assemble etc. are guaranteed as fundamental rights under Article 19 of Constitution. Strike has always been an effective weapon in the hands of employees during the industrial revolution by mass labour particularly in factories and mines. In most of the countries, the strikes were quickly made illegal. The strike is typically a devise reserved as a threat or last resort during negotiations between the Company and the Union, which may either before or after the contract between union and management expires. The objective of strike, therefore, is to obtain a contract or agreement between the union and the company.

The claim of right to strike to ensure negotiation between the Union and the Company has been. However, rejected by the Supreme Court in '*All India Bank Employees Association-Vs-National Industrial Tribunal*' Case. [1] The Supreme Court has gone a step further in *Rungarajan -Vs- State of Tamil Nadu*' [2] and declared that the government servants have not even the equitable right to strikes. This extreme view taken by the Supreme Court has given rise to strong protest from the trade Union activists and as the right to form an association or union to them is a fundamental right under Article 19 (1)(c) and the right to strike flows from it:—

Article 19(1)- All citizen shall have the right (c) to form an association or unions.

It is often contended on behalf of Union activities that the right of workmen to form unions or associations by sub-clause (c) of clause (1) or Article 19 guarantees and confer upon union so formed, a right to collectively function as an instrument for agitating and negotiating and by collective bargaining to secure and ensure the demand of workman in respect of their wages prospects and conditions of works. The claims raised by them are as follows:-

i. Articles (19) (1) (c) of Constitution guarantees to the citizens in general and to workmen in particular the right to form unions. The expression 'Union' in addition to the word 'association' found in the Article refers to associations formed by workmen for trade union purposes.
ii. The right to form association or union in the sense of forming a body and it as a concomitant right, a guarantee that such union shall achieve the object for which it was formed. If this concomitant right were not conceded, the right guaranteed to form union, would be an idle right and an empty formality lacking all substance. iii. The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers.

The provisions of the Industrial Disputes Act, 1947 empowers the government in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strike or lock-out occurs, to refer the disputes to an impartial tribunal for adjudication with a provision banning and making illegal, strikes or lock-ups during the pendency of the adjudication proceedings. The provision of an alternative to a strike for the sake of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if the same were an effective substitutes. However, the Hon'ble Supreme Court in *Rangarajan -Vs- Tamil Nadu,* [3] has rejected this contention poining out that the right to form union or association guaranteed by labour legislation is not confined to employers. The court held

"Both under the Trade Union Act as well us under the Industrial Disputes Act the expressions union signifies not merely an union of workers but includes also unions of employers. If the fulfillment of every object for which on union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to an union of employers which would result in an absurdity. We are pointing this out not as any conclusive answer, but to indicate that the theory of learned counsel that a right to, form unions guaranteed by Sub-clause (c) of C(I) of Art. (c) carries with it a fundamental right in the union so formed to achieve every objects for which it was formed with the legal consequences, that any legislation not falling within Cl. (4) of Art. 19 which might it any way hamper the fulfillment of those objects, should be declared unconstitutional andvoid under Art. 13 of the constitution. Is not a preposition which could be accepted as correct."

The Court further pointed out that the provision conferring right to form association is not absolute but subject to reasonable restriction under Article 19 (4) and held

"Merely by way of illuslatration we might point out that learned counsel admitted that through the freedom guaranteed to workmen to form labour union carried with it the concomitant right to collective bargaining together with right to strike, still the provision in the industrial Dispute Act forbidding strikes in the protected industries as well as in the event of reference of the dispute to adjudication under C'. 10 of the industrial Disputes Act was conceded to be a reasonable restriction on the right guaranteed by Sub- Cl. (c) of Cl. (1) of Article 19. It would be seen that if the right to strike were by implication a right guaranteed by Sub-Cl.(c) of Cl. (l) of Art. 19 then the restriction on that right in the interests of the general public, viz. national economy while perfectly legitimate if lasted by the criteria in Cl. (6) of Art. 19, might not be capable of being sustained as a reasonable restriction imposed for reason of morality or public order."

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The Supreme Court categorically stated that the right to strike is not a fundamental right, when the issue came before the Court in '*Karneshwar Prasad -Vs- State of Bihar*',[4] in which the constitutional validity of rule 4-A, 371 introduced into *Bihar Government Servants' conduct Rules, 1956*, was challenged. The proviso contained in a notification of the Governor of Bihar. dated: 16.03.1957, reads as follows:

"4 - A, Demonstration and Strikes:- No Government Servant shall participate in any demonstration or resort to any form of strike in connection with any mutter pertaining to his condition of Service.

The provisions of Industrial Disputes Act, 1947 indicate that strike could not be treated as an illegal action. Section 2(2) of the said Act defines the term strike'. It says, "strike" means a "cessation of work by a body of persons employed in any industry acting in combination, or a concerted refused, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment." Whenever the employees want to go on strike, they have to follow the procedure provided by the Act otherwise their strike would be deemed to be an illegal strike. Section 22(1) of the Industrial Disputes Act, 1947 put certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract:

a. without giving to employer notice of strike within six weeks before strike; or
b. within fourteen days of giving such notice: or
c. before the expiry of dates of strike specified in any such notice as aforesaid; or
d. During the pendency of any conciliation proceeding before a conciliation officer and seven days after the conclusion of such proceeding.

It is, thus, obvious from above provisions that these provisions do not prohibit the workmen going on strikes but require them to fulfill certain conditions before going on strike. So the strikes which comply with the said provisions of the Act could not be treated as illegal strike and it in fact recognizes the well accepted principles of human rights. Article 8 (1) (d) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) provides that the States parties to the covenant shall undertake to ensure:

"The right to strike, provided that it is exercised in conformity with the laws of the particular country."

Further, Justice V.R. Krishna lyre has opinioned in *Gujarat Steel Tubes -Vs- Its Mazadoor, Sabha'* [5] that a strike could be legal or illegal and even an illegal strikes could be a justified one and held:

"The right to unionize, the right to strike us part of collective bargain and, subject to the legality und humanity of the situation, the right of the weaker group, viz, labour, to pressure the stronger party, viz., capital, to negotiate and render justice are processes recognized by the industrial jurisprudence and supported by social justices. While society itself in its basic needs of existence, may not be held to ransom in the name of the right of bargain and strikers must obey civilized norms in the battle and not be vulgar or violent handlooms, industry, represented by intransigent managements, may well be made to reel into reason by strike weapon and cannot then sequel or wail and complain of loss of profit or other ill-effects but most negotiate or got a reference made."

Justice Ahmadi also considered in '*B.R. Singh -Vs- Union of India*" [6] strike and held:

"*The right to form association or unions is a fundamental right under Article 19 (1) (c) of the Constitution. Section B of the Trade Union Act provides for registration of a trade union if all the requirements of the said enactments are fulfilled. The right to form associations or unions and provide for their registration was recognized obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade Unionists act mouth piece of laobour."*

Since there is a larger bench decision in "*All India Bank Employees 'Association*", to the effect that strike could not be treated as fundamental right, so if this view expressed by Justice Ahmadi can be treated as the ratio of the decision one can arrive at a conclusion the right to strike is a statutory right or common law right.

Justice Swant considered the reasonability and extent of right to strike in "*Syndicate Bank – Vs- K. Unwsh Nuyak'* [7] and took view that though strike is a right but its misuse should be controlled as far as possible and observed:

"The strike or lockout is not to he resorted to because the party concerned has superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of rule of might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify……. The Strike or lockout as a weapon has to be used sparingly for redressed of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industries legislation such as the Act places additional restriction on strikes and lockouts in public utility services."

Again, in 'B.L. Wadhera –V- State' [8], the Delhi High Court held that lawyers have no strike to go on strike or give a call for boycott and they cannot even go on a token strike and observed specifically that the strike cannot be justified in the present day situations whether for just or unjust cause.

In another significant judgment in *Rangarajan –Vs- States of Tamil Nadu*', [9] the Supreme Court hearing the unprecedented action of Tamil Nadu Government and terminating the service of all employees who have resesorted to strikes for their demands, has taken a negative attitude towards right to strike and rules that right to strike is not a fundamental right. Kerala High Court has thus rightly concluded that there cannot be any right to call or enforce a "Bandh" which interface with the fundamental freedoms of other citizens in addition to causing national loss in many ways. Kerala High Court [10] has ruled:"

17. No, political party or organization can claim that it is entitled to paralyze the industry or commerce in the entire state or nation and is entitled to present the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties from their own benefit or for the benefit of the state or the nation. Such a claim would be unreasonable

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and could not be accepted as a legitimate exercise of fundamental right by a political party or those comprising it."

The Court, therefore, arrived at a conclusion that there is no moral or equitable justification to go on strikes and apart from statutory rights, government employees cannot claim that they can take the whole society at ranson by going on strike even if there is injustice to some extent as presumed by such employees. The Courts are of opinion that "Strike as a weapon is mostly misused which results in chaos and total maladministration."

Notes

1. All India Bank Employees Association —Vs—National Industrial Tribunal '[AIR 1962 SC 1962 (5 Judges Bench)
2. Ramgarajan -Vs- State of Tamil Nadu; AIR 2003 SC 3030 (2 Judges Bench)
3. I bid at page 180
4. Kameshwar Prasad -Vs- State of Bihar; AIR 1962 SC 1166;
5. Gujrat Steel Tubes-Vs-Its Mazdoor Sabha= AIR 1980 SCHOOL 1896 (3 Judges Bench)
6. B.R. Singh -Vs- Union of India; (1989) 4 SCC 7109
7. Syndicate Bank -Vs- Umesh Nayak = (1994)5 SCC 573 (5Judge Bench);
8. B.L. Wadhara –V- State; [AIR 2000, Delhi 266]
9. Rangarajan -Vs- State of Tamil Nadu; AIR 2003 SC 3030;
10. Communist Party of India (M)-Vs.- Bharat Kumar and others; AIR 1998 SC 184: (1998) ISCC 201; The Registrar General, High Court of Meghalaya –V- The State of Meghalaya; AIR 2015 Meghalaya 23 (Full Bench).

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2. Dr. J.N. Pandey ; The Constitutional Law of India; (Central Law Agency, Allahabad, 2012)
3. P.M. Bakshi; The Constitution of India; (Universal Law Publisher Pvt. Ltd.; Delhi, 1996)
4. Justice M. Rama Jois; Services under the State; (India Law Institute, New Delhi; 2007)
5. Samaridity Par; Law Relating to Public Services, (Lexis Nexis Butterworth Wadha, Nagpur, 2011)