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Workers Right to Strike: A Socio- Legal Analysis

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Abstract

The efficiency of any person depends on the ability of its resource to utilize other resources such as legal right capitalism and demand for achievement of remuneration. Legal rights of workers play the vital role in workers life in present scenario how they demand for remuneration under the contract. With the support of legal case we mention the role of strikers and also introduced the right of workers. Currently the strike encourages the consideration of workers as a strategic factor, not only the play important role in strategic implementation, but also they are beginning to be reckoned as sources of sustainable competitive advantage. Relationships between the management and workers have been studied from different perspectives. This study is an attempt to investigate the role of strikers.

Key words – legal right, strike, workers, capitalism, demand, remuneration

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"*If you are an anvil, bear the strokes; if you become a hammer, strike.*"

1. INTRODUCTION

Employees have fundamental and moral right to resort to strike if the employers and moral right to resort to strike if the employers do not give them remuneration as per the contract. So government should try to fulfill their pass of obligations. Generally the strike is for the reason of non-payment of salaries, bonus and other benefits .The research work in relations, to right of the workmen to go on strike, is conducted. One of the most effective strikes ever, in this country has been declared by the employees of state bank of India. The demand of pensioner's benefits to the workmen was the issue in controversy. Strike is still a weapon, which may be utilized for the purpose of negotiation and setting the negotiations, on the basis of equality in bargaining. Though, the right to strike is not a fundamental right granted by the constitution it is a marked portal emerging out of right to the expressions and freedom of speech.

Strikes have come in existence much before the Bourges in Parliament and constitution of India. Therefore the statutory provisions should be made to provide the right to strike to workers. The loom of the Government, and the Courts in India, has altered time to time, in the beginning, the infant republic tried to become a welfare state, for that purpose, the liberal approach and interpretation of the statutes in the background of socialist type of governance was done by the courts in India. This approach may be seen from some of the Judgments of the Honorable Supreme Court. The approach of the judges can be sufficiently introduced in the observation of Madon, J. in Central Inland Water Transport Corporation V. BN Ganguli.[1]

"As society changes, the law cannot remain immutable…..The law must...march in tune with the changed ideas and ideologies. Legislature are, however, not best fitted for adopting the law to the necessities of the time, for the legislature policy is too slow and the legislatures often divided by politics slowed down by periodic elections and overburdened by myriad other legislative activities. The process of amending a constitution is too cumbersome to meet the immediate needs. Their task must, therefore, of necessarily fall upon the courts because the courts can by process of judicial interpretation adopt the law to the needs of society." In the premises of the above said observations, the interpretation of the labour and industrial law, in the background of the social background in the country, commenced.

In Baldev Raj Chandra v. UOI[2] lyre, J. (as he was then) observed: "the appellant.... Has painstakingly and proficiently presented his case, which calls for mercy, if not justice" This demonstrates an instance where mercy has been preferred to justice by **Iyer, J.** (as he was then) This approach is in consonance with what **Hutcheson J.** once said: "the judge really decides by feeling and not by judgment... The vital motivating impulse for the decision is an intuitive sense of what is right or wrong in the particular case, and the statue judge having decided, enlists his every faculty and belabors his laggard mind, not only to justify-that institution to himself; but also to make it pass muster with his critics.[3]

The socialist spirit was not only a principle, but it was the very soul of interpretation of any legal

[1] 1986 Lab IC. 1312: see also AIR 1986 S.C. 157
[2] AIR 1981 S.C. 70, 1981 LIC 1184
[3] Jerome frank, law and modern mind 1963 edition p. 12.

provision. The courts had the approach of protecting the interests of the workers class in this country, therefore, in Peonies Union for Democratic Rights Vs. Union of India[4] Supreme Court held that non-payment of minimum wages to the workers was a denial to them of their right to livelihood, and therefore, the same is violative of Article 21 of the Constitution. **Bhagwati, J.** (as he was then) held that the rights and benefits conferred on the workmen employed by contractor under various labour laws are clearly "intended to ensure basic human dignity to workmen and if the workmen are deprived of any of these rights and benefits, that would clearly, be violative of Article 21 which is right of life".

The view adopted by Bhagwati J and Krishna Iyer J are contrast to the approach of what **Gajendragadkar, J.** (as he was then) observed: "...but on such occasions it should be necessary to remember that what is administered in courts is justice according to law, and consideration of fair play and equity, however important they must yield to clear and express provisions of law."[5]

The role of social justice in the interpretation of the provisions relating to the labour and development of the industrial jurisprudence, in such a- manner, as would promote the cause of the workmen, may be seen by the above observations, "Socio-economic justice, the cornerstone of industrial jurisprudence to be achieved by the process of 'give and take', concessions and judgments of conflicting claims would hardly advance, in the industrial dispute, involved in this appeal by special leave brought by the appellant...canvassing some technical legal nicety rendering the two employees jobless for more than seven years is encouraged" after these observations, two workmen were reinstated in their services.[6]

The socialist approach adopted by the courts in India, was at its best in the Gujrat Steel Tubes case,[7] wherein Iyer .J demonstrated the socialist approach in case of strike, and shown the approach to balance the conflicting interests, observing that, strike though may be illegal but still may be justified. Does it not tantamount to saying that the parliament has, through legislation, illegalized what is in fact just? It seems Iyer J. here gives precedence to his own reason than to express and clear intention of the legislature.

2. THE ENTRANCE OF CAPITALISM IN INDIA

Though, in the beginning courts in India, have adopted the socialist approach, and the interests of the working class in this country, was adopted by the courts, the capitalism has entered in India, by joining the hands with globalization, the privatization, along with other policies of government, favoring the employer, in place of the workman, though the approach runs contrary, to what has been contemplated by the framers of constitution, and recognized by the legislators, by introducing the 42nd constitutional amendment, in the year 1976, to insert the term "socialist" in the Preamble of the constitution. The intent has been rendered nugatory, by following observations of the courts, in various situations.

The approach of the government, to sign the international treaties, relating to the trade, and to bring home the issues of the globalization, has made a huge impact on the economy, the impact

[4] AIR 1982 S.C. 1473.
[5] Madmanchi Ramappa V/s Multhaluru Bojappa (AIR 1963 S.C. 1633).
[6] Services production agencies (p) Ltd. V/s Industrial Tribunal AIR 1979 S.C. 170.
[7] Gujrat Steel Tubes V/s GST Majdoor Sabha AIR 1980 S.C. 1896.

may be seen, even from the response of the courts, and the courts in the country, which were considered as the protectors of the rights of individual in the country, have started adopting the capitalistic approach.

The first instance of the capitalistic approach was shown by the supreme court, in the case of **T.S.Kelawala**[8] where the Supreme court has -held that, the workers are not entitled to the wages for strike period, on the principle of "No work no pay", which shows the capitalistic approach adopted by the judges. The Court observes

"Deliberate abstention from work, whether by resort to strike or go slow or any other method, legitimate or illegitimate, resulting in no work for the whole day or days or part of a day or days, will entitled the management to deduct, pro rata or otherwise, wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or Standing Orders. In cases of such undisputed mass misconduct deduction of wages will not require disciplinary proceedings. Amount of deduction of wages will depend on facts and circumstances. Payment of Wages Act, 1936, Sections 7 (2) (b) and[9]."

The above said judgment was delivered, strictly construing the definition of wages, an the philosophy that, the judiciary adopt the law as incorporated by the legislature, and should not add anything to it. Similar observations may be seen in the case of **Union of India Vs. Deoki Nandan Agarwal[9].** "To invoke judicial activism, to set at naught legislative judgment is subversive of the Constitutional harmony and comity of instrumentalities...it is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature. When the language of the provision is plane the Court cannot rewrite the legislation for the reason that it has no power to legislate.

The approach of the court, in relation to the right to go on strike has kept on changing this change may be seen in subsequent part of the discussion, the policy of the government has done no good to the situation, the Government's bias towards the capitalist economy may be seen from some of the rules made by the government, which have in turn imposed a blanket ban on the right to go on strike of the employees. A reference may be made to the rules framed by the Tamil nadu state Government[10] an Rajasthan State Government.[11]

Another instance of change in approach of the Supreme Court towards the workers can be seen in the case of **T. K, Rangarajan v. State of T. N**[12] in which Supreme Court has ruled the Government employees have no legal or moral right strike. Though this judgment can be questioned for its soundness; to this judgment shows the trend in labour adjudication as to how the Supreme Court is withdrawing its protective hands from the labourers.

The court has justified the action of Tamil Nadu Government terminating the services all employees who have resorted to strike for passing their demands. On behalf of Government employees, writ petitions were filed challenging the validity of the local act, in the state of Tamil

[8] 1990 (4) SCC 744.
[9] AIR 1992 S.C. 496.
[10] Rule 22 of Tamilnadu Civil Services (Conduct Rules), 1976
[11] Rule 9 of Rajasthan Civil Services Conduct Rules, 1973.
[12] AIR 2003 S.C. 3032.

Nadu. The Court declared that governmental employees have no right to resort to strike whether fundamental, legal or moral.

In this case, the Hon'ble Court stated that there is no statutory provision empowering the employees to go on strike. But it is accepted jurisprudential rule that a citizen can do all but which law prohibits while the government machinery can do only what is empowered to do by law.

The period when the Apex Court pronounced the above stated judgment, and the period when the report of the National Commission on Labor was introduced was the same, but, in the said report the recommendations are made to maintain the industrial harmony, which has been observed in the following words, Industrial peace and industrial harmony may have the same meaning; but we are inclined to think that' the concept of industrial peace is somewhat negative and restrictive. It emphasizes absence of strife and struggle. The concept of industrial harmony is positive and comprehensive and it postulates the existence of understanding cooperation and a sense of partnership between the employers and the employees. That is why we prefer to describe our approach as one in quest of industrial harmony.[13]

3. STRIKES, MAKING DEMAND TO GET REMUNERATION UNDER THE CONTRACT

Employees have fundamental, legal and moral right to resort to strike if the employers do not give them remuneration as per the contract. So government should try to fulfill their part of obligations. Generally, the strike is for the reason of non-payment of salaries. To make the payment of salaries to employees certain at right time, there should be bank appointed as security to the employees. The payment of fees to government employees will be the matter between them and the bank. In turn government will be paying money to the bank. It will lead to certainty in payment of salaries to the government employees unaffected by the financial inconsistency of the government. In case the government does not turn up to pay bank then bank can easily handle such situation through legal process. It can easily bear the handsome fees of big lawyers and hence can manage to get effective and speedy justice. The bank can bear the nonpayment for a longer time than a government employee.

4. DEMAND TO GET REMUNERATION OTHER THAN THE CONTRACT

To get into strike to enforce such conditions, which were not there in the contract, is unjust and illegal. Sometimes employees go on strike to get their unreasonable demand fulfilled because they know they have a high degree of leverage over the employers. Gandhi ji held that means were just as important as ends. Only rights, he believed, could lead to right ends. A contract eritered into by coercion or undue influence is no contract if the employees are not contended with the remuneration to them as per the contract then they can leave the employer as soon as their contract expires. However, court should not forget to look at the fact that the employer should not have been in the situation that contract would have been one sided.

In a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract may appear on face voluntary but it may, in reality be involuntary because while entering a contract the employee by reason of his economically helpless condition may have been faced with choice either to starve or to submit to exploitative terms dictated by powerful employers.

[13] Report of National Commission on Labour, presented in 2002., pp. 53.

5. POST RANGARA JAN ERA: JUSTIFICATION OF THE PROBLEM

The ratio laid down in the Rangarajan Case, has created huge controversy in India, the premises of uncertainty of the right to strike has widened, and in the era when the machinery is replacing the human being, for the purpose of completion of work, the capitalist thoughts of the multinational companies have been boosted, and there exists a belief in the employer class, that, the right to strike would stand abolished in passage of time.

The Attorney General **Soli J. Sorabjee,** in his personal capacity, came out strongly on the issue and stated that the comment of Supreme Court "no moral or equitable right to go on strike" were "uncalled for and beyond comprehension".[14]

He said the right of collective bargaining and ancillary right to go on strike was an invaluable right to employees and it was secured after years of toil and effort. He further stated, "There can be horrendous situations in which the employees have no effective mechanism for redressal of their grievances and are left with no option but to resort to strike".

Thus, the Attorney General himself agreed that when there is no effective mechanism to settle grievances, the strike is the only means to express their dissent. In tune to this proclaimed, other unionists and left parties reiterated their strong support to the employees of the country and "The working class must assert its hard earning right to strike through a countrywide united struggle."

It may be seen that, once again a justifiable campaign has hardened against a judgment of the Supreme Court, which has held that there is no fundamental or statutory provision empowering employees to go on strike. Some members of Parliament are, in desperation suggesting the amendment of the Constitution for this purpose.

Thus, when the statutory provisions have led to an inference that, the workers have the right to strike in this country, on the other hand, the Supreme court has in very specific terms has held that, there is no legal moral or equitable right to go on strike. The controversy led to the criticism, from all spheres of the society, which has been discussed earlier. The memories of the Supreme court ruling and controversy created by the same were still scratching the minds of the people in this country, when the Honda Motors has seen, one of the worst blood baths in this country.

6. THE RECENT CONTROVERSY

While doing the present work in relation to the right of the workmen to go on strike is conducted, one of the most effective strikes ever, in this country has been declared by the employees of the State Bank of India, wherein the entire economy of the country has been paralyzed by the strike of the employees of State Bank of India. From the pensioners to the government employees, entire economic transactions were punctured by the inception of the strike.

The demands of pensioners benefits to the workmen was the issue in controversy where on the one hand the employees were demanding the pension, at a higher length, as they have contributed from the date of inception in service, while the management was ready to settle with partial increase, the government was not ready for such increase, on the ground that, the other

[14] Strike, the inalienable right: Soli Sorabjee: The Hindu 11th August, 2003.

employees will demand for the same.

Now, it is interesting to see, whether the court will apply the same formula of justified and unjustified strike. The view of the Division Bench of the Supreme Court, in the case of T.K. Rangarajan would be followed, for the purpose of considering the entitlement of the workers for the wages for strike period, is an interesting question, which may decide the fate of the right to strike of the workmen. But, huge moral victory of not only the workmen, but also the right to strike has been witnessed by the country, when, at last, on 9-04-2006, the country has witnessed, one of the biggest compromises made by the Central Government, wherein, the government was made to bend its back, and accept to the demands of the strikers.

It shows that, the strike is still a weapon, which may be utilized for the purpose of negotiations, and setting the negotiations, on the basis of equality in bargaining. But, they said strike was from a work class, which has earner substantial deal of money, and who have the funds to subsist for the bargaining by resorting to strike, for fairly long period. But, what would be the situation of a workman, who has the hand to mouth situation, who has to work for the entire day, to earn his leaving, the problem of deciding the right to strike, still subsists. The right of the working class, and the apprehension of its abolition, still subsists even after witnessing, successful strike.

7. CONCLUSION

Though, the right to strike is not a fundamental right granted by the Constitution, it is a marked portal emerging out of right to the expression and freedom of speech. The fundamental right freedom of speech and expression is not absolute; it is subjected some restrictions on par with the all other fundamental rights. It does not mean that the citizens should not express their dissent. They may adopt any mode of expression to represent their dissent, which is not against the public policy. Therefore, considering the socialist pattern of the Indian legal system, the Right to strike, should be elevated to the high pedestral, of fundamental right, under Article 19 (1) (c), on which the reasonable restrictions may be imposed, including, the restrictions on use of force etc,

In every industry, an industrial relation committee should be constituted, which would consist of equal representatives on each side, who will try to reconcile the debatable issues, so as to avoid the strikes.

Hence it can, concluded that the 'strikes' in themselves are not the creation or the result of any legislation or judicial pronouncements. Rather the right to strike as reflected in bourgeois legislations is merely a meek recognition of what could not be prevented over the century either by policy methods or judicial pronouncements. Strikes have come in existence much before the bourgeois parliaments and constitutions. Those who derive their authority from the constitution must never forget that it is the strikes by the workmen, substituted with more daring actions in case the same were suppressed, which are responsible and credited for the emergence of constitutional democracies, the world over. Therefore, the statutory provisions should be made, to provide the workmen, with the right to strike.

REFERENCES

[1]. J.N. Pandey.(2012). Constitution of India: 45th edition Central Law Agency Allahabad (India).
[2]. Surya Narayana Misra. (2009). Labour and Industrial Laws, 25th edition Central Law Publications Allahabad (India).
[3]. Prof. S.C.Srivastava. (2012). Industrial Relations and Labour Laws: 6th Edition.
[4]. H.L.Kumar. (2013). Labour Laws ; 8th edition (2013), Universal Law Publishing Company, Delhi (India).
[5]. P. L. Malik's.(2013). Industrial Law (Covering Labour Law in India) (2 Volumes) Edition 24th Edition, Eastern Book Company.