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RIGHT TO STRIKE- A LEGITIMATE ILLEGALITY

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ABSTRACT

The basic agenda behind labour laws is that of their protection. Indian Government continuously move towards betterment of labour laws. The term "Right to Strike" is not a fundamental right in our country. It has been written down during the enactment of Industrial Disputes Act in the year 1947 that right to strike was acknowledged in India as a statutory right.

Labor struggle is a demand for reasonable return to the labors. It is expressed in a varied form i.e., increase in the rate of wages, resistance to reduction in the wages and grant of stipends and remunerations, etc.According to Constitution of India under Part-III, IV and IV-A, its constitute and concretize the goals of justice, liberty, equality, fraternity and the dignity of the individual set out in the preamble.The International Labour Organization instruction that a right to organize and collective bargaining shall be given to the each and every employees of an industry or organisation.

INTRODUCTION

Labour had to accept unfair service conditions as he was always at receiving end. There was no doubt that labour needed protection and it was necessary to ensure some basic minimum working conditions. There are many labour laws were passed to protect interest of workmen. Trade Union movement also took roots so that workmen can become united and get their legitimate rights. The result is that workers in organised sector are enjoying reasonably good working conditions and job security.

THE HISTORICAL BACKGROUND OF THE LABOUR LEGISLATION

One of the worst situation of Labour legislation is the effect of rapid industrialisation was exploitation of labour. Some major difficulties faced by labour are as follows-

1. The first one is long working hours
2. Second one is poor safety conditions
3. Dangerous working conditions

4. Child Labour problems
5. And the last but not least is total absence of job security.

CONSTITUTIONAL BACKGROUND OF LABOUR LAWS

India is a Union of States. The structure of Government is federal in nature. Government of India (Central Government) has certain powers in respect of whole country. India is divided into various States and Union Territories and each State and Union Territories has certain powers in respect of that particular State. According to 246 of our Constitution indicates bifurcation of powers to make laws, between Union Government and State Governments. Parliament has exclusive power to make laws in respect of matters given in List-1 of the seventh Schedule to the Constitution known as Union List. List II know as State List contains items under jurisdiction of States. List-III known as Concurrent List contains items where both Union and State Governments can exercise power. Matters connected with Labour Laws are covered in List-III of Seventh Schedule to the Constitution of India.

Entries relevant to labour matters in this concurrent list are as follows-

1. ENTRY NO. 22- Trade Unions; industrial and labour disputes.
2. ENTRY NO. 23- Social Security and social insurance, employment and unemployment.
3. ENTRY NO. 24- Welfare of labour including conditions of work, provident funds,, employers, liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
4. ENTRY NO. 36- Factories.

The only exception is that Industrial Disputes concerning Union Employees is a List-1, i.e. Union Subject.

Thus we can say that Central Government as well as State Government can pass laws in respect of labour matters. However, most of laws relating to labour maters have been passed by Parliament and are uniform all over India.

Some of the Acts are suitably modified by States to suit their requirements. Main Acts like gratuity, bonus, provident fund, ESI, Apprentices Act, Factories Act etc. are uniform all over India. In many

of the cases, even when Act is passed by Centre, its implementation is done by State Government authorities.

GENERAL DEFINITION OF STRIKE

The term ‘strike’ refers to a termination of work or a collaborative refusal to work based on usual downplay by the employees of any kind of industry to get their needs fulfilled. In this modern era, almost all the nations such as socialist, democratic or capitalistic, given right to strike to their workers. But in past years it should be used as a weapon. It can be misused; it can weaken the industrial work and eventual loss to the economy or GDP of the country.

According to Constitution of India under Part-III, IV and IV-A, its constitute and concretize the goals of justice, liberty, equality, fraternity and the dignity of the individual set out in the preamble. There are three parts in which the dominant theories of human rights are classified. The first one is Negative obligation of the State not to interfere with the liberty of the individual, second one is positive obligations of the State to take steps for the welfare of the individual and the last one is duties of the individuals to society and fellow individuals. When we are discussing about previous time our concept and ideas related to fundamental rights also developed in the west. And under this concept unlike the other legal rights, which are the creation of the State given to individuals against one another, the fundamental rights are claimed against the State. Therefore whether a Constitution says it or not, it generally assumed that the fundamental rights given in it are available only against the State that is against the actions of the State and its officials. For this reason Constitution of US, first among the modern written Constitutions to provide the fundamental rights, applied those rights only to State action, even though the Constitution does not say so. The same feature has been taken by our Constitution also with some modification or necessary changes.

In ***B.R. Singh v. Union of India, Justice Ahmadi***states that "The Trade Unions with sufficient membership grounds or strength are able to bargain more effectively with the management than comparing to individual workman.

THE INDUSTRIAL DISPUTES ACT, 1947- Provisions of Valid Strike

According to Chapter V of Section 22 of The Industrial Disputes Act, 1947, it states the prohibitions on right to strike. It states that no individual employed in public utility service shall go on strike in breach of contract.

a) First point is without giving notice of strike to the employer six weeks prior to the strike; or

b) Second point is within two weeks of giving such notice; or

c) Third Point is before the expiry date of strike specified in any such notice; or

d) Last is during the pendency of conciliation proceedings before the concerned officer.

RIGHT TO STRIKE IS NOT A FUNDAMENTAL RIGHT IN INDIA

According to Article 19 it states that all citizens shall have the right to:

a) Freedom of speech and expression;

b) Assemble peacefully and without arms;

c) Form associations or unions;

The term “Right to Strike” is not a fundamental right in our country. It has been written down during the enactment of Industrial Disputes Act in the year 1947 that right to strike was acknowledged in India as a statutory right. According to Section 22(1)(a) of the Industrial disputes Act 1947, it states that employees can go for the strike in case any kind of breach of contract has been done provided there should be a prior notice that is given to the employer within six weeks of such strike. This also includes government employees. The given right is not freely mentioned in the statute. There are definite terms or conditions, which only if contented, and then the workers go on strike. The term right to strike is an important function in the hands of workers for appealing redressal and safeguarding their freedom. There was a universal temerity that employer is always at authority or controlled position and there may be a chance of him, giving cruel terms and condition of service on the employees. Therefore we can say that theneed was of a work for collective bargaining. According to the Hon’ble Supreme Court held that good relations or mutual

understanding between employer and employee and the term collective bargaining are the main objectives of Industrial Disputes Act, 1947.Whereas, in the Industrial Relations Code 2020, Section 2(zk) defines "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 have been so employed to continue to work or to accept employment and includes the concerted casual leave on a given day by fifty percent, or more workers employed in an industry.

According to the Constitution of India, Article 19(1)(c) said about right to form association and trade unions. If there is no right to go for the strike, then theright to form associations will be follow. Then there shall be a question arises why such right is given. The Indian judiciary through the sequence of judicial decisions highlight on the legality or illegality of strike, but didn't stop or impose any kind of ban on the right to strike. The Apex Court said that the membership of trade union if adequate is able to bargain. But such type of bargaining capability is high reduced when there is no right to strike given to the workers.

The International Labour Organization instruction that a right to organize and collective bargaining shall be given to the each and every employees of an industry or organisation. However, there is no demonstrating supplying on the right to strike. But ILO Committee with expert members has highly considered this right as essential and an basic part of the right to organize. India has enforced and encourages almost all the principles personified in these two conventions excluding the right to strike. Universal Declaration of Human Rights, 1948 come up with the protection of workers' attentiveness. All one have the right to form trade unions and associations. And the term right to strike is a continuation of their constitutional advantage to form association. International Covenant of Economic, Social and Cultural Rights, 1966 also provides for the recognition of the right to strike with the condition that it is in conformity with the law of the member states.

RIGHT TO STRIKE IN INDIA – A LEGITIMATE ILLEGALITY

Labor struggle is a demand for reasonable return to the labors. It is expressed in a varied form i.e., increase in the rate of wages, resistance to reduction in the wages and grant of stipends and remunerations, etc. In case the laborer desires to attain such gains individually, he usually fails

because of his weaker negotiating power, the managing with well economic background standpoints in better position to dictate its terms.

The Supreme Court judgment of T.K.Rangarajan vs. State of Tamil Nadu stresses on prominence of right to strike in democratic society. With the fact, Tamil Nadu government closed the services of all the workers who have resorted to strike their demands was challenged before the High Court of Madras by the requisitions under Article 226/227 of the constituents. On behalf of the government workers, court order petitions were fill up challenging the validity of Tamil Nadu Essential Services Maintenance Act (TESMA), 2002 and the Tamil Nadu Ordinance 2 of 2003. The partition workbench of the court set separately the intervening order, and prominent that the writ petitions were not maintainable as the Administrative Tribunal was not approached. It was challenged before the Supreme Court and Shah J. started the judgment with the term "leave granted".

The first word itself of the Shah J. offers the reader an mindset that the Supreme Court has set a raised area for an additional landmark judgment as a titleholder of egalitarian human rights.

RIGHT TO STRIKE - JUDICIAL INTERPRETATIONS

In the case of ***All India Bank EmployeesAssociation v. National Industrial Tribunal*** and others , the Hon'ble Court particularly held that even very liberal interpretation of sub-clause (C)30 of clause (1) of Article 19 cannot lay down the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, likewise as part of collective bargaining or otherwise. Therefore, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. According to the Industrial Dispute Act, 1947 the ground and conditions that are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be of illegal.

PENALTY FOR ILLEGAL STRIKES AND LOCKOUTS

According to Section 26 of the Industrial Disputes Act, 1947, lay down the provisions related to the penalties that shall be awarded to all those who commence and participate in illegal strikes.

CONCLUSION

The structure of Government is federal in nature. Government of India (Central Government) has certain powers in respect of whole country. India is divided into various States and Union Territories and each State and Union Territories has certain powers in respect of that particular State. According to 246 of our Constitution indicates bifurcation of powers to make laws, between Union Government and State Governments. When we talking about an outcome then we will definitely say that Central Government as well as State Government can pass laws in respect of labour matters. However, most of laws relating to labour maters have been passed by Parliament and are uniform all over India. The International Labour Organization instruction that a right to organize and collective bargaining shall be given to the each and every employees of an industry or organisation. However, there are no demonstrating supplying on the right to strike. But ILO Committee with expert members has highly considered this right as essential and an basic part of the right to organize. India has enforced and encourages almost all the principles personified in these two conventions excluding the right to strike. The term "Right to Strike" is not a fundamental right in our country. It has been written down during the enactment of Industrial Disputes Act in the year 1947 that right to strike was acknowledged in India as a statutory right. According to Section 22(1)(a) of the Industrial disputes Act 1947, it states that employees can go for the strike in case any kind of breach of contract has been done provided there should be a prior notice that is given to the employer within six weeks of such strike. This also includes government employees. The given right is not freely mentioned in the statute. There are definite terms or conditions, which only if contented, and then the workers go on strike. In a judgment of T.K.Rangarajan vs. State of Tamil Nadu stresses on prominence of right to strike in democratic society. With the fact, Tamil Nadu government closed the services of all the workers who have resorted to strike their demands was challenged before the High Court of Madras by the requisitions under Article 226/227 of the constituents. There is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. According to the Industrial Dispute Act, 1947 the ground and conditions that are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be of illegal.

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