

# Right to Strike

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## ABSTRACT

The right to strike is a universally accepted concept and international labour organisations (ILO) have recognized the right to strike as a fundamental human right for maintaining international labour standards. Nevertheless, in India, it is not a fundamental right, it is a legal right given to the citizens. A strike is when workers choose not to go to work, because they want higher pay or better work conditions. It is one of the ways by which the grievances of the workers can be resolved, but there is an ambiguity in curtailing the right to strike which dithers the workers from going on a strike. There is no law with regard to the right to strike before independence. After the enactment of industrial disputes act 1947, which provides a statutory right to strike and provides the ingredient which constitutes a strike. Article 19(1)(c) gives the right to form an association or union and to go on strike peacefully but with reasonable restrictions. Though it is a legal right, only certain classes of workers can enjoy this privilege. This article focuses on the evolution of the right to strike in India and the purpose of reasonable restriction mentioned in article 19(1)(c) and the difficulty related to such restrictions<sup>1</sup>.

**Keywords:** Strike, Industrial disputes, Payment of wages, Constitution, International labour organisation, Employer- Employee.

## INTRODUCTION

Strike is the united refusal to do work by the employee to achieve their objective relating to wages, working conditions or a job-related argument with the employer. Strike is the very powerful weapon given to the employees to achieve their demands. It brings the pressure on the employer to listen to the demands of the employees.

Right to strike is a globally accepted right. It is a weapon used by the trade unions or other associations or workers to meet their grievances with management of the industry. It is the last weapon used by the employee to make the management listen to the demand, but these rights are not absolute rights given to the workers. There are certain restrictions with respect to the right to strike in India. The evolution of the right to strike in India has been marked by legislative developments, particularly with the enactment of the Industrial Disputes Act in 1947.

In the context of India's development as a nation, it is imperative to establish labour legislation that maintains a balanced approach, giving due consideration to both employers and employees for the advancement of the industrial structure. The Industrial Disputes Act grants certain rights to employees, with the right to strike being one such provision. However, it's noteworthy that the Supreme Court, through

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<sup>1</sup> International Labour Organisation. Retrieved from [Chapter V. Substantive provisions of labour legislation: The right to strike](#)

multiple judgments, has clarified that the right to strike is not a fundamental right under the constitution. While it is a statutory right, there exist certain restrictions on its exercise, especially for specific categories of employees, such as those in government service. These limitations pose challenges for employees in asserting their interests and negotiating for improved conditions. Despite being a recognized statutory right, the restrictions imposed on the right to strike can constrain the ability of employees to effectively advocate for their rights and enhance their bargaining position.

### **STRIKE - DEFINITION**

According to Industrial Disputes Act, 1947, Section 2(q) a strike is “a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under common understanding of any number of persons who are or have been so employed to continue to work or to accept employment”<sup>2</sup>.

The ILO's supervisory body does not provide a definition for strike action, as it is deemed to lead to an inaccurate or flawed conclusion. The Committee on Freedom of Association permits strikes, as long as they are carried out peacefully (according to the reference provided, paragraph 496). The Committee of Experts has emphasised this stance.

*“When the right to strike is guaranteed by national legislation, a question that frequently arises is whether the action undertaken by workers constitutes a strike under the law. Any work stoppage, however brief and limited, may generally be considered as a strike. This is more difficult to determine when there is no work stoppage as such but a slowdown in work (go-slow strike) or when work rules are applied to the letter (work-to-rule); these forms of strike action are often just as paralysing as a total stoppage. Noting that national law and practice vary widely in this respect, the Committee is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful. The Committee considers ... that restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful (ILO, 1994a, paras. 173 and 174)”<sup>3</sup>.*

According to Cambridge dictionary “strike is to refuse to continue working conditions, pay levels, or job losses”<sup>4</sup>

### **TYPES OF STRIKE**

A strike is not only about the stoppage of work. Strikes will occur in various ways. The various types of strikes are given below:

#### **1. GENERAL STRIKE**

It is the typical way of going on a strike, where the workers communion together for a common demand to stop working. These types of strikes are frequently used for the demands related to economic aspects

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<sup>2</sup> See Section 2 clause (q) of Industrial Disputes Act, 1947

<sup>3</sup> Retrieved from [ILO principles concerning the right to strike](http://ILOprinciplesconcerningtherighttostrike)

<sup>4</sup> <https://dictionary.cambridge.org/dictionary/english/strike>

like wages, bonus, leaves and holidays. These are often apparent in industries such as the transport service department, the post and telegraph department and among government employees.

The sanskrit word bandh which means closed . It is similar to a general strike. It is a very regularly used form of protest in india. During a bandh , the association declared a general strike.

General strike should be undergone with the legal framework applicable in their jurisdiction and ensure that their action comply with the rules and regulation relevant to the legislation governing right to strike.

## 2. MASS CASUAL LEAVE

It is a type of strike where the workers take leave concurrently against the rules stated in the employees protocols to express their grievances. Usually employees will have established procedures to take leave. But here the employees will take mass leave to address their demand.

Example ;In the year 2022 thousands of gujarat government employees, including school teachers join mass casual leave protests across the state to implement the old pension scheme. Nearly 7000 teachers were leave in bhavnagar district alone<sup>5</sup>.

## 3. HUNGER STRIKE

Hunger strike is a form of protest where individuals abstain from taking food to seek attention to their demands. While hunger strikes are not explicitly governed by labour laws, they are the ways of expressing their dissents.

### EXAMPLE

In 2021 Indian farmers started a day-long relay hunger strike against the central government's new agricultural laws.

Hunger strike does not amount to attempt to suicide under Section 309 of IPC.

### P. Chandrakumar vs State, 2021<sup>6</sup>

Justice N. Anand Venkatesh held that “The mere fact that the petitioner has protested by sitting on hunger strike will not attract the offence under Section 309 IPC. Even if the materials available on record are taken as it is, it does not constitute an offence under Section 309 IPC.”

## 4. GO-SLOW STRIKE

Go-slow strike is also known as the work slow down. Here the employees do not refuse to work but deliberately reduce their work output of production in the industry as a means of their protest.

Go-slow strike is more dangerous than total cessation of work. Here work will be slow, output will be less than the usual production but the workers are entitled to full wage.

### Bharath Sugar Mills Ltd vs Shri Jai Singh<sup>7</sup>

The Supreme Court set aside the order of the tribunal refused permission to dismiss 13 of the workmen who engaged in go slow and stated that go-slow is much more dangerous than total cessation of work. During a strike much of the machinery can be fully turned off, during the go slow the machinery is kept

<sup>5</sup> Thousands of Gujarat govt employees join 'mass casual leave' stir in state over old pension scheme;The Economic Times; cited on Sep 17, 2022; [Internet] Available from : [Thousands of Gujarat govt employees join 'mass casual leave' stir in state over old pension scheme - The Economic Times](#)

<sup>6</sup> P.Chandrakumar vs State CrI.OP.No.2791 of 2021

<sup>7</sup> [1962] 3 SCR 684

going at reduced speed which is extremely damaging the machinery part. Considering all this go-slow is serious misconduct.

## 5. STAY IN

This is a type of strike where the workers present at the workplace but do not work. Workers occupy and refuse to move from the workplace. They take over the control of the production but do not work. This kind of strike is also known as pen down or a tool down strike. Workers show up at the workplace and refuse to leave and also refuse to work.

### **Punjab National Bank, Ltd vs Its Workman<sup>8</sup>**

The workers who enter up on a pen down strike not only ceases to work but also refuse to vacate their seat when asked by the management constitute illegality. The Court held it as an illegal strike.

## 6. SYMPATHY STRIKE

Here workers go on strike to show their sympathy or support to the other unit of workers who are already on strike. The workers do not have any grievances of their own even so show their support to the other unit of workers, expressing their unanimity. There is a difficulty in fixing these strikes under the Section 2(q) of Industrial disputes Act, 1947 as the strike happens in support of others grievances.

## 7. WILD CAT STRIKE;

Here strike will be conducted by the employees without the consent and authority of the respective trade union. These strikes will not come under the purview of illegal strikes though it violates the agreement of collective bargaining. As the name indicates, these strikes contain the characteristics of a wild cat which is unpredictable and uncontrollable.

## 8. GHERAO

Gherao refers to preventing a person from moving freely. This is the strategy used by the workers to achieve their demands. The person will be restrained from moving in a particular location which may be the workplace until the demands are met. Mostly the target people are management people like managers. Sometimes the person restrained will not be offered food and not entitled to basic amenities like proper ventilation and water. In extreme situations they are thrusted to physical abuse. Gherao involves the component of wrongful restraint and wrongful confinement.

Gherao is lawful but illegal gherao is unlawful. In the case of **Management of Safdarjung Hospital vs Kuldip Singh<sup>9</sup>**, Supreme Court held that the right to gherao is a legitimate right which cannot be prevented but it should be exercised lawfully. In **Jay Engineering Works Ltd vs State of West Bengal and Ors<sup>10</sup>**, Supreme Court stated that illegal gherao is not protected under the right to protest, it is punishable under law.

## GENERAL CAUSES FOR STRIKE;

The Industrial Disputes Act, which addresses strike, does not explicitly specify the reason for a strike. However, there are general causes for strike outlined below.

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<sup>8</sup> 1960 AIR 160

<sup>9</sup> IR 1970 SC 1407

<sup>10</sup> AIR 1968 Cal 407

- Inadequate wages
- Poor working conditions
- Bonus and profit sharing
- Unsatisfied with increment
- Issue related to incentives
- High working hours
- Leave or holidays
- Other benefits (healthcare, retirement plans etc.)
- Job securities (fear of layoff)
- Changes in the employment policies
- Disputes regarding Collective bargaining
- Unfair labour practices (unfair treatment, discrimination, etc.)
- Lack of effective communication between employer and an employee.

### **STRIKE AND INDUSTRIAL DISPUTES ACT, 1947**

The Industrial Disputes Act, 1947 is the initial legislation that formally outlines and characterises a strike as a collective cessation of work by a group of employed individuals within an industry, marked by a joint refusal to work or accept employment as per a shared understanding among the workers.

The Act lays out conditions that determine the legality of strike, outlining circumstances where a strike conducted within the framework of specified rules and procedures is deemed legal, while a strike carried out in violation of these regulations is considered illegal as per the law.

Section 22 of Industrial Disputes Act, 1947 specifies certain conditions under which a strike will be considered illegal<sup>11</sup>. Prohibition mentioned in this section applies to public utility service.

1. Before commencing a strike, it is mandated by the Act that the employee must provide notice of intended strike within a six-week timeframe; (or)
2. Notice should be issued at least fourteen days prior to the commencement of a strike; (or)
3. Strike must take place before the expiry of the specified date mentioned in the notice; (or)
4. A strike should not occur while any conciliation proceedings are ongoing before a conciliation officer, and for a period of seven days following the conclusion of these proceedings.

When a strike is already in progress, issuing a notice of strike is not necessary. The employer should inform the authority specified by the appropriate government about the strike on the day in which it is declared. It should be informed within five days on which the notice is issued.

### **Buckingham and Carnatic Co. Ltd vs Workers of the B & C Co. Ltd<sup>12</sup>.**

It was a textile industry, which was listed under the public utility services. Strike took place without giving notice. The court held it as an illegal strike.

Section 23 provides general prohibition of strike including public utility service. Workmen of any industrial establishment should not go on a strike.

1. During the pendency of conciliation proceedings before the board of conciliation and seven days following the completion of those proceedings; (or)

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<sup>11</sup> See Section 22 of Industrial Disputes Act, 1947

<sup>12</sup> 1953 AIR 47

2. During the pendency and completion of two months of any such proceedings before the Labour Court, Tribunal or National Tribunal; (or)
3. During the pendency and completion of two months of any arbitration proceedings before the arbitrator. On the issuance of notification under Subsection (3A) of Section 10A; (or)
4. During the period of any operation of settlement or award relating to any matter includes award or settlement<sup>13</sup>.

Section 24 deals with illegal strike. Strikes that do not adhere to the procedure that are mentioned in Section 22 and 23 are considered illegal.

### **1. Strike or lockout shall be illegal -**

If it contravenes the procedure mentioned in Section 22 and 23

If it contravenes an order made under subsection (3) of Section 10

**2.** Where a strike occurs in response to an industrial dispute which is already before the board, an arbitrator, labour court, tribunal or national tribunal is deemed to be an illegal strike. Provided that on commencement or in continuance of such a strike which is not in contravance of the subsection (3) Section 10 or subsection (4A) of Section 10A was not prohibited.

**3.** Illegal lockout which declares a strike is not an illegal strike<sup>14</sup>.

Section 25 deals with prohibition of financial aid to illegal strikes - Any person should not knowingly and directly support the illegal strike by expanding any money<sup>15</sup>.

Section 26 penalty for illegal strike - Any workman who commences, continues or otherwise, strike which is illegal under this act shall be punishable with imprisonment up to one month or fine up to fifty rupees or both<sup>16</sup>.

Section 27 penalty for instigations, etc. - Any person who instigates others to take part in an illegal strike under this act shall be punishable with imprisonment up to six months or with fine up to one thousand rupees or both.

Section 28 - Penalty for giving financial aid to illegal strikes and lock-out - Any person who knowingly and directly supports illegal strikes by giving financial aid shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or both.

### **RIGHT TO STRIKE UNDER INTERNATIONAL LAW**

Right to strike is universally recognised as an essential right for employees, often considered as a fundamental human right. The International Labour Organisation (ILO), with its tripartite structure, focuses on enhancing labour standards and has engaged in addressing matters concerning the right to strike<sup>17</sup>.

Early 1927 right to strike was identified with freedom of association under convention 87<sup>18</sup> and collective bargaining under convention 98<sup>19</sup>. This situation persisted for nearly six decades. In 1952 both the

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<sup>13</sup> See Section 23 of Transfer of Property Act, 1947

<sup>14</sup> See Section 24 of Transfer of Property Act, 1947

<sup>15</sup> See Section 25 of Transfer of Property Act, 1947

<sup>16</sup> See Section 26 of Transfer of Property Act, 1947

<sup>17</sup> See section 28 of Transfer of Property of Act, 1947

<sup>18</sup> Convention 87 year, 1947 and 1948 of International Labour Organisation, 1919

<sup>19</sup> Convention 98 year, 1949 of International Labour Organisation, 1919

Committees the Tripartite Committee on Freedom of Association (CFA) and Independent Committee of Experts (CEACR) confirmed that convention 87 includes right to strike and also right to strike comes under the jurisprudence of ILO. In 1992 the employers representatives took a first step to eradicate the right to strike from ILOs jurisprudence. Taking the right to strike from ILOs jurisprudence would be dangerous for the workers. Hence ILO recognised the right to strike as a fundamental of the employees. The recognition is mentioned in various international labour standards and in the fundamental document of ILO.

The International Covenant on Economic, Social and Cultural Rights (ICESCAR) doesn't explicitly articulate the right to strike, the covenant lays the foundation for this right through Article 8, which acknowledges the right to form associations, and Article 7, which recognises the right to collective bargaining. These provisions implicitly pave the way for the right to strike, as the formation of association and the practice of collective bargaining or closely linked to the broader concept of workers rights, including the right to engage in strike as a form of collective action<sup>20</sup>.

### **CONSTITUTIONAL VALIDITY OF RIGHT TO STRIKE**

In India the right to strike is not a fundamental right. It is a statutory and legal right. Article 19 (1) of the constitution of India provides certain freedom as a fundamental right. Which includes right to freedom of speech and expression 19 (1)(a) and right to form associations or unions 19(1)(c). Right to strike is not explicitly enumerated in the Indian constitution. However, it is inferred from the freedom of association, which is guaranteed under article 19(1) (c) of the constitution of India. The Supreme Court of India has recognized the right to strike as an inherent aspect of the broader right to form association, considering it a legitimate means for workers to express their collective concerns and interest<sup>21</sup>.

The right to form associations empowers workers to establish trade unions. Within the framework of these unions the right to engage in collective bargaining is recognised, and this includes the legitimate exercise of right to strike as means for workers to collectively address their concerns and interests.

### **SUPREME COURT JUDGEMENT RELATED TO CONSTITUTIONAL VALIDITY OF RIGHT TO STRIKE**

#### **Kameshwar Prasad And Others vs The State Of Bihar And Another<sup>22</sup>**

In this case rule 4A was introduced into Bihar government servants conduct rules, 1956 by the government of Bihar stating that government servants should not enter into any demonstration or resort to any form of strike relating to working conditions was challenged by the appellant that 4A rule violate the fundamental right guaranteed under Article 19(1)(a)&(b). The Supreme court held that prohibition imposed on any form of demonstration violates article 19 withal clarifies that prohibition of right to strike may be imposed on government servants as right to strike is not a fundamental right.

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<sup>20</sup> Andon Majhosev;Jadranaka Denkova;The Right to strike: International and regional legal instruments with accent of legislation in Republic of Macedonia;[Internet] Available From:[The Right to strike: International and regional legal instruments with accent of legislation in Republic of Macedonia - CORE](#)

<sup>21</sup> See Article 19 of Constitution of India,1950

<sup>22</sup> 1962 AIR 1166

**All India Bank Employees vs National Industrial Tribunal & others<sup>23</sup>**

This case was filed against section 34A of banking companies act, 1949 as it prevented the trade union from effectively exercising the concomitant right of collective bargaining in respect of wages bonus etc. which contravene the fundamental right guaranteed under Article 19 of constitution of india. The court ruled that a broad or liberal interpretation should be applied to the principles outlined in Part III of the constitution. Even Though it extends to subclause © of clause (1) of Article 19, it does not lead to the conclusion that trade unions are given the right to effective collective bargaining or strike as a part III of the right to form association or union.

**T.K Rangarajan vs. Government of Tamil Nadu and Others<sup>24</sup>**

In the case involving the termination of 2 lakh employees by the Tamil Nadu government due to being engaged in striking, the court addressed the matter by disposing of the appeal and writ petition and stated that government employees do not have statutory or fundamental right to engage in strikes. These are some landmark judgements related to constitutional validity of strike.

**REASONABLE RESTRICTION IN RIGHT TO STRIKE**

While the right to strike is not explicitly recognized as a fundamental right in India, it is acknowledged as a statutory and legal right. This statutory right, however, it is not an absolute right is subject to reasonable restrictions. In other words, even though workers in India possess a legal entitlement to strike, certain limitations or conditions may be imposed on the exercise of this right to ensure its responsible use and to balance the interests of all parties involved. The imposition of reasonable restrictions is a measure to prevent potential abuse of the right to strike while maintaining the overall stability of essential services and the functioning of the economy.

The right to strike is curtailed in essential services such as healthcare, public safety, and utilities to safeguard the general public from the adverse consequences of these strikes. This restriction is implemented to ensure that essential services critical to the well-being and safety of the public remain uninterrupted, minimising the potential negative impact of strikes on the broader community.

**Harish Uppal vs Union of India And Another<sup>25</sup>**

The Supreme court in this case held that lawyers have no right to go on a strike. If deemed necessary lawyers are limited to expressing dissent through means such as press statements, TV interviews, displaying banners or placards outside the court premises, wearing symbolic arm bands, participating in peaceful protests away from court premises, engaging in dharnas, or organising relay fasts.

The smooth functioning of essential services, and healthcare is often considered as an important function. Strikes or disruptions in healthcare services can have serious consequences for patient care and public health. Considering this the court in may cases held that There should not be the incident of strike in patient care services etc held in **AIIMS Student Union vs AIIMS<sup>26</sup>**

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<sup>23</sup> 1962 AIR 171

<sup>24</sup> AIR 2003 SC 1257

<sup>25</sup> (2003) 2. SCC 45.

<sup>26</sup> 2002 1 SCC 428



There are laws and regulations that restrict the right to strike for certain categories of public servants, including teachers and government employees. The reasoning behind such restrictions is often based on the essential nature of public services and the potential impact of strikes on the public. It was held in **T.K Rangarajan vs. Government of Tamil Nadu and Others** that teachers or government employees cannot go on a strike.

### WAGES DURING STRIKE PERIOD

Wages are a fundamental aspect of employment, and disputes or strikes related to wage issues are not uncommon. Workers often go on strike to negotiate for better wages, improved working conditions, or other benefits. However, the Payment of Wages Act, particularly Section 7<sup>27</sup>, addresses the deduction of wages in the event of a cessation of work. This provision implies that if employees participate in a strike leading to a stoppage of work, employers have the authority to make deductions from the workers' wages for the duration of the strike.

The specific details of this provision may vary depending on the jurisdiction, as labour laws differ. Essentially, the Payment of Wages Act aims to regulate the deduction of wages during work stoppages, including strikes. This serves as a mechanism to discourage strikes by ensuring that employees do not receive their full wages when work comes to a halt.

Understanding the provisions of the Payment of Wages Act and other relevant labour laws is crucial for both employers and employees. These laws delineate the conditions under which wage deductions can be made and the procedures that should be followed. The intention behind such provisions is to maintain a balance between the interests of workers and employers, with the specifics determined by the legal framework of each jurisdiction.

In a prior Supreme Court judgement concerning wages during a strike, the court held that workers are entitled to receive their wages for the day of the strike. If the strike is legal and justifiable.

In the case **Management of Chitrakulam Tea Estates (P) Ltd. vs. Its Workman**<sup>28</sup> and **Crompton Greaves Ltd v. Workmen**<sup>29</sup> It was held that the strike in these cases are neither illegal nor unjustified and further held that the factory workers are entitled to wages for that day of strike.

Later in **Bank of India Vs. T.S. Kelawala & Ors**<sup>30</sup> The court held that the workers are not entitled to wages during strike regardless of whether it is legal or illegal.

The supreme court in **Syndicate Bank v. K. Umesh Nayak**<sup>31</sup>, clarifies the conflict view in the management of chitrakulam tea estate case and T.S kelawala case. The court emphasised that for entitlement of wages during a strike, it must be both legal and justified. The legality is determined by examining any breach of the Industrial Disputes Act, while justification involves considering factors such as service conditions, nature of demands, the cause leading to the strike, urgency, and the reason for not resorting to dispute resolution machinery.

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<sup>27</sup> See section 7 of Payment of Wages Act, 1936

<sup>28</sup> AIR 1969 SC 998

<sup>29</sup> AIR 1979 SC 1489

<sup>30</sup> 1990 SCR (3) 214

<sup>31</sup> AIR 1995 SC 319

## CONCLUSION

The right to strike in labour legislation is a complex and controversial issue that attempts to find a delicate balance between the interests of employers, employees, and the general public. While internationally recognized as a fundamental employee right, its implementation in India has faced scrutiny, particularly in essential services where restrictions are deemed necessary to ensure the smooth functioning of essential service sectors such as healthcare and public safety. The inclusion of reasonable restrictions on the right to strike underscores the need to protect essential services and public welfare. Navigating this intricate landscape requires a thorough understanding of the statutory framework, legal precedents, and a commitment to maintaining a fair representation of interests for both parties involved. Finding the correct equilibrium is essential for promoting a harmonious relationship between employers and employees while safeguarding the stability of businesses and the well-being of the public. Continuous conversation, sustained discussion and collaboration between all the interested parties including the government, employers, and employees, are essential to evolving a strong and fair structure for the exercise of the right to strike in India.