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Wages during Strikes & Lock-outs

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ABSTRACT

Strike is a cessation of work to resolve grievances which can also be said to be legitimate illegality. Workers may strike for various reasons such as low wages or bad working conditions. There has been a constant dispute regarding issues around wages. While employers are compelled to pay wages for certain holidays, should they be compelled to pay for the days in which workers have gone on strike? One could argue that justified strikes should have wages paid for but that has not exactly been followed. This very question has been brought before the Courts on multiple occasions but there seems to be no consensus on whether wages should be paid during strikes. The issue of wages becomes grave when it comes to the labour who are in the weaker class of the society, or to those who rely on daily wages.

This article will go over the concept of strike and lock-out, and briefly explain the contradictory cases in order to throw light on the various issues of the system. It will also go over the recent Industrial Relations Code, 2020 that has been passed. It will attempt to acknowledge the gap that is there in the legislation and the importance for the Parliament to make clear laws on wages during strikes and lock-out.

Keywords: *cessation of work, resolve grievances, strike, lock-out, wages during strike, wages during lock-out.*

Strike and lock-outs are the efficacious weapons in the armoury of employees and employers against each other. The Industrial Disputes Act considers them as counterparts. As per the statutory law, the right to strike and lock-out is not absolute as sections 62, 63 and 64 of the Industrial Relations code 2020 place restrictions on them. In India, there is neither a legislation nor an accepted jurisprudence on payment of wages during the periods of strike or lock-out. The points that the adjudicators consider while awarding the wages is whether or not the strike was legal.³ “No work- No wage” has been the broad deciding principle in most cases with few exceptions.

The International Labour Organization’s Committee of Freedom of Association has not

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³ Mahalaxmi Cotton Mills v. Their Workmen, (1952) L.A.T 635 (India).

provided a negative stance on wage deductions during strikes, but stated that it is reasonable as long as the parties negotiate their issues.⁴

Few instances of strikes in India-

- In January 2019, twenty crore workers from several organised as well as unorganised sectors, successfully participated in the 'Bharat Band'. They claimed that the policies of the government such as the fixed term employment, were against the workers.⁵
- In September, 2016, Indian workers of the public sector went on strike to fight for higher wages. In many states banks and power stations were shut down and public transportation systems froze. The government took care of their demands and increased the wages.⁶
- In January 2014, Kingfisher employees went on strike as they had not been paid their salaries for a period of 17 months.⁷

Few instances of lock-out in India-

- On July 18, 2012, the workers of the leading car manufacturer Maruti Suzuki at Manesar, Haryana created havoc. They burnt the human resource manager of the company alive to death. The reason that was given for all this destruction was that the supervisor made an objectionable remark against a permanent worker, who belonged to the Scheduled Caste category. As a result, the management decided to declare a temporary lockdown of the plant that produces about 1600 units per day.⁸
- In March 2014, Toyota Kirloskar Motor Ltd. at Bidadi, announced a lock-out. The issue was regarding the annual wages of the workers which were pending for over a year.⁹

Strike has been defined in Section 2(zk) of the Industrial Relations Code, 2020 as "*strike*" means a cessation of work by a body of persons employed in any industry acting in

⁴ Bernard Gernigon et al., *ILO Principles Governing the Right to Strike*, 137 No.4 INTERNATIONAL LABOUR REVIEW, 48 (1998).

⁵ *Trade unions claim success in two-day all-India strike*, THE ECONOMIC TIMES (Jan. 10, 2021, 10:02 AM), https://economictimes.indiatimes.com/news/politics-and-nation/unions-claim-success-in-two-day-all-india-strike/articleshow/67464576.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

⁶ *Tens of millions of Indian workers strike in fight for higher wages*, THE GUARDIAN (Jan. 11, 2021, 12:20 AM), <https://www.theguardian.com/world/2016/sep/02/indian-workers-strike-in-fight-for-higher-wages>.

⁷ *Kingfisher employees to go on hunger strike from Jan 6*, THE HINDU (Jan. 20, 2021), <https://www.thehindubusinessline.com/economy/logistics/kingfisher-employees-to-go-on-hunger-strike-from-jan-6/article23121536.ece>.

⁸ Gopalakrishnan Narayanamurthy, *Maruti Manesar Plant Lockout*, THE EMERALD (Jan. 12, 2021, 10:00 AM), <https://www.emerald.com/insight/content/doi/10.1108/EEMCS-02-2014-0042/full/html>.

⁹ V. Sridhar, *Toyota India lifts lockout, workers refuse to budge*, THE HINDU (Jan. 22, 2021), <https://www.thehindu.com/business/Industry/toyota-india-lifts-lockout-workers-refuse-to-budge/article5825095.ece>.

combination, or a concerted refusal, or a refusal, under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment and includes the concerted casual leave on a given day by fifty per cent. or more workers employed in an industry.¹⁰

lock-out has been defined in section 2(u) of the code as “the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him”.¹¹

It is imperative to see the adjudication of certain landmark cases concerning the question as to whether the workers are entitled to wages during a strike, whether illegal or legal.

The hon’ble Supreme Court in the case of *Buckingham & Carnatic Co. Ltd. v. Workmen*¹² held the strike to be illegal as it is necessary to provide notice of strike for public utility service. In *Chandramalai Tea Estate v. Workmen*¹³, a three judge bench criticised the use of strike as a weapon. Based on the facts of the case, the court held that the strike was unjustified and that the workmen were not even entitled to half of the wages for the strike period. In the case of *India General Navigation*¹⁴, the court opined that the question of justified or unjustified is to be acknowledged in legal strikes only. Only in the case of legal and justified strike are the workmen entitled to wages.

In the case of *Crompton Greaves Ltd v. Workmen*¹⁵, apart from reiterating what was held in the *India General Navigation* case, the court held that the strike should not be considered as unjustified unless the reasons for the strike are entirely unreasonable or pertinacious.

The Supreme Court did not follow any particular approach till 1990 but stuck to the ‘status’ theory of workmen and evolved certain principles relating to it. In 1990 the court resorted to purely ‘contractual’ theory.

The judgement given in *Bank of India v. T.S. Kelawala (1990)*¹⁶, was not as progressive as the preceding judgements. This case stated that where there are no rules or regulations on a particular subject, the authorities or the employers will retain the power to deduct the wages of the striking employees for the absence from duty. The Court further stated that the legality or justification of the strike was not of importance. The deduction of wages does not take away

¹⁰ Industrial Relation Code, 2020, No. 35, Acts of Parliament, 2020 (India).

¹¹ Ibid.

¹² *Buckingham & Carnatic Co. Ltd. v. Workmen*, A.I.R. 1953 S.C. 47 (India).

¹³ *Chandamalai Tea Estate v. Workmen* A.I.R. 1960 S.C. 902 (India).

¹⁴ *India General Navigation v. Workmen*, 1960 AIR 219 (India).

¹⁵ *Crompton Greaves Ltd v. Workmen*, AIR 1978 SC 1489 (India).

¹⁶ *Bank of India v. T.S. Kelawala*, 1990 I C.L.R. 748 (India).

the right to strike and the employees know repercussions of the same.

In 1995, in the case of *Syndicate Bank and Ors. vs. K. Umesh Nayak*¹⁷, the previously contradictory judgements were brought into question. Prior to the 1990 judgement, the justification of the strike was considered, and subsequently, it had no consideration. The appellants felt that it was necessary to bring it up again. The Court held that strikes have to be justified and legal in order to receive wages. The legality of the same would be checked by the Industrial tribunal and no other authority. However, legality alone doesn't guarantee wages. The court observed the fact that the legality of the strike depends on the provisions of the Industrial Disputes Act and the justifiability of the strike depends on the conditions of the strike such as urgency of the situation, nature of the issue or demand, working conditions, or why the dispute was not resolved without resorting to strike.

Another notable judgement was given in the case of *T.K.Rangarajan V. State of Tamil Nadu*¹⁸, when the state terminated all the employees who had gone on strike. When the issue came before the court, the judge held that there was no fundamental/statutory/equitable right to strike and that government employees could not resort to strike. The case of *Kameshwar Prasad v. State of Bihar*¹⁹ was referred, where the judge stated that even a very liberal interpretation of Art. 19(1)(c) of The Constitution of India could not guarantee the fundamental right to strike. Notably the Court stated that government employees cannot claim the right to strike, as they hold important positions with respect to welfare of the society. In the scenario where acts of injustice are committed against them, they have been given various redressal methods within the system itself. The court observed how strikes by government employees could affect the entire nation and bring the system to a halt, which would lead to chaos in the society. The court concluded by stating that strikes have been grossly misused at times as well.

Through the above mentioned judgements and observations by the court, right to strike cannot be interpreted as a statutory or fundamental right, if they are not illegal and are justified, then the workers will be paid wages. Legality solely does not guarantee wages. Further, every case has different circumstances and issues/disputes which must be looked at separately in order to ascertain the receipt of wages. The "justifiability" depends on the same as no statute can define that. However, there is a need to establish guidelines or certain pointers that Courts can see, to avoid strikes being termed as unjustified with no basis or vice-versa.

These guidelines or conditions could ascertain the justification of the strikes, could be based

¹⁷ *Syndicate Bank and Ors. v. K. Umesh Nayak*, 1995 AIR SC 319 (India).

¹⁸ *T.K.Rangarajan v. State of Tamil Nadu*, 2003 5 SCALE 537 (India).

¹⁹ *Kameshwar Prasad v. State of Bihar*, 1962 AIR 1166 (India).

on certain things such as the level of working conditions such as hygiene, unsatisfactory results from previous disputes raised, inability of workers to satisfy basic needs, upper management's refusal to negotiate, type of work and all related functions such as minors facing breathing ailments therefore needing certain health care etc; as well as the legality of the law. Firstly, these would primarily ensure that certain basic rights of the workers are met with. Secondly, there is constant development and technical advancement, laws sometimes fail to accordingly remain at par with the same. They can tend to be outdated and while a certain working condition/wage/penalty may seem reasonable at the time of the implementation of the law, they may not still be reasonable. The legality aspect must not be lost on the basis of outdated laws. Therefore, while looking at the legality of the strike, the courts should ensure whether the law itself is still applicable or not.

With respect to wages during lock-out, it was held in the case of *Indian Marine Service Pvt. Ltd. v. Their Workmen*²⁰ that workers are entitled to full wages for the period of the entire lock-out if the lock-out was unjustified. In the scenario of an illegal lock-out, the workers have no compulsion to go to work or take part in the conciliation proceedings. The employer cannot deny them wages for the same. However, it was also stated that a lock-out that was declared after an illegal strike would mean both parties are at fault so the workmen are only entitled to half of their wages during the period of lock-out.

Recently, a pandemic hit which caused a nation-wide lockdown to prevent the spread of Covid-19. An order was passed on the 29th March, the Government of India issued an order under Section 10(2)(1) of the Disaster Management Act, 2005. By this the State and UTs were ordered to issue further orders that the employees of the Industries and commercial shops were bound to be paid full wages during the period of lockdown. Not paying employees would amount to an offence. Furthermore, it was stated that the 'no work no pay' principle could not be applied during such times.²¹

On 12th June, this order was challenged and the Supreme Court gave an interim order in *Ficus Pax Private Limited vs Union Of India*²², stating that private establishments, industries were to negotiate the terms of pay with their employees and enter into settlements regarding the pay upto the order of the MHA on 18th May which withdrew the previous order of compulsory

²⁰ *Indian Marine Service Pvt. Ltd. v. Their Workmen*, 1963 AIR SC 528 (India).

²¹ KR Shyam Sundar, *Employers are obliged to pay wages during lockdown period*, THE HINDU BUSINESS LINE (Apr. 13, 2020), <https://www.thehindubusinessline.com/opinion/employers-are-obliged-to-pay-wages-during-lockdown-period/article31331369.ece>.

²² *Ficus Pax Private Limited v. Union Of India*, 2020 LLR 579 (India).

payment of wages.²³

Some changes were brought in the law recently and on 28th September, 2020, three Labour Law bills were passed, one of them being The Industrial Relations Code, 2020. The Code has broadened the definition of “strike” so as to include “the concerted casual leave on a given day by fifty per cent. or more workers employed in an industry. Joint casual leaves have been added to the scope of strikes by the code.”²⁴

It states that all persons must give a 14 day prior notice before going on a strike or lock-out, which would be valid for 60 days and not for just 42 days anymore, thereby flash strikes would no longer be permissible. While previously notice was solely to be provided for strikes in public utility services such as airlines, railways, establishments providing services like water, telephone; the amendment would make notice of strike a requirement in all industrial establishments. While the reasoning isn’t clear, no restriction has been created so this can be considered as a neutral or positive amendment.

While a conciliation proceeding is ongoing, the code prohibits strikes and lock-outs during and up to 7 after it. If before a tribunal, strikes are prohibited during and up to 60 days after the proceeding. If the proceedings are yet to start, the conciliation officer should be given a notice 5 days prior to the strike and lock-out after which the conciliation proceeding will immediately start. And lastly, in case the conciliation proceedings have not been successful, the aforementioned period of prohibition could be extended even beyond the 60 days validity period.

The labour laws objectives are to ensure the welfare of the workers. Strikes are important and legitimate resorts that employees can turn to when an issue arises, guaranteed it does not result in violence or destruction. Therefore, not being paid for periods of legitimate strikes would deter people and force them to continue working in possibly bad conditions. Furthermore, lock-outs can be done by employers illegally and without justification, also during which employees must be paid. The Supreme Court through its precedents has given reasonable distinctions regarding the situations where wages are to be paid, which have to be both justified and legal.

²³ *Supreme Court Order On Payment Of Wages During The Lockdown Period*, INDUSLAW (June, 2020), <https://induslaw.com/app/webroot/publications/pdf/alerts-2020/Infoalert-SC-directions-on-MHA-Order-requiring-full-payment-of-wages-June-26-2020.pdf>.

²⁴ *New Labour Laws Explained (Part 1): Industrial Relations Code 2020*, LIVELAW (Sept. 26, 2020, 08:43 PM), <https://www.livelaw.in/know-the-law/new-labour-laws-explained-part-1-industrial-relations-code-2020-163569?infinitescroll=1>.