

**RIGHT TO STRIKE OF WORKERS IN PUBLIC SECTOR BANKS: A  
CONSTITUTIONAL AND LEGAL PROVISIONS IN INDIA**

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**Abstract**

Strike is a very powerful weapon used by trade union of worker's to get their demand from management. Today strike is become a weapon of self defence against the arbitrary and unjust policy of management. But under Indian constitution right to strike of workers is not directly and absolute right. It flows of from the fundamental right to form union or association which is subject to reasonable restriction. In this research paper I have discuss the meaning, reason and kind of strike by workers in public sector banks. I have also discuss the legal provision relating to right to strike by workers in India and judicial response on the worker right to strike with the help of suitable case.

**Keywords:** Strike, Workers, Public Sector Banks, Fundamental Rights, Judicial, Statutory

**Introduction:**

Strike is powerful weapon in the armory of workman. It is available when there is a dispute between the employer and employee. Skilful use of this weapon may help the workmen to force the employer to accept their demands. Strike is a weapon that disempowered to fight in oppressive cases when no constructive option is left. It is the last resort taken out of expression. It is a weapon that provides an opportunity for collective bargaining. Strike is neither an act of war against the industry nor against the employer. It is basically a weapon of self-defense against the arbitrary and unjust policy of the management. It is a social necessity for promoting or defending the just economic interest of the working class.

The right to strike has acquired an implied authorization from Articles 23, 24 and 25 of the Universal Declaration of Human Rights (1948). In India the Trade Unions Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union. Further, the Industrial Disputes Act, 1947 recognized that the workers have the right to strike in certain circumstances other than those prohibited. The Supreme Court in *Chandramalai Estate v. Their Workmen* , recognized that strike is a legitimate and sometimes unavoidable weapon in the hands of laborers.

Reckless use of strike by the workmen creates the risk of unnecessary stoppages. These stoppages create worse tensions and frictions and may results in the violation of law and order. Yet day by day ratio of strike is increased in every sphere of society. But strike ratio is also increasing in banking sector. Their can be so many reasons of strike in public sector banks but recently strike was occurring in banks because of Central Government is vigorously pursuing their policies of labour reforms aimed at weakening the labour laws in favour of the capitalists, corporates and employers and to the detriment of working class. These measures are part of their neo-liberal economic policies which are aggravating the problems of the workers and common masses.

### **Definitions**

**Strike:-**Section 2(q) Industrial Dispute Act 1947,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 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 accept employment.

**Workman:-** The Industrial Disputes Act 1947 defines a ‘workman’ as: any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

**Public sector banks:** public sector banks are banks where majority stake (i-e more than 50%) is held by the government. The share of the bank is listed on stock exchanges. There are total of 27 public sector banks in India [19 Nationalized banks + 6 State bank group (SBI

+ 5 associates)+Industrial Development Bank of India +Bhartiya Mahila Bank ].In 2011 Industrial Development Bank of India and in 2014 Bharatiya Mahila Bank were Nationalized with a minimum capital of Rs 500 crores.

**TYPES OF STRIKE:**

- 1. Economic Strike:** Under this type of strike, labors stop their work to enforce their economic demands such as wages and bonus. In these kinds of strikes, workers ask for increase in wages, allowances like traveling allowance, house rent allowance, dearness allowance, bonus and other facilities such as increase in privilege leave and casual leave.
- 2. Sympathetic Strike:** When workers of one unit or industry go on strike in sympathy with workers of another unit or industry who are already on strike, it is called a sympathetic strike. The members of other unions involve themselves in a strike to support or express their sympathy with the members of unions who are on strike in other undertakings. The workers of sugar industry may go on strike in sympathy with their fellow workers of the textile industry who may already be on strike.
- 3. General Strike:** It means a strike by members of all or most of the unions in a region or an industry. It may be a strike of all the workers in a particular region of industry to force demands common to all the workers. These strikes are usually intended to create political pressure on the ruling government, rather than on any one employer. It may also be an extension of the sympathetic strike to express generalized protest by the workers.
- 4. Sit down Strike:** In this case, workers do not absent themselves from their place of work when they are on strike. They keep control over production facilities. But do not work. Such a strike is also known as 'pen down' or 'tool down' strike. Workers show up to their place of employment, but they refuse to work. They also refuse to leave, which makes it very difficult for employer to defy the union and take the workers' places. In June 1998, all the Municipal Corporation employees in Punjab observed a pen down strike to protest against the non-acceptance of their demands by the state government.
- 5. Slow Down Strike:** Employees remain on their jobs under this type of strike. They do not stop work, but restrict the rate of output in an organized manner. They adopt go-slow tactics to put pressure on the employers.

**6. Sick-out (or sick-in):** In this strike, all or a significant number of union members call in sick on the same day. They don't break any rules, because they just use their sick leave that was allotted to them on the same day. However, the sudden loss of so many employees all on one day can show the employer just what it would be like if they really went on strike.

**7. Wild cat strikes:**

These strikes are conducted by workers or employees without the authority and consent of unions. In 2004, a significant number of advocates went on wildcat strike at the City Civil Court premises in Bangalore. They were protesting against some remarks allegedly made against them by an Assistant Commissioner.

**CAUSES OF STRIKE IN BANKS:** Strikes can occur because of the following reasons:

- Dissatisfaction with company policy
- Salary and incentive problems
- Increment not up to the mark
- Wrongful discharge or dismissal of workmen
- Withdrawal of any concession or privilege
- Hours of work and rest intervals
- Leaves with wages and holidays
- Bonus, profit sharing, Provident fund and gratuity
- Retrenchment of workmen and closure of establishment
- Dispute connected with minimum wages

**WHY NEED RIGHT TO STRIKE IN INDIA**

Workers have not a fundamental right and legal right to go strike in India. But in some circumstances they become helpless and they have no option except strike. Those circumstances may be following in whose they need right to strike :

1. Striking is a last resort but sometimes the only tool for workers to protect themselves.
2. To avoid being at the complete mercy of employers.
3. To give more of a balance between worker and employer power.
4. Without it, more and more governments will ban industrial action and punish people who dare to strike.

5. Most strikes are over pay and better working conditions. Without the threat of strike action, corporations will be able to make bigger profits, while working conditions will get worse.

#### **CURRENT SCENERIO OF STRIKE OF WORKERS IN BANKS:**

Recently it is noticed that strike rate has increased in both public & private sector banks in our country. The reason for that can be different but involving of staff of even apex bank of country i.e. RBI, and apex bank in rural development sector NABARD in strikes alarmed and cautions the government.

There were a big strike at July 29<sup>th</sup> 2016 and September 2<sup>nd</sup> 2016 across the country. The strike was called of AIBEA (All India bank employees association) and AIBOA ( All India bank officers association) . Due to srike banking system was mostly paralyzed in which 85% workers of banking staff stayed away from work to take part in the nation wide strike against the centre . However essential service such as bus, train and other transport service remained unaffected.

The main reason of current Nation-wide strike by the AIBEA (All India bank employees association) and AIBOA ( All India bank officers association) was opposing the anti- people economics policy, anti-worker labour reform, oppose closour of associate banks and merger with SBI, and demand recovery of bad loan of the central government.

The Bank employees also opposing the retrograde banking reforms like privatisation of banks, consolidation and merger of banks, allowing big corporates to start their own private banks, allowing Licence to corporate houses to start Small Private Banks in the rural areas and deliberate inaction to recover huge bad loans in banks.

The present strike was called in spot of 12 points charter of demand of central trade union included urgent measures for containing price rise through universalisation of public distribution system and banning speculative trade in commodity market, containing unemployment through concrete measures for employment generation.

The other main demands are universal social security cover for all workers, Minimum wages of not less than Rs 18,000 per month with provisions of indexation, assured enhanced pension not less than Rs 3,000 per month for the entire working population, Removal of all ceilings on payment and eligibility of bonus, provident fund, increase the quantum of gratuity and opposing Labour Law Amendments and FDI in Railways, Insurance and Defence.

On July 29th 2016 service at around 80 thousand bank branches in the country were hit as employees of public sector banks went on a one-day strike to protest proposed merger of SBI associates with the parent and other issues. However, private sector banks like ICICI Bank were working as usual. Most of the public sector banks including SBI had earlier informed their customers of inconvenience if strike materializes.

Major demands of that strike which held on 29<sup>th</sup> July were:

- Acquisition of associate banks be at par without discrimination
- All supervisory staff be taken into confidence, prior to acquisition, on all matters concerning them
- Issues including protection of seniority, one-time inter-circle transfer option, special compensatory allowance, additional increments, transfer policy and promotion policy be looked after
- All benefits available to the officers in the SBI to be passed on to the officers in associate banks right from a common date, the date on which acquisition is cleared or the first appointed date of acquisition of any of the associate banks
- All head offices of individual associate banks are to be converted into separate local head offices of the SBI and as such head office of the SBP should be converted into local head office of the SBI at Patiala
- Creation of a local head office in Patiala which will control more than 1,137 offices in Punjab
- The existing local head office of SBI at Chandigarh will take care of branches of Chandigarh, Haryana, HP and J&K

### **RIGHT TO STRIKE OF WORKERS IN INDIA:**

Every right comes with its own duties. Most powerful right have more duties attached to them. Today in each country of globe whether it is democratic, capitalist, socialist given right to strike to workers. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry. This would ultimately affect the economy of the country. Today, most of the countries, especially India, are dependent upon foreign investment and under these circumstances it is necessary that countries who seeks foreign investment must keep some safeguard in there respective industrial laws so that there will be no misuse of right of strike. In India, right to protest is a

fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the industrial dispute Act, 1947.

**Strike is a fundamental right or not?** In India unlike America right to strike is not expressly recognized by the law. The trade union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law. Now days a right to strike is recognized only to limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions.

The right to strike in the Indian constitution set up is not absolute right but it flow from the fundamental right to form union. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions.

In the *All India Bank Employees Association v. I. T* the Supreme Court held, “the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations.”

Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

In *Kameshwar Prasad v. State of Bihar* the Supreme Court held that even a very liberal interpretation of article 19 (1) (c) could not lead to the conclusion that the trade unions have a guaranteed fundamental right to strike. In *All India Bank Employees' Association v. National Industrial Tribunal* (the AIBE case) also it was contended that the right to form an association guaranteed by Article 19 (1) (c) of the Constitution, also carried with it the concomitant right to strike for otherwise the right to form association would be rendered illusory. The Supreme Court rejected this construction of the Constitution: “to read each guaranteed right as involving the concomitant right necessary to achieve the object which might be supposed to underlie the grant of each of such rights, for such a construction would, by ever expanding circles in the shape of rights concomitant to concomitant right and so on, lead to an almost grotesque result.”

It was a culmination of the ratios of the *Kameshwar Prasad* and the *A.I.B.E.* cases that resulted in the decision in the highly contentious *Rangarajan* case. In reliance of these judgments, the Apex court was correct in opining that there exists no fundamental right to strike. But in stating that Government employees have no “legal, moral or equitable right”, the Court has evolved a new industrial jurisprudence unthought-of of earlier. It is true that the judgments mentioned above have rejected the right to strike as a fundamental right, but not as a legal, moral or equitable right. The question of ‘strike’ not being a statutory or a legal right has never even been considered in the court. Further the expression ‘no moral or equitable right’ was uncalled for. A court of law is concerned with legal and constitutional issues and not with issues of morality and equity.

In **T.K. Rangarajan v. Government of Tamilnadu and Others**, Justice M.B. Shah, speaking for a Bench of the Supreme Court consisting of himself and Justice A.R. Lakshmanan, said, “Now coming to the question of right to strike – in our view no such right exists with the government employee”.

This case simply ignores statutory provisions in the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926, and an equal number of case laws laid down by larger benches that have recognized the right to strike. It also fails to consider International Covenants that pave the way for this right as a basic tenet of international labor standards. In this case clearly mention no moral, legal of equitable right to strike of government employees.

**Strike as a legal right :-**The right to strike is organically linked with the right to collective bargaining and will continue to remain an inalienable part of various modes of expression by the working people, wherever the employer-employee relationship exists, whether recognized or not. The Apex court failed to comprehend this dynamic of the evolution of the right to strike. In *B.R. Singh v. Union of India*, Justice Ahmadi opined that “the Trade Unions with sufficient membership strength are able to bargain more effectively with the management than individual workmen. The bargaining strength would be considerable reduced if it is not permitted to demonstrate by adopting agitation methods such as ‘work to rule’, ‘go slow’, ‘absenteeism’, sit-down strike’, and ‘strike’. This has been recognized by almost all democratic countries”.

**Strike as a statutory right:-**The Industrial Disputes Act, 1947 implies a right to strike in industries. A wide interpretation of the term ‘industry’ by the courts includes hospitals, educational institutions, clubs and government departments. Section 2 (q) of the Act defines ‘strike’ means “a cassation 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 or have been so employed to continue to work or accept employment” Sections 22, 23 and 24 all recognize the right to strike. Section 24 differentiates between a ‘legal strike’ and an ‘illegal strike’. It defines ‘Illegal strikes’ as those which are in contravention to the procedure of going to strike, as laid down under Sections 22 and 23. The provision thereby implies that all strikes are not illegal and strikes in conformity with the procedure laid down, are legally recognized. Further Justice Krishna Iyer had opined that “a strike could be legal or illegal and even an illegal strike could be a justified one”. It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike.

***Right to strike – Judicial Interpretations:*** judiciary is most powerful pillar to soul the dispute between employees and workers but judiciary cannot cross the limit of legislative provision in India. A series of judicial decisions emphasized on the legality or the illegality of the strike, but did not impose a ban on the right to strike. In *Management of Kairbeta Estate, Kotagiri v. Rajamanickan* the full bench observed that, just as a strike is a weapon available to the employees for enforcing their individual demands, a lockout is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between the capital and the labour, the weapon of strike is available with the labour.

It was also held that, strike a weapon to force the employer to accede to employees demand and to give them the legitimate dues is a strike which is recognised under the Industrial Disputes Act as defined in Sec 2 (q).

In *Bank of India v/s I.s.Kalewala* the constitutional bench held that, whether the strike is legal or justified is question of fact to be decided with the help of the evidence on record. In *Crompton Greaves Ltd v. Workmen* the division bench held it that a strike is legal if it does not violate any provision of the statute. Again a strike cannot be said to be unjustified unless the reasons for it are entirely perverse and unreasonable. Whether a particular strike was justified or not is a question of fact which has to be justified in the light of the facts and circumstances of each case.

In the case concerning *Management of Chandramalai Estate, Ernakulam v. Its workmen* a division bench judgment, there was a dispute between the management and the workers and the labour minister decided to arbitrate the matter. In this case it was held that the strike in protest of the recalcitrant attitude of the management in boycotting the conference, held on 23rd November, 1961 by the labour minister of the state was not unjustified. It was also held

in this case that strike is legitimate and sometimes an unavoidable weapon in the hands of the workers. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect labour to wait till after the government takes notice. In such cases, strike even before such a request has been made may well be justified.

## **CONCLUSION**

The right to strike is not fundamental or absolute right in India in any special and common law, whether any undertaking is industry or not. This is a conditional or qualified right only available after certain pre-condition are fulfilled. If the constitution maker had intended to confer on the citizen as a fundamental right the right to go on strike, they should have expressly said so. On the basis of the assumption that the right to go on strike has not expressly been conferred under the Article 19(1) (c) of the Constitution. Further his Lordship also referred to the observation in Corpus Juris Secundum that the right to strike is a relative right which can be exercised with due regard to the rights of others. Neither the common law nor the fourteenth Amendment to the federal constitution confers an absolute right to strike .It was held in the case that the strike as a weapon has to be used sparingly for redressal 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, 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. Every dispute between an employer and employee has to take into consideration the third dimension, viz. the interest of the society as whole. Recently Supreme Court held that if the strike is illegal then the employer have right to take action against the workers or employees who had taken part in the strike.

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