Right to Strike: A Conceptual and Contextual Anathema

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I. Introduction:

Class struggle according to Marx lies at the very heart of societal structures. The alignment of interests brings the workers together and the capitalists too come together in order to protect their interests and a class struggle ensues. The class struggle is fundamentally to control the means of production. While the bourgeoisie feel that it simply owes the wages it pays to the workers, workers think they must have some share in the profit as well because it is on account of their labour that the profit is earned. A deadlock is not in the interest of either of the sides. Therefore, reconciliation is sought. However, neither of the parties are either willing to permanently forgo their claim to the profit or let go the desire to control the means of production. This is primarily because the worker class sees huge disparity between their standard of life and that of the bourgeoisie. Since the comfortable life of the bourgeoisie comes from the profits the proletariat sees itself producing, it thinks it justifies asking for a piece of cake.

Legislation supporting the cause of workers and promoting power of collective bargain together with the institutionalization of strike as a mode of protest ensured that the workers were not left with the option of revolution alone when things got too bad. Workers were, thus, allowed to voice their concerns through peaceful and effective means.[2]

The freedom of association has been the cornerstone of the society. The uneven socio-economic conditions the people organized themselves to have equal status, equal share in economic production and to remove social barriers, inequalities and abolish private monopolies and concentration of economic powers in the hands of a few persons of society. In this way the capitalist class and the labour class, the class of haves and have-nots recognized since the commencement of industrial age, came into conflict.

Interest in preserving industrial peace prompts the states to intervene in industrial disputes in order to facilitate settlement. This approach is not a

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2 Hemraj Singh, "*Conflict Theory and Marx's Classless, Stateless Society*", Lawyers update, November 2009, p.20

very healthy one. Bipartite settlements are more healthy.[3] In bipartite settlements gradually a pattern of relationship emerges in each industry which parties find comfortable and satisfactory. In such cases there will be a lesser chance of dispute.

Strike is the most popular form of industrial action. It is used to force the employer to accept or discard certain conditions of work. Often, a strike does not stay limited within this definition. Today it has become a popular concept. It has to be regulated by law. In the narrow concept though it means only temporary work stoppage, in the broader spectrum it includes many types of actions. Each of these actions can be regarded as a separate form of action.

Strikes and other industrial actions are mainly due to frustrations. Sometimes the reasons behind the frustrations may not be within the control of the management. The management can however, keep a check on the problem merely by keeping a watch on the factors that may aggravate the frustration. In this way management can even succeed motivating the worker towards better production.[4]

II. PART-I :
Strike: Meaning and Concept

In any industrial endeavor co-operation of labour and capital is quintessential for its success, although they have interests contrary to each other. They have different strategies and weapons to ventilate their grievances and safeguard their interests. This democratic weapon often used by them is strike. Strike is a weapon available to the employees for enforcing their industrial demands. In the struggle between capital and labour, as the weapon of strike is available to the labour and is often used by it. Strike is one of the oldest and most effective weapons of labour in its struggle with capital for securing economic justice.

Anderson's law dictionary defines strike as a combination among labourers or those employed by others, so as to compel an increase of wages, a change in the hours of labour, a change in the manner of conducting the business of principal or to enforce some particular policy in the character or number of the men employed or the like. Webster's dictionary defines the term strike as 'the act of quitting work done by mutual understanding by a body of

3 Punekar, et al, Labour Welfare Trade Unionism and Industrial Relations, (1980), p.276, Himalaya Publishing House,Bombay.
4 Thomas W. Harrel, Industrial Psychology, (1976), p.237, Oxford Book Company, New Delhi.

workmen as a means of enforcing compliance with demands made on their employer; a stopping of work by workmen in order to obtain or resist a change in conditions of employment'.

In India no right to strike is conferred expressly under any statute. The Industrial Disputes Act, 1947 (ID Act) merely regulates the right and thus impliedly recognizes the right. The Industrial Disputes Act may be regarded as the source of the meaning and definition of strike. In ordinary parlance, it may be understood to mean 'stoppage of work'. The Little Oxford Dictionary describes it as "employees concerted refusal to work until some grievance is remedied; similar refusal to participate in other expected activity."

Industrial Disputes Act defines strike as '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 to accept employment.

III. Historical Background of Strike in India:

In India, Industrial Organizations existed from 2500-1700 B.C., which is called the vedic age. They were so diffused that it is very difficult to trace their growth in that period. During the Buddhist period (600 B.C.) such organizations began to be noticed. These guilds are autonomous bodies and acted as courts of settlement of dispute.[5] This was the state of trade unionism and trade union movement for a long time. Later on with the organization of villages, the village Panchayat used to settle the industrial disputes.

A well-defined growth of trade union movement and subsequent legislations started only with the strike of 1859. A violent conflict arose between the contractors of European Railways and their employees in Bombay Presidency. It resulted in the death of a contractor. As a result the Workmen's (Disputes) Act 1860 was passed.[6] It provided for a speedy and summary disposal of disputes by the magistrate. This Act also made industrial disputes conspiracy and breach of contract. It was repealed in 1932. In 1920 the Trade Disputes Act was enacted. This Act provided for courts of enquiry and conciliation board. It forbades strike in public utility without a month's notice in writing. After the enactment of the Indian Trade

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5 P. C. Jain and Budh Prakash, Labour in Ancient India (1971),p. 243, Sterling Publisher Pvt. Ltd., New Delhi.

6 K.N. Vaid, State and Labour in India (1965),p.141, Asia Publishing House, New york.

Union Act, 1926 there was an outburst of strikes. So the 1929 Indian Trade Disputes Act was enacted. It required the public utility services to give a fortnights notice before commencing the strike.

Based on all the previous enactments the Industrial Disputes Act, 1947 was passed. The Industrial (Amendment) Act, 1982 requires the setting up of a Grievance Settlement Authorities. India's main problem is that from the initial stage itself trade unionism has associated itself with politics.

IV. Illegal Strike:

In a democratic state the workers have a right to express their grievances or make their demands by resorting to strike in India , unlike USA and England. It is not the object of the strike that makes it illegal but it is breach of the relevant statutory provisions which makes it illegal.[7] Section 24 of the Act[8] defines what an illegal strike is. A strike declared in contravention of section 22 and 23 is illegal, and also when it is continued, it is prohibited under section 10(3) or section 10-A (4A). A strike can be illegal only when it breaches some provisions of law. Thus, even if a strike is of violent type it will not be declared illegal so long it does not contravene any of the statutory provision.

In ***Life Insurance Corporation Of India v. Amalendu Gupta***,[9] the employer failed to pay the bonus to the workmen as ordered by the Supreme Court and the High Court. Therefore, the strike cannot be held to be unjustified. Furthermore the strike was peaceful and the workers had not resorted to acts of violence or intimation.

V. PART-II:
Right to Strike

One of the well-established conceptual exercises in jurisprudence is the Hohfeldian analysis of jural relations. Of the four classes, the first one, i.e. rights and their correlative duties are by far the most important. The concept has to be analyzed, of course, in the light of employer-employee relationship. The two are 'partners in production.' The predominant motto of their coming

[7] E.M. Rao, O.P. Malhotra's, "The Law of Industrial Disputes", New Delhi: Lexis Nexis Buttrworths,2004 at 503.
[8] Industrial disputes Act 1947
[9] 1988-II-LLJ-495

together is the production and distribution of goods and services for the benefit of the society. Neither of them can deviate from their chosen path. Strike, by definition, is stoppage of work. Conceding the same as a right suffers from an inherent defect in as much as it violates the underlying spirit of employer-employee relationship. In other words, instead of promoting and multiplying, it scuttles and retards the production and distribution of goods. Hence, such a proposition can hardly be accepted. Strike as a 'right' must have a concomitant duty.

Of course, every employer is under a pious obligation to meet the reasonable and just demands of his employees. As has been seen, trade unions and strikes emerged as a reaction against the persecutory and exploitative measures of the employers. Workmen were able to call the shots by virtue of their sheer strength. But such an attitude could not decide the criterion of reasonableness and validity. Hence, the state had to intervene to lay down the rights and corresponding duties governing the employer-employee relations and consequently, several labour legislations, ensuring the just and reasonable needs of workmen, were enacted. This has surely made redundant the prospect of a right to strike.

VI. The Legislative Intention about Right to Strike:

A reference to Industrial Disputes Act is a sine qua non to ascertain the legislative intent with regard to right to strike. An analysis of the Act reveals that none of its provisions confers a right to strike on any one. In fact, the Industrial Disputes Act, 1947 has several provisions that make the resorting to strikes very difficult. Section 22 of the Act provides that a person employed in a public utility service cannot go on strike in breach of contract without giving to the employer six months notice and/or during the pendency of any conciliation proceedings.

VII. A Judicial Response towards a "Strike Free Society":

It is heartening to know that the judiciary, from early on, has been antipathetic to strikes. The apex court has, in the larger interests of the society, left no stone unturned in denouncing strikes. Donning the robes of a crusader, right from the days of ***All India Bank Employees' Association v. National Industrial Tribunal Case***[10] (hereinafter referred to as AIBEA), the Supreme Court has tried its best to rid the society of the menace of strike.

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10 AIR 1962 SC 1166

In AIBEA it was contended, inter alia that a workman enjoyed a fundamental right to strike as a necessary corollary of the right conferred by virtue of Article 19(1)(c), the relevant portion of which reads, 'All citizens shall have the right... to form associations or unions'. It was contended that right to strike was inherent in the right to form unions and that the state was free to impose restrictions for the prevention of public order and morality only. The right to form unions or associations would be without sheen and substance if people did not have the right to go on strike.

The position in the AIEBA was emphatically reiterated and upheld subsequently in two cases viz., ***Kameshwar Prasad v. State of Bihar***[11] ***and Radhey Shyam Sharma v. Post-Master General***, respectively. Interestingly, both of them were decided by the constitution benches.

Though the immediate parties to strike are workmen and employer, the ultimate sufferer is the society at large. Strike spreads its vicious tentacles to various cross-sections of the society, and devours each and everything that comes its way. It is not surprising that strikes have a tendency to throw the society out of gear, and trample upon others' rights. Hence, a three judge bench of the Supreme Court in ***Communist party of India (M) v. Bharat Kumar***,[12]while approving ***Bharat Kumar K. Palicha v. State of Kerala***,[13], held thus: "there cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a 'bundh', which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways...." [14] Earlier the Kerala High Court had, in the latter case observed: "No political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire state or nation and is entitled to prevent the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit for the benefit of the of the state or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of

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11 AIR 1962 SC 1166

12 (1998) 1 SCC 201

13 AIR 1997 Ker 291 (FB)

14 (1998) 1 SCC 201

a fundamental right ...[15]". Needless to say, the Supreme Court was in full agreement with this view while pronouncing the judgment in the former.
The "***Tamil Nadu Mass Dismissal Case***" highlights the fact that impairment of the basic democratic rights of any organized force cripples efforts to attain social harmony. The emphasis should be on inculcating respect and protection by law or liberal principles for organizing and pressing one's interests. There is therefore a clear and immediate need for a modern, positive Government employees relations policy to reconsider collective bargaining rights of Government employees relations policy to reconsider collective bargaining rights of Government employees not falling within the category of 'workmen' ; all stand to benefit from its adoption. This paper argues that there is an insurmountable necessity for legislative amendment before there is a judicial attempt to entrench the right to strike in Government employees. The Court in the Tamil Nadu mass Dismissal case appeared to have its hands tied by the explicit wording of the service regulations. Such legislative action would also compliment the fundamental right to freedom of association guaranteed to all citizens under Article 19(1)(c) of the Constitution of India.

VIII. PART-IV:
2nd National Commission on Labour on Strikes

Recognizing the pitfalls associated with frequent strikes, the 2nd National Commission on Labour, in its report, defines a strike as "the assertion of the fundamental right of the worker to withdraw co-operation from what he perceives as injustice being done to him. This is achieved by stoppage of work". The report then advocates the concept of 'strike ballots' as a means of protest. It states that in the event of an industrial dispute between the employer and employees not being resolved through mutual negotiations, there may be a strike ballot. If the strike ballot shows that 51% of the workers are in favour of a strike, it should be presumed that a strike has taken place. The omission counters the argument that the concept of a 'strike ballot' is tantamount to taking away the right to strike by opining that the 'strike ballot' recognizes majority support to the proposal for strike as an equivalent to a successful strike without hurting the majority of people, especially in case of essential services.
The appropriate government would have the authority to prohibit such a strike or lockout by a general or special order and refer the contentions issue for adjudication. General provisions of giving notice etc. would apply. The Report recommends imposing penalties for illegal strikes and lockouts. The

[15] AIR 1997 Ker 291 (FB)

union leading an illegal strike must be recognized and debarred from applying for registration or recognition for a period of two or three years.
The concept of strike as delineated by the 2nd National Commission on Labour has serious ramifications on the rights of workers. Strikes are a recognized means of negotiating all over the world. It is an integral part of the bargaining process being an important weapon of economic coercion in the hands of workers.

IX. Conclusion:

The problem of right to strike is a complex one. It is quite often only a symptom of disease. It is the disease, which requires proper diagnosis and adoption of preventive and curative treatment. The real disease seems to be the result of cumulative action of a number of factors, such as number of factors, such as lack of organization and education among the workers, lack of proper and enlightened marginal approach to labour problems and absence of a wide legislative policy by the state relating to labour. The proper pathological approach will be to encourage unionization, to extend workers education to minimize chances of over politicization to unions and to provide proper legislative foundation for creation of an industrial relation system based on a spirit of co-operation and mutual understanding and not one of confrontation among the parties involved. When these measures are implemented our country is likely to witness a smooth industrial environment conducive to national progress.[16]

The judgment of the Supreme Court in ***T.K.Rangarajan v. State of T.N. and others***[17] holds that government employees have no moral or legal fundamental right to strike. The only issue that arose for consideration before the Court in that case was whether the state of Tamil Nadu had lawfully terminated the services of more than 1,70,000. This was purportedly in exercise of powers under an amended Essential Services Act, which enabled the government to terminate their services without any notice of enquiry. The Court dodged the issue and refused to decide it. Instead, it said that the State had 'gracefully' agreed to reinstate the employees, 'upon their giving an apology and an undertaking not to strike. More than 6000 employees were not reinstated but kept out on the ground that there were FIRs registered against them. The question of validity of the section and that of the Essential Services Act was kept open for decision at a later stage.

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[16] Gangotri Chakraborty, Strike: Problems and Perspectives, (LL.M. Dissertation) University of Cochin, Dept. of Law.p.148
[17] (2003) 6 SCC 581

The Court then went on to give its opinion on the question whether the employees had the right to strike and held that they had no moral or legal or Constitutional right to strike. This was the 'tempting moment' when the judges should have stopped short of expressing their opinion.

The focal point in relation to the right to strike is the deficiency of any specific legislative provisions regarding the right to strike. The provisions of the Industrial Disputes Act are only to regulate the strike, but not to prohibit it. The regulations of the commencement of strike are only given by the judicial pronouncements.