# Essay on Employees' Rights to Strike

> *"India is perhaps a unique country where one witnesses a bandh or strike almost every other day. "*
>
> *—A foreign Press reporter.*

Our Constitution guarantees the basic rights to every citizen of the country in the chapter on Fundamental Rights. It is also a virtual fact that the fundamental rights of people as a whole cannot be subservient to the fundamental rights of a group or section of the people. There cannot be any right to strike which interferes in the lives of common people and also causing huge loss to the national economy.

In a democracy, government employees are part and parcel of the government machinery and so owe duty and responsibility towards the society. Too many strikes and bands are very disastrous for the smooth functioning of government and cause a lot of hardships to the common man. In our country, everyone is found talking of his rights in a democracy, but he forgets the fundamental duties enshrined in the same Constitution.

From worker's point of view, strikes are ultimate weapons that are only resorted to by them when all other means of struggle and negotiation to meet their genuine demands have exhausted. It is experienced that the working class as a whole has been relatively responsible and only used strikes in extreme cases when negotiations have failed completely or when employers have appeared to be completely insensitive to genuine demands of labor.

Denial of this right would lead to a massive deterioration of the

bargaining power of workers which has already been weakened by various macroeconomic processes such a global integration and the withdrawal of the state from important areas of regulation and provision. In any society, the socio-economic rights of the citizens including workers have never been freely gifted by the State or the employers; their recognition and implementation have always been the result of prolonged struggle on the part of workers and other groups.

Changing the conditions of such a struggle amounts to changing the possibility of ensuring these basic rights which are even recognized in the Constitution of India. Therefore, the right to strike for workers remains an important instrument for ensuring the basic economic rights of all citizens. Nobody says that government employees should not have the right to form their associations to protect their rights. The trouble arises when this right is misused and they resort to Strikes, Hartals, and Bandhs, thereby bringing the everyday life of a common man to a halt. In fact over the years under the patronage of politicians and political parties, the trade unions or organizations have begun to feel so powerful and perversive that they do not mind neglecting their work, but at the same time will like to demand more perks and facilities. The frequency with which various trade unions resort to strikes has resulted in a heavy toll on the socio-economic fabric of the country. All the political parties, taking excuse for their vote-banks, never resort to taking any tough action against such striking employees.

Fortunately, the Judiciary has intervened at the right time to underscore this reality. On Aug. 6, 2003, the verdict came from the Supreme Court, that government employees had no fundamental, legal, moral or equitable right to strike on work. The Divisional Bench of the Supreme Court made the observation while disposing of a writ appeal and petitions challenging the Madras High Court’s dismissal of the petitions against the summary dismissal of Government employees

in Tamil. Nadu under the Tamil Nadu Essential Services Maintenance Act (TESMA) 2002, as amended by an ordinance on July 4, 2003. Lacs of Government employees and teachers in the State launched an indefinite strike on July 2, 2003. About two lacs of them were dismissed from service on July 4, 2003, under the provisions of TESMA.

The Supreme Court observed that “strikes hold the State to ransom” and “cause heavy loss of working days”. The Supreme Court also observed that strike is the most misused weapon in the country. The Supreme Court made it quite clear that the employees have no fundamental right to resort to strike. Quoting the judgment in a case relating to an All India strike by bank employees, the Bench said that the Supreme Court had specially held that even very liberal interpretation of sub-clause (c) of clause (i) of Article 19, cannot lead to the conclusion that trade unions have a guaranteed right to effective collective bargaining or to strike either as part of collective bargaining or otherwise.

Thus the Court had not rejected the employee’s right to form an association, indeed made it clear that government employees can have their legitimate grievances addressed through different statutory provisions. In making the arguments the Court further observed that the government employees can legitimately enjoy their rights as long as this enjoyment does not endanger the well-being of the largest democracy.

What we have is a cluster of rights, socio-economic, political, and civic. All merit legal protection. The right to strike is a political right, as “a facet of industrial democracy”. It can be exercised legitimately not only in protest against employer policies but also as a challenge to government policy. As civil liberty, it involves three rights—freedom of association, freedom from forced labor, and freedom of speech. No right is absolute. Every right is subject to

reasonable restrictions in the interests of other segments of society or of society as a whole. That is no reason for denying the right, but a challenge to define the limits sensibly.

Even in the haven of private enterprise, the United States, its Supreme Court's ruling in National Association for the Advancement of Colored People v/s Claiborne Hardware Co. (458 U.S. 886; 1982) should produce people here to reflect on the right. The NAACP had organized a boycott to put pressure upon local civic and business leaders to take steps to promote racial equality. The court upheld their action as a form of political expression and, therefore, entitled to protection as speech. "A strike seems to be no more coercive than a successfully organized economic boycott".

The work discusses thoroughly the reasons for legal protection as well as restriction of strikes, the standard-setting in the ILO, and the import of international instruments. It is not widely known in India that the ILO's Committee on Freedom of Association (CFA) held that the right to strike is an essential aspect of freedom of association, guaranteed not only in Conventions 87 and 98 but also in the ILO Constitution.

Whenever industrial disputes arose, the Indian government, under the guise of maintaining law and order, resorted to the arrest and detention of trade union members and organizers. The CFA pointed out that the complainant had made no reference to specific cases in which the right to strike had been prohibited and, therefore, there was insufficient information to warrant further examination of the case. The Committee merely observed that in most countries strikes are recognized as a legitimate weapon of trade unions in furtherance of their interests'. Also, the Committee added, "Strikes are regarded as legitimate in these countries only so long as they are exercised peacefully and with due regard to temporary restrictions placed

thereon (for example, cessation of strikes during conciliation and arbitration procedures, refraining from strikes in breach of collective agreements).”

Over time, however, the Committee became more committed to the protection of a right to strike. India is a member of the ILO. The Supreme Court’s ruling, unless reviewed and reversed, maybe an international embarrassment.

If we see in the Indian context, when the economy is on the verge of taking flight, the trade unions and the labor class must realize that the future of the country depends on “an all-out effort to improve the quality of working and raise the living standard of each and every citizen of this country”. Only then the nation can make rapid progress. The government should also create impartial machinery to redress ‘.he genuine grievances of its employees. The service rules should be unambiguous and transparent. Nepotism and corruption should not have any place in the recruitment, transfer, and promotional matters of employees.

It is the duty of both employees and the employer to avoid conflicts and try to sort out the matter with an open mind, keeping in view the good and welfare of the society and the nation as a whole.