Chapter: IV

RIGHT TO STRIKE AND THE SUPREME COURT

Every right comes with its own duties. Most powerful rights have more duties attached to them. Today, in each country of globe whether it is democratic, capitalist, socialist, give right to strike to the 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 their 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.

T.K. Rangarajan v. Government of Tamilnadu and Others\(^1\), 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”.

\(^1\) 2003(6) SCALE 84
Even as early as 1961, the Supreme Court had held in Kameshwar Prasad v. State of Bihar\(^2\) 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\(^3\) 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 rations 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 the Government employees have no “legal, moral or equitable right”, the Court has evolved a new industrial jurisprudence unthought of earlier. It is true that the judgments mentioned above have rejected the right to strike as a

\(^2\) 1962 Supp3 SCR 369
\(^3\) AIR 1962 SC 171
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.

The Rangarajan 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 labour standards.

4.1 Strike as a legal right

The Working class has indisputable earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognizes it as their implied right. Striking work is integral to the process of wage bargaining in an industrial economy, as classical political economy and post-keynesian economics demonstrated long ago in the analysis of real wage determination. A worker has no other means of defending his real wage other than seeking an increased money wage. If a capitalist does not grant such an increase, he can be forced to come to a negotiating table by striking workers. This he can do because the earnings of the capitalist are contingent upon the worker continuing to work. The

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4 Bank of India v T.S.Kelwala 1990(4) SCC 744
argument is drawn from Ricardian and Marxian classical political economy that shows how the employer’s income is nothing other than what is alienated from the worker in the process of production. When workers stop working, capitalists stop earning. The same applies to government servants as well. When they strike work, it is not the authorities who suffer a loss of income or disruption of their income generating process but the general public. Here, authorities come to a negotiating table mainly under political pressure or in deference to public opinion.

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\(^5\), 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 agitational methods such as ‘work to rule’, ‘go slow’, ‘absenteism’, sit-down strike’, and ‘strike’. This has been recognized by almost all democratic countries”.

\(^5\) (1990) Lab.IC 389 SC 396
In Gujarat Steel Tubes v. Its Mazdoor Sabha, Justic Bhagwati opined that right to strike is integral of collective bargaining. He further stated that this right is a process recognized by industrial jurisprudence and supported by social justice. Gujarat Steel Tubes is a three-judge bench decision and cannot be overruled by the division bench decision of Rangarajan. In the Rangarajan case the court had no authority to wash out completely the legal right evolved by judicial legislation.

4.2 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

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6 AIR 1980 SC 1896
7 It was held that the right to strike as mode of redress of the legitimate grievance of the workers and employees is expressly recognized under the ID ACT Labic 1079 (1084) (DB) Punj.
8 Bangalore Water Supply & Sewerage Board v.A.Rajappa AIR 1978 SC 548
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”.\(^\text{9}\) It is thus beyond doubt that the Industrial Disputes Act, 1947 contemplates a right to strike.

The statutory provisions thus make a distinction between the legality and illegality of strike. It is for the judiciary to examine whether it is legal or illegal. Is the total ban on strikes post-Rangarajan not barring judicial review which itself is a basic structure of the Constitution.

Further, Sections 22, 23 and 24 of the Act imply a right to strike for workers and a right to lock-out for the employers. In Kairbitta Estate v. Rajmanickam\(^\text{10}\), Justice Gajendragadkar opined: “In the struggle between the capital and labour, the weapon of strike is available to labour and is often used, as is the weapon of lock-out available to the employer and can be used by him”. The workers’ right to strike is complemented by the employers’ right to lock-out, thus maintaining a balance of powers between the two.

However, the Rangarajan judgement, by prohibiting strikes in all forms but leaving the right to lock-out untouched, tilts the balance of power in favour of the employer class. The workers’ right to strike is complemented by the employers’ right to lock-out, thus maintaining a balance of powers between the two. However, the Rangarajan judgement, by prohibiting strikes in all

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\(^9\) AIR (1980) SC1896
\(^{10}\) Kair Bitta Eastate v Rajamnickam, (1960) II L.L.J.(SC.) 275
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The Court, in opining that strikes ‘hold the society at ransom’, should have taken into account that the number of man days lost due to strikes has gone down substantially during the last five years. Whereas there has been a steep rise in the Mondays lost due to lock-outs, due to closures and lay-offs. Annual Report of the Union Labour Ministry (2002-03). In 2001, man days lost due to lock-outs were three times more man days than strikes. The Apex court preferred to overlook the recent strike by the business class against the VAT and also the transport companies strike against the judicial directive on usage of non-polluting fuel, both of which created much more chaos and inconvenience to the common people. It is submitted that the court came to a conclusion without looking at the industrial scenario in the present times. Should the apex court not consider banning closures, lock-outs, muscle-flexing by the business class etc., which not only put people to inconvenience but also throw the workers at risk of starvation

Besides the Industrial Disputes Act, 1947, the Trade Unions Act, 1926 also recognizes the right to strike, Sections 18 and 19\textsuperscript{11} of the Act confer immunity upon trade unions on strike from civil liability.

\textsuperscript{11}Sec 18, Tapan, Right to strike in inalienable, peoples democracy vol 1 XXVII No. 35 Aug 31, 2003Sec 18 provides for immunity from legal proceedings in respect of any act done in contemplation or furtherance of any trade disputes on the sale ground of inducing person to break contact of employment

Sec 19 Enforceability of agreements not with standing anything contained in any other law of the time being inforce an agreement between the members of a registered trade-union shall not be void or voidable merely by reason of the fact that any of the object of the agreement are in restraint of trade.
4.3 International Treaties

Article 8 (1) (d) of the International Covenant of Economics, Social and Cultural Rights (ICESCR) provides that the States Parties to the Covenant shall undertake to ensure: “the right to strike, provided that it is exercised in conformity with the laws of the particular country – Article 2 (1) of the Covenant provides. “Each State Party to the present Covenant undertakes to take steps, with a view to achieving progressively the full realization of the rights recognized in the present covenant by all appropriate means, including particularly the adoption of legislative measures”.

The blanket ban on the right to strike also transgresses the limits of the Conventions of the International Labour Organization (ILO). Convention 87 relates to Freedom of Association and Protection of the Right to Organize. Convention 98 refers to the Right to Organize and Collective Bargaining. Both conventions have been ratified by 142 and 153 nations respectively including Australia, France, Germany, Italy, Japan, Pakistan, Sri Lanka, Pakistan and the United Kingdom. Both the conventions, along with eight other conventions, have also been identified by the ILO’s Governing Council to be its core conventions.

Convention 154 is the Collective Bargaining Convention, 1981. The Preamble to this Convention reaffirms the provision of the Declaration of Philadelphia recognizing “the solemn obligation of the International Labour Organisation of the to further among the nations of the world programmes
which will achieve the effective recognition of the right of collective bargaining”. Further the Convention is not restricted to labour trade unions. Article 1 of the Convention states “Convention shall apply to all branches of economic activity”. Public employees are also not exempted from the above. Convention 151 is the Labour Relations Public Service Convention, 1978. Article 9 of the Convention provides. “Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the of their functions”.

Through India is not a signatory to any of the above-mentioned ILO Conventions, it has been a member of the ILO since 1919. The ILO Declaration of fundamental Principles and Rights at Work states “The International Labour Conference, declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in by virtue of being a member of the ILO, India is under obligation to satisfy at least the fundamental rights promoted by the Conventions, irrespective of it having ratified them or not. With the Rangarajan verdict, the Apex court has refused to adhere to the fundamental tenets of the ILO.

According with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely
freedom of association and the effective recognition of the right to collective bargaining.

Therefore, by virtue of being a member of the ILO, India is under obligation to satisfy at least the fundamental rights promoted by the Conventions, irrespective of it having ratified them or not. Further, India is not an ordinary member of the ILO, but one of the founding members of the Organization. After 85 years of this relationship that India has had with the Organization, our Apex court has refused to adhere to the fundamental tenets of the ILO.

4.4 Legal Interpretation to be in consonance with international covenants

The Directive Principles of State Policy enshrined in Part IV of the Constitution, of India Article 51 (c) provides that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another. Article 37 of Part IV reads as under: application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.

A conjoint reading of Articles 51 (c) and 37 implies that principles laid down in international conventions and treaties must be respected and applied in governance of the country.
In Vishaka v. State of Rajasthan,\textsuperscript{12} Justice Verma opined that any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51 (c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

In People’s Union for Democratic Rights v. Union of India,\textsuperscript{13} the Court followed the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR) and International Labour Organization’s Conventions, to interpret and expand the ambit of Article 21 of the Constitution. In Life Insurance Corporation of India v. Consumer Education and Research Centre,\textsuperscript{14} it was held that fundamental rights are subject to the directives enshrined in Part IV of the Constitution, the UDHR, the European Convention of Social, Economic and Cultural Rights, and other international treaties such as the Convention on Rights to Development for Socio-Economic Justice.

\textsuperscript{12} (1993) 6 SCC 241 P. 249
\textsuperscript{13} AIR 1982 SC 1473 P. 1487
\textsuperscript{14} (1995) 5 SCR p.482
It is thus settled that the raison d’être of Article 51 (c) is to introduce and implement various international instruments particularly the UDHR, ICCPR and the ICESCR in the interpretation of fundamental and legal rights. Therefore, the right to strike as contemplated by these Covenants and the ILO conventions is well within the ambit of constitutional (Articles 19 & 21) as well as legal provisions (Trade Unions Act, 1926 & Industrial Disputes Act, 1947). Thus, the decision in Rangarajan stands in disrespect to the provisions of international law.

**Industrial Dispute Act, 1947**

The Industrial Disputes Act, 1947 refrains generally the trade unions from going on strike. Its focal thrust is on more efficient alternative mechanisms for dispute settlement, such as reference to Industrial Tribunals, compulsory adjudication, conciliation, etc. In fact the very intention behind its enactment as illustrated in the statement of objects and reasons, was to overcome the defect in the Trade Unions Act, 1926, which was, that it imposed restraints on the right to strike but did not provide for alternative settlement of the disputes.

The Statement further reads as under “The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights
of strike and lock-out, which must remain inviolate, except where considerations of public interest override such right”.

Thus, the concept of alternative settlement mechanisms in industrial disputes was statutorily ushered in the Act with a view to providing a forum and compelling parties to resort to the forum for arbitration so as to avoid confrontation and dislocation in industry, that a developing country like India can ill-afford. Peace and harmony in industry and uninterrupted production being the demand of the time, it was considered wise to arm the Government with the power to compel the parties to resort to arbitration and a necessary corollary to avoid confrontation and trial of strength which are considered wasteful from national and public interest point of view.

Sections, 4,5,6,7,7A,7B,9,10 and 10A of the Industrial Disputes Act, 1947 provide alternative measures for settlement of industrial disputes elaborately. Section 4 of the Act provides for a diplomatic procedure which endeavours to settle a controversy by assisting parties to reach a voluntary agreement and the ultimate decision is made by the parties themselves. The conciliation machinery provided for in the Act, can take not of the existing as well as apprehended disputes either on its own or on being approached by either of the parties. Since, the final decision is with the parties themselves, they cannot complain that their practical freedom has been impaired or that they have been forced into a settlement which is unacceptable to them.
Section 6 provides for the constitution of a Court of Inquiry, that
enquires into the merits of the issues and prepares a report on them that is
“intended to serve as the focus of public opinion and of pressure from
Government authorities”\textsuperscript{15}.\textsuperscript{15} Section 10 A provides for voluntary arbitration. Voluntary arbitration seems to be the best method for settlement of all types
of industrial disputes. The disputes can be resolved speedily and is less
formal than trials. The greatest advantage of arbitration is that there is no
right of appeal, review or writ petition. Besides, it may well reduce a
company’s litigation costs and its potential exposure to ruinous liability apart
from redeeming the workmen from frustration.\textsuperscript{16} Apart from these, Sections
7, 7A and 7B deal with the constitution of adjudicatory authorities viz.,
Labour Courts, Tribunals or National Tribunals respectively.

It is submitted that these alternative machinery for settlement of
industrial disputes are proving to be highly effective. Report of the National
Commission on Labour according to which” during the years 1959-66, out of
the total disputes handled by each year, the percentage of settlements had
varied between 57 and 83. The remaining disputes, it is reported, were
settled mutually referred to voluntary arbitration or arbitration under the Act
or to adjudication or were not pursued by the parties. During the period
1965-67, the percentage of settlements reached in Bihar ranged from 51 to

\textsuperscript{15} International Encyclopedia of Social Science vol 8, P.508
\textsuperscript{16} Karnal Leather Karmachani Sangatham v Liberty Foot Wear Co, (1990) Lab IC 301 at 307. (SC)
Jagannath Shetty.J
86, in Assam from 65.5 to 92.3. In U.P Punjab and Delhi, in the year 1966, the percentage of disputes settled was 60, whereas in Kerala it ranged around 80 per cent. The statistics for settlement of disputes by alternative mechanism are greater those for that by strike where the disputes are mainly left unresolved.

The provision of such an elaborate and effective mechanism for settlement of industrial disputes, along with a reading of the statement of objects and reasons, is a definitive indication of the fact that the statue enshrines a preference to these alternative mechanisms over strikes.

4.5 Weapon of last resort

While on the one hand it has to be remembered that a strike is a legitimate and sometime unavoidable weapon in the hands of labour, it is equally important that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that any kind of demand for a ‘strike’ can be commenced with impunity without exhausting the reasonable avenues for peaceful achievement of the objects. There may be cases where the demand is of such an urgent and serious nature that it would not be reasonable to expect the labour to wait after asking the government to make a reference. In such cases the strike, even before such a request has been made, may very well be justified.