B.A.LL.B. VII SEMESTER
SUBJECT – LABOUR AND INSUDTRIAL LAW
CODE – BL-701
TOPIC - STRIKES AND LOCK-OUTS

In any industry, the two main pillars are employee and employer. The industry is running when these two pillars coordinate with each other. But in sometimes there are clashes of interest between employer and employee. For the benefit of the industry, it was necessary to resolve the conflict between employer and employee. Because the work environment is affected due to conflicts. Strike and lock-out-useful and powerful weapons in the armoury of workmen and employers-are available when a dispute or a struggle arises between them. Threats of their use, even more than their actual use, influence the course of the contest. The threat is often explicit; much more often it is' tacit but not for that reason the less effective. Skilful use of these weapons, threatened or actual, may help one party to force the other to accept its demands, or at least to concede something to them. But the reckless use of them courts the risk of unnecessary stoppages. Threats, even those not meant 'Seriously, can easily lead into positions from which retreat becomes impossible. Stoppages hurt both parties badly, create worse tensions and frictions and violations of law and order. If we provide a healthy environment, then it will provide the benefit of the employer as well as the employee. Strike used as a weapon by the workers and lockout used as a weapon by employers when the conflict between employer and employee is not going to resolve. Strike and lockout used at that time when the situation is very critical and there is no hope of resolving the dispute.

Strike- It owes its origin to old English words Striken to go. In common parlance, it means hit, impress, occur to, to quit work on a trade dispute. The latter meaning is traceable to 1768. Later on it varied to strike of work. The composite idea of quitting work or withdrawal of work as a coercive act could be gathered in the use of word as a verb as well as an adjective. The definition and use of the word strike has been undergoing constant transformation around the basic concept of stoppage of work or putting off work by employees in their economic struggle with capital.[1]

[1] **G.M. Kothari, Labour Demands and Their Adjudication, pp.200-202**

The strike has been defined in Section 2 (q) of the Industrial Disputes Act as under—A 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 to accept employment.

The analysis of the definition would show that there are the following essential requirements for the existence of a strike:

(1) There must be a cessation of work.

(2) The cessation of work must be by a body of persons employed in any industry;

(3) The strikers must have been acting in combination;

(4) The strikers must be working in any establishment which can be called industry within the

Meaning of Section 2(j); or

(1) There must be a concerted refusal; or

(6) 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;

(7) They must stop work for some demands relating to employment, non-employment or the terms of employment or the conditions of labour of the workmen.

The strike is illegal

1. If it is in breach of Contract of Employment.
2. If it is in Public Utility Services.
3. If a notice under Section 22 (1) is not given.
4. If commenced during Award or settlement period.
5. If commenced during or within 7 days of completion of Conciliation Proceedings.
6. If commenced during or within Two months of completion of Adjudication Proceeding

A strike, according to Section 2 (q) of the Industrial Disputes Act, is a cessation of work for any length of time under a common understanding to put pressure on an employer to accept their demands. Such a strike can exist even though it is not part of an industrial dispute.[2] A mere absence of workers from the factory[3] or a concerted application for leave is not a strike. But absence from work even on a holiday with the intention of coercing the employer has been called

[2] **G. D. Dalvi v. Goodlass Wall Ltd" Bombay, (1956) II L,L,]. 278.**

[3] **Ram Sarup v. Rex, [1949·50] 1 FJ.R. 113: A.LR. 1949 All. 218.**

a strike.[4]" The so-called go-slow strike needs special comment. It occurs when workers attend to their work, but do it slowly. This can cause heavy loss to an employer. One peculiarly effective form of go-slow strike, hard to deal with, is so-called work-to-rule, recently resorted to by employee'S of the telegraph department. This form of Strike occurs, mostly in posts and telegraphs, banks, railways, and so forth, when the workmen, by invoking time-consuming rules that are usually ignored, slow down their work. This differs from the ordinary go-slow strike in that here the workers merely refuse to do more work than they should. It is sometimes very difficult, however, to determine where work-to-rule ends and go-slow begins. Neither of these so-called strikes leads to "cessation of work". Therefore, it is debatable whether they come within the Act's definition. A go-slow strike-presumably because of the serious financial injury, it causes to an employer-has been held to be serious misconduct.[5]' But can work-to-rule be similarly held to be misconduct The workers say, on the contrary, that their conduct is unusually legally and correct.

Section 2(1) of the Industrial Disputes Act, 1947 defines Lock-out to mean:

- The temporary closing of employment or
- The suspension of work, or
- The refusal by an employer to continue to employ any number of persons employed by him.

Section 2(1) defines the term Lock-out. From the definition given in the Trade Dispute Act, the present Act has taken the present definition but has omitted the words when such closing, suspension or refusal occurs in consequences of a dispute and is intended for the purpose of compelling those persons or of aid in another Employer in compelling persons employed by him to accept terms or condition of, or affecting employment.
With the omission of these words, the present definition fails to convey the very concept of Lock-out. **In Sri Ramchandra Spinning Mills v/s State of Madras[6],** the Madras High Court read the deleted portion in the definition to interpret the term lock-out. According to the Court, a flood may have swept away the factory, a fire may have gutted the premises; a convulsion of nature may have sucked the whole place under ground; still if the place of employment is closed

[4] **Pipriach Sugar Mills Ltd. v. Their Workmen, [1956-57] 10 F.J.R. 413**
[5] **Vasant Govind Madhava Rao v, Gujarat Works Ltd., (1956) II L.L.1. 731 (I..A.T.).**
[6] **1957 I LLJ, 90.**

or the work is Suspended or the Employer refuses to continue to employ his previous workers, there would be a lock out and the Employer would find himself exposed to the penalties laid down in the Act. Obviously, it shows that the present definition does not convey the concept of the term lock out

Lock-out, as the antithesis of strike, is temporary closure of a place of business by the employer to bring pressure on his workmen to accept his terms. This is the word's usual meaning, although an inartistic definition of lock-out in Section 2 (1) seems to give a colour of lock-out to any closure of a place of business, even one caused by flood or fire or earthquake. The courts have had to clarify that definition. A permanent discontinuance of business is not a lock-out, because a lock-out is a closure of a place of business, not a termination of the business itself."[7]

Sections 22 to 24 of the Industrial Disputes Act deal with prohibition on both strikes and lock-outs. We shall briefly describe the limitations on strikes, which limitation'; also apply, mutatis mutandis, to lockouts. The Act classifies industries into public-utility services and others, and it prohibits strikes in the former more stringently than in the latter. In a public-utility service a strike requires a notice of not less than two weeks and not more than six. Industries other than public-utility services do not need such notices. In a public-utility service any strike pending conciliation is illegal.[8]

In any other industry a strike pending conciliation is legal-with the sale exception of one pending conciliation before a board.[9]" Regardless of notice and in any industry, a strike is illegal during a period of adjudication, or within the effective period of any award or any settlement. A strike legally in existence at the time of a reference to a tribunal, or to an arbitrator, or to a board of conciliation is not made ipso facto illegal by the reference.[10]" But the appropriate Government can by order prohibit such a strike's continuance."[11]

Strikes (legal or illegal) have been classified into justified and unjustified strikes. Dismissals of illegal strikers have sometimes been disapproved of on the ground that the strike, while illegal, was justified. Similarly, claim of legal/striker have sometimes been dismissed on the ground that

---

[7] **Jaya Bharat Tile Works v. State of Madras, (1954) I L. L.J. 286.**

[8] **Section 22**

[9] **Section 23**

[10] **Section 24(2)**

[11] **Section 10(3)**

the strike, while legal, was not justified. But it is now settled that an illegal strike can not be a justified strike. In deciding the question of punishment of strikers, a company must conduct an enquiry to determine the role of the strikers and must distinguish between peaceful strikers and violent strikers. It may not punish all strikers indiscriminately. Even peaceful strikers in a strike that is legal and justified, have no absolute right to strike-pay. But considering the economic disparity between the employers and the workmen, and the unequal bargaining power of the workmen, wages for the period of a strike, or part of it, are usually awarded on grounds of social justice. In awarding such strike-pay the courts consider the status of the strike not only at its commencement but also during its course later on.[12]

Strikes and lockouts are the most important indices of industrial relations in modern industries. These are the 57 economic sanctions which are usually resorted to by different conflicting groups as the last resort, when all possibilities of reaching a settlement fail. Whenever there is friction between Management and labour, the workers suffer and the only weapon, according to them, by which they can win over their employer, is "Strike". A strike has commonly been defined as a spontaneous and concerted withdrawal of labour from production. Strikes may be in the form of a stay-away strike where workmen simply do not come to the workplace during the working hours. Strikes may also be in the form of stay-in, sit-down or tools-down. The consequences of labour unrest affect all sections of the society. It affects the Government by retarding the growth of economy and the employer by low productivity and profit. Employees suffer wage cuts and the public are affected by the non-availability of consumables as well as the consequent price-hike. Parallel to the strike is the lockout which is used by the employer to curb the militant spirit of the workers. When the employer wants to dominate over the workers and 58 their rights and impose his own will upon them, he closes his business premises and prevents the workers from doing work.[13] This is called lockout. Strikes and lockout have now become important factors in the employer-employee relations.

The causes of strikes leading to work - stoppage may not be considered to be the issues on which strikes take place. But a cause must necessarily and invariably lead to an effect. But a demand for wage rise, protest against retrenchment and the like which represent "issues" do not always or necessarily lead to strike. If the workers' view is accepted by the Management, the strike can be

---

[12] **D. D. Seth, Commentary on the Industrial Disputes Act, 1947 at 353-54 (1966).**

13 K.N. Srivastava, Industrial Peace and Labour in India, Kitab Mahal, Allahabad, 1954, p.74.

averted. If the two sides fail to reach an agreement, the strike may follow. Thus the relationship between the issues like wage demands and personal policy may or may not lead to strike in the form of work-stoppage. Accordingly, they need not be taken as the causes of strikes. It is better to consider them as issues for bargaining between the labour and management. As the official Statistics refer the issues on which disputes take place (e.g., wage, retrenchment, leaves etc.,) as the "causes of industrial disputes", we can only study the distribution of strikes related to such issues for disputes.[14] India in the present context of economic development programmes cannot afford the unqualified right to the workers to strike or to the employer to lock-out. Compulsory arbitration as an alternative of collective bargaining has come to stay.

Penalty for illegal strikes and Lockouts[15]

(1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

[14] https://shodhganga.inflibnet.ac.in
[15] Section,26

Lay-off, Retrechment and closure

Lay-Off, Retrenchment and Closure are three case scenarios contemplated in the Industrial Disputes Act, 1947, which essentially results in employees losing their jobs.Chapter V-B was added in the Industrial Disputes Act, 1947 through amendment under Article 32 of the Constitution. Chapter V-B includes Section 25-K to Section 25-S of the Industrial Disputes Act, 1947

Definition of Lay off[16]

"Lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Essentially, a lay-off is a condition where the employers are constrained to deny work to their workforce owing to conditions that bring forth a temporary inability to keep their business going. The said case scenario can happen only in a continuing establishment.

Essentials:

- The conditions where Lay-off could be brought into play are:
- There has to be a failure, refusal or inability of an employer
- This failure, refusal or inability should be an offshoot of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason
- The names of the laid-off workers should necessarily feature on the muster rolls of the establishment

[16] **Section 2(kkk)**

- The said workers should not have been retrenched

Section 25-M Prohibition of lay-off-

No workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [with theprior permission of the appropriate Government or such authority as maybe specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority), obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion.

Constitutional Validity of Section 25-M

In Papnasam Labour Union V. Madhura Coats Ltd.[17] constitutionality of Section 25-M of Industrial Disputes Act, 1947 was challenged on the ground that the section as amended by the Amendment Act of 1976 imposed unreasonable restrictions in so far as it required prior permission to be obtained to effect lay-off and as such it was ultra vires and void. It was held that the object of Section 25-M is to prevent avoidable hardship to the employees resulting from lay-off and maintain higher production and productivity by preserving industrial peace and harmony. It was further pointed out that the legislature has taken care in exempting the need for prior permission to lay-off in Section 25-M if such lay-off is necessitated on account of power of failure or natural calamities because such reasons being grave, sudden and explicit, no further scrutiny is called for. Therefore, in the greater public interest for maintaining industrial peace and harmony and to prevent unemployment without just cause, the restriction imposed under sub-section (2) of Section 25-M cannot be held arbitrary, unreasonable or far in excess of the need for which such restriction has been sought to be imposed. Criminal cases need not be pursued, not only within the ambit of Section 482 of the Criminal Procedure Code but in special facts of the case will also secure the ends of justice

Definition of Retrenchment (Section 2(oo))-

"Retrenchment" means the termination by the employer of the service of a workman for any

[17] **laws (SC) 1994 12-69**

reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but doesn't include- (a) Voluntary retirement of the workman; or (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or [(bb) termination of the service of the workman as a result of the on-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill-health;

Section 25-N Condition precedent to retrenchment of workmen-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf

Constitutional Validity of Section 25-N

In Workmen of Meenakshi Mills Ltd., etc. V. Meenakshi Mills Ltd. And another,[18]

the Supreme Court held that Section 25-N of the Act as constitutionally valid on the ground that the restrictions imposed on the right of employer to retrench workmen is in interest of the general public. It does not infringe Article 19(1) (g) of the Constitution and duty to pass a speaking order and affording opportunity to the parties concerned with judicial power while functioning under sub-section (2) of Section 25-N and hence no appeal lies to Supreme Court against an order passes under sub-section (2) of Section 25-N.

Closure- The law relating to investigation and settlement of industrial disputes, namely, the Industrial Disputes Act, 1947, originally does not contain the provisions relating to closure of an

---

[18] [1992] INSC 160 (15 May 1992)

industry. The provisions relating to law of closure were inserted in the year 1957 in view of the Supreme Court judgment.[19] Subsequently, over a period of years the law relating to closure, has undergone series of amendments from time to time and thus was consolidated to the present position in the year 1982.

It is in the fitness of things that the right to security in the event of unemployment has, though late, found legislative recognition in our country.[20] The security of employment is necessary from the point of view of the workmen as well as the industry. If a worker sticks to his job he becomes more efficient by experience and an efficient worker is sure to augment the production in the industry. [21]

Definition of Closure (Section 2(cc))-

According to Section 2(cc)[22] of the Industrial Disputes Act, Closure of an industry means the permanent closing down of a place of employment or part thereof.

The term closure was used in the Act even prior to the insertion of this definition clause but was not defined as such. This led to divergence in judicial view as to when the closing down of a part of an establishment constituted closure and when it was an act of retrenchment. This controversy is resolved by the express terms of the definition clause itself. It is now made clear that the closure arises even if a part of the place of employment is permanently closed down. No industrialist will like to close down an earning industry, unless there are compelling circumstances to do so. Various kinds of situations, such as labour trouble of an unprecedented nature, recurring loss, paucity of adequate number of suitable persons for the purpose of management, non-availability of raw-materials, insurmountable difficulty in the replacement of damaged or worn-out machinery may arise in any industry, ultimately forcing its closure.

Special Provision Relating To Closure Section 25-O Procedure for closing down an undertaking-

An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety

[19] Hariprasad Shivshankar Shukla v/s. A.D. Diwelkar, AIR 1957 S.C 121; Barsi Light Railway Co., Ltd., v/s. Jogelkar, (1957) 1 LLJ. 243 (S.C

[20] Article 25 ofthe Universal Declaration of Human Rights (1948).

[21] Bum & Co., v/s. Their Employees, AIR 1957 SC 38.

[22] Inserted by Industrial Disputes (Amendment) Act of 1982, (w.e.f. 21-8-1984)

days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work,

Applicability of Section 25-O This section deals with the permission for closure of undertaking.

In **Hindalco Industries Ltd v Union of India and Others**,[23]
it was held that even though the closure of an undertaking was not a planned and voluntary closure by the company Section 25-O of the Industrial Disputes Act, 1947 would be applicable. It was also pointed out that even if an undertaking is closed for reasons beyond its control Section 25-o would be applicable and the conditions imposed in the order of the government granting permission for the closure were valid and binding on the appellant company.

Constitutionality of old Section 25-O

In Excel Wear v. Union of India,[24] Industrial Disputes Act 1947-Sections 25(O) and Section 25(R)-Constitutional Validity of-Whether right to close down an undertaking a fundamental right.

It was held that Section 25-O of the Industrial Disputes Act, 1947 as a whole and Section 25-R in so far as it relates to the awarding of punishment for infraction of the provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1) (g) of the Constitution. It was further held that it is true that Chapter V-B deals with certain comparatively bigger undertaking and of few types only. But with all this difference it has not made the law reasonable. It may be a reasonable classification for saving the law from violation of Article 14, but certainly it does not make the restriction reasonable within the meaning of Article 19 (6). Similarly, the interest of ancillary industry cannot be protected by compelling an employer to carry on the business if he cannot pay even the minimum wages to the labourer.

Within the meaning of Article 19(1) (g) includes right to close down the business and the fact

---

[23] **1993 SCALE (4)666**
[24] **1978 SCC (4) 224**

that the citizen cannot exercise this right as much as the permission of the State Government is required under Section 25-O before closing down the business, infringes the right given under Article 19(1) (g). The Supreme Court judgement in Workmen of Meenakshi Mills Ltd. v. Meenakshi Mills Ltd would equally apply to the provisions of Section 25-O as amended by the Act 46 of 1986. The right to close a business is an integral part of the fundamental right to carry on business and is guaranteed by Article 19(1) (g) of the Constitution.

Penalty for closure-

Any employer, who closes down an undertaking without complying with the provisions of sub-section (1) of section 25-O shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both. Any employer, who contravenes an order refusing to grant permission to close down an undertaking under sub-section (2) of section 25-O or a direction given under section 25P], shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and where the contravention is a continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction. It was held in **Excel Wear v. Union of India**, that Section 25-R in so far as it relates to the awarding of punishment for violation of provisions of Section 25-O are constitutionally bad and invalid for violation of Article 19(1) (g) of the Constitution.[25]

Compiled by

Dr Kusumavati
Assistant Professor of Law
ILS, CCSU campus, Meerut

For further queries you may reach us via..
E-mail - kumkumsingh012@gmail.com
Mob - 9410617968

[25] **Section 25-O**