RIGHT TO STRIKE IN PUBLIC UTILITIES: A COMPARITIVE ANALYSIS WITH REFERENCE TO INDIA & UK

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Introduction:

Every right comes with its own duties. Most powerful rights have more duties attached to them Every worker in each country of the globe whether it is democratic, capitalist, socialist, needed the right so strike with a reasonable restraints on their use. Right to strike as a mode of redress of the legitimate grievance of the workers is recognized by the law. **Strike,** is a work stoppage caused by the mass refusal of employees to work. A strike usually takes place in response to employee grievances in most countries, strike actions are quickly made illegal, as factory owners had for more political power than workers. Most western countries partially legalized striking in the late 19th air early 20th centuries.

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

Meaning of strike: - Collective, organized, cessation or slowdown of work by employees to force acceptance of their demands by the employer. In most jurisdictions require that to be legal

- a strike must be approved by the majority of the employees in a secret ballot,
- the ballot must be subject to independent verification if the number of employees exceeds a certain number (commonly 50),
- a notice of the impending strike ballot must be given to the employer a certain number of days in advance (commonly seven).
- the employer must be provided with the results of the ballot and, thereafter,
- a notice of the union's intention to proceed with the strike must be given to the employer a certain number of days in advance (commonly seven). Also called strike action or industrial action.

Meaning of Public Utility services:-

A **public utility** is an organization that maintains the infrastructure for a public service Public Utilities are subject to forms of public control and regulation ranging from local community- based group to state-wide government monopolies.

According to Section 2(n) of the Industrial Disputes Act, 1947, public utility service means:

a) any railway service or any transport service for the carriage if passengers or goods by air,

b) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends,

c) any postal, telegraph or telephone service,

d) any industry which supplies power, light or water to the public,

e) any system of public conservancy or sanitation

f) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the official Gazette declare to be public utility service for the purpose of this Act for such period as may be specified in the notification provided that the period so specified shall nor in the first instance, exceed six months but may by a like notification be extended from time to time by any period not exceeding six months at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension

Right to strike in India:-

- **Indian Constitution**
  - **Freedom of Speech and expression (Article 19(1)(a))**

A suppression of speech, in its most painful consequence would be mental sterilization. Freedoms of speech are comprehensive, and include freedom of expression concerning both public and private affairs. In guaranteeing the freedom of speech and in subjecting it to reasonable restrictions, our Constitution has to resolve the dilemma, since the choice is not between order and liberty; it is between liberty and anarchy.

Restrictions on freedom of speech may be imposed in the interests of the "sovereignty and integrity of India, the security of State, friendly relationship with foreign sates, public order, decency and morality in relation to contempt court, defamation or incitement of an offence".

  - **Freedom to Assemble peacefully and without arms (Article 19(1)(b)**

Democracy would have no meaning if freedom to assemble is not guaranteed. Thus, public meetings in open spaces and public streets have formed part of our national life and people have come to regard it as part of their privileges and immunities. Similarly, the right to take

out a procession on the highways and Public Street is part of the right to assemble which the people have regarded as part of Indian law, even before the commencement of Constitution Reasonable restrictions may be imposed in the interests of the sovereignty and integrity of India or public order.

- **Freedom to form association and unions (Article 19(1)(c)**

Social functioning of organized societies is based on multiplicity of associations and organizations: No democracy can function without freedom to form associations and unions. Political parties, trade unions, social and other organizations are part of democratic functioning of the society and the government. Article 191) (c) guaranteed freedom to form associations and unions, though reasonable restrictions on the freedom may be imposed in the interest of integrity and sovereignty of India, public order and morality.

❖ **Other Legislative Provisions:** In India 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. The Trade Unions Act: 1926 also recognizes the right to strike. Sections 18 and 19 of the Act confer immunity upon trade unions on strike from civil liability. 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 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, and clubs and government departments. Section 2 (q) of the Act defines strike 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 lyer had opined that "a strike could be legal or illegal and even an illegal strike could be a justified one" in Gujarat Steel Tubes v. Its Mazdoor Sabha 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 and not to declare that there exists no right to strike.

- National Labour Relations Act states, that under Section 7 "Employees shall have the right to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" Strikes are included among the concerted activities protected for employees by this section. Section 13 also concerns the right to strike.

- International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) Article (1) (d) 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

India is a signatory to the Covenant and is therefore bound under Article 2 (1) to provide for the right to strike as enshrined in Article 8 (1) (d), through legislative measures or by other appropriate means.

Legality of Strike in Public Utility Services:

Section 24 of the Industrial Disputes Act, 1947, declares that strikes would be illegal only when Hey have been resorted to in contravention of the mandatory provisions of Section 22 and those of Suction 23 of Act or when they are in defiance of the order made under sub-Section (3) of Section 10 or (4A) of Section 10 A of the Act.

The provisions of Sections 22 of the Act apply to establishments which fall in the category of 'public utility service' as defined in Section 2(6) of the Act Following conditions relating to a valid notice of strike are prescribed in Section 22/1) of Industrial Disputes Act. 1947 requires compliance by, the workers in a public utility service intending to go on strike

(1) notice of strike within six weeks before striking, i.e., the notice should have been given not earlier than six weeks before the date on which the strike is resorted, and

(2) the strike should not be resorted to unless and until a period of 14 days has expired from the date of the notice of strike

(3) before the expiry of the date of strike specified in the notice of strike.

It can thus, succinctly be stated that, any strike stared

(a) without giving notice within six weeks before the strike.

(b) without giving notice of 14 days:

(c) before the date specified in the notice and

(d) during the pendency of any conciliation proceedings and within seven days after its conclusion would be an illegal strike.

The obvious object for, the above mandatory provision to enable the authorities to make alternative arrangements for running public utility service vital to the day-to-day life of the community in the event of a strike These conciliations are essential and have to be fulfilled in order a clothe a strike by public utility service workmen with the mantle of legality.

Right to Strike in Public Utilities Sectors- JUDICIAL INTERPRETATIONS

In **B.R Singh Union of India**[1], Justice Ahmadi opined The Trade Unions with sufficient membership strength are able to bargain more effectively with the management than individual workman. The bargaining strength would be considerably reduced if i were not permitted to demonstrate by adopting agitation methods such as work to rule', 'go-slow down strike', and 'strike. This has been recognized by almost all democratic countries.

In ***All India Bank Employees' Associations National Industrial Tribunal and others***[2], the Court specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot load to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise.

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 these provisions and conditions are not fulfilled then the strike will be illegal

Justice Shah's judgment in ***T K Rangarajan State of Tamil-Nadu***[3] does not seem to be right when saying: "There is no statutory provision empowering the employees to go on strike." Going further, the judge then declared that there was no moral or equitable justification to go on strike This observation does ignore the legal provisions under the Indian Law and International convention Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands

[1] (1998)2 LLJ(SC)
[2] (1961) II LLJ 385 SC
[3] AIR 2003 SC 3032

was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry he kept in abeyance until further orders od soch employers he directed to resunte duty, That interim order was challenged by the State Government by filing writ appeals. On behalf teacher, entire educational system suffers, many students are prevented from appearing in their exam which ultimately affect their whole career. In case of mike by Doctors, innocent patients suffer in case of strike by employees of transport services, entire movement of the society comes to standstill, business is adversely affected and number of per find it difficult to attend to their work, to move from one place to another or one city to another On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

In case of **Ramnagar Cane and Sugar Co. Ltd vs Jatin Chakravarthy and others** [4] the Supreme Court while considering the implications of the provisions of Section 18(3) of the Act held that the interpretation put on Section 133) which aims at giving an extended operation to a settlement has an important bearing on the meaning of Section 22(b) and, therefore, lordships observed that if a conciliation proceeding is pending between one union and the employer and it relates to matters concerning all the employees, the pendency of such a proceeding would be a bar against all the employees of the employed in a public utility service to go on a strike.

In ***Worker of the Industry Colliery, Dhanbad Industry Colliery***[5] the company submitted its report on 20.10.1949, be well within 14 days from the conciliation proceedings as required by Section 12(6) of the Act. The report was sent through routine official channel and was received in the office of Chief Labour Commissioner at New Delhi on 25.10 1949. However, the report was not passed on to the ministry of Labour which was also in New Delhi until about 17.11.1949. The employees had no means of knowing when the report was actually received by the Central Government which was the 'appropriate Government' or when the period of seven days after such receipt expired In these circumstances, the employees went on strike on 7.11 1929 in accordance with the date specified in their notice. But in view of the fact that the Chief Labour Commissioner was not the age of the Central Government the receipt by him was not the receipt by the Central Government. Hence, un true construction of the provisions of Section 2200) of the Act, it was held by the Supreme Court that the strike was illegal and the employees must face and bear the consequences of an illegal strike.

Upon the expiry of this period of seven days from the day the Government received the conciliation officer's report, the Act permits, a strike hot after that period is over the employees are left free to resort to collective action by way of strike. It is crystal clear that the time is the essence of the provisions and the

[4] AIR(1960) SC1012
[5] (1953) SCR 428

requirement of the relevant provision must be punctually obeyed and carried out if the Act is to operate harmoniously at all.

United Kingdom

The Industrial Relations Act 1971 was repealed through the Trade Union and Labour Relations Act 1974, sections of which were repealed by the Employment Act 1982.

The Code of Practice on Industrial Action Ballots and Notices, and sections 22 and 25 of the Employment Relations Act 2004, which concern industrial action notices, commenced on I October 2005 Lawyers have suggested that the courts are taking an increasingly relaxed approach when interpreting the Trade Union and Labour Relations Act 1974, meaning that it is becoming easier to strike

Legislation was acted in the aftermath of the 1919 police strikes: forbidding British police from both taking industrial action, and discussing the possibility with colleagues. The Police Federation which was created at the time to deal with employment grievances, and provide representation to police officers, has increasingly put pressure on the government, and repeatedly threatened strike action.(17)

Prison officers have gained and lost the right to strike over the years, most recently despite it being illegal, they walked out on 10 May 2012

In UK whether public utility service or non-public utility service, if due notice of strike is not given, then each workman withdraws his labour in breach of his respective contract of employment. Hence in UK all wild-cat and official strike are unlawful In Australia the setting up of conciliation arbitration machinery has been accompanied by legislation making strikes illegal. The attitude is that where machinery for the settlement of disputes by conciliation and arbitration exists, resort to strikes is unnecessary strikes victoria ere illegal strikes in essential service unless there has been affirmative vote at a secret ballot. New South Wales Legislation also makes certain strikes illegal which take place before 14 days notice to the government of an intention to strike.

In UK, the major problem in the illegality of strike action is whether or not the strike is in breach of contract. Most of the tortious liabilities which can be incurred at common lane by strike action require an initial unlawful act and a breach of contract of employment may be considered unlawful for such purposes. Also, the tort of inducing a breach of contract by definition requires an initial breach of contract[6]

In UK peacetime Emergency powers sought to secure the essentials of life to the community and prohibited strikes in public utilities by empowering the Government to declare a state of emergency. The industrial disputes which are of a grave and serious character by establishing that the Secretary of State in certain circumstances may apply to the Industrial Court for an order restraining persons from organizing industrial action for up to 60 days. The other procedure available in the same type of emergency situation is a ballot,

that is the Secretary of State may apply for a ballot when the situation is that the conditions appear to be, or likely to be seriously injurious to the livelihood of a substantial number of workers employed in a particular industry Now, the Trade Union and Labour Relations Act of 1974, has also abolished the Emergency measures of 1971 statute

SUGGESTIONS & CONCLUSION

Right to Strike is not absolute in India and UK reasonable restrictions have been put on this night in India and UK Strike is a weapon that empowers the disempowered to fight in oppressive cases when no constructive option is left. It is a weapon of the last resort taken out of exasperation. It is this weapon which provides an opportunity for collective bargaining. When their demands are not acceded to by the employer then the conciliation and mediation should starts Hourd is constituted and if both the efforts fail and need is felt reference is made to the adjudicator to adjudicate in to the dispute, this is fantastically working proposition of law.

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[6] Foster Ken Strikes & Employment Contracts -36 MLR (1973) 27.5

[7] Emergency Powers Act.(1920) and (1964)

Weapon of strike cannot be used first and then to resort to other avenues. As a sound proposition of law the Supreme Court has time and again laid down that the strike as a weapon is of last resort when all avenues to settle the differences have exhausted.

To avoid strikes is everyone's responsibility but to assert that strikes under any circumstances are illegal, immoral, inequitable and unjustified is contrary to our law and industrial jurisprudence

Further, Justice Krishma Iyer had opined that a strike could be legal or illegal and even an illegal strike could be a justified one in Gujand Steel Tubes v. It's Mandoor Sabha, is thus beyond doubts that the Industrial Disputes Act, 1947 contemplates a right to strike

Unless the strike is banned within the meaning of Sec 22 (1) of the Industrial Disputes act, the same canl be termed as illegal attracting Sec 24 of the Act

Section 22(1) provides that no person employed in public utility service shall go on strike in breach of contract

a. without giving to the employer notice of the strike within six weeks before striking, or

b. within fourteen days of giving such notice or

c. before the expiry of the date of strike specifically in any such notice as aforesaid or

d. during the pendency of any conciliation proceeding believe a conciliation officer and seven days after the conclusion of such proceedings

This legislation makes a point clear that the courts presumed the right to strike as a legally justifiable right. The point in which the courts were traditionally interfered was with the legality of the strike and not the right to strike. For a worker the right to strike is fundamental as it is intertwined with very source of livelihood. It is expedient on the judiciary, at least the apex judiciary to recognize thus right for the working class to survive in a mixed economy.

Even though there is no express statement in our constitutional low incorporating in it the doctrine of separation of powers, in the interpretation of the Constitution, this Court has broadly adopted the said doctrine in Indira Nehru Gandhi Vs. Shri Raj Narain and others. Even though by virtue of its powers by interpretation of law the court in an indirect way is making law, it should be stated that there are well recognized limitations on the power of the court making inroads into the legitimate domain of the legislature. If the legislature exceeds its power, this Court steps in If the executive exceeds its power, then also this Court steps in. If this Court exceeds its power, what can people do? Should they be driven to seek an amendment of the law on every such occasion? The only proper solution is the observance of restraint by this Court in its pronouncements so that they do not go beyond its own legitimate spheres. It is expedient on this court to recognize the right to strike in this context to provide the legitimate locus for the workers

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