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L.L.B Part- 3rd

Subject- Labour Law

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Topic- Under what circumstances strikes and lockouts become illegal.

Introduction -

The Strike is a weapon in the armoury of the working class to fight collectively and to pressurize the employer. It is a weapon which is made use of by the labor class to safeguard their interests both economic and cultural.

While Lockout is an act of employer. Lock-out means to "to shut or to close" Prior 1860 Lockout was known as "turn off" Lockout is an effective and widely recognized weapon in the hands of employers. It is the antithesis of Strike.

Strike is legitimate and sometimes unavoidable weapon in the hands of labor and may be resorted to for securing demands of workmen to improve their working conditions.

But this weapon when misused can lead to penal consequences. Section 24 of the Industrial Dispute Act, 1947 lays down grounds which make the Strike and Lockout illegal.

Definition of Strike -

Section 2(q) of the Industrial Dispute Act 1947 defines "**Strike**" - 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.

Definition of Lockout -

Section 2(1) of the Industrial Dispute Act, 1947 defines Lockout - "**Lock-out**" means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Position in India-

In India, unlike America, 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.

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 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. In the **All India Bank Employees Association v. I. T.**, the Supreme Court held,

"the right to strike or right to declare lock out may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of article 19 but by totally different considerations."

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

Provision of valid strike under the Industrial Dispute Act, 1947-

Section 2(q) of said Act defines the term strike, it says, "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.

Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise there strike deemed to be an illegal strike. Section 22(1) of the industrial

Dispute Act, 1947 put certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract:

- a. Without giving to employer notice of strike with in six weeks before striking; or
- b. Within fourteen days of giving such notice; or
- c. Before the expiry of the date of strike specified in any such notice as aforesaid; or

- d. During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfill the condition before going on strike. Further these provisions apply to a public utility service only.

The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike.

However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work.

Circumstances when strikes and lockouts become illegal -

Section 24 provides that a strike in contravention of section 22 and 23 is illegal. This section is reproduced below:

1. A strike or a lockout shall be illegal if,
 - i. It is commenced or declared in contravention of section 22 or section 23; or
 - ii. It is continued in contravention of an order made under sub section (3) of section 10 or sub section (4-A) of section 10-A.
2. Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all the time of the reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal; provided that such strike or lockout was not at its commencement in contravention of the provision of this Act or the continuance thereof was not prohibited under sub section (3) of section 10 or sub section (4-A) of 10-A.
3. A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

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