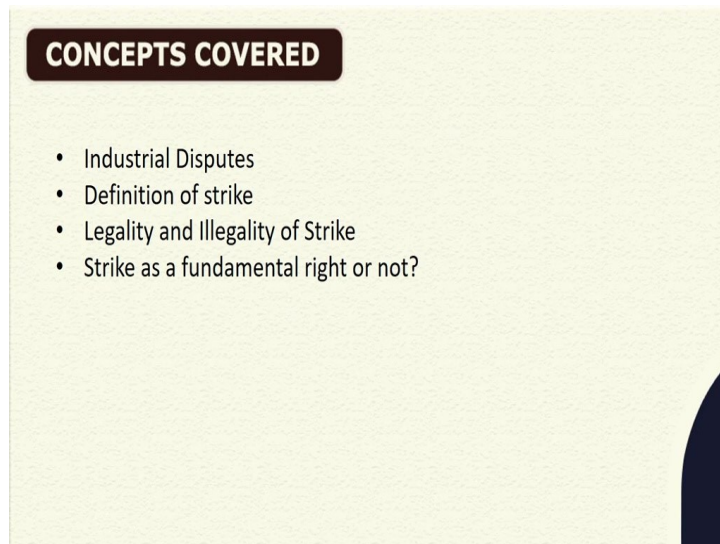


New Labour Codes of India
Professor K D Raju
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur
Lecture 14
Strike

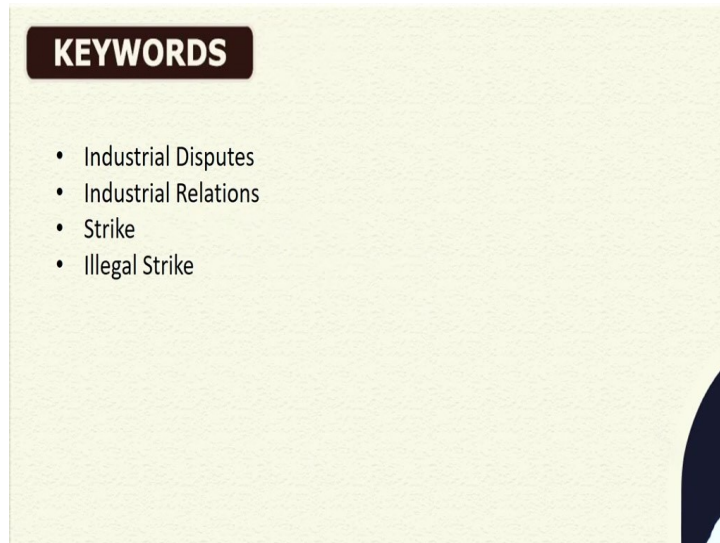
Dear students in this class, we are going to discuss some important aspects of labour law that is strike. So, in this class, we are going to discuss about what is the definition of a strike and what constitutes a legal strike what constitutes illegal strikes and what are the component of strikes.

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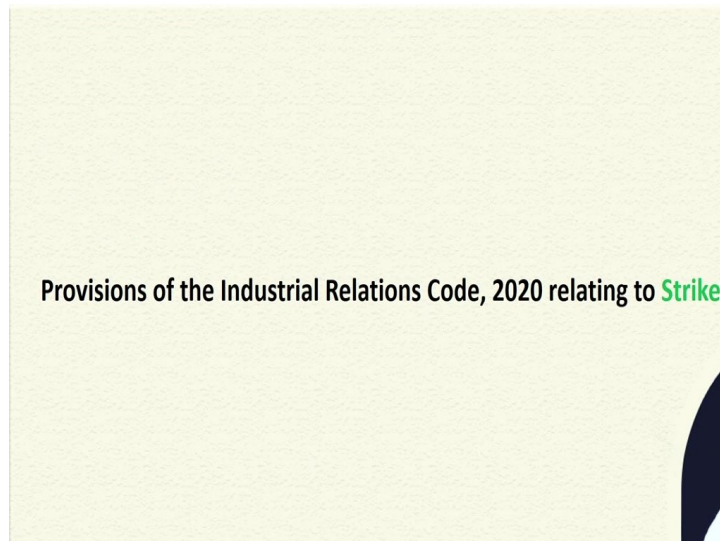
And more importantly, whether striking or strike is a fundamental right under the Constitution of India.

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So, everybody knows what is the meaning of a strike, but, the question is whether it is coming within the definition of a strike. So, what are the processes and procedures to be followed for a strike, for an illegal strike and when a legal strike becomes an illegal strike then what are the consequences whether the workman is eligible to get the salary of the striking period and also, more importantly, the judicial pronouncements about the legality or illegality of strikes and also the applicability of termination of service in consequent to illegal strikes?

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Section 2 (zk): 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 and includes the **concerted casual leave** on a given day by **fifty(50%) percent. or more** workers employed in an industry;

So, we are specifically going to look into the provisions in the Industrial Relations Code with regard to strikes and a strike is nothing but the cessation of work. So, this is the same definition in ID Act as well as in the new code. what exactly mean by cessation of work? So, cessation of work can be due to many reasons.

So, it can be by a concerted decision, it can be a concerted refusal under a common understanding of any number of people who are or have been so, employed to continue to work or to accept employment and includes the concerted casual leave on a given day by 50 percent or more. So, this is the definition which we saw in the last class as well.

The definition is given under the IR code Section 2(zk) so, there must be a combination or concerted effort in the background of a strike, a cessation of work. So, it can be in many forms, it can be a refusal to work also. So, the concerted effort must be evident in a strike. So, it is given to 50 percent of the workers.

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Section 2 (q) if ID Act 1947: Strike

- For strike, the industrial dispute act under 2 (q) defines strikes as **"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"**.

So, the ID Act very clearly says 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. So, only a minor change has been made from Section 2(q) under the ID Act in the new IR code. So, the IR code has a little bit less elaborated the definition of strike.

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Section 2 (zk): Strike

- T.K. Rangarajan v Government of Tamil Nadu, AIR 2003 SC 3032
- It was held that the right to strike is **not a fundamental right**.
- Further, it is **not even a legal or statutory right**.

So, we can very clearly say that in there are many judgments, we will see this Rangarajan judgment most popular judgment, which clearly said that the right to strike is not a fundamental right. It is not even a legal or statutory right. So, we will see some of the

judgments where the court said that it is a statutory right. So, the legal strike is a statutory right. But this judgment is to what extent is bought and we will see that there is a mass strike by the government employees of Tami Naidu government, then the quarter sports so, the owner-employees and government employees, there is a difference. So, we will discuss this case later on elaborately.

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CHAPTER VIII STRIKES AND LOCK-OUTS

62. Prohibition of Strikes-

No person employed in an industrial establishment shall go on strike, in breach of contract -

- without giving to the employer **notice of strike** within **sixty(60) days before** striking; or
- within **fourteen(14) days** of giving such notice; or
- **before the expiry of the date of strike specified in any such notice**; or
- during the **pendency of any conciliation proceedings** before a conciliation officer and **seven(7) days after** the conclusion of such proceedings; or
- during the pendency of **proceedings before a Tribunal** or a **National Industrial Tribunal** and **sixty(60) days, after the**

So, here the prohibition of strikes provisions very clearly in section 62 says prohibition of strikes. So, if no person will go on a strike in breach of contract without giving notice of strike within 60 days before striking. So, somebody wants to go on strike. Now, they have to give 60 days before striking. And so, it must be within 14 days of giving such notice.

So, now, minimum 60 days' notice is required and also, and the strikes are prohibited during the pendency of any conciliation proceedings. So, that means, if it is proceedings before any conciliation officer, 7 days after the conclusion of the proceedings also. So, during the pendency of proceedings, and after also to some days, so, the conciliation officer so, some days will get to settle the dispute, and also any disputes pending before tribunals or national tribunals normally pending after conclusion, also 60 days after the conclusion of the proceedings also, no strike can be that.

So, today morning, I was reading the news that the Kerala electricity board engineers are going on strike without notice. So, the question is now, under the IR code, without 60 days' notice nobody can go with a strike illegal strike. So, we will see what is the status of this so-

called you know, is taking strikes without any notice to respond to some incidents. So, the IR code is very clear, now 60 days' notice is required for any kind of legal strike.

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CHAPTER VIII STRIKES AND LOCK-OUTS

62.Prohibition of Strikes-
No person employed in an industrial establishment shall go on strike, **in breach of contract -**

- during the **pendency of arbitration proceedings** before an arbitrator and **sixty(60) days after** the conclusion of such proceedings, or
- during any period in which a **settlement or award is in operation**, in respect of any of the matters covered by the settlement or award

So, prohibition is not only applicable to conciliations. So, nobody can go on strike during the pendency of arbitration proceedings as well. So, and also 60 days after the conclusion of proceedings as well. So, there is a cap, the cap is given for the implementation of such awards. So, conciliation settlements or these arbitration awards and during any period of settlement or award is in operation, the parties are prohibited from going on with the strike. So, you enter into a settlement or when there is an arbitration award in favour of one party, you cannot win out with strike. So, this is what the specific provision says.

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CHAPTER VIII STRIKES AND LOCK-OUTS

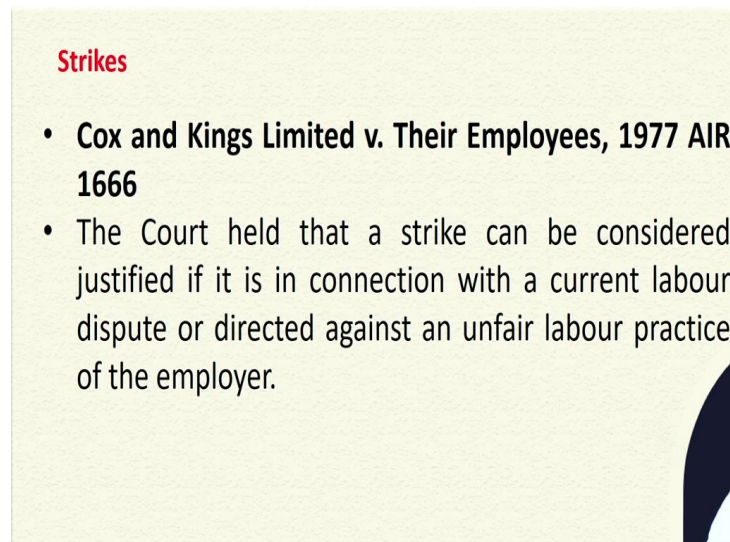
62.Prohibition of Strikes-

- The notice of strike **shall not be necessary** where there is **already in existence a strike**,
- The **notice of strike** shall be given by **such number of persons to such person or persons and in such manner**, as may be prescribed.
- If on any day an **employer receives** from any person employed by him any such, he shall within **five(5) days** thereof report to the appropriate Government or to such authority as that Government may prescribe and to the conciliation officer, **the number of such notices received or given on that day.**

So, now you can say that notice is not necessary, where there is already existing a strike. So, already if a strike is continuous or continuous goes on that there is a new notice is not required. So, you can see that the notice of strike can be given by the such number of people. So, it is already the says most of the law says 50 percent. So, the state government can even specify with regard to certain industries.

So, as I told you within five days, so, report the appropriate matter to the government or the authorities, and now, what are the new IR code, the conciliation offices so, it is not only the notice is given to the given to the employer, but also to the conciliation officer is also to be given a notice.

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Strikes

- **Cox and Kings Limited v. Their Employees, 1977 AIR 1666**
- The Court held that a strike can be considered justified if it is in connection with a current labour dispute or directed against an unfair labour practice of the employer.

So, in this particular case, so, the court said whether strike was justified or not justified. So, if it is, the court very clearly held that a strike can be considered justified if it is in connection with a current labour dispute or directed against an unfair labour practice. So, a strike is considered justified, if it is in connection with a dispute or unfair labour practice of the employer otherwise not justified.

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Public Utility Services

- **Ballarpur Collieries Co. v. The Presiding Officer, Central Government Industrial Tribunal, 1972 AIR 1216:**
- It was held, if a person was employed in public utility services, then, he/she **cannot go on a strike without the consent and gathering of the procedures** which must be satisfied in the provisions.

So, in this particular case, the court held that a person is employed in public utility services, whether he has the right to go on strike. So, the court clearly clarified that he cannot go on a strike without the consent and gathering of the procedures which must be satisfied the provisions of this particular public utility service.

So, you know that nobody in the public utility services can go on with the strike. Special procedures are implemented public utility services are absolutely exempted from the strike. So, Ballarpur Collieries case from the 1970 itself, it is very clear, you cannot go on strike in certain establishments like public utility services.

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Illegal Strikes

63. Illegal Strikes-

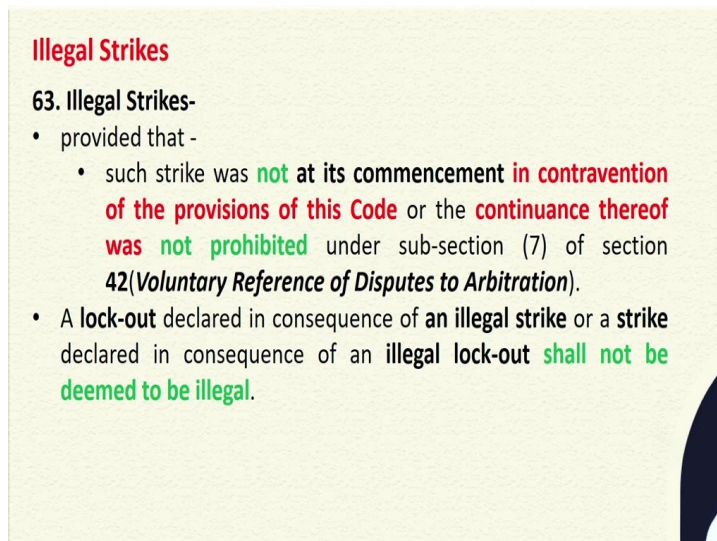
- A strike **shall be illegal**, if it is—
 - Commenced or declared in contravention of section 62; or
 - Continued in contravention of an order made under sub-section (7) of section **42(Voluntary Reference of Disputes to Arbitration)**.
- Where a strike in pursuance of an industrial dispute **has already commenced** and **is in existence** at the time of the filing of the application relating to such industrial dispute in the Tribunal or of the reference of such industrial dispute to an arbitrator or a National Industrial Tribunal, **the continuance of such strike shall not be deemed to be illegal**,
- provided that -

So, we said that the electricity board or the electricity board are public utility services, but if the offices irresponsibly go on strike that is going to be an illegal strike. So, there are legal strikes and illegal strikes. So, what is the corridor So, what is the margin? So, what is the border between a legal strike and an illegal strike? Here a strike can be considered as illegal if it is commenced or declared in contravention of the provisions of the notice period.

And that continued in contravention of an order made by under it can be an arbitration award, it can be a conciliation settlement and arbitration award in furtherance to the voluntary reference of disputes or in an order by a tribunal. So, if a process is strike or industrial disputes already process commenced and is in existence at the time of filing of the application related search industry dispute or tribunal or references is already in place.

And the continuance of such strike shall not be deemed to be illegal if the strike was already continuing. But, if the process is already continued, and after the process is started, if you are continuing with the if you are just starting the strike after this process, that it is going to be illegal, it is held to be an illegal process, illegal strike.

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Illegal Strikes

63. Illegal Strikes-

- provided that -
 - such strike was **not at its commencement in contravention of the provisions of this Code** or the **continuance thereof was not prohibited** under sub-section (7) of section **42(Voluntary Reference of Disputes to Arbitration)**.
 - A **lock-out** declared in consequence of an **illegal strike** or a **strike** declared in consequence of an **illegal lock-out shall not be deemed to be illegal.**

And a strike, the commencement is very important. If it is already continuing strike then there is not valid it is not going to be an illegal strike. So, if the continuance of this particular strike is not prohibited or it was paid in accordance with a reference of disputes, moderate reference of disputes. So, if a lockout, a lockout in response to an illegal strike shall not be deemed to be illegal, because the employer is compelled to lockout because of an illegal strike, that

lockout cannot be considered as illegal, because the employer is taking an action because of an action taken by the against the illegal strike by the employees or the workmen.

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Prohibition related to Strikes

64. Prohibition of financial aid to illegal strikes-

- No person shall knowingly spend or apply any money in direct furtherance or support of any illegal strike.

And also, it is completely prohibited any kind of financial aid for illegal strikes. So, it is the provision clearly says that no person shall knowingly spend or apply anybody in direct furtherance support of illegal strikes. So, nobody should finance illegal strikes. So, the prohibition is very clear- section 64.

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Right to Strike? – Restrictions thereon - Not a fundamental right.

- All India Bank Employees' Association v. National Industrial Tribunal & others [(1962) 3 SCR 269]
- Supreme Court held that:
 - *"the right to strike or right to declare lockout may be controlled or restricted by appropriate industrial legislation and the validity of such legislation would have to be tested not regarding the criteria laid down in clause (4) of Article 19 but by totally different considerations."*
 - There is a guaranteed fundamental right to form association or Labour unions **but there is no fundamental right to go on strike.**

And whether the employee is whether workers have a right to strike. So, we talked about that, it is there is no fundamental right. This is the consistent legal position from the very

beginning. So, one of the important cases is the All India Bank Employees Association versus National Industry Tribunal and others. So, Supreme Court in this case very clearly said that so this is the 1962 case.

So, the court said that the right to strike or the right to declare lockout may be controlled or restricted by appropriate industry legislation. And the validity of such legislation would have to be tested not regarding the criteria laid out in clause (4) of Article 19, but by totally different considerations.

So, you can have a guaranteed right to form associations and labour unions, but you do not have a fundamental right to go on strike. So, this was the observation in the All India Bank Employees Association case by the Supreme Court. So, the legal position has not changed even now. So, there is no fundamental right to go on strike, but there is a fundamental right to form associations and labour unions.

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Right to Strike? - Not a fundamental right.

- *Kameshwar Prasad v. The State of Bihar 1958* by stating that strike is not a fundamental right.
- Government employees have no legal or moral rights to go on strikes.
- In *T.K. Rangarajan v. Government of Tamilnadu and Others (2003)*
- the SC opined that not only there existed no fundamental right to strike but also stated that the Government employees have no "legal, moral or equitable right".

So, we look into the earlier case also, you can say that, especially from the very beginning, post-independent India, the position is very clear that the government employees have no legal or even moral rights to go on strike. This was held in the case is Kameshwar Prasad versus the state of Bihar and then, we comes to the 2003 case, we said that T.K Rangarajan versus the government of Tamil Nadu.

So, following these Kameshwar Prasad case, the court very clearly said that no fundamental right to strike so, and not only no fundamental right, the government employees have no legal or moral or equitable right to go on strike. This is the Supreme Court Epiq court sorry, Epiq

Court sided T.K Rangarajan case. So, it is very clear that ordinary workmen or employees are different from corporate employees. So, they do not have any legal or moral or equitable right to withdraw with strikes.

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Restrictions on Strike - No strike in the premises

- **Punjab National Bank v. Their Employees, AIR 1960 SC 160**
- The court observed that in the strike, **the employer might bar the entry of the strikers within the premises by adopting the effective and legitimate method in that behalf.**
- He may call upon employees to **vacate**, and,
 - on their **refusal** to do so, take due steps to **suspend** them from employment,
 - proceed to hold **proper inquiries according to the standing order** and
 - **pass proper orders** against them subject to the relevant provisions of the Act.

So, in this Punjab National Bank case, the question was, whether the employees can do strike within the premises of the bank or the industry premises. So, in this case, the court observed that the strike so, the employers' bar, the entry of strikes within the premises by adopting the effective and legitimate method of, to that behalf.

So, see, he asked the employees to vacate but they refused and to suspend in accordance because they are not listening to him. So, they suspended the employees from their employment and also other processes like inquiries are started according to the standing order. So, in that particular case, we can say that, so, the question is, if anybody has a right to strike within the premises, the answer we get is nobody has a right to strike between the premises by obstructing other people from entering in the gates.

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Restrictions on Strike - No lightning strike

- ***Sadual Textile Mills v. Their workmen, AIR 1958 Raj 202***
- "We are of opinion that what is generally known as a lightning strike like this takes place without notice..... And each worker striking(is) guilty of misconduct under the standing ordersand liable to be summarily dismissed.....(as)..... the strike cannot be justified at all. "

And also, we can see that in this particular case as well. So, the lightning strike, we are talking about the lightning strike of a certain event, they are public utility services. So, the jurisprudence is very clear from the very beginning that if anybody is going with a lightning strike without proper notice, and it is added that is about it to that particular person, those who are worker is guilty of misconduct under standing orders and liable to be summarily dismissed.

So, the strike cannot be justified at all. So, I was talking about the strike of the Kerala Electricity Board workers. So, under the new code, they have to give a 60 days notice which they have not given. So, they are going on with a lightning strike because some of their employees were suspended. Now, it will be very difficult for the AD union to go on with strike like a lightning strike, you cannot go.

So, it will severely curtail so, I would not say that it is bargaining power, so called illegal strikes, so there will be sufficient time for the matter to be settled the other way around through voluntary arbitration or through negotiation or the conciliation offices or through the tribunals. But nobody has the right to go with a lightning strike without the duties under the new code.

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Legality or Illegality of Strike

- The effect of a strike is that the workmen **cannot claim wages for the period during which an illegal strike continues.**
- If the **strike is legal the workmen are entitled to wages.**
- A strike is legal or illegal, justified or unjustified is the **question of fact** which is to be judged in the light of the facts and circumstances of each case.

So, the question is the legality or illegality, how you are going to decide the effect of the strike? The effect of the strike is that whether the workmen can claim wages for the period of a legal strike or illegal strike. So, in the early times the court said that, if it is an illegal strike the workmen are entitled to wages if it is an illegal strike, they are not eligible to get wages. So, whether it is a legal or justified or illegal strike depends upon the question of fact. So, it will depend from case to case, it will depend on the support facts and circumstances of each case and whether a particular strike is legal or illegal. Now, what I said earlier without proper procedures if anybody is going on with a strike it is held to be illegal, especially during the notice period.

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Non-Participation during the Pendency of Reference

- **Ballarpur Collieries Co. v. H. Merchant, AIR 1966 Pat 219**
- It was held that where in a pending reference **neither the employer nor the workmen were taking any part**, it was held that **section 23 - General prohibition of strikes and lock-outs (of the repealed Industrial Disputes Act, 1947)** has no application to the strike declared during the pendency of such reference.

So, in this particular case, so, Ballarpur Collieries versus the H. Merchant, 1966. So, you can see that the pending references that pending references we saw that the provision clearly says that the parties cannot go with strike. So, general prohibition of strikes are applicable when a reference is pending.

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Legal strike

- **Crompton Greaves Ltd. v. Workmen, AIR 1978 SC 1489**
- Supreme Court observed that **if a strike is legal as well as justified** then, **the worker is entitled to wages for the period of strike, the strike should be legal and justified.**
- The use of **force, coercion, violence or acts of sabotage** resorted to by the workmen during the strike period which was legal and justified **would disentitle them to wages for the strike period.**

Supreme Court also held that what is illegal strike once a strike is justified they are entitled for wages during the particular period of strike. So, it must be legally justified that it is considered to be illegal strike. So, use of force, violence, acts of sabotage and resorted to violence and also by the workmen during the striking period, which was considered as a so, they said that it was legal and justified would disentitle them to wages for the strike and period. So, if the striking people then done with any kind of activities or violence, it can be held illegal strike.

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Misconduct

- Taking part in the **illegal strike** amounts to **misconduct** on the part of a workman for which they invite the **punishment of dismissal**.
- Whether the employer is free to punish dismissal from services in such cases has been **subject to regular domestic enquiry** to determine **the quality of misconduct and quantum of punishment** by finding out whether they were **peaceful strikes or violent strikers**.

So, we already said that if somebody is going on with an illegal strike, it can lead to misconduct as well especially, when the government employees so, so it is very clear that if it is an illegal strike, sometimes an illegal strike amounts to misconduct on the part of and definitely the illegal strikes, it will invite in general inquiries according to the standing orders, and it can invite the punishment of even up to dismissal. So, it is subject to the punishment and dismissal of services as subject to the regular domestic inquiries and also the process prescribed by the standing orders.

And the quantum of punishment definitely depends upon the nature of strikes or nature of strike whether it is peaceful or violent strike is or whether the workers are doing any kind of activities, what kind of activities they are doing, In all cases any kind of violence is used, it can be held an illegal strike. So, the question is whether it is a peaceful strike or a desert violence strike.

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Wages for the duration of strike

- **Bank of India v T.S. Kelawala, 1990 SCC (4) 744**
- Supreme court held that where the **contract or standing orders or the service rules regulations** are **silent** on the issue of workers' entitlement to wages during the strike period, **the management has the power to deduct wages for absence from duty** when the absence is **concerted action** on the part of the employees and the absence is not disputed, **irrespective of the fact whether the strike was legal or illegal.**
- There is **no statutory provision either in civil law or in industrial law prescribing payment of wages during the strike.**
- Strike pay **cannot**, therefore, be claimed as a legal right.

And the wages which we already discussed, if it is an illegal strike, definitely the workers are not eligible for the illegal strike.

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Compensation to employer

- **Rohtas Industries v. Its Union, (1976) 2 SCC 82**
- The Supreme Court held that the remedy for illegal strike has to be sought exclusively in **section 26 of the Act.**
 - **26. Penalty for illegal strikes and lock-outs-** punishable with imprisonment for a term which may extend to **one(1) month**, or with fine which may extend to **fifty rupees(₹50)**, or with both.
 - **86. Penalties-** punishable with fine which shall not be less than **one thousand(₹1,000/-) rupees**, but which may extend up to **ten thousand(₹10,000/-) rupees** or with imprisonment for a term which may extend to **one(1) month**, or with both.
- The award granting **compensation to employer** for loss of business though illegal strike is **illegal** because such **compensation is not a**

And compensation in case of the employee in the case of violent strikes so, the employees can claim. Compensation in the case of any kind of damages and also, they can impose penalties or the workers on illegal strikes and lockouts. And the provision clearly says that, so, the penalties can be imposed on the workers to the tune which is prescribed under the penalties in the code.

So, here the compensation to the employer for loss of business because of the illegal strike is illegal because the compensation is not a dispute. Compensation is not a dispute within the purview of section 2(k) of the earlier ID Act and also the new Act. So, the employer cannot claim compensation for an illegal strike through the ID Act. He has to record to other processes and other procedures of other laws for claiming damages and compensation for the illegal strike.

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Quantum of Punishment

- **M/S. Burn & Co. Ltd. & Others vs Their Employees, 1960 AIR 896**
- It was laid down that **mere participation** in the strike would **not** justify **suspension or dismissal** of workmen.
- The Supreme Court held, where the strike was **illegal**, the only question of practical importance would be the **quantum or kind of punishment**.
- To decide the quantum of punishment, a clear distinction has to be made between **violent strikers** and **peaceful strikers**.

So, here also say is the punishment, which is for the illegal strike, it was clearly laid out by the court that the mere participation in strike is not going to justify the suspension or dismissal of workmen, the Supreme Court held that the question of quantum of punishment should be commensurate with the activities whether the strike is legal. So, the strike is illegal and also even illegal strike and what kind of activities whether it was a peaceful strike or it was a violent strike that has to be taken into consideration.

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Conciliation Proceedings

- Once the notice period has elapsed, employees are required to **attempt conciliation** with the employer.
- While **the conciliation process is required to be completed in 14 days**, the Industrial Relations Code, 2020 **does not prescribe any consequences whatsoever if this period is exceeded**.
- In effect, this gives employers a major incentive to delay conciliation indefinitely and thereby **stall** a potential strike.
- If, during or after conciliation, 60 days have passed since the notice of strike was originally sent, the Industrial Relations Code, 2020 requires a **fresh notice** to be sent and the entire process

And also, in the conciliation proceedings, you can see that all the conciliation proceedings process is required to be completed within 14 days. So, under the new code, we can see that a very short period of time is prescribed for conciliation proceedings. And it is definitely in favour of both employees as well as employees and workmen because this within the shorter period either the dispute can be settled or it can be referred for further process.

So, that means, there is a shorter period of time. Either the disputes can be resolved or they can resort to the conciliation process or to the tribunals. And also, we can say that the notice period, the notice period has increased now to 60 days and the 60 days of notice is mandatory for going on with the legal strike.

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Conciliation Proceeding Fails

- If conciliation fails, the employer can apply for formal adjudication of the dispute before the Industrial Tribunal created under the Industrial Relations Code, 2020.
- The (presumably) underpaid employees, now must **hire and pay lawyers to fight their case**.
- They are also **not** permitted to strike either during the notice period, the **conciliation** period, the **adjudication** period, or for **two(2) months after the adjudication is complete**.

So, we said that the quick strikes are held to be illegal and under the present IR code and if the conciliation proceedings also failed, we said that it should be referred to the government, and the failed report should be filed by the Constitution officer to the government. So, here also we can say that now, there are different kinds of employment itself. So, we have already talked about in the last class about employment or of contract and for the contract.

So, the cases in the case of underpaid employees. So, now, the mostly hire and pay policy is prevailing. So, this is one of the main allegations against the new labour codes, it facilitates hire and pay policy, but we can see that there is a very clear process and also very shorter period is prescribed for the dispute settlement and also the notice period during the notice period also, they are not eligible to be a strike.

A strike is not permitted during the pendency of the proceedings, any legal proceedings nor if once the notice period is complete, then only they can be done with the strike. So, conciliation periods, adjudication periods, so, after also is complete two months they have not eligible to survey so, it will be under the new code, it will be very difficult for any organization in it to Trade Union to go on with strikes.

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Complex procedure

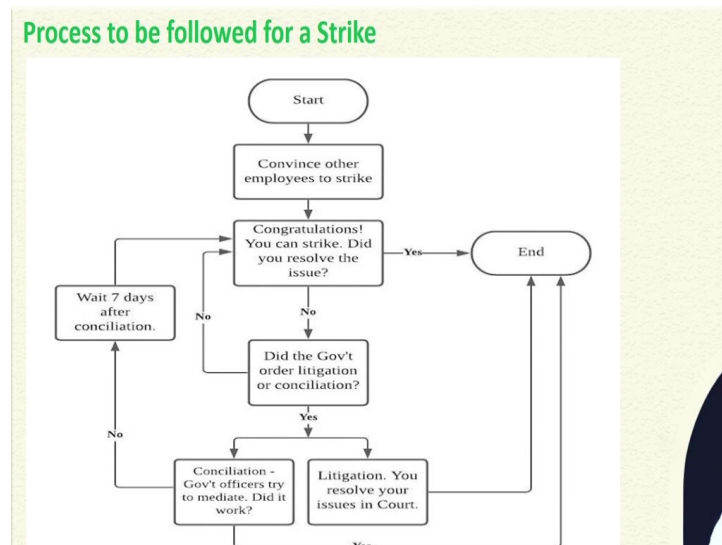
- The IRC has both made the procedure of going on strike **unnecessarily complex and expensive** and has **extended this procedure to every industry**, as opposed to just Public Utilities under the repealed *Industrial Disputes Act, 1947*.
- Nobody is sure why this has been done.
- The Parliamentary Standing Committee set up to look into the Industrial Relations Code, 2020 found ***"No plausible reason for expanding the ambit of this provision indiscriminately to all the industrial establishments as restrictions should not apply to all strikes and demonstrations which are meant to assure freedom of industrial actions"***.

Because the striking notice period has been increased and also the process is very tight. And so, as I told you that it is unnecessary and more complex, so it is merely complex procedures. So, these complex procedures, which you can see that, the procedure in the industry, so now it is simplified. So, the complex procedures of the ID Act have been replaced with the IR

code. And now it is the most simplified procedure, even going on for going for all with the strike.

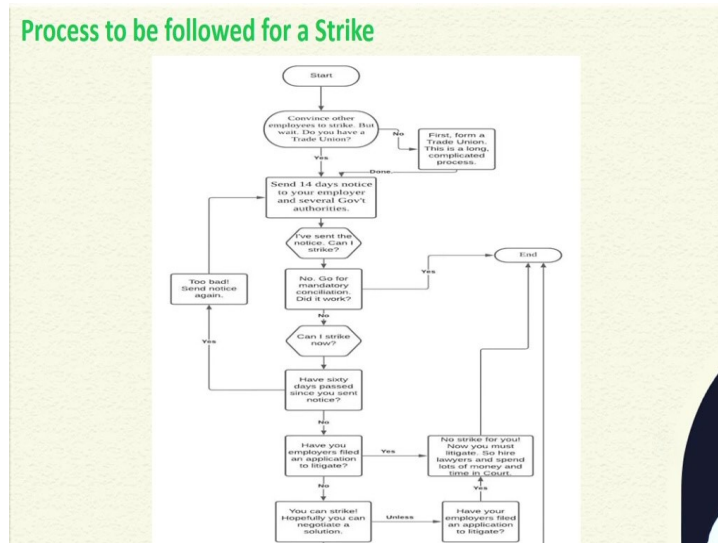
So, and also the parliamentary standing committee, so that really look into this, the IR code 2020 and they found that so I got no plausible reason for expanding the ambit of this provision, indiscriminately to all the industrial establishments as restrictions should not apply to all strikes and demonstrations which are meant to assure freedom of industrial actions. So, we know that under the IR code, the restrictions are more strict. So, it will be very difficult for any labour organization to go on strike for a shorter period of notice. There is no provision in the IR code for a sudden strike. So, we already said that. Now, nobody can go on a sudden strike without the statutory period of notice.

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So, if we process, we know that there is a lengthy process under the ID Act earlier, and now it is made very simplified, had 60 days notice required for going with a strike.

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And the case of a strike as I told you that this is the process the India process under the ID at a lengthy complex process, which is simplified under the IR code.

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86. Penalties

- Any worker who **commences, continues or otherwise acts** in furtherance of, **an illegal strike** under this Code, shall be punishable with fine from **₹1,000 - ₹10,000/-** or with imprisonment upto **one(1) month**, or with both.
- Any person who **instigates or incites** others to take part in, or otherwise acts in furtherance of, **an illegal strike** under this Code, shall be punishable with fine from **₹10,000 - ₹50,000/-** or with imprisonment upto **one(1) month**, or with both.
- Any person who **knowingly spends or applies any money** in direct furtherance or support of, **an illegal strike** shall be punishable with fine from **₹10,000 - ₹50,000/-** or with imprisonment upto **one(1)**

When you look into the penalties and penalties are a very important part of the new code. It clearly says that, if any worker who commences or continues or otherwise acts in furtherance or undergoing or went on with illegal strike shall be punishable with up to 1000 to 10,000 rupees, fine and also imprisonment for one month or both. So, the punishment is very severe.

And also, if any person instigates or incites others to take part in or otherwise act in furtherance of an illegal strike, we saw the privileges and immunities of trade unions that

would not come under the purview of this particular provision, because here the punishment is specifically for people those who are done with the illegal strike, so, they will be again punished with the higher punishment higher fine of 10,000 to 50,000 rupees.

So, for people who have those who are instigating any legal strike, the punishment is from 10,000 to 50,000 rupees or imprisonment for 1 month. And also, any person who is spending money for a legal strike or financing an illegal strike is punishable with 10,000 to 50,000 rupees and imprisonment for one month, one month imprisoned or both. So, all these are welcome development under the new IR code.

So, we had also curtailed illegal strikes, or somebody will be prevented from withdrawing with an illegal strike and they also people those who are instigating illegal strikes and also people who are financing illegal strikes. So, we said at the beginning of this particular course itself, that what is the objective of these are the repeal of all these labour legislations is one main objective is, you know, doing is of business. So, India is the preferred location for doing business. So, that is why these particular punishments are prescribed.

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93. Protection of Persons

- No person refusing to take part or to continue to take part
- In any **illegal strike** under this Code shall
- By reason of such refusal or by reason of any action taken by him under this section
- Be subject to **expulsion** from any Trade Union or society, or to any **fine** or **penalty**, or to **deprivation** of any right or benefit to which he or his legal representatives would otherwise be entitled or
- Be liable to be placed in any respect, either directly or indirectly, under any **disability** or at any **disadvantage** as compared with other members of the Union or society

And also, illegal strike so no person will be refused to take part or to continue to take part. So, there will be the protection of people, those who are not taking part in the illegal strikes. Illegal strike as I told you, so, if any person is prevented, somebody is crumbling, somebody to enter into an illegal strike or instigating there will be a punishment, which we already saw that.

And though trade union should expel any person or impose a penalty, because somebody has not participated in a particular strike. So, that means that, in the case of illegal strikes, no punishment should be imposed, and no penalties should be imposed on a worker who is not participating in an illegal strike. So, as I told you, the members of unions and societies and there is a legal, there is a moral obligation to participate in strikes, but not illegal strikes.

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2019 incident in Bangalore at Wistron Manufacturing Pvt. Ltd.

- **Non-redressal of payment and overtime issues** at the factory of Wistron Info.comm. Manufacturing India Pvt Ltd, a subsidiary of Wistron Corporation, the Taiwan-headquartered computers and computer peripherals firm that manufactures iPhones for Apple
- **Resulted in a riot** at the plant on 12th Dec. 2019
- Over 150 people were arrested in connection with the violence
- There were allegations of **middlemen exploiting the contract workers and skimming their wages.**
- "To employ women in night shifts, you need permission which the company did not acquire. And requisite facilities like transport were also not provided for them," - Maitreyi Krishnan, state committee member of **All India Central Council of Trade Unions**

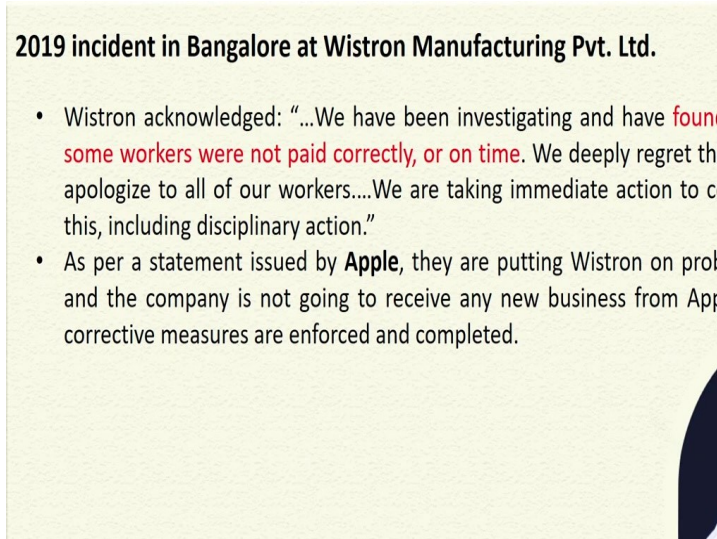
So, I want to point out these, you know, the incident which happened in Bangalore, the 2019 incident in these two companies, what is it? the Bangalore at Wistron Manufacturing Private Limited, which manufactures, you know, the computer peripherals, and also the iPhones are manufactured. And there was a big strike or you can say that it is a strike and also the consequent lockouts and labour problems. And you can see that there is a big labour problem if this, but that there was a continuous riot, which resulted in riot into 2019.

And a police action was against these striking workers. And there was violence the workers were, you know, resort to violence. And the management, at least the workers adored the illegal strike. And here, you get there were allegations that the middlemen are exploiting the contract workers. And there were allegations against the management that they are not making payments in time. And also, the workers were forced to work in shifts, especially women workers were forced to work the night shift.

And also, there are other facilities that were not given to the workers. So, the Karnataka government has taken a serious thought of this particular incident and also at its withdrawal

with so again, we know that just before the particular new code, this incident is happened in 2019, and another incident also happened.

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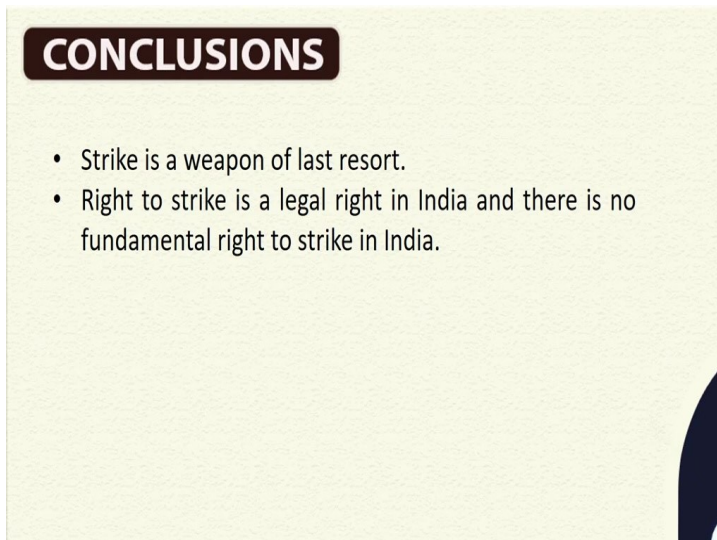


2019 incident in Bangalore at Wistron Manufacturing Pvt. Ltd.

- Wistron acknowledged: "...We have been investigating and have **found some workers were not paid correctly, or on time.** We deeply regret this apologize to all of our workers....We are taking immediate action to co this, including disciplinary action."
- As per a statement issued by **Apple**, they are putting Wistron on proba and the company is not going to receive any new business from Appl corrective measures are enforced and completed.

So finally, what happened we can see that some workers are not paid. So, the working conditions are very important for PC or basic or keeping harmony in the Indian companies and the Indian industries.

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CONCLUSIONS

- Strike is a weapon of last resort.
- Right to strike is a legal right in India and there is no fundamental right to strike in India.

REFERENCES

- The Industrial Relations Code, 2020

And we can see that, also another incident which we noticed very recently is the Toyota plant, similar incidents were reported for the Toyota plant into 2020. So, I hope that these kinds of incidents will not repeat again with the advent of notification of this new code. So, especially when it comes to strikes, it is considered as a weapon of last resort.

So, the right to strike is a legal right not a fundamental right at all in India. And we saw the crossing line between legal strikes and illegal strikes are very, you know, the border is very thin. So, legal strikes if permitted, illegal strikes are not permitted in India, that is why now you can see the penalties are also prescribed under the new code. So, the strike must be a last resort in the new industrial development era, in India. So, thank you.