

Concept of Strike and Lockout in Labour Law

Strike

Definition of Strike

Section 2(q) of the Industrial Disputes Act, 1947 defines a strike as “a group of workers in an industry stopping work together, or a joint refusal by any number of workers, who are or have been employed, to continue working or accept employment.”

Essentials of a Strike

According to this definition, a strike must include the following:

In **State of Bihar vs. Deodas Jha** (AIR 1958, Pat. 51), it was decided that the duration of a strike doesn't affect its definition; even a short stoppage or refusal to work can be considered a strike.

In **Kameswar Prasad vs. State of Bihar** (AIR 1962, SC 1166), the Supreme Court clarified that the right to strike is not a fundamental right. Instead, it's a means for workers to express their grievances to employers and seek resolution.

Legal Status of Strike in Labour Law

Section 22 of the ID Act prohibits strikes in Public Utility Services and Section 23 generally restricts strikes in any industrial establishment, making strikes mostly illegal. However, Section 24(3) specifies that a strike in response to an illegal lockout won't be illegal. There are also situations when a strike can be considered legal. Section 20(1) outlines that conciliation proceedings begin when a notice is received by the conciliation officer or when the dispute is referred to the Board.

During the period between 14 days after issuing a strike notice and before six weeks pass from that date, a legal strike can occur in Public Utility Services, provided the dispute hasn't been referred yet.

Another scenario in which a strike becomes legal is as follows: If a new strike notice is issued on the same matter as a previous dispute for which the conciliation officer reported a failure, the union can proceed with a legal strike after the mandatory 14-day cooling-off period unless the government refers it to the Labour Court or Industrial Tribunal. The failure of previous conciliation proceedings on the same grounds applies to the fresh strike notice.

In non-public Utility Services, there's no specific time window. Unless the establishment's Standing Orders prohibit or regulate strikes or ongoing negotiations or conciliation proceedings, workers can engage in a strike without prior notice.

One might question the general prohibition on strikes in any industrial establishment under Section 23. The answer lies in the fact that this prohibition applies only when it breaches a contract.

A strike is illegal if it:

- Violates the Contract of Employment.
- Occurs in Public Utility Services.
- Doesn't follow the notice requirement of Section 22(1).
- Begins during an Award or settlement period.
- Begins during or within 7 days of completing Conciliation Proceedings.
- Begins during or within Two months of completing Adjudication Proceedings.

Is Strike a Fundamental Right?

Although the Constitution guarantees the right to form a union and the right to freedom of speech and expression under Articles 19(1)(c) and 19(1)(a), respectively, the right to strike is not derived from these provisions. However, peaceful demonstrations are permitted.

Lockout in Labour Law

Definition of Lockout

Section 2(I) of The Industrial Disputes Act, 1947 defines a lockout as the "temporary closure of a workplace, the suspension of work, or an employer's refusal to continue employing any number of workers during their period of employment." A lockout is when an employer temporarily closes a workplace or stops work. It's different from permanently closing a business. Before 1860, a lockout was referred to as a "turn-off." A lockout serves as the employer's counterpart to a strike.

Essentials of a Lockout

To constitute a lockout in labour law, the following conditions must be met:

- Temporary closure of the workplace by the employer or the suspension of work by the employer or the employer's refusal to continue employing any number of workers.
- These actions should be motivated by coercion.
- It should relate to an industry as defined in the Act.
- There should be a dispute in the industry.

Legal Status of Lockout

A lockout declared in violation of Section 10(3), Section 10A(4A) (i.e., declaring a lockout when an industrial dispute has been referred) is considered illegal. Additionally, a lockout declared without complying with Section 22 and 23 (i.e., issuing a notice before the lockout) is illegal (Section 24(1)). However, a lockout declared in response to an illegal strike is considered legal (Section 24(3)). A legal lockout can become a powerful tool for an employer in critical situations.

Section 2(1) defines the term "lockout." However, the current definition is incomplete. The term was originally and correctly defined in the Trade Dispute Act, 1929. The present Act has adopted the current definition from the Trade Dispute Act but has omitted the words "when such closure, suspension, or refusal occurs as a result of a dispute and is intended to compel those persons or to assist another employer in compelling persons employed by him to accept terms or conditions of, or affecting employment."

In the case of **General Labour Union (Red Flag) v/s B. V. Chavan And Ors** on 16 November 1984, the Supreme Court of India ruled that imposing and continuing a lockout that is deemed illegal under the Act is an unfair labour practice.

In **Sri Ramchandra Spinning Mills v/s State of Madras**, the Madras High Court included the deleted portion in the definition to interpret the term "lockout." According to the Court, even if a flood, fire, or natural disaster causes the closure of the workplace or the suspension of work or the employer refuses to continue employing previous workers, it would still be considered a lockout, subjecting the employer to penalties under the Act. This demonstrates that the current definition does not fully convey the concept of a lockout.

Lockout, When Legal

The Act treats strike and lockout on the same basis, treating one as the counterpart of the other. Therefore, the provisions of the Act that prohibit strikes also prohibit lockouts.

The reasons for banning or prohibiting lockouts are the same as those for banning or prohibiting strikes. This is because employers and employees are not discriminated against in their respective rights in the field of industrial relations between the two. As such, a lockout, if not in conflict with Section 22 and 23, may be considered legal or not legal. Sections 24(1)(iii), 10(3) and 10A(4A) similarly govern lockouts.

A lockout in response to an illegal strike is not deemed illegal. However, if a lockout is illegal, Section 26(2), 27 and 28 come into play to address the situation. The Act does not provide specific guidelines for settling claims arising from illegal lockouts. Courts have adopted the approach of assigning blame between the employer and employees. This once again highlights the concept of the justifiability of a lockout.

The Difference Between Strike and Lockout

Initiators of the Actions

One of the most critical difference between strike and lockout lies in who initiates these actions. A strike is typically initiated by employees or labour unions representing them. Employees collectively cease work or jointly refuse to continue working to address grievances, advocate for better working conditions, or assert their labour rights. This collective action represents the workers' unified stance in the workplace.

In contrast, a lockout is initiated by employers. Employers use lockouts as a strategic move to gain an advantage during labour disputes or negotiations. Lockouts involve the temporary closure of the workplace, the suspension of work, or the refusal to continue employing a group of workers. Employers employ this tool with the intention of pressuring employees to accept specific terms or conditions. Lockouts reflect the exercise of authority by management.

Purpose of the Actions

The difference between strike and lockout also extends to their underlying purposes:

Strikes are initiated to address grievances or disputes related to wages, benefits, working conditions, or other employment terms. Employees strike with the goal

of compelling their employer to address these issues, advocating for fairness and justice in the workplace.

Lockouts, on the other hand, are strategically employed by employers to gain an upper hand in labour negotiations. The purpose of a lockout is to pressure employees into accepting the employer's terms, often with the aim of achieving a more favourable outcome in negotiations. Lockouts are a means for employers to assert their stance and protect their interests.

Duration and Temporary Nature

Both strikes and lockouts are temporary in nature, but their impacts differ:

Strikes involve a temporary cessation of work by employees. During a strike, employees may engage in activities such as picketing or other forms of protest to convey their message. However, the intent is not to permanently shut down the workplace but to achieve specific goals or concessions.

Lockouts, similarly temporary, entail the temporary closure of the workplace or the suspension of work. Employers employ lockouts as a short-term measure to disrupt employees' activities and pressure them to accept certain terms or conditions. The workplace closure during a lockout is not permanent.

Collective vs. Employer-Centric Action

The nature of strike and lockout underscores the collective versus employer-centric dynamics:

Strikes represent collective actions by employees, demonstrating solidarity and unity among workers. Strikes underscore the power of employees when they come together to advocate for their rights and interests.

Lockouts are centred on employers' actions. Employers exercise their authority to impose a lockout as a strategic manoeuvre to influence labour negotiations or disputes. Lockouts place employers in a position of control.

Legal Implications of Strike and Lockout in Labour Law

Both strikes and lockouts are subject to legal regulations, but their legality is contingent on different criteria:

Strikes are subject to legal regulations governing their conduct. Violations of these regulations can lead to strikes being declared illegal, making workers vulnerable to penalties or consequences.

Lockouts, too, are subject to legal oversight. Employers must adhere to legal requirements when imposing lockouts and violations of these requirements can result in lockouts being declared illegal.

Strike vs Lockout

Here's a table summarising the key difference between strike and lockout:

Aspect	Strikes	Lockouts
Initiator	Employees or labour unions initiate	Employers initiate
Purpose	Pressure employer to address grievances or demands	Pressure employees to accept employer's terms
Duration	Temporary cessation of work	Temporary workplace closure, not a permanent shutdown
Collective Action	Collective action by employees	Employer-centric action
Motivation	Employee grievances	Labour disputes, often related to negotiations
Legal Regulations	Subject to legal regulations; violations can lead to legality challenges	Subject to legal regulations; violations can lead to legality challenges

Laws on Strike and Lockout

General Restriction on Strike and Lockout (Section 23)

This rule applies to all industrial places, including public utility services. Workmen can't strike against their work contract and employers can't impose a lockout as follows:

The difference between Section 22(1) and (2) and Section 23 is that in the former, a notice of strike or lockout is required, but in the latter (Section 23), it isn't needed.

Illegal Strike and Lockout (Section 24)

According to Section 24(1), a strike or lockout is considered illegal when:

Prohibition of Financial Support for Illegal Strike and Lockout (Section 25)

No one should knowingly provide money to support any illegal strike or lockout directly.

Penalties for Illegal Strikes or Lockouts (Sections 26-31)

Section 26 outlines penalties for both strike and lockout. However, before imposing a penalty under this act, it must be proven beyond a reasonable doubt that:

In **Madurantakam Co-op Sugar Mills vs. Vishwanathan**, (2005) 3 SCC 193, an employer charged all the workers who participated in an illegal strike with allegations of misconduct, instigation and participation in an illegal strike. Some workers justified their actions, while others apologised. The employer sent warning letters to those who apologised but didn't fire them, whereas they fired those who didn't apologise. The apex court ruled that workers can't be dismissed since they didn't all stand on the same footing and the same view can't be applied.

In **Mgmt. Oriental Tpt. Ltd vs. S. T. Ramkrishna**, 2006I LLN 598, when workers in an establishment went on strike and were referred to the adjudication tribunal at the intervention of authorities, they were charged with using offensive language and violent acts. They were found guilty in a domestic inquiry and then dismissed. The employer sought approval under section 33(2) of the act, but it was rejected by the tribunal. Later, the high court of Karnataka held that the use of offensive language was not related to the strikes or any connected matter. The application was rejected and remanded for fresh consideration.

Penalties for Instigation (Section 27)

Anyone who encourages, incites, or lures others to take part in illegal strikes or lockouts commits a crime and can be punished with imprisonment for up to six months, a fine of up to one thousand rupees, or both.

Penalties for Providing Financial Aid to Illegal Strike and Lockout (Section 28)

Anyone who encourages, incites, or lures others to take part in illegal strikes or lockouts commits a crime and can be punished with imprisonment for up to six months, a fine of up to one thousand rupees, or both.

Penalties for Other Offences (Section 31)

In **Bharat Petroleum Corporation Ltd. vs. Petroleum Employee's Union and Others**, (2003) III L.L.J.229(Mad), the High Court of Madras determined that parties to a contract were bound by conciliation proceedings and had to await a decision. As the conciliation proceedings were ongoing, the prohibition in Section 22(1)(d) of the Industrial Disputes Act, 1947 came into effect. Thus, the respondent's strike was considered illegal under Section 24.

The Supreme Court, in **India General Navigation and Railway Company Ltd and Another vs. Their Workmen** (AIR 1960, SC 219), held that when there's an illegal strike, the workers wouldn't be entitled to any wages or compensation and they could be subject to punishment through discharge or dismissal.

Conclusion

Strike and lockout, both are powerful tools in the realm of labour relations, each serving as a means for employees and employers to assert their interests and leverage negotiations. While both actions disrupt workplace operations, they differ fundamentally in their initiation, purpose and legal implications.

The difference between strikes and lockouts is not merely procedural; they represent a fundamental distinction in perspective. Strikes embody the collective will of workers, seeking to balance the scales of power in the workplace. Lockouts, conversely, reflect the employer's exercise of authority, often with the aim of achieving a favourable outcome in negotiations.