

# Abusing the right to strike

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**T**he recent flash strike by a section of the employees of Air India has led to much public discussion over whether such actions are justified. Under what circumstances can strikes be resorted to? Who can decide on the legitimacy of strikes? Are there any special situations, such as essential services, where the right to strike can be restricted?

The right to strike is recognised as part of 'trade union rights', under ILO conventions 87 (Freedom of Association) of 1948 and 98 (Collective Bargaining) of 1949, part of the core international labour standards, which have been ratified by 150 and 160 countries respectively. Countries which have ratified these conventions are expected to implement them, and any gaps are subject to reporting and monitoring by the ILO Committee on Application of Standards. Employers, workers organisations as well as governments can make complaints to the ILO on violation of these conventions even for countries which have not ratified them. India has not ratified either of these conventions, due to difficulties in providing full trade union rights to government servants. However, other South Asian countries such as Bangladesh, Pakistan and Sri Lanka have done so.

The ILO has set up a quasi-judicial body, the Committee on Freedom of Association composed of three members each from governments (presently from France, Peru, Kenya), employers, and workers, serving in their individual capacity, which investigates these complaints and recommends appropriate action. Over many years, this committee has issued rulings on various aspects including the right to strike, banning of trade unions, dismissal of striking workers, etc and this body of case law serves as a useful guide for administrators, employers and unions.

The ILO bodies have agreed in many cases that the right to strike can be restricted in the case of public servants, the armed forces or police, and in cases where essential services are likely to be disrupted. In the latter case the definition of 'essential services' commonly used is 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population'. Such services recognised as essential by the ILO include



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— the hospital sector; electricity services; water supply services; the telephone service; air traffic control.

In the case of aviation, air traffic control falls under essential services, while general air transport does not. However, the authorities may prescribe minimum levels of service which must be ensured in the event of a strike in any particular sector. A prolonged strike in a nominally non-essential service, may result in danger to safety and health, for example, in the case of sanitation or port workers, and it could then be treated as an essential service. In general, the ILO has got around this situation by advising that in all important sectors, there should be prescribed minimum levels of services to be maintained in the event of a strike, and this may also depend on the duration of the strike.

In cases where there are restrictions on the right to strike, the ILO has advised that this should be 'accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented'. This would apply in case of government employees, security personnel, etc.

Where workers organisations resort to strikes, the ILO has specified certain pre-conditions to be met — (1) the obligation to give prior notice; (2) the obligation to have recourse to conciliation, mediation

and (voluntary) arbitration procedures in industrial disputes as a prior condition to declaring a strike, provided that the proceedings are adequate, impartial and speedy and that the parties concerned can take part at every stage; (3) the obligation to observe a certain quorum and to obtain the agreement of a specified majority; (4) the obligation to take strike decisions by secret ballot; (5) the adoption of measures to comply with safety requirements and for the prevention of accidents; (6) the establishment of a minimum service in particular cases; and (7) the guarantee of the freedom to work for non-strikers. It will be seen that in the recent Air India strike several of these principles were not respected.

The ILO also has something to say about strikes for political reasons or sympathy strikes. Strikes that are purely political in character do not fall within the scope of freedom of association. General strikes at the national level are legitimate in so far as they have economic and social objectives and not purely political ones. However, the political system and related developments may sometimes impede the exercise of trade union rights, as happened in the case of Poland in 1981 when the government dissolved Solidarity. The ILO advises that workers should be able to resort to sympathy strikes, provided the initial strike they are supporting is itself lawful.

The ILO has emphasised that responsibility for declaring a strike illegal should

not lie with the government, but with an independent body which has the confidence of the parties involved, especially in those cases in which the government is a party to the dispute. This would be the case for Air India, a PSU. But in India there exists such an independent body to decide on the legality of a strike, in the form of an independent judiciary. Since the Air India strike has been the subject of a court process, all concerned are obliged to respect the court decisions.

Regarding the decision to strike, the ILO advises that a country can establish in its legislation provisions which require a vote by workers before a strike can be held, and if so, it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level. The ILO recognises the right of non-strikers to work, where in connection with strike picketing, it emphasises that such action should be peaceful and should not lead to acts of violence against persons.

Dismissal of workers for participation in trade union activity including organising lawful strikes is deemed a violation of trade union rights, and reinstatement of such dismissed workers is what the ILO recommends. The redress mechanism should be effective and quick in settling such matters.

One hopes that the tensions in labour relations within Air India will soon be resolved, so that both partners, labour and management can concentrate on getting the organisation on its feet and providing the quality services it was once renowned for ■



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