

LEGALITY OF GO-SLOW STRIKES IN INDIA

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ABSTRACT

Go-slow strikes are a form of industrial action in which workers deliberately work at a slower pace than usual in order to cause problems for their employers. These strikes are often used as a means of protest or bargaining by workers who are dissatisfied with their working conditions, wages, or other aspects of their employment. The legality of go-slow strikes in India is a complex and controversial issue that has not been clearly resolved by the law or the courts.

The main legal source that regulates industrial disputes and strikes in India is the Industrial Disputes Act, 1947 (“IDA”). The definitions in the IDA do not explicitly include or exclude go-slow strikes, leaving room for interpretation and debate. The judicial interpretation of go-slow strikes in India has been varied and inconsistent, as different courts have taken different viewpoints on this issue. Some courts have held that go-slow strikes amount to misconduct by the workers. Some courts have also taken a middle ground and held that go-slow strikes may be legal or illegal depending

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on the facts and circumstances of each case, such as the nature, extent, duration, and motive of the go-slow action.

The endeavour of this research paper is to understand the legality of go-slow in India. In order to do this, the research paper will focus on understanding the current legal position of go-slows in India as per labour laws and its interpretation by the courts. The paper will also make a comparative analysis with the foreign legal approach to have a holistic overview of the issue to analyse the issue of legality of go-slows in India.

Keywords: *Go-slow Strikes, Unfair Labour Practices, Illegal Strike, International Labour Law Standards*

I. INTRODUCTION

Strike refers to work stoppage by a group of employees to achieve a common goal.¹ They are generally considered legal in democracies as they are considered as an invariable symptom of unrest among industrial workers and a positive right, which help the workers to bargain collectively for their rights and interests. Without this right, workers would be at the mercy of their employers and would have little power to negotiate for the rights such as better wages, benefits and working conditions. Strikes also help in protecting the public interest as generally workers protest unsafe working conditions or unfair labour

¹SR De Silva, 'Methods of Trade Union Action: Part II - Picketing, Go Slow, Stay-in-Strike Gherao, Overtime Ban and Lock-Out' (1969) 2(2) Vidyodaya Journal 125-147.

practices.² Thus, strikes provide a way for the workers to compel their employers to improve safety standards and treat their employees fairly.

A *go-slow* or *slowdown strike* is a form of industrial action in which workers deliberately work at a slower pace than usual to cause problems for their employers.³ It is a less disruptive form of protest than a full-blown strike, but can still be effective in achieving the goals of the workers. Go-slow strikes are often used in industries where it is difficult or impractical for workers to completely walk off the job.⁴ For instance, in the transportation industry, a go-slow strike might manifest as drivers taking longer routes, making more stops, or deliberately driving at reduced speeds. This not only affects the efficiency of operations, but can also lead to dissatisfied customers and increased costs for employers. In manufacturing, workers engaged in a go-slow strike may deliberately *prolong the time* required to complete tasks, introduce errors into the production process, or intentionally slow down assembly lines. These actions can disrupt production schedules and affect product quality, thereby putting pressure on employers to address workers' concerns.

However, go-slow method of strike is considered as an unacceptable form of industrial action in various countries. In India as well, the courts have taken different positions on this issue. Therefore, the primary objective of this research paper is to examine the legality of go-slows within the context of Indian legal framework. To do this analysis, the paper is structured into two chapters. The first chapter will scrutinize whether go-slows can be categorized as a form of strike within the Indian legal framework. The second chapter will delve into the legal intricacies surrounding go-slows in India, addressing the existing ambiguities within the current legal framework. Additionally,

²KGJC Knowles, "'Strike Proneness" and Its Determinants' (1954) 60(3) American Journal of Sociology 213-229.

³Harrison King, 'Instigating Strikes and Slow-Downs' (1949) Washington University Law Quarterly 148-153.

⁴ibid.

this chapter will explore potential resolutions to these ambiguities by considering both national and international perspectives.

II. GO-SLOW AS A STRIKE

Before delving into the question of legality of go-slow strike in India, it is imperative to understand whether a go-slow method of industrial action would be considered as a strike in the Indian legal framework. The term ‘strike’ has been defined under Section 2(q) of the IDA.⁵ It defines strike as “*a cessation of work by a body of persons employed in any industry acting in combination or a concerned 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.*” The most important term in this definition is *cessation*, which means stoppage or termination.⁶ Hence, the use of *cessation* word in the statutory definition of strike means that an industrial action needs to essentially involve termination or stoppage of work if it needs to be considered as a strike as per the IDA. On the other hand, go-slow or slowdown strike is a kind of industrial action in which workers do not stop working, but instead, slow down the entire process to reduce productivity, which essentially means that there is no actual ‘cessation’ or ‘stoppage’ of work on the behalf of workers. Therefore, go-slow cannot be considered as a strike as per statutory definition under the IDA.

Apart from the statutory provisions, Indian courts have also contributed to the interpretation of what constitutes a strike in the context of labour disputes. One pivotal case that sheds light on the legal definition of a strike is the case of *Shri Ramchandra Spinning Mills v. State of Madras*.⁷ In this case, the court established a crucial test to determine

⁵The Industrial Disputes Act, 1947 (14 of 1947) s 2(q).

⁶Admin, ‘Cessation Definition and Meaning | Collins English Dictionary’ (*Collins Dictionary*, 2023) <<https://www.collinsdictionary.com/dictionary/english/cessation>> accessed 15 December 2023.

⁷*Shri Ramchandra Spinning Mills v State of Madras* AIR 1956 Mad 241.

whether an industrial action qualifies as a strike under the IDA. According to this test, for an action to be considered a strike, two key elements must be present. First, there must be an *explicit intention* among the workers to exert pressure on their employer. Second, this intention must lead to a *concerted effort* by the workers to stay away from work or *abstain from work*. Applying this definition, it becomes evident that a go-slow method does not meet the criteria for a strike under the Indian law. While a go-slow approach is undeniably aimed at creating inconvenience and economic pressure for the employer by causing disruptions and problems in the workplace, it does not involve a complete withdrawal of labour. Instead, it involves a deliberate reduction or a 'slow down' in work pace or productivity, without the employees entirely 'staying away' from their work responsibilities.

However, courts over time have also made some other interesting observations like in the case of *Punjab National Bank v. Their Workmen*.⁸ In this case, bank employees entered into the premises of the bank, but refused to take pens in their hands to do usual duties which is a classic example of pen-down strike⁹ (a form of nonviolent strike action in which groups of workers partially attend offices or workspaces without getting involved in usual office work or management). The workers refused to obligate with their usual duties and the bank contented before the court that the employees were guilty of participating in illegal strikes with the intention to paralyse its business and deter its customers from using its services. However, the court still held that a pen-down strike is not an illegal strike and comes under the meaning of strike as per Section 2(q) of the IDA.¹⁰ They further stated that it is a strike in a way that the workmen in a concerted manner entered the office premises, but refused to take on their usual duties.

⁸*Punjab National Bank v Their Workmen* AIR 1960 SC 160.

⁹John McMullen, 'Legality of Deductions from Strikers' Wages' (1988) 51(2) *The Modern Law Review* 234-240.

¹⁰The Industrial Disputes Act, 1947 (14 of 1947) s 2(q).

This case provides an intriguing perspective on the question of whether go-slow actions should be considered strikes in India. While the case in question involved some sort of stoppage or cessation of work rather than a mere slowing down of usual work processes, it is essential to note that the court also emphasized on the term *concerted refusal* within the definition of strike as per Section 2(q)¹¹ of the IDA. This emphasis highlights that a *concerted refusal* is a fundamental requirement for categorizing an industrial action as a strike. Building upon this interpretation, one can extend the inference of the case to encompass go-slow actions within the definition of a strike. By viewing the act of deliberately working at a slower pace as a form of *concerted refusal* to perform work in the typical or expected manner, one can argue that go-slow tactics indeed align with the essential criteria for defining a strike under the Indian labour law regime.

In essence, this perspective suggests that go-slow actions can be seen as a form of collective refusal by workers to adhere to the usual pace of work, which, in turn, exerts pressure on the employer and disrupts normal business operations. Therefore, within the framework of the IDA, the concept of *concerted refusal* can be applied to both complete work stoppages and go-slow actions, thus expanding the scope of what constitutes a strike in India. However, till date, the courts have not tried to interpret the issue of go-slow with such overview, the labour codes and other laws have also overlooked the issue of go-slow as a form of strike. Therefore, one can say that in the present legal context, go-slow has not yet been clarified as a strike in the Indian legal framework, albeit being described as an unfair labour practice, as seen in the upcoming head.

¹¹ibid.

III. LEGALITY OF GO-SLOW: DILEMMA OVER VAGUENESS – NATIONAL AND INTERNATIONAL PERSPECTIVE

As already discussed, go-slow cannot be considered as a strike as per the IDA. Apart from this, the IDA also entails certain unfair labour practices which are defined under Section 2(ra). This Section states that unfair labour practices are *any of the practices described under Schedule V of the Industrial Dispute Act*.¹² Schedule V¹³ divides the unfair labour practices into two categories – I) Unfair Labour Practices carried out by employers and their trade unions and II) Unfair Labour Practices carried out by employees and their trade unions. In Part II of the Schedule, the IDA clearly states that *staging, encouraging or instigating such forms of corrective actions as wilful go slow*¹⁴ will be considered as unfair labour practices on part of the employees and their trade unions. Therefore, go-slow is considered as an Unfair Labour Practice as per the IDA. Even the Industrial Relations Code, 2020 considers go-slow as Unfair Labour Practice in the Schedule II,¹⁵ however, the code is yet to be implemented and the paper would, therefore, refrain from any discussion regarding the same.

The IDA also imposes a penalty or punishment on Unfair Labour Practices in the form of Section 25U,¹⁶ which states that “*any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.*” This designation of go slow as an Unfair Labour Practice and imposition of punishment clearly indicates that this method of industrial action is not

¹²The Industrial Disputes Act, 1947 (14 of 1947) s 2(ra).

¹³The Industrial Disputes Act, 1947 (14 of 1947) sch V.

¹⁴The Industrial Disputes Act, 1947 (14 of 1947) sch V Part II Point 5.

¹⁵The Industrial Relations Code, 2020 (35 of 2020) sch II Part II Point 5.

¹⁶The Industrial Disputes Act, 1947 (14 of 1947) s 25U.

supported in the Indian legal framework. This reasoning is further strengthened through the landmark cases involving the question of go-slows.

One of the main cases on such issue is the case of *Bharat Sugar Mills Ltd. v. Jai Singh*,¹⁷ in which the Supreme Court held that ‘go-slow’ means deliberately delaying the production of goods and services by the workers. It has been considered as a dishonest practice which is even more harmful than complete cessation of work, as during strike, one can switch-off the machinery, whereas in go-slows, such measures cannot be taken. In go-slows, machinery is kept on at a reduced speed which may damage its parts. Therefore, go-slows are a serious kind of misconduct. The Supreme Court in *Jay Engineering Works Ltd v. Union of India*,¹⁸ also reiterated that go-slow as a form of strike *is a misconduct and Unfair Labour Practice*, so it should not be practiced.

During those days, the courts were so against the idea of go-slows that the Bombay High Court held in the case of *Zaikh v. Firestone Tyre & Rubber Company Ltd*¹⁹ that even piece-rated employees, who are paid according to the amount of work done by them, cannot go-slow as a form of strike because it is a serious misconduct and justifies their dismissal. The Court stated that nature of work of piece-rated employees should encourage them to do more work as the payment of wages in such cases is directly linked to production. Further, just because no minimum limit is prescribed on the employee, does not mean that the employee can reduce his or her productivity and start working at a slower pace. They must endeavour to meet the conditions of service and provide the required produce to the employer, which he is entitled to.

Looking at these lines of cases, one can clearly infer that the courts were quite hostile against the idea of go-slow being used as a strike and

¹⁷*Bharat Sugar Mills Ltd. v Jai Singh and Ors.* [1962] 3 SCR 684, para 3.

¹⁸*Jay Engineering Works Ltd v Union of India* [1963] 3 SCR 978, para 9.

¹⁹*Zaikh v Firestone Tyre & Rubber Company Ltd* [1954] ILLJ 281 Bom.

deemed go-slow as a misconduct. However, one thing that the courts have never done is to deem go-slow as an *illegal strike* and ban it. Analysing the statutory provisions, Section 24 of the IDA which contains provisions regarding illegal strikes and lock-outs states that a strike or lockout is considered illegal if “*I) it is commenced or declared in contravention of Section 22 or Section 23 or II) if it is continued in contravention of an order made under sub-section (3) of Section 10 [or sub-section (4A) of Section 10A]*”.²⁰ These provisions do not state that Unfair Labour Practices are illegal, therefore, go-slow has not been designated as an illegal strike either by the statutory provisions or by the courts of law. This reasoning implies that the legality of go-slow in India is unclear as on one hand, it is not explicitly illegal, but on the other hand it is a misconduct in the eyes of courts.

Due to this vagueness over the legality of go-slow in India, courts have taken differing stances over the issue of go-slow and Unfair Labour Practices in general, as in the case of *Crompton Greaves Ltd v. Workmen*.²¹ Here, the Supreme Court held that “*an industrial action or strike cannot be deemed illegal or unjustified or unfair unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of facts and circumstances of each case.*” Similarly, in the case of *Statesman Limited v. Workmen*,²² the Supreme Court held that “*If a strike is illegal, wages during the period will ordinarily be negated unless considerate circumstances constrain a different course, strictly speaking, the question of whether a strike is illegal and unfair needs to be viewed with the whole course of developments and not stop with examining of initial legitimacy.*” These court reasonings can be inferred to provide legitimacy to even Unfair

²⁰The Industrial Disputes Act, 1947 (14 of 1947) s 24.

²¹*Crompton Greaves Ltd v Workmen* AIR 1979 SC 1489, para 4.

²²*Statesman Limited v Workmen* [1976] ILLJ 484, para 15.

Labour Practices like go-slows, if the facts and circumstances require commission of such acts to meet the ends of justice and fairness.

However, later, the Court did not consider the reasoning of the *Crompton Greaves & Statesman Limited* case and reiterated *Bharat Sugar Mills*' stance in the case of *Bank of India v. T S Kelawala and Ors.*²³ Here, the Supreme Court stated that “go-slow may be legal or illegal but it does not save the employees from deduction of their wages. Legality of a strike only saves the workers from disciplinary action since a legal strike is a legitimate means of grievance redressal for them so if a go-slow leads to loss of production for the employer, then the employer is entitled to deduct wages.” This perspective underscores the distinction between the legitimacy of a strike and the consequences employees may face, such as, wage deductions. It is important to note that the court still stated that ‘deduction of wages’ does not make an industrial action or strike as illegal. Therefore, even though this judgement holds go-slow in a negative light, it does not consider it as illegal. It only considers it as serious misconduct.

However, the Court took a liberal approach later on, and in the recent judgement of the Supreme Court in the case of *Bata India Limited v. Workment of Bata India Limited and Anr.*,²⁴ the Court held that “workers should be given the fair opportunity to be heard before their wages are deducted for using go-slow approach of industrial action.” The Court further stated that the right procedure should be followed if the employers are of the opinion that their employees are using go-slow approach and this opinion should be formed only after ascertaining the facts and circumstances of the dispute. In essence, the Court stressed upon the importance of due process.

An analysis of all these cases clearly indicates that the legality of go-slow is unclear in the Indian legal framework. The courts of law in

²³*Bank of India v T S Kelawala and Ors* [1990] SCC (4) 744, para 4.

²⁴*Bata India Limited v Workment of Bata India Limited and Anr* Civil Appeal No 6794 of 2010, para 20.

India love to play with the idea that go-slow is not illegal, but it is also not freely available to the employees as a method of grievance redressal considering it is a serious misconduct.²⁵ However, Courts have recently resorted to a liberal interpretation by stating that this misconduct needs to be identified with proper procedure. Another concerning aspect of these case laws is that they do not try to identify whether a go-slow is a strike as per definition of IDA.

These judgements have essentially left go-slow in the middle of the road as they do not stop the workers from adopting go-slows, but also do not grant them complete freedom to use this method for grievance redressal. On the other hand, it allows the employers to punish their employees with certain restrictions and possibility of wage deductions. This kind of ambiguity over the legality of go-slow approach in India is detrimental to the rights of both employees and employers, as employees may find themselves in a precarious position, uncertain about the consequences of using go-slow tactics whereas employers may struggle to strike a balance between addressing productivity issues and respecting the rights of the workers. Therefore, a more comprehensive and precise legal framework regarding the issue of go-slow could help in protecting the rights of both employees and employers while fostering a fair and effective labour environment in India.

India can greatly benefit from considering foreign interpretations of go-slow approaches to address the ongoing issue of their legality within the country. Different countries have adopted varying stances on go-slows, and India could learn from these international models to bring clarity to this contentious issue. For instance, in the United Kingdom, go-slow is considered as an Action Short of a Strike (“ASOS”) as per

²⁵*M/S Sasa Musa Sugar Works(P) Ltd v Shobrati Khan and Others* [1959] SCR Supl (2) 836.

the Trade Union and Labour Relations (Consolidation) Act of 1992.²⁶ These actions are protected under this Code if they meet specific criteria such as: a) go-slow is organised due to a trade dispute; b) it does not involve unlawful picketing, and c) it has been selected by the workers as their grievance redressal action through a properly organised ballot. This approach allows for a regulated form of industrial action while maintaining legal protections for workers. Following a similar path could provide Indian workers with legitimate means of expressing their grievances and negotiating with employers, all while adhering to the established rules and regulations. UK's ASOS model's efficacy has also influenced other European nations, such as Finland and Greece²⁷ in recognising regulated forms of industrial actions akin to go-slows using this model.

However, there are some countries which have taken an opposite stance. For instance, Belgium considers the go-slow approach as illegal as their industrial laws permit only complete refusal or cessation of work as a strike.²⁸ This approach simplifies the legal landscape and can provide employers with great certainty in managing labour disruptions.

India may choose to take the approach of the United Kingdom and make go-slow legal in India by making the required amendments to the IDA and including a proviso of ASOS with similar kind of requirements as imposed by the UK government. This will help the workers choose what is the best approach for them as well as provide the protections of statutes to them. It will also help regulate go-slow approach and provide protection to employers in the form of lockout,²⁹ i.e., *temporary closing of place of employment or refusal by an*

²⁶Wiebke Warneck, 'Strike Rules in the EU27 and Beyond: A Comparative Overview' (2007) European Trade Union Institute for Research, Education and Health and Safety (ETUI-REHS) 1-73.

²⁷ibid.

²⁸ibid.

²⁹The Industrial Disputes Act, 1947 (14 of 1947) s 22.

*employer to continue to employ any number of persons employed by him*³⁰ as per the provisions of Section 22 of the IDA.

India may also take the Belgium approach and deem go-slow as an illegal strike in India rather than merely as an Unfair Labour Practice and a serious misconduct. This parallel seems more feasible as the definition of strike in the Belgium law is on the lines of the Indian law as both require complete cessation or refusal on part of the workers. This would also clear the ambiguity over go-slow's usage and would allow the workers and employers to choose the action that best suits their interests by providing clarity over the consequences and parameters associated with go-slow actions.

Furthermore, aligning with international labour standards would demonstrate India's commitment to harmonizing its labour laws with global norms, potentially making it more attractive to foreign investment and facilitating international labour relations. Ultimately, choosing one of these paths is essential to resolving the ambiguity surrounding go-slows and ensuring that the rights and interests of employees and employers are effectively protected. This will also prevent unnecessary litigations being pursued over the matter of the legality of go-slows in India.

IV. CONCLUSION

The legality of go-slow actions in India is a complex and unresolved issue that has significant implications on the rights and interests of both employees and employers. This research paper has concluded that go-slows are not explicitly recognized as strikes in India, nor are they clearly defined as legal or illegal actions. This ambiguity creates uncertainty, disputes, and inefficiencies in dealing with labour-related conflicts. Therefore, this paper suggests that there is an urgent need to

³⁰The Industrial Disputes Act, 1947 (14 of 1947) s 2(1).

address this issue by taking a decisive stance on the status of go-slows in India.

One possible way to do this is to consider foreign jurisprudence and adopt either the United Kingdom's approach of making go-slow legal as an ASOS with certain conditions, or Belgium's approach of classifying go-slows as illegal strikes. This would provide much needed legal clarity and consistency, as well as align India's labour laws with the international standards.