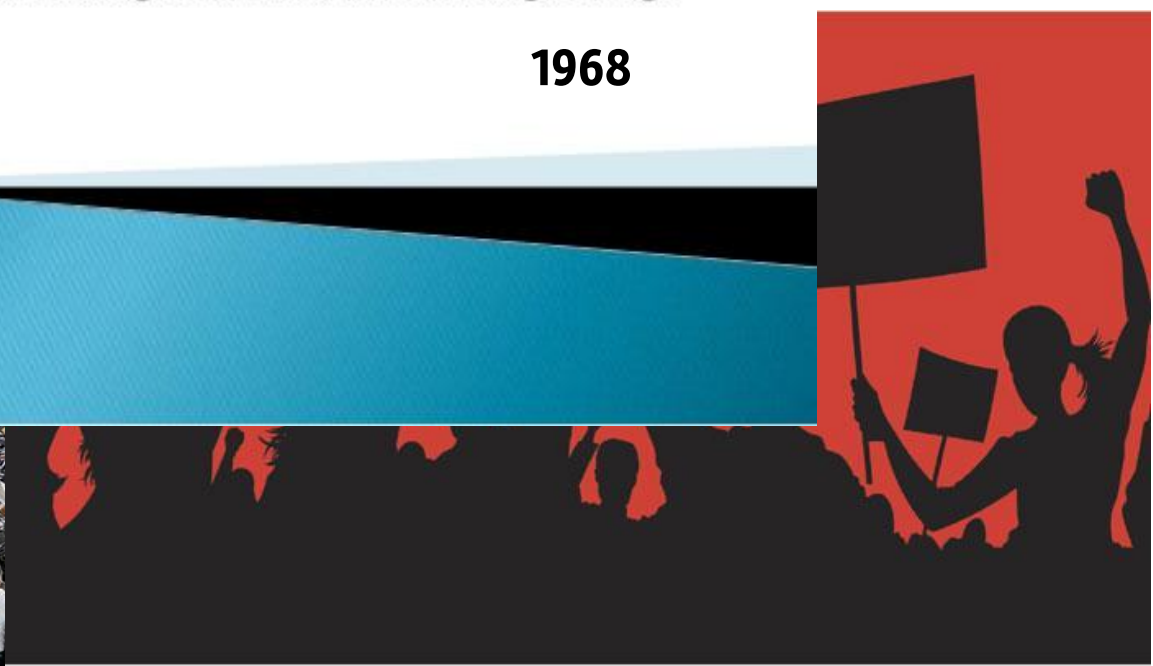




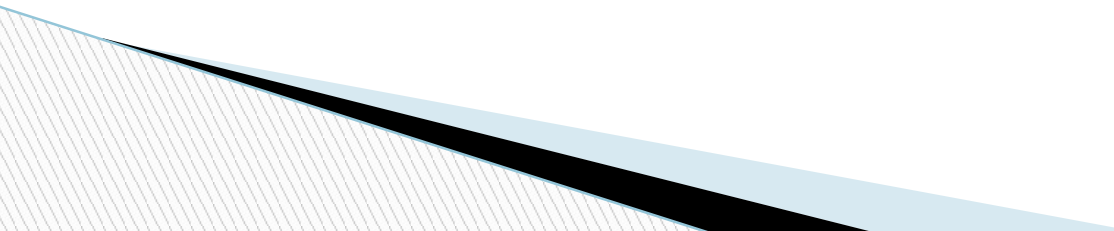
ESMA

ESSENTIAL SERVICE MAINTENANCE ACT

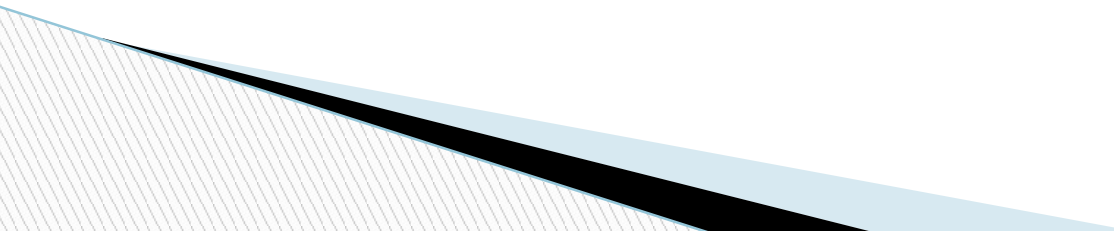
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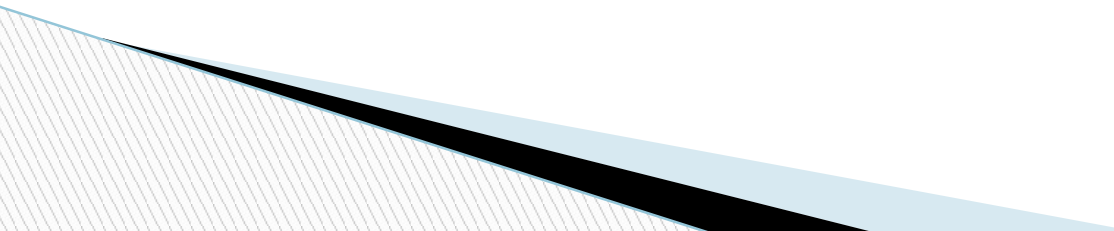
What is ESMA?

- ▶ ESMA is an act established to ensure delivery of certain services, which if obstructed, would affect the normal life of the community.
 - ▶ It is a law made by the Parliament of India; but the discretion on execution of it mostly lies with the State Governments.
 - ▶ Any order passed under this Act has an overriding effect on other laws for the time being, when in force (Section-8).
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What are essential services?

- ▶ Any service with respect to which the government feels that its discontinuation would affect the maintenance of supplies and services necessary for sustaining life is considered an essential service.
 - ▶ The services include postal, telegraph or telephone service, all transport services, health services, defence services among others.
- 

Which services fall under this category?

- ▶ Services related to public conservancy, sanitation, water supply, hospitals, banking or related with the defence of the country are considered essential.
 - ▶ Any establishment dealing with production, supply or distribution of petroleum, coal, power, steel and fertilizers also falls under the essential services category.
 - ▶ The employees can't refuse to work overtime if their work is considered necessary for the maintenance of any of the essential services.
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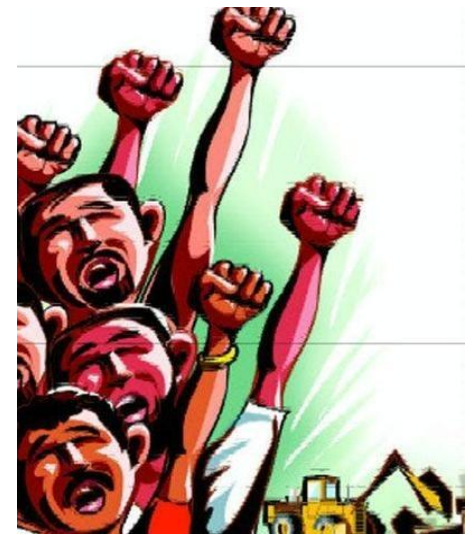
FEATURES OF THE ACT

- ▶ It has the power to prohibit strikes in any essential services.
- ▶ Any strike declared before or after the issue of the order, shall be deemed illegal.
- ▶ Penalty for instigation of strike, giving financial aid for strike.
- ▶ Punishment in the form of imprisonment or fine.
- ▶ Right to arrest without warrant.



SECTIONS

- ▶ 1. Short title, extent and commencement.
- ▶ 2. Definitions.
- ▶ 3. Power to prohibit strike in certain essential services.
- ▶ 4. Penalty for illegal strike.
- ▶ 5. Penalty for instigation.
- ▶ 6. Penalty for giving financial aid to illegal strike.
- ▶ 7. Action under Sections 4, 5 or 6 in addition to other disciplinary action.
- ▶ 8. Power to arrest without warrant.
- ▶ 9. Act to override other laws.



OTHER IMPORTANT PROVISIONS

- ▶ Dismissal of employee.
- ▶ Penalty for giving financial aid to illegal strikes.
- ▶ Prohibition of lockout.
- ▶ Prohibition of layoff.
- ▶ Summary trial of offence.

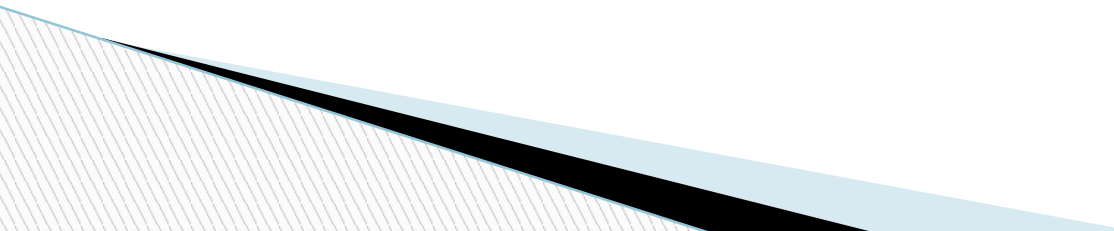


Is it illegal for the employees to go on strike?

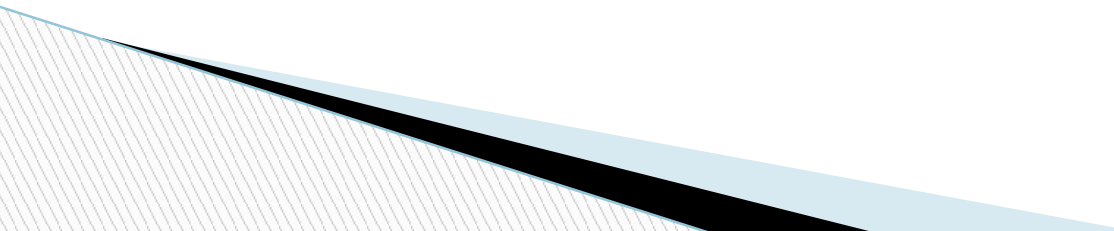
- ▶ A strike per se is not illegal, but the government is empowered to prohibit it if it feels that the strike is gravely disturbing public life.
- ▶ For that, the government has to issue a general or special order to end the strike. Any strike becomes illegal after the passing of this order.



What actions can be taken against the employees?

- ▶ Persons who commence the strike as well as those who instigate it are liable to disciplinary action, which may include dismissal.
 - ▶ As the strike becomes illegal after ESMA is invoked, legal action can also be taken against these employees.
 - ▶ Persons participating in or instigating the strike are punishable with imprisonment, which may extend to one year or with fine or with both.
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Applicability of the ESMA

- ▶ Each state in the Union of India, has a separate state *Essential Services Maintenance Act* with slight variations from the Central Law in its provisions.
 - ▶ The law has seen little use in India, with many strikes continued for weeks without ESMA being invoked by the Union Government or the State Government.
 - ▶ There have been instances of citizens approaching Courts for implementation of ESMA, and the executive being forced by Court Orders to declare ESMA over a strike and the strikes being called off overnight.
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EXAMPLES OF ESMA BEING EVOKED

- ▶ A strike by 2000 resident doctors in New Delhi in June, 2015 was called off after the invocation of the ESMA as disruption of medical services was causing inconvenience and hardship to the general public.
- ▶ In 2005, the Hyderabad Government invoked the ESMA against striking chemists since pharmacies are an essential service.

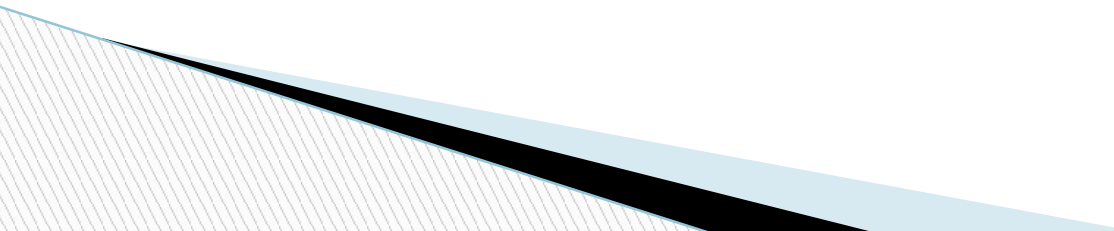


KARNATAKA ESSENTIAL SERVICES MAINTENANCE ACT

Karnataka

- ▶ The Government of Karnataka enacted *Karnataka Essential Services Maintenance Act* in 1994 which was in force since 16 April, 1994.
- ▶ The life of the Act was ten years as per Section 1(3) and it lapsed on 15 April, 2004.
- ▶ The Government of Karnataka has threatened to invoke the Act multiple times since then, even though the Act had lapsed in 2004.

(Continued...)

- ▶ However, the State has power to impose the Central Law without modification unless it enacts a new law suitable for it.
 - ▶ The Government of Karnataka had planned to reintroduce ESMA with Karnataka Essential Services Maintenance Bill, 2013 and ESMA has been re-introduced in Karnataka effective from 09th June, 2015.
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THANK YOU

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