



Research Paper

Whether workers Right to Strike in India is Fundamental.

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Abstract

The right to strike is a contentious issue in Indian industrial law, symbolizing the tension between workers' rights to collective bargaining and the state's interest in maintaining workplace tranquility. The Industrial Relations Code, 2020 ("IRC" or "the Code") consolidates prior labor rules and imposes significant restrictions on strike activities, while ostensibly balancing worker rights with economic stability. This article examines the constitutionality of restrictions by analyzing instances such as T.K. Rangarajan v. State of Tamil Nadu (2003) and All India Bank Employees' Association v. National Industrial Tribunal (1962). It highlights the discrepancies between the freedom of association granted by Article 19(1)(c) and the statutory limitations on collective action. The article juxtaposes India's framework with those of other nations, assesses the Code's compliance with the concept of proportionality and ILO conventions, and finally proposes reforms to align industrial peace with constitutional ideals.

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I. Introduction

The right to strike is a potent instrument for workers to articulate their problems and seek equitable treatment from employers. It represents collective power and camaraderie among laborers. Nonetheless, while strikes are crucial in securing justice and safeguarding labor rights, they may also disturb industrial peace and economic stability. Consequently, India has a persistent dilemma - how to reconcile the workers' freedom to strike with the need of sustaining industrial tranquillity and production.

The notion of strike has been present in India since the colonial period. During British colonial authority, laborers in many sectors, particularly textile mills, railroads, and plantations, used strikes to contest exploitation, inadequate salaries, and substandard working conditions. The early 20th century seen several coordinated strikes that significantly influenced India's labor movement. Post-independence, the Indian government attempted to control industrial relations by law, notably the Industrial Disputes Act of 1947, which established a legal framework for strikes, lockouts, and resolutions. The legislation acknowledged the significance of strikes as a protest mechanism, while also instituting rules and procedures to avert abuse and maintain industrial tranquility. The right to strike functions as a crucial tool for workers to get better wages, improve their working conditions, and protect their rights via collective bargaining. In India, this right is conditional and regulated by legislative statutes and judicial interpretations. This article analyzes the legal framework governing the right to strike in India, focusing on its constitutional, legal, and judicial dimensions, along with its implications for both workers and employers.

A strike inherently has the ability to disrupt the employment contract to achieve certain long-term aims. Furthermore, it serves as a mechanism for workers to counteract the economically dominating management entities, who have historically been seen as possessing superior negotiating strength and expertise. This conflict of interests between employers and employees can be reconciled through a harmonious interpretation of the competing rights and obligations of the parties involved, in alignment with, and not in violation of, the fundamental principles of the rule of law as enshrined in the Indian Constitution. To attain economic independence and foster a harmonious working environment, the authors assert that the legal right to strike for workers should be enshrined in the constitution and safeguarded against deprivation, unless in line with the 'process set by law.' In this regard, it is essential to pose the following inquiry: Is there a constitutional right to strike under the Indian Constitution?

In August 2024, Odisha enacted the Essential Services Maintenance (ESMA) Act to prohibit healthcare workers from striking for improved conditions. It stifled dissent and exposed issues about India's public health and democratic government. The decision was issued in response to the Odisha Nursing Employees Association's strike for justice and safety on August 27. The brutal rape and murder of a Kolkata physician incited extensive protests, prompting medical professionals to demand enhanced safety and improved working conditions. ESMA was used to suppress nurses, pharmacists, paramedics, and technicians in government and autonomous health facilities in Odisha, disregarding their grievances. Nursing officers protested in Bhubaneswar on August 23 demanding worker safety, equitable compensation, and enhanced conditions while donning black badges. This disagreement raises significant constitutional concerns.

Are millions of Indian laborers permitted to engage in strikes? The ILO Committee on Freedom of Association endorses the "right to strike" as a fundamental labor right. It enables workers and unions to safeguard and enhance their financial well-being. State legislation differs on striking rights. In India, courts have often invalidated the constitutional right to strike.

Strike rights must to be more broadly recognized as fundamental rights under global standards and the principles of socialism and social justice included in the Indian Constitution.

What constitutes the Right to Strike

A strike is the collective refusal of workers to work under the circumstances imposed by employers. Strikes occur for several causes, primarily in reaction to economic situations (termed economic strikes aimed at enhancing salaries and benefits) or labor practices (focused on improving working conditions). In every nation, regardless of whether it is democratic, capitalist, or socialist, workers are granted the freedom to strike. This privilege should serve as a measure of last resort, since its abuse might adversely affect the industry's output and financial profitability.

The freedom to protest is a fundamental right enshrined in Article 19 of the Constitution of India. The right to strike is not a basic right but a legal right, subject to legislative restrictions as outlined in the Industrial Dispute Act of 1947. The Industrial Dispute Act of 1947 is included under The Industrial Relations Code of 2020.

In India, in contrast to America, the legal framework does not explicitly acknowledge the right to strike. The Trade Union Act of 1926, for the first time, conferred a restricted right to strike by recognizing certain acts of a registered trade union in pursuit of a commercial dispute, which would otherwise constitute a violation of common economic law.

Currently, the right to strike is acknowledged only to a restricted degree, permitted within the confines established by law, as a legal tool of Trade Unions. The right to strike under the Indian Constitution is not an absolute right; rather, it derives from the basic right to establish a union.

Like other basic rights, the ability to organize trade unions and call for strikes is subject to legitimate constraints imposed by the state. Right to strike as stipulated by International Convention: The right to strike has been acknowledged by the agreements of the International Labour Organization (ILO). India is a founding member of the ILO.

The Industrial Disputes Act of 1947 defines "strike" as the suspension of labor, accomplished via a collective action, a coordinated refusal, or a mutual agreement among workers to decline work or employment. The ILO broadens the term by embracing alternate types of industrial action, such as go-slow strikes (which diminish output) and work-to-rule (strict adherence to laws), which may not involve a total work stoppage but may nonetheless obstruct operations. The ILO's broad interpretation acknowledges the development of labor tactics, therefore guaranteeing the effectiveness of workers' collective activities notwithstanding restrictive national labor laws. Conversely, the Indian definition prioritizes direct job stoppage, perhaps neglecting indirect but equally important striking measures.

Nonetheless, the Supreme Court of India provides a broad interpretation of the term "strike" under this Act. The purpose to oppose management is not fundamental to the definition of a strike. The Supreme Court has determined that when employees collectively refrain from work owing to unrelated issues or worries over the working circumstances of other workers under different management, such an action is classified as a strike. The Supreme Court determined that the legitimacy of a strike is a factual matter, since a trade union's principal aim is collective bargaining for increased base wages, benefits, and leave entitlements. A "question of fact" pertains to a matter that relies on facts and factual conditions, rather than legal interpretation. If demands are presented and a strike is used to compel the corporation to acquiesce or commence discussions, the strike should be deemed legitimate. The right to strike is not constitutionally protected in India, and Indian courts have declined to acknowledge it as an extension of the basic right to organize an organization as stipulated in Article 19(1)(c) of the Constitution.

Is Right to Strike Fundamental Right?

The authors acknowledge that, although the right to strike is constitutionally recognized, its practical availability remains largely unchanged due to its statutory existence. The author advocate for a fundamental right to strike for two primary reasons. **Primarily**, basic rights are more sacred and esteemed than other legal or statutory rights, resulting in little institutional interference and extensive judicial examination based on the 'reasonableness' of State actions. **Secondly**, it would mitigate economic exploitation of workers by management, since acts must be justified according to the criteria of 'reasonable constraints' and 'process established by law' outlined in Part III of the Constitution.

In **T.K. Rangarajan v. Government of Tamil Nadu and others** in India, the Supreme Court's division bench opinion, addresses the validity of legislation that restricts the right to strike for government workers in India. The Supreme Court upheld the termination of government workers by the Tamil Nadu Government, referencing **All India Bank workers' Association v. National Industrial Tribunal and others**. And in the case of **Kameshwar Prasad v. State of Bihar**, it is asserted that there is no basic right to strike under the Indian Constitution. The Supreme Court said that government workers had no moral, legal, or fundamental right to strike.

This analysis reexamines prior rulings of Indian constitutional courts and references **Kameshwar Prasad and B. R. Singh and others v. Union of India** to assert that a basic right to strike exists under the Indian Constitution. The higher courts in India have often sought a consistent constitutional resolution regarding whether the right to strike constitutes a right, and if so, whether it is a basic right, as well as the source of its validity. While the acknowledgment of the right to strike as a legislative entitlement for non-government workers is firmly established, there remains a conspicuous absence of consensus in court interpretation about its constitutional validity. The issue of granting the right to strike a basic status has also posed challenges for constitutional courts in South Africa, the United States, Canada, and others. The sole distinction lies in the fact that, while the Indian judiciary is endeavouring to formulate a constitutionally valid response, or at least appears to be, several foreign counterparts have not only acknowledged and embraced this right but have also integrated it into the fundamental tenets of an ideal democracy through their comparative analysis of the importance of equality, individual autonomy, and human dignity.

The Supreme Court has consistently determined that the right to strike is not a fundamental right, despite being a legal entitlement grounded in statute and tradition. Legitimate industrial law acknowledges the right to strike as an inherent entitlement, since the working class has unequivocally secured this right via a protracted battle for industrial action. In a capitalist economy, the wage negotiation process is incomplete without strikes. The only viable alternative for a worker to safeguard their income is to pursue a higher salary. If a capitalist refuses to provide such a raise, workers may initiate a strike to compel negotiations. This individual is permitted to act accordingly, since the capitalist's profit relies on the worker's ongoing exertion.

Irrespective of the recognition of the employer-employee relationship, the right to strike is an essential component of the workforce's many responses and manifestations, since it is inherently connected to the right to collective bargaining. **Justice Bhagwati's** 1980 judgment in **Gujarat Steel Tubes v. Its Mazdoor Sabha** asserts that the freedom to strike is essential to collective bargaining. He said that industrial jurisprudence and social justice acknowledge this privilege as a procedural phenomenon.

The Industrial Disputes Act introduced formal acknowledgment of the right to strike inside enterprises in 1947. According to judicial interpretation, the phrase "industry" includes not just enterprises but also nonprofit organizations, educational institutions, and clubs. The Act characterizes a strike in subsection 2 (q) as "a work stoppage by a collective of individuals employed in any industry, or a coordinated refusal, or a refusal, predicated on a shared understanding among any number of individuals who are or have been employed, to persist in working or to accept employment." The right to strike is acknowledged in Sections 22, 23, and 24. A justified strike is distinctly characterized from an illegitimate strike according to Section 24. Any strike that fails to adhere to the established rules for initiation, as delineated in Sections 22 and 23, is deemed unlawful. The verdict elucidates that strikes according to certain standards are legally acknowledged, and not all strikes are deemed unlawful. The right to strike is explicitly articulated in the 1947 Industrial Disputes Act. Statutes delineate distinct definitions for legal and illegal strikes. The court will determine the legality or illegality of the subject.

The employers' ability to implement a lockout preserves a balance of power against the workers' right to strike. The right to strike is acknowledged in two legislations: the Trade Unions Act of 1926 and the Industrial Disputes Act of 1947. According to sections 18 and 19 of the Act, trade unions are exempt from civil liability during strikes.

To decide whether right to strike is fundamental right or not, we must initially, determine, whether right to strike is included under 19(1)(c). Article 19(1)(c) of the Indian Constitution addresses the constitutional clause about the right to strike, stating that "all citizens shall have the right to form associations, unions, or co-operative societies." This essential right is likewise recognized by the 1948 Universal Declaration of Human Rights (UDHR). Article 20 of the UDHR confers the right to association, allowing individuals to establish and join trade unions to safeguard their interests as stipulated in Article 23(4). The state is permitted to impose reasonable limits

on the practice of freedom of association under Article 19(4) of the Indian Constitution, contingent upon considerations of national integrity, public order, sovereignty, or morality. This parallels the constraints established by Article 29(2) of the UDHR, which also permits limits on the right to freedom of association with comparable justifications. The ILO acknowledges the right to strike as a derivative of the right to organize. The Supreme Court in *All India Bank Employees' Assn. v. National Industrial Tribunal* acknowledged that the right to strike may be encompassed within Article 19(1)(c), which ensures all essential rights for associations to achieve their objectives, taking into account both literal interpretation and the diverse domains in which citizens can legitimately participate. The Supreme Court's denial to interpret the right to strike inside Article 19(1)(c) principally depends on its interpretation of Article 19(4), which, in the Court's view, lacks suitable constraints. The court acknowledges that a fair limitation on the expansive basis of "interests of the general public" may constitute a legitimate constraint on the right to strike, since it might be construed to include the national economy. The court deems the considerations of morality or public order inadequate to restrain the "illegal strikes." This logic is flawed. 'Public order' as a basis for reasonable restriction sufficiently encompasses the necessary limitations on the right to strike. The Industrial Disputes Act of 1947 delineates the procedures for legal and illegal strikes, while the Essential Services Maintenance Act of 1968 (ESMA) and the pertinent State and Central Government Service Rules primarily regulate the limitations on the right to strike. The aim of the ESMA is to maintain certain basic services and the community's standard functioning. This may be immediately construed as a basis for public safety, which is itself seen as a component of "public order." Interference with the supply or distribution of critical goods or services is deemed detrimental to public safety. Identical observations apply to the limitations placed on government personnel. Legislation, such as the Tamil Nadu Government Servants Conduct Rules, 1973, already exists to control strikes by government workers. Consequently, the assertion that the justifications for limits under Article 19(4) are insufficient to limit the right to strike when necessary, and that this right should be governed by specific legislation, is untenable. Moreover, the right to strike is not the only basic right governed by several legislations, although being enshrined as a fundamental right in the Indian Constitution. Article 19(1)(a) guarantees the right to freedom of speech and expression, which is subject to limitations under Article 19(2) and further constrained by particular statutes such as the Information Technology Act, 2000, and the Telegraph Act, 1885. The state may restrict the exercise of the right to strike by particular laws if it encounters difficulties, similar to its regulation of the right to freedom of speech and expression. The second case examined is *Radhey Shyam Sharma v. Post Master General, Central Circle*, which warrants reconsideration due to its erroneous rationale in determining that the right to strike is not a basic right. The Supreme Court examined a challenge to the right to strike as a basic right under Article 19(1)(a) and Article 19(1)(b). The discourse in *All India Bank Employees' Assn. v. National Industrial Tribunal* elucidates that the limitations imposed by Article 19(4) are adequate, and the right to strike can be inferred from Article 19(1)(c). Consequently, the rejection of the right to strike as a fundamental right in this ruling is inconsequential, as it relies on Article 19(1)(a) and Article 19(1)(b). The Court's erroneous approach in this opinion is notably based on *All India Bank Employees' Assn. v. National Industrial Tribunal*, which addresses the right to strike under Article 19(1)(c). The erroneous logic in *Radhey Shyam Sharma* diminishes its authority, underscoring the need for a more precise comprehension of the right to strike in relation to Article 19(1)(c) instead of Articles 19(1)(a) and 19(1)(b). The rationale indicates that the landmark ruling in *T.K. Rangarajan v. Govt. of T.N.*, which asserts that the right to strike is not a basic right, is untenable, since it reaffirms the legal stance established in the three aforementioned judgments. It examines the impact of strikes on society and the basic rights of other people to restrict the right to strike, a consideration absent in the previous judgments. The assertion that strikes are more detrimental to society than beneficial to workers is flawed. Laborers are a key component of society, and India is a socialist nation. The notion of socialism is included in the Preamble of the Constitution. The Indian state cannot ignore the group of people, some of whom occupy the lowest strata of its economy and sustain it. Furthermore, the court references *Communist Party of India (M) v. Bharat Kumar* to underscore that any action infringing upon people's basic rights is impermissible. Nonetheless, that verdict pertains to Bundhs rather than strikes. The ruling explicitly states, "A call for a bundh is clearly distinct from a call for a general strike (...). The objective of the bundh organizers is to guarantee that no activities, whether public or private, occur on that day." The Supreme Court of India has determined that the interests of the working class should be prioritized, giving them the advantage in legal interpretation in cases of uncertainty. The ruling is valid where the legislation aims to safeguard vulnerable populations; in these instances, judges are warranted in adopting a wide interpretation of the law. The preamble of the Indian Constitution articulates socialism as a philosophy, and the welfare laws included therein seek to provide justice, equality, and dignity for all individuals. These principles are upheld by Fundamental Rights and the Directive Principles of State Policy, which direct the State to advance social welfare, mitigate inequality, and safeguard the interests of marginalized groups, therefore striving for a fair and inclusive society. Consequently, the constitutional requirements should be interpreted expansively, and the Bundh decision, which does not pertain to strikes and expressly distinguishes between them, is not relevant to support the denial of workers' rights to collective bargaining and improved circumstances.

International norms and standards.

The International Labour Organization (ILO), sometimes known as the 'Magna Carta' of workers' rights, has developed a robust foundation for the right to strike via several Conventions, Resolutions, and Recommendations that demand universal adherence under customary international law. Other international human rights treaties recognize the right to strike as fundamental, but not explicitly. The ILO's principal purpose is to protect universally acknowledged fundamental worker rights. The right to strike is not explicitly stated in the I.L.O. Constitution; however, the Committee of Experts on the Application of Conventions and Recommendations (C.E.A.C.R.) has resolved this ambiguity by interpreting Convention 87, which focuses on the Freedom of Association and Protection of the Right to Organize, thus giving the right to strike fundamental importance. Many people have voiced concerns about the unthinking acceptance of the C.E.A.C.R.'s justification for the fundamental nature of the right to strike. The major problem is the approval of nonbinding directions for national policy and action presented by a Member Committee without the authority under international law to judge the relevance of domestic constitutions. This argument is flawed because, although it is agreed that I.L.O. Recommendations serve only as advice and are not binding on non-ratifying Member States, it should not be disregarded that each State Party to the I.L.O. is required to comply with the recommendations in 'good faith.' Regarding the preceding issue, a comprehensive interpretation of Article 328, in conjunction with Article 1029 of Convention 87, substantiates the fundamental nature of the right to strike, as it expressly recognizes organizations' rights to "organize their administration and activities and to formulate their programmes" in furtherance of worker interests. The Indian government has rejected to sign Convention 87, citing "technical" concerns over limits on specific rights for government employees. Thirty Nonetheless, the author contends that Member States must adhere to "core" I.L.O. Conventions, regardless of their ratification status. This conclusion is based on the I.L.O. Declaration on Fundamental Principles and Rights at Work, 1998, which states unequivocally that Member States "are obligated to respect, promote, and realize, in good faith and in accordance with the I.L.O. Constitution, the principles concerning the fundamental rights encompassed by those Conventions."

In India, Articles 51(c) and 37 of the Directive Principles of State Policy compel the state to "introduce" and "implement" foreign laws and instruments to guarantee treaty compliance. Given the presence of such sections in the Constitution, constitutional courts lack the authority to reconcile international and constitutional law, since Indian courts are institutions of "law" rather than "justice" and must adhere to the Indian Constitution. The right to strike, as established in the I.C.E.S.C.R.35 and recognized by the I.L.O. Convention 87, is a basic aspect of international law that should be understood in light of Article 19 of the Indian Constitution's protection of freedom of association. Concurrently, it is recognized that constitutional absolutism is untenable in any democracy. Furthermore, strikes deemed "purely political" are not protected by the principles of freedom of association; however, permissible restrictions may apply to the exercise of rights pertaining to "occupational" and "trade union" strikes during a significant national emergency or when government or public servants authorized to maintain public utility services exercise such rights. Recognizing a right as a constitutional right requires a distinct investigation, as does creating exceptions to it. In India, courts have regularly supported restrictions on the right to strike, citing the Constitution as justification, without fully determining the constitutionality of defining this right as a basic entitlement.

Reconciling Labor Rights with Industrial Harmony

To find a balance between the right to strike and industrial peace, all parties involved, including workers, businesses, and the government, need to work together. The best way to stop strikes is to have good collective bargaining. Transparent communication and mutual respect between management and personnel may help solve most problems before they happen. Labor officials should also push for mediation and arbitration as ways to settle conflicts quickly and equitably, so that strikes don't have to happen. Also, workers in critical services should be able to voice their complaints. However, it is fair to limit strikes in certain areas to protect the public good. Still, these workers need to be able to use faster ways to settle their complaints. Unfair treatment, late pay, or unsafe working conditions are some of the things that lead to many strikes. Employers must make sure that their employees follow labor laws and that the workplace is fair, open, and safe. Encouraging social discourse and talks between the government, businesses, and workers may help everyone understand each other better and set fair labor rules. The Industrial Relations Code, which went into effect in 2020, changed the rules for strikes in India. The Code combines old labor laws and adds tighter rules for strikes, such as requiring all businesses, not just public utilities, to provide notice. This technique is meant to make things more stable and less likely to be disrupted by things that come up unexpectedly. However, labor unions have criticized it for making it harder for people to work together. In the era of globalization and automation, strikes are about more than simply pay. They are also about job security, working conditions, and the loss of jobs to technology. As a result, the right to strike changes as the industrial situation changes.

II. Conclusion

The right to strike remains a complex and evolving aspect of Indian labor law. This research highlights that, while the right to strike is recognized as a significant means for workers to express their grievances and negotiate better conditions, it is not currently classified as a fundamental right under the Indian Constitution. Judicial interpretations, particularly by the Supreme Court, have consistently held that the right to strike, though important, is subject to reasonable restrictions and is not protected as a fundamental right under Article 19. Instead, it is regulated through statutory provisions, such as the Industrial Disputes Act, which balance workers' interests with the broader concerns of public order and economic stability. Going forward, the challenge lies in ensuring that any regulation of the right to strike protects both the legitimate interests of workers and the essential services relied upon by society. Continued dialogue and legal clarity are necessary to harmonize these objectives within India's constitutional and legislative framework.

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