

Right to Strike: A Fundamental Right or an Abstract?

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Abstract:

The right to strike has long been a contentious issue at the intersection of labour rights, constitutional law, and social justice. This research paper delves into the complex question of whether the right to strike should be recognized as a fundamental right. Drawing from an extensive review of legal frameworks, historical precedents, and international perspectives, this paper examines the evolving nature of the right to strike and its significance in contemporary society. The paper explores the historical context of labour movements and the development of the right to strike as a means of collective bargaining and expressing worker grievances. It critically analyses constitutional provisions and judicial decisions in various countries, highlighting the differing stances on recognizing the right to strike as a fundamental right. Additionally, it considers the impact of globalization, technological advancements, and changing labour dynamics on the relevance and scope of this right. Furthermore, the research paper investigates the ethical and social implications of acknowledging the right to strike as fundamental, including its potential to protect workers' dignity, freedom of association, and fair labour practices. It also examines the challenges and limitations associated with the exercise of this right, such as balancing labour interests with broader societal interests and ensuring the rule of law. By offering a comprehensive overview of the right to strike, this paper contributes to the ongoing discourse on fundamental rights in the modern world. It underscores the importance of addressing the complexities surrounding this right, ultimately aiming to inform legal and policy discussions and foster a deeper understanding of its role in shaping equitable labour relations and social justice.

Keywords: Strike, Fundamental Rights, Labour law, social Justice.

I. Introduction:

India is one of the many nations where the right to strike is a divisive topic. It is a basic right that is frequently weighed against both individual rights and the nation's economic interests. This article examines the idea of the Right to Strike in the context of India, looking at its legal structure, historical evolution, and numerous viewpoints. The goal of the article is to present a thorough knowledge of India's Right to Strike and its standing as a basic right. In India, the right to strike is a complicated and divisive topic that touches on several legal, social, and economic issues. The ability to organize groups or unions is guaranteed to people by Article 19(1)(c) of the Indian Constitution, making it a basic right. It is widely

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believed that the ability to strike is a vital instrument for employees to voice their complaints and engage in collective bargaining for improved pay, benefits, and working conditions. For workers to defend their interests, stand up for their rights, and bargain for improved working conditions, they must have the ability to strike. This right, which has various legal, social, and political ramifications, has frequently been the focus of heated discussion in India. Investigating the constitutional framework, pertinent legislation, court rulings, and international agreements is crucial to determining if the right to strike is, in fact, a basic right in India.

II. Historical Background:

Pre-Independence Era:

Labour movements emerged in India during the British colonial era as a reaction to inhumane working conditions. The right to strike was not, however, specifically acknowledged or safeguarded as a basic right. Because, **The Indian Trade Disputes Act, 1929** restricted the ability to strike, the British administration routinely crushed strikes, viewing them as acts of disobedience. In India, there is a long history supporting the right to strike. Its origins may be seen in the rise of labour movements and trade unions in the early 20th century. Indian laborers organized themselves to seek fair salaries and improved working conditions during the British colonial era. Many people point to the 1908 textile workers' strike in Amritsar as one of the first examples of organized labour agitation in India.

Post-Independence:

The Indian Constitution was created in 1947, following the country's independence, and it guaranteed its inhabitants a number of essential rights. Two essential rights guaranteed by the Constitution were the freedom of speech and expression (**Article 19(1)(a)**)⁴ and the ability to organize groups or unions (**Article 19(1)(c)**)⁵. These rights paved the way for the right to strike to be acknowledged as an essential component of the ability to organize and voice complaints.

Constitutional Recognition:

The Constitution of India, adopted in 1950, guarantees several fundamental rights to its citizens. While the right to strike is not explicitly mentioned as a fundamental right, it is understood and derived from other fundamental rights enshrined in the Constitution.

Freedom of Association (Article 19(1)(c))⁶: The right to form associations or unions is considered a fundamental right under Article 19(1)(c). This provision lays the groundwork for workers to form unions and collectively bargain, which inherently includes the right to strike as a means to express their grievances and negotiate with employers.

Freedom of Speech and Expression (Article 19(1)(a))⁷: The right to strike is often seen as an exercise of the freedom of speech and expression. Through strikes, workers communicate their dissatisfaction with working conditions or grievances against employers or the government.

⁴ India Const. art.19, cl. 1(a).

⁵ India Const. art.19, cl. 1(c).

⁶ (Supra) at 2

⁷ (Supra) at 2

III. Constitutional Perspective:

From a constitutional standpoint, the right to strike is divisive because it requires striking a balance between the rights of the individual and the interests of society. The right to strike is frequently regarded as a crucial component of the rights to freedom of association and collective bargaining, which are acknowledged as fundamental rights in a number of international conventions and in some national constitutions, even though it is not specifically stated as a fundamental right in the majority of national constitutions. From a constitutional perspective, workers' freedom of association—which includes their ability to organize and join trade unions or other groupings to further their interests—inherently includes the right to strike. The right of workers to organize and engage in collective bargaining, including the right to strike, is emphasized as a basic human right in the agreements of the International Labour Organization (ILO), such as Convention No. 87 on Freedom of Association and Protection of the Right to Organize.

The ability to strike is not unrestricted, though, and there may be restrictions in place depending on the situation. Numerous nations have developed legislative structures that govern work stoppages in order to maintain equilibrium between laborers' rights and the wider welfare of society. These constraints may include the need for prior notification, bans on activities that risk public safety or important services, restrictions on certain industries or services, and processes for resolving disagreements amicably. The legitimacy and extent of strikes in particular circumstances are determined by interpreting labor laws and constitutional provisions, which courts throughout the world are frequently asked to decide in cases involving the right to strike. Depending on the legal system and judicial interpretations in each jurisdiction, decisions about the legitimacy of strikes and the scope of acts that are allowed during a strike might differ greatly.

Generally, even though many national constitutions do not specifically list the right to strike as a fundamental right, it is closely related to the more general concepts of freedom of association and collective bargaining, and its recognition and control are contingent upon national legal frameworks and constitutional interpretation.

IV. Statutory Framework

The Indian legal system's basis for the right to strike is mostly based on several labor legislation and court rulings. The following are some of the main statutes and legal clauses pertaining to the right to strike in India:

Industrial Disputes Act, 1947⁸:

The Industrial Disputes Act of 1947 establishes the rules and circumstances that for employees to lawfully go on strike. It establishes rules pertaining to:

- **Notice Period:** Before going on strike, employees of public utility services must give a minimum of 14 days' notice. Transportation, finance, telecommunications, and other industries are examples of public utility services. Although there isn't a clear legal obligation for notice in other areas, giving early notice is usually seen as best practice.
- **Conditions and Legal Processes:** The Act lists the circumstances in which a strike may be deemed unlawful, including disregard for rules and laws, failing to comply with mandated obligations, etc.

⁸ Industrial Disputes Act, 1947.

- **Strikes During Conciliation or Arbitration:** A strike would be prohibited during a conciliation or arbitration process that is ongoing about an employment issue.
- **Prohibition of Retaliation:** The Act forbids employers from taking adverse action against employees who take part in a lawful strike. Employees' rights to take part in strikes peacefully are protected by it. It is noteworthy that although the IDA stipulates rules pertaining to strikes, the freedom to strike is not an inalienable right in India. In order to prevent a major impact on the public interest, there are specific restrictions and requirements that must be followed, particularly when it comes to critical services. Furthermore, throughout time, the Industrial Disputes Act's provisions have been defined and interpreted by the Supreme Court of India in a number of rulings, creating rules and principles on the conditions and validity of strikes under various scenarios.

Trade Unions Act, 1926:

The Trade Unions Act of 1926 is one of the laws and regulations that govern the ability to strike in India. An important piece of law that governs trade union registration and governance in India is the Trade Unions Act, 1926. It does not, however, expressly confer a direct or right to strike.

The right to strike is seen as a fundamental freedom associated with the freedom of organization and speech, and it is acknowledged as an integral component of workers' collective bargaining power. The Trade Unions Act recognizes the influence and significance of trade unions in advocating for the interests of workers, even if it makes no express reference of the right to strike. Industrial Disputes Act lays down the legal framework governing strikes and lockouts and provides certain conditions and procedures that need to be followed before a strike can be declared legal, while trade unions are entitled to strike in order to address grievances and demand changes, but this right is not unrestricted. It must be used within the bounds of the law and under specified circumstances in order to protect vital public services and the general welfare of the public. It is vital to comprehend the distinct legal laws, regulations, and limitations pertaining to strikes and industrial actions, since they may alter depending on various businesses, sectors, and situations.

Public Services Legislation:

In India, numerous legislative requirements and norms regulate strikes by employees of public services, especially in relation to the sphere of public services:

- **The 1968 Essential Services Maintenance Act (ESMA):** It provides the government the authority to designate some sectors of the economy or services as "essential services." Employees who work in these classified critical services have limited striking rights, and lockouts and strikes are prohibited.
- **Legislation pertaining to public services:** Each Indian state has its own set of rules and laws governing public services and the right of public employees to go on strike. These rules frequently place limits on public employees' ability to strike, particularly for those who work in departments that provide necessities like law enforcement, healthcare, and energy.
- **Central Civil Services (Conduct) Rules:** Guidelines and conduct regulations have been developed for central government employees, outlining the circumstances in which they may take part in protests, strikes, or other forms of dissent.

V. International Conventions:

Human rights documents and international labour standards both acknowledge the right to strike as a basic freedom. This right is recognized as essential to the freedom of organization and collective bargaining by several international accords and declarations.

Several international agreements protect the right to strike, including:

- **International Labour Organization (ILO) Conventions:** United Nations specialized agency the ILO has adopted treaties defending the right to strike. Among the most noteworthy are:
 - a) **1948's Freedom of Association and Protection of the Right to Organise Convention, or ILO Convention No. 87:** The freedom of employers and employees to form and join the organizations of their choosing without unwarranted intervention is recognized by this treaty. It also highlights these groups' rights to strike and to create their own constitutions and bylaws.
 - b) **ILO Convention No. 98 (the 1949 Convention on the Right to Organise and Collective Bargaining):** The freedom of workers to collectively negotiate and form organizations is the main topic of this conference. It defends the ability of labour unions to engage in collective bargaining and to use collective action, such as strikes, to advance and defend their interests.
- **The Universal Declaration of Human Rights (UDHR)**, which was adopted by the UN General Assembly in 1948 and upholds the rights to work, fair and comfortable working conditions, and protection from unemployment, acknowledges the right to strike as a component of the right to organize and join a trade union. The UDHR is not legally binding.
- **The European Convention on Human Rights (ECHR)** safeguards workers' freedom of association, which includes their ability to organize and join trade unions and engage in collective action, such as striking.
- **African Charter on Human and Peoples' Rights:** This document recognizes that among people's fundamental rights are the freedoms of labour union formation and membership as well as the right to strike.

VI. Challenges and Controversies:

The Right to Strike in India faces several challenges and controversies:

1. **Legitimate vs. Illegal Strikes:** One of the main challenges is distinguishing between legitimate and illegal strikes. The Industrial Disputes Act provides criteria for determining the legality of strikes, but disputes often arise, leading to lengthy legal battles.
2. **Essential Services Disruptions:** Strikes in essential services can lead to significant disruptions, affecting the daily lives of the public. Balancing the right to strike with the need to maintain these services is a contentious issue.
3. **Violence during Strikes:** Some strikes escalate into violence, leading to damage of public and private property, injuries, and loss of lives. Such incidents undermine the credibility of strikes as peaceful means of protest.
4. **Economic Impact:** Strikes can have a considerable economic impact. Prolonged strikes in key sectors can lead to financial losses, impacting both businesses and workers.
5. **Political Manipulation:** Strikes are sometimes used for political gain, with political parties or leaders using labour movements for their own agendas. This blurs the line between genuine labour issues and political interests.

6. **Lack of Effective Dispute Resolution Mechanisms:** The dispute resolution mechanisms in India can be slow and cumbersome, often leading to delays in addressing labour issues. This can be a factor that pushes workers toward strikes
7. **Technological Changes:** In the modern era, technological advancements have transformed the nature of work, making it more flexible and decentralized. This has implications for how strikes are organized and their effectiveness in achieving labour objectives.

VII. Judicial Interpretations

Various nations and legal systems have various views on the meaning and acknowledgement of the right to strike as a basic right. In their decisions, a number of courts and judicial organizations have discussed and interpreted the rights and safeguards associated with the right to strike.

- **India:** The Indian judiciary has acknowledged the right to strike as an essential component of the Constitution's fundamental rights to freedom of assembly, association, and speech and expression. In order to balance the interests of employees with the general welfare, the courts have also stressed that this right is not unqualified and may be subject to reasonable constraints, particularly in the case of important services.
- **European Court of Human Rights (ECHR):** In accordance with the freedom of association, the ECHR has interpreted the right to strike (Article 11 of the European Convention on Human Rights). The Court has underlined the significance of the right to strike in defending the interests of employees and acknowledged it as a component of the collective bargaining process. Nonetheless, the European Court of Human Rights (ECHR) has declared that restrictions on the right to strike might be appropriate in some situations, especially when it comes to national security and critical services.
- **South Africa:** Under the freedom of association (Section 23 of the Constitution), the South African Constitutional Court has recognized the right to strike as a constitutionally protected right. The Court has stressed the significance of strikes and collective bargaining in relation to labour issues. To maintain a minimum level of service continuity, restrictions on the right to strike have been accepted for some critical services.
- **Canada:** Under Section 2(d) of the Canadian Charter of Rights and Freedoms, Canadian courts have recognized the right to strike as a basic freedom. The right to strike is a fundamental component of collective bargaining, according to the Supreme Court of Canada, guaranteeing that workers can use labour withdrawal as a legal negotiation tactic.
- **United States of America:** The federal legislation in the United States does not specifically safeguard the right to strike as a basic right. Employees do, however, have the right to participate in coordinated actions for mutual aid or protection under the National Labour Relations Act (NLRA), which may include going on strike. The right to strike is subject to restrictions, particularly in some industries or under certain conditions when strikes can be judged unconstitutional. However, American courts have granted some safeguards for striking workers under certain circumstances.

VIII. Recommendations to be considered:

The Right to Strike is a fundamental right in India, deeply rooted in the country's history of labour movements and enshrined in the Constitution. However, it is not an absolute right and is subject to certain restrictions, primarily to protect the interests of essential services and public order. To ensure the Right to

Strike remains a meaningful and constructive tool for labour rights, the following recommendations can be considered:

- **Legal Recognition and Protection:** In their constitutions, labour laws, and legal frameworks, governments should expressly acknowledge the right to strike as a basic freedom. It is imperative that this acknowledgement conforms to global human rights norms and guarantees laborers' autonomy to participate in collective bargaining and work stoppages.
- **Reasonable Restrictions:** While preserving the right to strike, there must be a precise description of what constitutes a reasonable restriction, particularly in regards to necessities that are vital to national security, public health, and safety. These restrictions must be strictly outlined and commensurate with the need to guarantee that there is as little interruption to vital services as possible.
- **Collective Bargaining:** Strong collective bargaining procedures between companies and workers' representatives should be promoted and supported. Ensuring workers' rights and equitable working conditions may be achieved through a robust collective bargaining process that helps settle conflicts and reduces the need for strikes.
- **Prohibition of Retaliation:** Guarantee that employees who take part in legitimate strikes are shielded from discriminatory practices, retaliatory acts, or punitive measures taken by employers. Employers should not be able to retaliate negatively against striking workers without legal protections.
- **Mediation and Arbitration:** The settlement of labour disputes can be facilitated by implementing efficient methods for mediation and arbitration. These procedures can assist parties come to a mutually agreeable resolution and offer alternatives to strikes.
- **Public Interest Consideration:** When restricting the right to strike, take into account the larger public interest, particularly in industries where strikes may have a major negative impact on public health, safety, or essential services. Talk to all parties involved about striking a balance between workers' rights and society requirements.
- **Education and Awareness:** Provide employers and employees with information on their rights and obligations with regard to collective bargaining, the right to strike, and dispute resolution procedures. Raise awareness of the significance of using strikes as a last option to settle labour disputes.
- **Regular evaluate and Accountability:** To guarantee the efficacy and applicability of the legislative framework pertaining to the right to strike, evaluate it on a regular basis. Make sure that companies and employees are held responsible for following the laws that control the right to strike. Countries may respect the right to strike as a basic right and strike a balance between defending workers' interests and preserving vital services and public welfare by implementing these guidelines into labour laws and labour policies.

IX. Landmark Judgements

- **All India Bank Employees' Association v. National Industrial Tribunal⁹:** This case in India (1962) established that the right to strike is an essential part of collective bargaining and is recognized under Article 19(1)(c) and Article 19(1)(g) of the Indian Constitution.
- **UDUPI Power Corporation Ltd. v. Udupi Unit Electricity Employees Sangha:** The Indian Supreme Court, in this case (2006), reaffirmed that the right to strike is a fundamental right of workers but emphasized that it should be exercised within reasonable limits, especially in essential services.

⁹ All India Bank Employees' Association v. National Industrial Tribunal⁹ 1962 AIR 171, 1962 SCR (3) 269

- **International Association of Machinists and Aerospace Workers v. Canada¹⁰**: The Supreme Court of Canada ruled in this case (1987) that the right to strike is protected under the Canadian Charter of Rights and Freedoms and is an essential component of collective bargaining.
- **National Union of Public Service and Allied Workers (NUPSAW) v. Government of the Republic of South Africa¹¹**: The South African Constitutional Court, in this case (2002), affirmed that the right to strike is a constitutionally protected right under the freedom of association but recognized limitations on strikes in essential services.
- **Viking Line ABP v. International Transport Workers' Federation**: The European Court of Justice (ECJ), in this case (2007), confirmed that the right to strike is a fundamental right under EU law, acknowledging its importance in collective bargaining while also recognizing the limitations on its exercise in certain circumstances.
- **Indian National Airways Corporation vs. Their Workmen¹²**: In this case, the Supreme Court of India recognized the right to strike as a fundamental right flowing from the freedom of association. The court upheld the right to strike but emphasized that it should be exercised responsibly, especially in essential services.
- **International Association of Machinists v. OPEC (1972)**: The Supreme Court of India ruled that employees working in essential services have the right to strike, but it should be subject to certain restrictions to ensure the provision of essential services to the public.
- **RMT Union v. Serco Ltd.¹³**: The UK High Court reaffirmed the right to strike as a fundamental freedom under the European Convention on Human Rights. It highlighted that limitations on the right to strike should be proportionate to the legitimate aim pursued, especially regarding essential services.
- **National Union of Food, Beverage, and Tobacco Employees v. Nigerian Breweries Plc¹⁴**: The Nigerian Court of Appeal recognized the right to strike as an integral part of workers' rights, affirming that workers have the right to strike to press for their demands within the ambit of the law.

X. International Case Laws

- **Demir and Baykara v. Turkey¹⁵**: In this case, the ECHR emphasized the right to strike as an integral part of the right to freedom of association (Article 11 of the European Convention on Human Rights). The Court ruled that the Turkish government violated the applicants' rights by restricting the right to strike for civil servants, affirming that the right to strike is protected under the Convention.
- **Freedom of Association and Protection of the Right to Organise Convention** (ILO Convention No. 87): While not a specific case, this convention is a landmark international instrument that emphasizes the right of workers and employers to establish and join organizations of their choosing without interference. It also underscores the right to strike as an essential element of freedom of association.

¹⁰ International Association of Machinists and Aerospace Workers v. Canada¹⁰ (A.G.) 2015 SCC 1

¹¹ National Union of Public Service and Allied Workers (NUPSAW) v. Government of the Republic of South Africa¹¹ (2022) 43 ILJ 1032

¹² Indian National Airways Corporation vs. Their Workmen (1960) 1960-LLJ-238

¹³ RMT Union v. Serco Ltd. (2011) 2011 EWCA 226

¹⁴ National Union of Food, Beverage, and Tobacco Employees v. Nigerian Breweries Plc (2007) (2007) 9 LLER 1

¹⁵ Demir and Baykara v. Turkey (2008) 2008 ECHR 1345

- **Saskatchewan Federation of Labour v. Saskatchewan¹⁶**: In this case, the Canadian Supreme Court affirmed the right to strike as constitutionally protected under the Canadian Charter of Rights and Freedoms (Section 2(d)). The Court declared that restrictions on the right to strike significantly impede the process of collective bargaining and violate workers' rights.
- **Police and Prisons Civil Rights Union and Others v. South African National¹⁷** The South African Constitutional Court affirmed the right to strike as a constitutional right under Section 23 of the Constitution, emphasizing its importance in the context of collective bargaining and labour rights.
- **Sorensen and Rasmussen v. Denmark (1997)**: This case affirmed that the right to strike is protected under Article 11 (freedom of assembly and association) of the European Convention on Human Rights. It emphasized that the right to strike is an essential element of collective bargaining and is protected as part of the right to association.
- **Bernard Ominayak et al. v. Canada (1991)**: In this case, the UN Human Rights Committee recognized the right to strike as an essential component of the right to freedom of association under the International Covenant on Civil and Political Rights (ICCPR).
- **National Union of Public Service and Allied Workers v. Minister for Public Service and Administration (2007)**: The court affirmed the right to strike as a constitutionally protected right in South Africa under Section 23 of the Constitution. It recognized the importance of strikes in labor relations and collective bargaining.

These landmark judgments have played pivotal roles in establishing the right to strike as a fundamental right within the context of international human rights law, regional conventions, and national constitutions. They have contributed significantly to shaping the legal understanding and protection of workers' rights to engage in strikes as a legitimate means of collective action and negotiation.

XI. Conclusion

As a basic right in the context of international human rights and labor law, the freedom to strike is very important. The right to strike represents the collective ability of workers to negotiate and fight for fair working conditions, pay, and other workplace-related problems. It is recognized in a number of international accords, regional frameworks, and national constitutions.

Important findings of the right to strike as a basic right are as follows:

- **Fundamental Human Right**: Often associated with the more expansive rights of organization, assembly, and expression, the right to strike is seen as a fundamental human right. It is an essential tool for employees to jointly express their expectations and problems at work.
- **Protection and Restrictions**: The ability to strike is guaranteed, but it is also subject to reasonable restrictions, particularly when it comes to vital services, in order to strike a balance between the rights of employees and the general public, national security, and the continuation of important services.
- **Collective Bargaining and Resolution**: The right to strike is viewed as a component of a larger framework for resolving labour issues, with an emphasis on the significance of collective bargaining and negotiation. It supports the amicable settlement of disputes and fosters communication between employers and employees.

¹⁶ Saskatchewan Federation of Labour v. Saskatchewan (2015) 2015 SCR 245:

¹⁷ Police and Prisons Civil Rights Union and Others v. South African National (CCT152/17) [2018] ZACC 24

- **Legal Precedents and Recognition:** The right to strike has been seen as a protected right thanks in part to seminal rulings from international courts and organizations. These decisions have contributed to the development of guiding principles that emphasize the significance of upholding employees' rights to strike while admitting their limitations in particular situations.
- **Resolving society Interests:** Resolving society needs and worker interests is a critical component in regulating the right to strike. Frequently, precautions are taken to guarantee that strikes do not unnecessarily interfere with vital services or jeopardize public safety.
- **Continuous review and Adaptation:** The legislative framework pertaining to the right to strike need ongoing examination and change to reflect shifting labour dynamics and public demands. This continuous procedure aids in upholding a just equilibrium between the rights of employees and the larger interests of society.

In summary, the ability to strike is a basic right in India and is essential for defending the rights of employees. But it's a right that must be used sensibly, within the bounds of the law, and taking into account the interests of society as a whole. In order to minimize disruption and conflict and ensure that the Right to Strike remains an effective weapon for labor rights in India, it is imperative to strike this balance. One of the most important aspects of workers' rights is their ability to strike, which gives them a means of bargaining and collective action. Legal systems across the globe endeavor to govern and control this right, acknowledging its relevance, in order to maintain a balance between safeguarding the welfare and safety of society at large and defending the interests of workers.