Volume 29, December 2023 ISSN 2581-5504

"Right to Protest and Indian Constitution: Analyzing Exercise and Limitations"

Ankit Kumar
PhD Scholar

ABSTRACT

From the vantage point of a democratic government like ours, the freedom to protest is a "evil necessity." This goes against the common belief that the right to demonstrate is only one of many basic rights guaranteed by the Constitution of India, 1950. Even though the contemporary idea of a "protest" originated in the French Revolution, the world now only tolerates nonviolent ones, as shown in the magnificent revolution in the UK. The successful execution of a protest requires a number of administrative measures; those that fail to meet the expected standards of law and order are typically deemed unlawful, and a curfew is subsequently imposed under Section 144 of Cr.P.C., 19573 in order to preserve public tranquility. The freedom to protest is not an absolute right, as this clearly shows, even though it is an integral part of Article 21 of the Constitution. Unfortunately, it seems that the people of India don't understand that there are some restrictions on their freedom to protest, and that they also have a responsibility to protect public property and the environment, lest they cause harm to everyone. Given the numerous public outcries directed at the state that have occurred up to this point, the author of this paper hopes to educate readers about the need to exercise reasonable restraint while protesting in order to preserve and uphold democratic principles by illuminating the efforts of the Indian and foreign judiciaries to clarify the aforementioned right and ensure that the masses comply with it in the public interest.

INTRODUCTION

Although it is derived from the right to association, the right to strike is not a basic right under India's Constitution. Many international treaties acknowledge it, either tacitly or in an outright way. Industrial workers in India are more likely to go on strike for various reasons. Despite ratifying a plethora of international agreements, India has chosen not to recognize the freedom of association guaranteed by the International Labor Organization's Conventions. India is obligated to fulfill at least the basic rights advocated by the Conventions as a member of the International Labor Organization, regardless of whether it has ratified them or not. By combining Article 51(c) with Article 37 of the Indian Constitution, it is implied that the values outlined in international treaties and conventions must be honored and implemented in the country's administration. While interpreting and expanding the scope of Article 212 of the Indian Constitution, the country's highest court looked to international treaties, declarations, and conventions, including those of the International Labor Organization, the United Nations Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights. However, the power to strike guaranteed by these Covenants and the Conventions of International Labor Organizations was disregarded by the same Court. These rights are a part of the constitutions of all countries, even the little, politically insignificant ones in the developing world. As an example, the right to strike is protected in the constitutions of many countries, including South Korea, Rwanda,

Volume 29, December 2023 ISSN 2581-5504

Ethiopia, and Poland. The rights to collective bargaining and strike are not explicitly guaranteed in our constitution.

In India, the Union List grants the legislature the authority to mediate labor conflicts between unions and their respective workers. When it comes to labor conflicts and unions, the Concurrent List gives both houses of parliament the power to pass legislation. However, the right to strike is not explicitly codified in any statute by either the federal or state legislatures.

Workers' rights to strike in the workplace are primarily governed by the Industrial Disputes Act of 1947. A review of this law shows that not a single clause grants any employee the right to go on strike. The Act does not include any measures that encourage or discourage strikes, with the exception of defining strikes. Actually, there are a number of sections in the Act that, by outlining the necessary procedures, make it impossible to go on strike. References to Industrial Tribunals, forced adjudication, conciliation, and other effective alternative conflict resolution processes are the primary focus. Unfortunately, the system has not been efficient in resolving such concerns due to the lengthy delays. Tribunals and Courts for Labor have thousands upon thousands of cases waiting to be heard. The relevant authorities waste a lot of time sending cases to the Industrial Tribunals, which might take years to reach a decision. After then, in accordance with the constitutional rules, one might appeal the Industrial Tribunal's verdict by submitting a petition to the High Court under Article 226. Thereafter, Letters Patent Appeal to the Division Bench and eventually Special Leave Petition under Article 126 might be filed in the Supreme Court. Workers' and unions' valid demands may be resolved via such a method, albeit it may take years. It is appropriate for the workers to go on strike in order to put pressure on the employer and have their demands met. There has been less room for collective bargaining to grow in India due to mandatory adjudication. In addition, the British government's 1942 Defence of India Rules, Rule 81A, which outlawed strikes and lockouts in response to the anti-British political climate in India, served as the basis for the 1947 Industrial Disputes Act. In addition to protecting unions against civil and criminal conspiracy charges, the Trade Unions Act of 1926 grants a limited right to strike.

T.K. Rangarajan v. Government of Tamil Nadu and others was the most recent decision from the Supreme Court's division bench, which addressed the validity of laws that limit government workers' ability to go on strike. The Industrial Disputes Act of 1947 was disregarded by the Court. The majority of the workers fired by the Tamil Nadu government in the T.K. Rangarajan case were classified as "work men" under the Industrial Disputes Act of 1947 since their jobs were mostly manual, clerical, or unskilled. According to the Supreme Court's interpretation in Bangalore Water Supply, the government endeavor at issue here falls under the concept of "industry" in which the Hon'ble Court ruled that the term encompasses both publicly and privately held businesses, regardless of ownership. Government workers in Tamil Nadu who were denied the right to strike by the Supreme Court are thus encompassed by the definitions.

There is a connection between the right to strike and the right to lockout for employers. As a result, a middle ground between the two rights is required. The Court by outlawing the right to strike in all forms without impacting the right to lockout moved the power in the favor of

Volume 29, December 2023 ISSN 2581-5504

employers which in turn diminish the negotiating power of the workers. As a result, the right to strike is not explicitly protected in Indian law.

LITERATURE REVIEW

The purpose of this study is to conduct a comprehensive literature analysis on the topic. Publications such as journals, newspapers, magazines, reports, international documents, and proceedings from various governments are reviewed. This section makes brief reference to a number of seminal works on the topic.

"Strike by Government Employees: Law and Public Policy" by Arjun P. Aggarwal Government workers in India have the right to go on strike, according to this article. Furthermore, the article delves into the historical context of regulations that control government workers' ability to strike, including the Central Civil Services (Conduct) Rules 1955 and the Essential Service Maintenance Act, 1981.Possible substitutes for strikes were also proposed by the writer.

• Shashi, Anand, and Vishal "Trade Union Movement in India and the Aftermath of Liberalised Economic Policy of 1991:" (Ranjan Kumar Jha 2006). This article sheds insight on the evolution of the Indian labor movement. The article delves further into the topic by exploring the role of trade unions in elevating labor conditions in India. Also covered are the ways in which trade unions have evolved since the economic liberalization agenda of 1991 was put into place.

“Encyclopedia of U.S. Labor and Working-class History:” (Eric Arnesen, ed.)9Beginning with the colonial period and continuing up to the current day, this book covers the history of labor and trade unions in the United States. It takes a look at both the renowned and the notorious strikes and unions in the workplace. This book is very user-friendly and well-structured.

"Social Justice and Labor Jurisprudence:" (Babu, Sharath, and Rashmi Sethi) When it comes to labor and industrial law, this book dissects Justice Iyer's most landmark decisions. The writers also take a close look at the key points of collective bargaining and industrial relations in India. Additionally, it explains the Industrial Dispute Act of 1947 in great depth and shows how Justice Krishna Iyer saw the connection between constitutional philosophy and labor difficulties.

In their article "Employee Rights and Industrial Justice:" Blancpain and Rojot cite This volume examines the instances of Laval and Viking. Twelve academics discuss the difficulties encountered by and consequences of the Laval and Viking decisions for the twelve EU member states in this research. Other topics addressed in the verdict include the extent to which the enforcement agencies of the member states will be able to implement it, the unity of workers across borders, and the acknowledgment of collective action as a basic right.

Bernard Gernigon, Alberto Odero, and others, "International Labor Organization Principles Regarding the Right to Strike:" Based on the ideas of the Committee on Freedom of Association and the Committee of Experts, this book examines the right to strike, including political strikes, as well as protections and assurances against the denial of that right.

Volume 29, December 2023 ISSN 2581-5504

Her book "Industrial Relations and Labor Laws:" was written by Piyali Gosh and Shefali Nandan. The many facets of labor law and industrial relations are covered in this book. First, it provides background on industrial relations theory and history; second, it delves deeply into the specifics of Indian labor laws, notably those that govern the right to strike, and clarifies their application.

STATEMENT OF PROBLEM

Despite the prevalence of strikes in India, research on the right to strike is severely lacking. The National Commission on Labour's recommendations about the right to strike have not resulted in any changes to the rules that govern strikes in India. Research on the subject of "Legal Regulation of Strikes in India: An Analysis" sheds light on the origins of the right to strike, which in turn helps to illuminate the working class's fight for that right. It also clarifies the right to strike's standing on a global scale, which is necessary for India to grant it constitutional legitimacy. Recognizing the right to strike in the constitution gives workers more leverage in negotiations, which improves employer-employee relations.

RESEARCH HYPOTHESES

- The Constitution of India does not protect the right to strike specifically.
- Other legislations of India protect the right to strike.
- Role of trade unions are politically motivated in strike.
- Indian Judiciary implicitly protects the right to strike.

RESEARCH METHODOLOGY

The present research is primarily descriptive and analytical. The data has been collected from secondary sources both print material as well as internet sources. The help of various secondary sources like books, Statutes, Acts, Reports, Articles in law journals, law reviews, newspapers, international documents, decisions of different Courts, First and Second Report of National Commission on Labor etc. has been taken.

OBJECTIVES OF THE STUDY

The fundamental objectives of the study are:-

- To trace the origin, historical background of strike.
- To analyze the international and regional documents relating to the right to strike.
- To evaluate the right to strike under Indian Constitution.
- To explain the laws regulating right to strike in India.
- To find out whether the government servants have right to strike in India.

Volume 29, December 2023 ISSN 2581-5504

International Perspective relating to strike

Modern labor laws include the right to strike as one of its essential human rights provisions. It is one of the most fundamental ways that workers protect their social and economic interests and is generally seen as a crucial part of collective bargaining. The ability to organize a strike is an inherent extension of the right to freely associate with others.

At least ninety nations' constitutions explicitly include the right to strike, and this right has been firmly established in international law and regional accords for decades. International and regional instruments upholding the right to strike include the International Labor Organization (1919), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966–1966), the European Convention on Human Rights (1950), the European Social Charter (1961), and the American Convention on Human Rights (1969). With the exception of the European Social Charter of 1961, which explicitly recognizes the right to strike, all international instruments implicitly recognize the right to strike. That is correct; it is now accepted practice on a global scale. Unfortunately, the right to strike was disregarded for quite some time since it was thought to be troublesome to include protections for the right to strike into international agreements.

The national laws of several nations also acknowledge this freedom. It comes in the shape of liberty in certain nations, like the UK and Ireland, where striking for any reason is not punishable by law and workers are not subject to fines or jail time. Strikes may only be initiated by trade unions or recognized for certain employees in some countries, such as France, Belgium, and Italy. Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, and the Netherlands have indirectly recognized the right to strike through case laws, while nations like South Africa, Argentina, Brazil, France, Portugal, Romania, and Portugal have explicitly recognized it in their constitutions or statutes that accept collective bargaining as a means of resolving industrial disputes. It is possible to restrict particular groups of workers, such as those in the police force, the military, or public service, from exercising the right to strike even in countries that have recognized it. In 1864, France was the first state to recognize the right to strike. In 1917, the right to strike was legally protected in Mexico's constitution, the first of its kind globally. Therefore, the freedom to strike is established, promoted, and protected by both express and implicit regulations at the international level. According to this school of thought, the right to strike is now a part of international law.

Prohibitions on going on strike

The Committee on Freedom of Association and the Committee of Experts do not recognize the right to strike without conditions. There are limitations as well. Even while the Committee has long held the view that unions should not be permitted to engage in politically motivated strikes, it has maintained that such strikes should not be limited in their ability to peacefully criticize the government's economic and social policies.

As a result of business consolidation, economic globalization, and decentralization of labor, the

Volume 29, December 2023 ISSN 2581-5504

Committee of Experts noted in its 1994 General Survey that sympathy strikes—which are legitimate in certain nations—are on the rise. The document argues that employees should have the right to participate in sympathy strikes so long as the original strike they are backing is legitimate, and that outlawing them in general might lead to misuse. It is also possible to temporarily outlaw strikes in the case of a serious national emergency. In the public sector, the right to strike can be limited or outright banned for two reasons:(1) employees who are acting in the name of the state cannot go on strike, and(2) certain services are considered essential if their disruption could put the lives, safety, or health of the entire population or a significant portion of it at risk.

Regardless of whether restrictions are suitable for the "public servants" mentioned before or whether there is a genuine threat to critical services, the CFA and CEACR have both determined that workers should have enough residual or compensation assurances to safeguard their rights.

Instead of outright banning strikes, a minimum service scheme might be more reasonable in cases involving critical services. In the case of a strike whose severity and length may cause a national emergency jeopardizing people's regular living circumstances, the imposition of minimum service might be warranted.

Furthermore, the CFA argued that an impartial entity with the trust of the parties concerned should, rather than the government, be tasked with the duty of deeming a strike unlawful. Even when the government is involved in a dispute, it should not have the last say on whether or not a strike is valid.

Legislative framework relating to strikes in India

As a result of the lengthy period of British rule, Indian law is heavily influenced by common law, and our industrial laws is mostly derived from English industrial law as well. Industrial workers in India are more likely to go on strike for various reasons. While there is no legislation in our nation that explicitly recognizes the right to strike, there are a number of rules that govern strikes. Constitutions, statutes, case law, and collective bargaining agreements are the four main sources of law that govern the right to strike. A worker's ability to exercise their right to strike is defined by the country's fundamental labor legislation. How the right to strike is regulated by law varies from one country to another.

Prior to 1926, workers in our nation were mostly uneducated, disorganised, and unaware of their legal rights and responsibilities, which made strikes uncommon. This is why India's legislative framework for industrial strikes was devoid of any specific language. Up to 1926, the Indian Penal Code, 1860, imposed criminal conspiracy on workers who participated in strikes. Legalizing specific actions taken by registered trade unions in pursuit of trade disputes, the Trade Unions Act of 1926 first implicitly acknowledged the right to strike. Influenced by the British Industrial Courts Act, 1919 and the Trade Disputes and the Trade Unions Act, 1927, the Trade Disputes Act was enacted in 1929 in India. For the first time, this law criminalized and severely limited the right to strike in connection with public utility services, making it unlawful to go on

Volume 29, December 2023 ISSN 2581-5504

strike without fourteen days' notice. In 1938, the Trade Disputes (Extending) Act made the Act permanent and loosened restrictions on strikes. Wartime anti-British sentiment in India prompted the federal and provincial governments to pass laws prohibiting or severely restricting strikes, lockouts, and other forms of industrial unrest, as well as establishing mandatory mechanisms for the settlement of such disputes through mediation or arbitration.

Notification introduced Rule 81-A to the Defence of India Rules, 1942 in January 1942 forbade industrial lock-outs and strikes without fourteen days' notice. This regulation did not differentiate between private utility companies and public utility services. It was also forbidden to go on strike while a trade dispute was being submitted to a legislative inquiry, conciliation, or adjudication, as well as while the processes were underway and for two months thereafter. Rule 81-A was preserved for six months by an ordinance, despite the fact that the Defence of India Rules expired after WWII.

In addition, in 1943, the Indian government added Rule 56-A to the Defence of India Rules to avoid the kind of workplace hartals that had broken out after Gandhiji's incarceration. Any person found guilty of violating this clause was subject to a fine of up to five lakhs rupees, imprisonment of up to five years, or both.

Around this time, two bills were introduced and eventually passed: the Industrial Relations Act of 1946 and the Industrial Disputes Bill. The Industrial Dispute Act, 1947 was passed by the government and is considered the most important law pertaining to labor relations. It incorporated the main ideas from Rule 81-A of the Defence of India Act, 1942 and kept the provisions from the Trade Disputes Act, 1929, which deal with mandatory arbitration, in order to establish procedures for investigating and resolving industrial disputes. The ability to go on strike was limited in both scope and procedure by the Industrial Dispute Act of 1947. The right to association was established as a basic right in India's 1950 constitution, which was ratified after independence, but the right to strike was not. In our nation, the right to strike is governed by a variety of different statutes.

The Indian Constitution's View on Strikes

Almost every democratic nation in the world has acknowledged the right to strike. Although not explicitly stated as a basic right, the ability to organize into unions and groups does encompass the right to strike under India's constitution. The right to association is no different from any other basic right in that it is subject to reasonable limitations. Assuming it does not harm other people or the public good, citizens are free to exercise this freedom. In the case of All India Bank Employees v. National Industrial Tribunal, the Supreme Court debated whether the right to association included the right to strike, and regrettably, it could not provide an affirmative answer. The main claim made in this case was that the freedom to organize a union also includes the right to go on strike, and that the former is useless and illusory without the latter. Given the legal recognition of the ability to establish a trade union, it was contended that an implicit right to strike existed. The Court held that the right under Article 19(1)(c) extends only to the formation of an association or union and in so far as the activities of the association or union are concerned

Volume 29, December 2023 ISSN 2581-5504

or as regards the steps which the union might take to achieve, its object, they are subject to such laws as, may be framed and such laws cannot be, tested under Article 19(4).

In the case of Kameshwar Prasad v. State of Bihar, the Supreme Court ruled that not even the most liberal reading of Article 19(1)(c) could establish a fundamental right to strike for trade unions.

In the case of B. R. Singh v. Union of India, a division bench of the Apex Court went beyond what was done in All India Bank Employees' Association v. Kameshwar Prasad to investigate whether or not an association's "objectives" might be legally protected. Not only does this case not provide the right to strike a basic character, but it has also reaffirmed the limitations on this right under Indian industrial law and confirmed that it is not absolute.

Regarding the Essential Services Maintenance Ordinance, 1960, the Supreme Court ruled in Radhey Shyam Sharma v. the Post Master General Central Circle, Nagpur, that it did not infringe upon the basic rights guaranteed by Article 19(1)(c). The only protection the ordinance offered was against unlawful strikes, as can be seen by reading Article 19(1). There is no basic right to strike. The Ordinance did not include any clause that limited such basic rights.

Enshrined in India's constitution are the guiding principles of state policy, which necessitate that workers be involved in operating industrial machines. Additionally, they argue that the state should make an effort to promote adherence to treaty commitments and international law in the interactions between organized groups.

The Government of India Act, 1935, enabled the national as well as the provincial and presidential legislatures to adopt legislation on trade unions, industrial and labor conflict. Legislation pertaining to mine and oil field safety and labor control is granted the authority to do so by the Indian parliament in the Indian Constitution, specifically in the Union List found in the VII Schedule. Parliament also has the authority to handle union employee-related industrial issues. If a subject is not included in either the state or concurrent lists, the parliament also has the residual competence to act on it. A labor or industrial dispute-related entry is missing from the state list. The concurrent list gives the power to both the federal government and individual state legislatures to pass laws regarding trade unions, industrial disputes, social security, unemployment, and other labor-related matters such as working conditions, employers' liability, workers' compensation, and provident funds. Thus, both the parliament and state legislatures have the competence to legislate on the matter of right to strike. However, the right to strike has not been explicitly codified in any legislation.

In interpreting and broadening the scope of Article 21 of the Constitution, the Supreme Court also looked to international texts. Despite the fact that state policy directives are not enforceable in court of law, the right to life, liberty, and the implicit dignity of human beings has, alas, never been considered by Indian courts. Thus, the Article 19 of The Constitution of India is competent to protect the right to strike, giving the constitutional protection to right to strike by establishing a link between “human dignity” principle enshrined in Article 21 and the directive principles of

Volume 29, December 2023 ISSN 2581-5504

state policy.

India is legally obligated to implement the right to strike, as stated in Article 8(1)(d), by legislative measures or other methods, since it is a signatory to the international agreements. Although numerous states have accepted the Conventions of the International Labour Organization, India is not one of them. India is obligated to fulfill at least the basic rights advocated by the Conventions as a member of the International Labour Organization, regardless of whether it has ratified them or not. Articles 51 (c) and 37, taken together, state that the government must adhere to and implement the principles outlined in international treaties and conventions. The right to strike, as envisioned by these Covenants and the International Labour Organization Conventions, is, thus, fully protected by the Constitution of India and other legal laws. A fundamental concept of international law, the right to strike is specifically guaranteed by the International Labor Organization Convention No. 87 and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). It must be interpreted in the context of the freedom of association provided by Article 19 of the Indian Constitution.

Legal and constitutional protections adequately cover the right to strike as envisioned by the ILO Conventions and the Covenants. It is unacceptable that the Indian Supreme Court has disregarded international law by ruling against the right to strike.

The right to effective collective bargaining, including the right to strike, is not guaranteed by our constitution, despite the fact that India is the biggest democracy in the world and our constitution is the second longest in the world. A right to organize implies the ability to do so. Thus, it encompasses the freedom to establish political parties, unions, partnerships, and businesses. The right to organize a union is meaningless without the ability to actually go on strike. Not even the most politically insignificant third world nations have failed to include these rights in their founding documents. Collective bargaining and the freedom to strike are not guaranteed under the Indian Constitution.

Strike regulation under other Indian legislation

Industrial strikes were uncommon in India before to 1926, so the country lacked a formal legislation governing them. Industrial strikes were more common following WWI, and in 1926, the Trade Unions Act legalized certain actions taken by registered unions to resolve trade disputes, thereby tacitly recognising the right to strike.

The primary statutes that govern the freedom to strike in India are the Trade Unions Act, 1926 and the Industrial Disputes Act, 1947. The Indian Penal Code of 1860, the Essential Services Maintenance Act of 1968, the Prevention of Damage to Public Property Act of 1984, the Punjab Prevention of Damage to Public and Private Property Act of 2014, the Central Civil Servants (Conduct) Rules of 1955, the Central Civil Servants (Conduct) Rules of 1964, and other laws governing strikes in India are listed..

Volume 29, December 2023 ISSN 2581-5504

CONCLUSION

The working class has a potent tool in the form of the strike to defend their interests and rights. Workers may have no other choice but to go on strike in order to demand that their employers address their concerns and fight for their rights. Capitalist and labor class claims and interests are diametrically opposed, leading to class conflict. Employees and employers have unequal bargaining power, and the right to strike helps level the playing field.

Both the right to association and the right to strike go hand in hand. Workers would be subject to conditions similar to those of slaves if they were unable to exercise their right to strike. The pursuit of profit takes precedence over the satisfaction of workers' complaints in the workplace. Workers' rights to organize unions would be meaningless if they were denied the ability to go on strike. Without the ability to safeguard members' interests and accomplish their formed purposes, the freedom of association cannot be completely exercised.

One of the most important aspects of collective bargaining is the right to strike. When collective bargaining fails, the last resort is to declare a strike. Because both employers and workers are afraid of the consequences of going on strike, this kind of agitation helps them come to an agreement even if the workers themselves don't use it. Employees' ability to go on strike strengthens their bargaining position, which in turn encourages employers to meet workers' demands and keeps tensions down. However, the right to strike is severely limited in our nation due to the disdain for collective bargaining.

Modern strikes evolved in response to the demands of the industrial revolution. Historically, they took the shape of work stoppages. Machines supplanted humans in many manufacturing jobs as the industrial revolution progressed, contributing to a spike in the unemployment rate. The primary reason for the worker unrest was the workers' decision to work for low wages in poor conditions. In an effort to improve their working conditions, they began to organise. Protest strikes, which they began to use, were punishable under the law because they constituted criminal conspiracies. Workers finally got the right to strike after a long and hard fight. As a result of colonial rule, most Indian labour laws are based on common law. We continue to adhere to the majority of our labor laws that were established during the British rule. Another area where British law had an impact was the legislation governing strikes. The English language is also the de jure standard in our country's courts.

It was in the United Kingdom that the industrial revolution got its start, and from there it went global. The United Kingdom had legislation passed to outlaw strikes and trade unions in an effort to quell them. Trade unions were not recognized and their activities were no longer considered illegal until the Trade Unions Act, 1871 was passed. Unions were shielded from legal action by the Trade Dispute Act of 1906. The Industrial Relations Act of 1971 limited strikes; the Trade Unions Labour Relations Act of 1974 removed these restrictions; and five more laws were passed between 1979 and 1990. By consolidating the earlier laws1 controlling strikes, the Trade Union and Labour Relations (Consolidation) Act, 1992 (TULRCA) sought to limit the influence of trade unions. In the United Kingdom, more stringent regulations regarding strike actions have been imposed by the Trade Unions Act, 2016..