
RIGHT TO STRIKE IN INDIA: FUNDAMENTAL FREEDOM OR STATUTORY PRIVILEGE?

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ABSTRACT

The debate regarding the nature of the right to strike in India, whether it can be considered a fundamental right or just a statutory right, is an issue between constitutional law and industrial relations as well as international labour laws. The Constitution of India provides for the freedom of association and formation of unions in Article 19(1)(c), but does not mention anything about the right to strike. The Industrial Disputes Act, 1947 provided provisions for and regulated the strike, while the Industrial Relations Code, 2020 provides the same provisions as that Act. The Supreme Court has consistently maintained that there is no fundamental right to strike from *All India Bank Employees' Association*, 1962 to *T.K. Rangarajan*, 2003.

The research paper deals with the historical background of the concept of the strike, examines the doctrine of constitutionality against Articles 19(1)(a), 19(1)(b), 19(1)(c) and 21 as well as the Directive Principles of State Policy, analyses the statutory scheme as well as the judicial rulings, and draws a comparison between the Indian position and international labour laws and the law of the United Kingdom and the United States of America. The present study attempts to argue that the right to strike in India is legally a conditional statutory right and not a fundamental right; however, the right is not simply a privilege, since it is based on the constitutional principle of associational freedom, the international obligations of India and the rationale of collective bargaining, and the regulation of the right itself must conform to constitutional reasonableness.

1. INTRODUCTION AND BACKGROUND OF THE RIGHT TO STRIKE

1.1 Introduction

Industrial relations are based on a precarious balance. On the one hand, there is the employer who owns the capital and the means of production while on the other hand, the worker has nothing but his ability to work. In a single employment contract, the worker's negotiating position is very poor, and thus the law of all industrial nations has been trying in some way or other to make the position even by allowing the worker to join together. The strike is the most potent of all such forms of association.¹

The legal status of the strike has always been uncertain in India as there has never been any definitive provision dealing with strikes. While Article 19 of the Constitution gives every citizen of the country the right to form associations or unions,² it is silent on strikes. The Parliament has defined and regulated the strike through the Trade Disputes Act, 1929, the Industrial Disputes Act, 1947 (ID Act), and the recent Industrial Relations Code, 2020 (IR Code).³ In numerous cases the Supreme Court has stated that the workers do not have a fundamental right to strike. Further, in *T.K. Rangarajan v Government of Tamil Nadu* the Supreme Court held that even government employees have no fundamental right, statutory right, legal right, equitable right or moral right to go on a strike.⁴ On the other hand, the Court has often held that strike is a justified and sometime inevitable tool in the hands of the labour.⁵ Even the statutes themselves have treated strike under certain conditions as a valid exercise.

The aim of this paper is to question whether such a characterisation is accurate and satisfactory. It raises an intentional dichotomy in its title: Is the right to strike a basic liberty, guaranteed against regular parliamentary majorities, or is it simply a privilege granted by Parliament? The answer that the paper gives, which will be explained in the subsequent chapters, is that it is indeed a useful but incomplete dichotomy.

¹ Otto Kahn-Freund, *Labour and the Law* (3rd edn, Stevens & Sons 1983) 14–20, describing the law's function as a counterweight to the inequality of bargaining power inherent in the employment relationship.

² Constitution of India, art 19(1)(c).

³ The Industrial Relations Code 2020 (Act 35 of 2020), which subsumes the Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act 1946 and the Industrial Disputes Act 1947, was brought into force together with the other three Labour Codes with effect from 21 November 2025.

⁴ *T.K. Rangarajan v Government of Tamil Nadu* (2003) 6 SCC 581.

⁵ *Management of Chandramalai Estate v Its Workmen* AIR 1960 SC 902.

1.2 Background to the Right to Strike in India

The strike in India dates back to organised industries. Collective action in the early twentieth century within the cotton mills of Bombay and the jute mills of Bengal was mostly unplanned and spontaneous. The strike action by the textile workers of Bombay in July 1908 after Bal Gangadhar Tilak's imprisonment demonstrated the potential of industrial actions to carry a political agenda. The formation of the All-India Trade Union Congress in 1920 and strikes in Madras textile mills in 1920-21 provided institutional recognition to labour actions.⁶

1.3 Development of Right to Strike in India

The development of the law regarding strikes can be considered in four different stages. In the first stage, before 1947, the issue was addressed through colonial laws where strikes were considered from the viewpoint of maintaining economic stability and public order. In the second stage, from 1947 to the early 1970s, the provisions of the ID Act provided a mechanism of conciliation, adjudication and arbitration, which although did not prohibit strikes, limited their scope to public utility services and the period during which the proceedings were pending and promoted the referral of disputes for adjudication. In the third stage, after the mid-1970s, the railway strike of 1974 and the response of the State to it and the passing of the Essential Services Maintenance Laws demonstrated the willingness of the State to consider strikes as a threat to the economy and public order.⁷ The fourth stage of developments, from the 1990s onward, has taken place in the context of economic liberalisation, growth of contract and informal labour and reduced trade union density and is characterised by procedural limitations on strike action, leading to the IR Code.

1.4 Meaning and Nature of the Right to Strike

"Strike," in the meaning of the ID Act, is a stoppage of work done by a group of persons employed in an industry in combination or a concerted refusal or a refusal in common understanding of any number of persons so employed to work or to remain at work.⁸ The IR Code adopts the same definition and adds that concerted casual leave on any day of fifty per

⁶ For an account of the early labour movement, see Sukomal Sen, *Working Class of India: History of Emergence and Movement 1830–1970* (K.P. Bagchi 1977); Radha Kumar Mukherjee, *The Indian Working Class* (Hind Kitab 1951).

⁷ On the 1974 railway strike, see Ramachandra Guha, *India After Gandhi* (Macmillan 2007) ch 22. The Essential Services Maintenance Act 1981 replaced an earlier statute of 1968.

⁸ Industrial Disputes Act 1947, s 2(q).

cent or more of the workers employed in an industrial establishment shall be treated as a strike.⁹

1.5 Significance of the Right to Strike in Industrial Relations

A strike is one of several things. Firstly, the strike is the punishment for the significance of collective bargaining. If the employer does not have anything to lose in not listening to the union's claims, then it is a mere petitioning. What gives bargaining any significance is the strike. The notion that "collective bargaining without the right to strike is collective begging" has become widely accepted in literature.¹⁰ Secondly, the strike is a form of protest. Thirdly, it is a way of asserting economic and social rights, including fair wages, safe working conditions and job security. Lastly, it is a form of industrial democracy through which the workers' voices are heard in making decisions about their work life.

2. CONCEPTUAL AND HISTORICAL FOUNDATIONS OF THE RIGHT TO STRIKE

2.1 Definition and Essence of a Strike

The statutory definition of a strike consists of three parts: (i) the cessation of work, or a refusal to continue working or take up employment; (ii) carried out by a group of persons who are employees in an industry; and (iii) working together in concert or concertedly or under a common understanding. ¹¹In the opinion of the Supreme Court, the statutory definition of a strike should be interpreted in its natural sense, and the motive or reason behind the cessation of work – whether the workers are seeking a rise in pay or protesting against their dismissal – makes no difference to the nature of a strike, which is defined only by the concertedly conducted cessation. ¹²The cessation of work does not have to be total, provided that it has the effect of a concerted refusal to continue working, even though a “go-slow” or “work-to-rule” approach raises a different issue of misconduct.

2.2 Development of the Right to Strike in India

As mentioned in Chapter I, there have been three major stages in the development process. There should be noted the legislative structure that emerged. The Trade Disputes Act 1929 was

⁹ Industrial Relations Code 2020, s 2(zk).

¹⁰ See Kahn-Freund and Hepple, *Laws Against Strikes* (Fabian Society 1972); Bernard Gernigon, Alberto Otero and Horacio Guido, 'ILO Principles Concerning the Right to Strike' (International Labour Office 2000) 3–4.

¹¹ ID Act, s 2(q); IR Code, s 2(zk).

¹² *Crompton Greaves Ltd v Workmen* (1978) 3 SCC 155.

the first attempt to create a comprehensive scheme. Then, the Bombay Industrial Relations Act 1946 and the ID Act 1947 adopted a different approach to the subject under consideration, where the state established special machinery for resolving industrial disputes and required its use before a strike could be legal. The ID Act became effective from 1 April 1947, in the last days of colonial India, and remained part of the Constitution almost unaltered.

2.3 The Strike as a Means of Collective Bargaining

The theory that supports the right to strike relies mostly on the bargaining function of strike action. According to the classical doctrine, the bargaining process between an individual and the employer is unfair; collective bargaining corrects the imbalance by creating bargaining power through the combination of workers' resources; and the strike makes that bargaining power effective.¹³ The Supreme Court recognised such a function of strikes, admitting the legitimacy of strikes as a means of struggle.¹⁴

2.4 Types of Strikes

There are several methods used to classify strikes. In terms of its purpose, the strike can either be an economic strike meant to improve pay and working conditions through the employer; a political strike aimed at shaping government policies; or a protest strike where there is a brief interruption to show that there is a grievance. In terms of its nature, a strike can be a general strike affecting an entire industry or a region; a sympathetic strike which supports workers somewhere else; a lightning strike called unexpectedly and, normally, without union approval; or a wildcat strike. In terms of the type of strike it is, a strike can be a complete work stoppage; a stay-in or sit-down strike where workers occupy the premises; a go-slow where workers work slowly; a work-to-rule where workers abide by all the rules to slow production down; a pen-down or tool-down strike; a hunger strike; or mass casual leave.

2.5 Difference between Strike, Lockout and Other Forms of Industrial Strike

A lockout is the temporary cessation of work or refusal to employ, any number of persons employed by the employer.¹⁵ It is the equivalent for the employer of a strike, and both are similarly governed by the statutes. But the two are not equivalent legally and constitutionally.

¹³ Kahn-Freund (supra) ch 1; Lord Wedderburn, *The Worker and the Law* (3rd edn, Penguin 1986) ch 1.

¹⁴ *Gujarat Steel Tubes Ltd v Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593.

¹⁵ ID Act, s 2(1); IR Code 2020, s 2 (definition of "lock-out").

A strike is an act of workers exercising their right to freedom of association, whereas a lockout is an exercise of the employer's property and freedom of trade. Nevertheless, the ID Act imposes the same limitations on the lockout that it imposes on strikes, and the Supreme Court has considered the two to be complementary instruments.¹⁶

2.6 Rationale for Right to Strike

There have been four main rationales put forward. One of them is the equality rationale: strike is the correction of the inherent inequality of power between employer and worker. The second one is the liberty rationale, which has been justified by the fact that nobody can be forced to work against his/her will; collective action is just an expression of that individual liberty. The third one is the democratic rationale: the worker's participation in the process of making decisions about his/her conditions of work is the form of industrial democracy, and the strike is just one of its forms. And the last one is the social justice rationale based in India on the Preamble of the Constitution with its concern for justice - social, economic and political – and the Directive Principles with their emphasis on a living wage and humane working conditions.¹⁷

2.7 Contemporary Obstacles to the Right to Strike

There are several contemporary developments which create obstacles in this area. Firstly, the form of labour has undergone a change. Most of the Indian workforce is in the informal sector, while even those who are in the formal sector belong to the category of contracted, fixed-term or outsourced labour, which makes it difficult for them to organise themselves and go on strike. Moreover, the statutory definition of "industry" and "workman" might not cover such workers. Secondly, in case of the platform, or gig, economy, the problem arises of whether the collective refusal of the workers to take up their tasks can be considered a strike, since the workers are independent contractors.¹⁸ Thirdly, the increasing list of "essential services" and "public utility services" through notifications reduces the scope of lawful strikes. Fourthly, the government has more often used essential services legislation as well as disciplinary action against strikes

¹⁶ *All India Bank Employees' Association* (supra).

¹⁷ Constitution of India, Preamble and arts 38, 41–43.

¹⁸ The Code on Social Security 2020 for the first time recognises gig workers and platform workers as categories entitled to social security, but it does not confer collective bargaining rights.

by public servants.

3. CONSTITUTIONAL FRAMEWORK: IS THE RIGHT TO STRIKE A FUNDAMENTAL RIGHT?

3.1 Article 19(1)(a) and Right to Freedom of Speech and Expression

Article 19(1)(a) provides all citizens the right to freedom of speech and expression. The rationale behind considering a strike under this article is that a strike is one of those expressions which communicate grievances of the workers to the employer and to the State. The case law which supports this argument is *Kameshwar Prasad v. State of Bihar*, wherein the Supreme Court had declared that the prohibition against participation of government servants in any kind of demonstrations is valid only to the extent it forbids orderly demonstrations, because a demonstration itself is an expression of an idea.¹⁹

3.2 Article 19(1)(b) and Right to Peaceful Assembly

Article 19(1)(b) guarantees the right of the citizens "to assemble peaceably and without arms." According to the Supreme Court, the right covers assembly in peaceful processions and demonstrations and is subject to reasonable restrictions for public order.²⁰ However, the right to assemble does not imply the right to assemble anywhere, even on government land, irrespective of who is the owner of the land.²¹ In a more recent ruling, the Court has recognised the right to protest as a part of Articles 19(1)(a) and 19(1)(b), but not to the extent that it interferes with the rights of others.²²

3.3 Article 19(1)(c) and Right to Freedom of Association

Article 19(1)(c) provides for "the right to form associations or unions".²³ This is where the constitutional right to strike can be made out most strongly, because striking is the very essence of a trade union, and a union which cannot strike may well be no more than a debating society. This was pointedly made clear in *All India Bank Employees' Association v National Industrial*

¹⁹ *Kameshwar Prasad* (supra).

²⁰ *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad* AIR 1973 SC 87.

²¹ *Railway Board v Niranjan Singh* AIR 1969 SC 966.

²² *Mazdoor Kisan Shakti Sangathan v Union of India* (2018) 17 SCC 324; *Amit Sahni v Commissioner of Police* (2020) 10 SCC 439.

²³ Constitution of India, art 19(1)(c). The words "or co-operative societies" were added by the Constitution (Ninety-seventh Amendment) Act 2011.

Tribunal. In this case, the court held that Article 19(1)(c) gives the right to form associations but does not give any right to such association to achieve its objectives or to do anything in the process of achieving those objectives, and that striking or locking out are not the incidents of freedom of association but can be regulated by industrial legislation.²⁴

This rationale has been in line with others where the Court has decided that while there is a right to form associations, this does not imply a right to be recognised by the employer or the State,²⁵ and although there is a right to remain a member of an association, there is no right to having the demands of the association being accepted.²⁶ In this manner, the effect of the Bank Employees case has been to limit Article 19(1)(c) to only the formation of, membership in, and to some extent, the functioning of trade unions.

The decision has been criticised and its rationale challenged. It is difficult for the Court's approach of considering the right to form associations to end with the process of forming it alone, when the Court has interpreted other fundamental rights as including those required for the full exercise of the same. The international approach, as discussed in Chapter VII, is that the right to strike is a corollary to the right to organise. Whether the Bank Employees case has remained good law after the development of Indian constitutional law since 1962 is a major issue of this study.

3.4 Right to Livelihood and Right to Dignity under Art. 21

The right to livelihood and the right to live with dignity are guaranteed within the ambit of Article 21 as interpreted by the Supreme Court in India.²⁷ This has been extended to the conditions of work, where the right to life encompasses the health and vitality of workers and protection against exploitation,²⁸ and as recently as 2020, an exemption granted by the State Government on labour laws to factories was declared invalid by emphasising the dignity of workers.²⁹

²⁴ *All India Bank Employees' Association* (supra).

²⁵ *Raghubar Dayal Jai Prakash v Union of India* AIR 1962 SC 263; *O.K. Ghosh v E.X. Joseph* AIR 1963 SC 812.

²⁶ *Damyanti Naranga v. Union of India* (1971) 1 SCC 678.

²⁷ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545; *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

²⁸ *Consumer Education and Research Centre v. Union of India* (1995) 3 SCC 42; *Bandhua Mukti Morcha v. Union of India* (1984) 3 SCC 161.

²⁹ *Gujarat Mazdoor Sabha v. State of Gujarat* (2020) 10 SCC 459.

3.5 Directive Principles of State Policy – Labour Rights

Articles 39, 42, 43 and 43A in Part IV of the Constitution direct the State: to secure the citizens' adequate means of livelihood, the health and strength of workers and equal remuneration for equal work; to make provisions for just and humane conditions of work; to secure a living wage and conditions of work ensuring a decent standard of life for all workers and employees; and to take steps to secure the participation of workers in the management of industries (Art. 43A – inserted by the Constitution (Forty-second Amendment) Act 1976).

3.6 Whether there is a fundamental right to strike that can be based on the rights under the fundamental rights articles

Three different lines may be traced for claiming a fundamental right to strike as a part of the fundamental rights regime. Firstly, it could be argued through the expression and assembly clauses, which the Indian courts have dismissed on the above-mentioned grounds, but accepting that the manifestations of the strike, like demonstrations and peaceful picketing, are protected. Secondly, it could be claimed through the association clause, on the basis that the right to strike is an integral part of the right to freedom of association; this approach has been made impossible after *All India Bank Employees' Association* and has been subsequently adhered to. Thirdly, it could be claimed through Article 21 along with the international obligations, on the basis that the acceptance of the International Covenant on Economic, Social and Cultural Rights, which includes the right to strike, can be invoked to add meaning to the fundamental rights in accordance with *Vishaka v. State of Rajasthan*.³⁰ This way has not yet been tested in the Supreme Court in connection with the strike, and it is confronted with the problem of the declaration accompanying India's ratification of the Covenant, according to which the right will be applied in conformity with the Constitution, and the Covenant right is subject to the laws of each State.³¹

3.7 Reasonable Restrictions and Public Interest

Even assuming that the right to strike was founded on Article 19, it would still be subject to

³⁰ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241, in which the Court read the guarantees of Articles 14, 19 and 21 in the light of the Convention on the Elimination of All Forms of Discrimination against Women in the absence of domestic legislation.

³¹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 8(1)(d). India acceded on 10 April 1979, subject to a declaration regarding art. 8.

reasonable restrictions. Article 19(2), (3) and (4) allow for restrictions on freedom of speech, assembly and association for the purpose of, among others, preserving public order, morality or decency, and for the association of, maintaining the sovereignty and integrity of India. It is necessary that the restriction should not be unreasonable in either procedure or substance. The restriction should not be arbitrary or excessive and should have a reasonable relationship to the objective sought to be achieved³². In recent years, the Court has invoked the principle of proportionality, which requires the measure to pursue a legitimate aim, to be suitable and necessary and to maintain the right-aim balance.³³

3.8 Constitutional Conflict Between Freedom of the Individual and Discipline of Industry

The law of strikes is characterised by a conflict between two constitutional principles. The first principle is the freedom of workers to associate and act collectively in furthering their interests, a freedom having both an individual aspect (the right of each worker to withhold his labour) and a collective aspect (the freedom of the trade union to act as it thinks fit). The second principle is the interest of the community in industrial harmony, in the continuity of the services essential to life and health, and in the economic system generally. The conflict can be resolved, according to the Court, by harmonious construction, but this involves a choice of which principle must give way when the two conflict.

4. STATUTORY RECOGNITION AND REGULATION OF THE RIGHT TO STRIKE

4.1 The Right to Strike Under the Industrial Disputes Act, 1947

The right to strike does not flow explicitly from the provisions of the ID Act. The ID Act defines the strike,³⁴ describes the situations in which strikes are prohibited³⁵, classifies the strikes as being illegal³⁶, and punishes illegal strikes, as well as those who provoke them and provide finances for them³⁷. The fact that a strike is legal if it is not prohibited under the ID Act follows necessarily from its provisions.

³² *State of Madras v V.G. Row* AIR 1952 SC 196; *Chintaman Rao v State of Madhya Pradesh* AIR 1951 SC 118.

³³ *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353; *Anuradha Bhasin v Union of India* (2020) 3 SCC 637.

³⁴ ID Act, s 2(q).

³⁵ ID Act, ss 22–23.

³⁶ ID Act, s 24.

³⁷ ID Act, ss 25–28.

4.2 Restrictions on Strikes Under the Industrial Disputes Act

There are restrictions on strikes under the Act. Section 22 is applicable only to public utility services and says that no person employed in any such service shall go on strike in breach of contract (a) if he does not give notice within six weeks of going on strike; (b) within fourteen days after giving such notice; (c) before the expiry of the date of strike fixed in the notice; and (d) during the pendency of conciliation proceedings before a conciliation officer and seven days thereafter.³⁸ Section 23 of the Act is applicable to all industrial establishments and prohibits strikes (a) during the pendency of conciliation proceedings before a Board and seven days thereafter; (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months thereafter; (c) during the pendency of arbitration proceedings and two months thereafter where notification has been issued; and (d) during any period in which a settlement or award is in operation in respect of any of the matters covered by it.³⁹

4.3 Services Provided by Public Utilities and Restrictions Thereon

According to the ID Act, “public utility service” means railway service; service of carrying passengers or goods by land or sea; air transport; any part of an industrial undertaking the functioning of which would endanger the safety of such industrial undertaking or of its workers; postal, telegraphic or telephonic service; any industry generating or transmitting energy; any industry distributing light or water to the general public; any industry providing a system of public conservancy or sanitation;⁴⁰ and any industry mentioned in the First Schedule which may, by notification issued by the appropriate Government, be declared as a public utility service for a period not exceeding six months if the appropriate Government was of the opinion that public interest or an exigency of an emergency nature so warranted.

4.4 Strikes - Legal or Illegal

Section 24 of the ID Act defines any strike which is commenced or declared contrary to sections 22 and 23 or which continues to be done in violation of order made under sections 10(3) and 10A(4A),⁴¹ as illegal. In case a strike is found to be legal at the time of its commencement and

³⁸ ID Act, s 22(1).

³⁹ ID Act, s 23.

⁴⁰ ID Act, s 2(n).

⁴¹ ID Act, s 24(1).

then subsequently, a reference takes place, then it does not become illegal unless it is ordered by the government for its discontinuation.⁴² Also, the lockout that was declared due to an illegal strike or a strike that is declared due to an illegal lockout, cannot be termed illegal.

4.5 Effects of an illegal strike

There are a number of effects of an illegal strike. Penalties: an employee who starts, continues or otherwise assists in perpetrating an illegal strike is liable to be imprisoned or fined and those people who encourage others to take part in the illegal strike or provide assistance financially are similarly liable to being fined or imprisoned.⁴³ Wages: the wages for the period of an illegal and unjustified strike are not due to the workers, and the decision of the Supreme Court is that wages for a strike period are due only in case of a strike that is both legal and justified.⁴⁴ Discipline: the participation in an illegal strike amount to misconduct under the Standing Orders and may make the workers susceptible to disciplinary proceedings, even dismissal, although the Court emphasises that the disciplinary proceedings have to be proper and that individual blame should be taken into account⁴⁵.

4.6 Recognition of Strikes in the Industrial Relations Code, 2020

IR Code brings the legal provisions in respect of trade unions, standing orders, and industrial disputes together, and it mirrors the ID Act structure, making substantial changes. The Code follows a similar language to the ID Act while defining a strike and adds “concerted casual leave on a given day of fifty per cent or more of the workers employed in an industrial establishment” to the definition of strikes.⁴⁶ Section 62 bans strikes without notice or during particular periods, while Section 63 mentions what strikes would be termed as illegal strikes.⁴⁷

4.7 Requirements of Notice and Procedural Restrictions

A very important feature is the requirement of notice. According to the ID Act, the notice and cooling-off period provided in Section 22 apply only to public utility services. According to Section 62 of IR Act, no workman employed in any industrial undertaking shall strike in

⁴² ID Act, s 24(2)– (3).

⁴³ ID Act, ss 26–28.

⁴⁴ *Syndicate Bank* (supra); *Bank of India v T.S. Kelawala* (supra).

⁴⁵ *Gujarat Steel Tubes* (supra).

⁴⁶ IR Code 2020, s 2(zk).

⁴⁷ IR Code 2020, ss 62–63.

contravention of contract (a) unless he serves on his employer a notice of strike at least sixty days before strike takes place; (b) within fourteen days from the service of such notice; (c) prior to the expiration of the period of strike fixed in the notice of strike; (d) during the period of conciliation proceedings before the conciliator and seven days from their termination; (e) during the period of proceedings before Tribunal or National Tribunal and sixty days from their termination; (f) during arbitration proceedings and sixty days from their termination after notice is served; and (g) during the period when any agreement or award is in operation for any of the matters provided therein.⁴⁸

4.8 Strikes in Essential and Public Services

The most difficult instance is that of essential and public services. The ID Act's list of public utility services, the Essential Services Maintenance Acts, and the behaviour code for government servants collectively mean there is a general ban on strikes in the public sector and a whole host of private services. This has been upheld by the Supreme Court in the case of *Rangarajan*, where it ruled that government servants do not have the right to strike and that the State can take any action against them.⁴⁹

4.9 Does Statutory Regulation Reduce the Right to a Privilege?

There is a view that since the strike is governed by legislation, it is only a privilege that is given by law. This assumption must be questioned. Legislation governing a right does not automatically convert a right into a privilege. In fact, all constitutional rights must be regulated, and Article 19 fundamental rights are explicitly subjected to reasonable restrictions. The difference between a right and a privilege is the source of entitlement and the ability to take back the privilege without warning.

There are two characteristics of the Indian system which tend to justify the "privilege" description. In the first place, the legal source of the right is normal legislation, and the legislature can modify or repeal it simply by a majority vote. This much is evident from the history of the ID Act and the IR Code. Second, in the absence of any express declaration of the right, the judiciary has viewed the legality of strikes as dependent upon the statutory scheme and not as the exercise of a separate right. However, there are three aspects of the Indian

⁴⁸ IR Code 2020, s 62(1).

⁴⁹ *T.K. Rangarajan* (supra).

situation which militate against describing it as a simple privilege. The strike is not conferred by the State but is an existing right regulated by it, and the statutes prohibit certain types of strikes. The statutes provide for immunities in favour of the strike, which would be meaningless if the right was simply a privilege. Any legislation imposing restrictions on strikes must, furthermore, meet the constitutional test of non-arbitrariness of Articles 14 and 19(4).

A more appropriate characterisation of the position taken by India would be that the right to strike is a statutory right, which, although not guaranteed or entrenched, has a constitutional penumbra.

5. JUDICIAL APPROACH TO THE RIGHT TO STRIKE IN INDIA

5.1 Early Interpretations by Courts

The earliest rulings on strikes were made by the industrial tribunals and the Labour Appellate Tribunal, where the strike was viewed as a legitimate, although unfortunate, aspect of industrial disputes, and by the Supreme Court in the 1950s and early 1960s. In *Chandramalai Estate*, the Supreme Court observed that a strike may be seen as a legitimate and sometimes inevitable weapon in the armoury of labour, but it must be used sparingly and only for justifiable reasons, and the issue of wages must be considered during the strike period.⁵⁰ These were the two key ideas that emerged from the early rulings of the Supreme Court and which are seen throughout the latter case law.

5.2 All India Bank Employees' Association v. National Industrial Tribunal

This is the basic decision. The case was based on the Bank Award and the legislation passed in pursuance of it, which the trade unions questioned on the ground that they infringed upon the freedom of association and other fundamental rights. The Supreme Court (Gajendragadkar J.) ruled that the right to form associations or unions under Art. 19(1)(c) is a right which is guaranteed by the Constitution, but it does not guarantee that the association shall succeed in achieving its objects. It does not include the right to strike or to get the demands of the association accepted by the employer.⁵¹

⁵⁰ *Chandramalai Estate* (supra).

⁵¹ *All India Bank Employees' Association* AIR 1962 SC 171.

5.3 Kameshwar Prasad v. State of Bihar

Kameshwar Prasad dealt with Rule 4-A of the Bihar Government Servants' Conduct Rules 1956, which made it an offence for government servants to take part in any demonstration. It was found by the Supreme Court that the said rule, to the extent that it applied to peaceful and orderly demonstrations, violated Articles 19(1)(a) and 19(1)(b) of the Constitution and could not be justified under the reasonable restrictions under Articles 19(2) and 19(3).⁵²

5.4 B.R. Singh v Union of India

B.R. Singh v Union of India was an important decision about the rights of trade union members where the position of the strike was addressed by the Supreme Court. The Court recognised that the right to strike plays an important part in the process of collective bargaining, being regarded as a well-known weapon of the working class and referring to international labour regulations, but it also made clear that the right in question cannot be absolute and can be regulated.⁵³ What should be emphasised here is the very attitude expressed by the Court. This is one of those cases in which the Court treated the matter with sympathy and proved that the rejection of a fundamental right does not imply any neglect of the strikes' role.

5.5 Syndicate Bank v. K. Umesh Nayak

The case of Syndicate Bank v. K. Umesh Nayak involved the issue of the right of the bank employees to wages for the period of the strike. Having considered the previous decisions of the courts, the Court ruled that the employees who take part in the illegal strike have no right to receive wages for the strike period, and that the employee has the right to wages for the strike period only if the strike was both legal and justified; that the legality of the strike depends on the fulfilment of the statutory requirements, while the justification of the strike depends on the reasonableness of the reasons and the fault of the employer.⁵⁴

5.6 T.K. Rangarajan v. Government of Tamil Nadu

The clearest articulation of the stance taken by the Court can be found in the case of T.K. Rangarajan. In July 2003, a huge number of government employees in the state of Tamil Nadu

⁵² Kameshwar Prasad v. State of Bihar AIR 1962 SC 1166.

⁵³ B.R. Singh v. Union of India AIR 1990 SC 1.

⁵⁴ Syndicate Bank v K. Umesh Nayak (1994) 5 SCC 572.

went on strike demanding the pension and other perks. Under the Tamil Nadu Essential Services Maintenance Act 2002, the employees who went on strike were terminated by the state. The Supreme Court upheld the validity of action taken by the State. According to the Court, employees cannot claim any fundamental right to go on strike, there exists no legislation conferring this right upon government employees, and there also exists no moral or equitable basis for it; it found the strike to be an improper manner to seek remedy from the State.⁵⁵

The decision has also been subject to harsh criticism. Firstly, the decision seemed to sanction the sacking of a huge number of people at once without offering much procedure. Secondly, there are some statements regarding the effect that the strikes would have on the public in the opinion of the Court. These do not pertain to the legal issue before the court but show a dislike of strikes from public officials. Thirdly, the decision does not pay due regard to the international law guaranteeing the right to strike and the compensations needed under international law standards when the right is limited. Finally, it lumps together government workers although they may differ vastly in their status. It must be noted that those sacked employees were eventually reinstated. However, the decision remains the leading precedent.

5.7 Recent Judicial Trends

A number of trends are noteworthy. First, in the case of *Ex-Capt. Harish Uppal v. Union of India*, the Supreme Court has ruled that lawyers do not have the right to go on strike or to boycott court proceedings, and that a strike by lawyers, if at all, will be justified in the most exceptional of circumstances, and lawyers who go on strike may be liable for costs.⁵⁶ Secondly, in the case of *Communist Party of India (M) v. Bharat Kumar*, the Court has upheld the judgment of the Kerala High Court that a "bandh", which is carried out through the use of coercion, is unconstitutional since it infringes upon the fundamental rights of others, distinguishing between a "bandh" and a "hartal", which is a voluntary suspension of activity.⁵⁷ Third, the Court's judgments on the right to protest, including *Mazdoor Kisan Shakti Sangathan* and *Amit Sahni*, have upheld the constitutionality of peaceful protests while also imposing certain restrictions on how this right may be exercised.

⁵⁵ *T.K. Rangarajan* (2003) 6 SCC 581; *Radhey Shyam Sharma v. Postmaster General, Nagpur* AIR 1965 SC 311.

⁵⁶ *Ex-Capt. Harish Uppal v. Union of India* (2003) 2 SCC 45.

⁵⁷ *Bharat Kumar* (supra).

5.8 Judicial Distinction between Right to Form Associations and the Right to Strike

The logic of the Court's arguments rests in the clear distinction between formation of an association and action through it. The former constitutes a constitutional right; the latter, including the right to strike, is not. The distinction is well illustrated in *All India Bank Employees' Association*, and it underlies the decisions regarding union recognition.⁵⁸ The distinction has its own logic: the Constitution guarantees the freedom to associate, and the action through such association is governed by law. However, the logic is incomplete. The freedom of association becomes meaningless if the association does not have a right to take any effective action. In terms of other freedoms, the case is different: the freedom of speech implies the freedom to disseminate one's views, and the freedom to practise a profession implies the freedom to practise it. The judicial approach to the Article 19(1)(c) rights differs from that applied to these other freedoms.

5.9 Whether the Restrictions on Strikes Meet the Requirements of the Constitution

The Court has not used the test of proportionality in respect of strikes in the same way that it has done in relation to other matters. As it has ruled that the strike is not a fundamental right, it has not gone into the question of whether the restrictions are reasonable restrictions on a fundamental right. The restrictions, if they have been considered at all, have been subjected to the broad test of Article 14. But there is no doubt that they affect the right of association.

6. INTERNATIONAL AND COMPARATIVE PERSPECTIVE

6.1 Right to Strike under International Labour Standards

The international community acknowledges the right to strike, although with certain limitations. The right to strike is not mentioned in the Universal Declaration of Human Rights, which guarantees the right to establish and join trade unions for the defence of one's interests.⁵⁹ The right to strike is explicitly recognised in Article 8(1)(d) of the ICESCR, in Article 6(4) of the European Social Charter, and in several regional treaties. This right has been deduced from the right to freedom of association in Article 11 of the European Convention on Human Rights

⁵⁸ *Raghubar Dayal Jai Prakash* (supra); *O.K. Ghosh* (supra).

⁵⁹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), art 23(4).

by the European Court of Human Rights.⁶⁰

6.2 International Covenant on Economic, Social and Cultural Rights

According to Article 8(1)(d) of the ICESCR, the right of workers to organise must be guaranteed and protected. The article specifies that, "States parties shall guarantee 'the right to strike, provided that it is exercised in conformity with the laws of the particular country'". Under Article 8(2), States can place restrictions on the exercise of the rights referred to in the article, including those of members of the armed forces, the police or the administration of the State. Article 8(3) states further that nothing in the article will allow for any legislative measure or application of the law to prejudice the guarantees provided for in the ILO Convention of 1948.⁶¹

6.3 The right to strike under ILO conventions

In the ILO Conventions on Freedom of Association and Protection of the Right to Organise (No. 87 of 1948) and on the Right to Organise and Collective Bargaining (No. 98 of 1949), there is no specific provision on the right to strike. But, according to ILO's supervisory organs -the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations-, "the right to strike is necessarily an indispensable corollary of the protection of the right to organise" as established under Convention No. 87, because trade unions have the right to organise themselves and to define their programme, in particular ways of achieving and defending the interests of their members⁶². According to the supervisory organs, although in certain cases trade unions may be obliged to provide advance notification of strikes and go through some procedural steps, such obligations should not render the exercise of that right practically impossible.

6.4 United Kingdom

There is no right to strike under English law. English law starts from the proposition that a

⁶⁰ European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163, art 6(4); *Demir and Baykara v Turkey* (2009) 48 EHRR 54; *Enerji Yapi-Yol Sen v Turkey* (App no 68959/01, 21 April 2009); *RMT v United Kingdom* (2014) 58 EHRR 8.

⁶¹ ICESCR, art 8; see Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (OUP 2014) ch 5.

⁶² ILO Convention No. 87 (1948), arts 3 and 10; ILO, *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalisation*, 2008 (ILC 101st Session, 2012, Report III (Part 1B)) 'Giving Globalisation a Human Face'.

strike is a breach of the contract of employment and that organizers of a strike may be guilty of the economic torts of inducing breach of contract and conspiracy. The history of English law is the history of the extension of statutory immunities from liability for those torts. Following the decision of the House of Lords in *Taff Vale Railway Co v Amalgamated Society of Railway Servants* holding a trade union liable in tort, Parliament passed the Trade Disputes Act 1906, giving trade unions and those acting in contemplation or furtherance of a trade dispute immunity from suit⁶³. Those immunities were narrowed in *Rookes v Barnard*, restored by statute, curtailed again by the legislation of the 1980s, and are now codified in the Trade Union and Labour Relations (Consolidation) Act 1992.⁶⁴

6.5 United States

The right to strike is most clearly recognised in statute in the United States. Section 7 of the National Labour Relations Act 1935 guarantees the right of employees to participate in concerted activities for collective bargaining or other mutual aid or protection, while section 13 states that nothing in the Act, except as expressly provided for, shall be construed so as to interfere with or impede or diminish in any way the right to strike.⁶⁵ The right is not, however, absolute. Employers can hire permanent replacements for economic strikers;⁶⁶ sit-down strikes are unprotected,⁶⁷ and the Labour Management Relations Act 1947 (Taft-Hartley) requires sixty days' notice prior to the expiration of a collective agreement, prohibits secondary boycotts, and authorises the President to apply for an injunction to postpone for eighty days a strike which threatens the national health or safety.⁶⁸ Strikes in violation of a no-strike clause are unprotected, and the Supreme Court has recently decided that a union that does not take reasonable steps to safeguard the employer's property during a strike may be liable under state tort law.⁶⁹

6.6 Comparative Position and Lessons for India

Comparison reveals a range of experiences. On one side, there are those legal systems where

⁶³ *Taff Vale Railway Co v Amalgamated Society of Railway Servants* [1901] AC 426 (HL); Trade Disputes Act 1906, ss 3–4.

⁶⁴ *Rookes v Barnard* [1964] AC 1129 (HL); Trade Union and Labour Relations (Consolidation) Act 1992, s 219.

⁶⁵ National Labour Relations Act 1935, 29 USC §§ 157, 163.

⁶⁶ *NLRB v. Mackay Radio & Telegraph Co.*, 304 US 333 (1938).

⁶⁷ *NLRB v. Fansteel Metallurgical Corp.*, 306 US 240 (1939).

⁶⁸ Labor Management Relations Act 1947, 29 USC §§ 158(b)(4), 158(d), 176–180.

⁶⁹ *Glacier Northwest Inc v International Brotherhood of Teamsters Local Union No 174*, 598 US 771 (2023).

the right to strike is enshrined in the Constitution: Article 1 of the Preamble of the French Constitution of 1946, enshrined in the present Constitution, states that the right to strike is exercised in accordance with the laws that regulate it; the Italian Constitution recognizes the right in accordance with the laws that regulate it (Article 40); the Japanese Constitution recognizes the workers' right to collective action (Article 28); the South African Constitution recognizes the right of every worker to strike (section 23(2)(c)); and the Supreme Court of Canada has held that the right to strike is protected by the freedom of association in the Canadian Charter of Rights and Freedoms.⁷⁰ On the other side, there are those legal systems where strikes are allowed only as an immunity from statutes. The middle position is occupied by legal systems like the United States, where the right to strike is recognised by statute.

6.7 Weighing the Interests of Workers, Employers, Third Parties, and the Public

No matter what the origin of the right, the weighing of interests between those of workers and those of employers, third parties and the public is necessary in any legal system. The interests of the employer are in the continuity of production and the protection of property; the interests of the public are in the continuity of essential services; and the economic interest is in the stability of the investment environment. They are genuine and legitimate interests. There are a number of principles suggested by international standards and comparative practice for weighing them. Restrictions should be based on a legitimate aim and be proportionate to it. Restrictions of the right to strike in essential services should be limited to strictly essential services and should be accompanied by compensatory guarantees. Procedural requirements should facilitate the settlement and not the prevention of strikes. Protection against reprisals for lawful strike activities should be provided. And the modalities of strike actions, including picketing and the conduct of strikers, should be regulated in such a way as to protect the rights of non-strikers and third parties, without eliminating the right itself.

7. CRITICAL ANALYSIS: FUNDAMENTAL FREEDOM OR STATUTORY PRIVILEGE?

7.1 Arguments in Favour of the Right to Strike as a Fundamental Right

There are five arguments to justify the recognition of the right to strike as a fundamental right.

⁷⁰ Constitution of the French Republic 1958, Preamble (incorporating the Preamble to the Constitution of 1946, para 7); Constitution of Italy, art 40; Constitution of Japan, art 28; Constitution of South Africa 1996, s 23(2)(c); *Saskatchewan Federation of Labour v Saskatchewan* 2015 SCC 4, [2015] 1 SCR 245.

First, the right to freedom of association should be given a purposive interpretation. A right to associate which does not include a right to action on behalf of the association is, as is often said, a right to form an entity without any teeth. The courts have given this type of purposive interpretation to the other rights under Article 19, and there is no reason to do otherwise for Article 19(1)(c).

7.2 Arguments in Favour of the Right to Strike as a Statutory Right

The other arguments in favour of the statutory characterisation are as follows. First, text and context. The Constitution mentions the freedoms of speech, assembly and association, but not the strike. The framers knew about the strike, as well as the ID Act, and the Directive Principles confine themselves to the purposes of labour legislation. In reading a right to strike into Article 19, one is reading into the Constitution a right which the framers did not see fit to include. Second, the nature of the strike. A strike is not an exercise of speech, assembly or association. It is a withdrawal of labour, in breach of contract, and carries certain implications for the employer and the general public.

7.3 The Relationship between Collective Bargaining and the Right to Strike

It cannot be disputed that the connection between collective bargaining and the strike is central to the question. For collective bargaining to serve its purpose as a means of fixing terms and conditions of employment, the threat of a strike must be there; otherwise, the process of negotiation becomes dependent upon the good will of the employer. This is not the case with the ID Act, which was based on the assumption that the State would act as a referee in solving disputes through mediation and arbitration.

7.4 Consequences of Too Many Restraints on Trade Unionism

Too many restraints on the right to strike have effects on trade unionism as an institution. First, they undermine the ability of trade unions to give benefits to their members, and hence make it unattractive for one to be a member of a trade union. Second, it forces trade unions to seek political connections, to seek favour from the government rather than build power on the factory floor. Third, they make industrial disputes occur outside the legal system; where lawful strikes become impossible, workers can opt to take unofficial and unplanned action, to use go-slow tactics, or to resort to violence, all of which are more disruptive to industrial relations than

a lawful strike.

7.5 Impact of Strikes on Employers, Consumers and Public Services

The impact of strikes cannot be ignored. For employers, a strike will result in a loss of production, loss of customers, and destruction of property and good relations. For consumers and members of the public, a strike in transport, banking, electricity supply and medical care will cause trouble, loss and, in some cases, even danger. In a country where there are large numbers of people who rely on public services and where alternatives are scarce, the impact of a strike will be felt even more strongly. Any valid case for a right to strike must admit that these are real impacts and that the law is justified in taking them into account.

7.6 Strikes in Essential Services and the Public Interest

The case of essential services provides the strongest rationale for restriction. There is broad consensus, including in the international standards, that the right to strike can be limited in the event of interruption of a service that would threaten life, personal security, or health. The issue is not whether restriction is allowable, but rather what form it should take. First, three principles derive from the international standards and the principle of proportionality. The restriction must apply only to services that are truly essential, and not simply all services that are useful or economically important. Second, the restriction must be made by law and not by executive decree, so that the legislature determines the extent of the exception. Finally, the restriction must be coupled with compensatory mechanisms, such as binding arbitration, so that workers who cannot strike have another way of settling their disputes.

7.7 Constitutional Morality vs. Industrial Regulation

The Supreme Court has held in another context that constitutional morality demands that the agencies of the State must conduct themselves in consonance with the values of the Constitution such as dignity, liberty, equality, and fraternity and not just the letter of the law.⁷¹ If the principle is applied to the law of strikes, then one may well ask whether the present regime of law embodies the constitutional commitment to the dignity of labour and the involvement of workers in the decision-making process.

⁷¹ Navtej Singh Johar v Union of India (2018) 10 SCC 1.

7.8 The Need for an Equitable Legal Framework

Based on the above discussion, the following evaluation can be made. First of all, it should be pointed out that according to numerous rulings of the Supreme Court, the right to strike in India is not a fundamental right, since it is granted by a statute and depends on the conditions set forth in the statute. This point is clear, and there is no need to pretend otherwise. However, the description of the right to strike as a "privilege" does not seem sufficient for several reasons. First, striking is a right of workers that existed prior to any regulation by the State. Second, the freedom of association guaranteed by Article 19(1)(c) gives the right a constitutional ground and the assertion that the right has more grounds than this one cannot be rejected based on contemporary constitutional principles. Third, India's international commitments and, specifically, the fact of India's ratification of ICESCR guarantee the right's place in the international legal framework. Fourth, any legislative limitations of the right to strike should comply with the constitutionally established standards of non-arbitrariness, reasonableness, and proportionality.

The proper characterisation can thus be said to be that the right to strike in India is a qualified statutory liberty with a constitutional penumbra. The right is neither enshrined nor entrenched and cannot be removed or rendered meaningless without recourse to constitutional considerations. The ideal approach to this question would take into account this situation by guaranteeing the right in statute and ensuring that restrictions on it are kept within strict bounds, among others.

8. FINDINGS, SUGGESTIONS AND CONCLUSION

8.1 Major Findings of the Study

The findings of the study can be summarised as follows.

- There is no express recognition of the right to strike in the Constitution of India, and the Supreme Court of India has always ruled in cases such as All India Bank Employees' Association (1962) to T.K. Rangarajan (2003) that there is no fundamental right to strike guaranteed under Articles 19(1)(a), 19(1)(b), 19(1)(c) or 21.
- The Court's interpretation is based on a narrow interpretation of Article 19(1)(c), where the freedom of association means the freedom to form an association but not to

effectively act through such association. The interpretation is against the purposive approach followed by the Court for other freedoms, international labour standards, and comparative law of democratic constitutions.

- The acts of a strike, such as peaceful demonstrations and picketing, have constitutional protection under Articles 19(1)(a) and 19(1)(b), provided that reasonable restrictions may be placed upon them. The difference between the acts of a strike and the strike itself is a consistent part of the case law.
- The right to strike has a place in the law of India as a qualified statutory liberty. Under the ID Act and IR Code, the strike is defined and regulated; strikes contrary to the terms of the defined conditions are made unlawful, and unlawful strikes are penalised and made civilly liable. Statutory immunities cover lawful strikes.
- The IR Code broadens the notice and cooling-off requirements to all industrial establishments, considers concerted mass casual leave a strike, and increases the penalty provisions.
- The Indian law of essential and public utility services has a broader application than the international standards, is amenable to extension by executive notification, and is not attended by compensatory provisions like compulsory arbitration.
- International law recognises the right to strike as a consequence of the right to freedom of association, which is subject to regulation. India has signed the ICESCR, but not the ILO Conventions 87 and 98. No detailed study of the international law on the issue has been undertaken by the Supreme Court of India.
- A comparative analysis reveals that the regulation of strikes is universal, but that the better approaches incorporate the conditions for legitimate strikes in the parties' own processes, recognise the right, and make provision for a compensatory mechanism if the right is regulated.
- The distinction between statutory and fundamental rights is not complete as far as the Indian position is concerned. It is a statutory right that is subject to constitutional norms and values of association, dignity and social justice.

8.2 Recommendations and Suggestions

In light of these findings, the following recommendations are made.

- Affirm the right in statute. The IR Code should be amended to contain an express statement that the worker and his organisation have the right to take lawful industrial action for the promotion of his interests under the conditions laid down in the Code. Such an affirmative statement, as is found in section 13 of the US National Labour Relations Act, would shift the presumption from one of prohibition to one of protection.
- Limit essential service provisions. The limitation of strikes should be limited to those services which are truly essential in the terms of the ILO, i.e., those services the disruption of which would pose a threat to the life, personal safety or health of the whole or part of the population. The discretion to add to the list by way of notification should be eliminated or limited to legislative or judicial scrutiny.
- Provide guarantees for compensation. In cases where strikes are restricted, there must be a scheme for fair, quick, and binding conciliation and arbitration, a time-limit for settling disputes, and the participation of the parties in the selection of arbitrators. The present Joint Consultative Mechanism for central government servants must be placed on a statutory footing and extended to cover state servants as well.
- Rethink the universal notice provision. The provisions for notice and cooling off period should remain applicable to strikes which are predictable, but a short protest strike or a strike in response to an immediate and grave default or danger on the part of the employer should be exempted or covered by a shorter notice.
- Take a proportionate approach to minimum services. In essential services, workers should be able to strike provided that they maintain a negotiated minimum service level determined by an independent agency and in consultation with trade unions.
- Protection against Retaliation. The law should clearly state that dismissal or any other form of penalty for engaging in a legal strike is a violation of labour laws, and that dismissal of strikers engaged in an illegal strike must be subject to individual consideration in light of the behaviour of each worker.

- Legalisation of Wages during Strike Periods. The code should clearly state that workers have the right to get their wages during a legal and justified strike, and that strikes arising out of a breach of law and/or agreement by the employer are justified.
- Balance the Penalties. Criminal penalties for participation in an illegal strike should be reduced and replaced with civil and disciplinary penalties, with criminal liability being reserved for violence, intimidation and damage to property.
- Expand Collective Rights to Non-Standard Workers. The legal provisions should be amended to include contract workers, fixed-term workers and platform workers, as well as clarifying the status of platform workers who collectively refuse assignments.
- Compliance with international standards. India must seriously consider ratification of ILO Conventions 87 and 98 and submit the Labour Codes to tripartite review for consistency with international standards on the right to strike.

8.3 Scope for Legislative Reform

A number of options may be considered for reform. First, there may be reform through legislation, with the IR Code and the Rules promulgated thereunder being revised in the manner recommended above. The IR Code is new legislation, and its implementation is just beginning. This is thus the appropriate stage for re-examining the IR Code based on the experience of the trade unions, the employers and the conciliatory authorities. Secondly, the Supreme Court may reconsider the All-India Bank Employees' Association case in the context of the further development of jurisprudence of Article 21, the proportionality test and international law of freedom of association. Without overruling the decision, the Court may hold that any restriction of strikes should pass a test of proportionality, as restrictions on the right to strike are one of the aspects of the freedom of association, without ruling whether strike is a fundamental right or not. Finally, at the institutional level, it would be appropriate to strengthen tripartite bodies with representation of the government, the employers and the workers.

8.4 Conclusion

The question raised in this paper as to whether the right to strike in India is a fundamental freedom or a statutory privilege can be answered clearly from the standpoint of law and more ambiguously from the standpoint of principle. From the standpoint of law, the Supreme Court

has held, and the laws operate on the basis of the assumption that the right to strike is not a fundamental right but a conditional statutory right. From the standpoint of principle, the classification of this right as merely a privilege is not an accurate reflection of its constitutional and international underpinnings. The right to strike is related to freedom of association, to the dignity of labour, and to collective bargaining.

The challenge that Indian law faces is that of changing from a regime where the strike is a problem to be solved to one where it is a freedom to be regulated. This will involve greater clarity regarding the statutory recognition of the right, a more limited and principled conception of the services in which it can be limited, compensatory machinery where it is limited, and a judicial willingness to review the limits according to constitutional standards. Such a regime would be in the interests of workers, who would have an effective means of collective action, of employers, who would have a more ordered regime, and of the public, whose access to essential services would be assured by principled and proportionate limitations. The upshot of this study is that Indian law has the tools to create such a regime.