



WIELDING STRIKE: SHOULD BE CONFERRED A FUNDAMENTAL STATUS IN INDIA? AN ANALYSIS OF A PARADOXICAL APPROACH

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ABSTRACT

It is well observed in construing the preamble of Indian constitution by our forefathers that liberty is fundamental for the development of an individual and it is very essential for the successful functioning of a democratic system. But so far, if the liberty is considered in the contemporary era alongside right to strike, the essence of the opinion of our forefathers is missed out as it is yet not given the fundamental status in Indian constitution. However, this right to strike has its prolonged genesis in the 12th Century B.C.

Overtime, it is witnessed that the legal status of right to strike had always been controversial, be it from the Indian perspective or international perspective. In the former, both the legislature and judiciary had simultaneously played an imperative role in regulating this right by way of enactment especially by Industrial Dispute Act, 1947 and precedent respectively. However, in the latter the right to strike has been considered at par with other rights on an equal pedestal in terms of its legality and necessity. Thus, it becomes imperative to analyze this right through its multifaceted dimensions be it domestic or international level.

Keywords: Strike, validity, industrial, dispute, work, constitution, right, labour, law

1. INTRODUCTION

In this contemporary global world every right comes along with a duty and the most powerful right comes along with the bundle of responsibilities and one such right is right to strike. In today's time each country around the globe gives a right to strike to its workers or employees. At times this right is even termed as a powerful weapons in the hands of the workers that signifies the suspension or stoppage of work by the worker. But this right must be the weapon of last resort because if this right is misused, it will create a problem in the production and financial profit of the industry.

The relevance of this right to strike can be recognized as an ordinary right of social importance to the working class to ventilate their grievances and thereby resolve industrial conflict. Skillful use of this weapon, whether threatened or actual, may help workers to force their employer to accept their demand or at least to concede something to them. But reckless use of the same can create worse tensions, frictions and violations of law and order.

Further, taking into consideration the opinion of the general public, strikes tends to retard the nation's economic development and in a country like India frequent stoppage of work for frivolous reasons that often accompanies this right cannot be tolerated. For these reasons, the Industrial Disputes Act seeks to regulate and restrict strikes so that the nation's welfare do not get compromised for any reason.

- Meaning and General Concept of Strike

The word 'strike' comes from 'strican to go' which means to quit, hit or impress in case of



a trade dispute.¹ It can ordinarily be referred to as concerted refusal to work on the part of person who are accustomed to work in a particular vocational area² and in a labour sense it is a stoppage of work by common agreement on the part of a body of work people for the purpose of obtaining or resisting a change in the conditions of employment³ but this meaning of strike has undergone various changes across the world and most of the nations have given the right to strike to the workers⁴ as natural, inalienable, inherent and almost absolute⁵ in nature.

In India the term "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment.⁶ This right is thus, guaranteed under Industrial Dispute Act 1947, which state that the workers can go on a strike giving prior notice of six weeks to the employer in case of any

breach of contract in public utility service.⁷ This act further provides for the conditions that needs to be satisfied before going on a strike⁸ so that this effective tool of bringing down the employer to the negotiable table is not misused.

2. EVOLUTION OF STRIKE

Strike came into existence two hundred years ago in the wake of the Industrial Revolution.⁹ The first known strike was in the 12th century B.C., in Egypt. Workers under Pharaoh Ramses III stopped working on the Necropolis until they were treated better¹⁰ and the first recorded phrase about it was 'to strike work' is used in the year 1778¹¹ when sailors in support of demonstrations in London struck or removed the topgallant sails of merchant ships at port thus, crippling the ships.¹² As the 19th century progressed, strikes became a fixture of industrial relations across the industrialized world, as workers organized themselves to bargaining for better wages and standards with their employees.¹³ The word strike then sounded like a blacksmith's hammer, the woman's acts and

¹ Karnik V.B, *Indian Labour Problem and Prospects* 186 (1974).

² HISTORICAL PROSPECTIVES ON STRIKE, 19 (May 27, 2020) http://shodhganga.inflibnet.ac.in/bitstream/10603/10436/9/09_chapter%202.pdf

³ Ahemadullah Khan, *Community on labour Law and Industries Law* 174 (Asian Law Book 4th ed. 2002 – 2003).

⁴ Aarif Shah, *Right to Strike: A Proposed Amendment in Indian Constitution*, *ipleaders* (May 27, 2020) <https://blog.ipleaders.in/right-to-strike-proposed-amendment-in-the-indian-constitution/>

⁵ Rajesh Tyagi, *The Supreme Court Pronouncement and the Right to Strike*, *revolutionary democracy* (May 27, 2020) <https://www.revolutionarydemocracy.org/rdv9n2/strike.htm>

⁶ Industrial Dispute Act 1947, § 2(q).

⁷ Industrial Dispute Act 1947, § 22(1)(a).

⁸ *Supra n. 4*, at .23.

⁹ Samatina Fernandes, *Strikes and lockouts*, 4 (May 29, 2020) <http://www.grkarelawlibrary.yolasite.com/resources/LLMSY-Lab-1-Samatina.pdf>

¹⁰ Joshua J. Mark, *The First Labour Strike in History*, *Ancient History Encyclopedia* (May 30, 2020) <https://www.ancient.eu/article/1089/the-first-labour-strike-in-history/>

¹¹ Shrikant Malegaonkar, *Types of Strikes Regarding Industrial Disputes in India*, *International Journal of Management and Humanities (IJMH)* I (2019).

¹² Sagar, *Strikes*, (May 30, 2020) <http://www.legalserviceindia.com/legal/article-1135-stikes.html>

¹³ Dr. Singh Avtar, *Introduction to Labour and Industrial Law* (Lexis Nexis, 2nd ed. 2008).



the Patriots for ants till today has maintained its violent character.¹⁴

Soon after a rampant increase in the strikes by the workers, strike actions were quickly made illegal in most of the countries, as factory owners had far more political power than workers. However, most western countries partially legalized striking in the late 19th or early 20th centuries. It was then in 1974 that India witnessed its first railway strike by the workers of Indian Railways. The 20 days strike by 17 lakh workers is the largest known strike in India. The strike was held to demand a raise in pay scale, which had remained stagnant over many years, in spite of the fact that pay scales of other government owned entities had risen over the years.¹⁵

Ever since then this weapon of strike is being used by the unions and the employees to save their rights under labour legislations. The right to strike is recognized as a legitimate right of the trade unions.¹⁶ The weapon of strike is mostly used by unions as the last major to ventilate their grievances, though some reckless unions resort to the weapon of strike much earlier, especially when it is not warranted to do so. In modern times strike is not something which is to be resorted, day in and day out. The modern unions and managements are of the view that the production of an establishment must not be hampered and various means and measures are worked out to see that there is no strike

happening in any industry, unless it is very necessary to hold it.¹⁷ There is an element of caution present in every strike when an attempt is made to pressurize the management to negotiate and settle the issues at hand¹⁸ and thereby all this is regulated in India in accordance with the provisions of Industrial Dispute Act 1947.

3. ROLE OF INDUSTRIAL DISPUTE ACT, 1947

Industrial Dispute Act is a milestone in providing workers or employees a right and at the same time limiting it to the legality and justifiability of the strike.¹⁹ Justice Krishna Iyer and P.N. Bhagwati in a case held that “strike can be illegal or legal one and even the illegal strike can sometimes be justified. It is the principle of social justice and well recognized by industrial jurisprudence. It is available to the employees as their legal right also and they can go for the peaceful strike to negotiate for their demands with the employer”.²⁰ Industrial Disputes Act has differentiated between legal and illegal strikes. So, it can be said that upon compliance of all requirements as mentioned in section 22 and 23, a strike can be legal and justified one.²¹

The concerned act was enacted with an intent to make provisions for investigation, settlement of Industrial Disputes and providing for certain safeguards to the workers²² so that the correct legal position of

¹⁴ Shrikant Malegaonkar, *Supra* n. 13.

¹⁵ Mishra S. N, *Labour and Industrial Law* (Central Law Publications 27th ed. 2013).

¹⁶ R. J. Kochar, *Right to Strike: Has Supreme Court Moved Backward?* (Economic and political weekly, 25 n. 29 (1990).

¹⁷ Shrikant Malegaonkar, *Supra* n. 13

¹⁸ *Id.*

¹⁹ *Crompton Greaves Ltd. v. Workmen*, AIR 1978 SC 1489

²⁰ *Maganlal Chhaganlal (P) Ltd v. Municipal Corporation Of Greater*, 1974 AIR 2009

²¹ *Syndicate Bank v. K. Umesh Nayak*, 1995 AIR 319

²² Vijay M. Gawas, *Right to Strike under Industrial Disputes Act, 1947 and other laws*, 4 INTERNATIONAL JOURNAL OF LAW 28 (2018).



the rights of workmen to go on strike could be determined and in order to attain this the provisions of the concerned act must be analyzed.

• Valid strike & Prohibition

The industrial dispute act provides procedure that is required to be followed by the workers or employee to make their strike legal. The act has defined the strike as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment.²³ However it is stated by the court Mere cessation of work does not come within the preview of strike unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand.²⁴ The concerned act even impose certain prohibitions to make a strike valid. It provides that no person employed in public utility service shall go on strike in breach of contract:

- a) Without giving to employer notice of strike within six weeks before striking; or
- b) Within fourteen days of giving such notice; or
- c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.²⁵

The above mentioned provisions are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice²⁶ though no notice is required when already there is a lock out in existence.²⁷ Moreover the provision of the concerned act are not meant to bar the workers or employees to go on the strike but require them to satisfy the requisites before. The prohibition prescribed under section 22 are applied to public utility service only²⁸ but there are general prohibitions which are applied to both public utility as well as non-public utility establishments.²⁹

• General prohibition on strike

There are general prohibitions given under the section 23 of the industrial dispute act to maintain a peaceful atmosphere amongst both the parties to the dispute i.e. workers and employer in order to conduct the problem solving mechanism efficiently like conciliation or adjudication or arbitration proceeding. The provision basically impose restrictions on declaring strike in breach of contract in the both public as well as non-public utility services in the following circumstances mainly: -

- a) During the pendency of conciliation proceedings before a board and till the expiry of 7 days after the conclusion of such proceedings;
- b) During the pendency and 2 months after the conclusion of proceedings before a Labour court, Tribunal or National Tribunal;

²³ Industrial Dispute Act 1947, § 2(q).

²⁴ Indian Iron & Steel Ltd. v. Its Workmen, AIR 1953 SC 47

²⁵ Industrial Dispute Act 1947, § 22(1).

²⁶ Mineral miner union v. kudremukh iron ore co. ltd., ILR 1988 KAR 2878

²⁷ Industrial Dispute Act 1947, § 22(3).

²⁸ Industrial Dispute Act 1947, § 22(1) & (2).

²⁹ Chandramouli Estates v. Its Workmen, (1960) KK LLJ 243-246.



- c) During the pendency and 2 months after the conclusion of arbitrator, when a notification has been issued under sub-section 3 (a) of section 10 A;
- d) During any period in which a settlement or award is in operation in respect of any of the matter covered by the settlement or award.³⁰ It is even noteworthy to borne in mind while interpreting the provision of section 2 that a conciliation proceedings before a conciliation officer is no bar to strike under section 23.³¹

• Grounds for strike

Now since a description has been made with respect to the definition of strike, its requisites and prohibition, it is imperative to know its grounds as well. Strike apparently arouse from the quarrels growing out of the dominant and servient relations of employers and employees. There exist situation when workers are forced to work for a particular amount and under a condition stated in the law that at times become a source of contact difficulties³² and therefore a relation law recognizes to this day, were, and still are the causes of some of the most bitter strikes that have ever occurred. Mainly the strikes are caused by differences as to³³:

1. Rates of wages and demands for advances or reductions i.e. Bonus, profit sharing, provident fund and gratuity.
2. Payment of wages, changes in the method, time or frequency of payment;
3. Hours of labour and rest intervals;

4. Administration and methods of work, for or against changes in the methods of work or rules and methods of administration, including the difficulties regarding labour-saving machinery, piece-work, apprentices and discharged employees;
5. Trade unionism.
6. Retrenchment of workmen and closure of establishment.
7. Wrongful discharge or dismissal of workmen.

• Illegal strike

It is pertinent to take an account of the facet that Industrial dispute act not only incorporates different provisions with regard to a legal strike but also embodied provisions related to illegal strike. It is stated in the act per se that³⁴:-

1. A strike or a lockout shall be illegal if,
 - i It is commenced or declared in contravention of section 22 or section 23; or
 - ii It is continued on contravention of an order made under sub section (3) of section 10 or sub section (4-A) of section 10-A.
2. Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all the time of the reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal;, provided that such strike or lockout was not at its commencement in contravention of the provision of this Act or the continuance thereof was not prohibited

³⁰ Industrial Dispute Act 1947, § 23.

³¹ Ballarpur Collieries Co. v. H. Merchant, 1967) 2 LLJ 201 Pat.

³² Anne Trebilcock, *Labour relation and human resource management: An overview*, 4th ed.

international Labour office (May 31, 2020) <http://www.ilocis.org/documents/chpt21e.htm>

³³ Woodruff lamberman, *Who Strikes – and Why?*, Harvard Business Review (May 31, 2020) <https://hbr.org/1983/11/who-strikes-and-why>

³⁴ Industrial Dispute Act 1947, § 24.



under sub section (3) of section 10 or sub section (4-A) of 10-A.

3. A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

It is stated in the case of *Maharashtra General Kamgar Union v/s Balkrishna Pen P. Ltd.*³⁵

Held: when a strike is commenced before the expiry of 14 days' notice, it will be illegal but only for the unexpired notice period and thereafter, the strike would be legal.

- Punishment & impact of illegal strike

The act roll out the provision explaining what does an illegal strike means and if it is conducted it is likely invokes certain punishment like any other illegal act. It is embodied in the act that any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.³⁶ It is even stated by the court that in case of illegal strike the only question of practical importance would be the quantum or kind of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.³⁷

Apart from the punishment the direct impact of illegal strike could be seen on the wages of the worker. It is well established that in order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.³⁸ Though it will not deprive the labour union of its immunities granted by the Trade Union Act³⁹ and mere participation in the strike would not justify suspension or dismissal of workmen.⁴⁰

Although the right to strike has been conferred to workers and employees in Industrial Dispute Act but the fundamental status hasn't been provided to this right.

4. CONSTITUTIONAL VALIDITY OF RIGHT TO STRIKE

Initially a limited right to strike was granted under the Trade Union Act, 1926 which was later given the statutory status under the industrial dispute act, 1947⁴¹ but so far this right has not been recognised as a fundamental right.⁴² The Constitution of India provides

³⁵ Maharashtra General Kamgar Union v. Balkrishna Pen P. Ltd, (1989) 1 Lab LJ 319 (Bom).

³⁶ Industrial Dispute Act 1947, § 26(1).

³⁷ M/S Burn & Co. Ltd. v. Their Workmen, 1960 AIR 896

³⁸ Crompton Greaves Ltd. v. Workmen, AIR 1978 SC 1489

³⁹ Rohtas Industries Ltd. v. Rohtas Industries Staff Union, AIR 1976 SC 425

⁴⁰ M/S Burn & Co. Ltd. v. Their Workmen, 1960 AIR 896

⁴¹ Vijendra Vikram Singh Paul, *India: Right to Strike Under Industrial Dispute Act, 1947*, Mondaq (May 31, 2020) <https://www.mondaq.com/india/workforce-management/24797/right-to-strike-under-industrial-dispute-act-1947>

⁴² All India Bank Employees' Association v. National Industrial Tribunal and others, 1962 AIR 171.



freedom to form associations and unions⁴³this even includes trade unions⁴⁴but right to strike is an ancillary right to Article 19(1)(c)⁴⁵ otherwise the right to form association would be rendered illusory.⁴⁶The necessity to form unions is obviously for voicing the demands and grievances of labour⁴⁷and resorting to strike in a given situation is a form of demonstrate.⁴⁸However it is stated by the court that strike is a legal weapon available to workers⁴⁹and it is mostly misused which results in chaos and maladministration, but the worker himself is the immediate victim of the strike with his only means of livelihood at stake. In addition to this there had been situations where they lose salaries, get imprisoned and sometimes shot dead.⁵⁰Therefore right to strike is not raised to the high pedestal of a fundamental right, it is recognized as a mode of redress for resolving the grievances of workers.⁵¹

It is further embarked in the constitution of India that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.⁵² If the workers require supporting their stand in parlance with the management an effective action like the right to strike needs to be at their reach.⁵³

5. JUDICIAL PERSPECTIVE ON RIGHT TO STRIKE

In pursuance of determining the validity and legality of right to strike judiciary had always been skeptical as reflected from the catena of decision and the foremost in the queue is *All India Bank Employees Association v National Industrial Tribunal*⁵⁴ wherein the right to strike ensuring negotiation between the Union and the Company was rejected. Later an extremist approach was propagated when Supreme Court declared that the government servants do not even have the equitable right to strikes.⁵⁵ In the case of *Rangarajan v Tamil Nadu*⁵⁶ Supreme Court held "Both under the Trade Union Act as well as under the Industrial Disputes Act the expression union signifies not merely a union of workers but includes also unions of employers. If the fulfillment of every object for which a union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to a union of employers which would result in an absurdity. We are pointing this out not as any conclusive answer, but to indicate that the theory of learned counsel that a right to form unions guaranteed by Sub-clause (c) of Art. 19(1) carries with it a fundamental right in the union so formed to achieve every

Kameshwar Prasad v. State of Bihar, AIR 1952 SC 252.

⁴³ Constitution of India 1949, Article 19(1)(c).

⁴⁴ T.K Rangarajan v. State of Tamil Nadu, 2003 (5) SCALE 537

⁴⁵ *Aarif Shah*, *Supra* n. 6.

⁴⁶ Vijay M. Gawas, *Supra* n. 24.

⁴⁷ B.R. Singh v. Union of India, 1 1989 SCR Supl. (1) 257

⁴⁸ *Id.*

⁴⁹ Crompton Greaves Ltd. v. Workmen, AIR 1978 SC 1489

⁵⁰ T.K Rangarajan v. State of Tamil Nadu, 2003 (5) SCALE 537

⁵¹ B.R. Singh v. Union of India, 1 1989 SCR Supl. (1) 257

⁵² Constitution of India 1949, Article 43A.

⁵³ Radhe Shyam Sharma v. Post Master General, 1965 AIR 311

⁵⁴ All India Bank Employees Association v. National Industrial Tribunal, (1961) IILLJ 385 SC

⁵⁵ Rungarajan v. State of Tamil Nadu, 2003 (5) SCALE 537

⁵⁶ Rangarajan v. Tamil Nadu, 2003 (5) SCALE 537



objects for which it was formed with the legal consequences, that any legislation not falling within clause (4) of Art. 19 which might in any way hamper the fulfillment of those objects, should be declared unconstitutional and void under Art. 13 of the constitution. Is not a preposition which could be accepted as correct.”

However, Justice Ahmadi in *B.R. Singh v Union of India*⁵⁷ held “The right to form association or unions is a fundamental right under Article 19 (1) (c) of the Constitution. Section B of the Trade Union Act provides for registration of a trade union if all the requirements of the said enactments are fulfilled. The right to form associations or unions and provide for their registration was recognized obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade Unionists act mouth piece of labour” and if the same view is followed then right to strike is a statutory and common right.

Further the reasonability and extent of right to strike was made out in *Syndicate Bank v K. Unwsh Nuyak*⁵⁸ stating that “The strike or lockout is not to be resorted to because the party concerned has superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of rule of might is right”. Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute,

may be hard to justify..... The Strike or lockout as a weapon has to be used sparingly for redressed of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industries legislation such as the Act places additional restriction on strikes and lockouts in public utility services.”

However, another clinical view of the same was again taken in *B.L. Wadhera v State*⁵⁹, wherein Delhi High Court held that lawyers have no right to go on strike or give a call for boycott and they cannot even go on a token strike and observed specifically that the strike cannot be justified in the present day situations whether for just or unjust cause.

Therefore, there is no moral or equitable justification to go on strikes and apart from statutory rights, government employees cannot claim that they can take the whole society at ransom by going on strike even if there is injustice to some extent, no matter the same right has been given the status of basic right at international forum.

6. INTERNATIONAL PERSPECTIVE ON RIGHT TO STRIKE

The international labour organization came into existence in 1919⁶⁰, the recommendation and conventions of the ILO form a part of the

⁵⁷ B.R. Singh v Union of India, 1990 AIR 1 1989

⁵⁸ Syndicate Bank v. K. Unwsh Nuyak, 1995 AIR 319

⁵⁹ B.L. Wadhera v. State, AIR 2000 Delhi 266

⁶⁰ International Labour Organisation, *About the ILO*, International Labour Organisation (June 1, 2020) <https://www.ilo.org/global/about-the-ilo/language/index.htm>



international labour law.⁶¹ The convention of international labour organization stands mandatory to its members. However this convention passed the freedom of Association and protection of the Right to workers⁶² though there is no express provision on Right to Strike.⁶³ There are other conventions that mandates or promote the right to organize and collective bargaining.⁶⁴

The provision of Universal Declaration of Human Rights (UDHR) states that everyone has a right to work, to free choice of employment, to just and favourable condition of work to protection against unemployment. Similarly, everyone has the right to form and to join trade union for protection of his interest.⁶⁵ Therefore this means the right to form trade unions by the workers and the right to go on strike for the purpose of getting their demands fulfilled by the employer is recognized.⁶⁶

The International Covenant of Economic, Social and Cultural Rights (ICESCR) 1966, that the state parties to present the covenant that recognizes the right of everyone to enjoyment of just and favourable condition of work⁶⁷ and it also ensure the right to strike provided that it is exercised in conformity with the laws of the particular country⁶⁸.

The country like Indian had ratified an obligation to respect the law of international provisions related to protection interest of workers. Even after being a member to the above mentioned ILO⁶⁹ and other International conventions and treaties India has still refused to accept the right to strike as a fundamental right even though the preamble of the ILO places great importance on the right to strike as being fundamental to collective bargaining power of the workers.⁷⁰

7. CONCLUSION

The concept of right to strike derive its genesis from Industrial Revolution when people started realizing the essence of healthy working environment and whopping wages for their respective work. Even then the nature of the strike was quite violent which has remained intact till the present time. This weapon of strike is used by the worker class to collectively demonstrate for voicing their demands and grievances and thereby it has a close relevance to the concept of collective bargaining.

It can be seen that several efforts have been made to give a mandate to this right. At international forum different conventions and treaties have been made and signed by

⁶¹ International Labour Organisation, *Conventions and Recommendations*, International Labour Organisation (June 1, 2020) <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

⁶² International Labour Organisation, Convention No.87

⁶³ Bernard Gernigon, Alberto Otero & Horacio Guido, *ILO PRINCIPLES CONCERNING THE RIGHT TO STRIKE*, International Labour Review, 137 n. 4 (1998).

⁶⁴ International Labour Organisation, Convention No.98

⁶⁵ Universal Declaration on Human Right, Article 23.

⁶⁶ Sagar, *Supra* n. 14.

⁶⁷ Universal Declaration of Human Rights, Article 7.

⁶⁸ Universal Declaration of Human Rights, Article 8(1).

⁶⁹ International Labour Organisation, *Membership in the International Labour Organization*, (June 2, 2020) https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_441858.pdf

⁷⁰ International Labour Organisation, Preamble



various countries to give Right to Strike a legal mandate. It is therefore pertinent to know that though the international forum attach an utmost importance to the Right to Strike, there are some states that do not recognize it as a fundamental right which is necessary for the living.

In India per se the right to strike is not fundamental or absolute. This a conditional right that can be invoked after satisfying the pre requisites mentioned under the Industrial Dispute Act which provide mechanism of solving dispute to the workers and employees by conferring right to strike but it has to be applied judiciously an unreasonable approach would not be acceptable.

Moreover, it has been stated that the custodian of constitution also referred to the observation in Corpus Juris Secundum that the right to strike is a relative right which can be exercised with due regard to the rights of others. It is the weapon of last resort and should be used only when there is no other means left or when the available means failed to resolve to issue, so that the interest of the public at large do not get hampered.
