DILUTION OF THE RIGHT TO STRIKE UNDER THE INDUSTRIAL RELATIONS CODE, 2020: A THREAT TO COLLECTIVE BARGAINING

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ABSTRACT

The right to strike has traditionally been considered an important element of collective bargaining and industrial democracy. It allows employees to bargain with employers on a more or less equal basis. Though the right to strike is not an express right guaranteed by the Indian Constitution, the Indian courts and labour jurisprudence have always recognised its value in ensuring fair labour standards and peaceful industrial relations. A balanced regulatory approach, allowing strikes but imposing reasonable limits, especially on the public utility service, was traditionally followed in Indian labour law.

The introduction of the Industrial Relations Code, 2020 marks a considerable change in the legal system of strikes and industrial conflict. The Code therefore limits the exercising of the right to strike in a significant way by placing stringent procedural requirements on it. This includes mandatory prior notice, periods of protracted cooling off, and extensive prohibition during conciliation and adjudication proceedings on all establishments. The paper critically discusses the negative effects of dilution of the right to strike on collective bargaining, by diluting the bargaining power of workers, undermining trade unions and enhancing the inherent power inequality between employers and employees.

This paper will provide a doctrinal analysis of statutory provisions, judicial precedents, and international labour standards, especially those adopted by the International Labour Organization. This paper aims to find that whether the Industrial Relations Code, 2020 focuses on industrial order and employer discretion at the expense of any measure of worker participation, and is there a risk to the very principles of social justice and fair industrial relations in India.

Keywords: Collective Bargaining, Trade Unions, Industrial Disputes, Right to Strike.

Concept of Collective Bargaining and Right to Strike

The right to strike and collective bargaining are two pillars of modern labour laws and industrial relations that are inseparable. The two allow workers to collectively bargain the employment terms and to pressure negotiation that do not yield fair results. Collective bargaining offers the negotiation platform whereas the right to strike acts as the enforcement mechanism that makes negotiation meaningful. Without the right to strike, collective bargaining loses its meaning because the employer will not have enough reason to compromise the demands of the workers.[1]

Collective bargaining is referred to the process where workers, typically through trade unions, discuss and bargain with employers on matters concerning wages, conditions of work, working hours, job security and other employment terms. It is founded on the principle of collective action, because individual workers are usually not strong enough to negotiate with employers effectively. Through collective action, workers are in a better position to counter the natural power imbalance existing in the employment relationship.

The right to strike is typically perceived as the collective and temporary suspension of work in order to state grievances or impose demands in connection with employment conditions on the side of workers involved.[2] The right to strike is not clearly outlined in the Indian Constitution as a fundamental right but it has been considered as a statutory and legal right with reasonable restrictions. The Indian courts have established that strikes are a recognised form of collective action in the industrial relations system.

Legal Position of the Right to Strike under the Industrial Disputes Act, 1947

Before the Indian Industrial Relations Code, 2020, the right to strike in India was mainly under the Industrial Disputes Act, 1947.[3] This Act pointed into a cautious system of reconciling the right of workers to collective action with the necessity to organize the state order and stability of industry. Although the right to strike was not accepted as absolute or fundamental right, it was noted to be a legitimate method of collective action, which could be effectively regulated through statutory measures.

The Industrial Disputes Act, 1947 did not prohibit strikes outright. Instead, it regulated their

[1] Int'l Labour Org., *Collective Bargaining in Industrialised Market Economies* (1994).
[2] Industrial Relations Code, 2020, § 2(zk).
[3] Industrial Disputes Act, 1947, No. 14 of 1947 (India).

exercise through procedural requirements, particularly under Sections 22 and 23 of the Act.[4] Section 22 imposed restrictions on strikes in public utility services, requiring workers to give prior notice of strike and prohibiting strikes during the pendency of conciliation proceedings and for a specified period thereafter. The rationale behind this provision was to ensure continuity of essential services affecting public interest, such as transport, water, electricity, and communication.[5]

In contrast, non-public utility services were subject to comparatively fewer restrictions. Workers in such establishments could resort to strikes without prior notice, provided that the strike was not in contravention of prohibitions under Section 23. This differentiated approach recognised that excessive restrictions on strikes across all sectors could undermine workers' bargaining power and industrial democracy.[6] This Code aimed to bring a balance between workers' rights and regulation by legalizing strikes as a bargaining weapon and putting strict controls only where it was required in the interest of the people.

Regulation of the Right to Strike under the Industrial Relations Code, 2020

Industrial Relations Code, 2020 can be seen as a major change in the Indian strategy of governing strikes and industrial conflicts.[7] The Code aims at providing a standardized framework on employer-employee relation by consolidating and replacing previous labour legislations. Among the most significant alterations offered by the Code, the regulation of the right to strike has been exposed to more extensive procedural requirements and increased prohibitions.

Mandatory Prior Notice of Strike

Section 62 of the Industrial Relations Code mandates that workers must give a prior notice of strike at least fourteen days in advance.[8] This notice should indicate the date when the strike is to take place and be effective not more than sixty days to the day of notice.[9] When the workers want to strike after the sixty days validity expire, they have to make new notice and wait another

[4] Industrial Disputes Act, 1947, § 22 & 23.
[5] Industrial Disputes Act, 1947, § 2(n).
[6] O.P. MALHOTRA, *THE LAW OF INDUSTRIAL DISPUTES* vol. 1, at 133–140 (7th ed. 2018).
[7] Industrial Relations Code, 2020, No. 35 of 2020 (India).
[8] Industrial Relations Code, 2020, § 62(1).
[9] Industrial Relations Code, 2020, § 62(1)(a).

fourteen days. These conditions greatly postpone the right to strike and limit the responsiveness of workers to the unfair labour practices or to immediate alterations in the working conditions.

The notice requirement has various functions in the industrial relations system. First, it will give the employers ample time to be ready in case of disruption of production and services so they can make alternative arrangements, or mitigate the effects. Secondly, it establishes the mandatory cooling off during which parties may seek to defuse the situation by resorting to negotiation or conciliation. Third, it makes sure that the strikes are not spontaneous and are only made after careful consideration and official communication.

Prohibition During Dispute Resolution Proceedings

In addition to the notice requirements, the Industrial Relations Code, 2020 sets certain time frames within which the strikes are strictly forbidden. Workers and employers are prohibited from engaging in strikes during the pendency of conciliation proceedings before a conciliation officer and for a period of seven days after the conclusion of such proceedings.[10] In the same manner, strikes are not permitted in the course of a hearing before a Labour Court, Industrial Tribunal, or National Industrial Tribunal, and sixty days subsequent to any hearing.[11]

The ban is also applicable in cases when an arbitration process is still underway with an arbitrator, and extends to two months following the successful completion of the arbitration process, in case the involved parties agreed to arbitration.[12] Since dispute resolution in India can be long, such prohibitions may actually lead to a prolonged suspension of the right to strike. Though the specified aim of these provisions is to promote peaceful conflict resolution, their overall impact could be to neutralize the collective bargaining power of workers.

Expansion of Illegal Strikes

A strike must be considered illegal if it is in contravention of Section 62 or continued in violation of an order made under Section 42(7) of the Code.[13] Any strike performed without following the notice term or prohibited time is considered illegal, and workers and trade unions risk penalties and other disciplinary measures. Such an increased threat of illegality causes a

[10] Industrial Relations Code § 62(1)(b).
[11] Industrial Relations Code, 2020, § 62(1)(c).
[12] Industrial Relations Code, 2020, § 62(1)(d).
[13] Industrial Relations Code, 2020, § 63.

chilling effect on workers, who are not willing to use collective action even in situations where grievances are justified and negotiations are unable to resolve the matter.

Any worker who initiates, joins, or contributes to illegal strikes is punished by imprisonment of up to one month, a fine of not more than fifty thousand rupees, or both.[14] These fines are significantly higher than what they were in the Industrial Disputes Act, 1947, where a fine on an illegal strike by workers was limited to a maximum of fifty rupees, and for an employer to one thousand rupees.[15] The increased punishments in the new Code are a result of inflation over the decades and an indication of a more deterrent purpose.

In addition to criminal punishment, there is also civil punishment of illegal strikes. The workers involved in an illegal strike through the Industrial Relations Code 2020 lose their right to receive wages during the strike period and can be taken into disciplinary action which includes being dismissed. In the case of *India General Navigation and Railway Company Ltd v. Their Workmen,*[16] the Supreme Court held that the workers lose all their rights to wages or compensation and can be punished by being fired or dismissed.

Impact of Dilution of the Right to Strike on Collective Bargaining

Effectiveness of collective bargaining is not only related to the presence of the negotiation mechanisms but also to the relative bargaining power of the parties. Employers have economic and structural power which is inherent in industrial relations, and workers depend mainly on collective action to secure equitable terms of employment. The right to strike is the most important tool by which workers are able to balance this inequality.[17] Weakening of this right thus has a direct and far-reaching impact on collective bargaining.

1. **Erosion of Bargaining Power of Workers**

The long procedural demand implemented by the Industrial Relations Code, 2020 seriously undermines the bargaining power of workers. Immediate and efficient strike action is diluted by mandatory pre-cooling of action and lengthy cooling-off. This leads the employers to no longer feel the urgency or sincerity of negotiation because they understand that workers have

[14] Industrial Relations Code, 2020, § 67.
[15] Industrial Disputes Act, 1947, § 26.
[16] India Gen. Navigation & Ry. Co. Ltd. v. Their Workmen, AIR 1960 SC 219.
[17] K.D. Srivastava, *Law Relating to Trade Unions and Unfair Labour Practices* 312 (6th ed. 2021).

high legal hurdles to jump over before engaging in collective action.[18] Without a serious threat of strike, collective bargaining becomes weak. Instead of an equal interaction between the parties, negotiations become highly reliant on the goodwill of the employers. This defeats the entire justification of collective bargaining as a means of reaching fair labour results.[19]

2. Shift in Power Balance in Favour of Employers

Dilution of the right to strike changes the balance of power in industrial relations by giving an undue advantage to employers. The requirement of advance notice allows the employer to plan counter-measures, including the recruitment of temporary or contract employees, reworking the production schedule, or relocation.[20] These measures greatly diminish the economic power of a strike, thus, making it less valuable as a bargaining weapon. It therefore puts employers in a position where they can postpone negotiations or avoid worker demands without the immediate consequence. This change of power endangers the principle of equality, on which collective bargaining is based, and turns it into a managerial process instead of a negotiation.

3. Weakening of Trade Unions

Trade unions are at the centre of collective bargaining since they are involved in representing the interests of workers and organising collective action. Nevertheless, in case the right to strike is severely curtailed, trade unions are deprived of their most powerful instrument of pressure. This reduces their institutional relevance and undermines their capacity to mobilise workers. In the long run, these limitations can result in a decrease in union membership and confidence of the worker in collective representation. The undermining of the trade union movement also lowers the effectiveness of collective bargaining, and this becomes a vicious circle where workers become more and more incapable of negotiating effectively with employers.

4. Chilling Effect on Collective Action

The extended nature of illegal strikes under the Industrial Relations Code generates a chilling effect on the readiness of the workers to enter into collective action. Fear of legal action, disciplinary measures and wage losses are part of the factors that discourage the workers to engage in strikes even when the grievances are justified and unmet. Such an atmosphere of

[18] V.G. Goswami, *Labour and Industrial Law* 521–525 (12th ed. 2019).
[19] B.R. Ghaiye, *Law and Procedure of Departmental Enquiries* 389–392 (2020).
[20] S.C. Srivastava, *Industrial Relations and Labour Laws* 447–452 (7th ed. 2021).

legal fear and uncertainty undermines solidarity and discourages workers to demand their rights by collective bargaining. Consequently, the negotiation process is held under a situation where workers are limited by fear as opposed to being empowered by the collective power.

5. Reduction of Collective Bargaining to a Formal Exercise

The aggregate effect of these combined factors is that collective bargaining may become a mere formality. Although the mechanisms of negotiation might persist in theory, they are largely rendered ineffective in reality when the right to strike does not possess any significance. Employers can indulge in the processes of bargaining in order to meet the requirements of the law without any real intention to serve the needs of workers. This is contrary to the aims of the labour law which is not only industrial peace but also fairness, dignity of labour and social justice.

Judicial Interpretation of the Right to Strike

Indian courts have always maintained that right to strike is not a fundamental right in the constitution. In *All India Bank Employees' Association v. National Industrial Tribunal*, the Supreme Court declared that the right to strike did not necessarily follow the right to form associations which is a fundamental right in Article 19(1)(c).[21] Nevertheless, the Court did not reject the validity of strike as a kind of collective action that is under statutory regulation.

In *Crompton Greaves Ltd. v. Workmen*, the Supreme Court recognised that strikes are a recognised instrument in the possession of labour, but were limited by legislation.[22] In the case of *Bharat Petroleum Corp. Ltd. v. Maharashtra General Kamgar Union (1999)*[23], the court ruled that engaging in illegal strikes constitutes misconduct that can lead to disciplinary measures, provided the principles of natural justice are upheld.

In the case of *Kameshwar Prasad v. State of Bihar (1962)*[24], the Supreme Court clarified that while peaceful protests are protected under the rights to freedom of speech and assembly as per Articles 19(1)(a) and 19(1)(b), the act of striking itself is not constitutionally safeguarded. The

[21] All India Bank Employees' Ass'n v. Nat'l Indus. Tribunal, A.I.R. 1962 S.C. 171 (India).
[22] Crompton Greaves Ltd. v. Workmen, (1978) 3 S.C.C. 155 (India).
[23] Bharat Petroleum Corp. Ltd. v. Maharashtra Gen. Kamgar Union, (1999) 8 SCC 552 (India).
[24] Kameshwar Prasad and Others vs The State of Bihar and Another, AIR 1962 SC 1166.

Court supported restrictions on strikes by government workers, emphasizing that such limitations are in the broader public interest.

This view was further affirmed in *T.K. Rangarajan v. Government of Tamil Nadu,* where the Supreme Court firmly stated that government employees do not possess a fundamental, statutory, or moral right to strike.[25] The Court noted that strikes are often misused, leading to disorder and administrative failure, and that societal interests should not be compromised by employee demands.

Constitutional Labour Law Perspective

The right to strike is not a fundamental right which is specifically identified in the Indian Constitution. The court has maintained in *All India Bank Employees' Association v. National Industrial Tribunal* that the right to strike is not part of the freedom of association as expressed in Article 19(1)(c). Article 19(1)(c) ensures the freedom to form associations, and this would be made very ineffective in case the trade unions are denied the means to operate in a meaningful manner.

In addition, Article 21 that provides the right to life and personal liberty has been interpreted judicially to incorporate the right to livelihood and the right to dignified living.[26] A dignified life includes fair wages, reasonable conditions of working, and job security.[27] The use of collective bargaining, which is facilitated by the threat of a strike, is instrumental in the achievement of these conditions. Any legal system that constrains workers collective agency can thus be considered as incompatible with the larger constitutional vision of social and economic justice.[28]

The Directive Principles of State Policy, specifically, Articles 38, 39, and 43, underline the role of the State in enhancing social wellbeing, reducing inequalities and providing humane and fair working conditions.[29] These goals are likely to be promoted through labour laws that ensure workers are not exploited and they are involved in making decisions about employment conditions.

[25] T.K. Rangarajan v. Gov't of Tamil Nadu, (2003) 6 S.C.C. 581 (India).
[26] Olga Tellis v. Bombay Mun. Corp., A.I.R. 1986 S.C. 180 (India).
[27] Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).
[28] INDIA CONST. preamble.
[29] INDIA CONST. arts. 38, 39, 43.

International Labour Law Perspective

International labour standards, especially those created by the International Labour Organization (ILO), offer significant normative advice on how collectives labour rights should be controlled. Even though, India is not a signatory to ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, it is an ILO member and has repeatedly stated its adherence to core labour principles.[30]

The ILO has always regarded the right to strike to be an inherent extension of the right to collective bargaining. The supervisory bodies at the ILO stated that the right to strike can be limited under reasonable grounds of public order or the provision of essential services but these limits should be reasonable, proportional and strictly limited. Blanket or excessive procedural conditions which will in effect neutralise strike action are not encouraged.

Conclusion and Suggestions

The right to strike is being diluted under the Industrial Relations Code, 2020, and this has serious consequences on the future of collective bargaining in India. The Code threatens to neutralise the most powerful bargaining weapon in the possession of workers by imposing strict procedural limitations in every sector. When employers already have high levels of economic and structural power, restricting the ability of workers to act together only further shifts the scales of industrial relations towards management.

The discussion that has been carried out in this paper gives an outcome that contradicts the aims of labour welfare legislations and constitutional vision of social and economic justice. To overcome these issues, it is proposed that the regulatory framework of strikes be revisited to re-establish a differentiated role, especially through restricting strict limitations to essential or public utility services. The procedural requirements ought to be shaped in such a way that they support real dispute resolution and do not slow down or suppress the collective action.

The harmonisation of domestic labour law with globally recognised standards of labour law would also enhance the industrial democracy and keep the collective bargaining process meaningful and effective. In the end, the maintenance of industrial peace does not lay in the oppression of the rights of the workers but in the establishment of a just and balanced system

[30] Int'l Labour Org., ILO Declaration on Fundamental Principles and Rights at Work (1998).

where both the employer and the worker is in a position to negotiate within fairly equal situation.