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SECTION 62 OF THE INDUSTRIAL RELATIONS CODE, 2020 AND THE EROSION OF COLLECTIVE BARGAINING

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Abstract

The right to strike currently holds an unstable position in Indian labour law. Courts have declined to recognise it as a fundamental right, yet successive legislative frameworks have preserved it as a statutory entitlement, subject to procedural conditions.[616] The consolidation of twenty-nine central labour statutes into four Labour Codes between 2019 and 2020 presented Parliament with an opportunity to rationalise this framework. The Industrial Relations Code, 2020 (hereinafter "the Code" or "IRC"), however, has moved in the opposite direction in one critical respect. Section 62 universalises the pre-strike notice requirement that was previously confined to Public Utility Services under the Industrial Disputes Act, 1947 (hereinafter "IDA"). When read alongside the automatic initiation of conciliation proceedings triggered by that notice, and the prohibition on striking during those proceedings, Section 62 creates what this paper terms a "Notice-Conciliation Trap." This trap renders the right to strike procedurally illusory for workers in all industrial establishments.

This paper pursues three related objectives. First, it situates Section 62 within the historical development of Indian strike law by comparing it against the IDA's regime. Second, it measures Section 62 against the normative principle of collective bargaining; that workers must possess credible coercive capacity to negotiate on equal terms with employers. Third, it draws a comparative analysis with South Africa's Labour Relations Act 66 of 1995 (hereinafter "LRA"), which similarly regulates strikes through notice and conciliation but does so in a manner that preserves rather than extinguishes the right. The paper also addresses the controversy surrounding the expanded definition of "strike" under Section 2(zk) of the Code and concludes with a proposal for legislative reform.

Statutory Framework Revolving Around the Right to Strike

The Industrial Disputes Act, 1947

Under the IDA, the regulation of strikes operated on a graduated basis, distinguishing between workers in Public Utility Services (PUS) and those in general industrial establishments. Section 2(n) of the IDA defined PUS to include railways, postal services, water, lighting, power, sanitation, hospitals, fire-brigade, and insurance services.[617] Section 22(1) prohibited workers in PUS from going on strike without first giving the employer notice within six weeks of the intended action and further barred any strike within fourteen days of giving such notice, during the pendency of conciliation proceedings before a Conciliation Officer, and for seven days after the conclusion of such proceedings.[618] The legislative rationale for this graduated approach was the particular vulnerability of public utility services to sudden disruption and the social harm that such

[616] *All India Bank Employees' Association v National Industrial Tribunal* AIR 1962 SC 171; *B R Singh v Union of India* (1989) 4 SCC 710.

[617] Industrial Disputes Act 1947 (Act 14 of 1947), s 2(n).

[618] *Ibid*, s 22(1)(a)–(d).

disruption could cause to third parties and to the public at large.[619]

For all other industrial establishments, Section 23 of the IDA imposed a more limited set of prohibitions. It barred strikes during the pendency of conciliation proceedings before a Board of Conciliation, arbitration proceedings, and proceedings before a Labour Court, Industrial Tribunal, or National Industrial Tribunal, as well as during any period in which an award of such a body remained in operation.[620] However, Section 23 did not require workers to serve advance notice before striking. A worker in a non-PUS establishment could legally go on a spontaneous or "flash" strike, provided no proceedings under the IDA were already pending. This distinction was deliberate. The legislature recognised that the element of surprise, or the credible and immediate threat of work stoppage, was a legitimate instrument of collective bargaining, and that its removal from non-PUS workers would negatively affect the bargaining power of workers.[621]

The definition of "strike" under Section 2(q) of the IDA was confined to a concerted refusal, or a refusal under common understanding, by workers to continue to work or to accept employment, together with a concerted casual leave taken by fifty or more workers on any given day.[622] The numerical threshold of fifty workers operated as a meaningful restraint on the breadth of the definition and excluded spontaneous or small-scale coordinated leave from the ambit of strike regulation.

The Industrial Relations Code, 2020: Universalisation and Expansion

Section 62(1) of the IRC repeals and replaces the differentiated framework of Sections 22 and 23 of the IDA. It requires any worker who intends to go on strike to give notice thereof to the employer at least fourteen days before the commencement of the strike, regardless of whether the establishment is a PUS or any other industrial establishment.[623] This universalisation of the notice requirement is the central statutory innovation under examination. The Code retains the prohibition on striking during the pendency of conciliation proceedings and for seven days after their conclusion,[624] and it mandates that a Conciliation Officer, upon receipt of the strike notice, shall commence conciliation proceedings.[625] The legal chain that follows from the combination of these provisions is examined in detail in the next section.

The definition of "strike" has also been substantially expanded. Section 2(zk) of the IRC defines "strike" to include, in addition to a concerted refusal to work, the concerted casual leave taken on a given day by fifty per cent or more of the workers employed in an industry.[626] Two points are significant. First, the threshold has shifted from the IDA's fifty workers—an absolute number—to fifty per cent of the workforce, a proportionate figure. In smaller establishments, this may produce a lower absolute threshold than the IDA contemplated. Second, by bringing mass casual leave within the definition of "strike," the Code subjects forms of collective protest that were previously unregulated—or governed only by the terms of the individual contract of employment—to the full apparatus of strike regulation, including the fourteen-day notice requirement and the prohibition during conciliation.

The Notice-Conciliation Conundrum and the Normative Principle of Collective Bargaining

The normative principle of collective bargaining rests on the proposition that the structural inequality between employer and worker must be corrected, at least partially, through the ability

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619 Statement of Objects and Reasons, Industrial Disputes Act 1947; V M Mohan Kumar, 'The Labour Codes 2020: A Critical Analysis' (2021) 63 *Journal of the Indian Law Institute* 85, 92.
620 Industrial Disputes Act 1947, s 23(a)–(f).
621 K D Srivastava, *Commentaries on the Industrial Disputes Act 1947* (Eastern Book Company 2012) 487.
622 Industrial Disputes Act 1947, s 2(q).
623 Industrial Relations Code 2020 (Act 35 of 2020), s 62(1).
624 *Ibid*, s 62(3).
625 *Ibid*, s 63(1).
626 *Ibid*, s 2(zk).

of workers to act collectively.[627] The ILO's Committee on Freedom of Association has consistently affirmed that the right to strike is an intrinsic corollary of the right to organise, and that legislation which effectively deprives workers of the practical capacity to strike undermines collective bargaining in its entirety.[628] The right to strike functions not merely as a last resort but as the credible threat that gives substance to collective negotiations. Where that threat is removed, the employer is placed in a position of permanent security against work stoppages, which distorts the bargaining process at its foundation.

The Supreme Court of India has not been consistent in its treatment of the right to strike. In *All India Bank Employees' Association v National Industrial Tribunal*, the Court held that the right to go on strike was not a fundamental right protected by Article 19(1)(c) of the Constitution.[629] In *B R Singh v Union of India*, the Court partially qualified this position, holding that the right of a trade union to carry on its activities under Article 19(1)(c) necessarily encompasses the right to demonstrate and to go on strike, and that these activities could be regulated but not altogether prohibited.[630] The decision in *T K Rangarajan v Government of Tamil Nadu* subsequently held, in the context of government employees, that there was no fundamental right, no statutory right, and no moral justification for a strike.[631] While the *Rangarajan* ratio is frequently invoked in broader contexts, it was rendered specifically in relation to essential services provided by public employees, and its extension to all workers in all industrial establishments would sit uneasily with the qualified recognition extended by *B R Singh*.

The Notice-Conciliation Trap operates in the following manner. Under Section 62(1), a worker who intends to strike must give fourteen days' advance notice to the employer. Under Section 63, upon receipt of that notice, the Conciliation Officer is duty-bound to commence conciliation proceedings.[632] Under Section 62(3), no worker may strike during the pendency of those proceedings, or for seven days after their conclusion. The Code does not prescribe a time limit within which the Conciliation Officer must conclude proceedings. An officer who commences proceedings on receipt of a notice can, in practice, extend the conciliation process indefinitely, and for as long as those proceedings remain formally open, the strike remains illegal.

Furthermore, Section 62(3) also prohibits strikes during the pendency of proceedings before an Industrial Tribunal or National Industrial Tribunal and for sixty days after the conclusion of such proceedings, or during any period in which an award is in operation.[633] These provisions, read together, create a near-continuous state of legal prohibition. A notice triggers conciliation; a failed conciliation may be followed by a reference to a Tribunal; Tribunal proceedings typically last months or years; awards operate for the period of their currency. The worker who complies with the law and serves the required notice finds the law systematically closing every subsequent window for lawful action.

This contrasts with the earlier framework under the IDA. Under Section 22 of the IDA, the notice requirement in PUS was accompanied by a clearly finite window of prohibition: no strike within fourteen days of notice, and no strike during discrete and time-bound conciliation proceedings. For non-PUS workers, the absence of any notice requirement meant that the employer could not use the dispute resolution machinery pre-emptively to forestall collective action. The flash strike was not merely a tactical option; it was a structural safeguard against the manipulation of procedure by employers who

[627] Simon Deakin, Gillian Morris, *Labour Law* (7th edn, Hart Publishing 2021) 786.
[628] ILO Committee on Freedom of Association, *Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (6th edn, ILO 2018) para 752.
[629] *All India Bank Employees' Association v National Industrial Tribunal* AIR 1962 SC 171, para 17.
[630] *B R Singh v Union of India* (1989) 4 SCC 710, 719–720.
[631] *T K Rangarajan v Government of Tamil Nadu* (2003) 6 SCC 581, para 13.
[632] Industrial Relations Code 2020, s 63(1).
[633] *Ibid*, s 62(3)(b)–(c).

had every incentive to ensure that conciliation never formally concluded.

In *Gujarat Steel Tubes Ltd v Gujarat Steel Tubes Mazdoor Sabha*, the Supreme Court held that a strike, even if illegal, may not justify dismissal where the employer's own conduct or unfair labour practices provoked the workers into action.[634] The case recognised that workers may resort to collective action in response to employer provocation, and that courts must assess proportionality rather than legality alone. The significance of this decision for present purposes is that it acknowledged a residual space for industrial action outside the formal framework of legality. Section 62, by extending the notice requirement universally and attaching automatic conciliation to it, removes this residual space: any strike without notice is illegal, and any strike with notice is suspended indefinitely by the ensuing conciliation.

In *Syndicate Bank v K Umesh Nayak*, the Supreme Court held that participation in an illegal strike could justify dismissal, reinforcing the serious legal consequences that flow from the legality or illegality of a strike.[635] The convergence of an expansive prohibition under Section 62 with the criminal penalties prescribed under Section 86 of the Code for participation in illegal strikes[636] means that workers face a structural deterrent on both sides: complying with Section 62 yields no practical right to strike, while non-compliance attracts dismissal and criminal liability. The Code, in this sense, codifies the most restrictive judicial interpretation of the right to strike—that it may be extensively regulated—without preserving the residual safeguard that *Gujarat Steel Tubes* and *B R Singh* had maintained: that regulation must not amount to a wholesale prohibition.

A Comparative Perspective: South Africa's Labour Relations Act, 1995

The Constitutional Foundation

South Africa presents a useful comparator for two reasons. First, like India, it is a developing country that undertook substantial legislative consolidation of its labour laws in the post-apartheid, post-liberalisation period.[637] Second, unlike India, it has constitutionally entrenched the right to strike. Section 23(2)(c) of the Constitution of the Republic of South Africa, 1996 provides that every worker has the right to strike.[638] This constitutional foundation shapes the interpretive framework within which the LRA must operate, whereby procedural requirements for the exercise of the right to strike cannot be construed so as to nullify the constitutional right itself.

The Statutory Framework Under the LRA

Chapter IV of the LRA governs collective bargaining and strikes. Section 64(1) of the LRA provides that every employee has the right to strike if the dispute in question has been referred to a council or to the Commission for Conciliation, Mediation and Arbitration (CCMA) and either a certificate stating that the dispute remains unresolved has been issued, or a period of thirty days has elapsed since the referral; and if notice of the commencement of the strike has been given to the employer in the prescribed form not less than 48 hours before its commencement.[639] In the case of strikes in essential services, this notice period is extended to seven days.[640]

The structure of Section 64 differs from Section 62 of the IRC in one fundamental respect. The conciliation process under the LRA is designed to terminate in one of two defined outcomes: either resolution, or the issuance of a certificate of non-resolution that unlocks the right to strike. The thirty-day period operates as a maximum, not a

[634] *Gujarat Steel Tubes Ltd v Gujarat Steel Tubes Mazdoor Sabha* (1980) 2 SCC 593, 634–635.
[635] *Syndicate Bank v K Umesh Nayak* (1994) 5 SCC 572, 582.
[636] Industrial Relations Code 2020, s 86.
[637] Sangeeta Bhatt, 'Consolidation of Labour Laws in India: The Four Labour Codes' (2021) 34 NATIONAL SCHOOL OF INDIA REVIEW 110, 114.
[638] Constitution of the Republic of South Africa 1996, s 23(2)(c).
[639] Labour Relations Act 66 of 1995 (South Africa), s 64(1)(a)–(b).
[640] *Ibid*, s 72(1)(b).

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minimum; if the CCMA issues a certificate before thirty days have elapsed, workers may proceed to serve notice of strike immediately. The LRA does not permit the employer or the state to extend the conciliation process indefinitely in order to forestall action. If thirty days pass without a settlement, workers are entitled to proceed to strike as of right, regardless of whether proceedings remain formally on foot.

In *National Union of Metalworkers of South Africa v Bader Bop (Pty) Ltd*, the Constitutional Court held that the right to strike is a fundamental right that must be interpreted generously and that restrictions on it must be strictly construed.[641] The Court emphasised that the procedural requirements of Section 64 serve the purpose of facilitating a genuine attempt at resolution before industrial action, not of serving as barriers to the exercise of the constitutional right.

Contrasting the South African Framework with Section 62 of the IRC

The contrast with Section 62 of the IRC is instructive. Both regimes require advance notice; both connect that notice to a conciliation process; and both prohibit strikes during the pendency of conciliation. The difference lies in the legal consequence of an inconclusive conciliation. Under the LRA, an inconclusive conciliation enables the right to strike: workers who have referred a dispute to the CCMA and received a certificate of non-resolution are in a stronger legal position than before, because they may now strike on 48 hours' notice. Under the IRC, an inconclusive conciliation extends the prohibition: workers who have served notice and participated in conciliation remain barred from striking for as long as the proceedings continue, with no statutory mechanism to convert an unresolved conciliation into an entitlement to strike.

This structural difference produces a material difference in incentives. Under the South African framework, the employer has an incentive to engage with conciliation in good faith, because failure of the process leads to a lawful strike. Under the Indian framework, the employer's rational strategy is to allow the Conciliation Officer to prolong proceedings, ensuring that the conciliation never formally concludes, thereby permanently preventing the workers from striking lawfully. The law, in effect, creates an incentive structure that rewards procedural bad faith.

It should be noted that India has not ratified the ILO's Freedom of Association and Protection of the Right to Organise Convention (Convention No 87, 1948) or the Right to Organise and Collective Bargaining Convention (Convention No 98, 1949).[642] South Africa ratified Convention No 87 in 1996.[643] While non-ratification does not render these standards inapplicable as persuasive authority in statutory interpretation, it reflects a different legislative disposition toward the international normative framework on collective bargaining.

<u>The Expanding Definition of "Strike"</u>

The controversy surrounding Section 2(zk) of the IRC does not stand alone; it is the structural complement of the Notice-Conciliation Trap. If workers cannot strike with notice because notice triggers a potentially indefinite conciliation, and cannot engage in collective protest without notice because mass casual leave is now a "strike" requiring prior notice; then the Code forecloses every avenue of lawful collective action.

The inclusion of mass casual leave within the definition of "strike" was a deliberate legislative choice. Under the IDA, mass casual leave by fifty or more workers was included within the definition of "strike" under Section 2(q), but this provision applied to a fixed absolute number of workers and did not extend to all forms of coordinated leave-taking. Under Section 2(zk) of

[641] *National Union of Metalworkers of South Africa v Bader Bop (Pty) Ltd* (2003) 24 ILJ 305 (CC), para 35.
[642] ILO, 'Ratifications for India', ILO NORMLEX) (https://normlex.ilo.org), accessed April 8, 2026.
[643] ILO, 'Ratifications for South Africa', ILO NORMLEX, (https://normlex.ilo.org), accessed April 8, 2026.

the IRC, the threshold is proportionate, amounting to fifty per cent of the workforce, which makes the provision considerably more expansive in small and medium enterprises. A workforce of twenty workers, of which ten take casual leave on the same day, is technically classified as participating in a strike under the Code.

The legal consequences are significant. A "strike" commenced without notice under the Code is an illegal strike, which may attract dismissal and criminal penalties under Section 86. Workers engaged in casual leave-taking, which is an entitlement under the terms of their employment, may find themselves classified as participants in an illegal strike if their collective exercise of that entitlement crosses the fifty per cent threshold. This creates a structural anomaly: a legally vested statutory right is converted into an illegal act by the collective coincidence of its exercise. Courts have not yet authoritatively resolved this tension under the IRC, since the Code has not been fully notified in all states.[644]

Legal scholars have identified this as producing a chilling effect on collective worker agency.[645] The very possibility that casual leave-taking might be construed as a strike creates a deterrent against any coordinated collective behaviour, regardless of whether there is any intent to exert industrial pressure on the employer. This result is difficult to reconcile with the principle articulated in *B R Singh* that trade union activities, which necessarily include collective action, may be regulated but not prohibited.[646] The combined effect is what this paper terms a regime of forced industrial peace: workers who comply with Section 62 are trapped in a conciliation from which there is no lawful exit; workers who do not comply, including those who take mass casual leave collectively, are in breach of the statute. The employer, by contrast, faces no equivalent procedural constraint under the Code.

<u>Suggested Legislative Measures for Amendment</u>

The analysis above identifies a specific and limited reform that would address the core structural defect in Section 62. The problem is not the notice requirement as such. Requiring advance notice of a strike serves recognised purposes: it provides the employer with an opportunity to make contingency arrangements, creates a cooling-off period that may allow a dispute to be resolved short of industrial action, and allows the state to facilitate conciliation. These purposes are reflected in the ILO's own guidance on the permissible regulation of strikes.[647]

The problem is that the IRC provides no procedural exit from conciliation. This gap can be addressed by inserting a "deemed failure" clause into Section 62, modelled in part on the South African approach. Such a clause would provide that if a Conciliation Officer is unable to bring the parties to a settlement within a fixed period from the receipt of the strike notice—thirty days would be consistent with the South African model—the proceedings shall be deemed to have concluded without resolution. Upon such deemed conclusion, workers would be entitled to commence a strike after a further notice of 48 hours. This reform would preserve the cooling-off function of the notice requirement without allowing the process to serve as an indefinite prohibition.

Additionally, the definition of "strike" under Section 2(zk) requires amendment. The inclusion of mass casual leave should be removed, or at minimum limited to circumstances where there is evidence of a concerted design to exert industrial pressure, rather than the mere coincidence of workers exercising their statutory leave entitlement on the same day. The current

[644] Centre for Workers' Management, 'The Labour Codes and the Right to Strike: A Policy Brief' (CWM, March 2025) 7–9.
[645] Ramapriya Gopalakrishnan, 'Labour Law Reform in India: A Critical Assessment of the Four Codes' (2022) 35 *International Journal of Comparative Labour Law and Industrial Relations* 287, 301.
[646] *B R Singh v Union of India* (1989) 4 SCC 710, 720.
[647] ILO Committee on Freedom of Association (n 13) para 793.

definition conflates the exercise of a legal right with the act of striking, and this conflation undermines both the right to casual leave and the right to collective action.

A further reform, essential to the normative coherence of Section 62, would be to impose a good faith bargaining obligation on employers during conciliation. The absence of such an obligation in the IRC—in contrast with the explicit duty recognised in the LRA[648]—means that the conciliation process operates asymmetrically: workers are bound by its continuation, but employers face no corresponding obligation to engage in it meaningfully. This asymmetry entrenches the structural imbalance that collective bargaining is designed to correct.

Conclusion

Section 62 of the Industrial Relations Code, 2020, in its current form, does not merely regulate the right to strike—it creates a procedural architecture that makes the lawful exercise of that right practically impossible for workers in any industrial establishment. By universalising the notice requirement and attaching it to an automatic and potentially indefinite conciliation process, the Code removes the element of credible coercive capacity that is the foundation of any genuine system of collective bargaining. The expanded definition of "strike" under Section 2(zk) closes the remaining avenues of collective protest by bringing mass casual leave within the ambit of strike regulation.

The comparative analysis with South Africa's LRA demonstrates that a regulatory framework for strikes does not need to produce this result. The LRA's use of a time-limited conciliation with a defined outcome—the certificate of non-resolution—preserves the right to strike precisely because it ensures that the procedural requirements lead to a determinate conclusion rather than an indefinite prohibition. India's failure to constitutionally entrench the right to strike, compounded by the procedural design of the IRC, has produced a framework that is structurally biased against collective worker agency.

The reforms proposed in this paper—a deemed failure clause, a narrowed definition of "strike," and a good faith bargaining obligation on employers—are modest in scope and consistent with the IRC's stated objective of promoting industrial harmony. Genuine industrial harmony requires a balance of power between the parties to collective bargaining. Section 62, as it stands, achieves the suppression of one side's bargaining leverage rather than its equilibrium.

[648] Labour Relations Act 66 of 1995, s 64(2); Simon Deakin, Gillian Morris, *Labour Law* (7th edn, Hart Publishing 2021) 821.