

राष्ट्रीय मजदूर कांग्रेस
INDIAN NATIONAL TRADE UNION CONGRESS
(I.N.T.U.C.) NATIONAL HEADQUARTERS

Phone : 2374-7767/68
Fax : 2336-4244
E-mail : intuchq@gmail.com
Website : www.intuc.net



"SHRAMIK KENDRA"
4, BHAI VEER SINGH MARG,
NEW DELHI- 110 001

23 October 2023

The Director General
International Labour Organization
Geneva

Dear Director General,

We thank you for your letter to all ILO Member States dated 31 August that was brought to our attention. In this letter you confirmed that you have received the request from the ILO Workers' group of 12 July 2023 for the urgent referral of the dispute over the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) (C.87) in relation to the right to strike to the International Court of Justice (ICJ) for decision, in accordance with article 37(1) of the ILO Constitution. The Workers' group also requested this matter to be put urgently on the agenda of the Governing Body for decision. This request has in the meantime received support from 36 Governments from different regions, recognising the importance of legal certainty on this issue for all constituents.

We also express our appreciation for the background report that was prepared by your Office to inform the decision during the Special Meeting of the Governing Body on 10 November 2023 and welcome your invitation to all Governments and employers' and workers' organisations concerned to send in comments.

Indeed, the right to strike is of the utmost importance for workers in India and the inability of the ILO to supervise this right, as a consequence of the dispute, in our national context is potentially seriously affecting labour relations in our country.

In India, unlike America, the right to strike is not expressly recognized by the law.

In India, the right to protest is a fundamental right under Article 19 of the Constitution of India. But right to strike is not a fundamental right but a legal right and with this right statutory restriction is attached in the Industrial Dispute Act, 1947.

Strikes arise for a number of reasons, though principally in response to economic conditions (defined as an economic strike and meant to improve wages and benefits) or labour practices (intended to improve work conditions).

The right to strike in the Indian constitution set up is not an absolute right but it flows from the fundamental right to form a union.

Moreover, in the case of BR Singh v. Union of India, AIR 1990 SC 1, it was further upheld that the right to strike at its best is a statutory right and cannot be equated to a fundamental right. Strike as a right is often seen as a means that must be employed as a last resort by the employees.

As per new Labour code - Workers should notify their employer about any upcoming strike at least fourteen days before going on strike, and the strike should happen within sixty days of the notice.

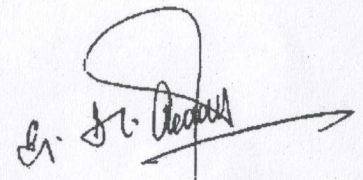
Industrial Relations Code prohibits the right to strike and demands that unions give a 60-day notice to strike. When a notice leads to automatic conciliation and striking during conciliation is illegal. Workers cannot strike when: conciliation proceedings are pending before a conciliation officer, and seven days after they are completed; or Legal proceedings are pending before an Industrial Tribunal/National Industrial Tribunal or arbitrator, and sixty days after they are completed. The Code thus destroys the freedom of association guaranteed to Indian citizens under the Constitution.

Also, the new Code prohibits employment of contract workers in any core activity but allows for their employment in a specified list of non-core activities such as canteen, security and sanitation services. No clarity on recognising unions, providing welfare schemes. Also, when it comes to trade unions, the Code has no criteria to 'recognise' them for formally negotiating with employers despite its registering them.

Trade Unions have claimed and seriously oppose that these Labour Codes are anti-worker as they paved the way for a "hire and fire" policy and restrict the right to strike. The new norms would adversely affect the workers by allowing easy retrenchment and exempting certain categories of companies from adherence to the laws that safeguard their rights and imposing conditions of virtual slavery on the working people.

We, therefore, wholeheartedly support the request for a referral from our Workers' representatives in the Governing Body and call for an urgent decision by the Governing Body to ensure an immediate referral of the dispute to the ICJ. In addition, since we firmly believe that the right to strike is an essential part of freedom of association and already elaborated by the ILO supervisory bodies, there will be no added value in a protocol complementing the convention to qualify the right to strike. On the contrary, any such attempt would generate a conflict with C.87 already guaranteeing the right to strike as a fundamental principle and right at work. This would further exacerbate the dispute rather than solve it. We are convinced that legal certainty through an advisory opinion of the ICJ that is binding on the ILO is urgently required.

Yours sincerely,



(Dr. G. Sanjeeva Reddy)
President