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Restriction or Prohibition? Testing the Strike Notice Regime of the Industrial Relations Code, 2020 Against Articles 14, 19(1)(c) and 19(4)

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ABSTRACT :

The Industrial Relations Code 2020 extends the mandatory fourteen-day strike notice, which the Industrial Disputes Act 1947 confined to public utility services, to every industrial establishment. It also brings concerted casual leave by fifty per cent or more of the workers within the definition of strike, and it attaches criminal penalties to strikes that break section 62. This paper tests that regime against articles 14, 19(1)(c) and 19(4) of the Constitution. The Supreme Court has repeatedly held that there is no fundamental right to strike, so the paper does not rest on such a right. It argues instead that the regime is constitutionally vulnerable on three counts: the universal notice rule fails the necessity stage of proportionality, the fifty per cent threshold lacks an adequate determining principle, and the penalties do not grade the seriousness of a breach. Comparison with ILO standards and recent reforms in the United Kingdom supports this view. The paper proposes tiered notice, a functional test for casual leave, time-bound conciliation and graded penalties.

Keywords: *right to strike; Industrial Relations Code 2020; proportionality; manifest arbitrariness; freedom of association; labour law*

Part I: Introduction

On 21 November 2025, the Industrial Relations Code 2020 (IR Code) came into force. It repealed the Industrial Disputes Act 1947, the Trade Unions Act 1926, and the Industrial Employment (Standing Orders) Act 1946.[1] Of the four Labour Codes, it matters most for the relationship between unions and employers, since it covers union recognition, standing orders, retrenchment, and the conditions on which workers may stop work. An amending Bill introduced on 11 February 2026 clarifies that the three older Acts stand repealed by operation of section 104 of the Code itself,[2] and the Industrial Relations (Central) Rules 2026 followed in May.[3]

The Code changes the law on strikes in three ways. Under the 1947 Act, prior notice was needed only in public utility services.[4] The Code requires it in every industrial establishment. Section 62 bars a strike unless notice was given within the sixty days before it, bars a strike within fourteen days of giving notice, and bars it before the date stated in the notice.[5] The definition of 'strike' also now covers concerted casual leave by fifty per cent or more of the workers on a given day.[6] An employer who receives a notice must report it to the appropriate authority within five days.[7] What was a narrow rule for essential services is now a procedural step that nearly all collective action must pass through.

This sits uneasily with existing case law. The Supreme Court has held more than once that there is no fundamental right to strike.[8] Article 19(1)(c) lets workers form unions, but it does not guarantee that a union can use any particular form of pressure. In *TK Rangarajan v Government of Tamil Nadu*, a case about government employees, the Court went further and said they have no moral or equitable right to strike either.[9] A challenge built only on a 'right to strike' would therefore face settled authority. Yet the Court has accepted that a strike which is both legal and justified entitles workers to wages for the strike periodFunun.[10] This paper is about where regulation stops and prohibition starts.

Writing on the Code so far comes mostly from practitioners. Law firm notes, government FAQs, and compliance checklists explain the new notice and

[1] Industrial Relations Code 2020 (Act 35 of 2020); Ministry of Labour and Employment, Notification S.O. 5320(E) (21 November 2025).
[2] Industrial Relations Code (Amendment) Bill 2026 (Bill 33 of 2026).
[3] Industrial Relations (Central) Rules 2026, G.S.R. 342(E) (8 May 2026).
[4] Industrial Disputes Act 1947, s 22 (repealed).
[5] Industrial Relations Code 2020, s 62(1).
[6] ibid s 2(zk).
[7] ibid s 62(6).
[8] *Kameshwar Prasad v State of Bihar* AIR 1962 SC 1166*; All India Bank Employees' Association v National Industrial Tribunal* AIR 1962 SC 171.
[9] *TK Rangarajan v Government of Tamil Nadu* (2003) 6 SCC 581.
[10] *Syndicate Bank v Umesh Nayak* (1994) 5 SCC 572*; Bank of India v TS Kelawala* (1990) 4 SCC 744.

reporting duties,[11] and PRS Legislative Research has summarised the Amendment Bill.[12] Academic work on strikes and the Constitution is mostly older than the Code. It deals with the previous notice regime and the cases from *Kameshwar Prasad v State of Bihar* onwards.[13] Online commentary has begun to question the Code's strike provisions, including after the International Court of Justice's advisory opinion of May 2026 on ILO Convention 87,[14] but no peer-reviewed article located for this paper tests them as a whole against the proportionality standard in recent Supreme Court decisions.

The paper asks whether the strike regime in the IR Code is a reasonable and proportionate restriction. It argues that the regime is constitutionally vulnerable, most clearly in its universal notice rule, its fifty per cent casual leave threshold and its undifferentiated penalties, and that this is so less because strike is a fundamental right than because those rules are arbitrary and over-inclusive under article 14 and weaken collective bargaining under article 19(1)(c).

The paper is doctrinal. It uses the text of the Code, case law, parliamentary material, and ILO standards. Part II traces the shift from the 1947 Act to the Code. Part III sets out the constitutional framework. Part IV examines the main provisions. Part V compares them with international standards, including Convention 87, which India has not ratified. Part VI suggests reforms, and Part VII concludes.

Part II: From the Industrial Disputes Act 1947 to the IR Code

Before 2025, the law on strikes sat in two statutes. The Trade Unions Act 1926 gave registered unions limited protection from criminal conspiracy and civil suits for acts done in furtherance of a trade dispute.[15] It did not give workers a right to strike. The Industrial Disputes Act 1947 then regulated strikes without conferring that right either. Its main control was section 22, which applied to public utility services only: workers could not strike without giving notice within six weeks before striking, nor within fourteen days of giving it, nor before the date stated in it.[16] Section 23 barred strikes in all industries while certain proceedings were pending, and section 24 made a strike illegal if it broke those rules.[17] Outside public utilities, workers could strike without notice, provided no proceeding was pending and no settlement or award was in force.

The IR Code was the product of a long consolidation exercise, following the Second National Commission on Labour's recommendation to merge the labour statutes into a few codes.[18] On strikes, the Code keeps the structure of the 1947 Act but removes the public utility limit. Section 62 now applies to every person employed in an industrial establishment.[19] It also keeps the bars on striking while conciliation, tribunal or arbitration proceedings are pending, and while a settlement or award is in operation.[20] Two features are new. The notice must be given within sixty days before the strike, where the 1947 Act used six weeks. And the definition of 'strike' now includes concerted casual leave by fifty per cent or more of the workers on a given day.[21]

Feature	Industrial Disputes Act 1947	IR Code 2020
Notice of strike	Public utility services only	All industrial establishments
Notice window	Within six weeks before striking	Within sixty days before striking
Minimum wait	Fourteen days	Fourteen days
Mass casual leave	Not expressly covered	Included in 'strike' (50% or more)
Employer's duty to report notice	Public utility services only	All industrial establishments

[11] Ministry of Labour and Employment, 'FAQ on Myths and Realities of Industrial Relation (IR) Code 2020' <https://www.labour.gov.in/static/uploads/2026/01/b9f5b3916c042a5597f9cb4f3cc9f0fd.pdf> accessed 4 October 2026.
[12] Navya Sriram, 'The Industrial Relations Code (Amendment) Bill, 2026' (PRS Legislative Research, 12 February 2026) < https://prsindia.org/billtrack/the-industrial-relations-code-amendment-bill-2026 > accessed 4 October 2026.
[13] Satarupa Ghosh, 'Right to Strike: A Conceptual and Contextual Anathema' (2014) 5(1) Indian Journal of Law and Justice 291; Shubhankar Dam, 'Strikes through the Prism of Duties: Is There a Fundamental Duty to Strike under the Indian Constitution?' (2004) 5(1) Asia-Pacific Journal on Human Rights and the Law 68.
[14] Right to Strike under ILO Convention No 87 (Advisory Opinion) (ICJ, 21 May 2026).
[15] Trade Unions Act 1926, ss 17–18 (repealed).
[16] Industrial Disputes Act 1947, s 22 (repealed).
[17] ibid ss 23–24 (repealed).
[18] Lakshmikumaran & Sridharan Attorneys, 'Industrial Relations Code, 2020 – An Overview' (2 October 2020) https://www.lkslaw.com/insights/articles/industrial-relations-code-2020-an-overview accessed 4 October 2026.
[19] Industrial Relations Code 2020, s 62(1).
[20] ibid s 62(1)(d)–(g).
[21] ibid s 2(zk).

Feature	Industrial Disputes Act 1947	IR Code 2020
Form of notice	Prescribed by rules	Form XI under the 2026 Central Rules

The government says the aim is industrial peace and preventing flash strikes.[22] The Labour Ministry adds that the Code does not ban strikes, needs no government permission, and leaves the right to strike 'intact' subject to the fourteen-day notice.[23]

The changes are larger than that description suggests, for three reasons. The notice rule once reached only essential services, where a stoppage directly affects the public. It now reaches a textile mill or a services firm as well. The mass casual leave provision reaches protests that have no formal strike call. And a strike that breaches section 62 is illegal under the Code,[24] with consequences that Part IV examines. None of these is a ban. Together they make lawful collective action harder, and whether that amounts to an unconstitutional restriction is the question Part III must answer.

Part III: The Constitutional Framework

A. No fundamental right to strike

Three Supreme Court decisions set the starting point. In *Kameshwar Prasad v State of Bihar*, the Court held that peaceful demonstration by government servants falls within article 19(1)(a) and (b), but upheld the rule's ban on strikes because the strike is not a protected freedom.[25] In *All India Bank Employees' Association v National Industrial Tribunal*, the Court held that article 19(1)(c) protects the formation of unions but does not guarantee that a union can achieve its demands by any particular means, including strike, and that the right can be regulated by statute.[26] In *TK Rangarajan v Government of Tamil Nadu*, a case arising from the mass dismissal of striking government employees, the Court went further and held that they had no fundamental, statutory, equitable or moral right to strike.[27] The IR Code is therefore not open to challenge on the plain footing that it takes away a constitutional right to strike.

B. A statutory right, not a constitutional one

The Court has not, however, treated lawful strikes as illegitimate. In the wages cases, workers are entitled to wages for a strike period only if the strike was both legal and justified.[28] That makes the statute the source of the right: a strike that complies with the Code is lawful, and one that breaches section 62 is not. The paper's challenge must therefore be to the reasonableness of the restrictions and not to the existence of the right.

C. Article 14 and manifest arbitrariness

Article 14 offers firmer ground. In *Shayara Bano v Union of India*, Nariman J, for himself and Lalit J, held that legislation can be struck down as manifestly arbitrary, meaning that it is capricious, irrational, or lacks an adequate determining principle, and Kurian Joseph J agreed that legislation can be challenged on the ground of arbitrariness.[29] The Court has since said that plenary legislation needs a more demanding standard than subordinate legislation.[30] The Code's strike rules are open to the objection even on that standard. A uniform notice rule applies equally to a hospital and a small workshop, and a fifty per cent casual leave threshold treats spontaneous protest as a formal strike. Part IV tests each provision on that footing.

D. Articles 19(1)(c) and 19(4)

Restrictions on the freedom to form associations must fit article 19(4), which permits reasonable restrictions only in the interests of the sovereignty and integrity of India, public order, or morality.[31] Industrial peace does not appear in that list. The State would have to bring the strike notice rules within 'public order', and the Court has read that expression narrowly, distinguishing it from ordinary law and order.[32] The State's answer will be that the Code restricts a method and not the freedom itself, and *All India Bank Employees' Association* supports it. The paper accepts that this is the weakest ground for the argument. Its use is to show that the restriction falls on the freedom's practical value, which matters when the proportionality inquiry begins.

E. Proportionality

The Court now asks whether a restriction on a fundamental right pursues a legitimate aim, has a rational connection with that aim, is necessary because no less restrictive alternative would serve equally well, and strikes a fair balance between the right and the aim.[33] In *Gujarat Mazdoor Sabha v State of*

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[22] Press Information Bureau, 'Integrated Law: Industrial Relations Code, 2020' (23 November 2025) https://static.pib.gov.in/WriteReadData/specificdocs/documents/2025/nov/doc20251123703701.pdf <accessed 4 October 2026>

[23] Ministry of Labour and Employment, 'FAQ on Myths and Realities of Industrial Relation (IR) Code 2020' https://www.labour.gov.in/static/uploads/2026/01/b9f5b3916c042a5597f9cb4f3cc9f0fd.pdf <accessed 4 October 2026>

[24] Industrial Relations Code 2020, s 63(1)(i).

[25] Kameshwar Prasad (n 8); see also Rangarajan (n 9) [12].

[26] *All India Bank Employees' Association* (n 8) 181.

[27] Rangarajan (n 9) [12], [17]-[19].

[28] Syndicate Bank (n 10); *Crompton Greaves Ltd v Workmen* (1978) 3 SCC 155; Kelawala (n 10).

[29] *Shayara Bano v Union of India* (2017) 9 SCC 1 [101]–[104] (Nariman J); ibid (Kurian Joseph J).

[30] *Association for Democratic Reforms v Union of India* (SC, 15 February 2024).

[31] Constitution of India 1950, art 19(4).

[32] *Dr Ram Manohar Lohia v State of Bihar AIR 1966 SC 740.*

[33] *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353 [60]; *Anuradha Bhasin v Union of India* (2020) 3 SCC

Gujarat, a challenge to state notifications exempting factories from working-time protections, the Court also required sufficient safeguards against abuse of the interference.[34] Industrial peace is a legitimate aim. The difficult stages are necessity, balance and safeguards. A notice rule limited to essential services, a shorter notice period, or a conciliation procedure that runs in parallel would all serve the aim with less cost to unions. Whether proportionality applies in full to a statute that does not directly restrict a listed fundamental right is not settled, and the paper adopts it as an analytical structure for Part IV.

Part IV: The Strike Provisions Tested

The State's case is that each feature of section 62 is a procedural condition for a lawful strike and not a ban. The question under article 14 and the proportionality framework is narrower: does each condition have a reasoned link to the aim, and is it no wider than the aim needs? This Part takes four features in turn and then the penalties that enforce them.

A. Notice in every establishment

Before the Code, notice was required only in public utility services, where a stoppage affects people who are not party to the dispute. Section 62(1) now applies to every person employed in an industrial establishment, whatever the service and whatever the size.[35] That removes the reason that justified the old rule. A stoppage in a ten-person workshop affects the employer and the workers, and no one else.

The Code shows that it can draw lines when it wants to. Grievance redressal committees are required only in establishments with twenty or more workers, and the retrenchment provisions are tied to a threshold of three hundred.[36] The strike notice rule has no threshold and no exception. Nothing in the Code explains why a hospital and a small workshop should be treated alike, which is the objection to a rule lacking an adequate determining principle.

The aim of giving conciliation a chance to work is legitimate, and a notice rule is rationally connected to it. The difficulty is necessity. Notice confined to essential services, or to establishments above a size, would serve the same aim at much lower cost to unions. The Ministry's answer is that fourteen days is short and that no government permission is needed.[37] That answers the question of how burdensome the rule is. It does not answer why the rule has to be universal.

B. The sixty-day window and the fourteen-day wait

A strike must follow notice given within the previous sixty days, must not begin within fourteen days of the notice, and must not begin before the date the notice names.[38] The notice must be in the form the Rules prescribe, which is Form XI.[39]

The fourteen-day wait is the easiest part of the regime to defend, because it is a short cooling period with a clear purpose. The sixty-day limit is also modest. It stops a union holding an old notice in reserve, and the cost of missing it is only to give notice again.

The real problem is the absence of any urgency exception. The only exception in section 62 is for a strike already in existence, where no notice is needed but the employer must intimate it.[40] A union responding to unpaid wages, an unsafe workplace, or the dismissal of a colleague must still wait fourteen days. A sudden stoppage is illegal from the first hour, however sudden the cause. The rule is symmetrical on its face, since an employer must give the same notice before a lockout.[41] The cost of delay is not symmetrical, however, because delay costs a union its leverage while the employer's operations continue.

C. Mass casual leave as a strike

Section 2(zk) brings concerted casual leave by fifty per cent or more of the workers on a given day within the meaning of 'strike'.[42] The State's purpose is to stop strikes disguised as leave. That purpose is legitimate, but the means have three weaknesses.

First, the line at fifty per cent has no stated principle behind it. Concerted leave by forty-nine per cent of the workforce is not a strike, and by fifty per cent it is. The legal consequence turns on a number and not on the conduct. A test that looked at concerted intent and the effect on operations would meet the aim without an arbitrary cut-off.

Second, *Kameshwar Prasad* protected peaceful demonstration under article 19(1)(a) and (b) while holding that strike falls outside the protection.[43] A group protest carried out through leave is closer to a demonstration than to a stoppage in some cases. The definition removes the distinction by treating the form of protest as a strike once the threshold is met.

637.

[34] *Gujarat Mazdoor Sabha v State of Gujarat* 2020 INSC 572.

[35] Industrial Relations Code 2020 (n 1) s 62(1).

[36] ibid ss 4, 77.

[37] Ministry of Labour and Employment (n 23).

[38] Industrial Relations Code 2020 (n 1) s 62(1)(a)–(c).

[39] ibid s 62(4); Industrial Relations (Central) Rules 2026 (n 3); 'Industrial Relations (Central) Rules, 2026: How India's New Industrial Relations Regime Is Changing' (SCC Online Blog, 11 May 2026) < https://www.scconline.com/blog/post/2026/05/11/industrial-relations-central-rules-2026-explained/ > accessed 4 October 2026.

[40] Industrial Relations Code 2020 (n 1) s 62(3).

[41] ibid s 62(2).

[42] ibid s 2(zk).

[43] *Kameshwar Prasad* (n 8).

Third, the consequence for the individual is serious. A worker who takes part in a strike that is illegal under the Code is exposed to criminal penalty, as section E shows. The State will say that workers can simply give notice. That reply concedes that a protest by leave now needs fourteen days' notice, which defeats the point of a protest that is meant to be immediate.

D. Bars during proceedings

The Code bars a strike while conciliation, Tribunal and arbitration proceedings are pending and while a settlement or award is in operation, and extends the Tribunal bar to sixty days after the proceedings end.[44] This is the weakest target. The 1947 Act already barred strikes in all industries during certain proceedings, so the Code keeps an old rule. The bar is also symmetrical, because lockouts are barred in the same way.[45] The State can fairly say that the bar is the price of an alternative remedy.

It matters only in combination. The length of the bar depends on how long a Tribunal takes, which workers do not control. Added to universal notice, it means that a union in a dispute faces a sequence of waiting periods before it can lawfully withdraw its labour.

E. Penalties for an illegal strike

A strike begun or declared in breach of section 62 is illegal, and the Code attaches consequences to illegality.[46] A worker who commences, continues, or acts in furtherance of an illegal strike is punishable with a fine of at least one thousand and at most ten thousand rupees, imprisonment of up to one month, or both. A person who instigates or incites it faces a fine of ten thousand to fifty thousand rupees, imprisonment, or both, and the same range applies to knowingly funding it.[47] An employer's illegal lockout carries a higher fine, from fifty thousand to one lakh rupees, or imprisonment, or both.[48] Under *Syndicate Bank*, a strike that is not both legal and justified also loses the right to wages.[49]

The objection is that the penalty does not distinguish between kinds of illegality. A strike one day short of notice is punished in the same range as a prolonged and defiant one, and the fine has a mandatory minimum. *Gujarat Mazdoor Sabha* requires sufficient safeguards against abuse of a rights-restricting measure.[50] The State may point to the Code's compounding of offences as such a safeguard.[51] Compounding mitigates the penalty but not the illegality, and it depends on the discretion of an officer and not on a rule that matches the penalty to the seriousness of the breach.

F. Assessment

The provisions are not equally vulnerable. The strongest targets are the universal notice rule, which fails on necessity, the fifty per cent threshold, which has no determining principle, and the undifferentiated penalties, which lack gradation. The weakest are the sixty-day limit and the bars during proceedings, each of which has a clear purpose and a modest cost taken alone. The case against the regime rests on those three features and on the way the others combine with them, and not on the idea of notice itself. Courts also defer to the legislature on socio-economic policy, so the claim made here is that the regime is vulnerable and not that it must be struck down.

Part V: Comparative and International Standards

The Supreme Court often reads international law into fundamental rights where the two are harmonious.[52] Though India has not ratified ILO Convention 87 on Freedom of Association, its principles offer a useful benchmark for testing whether the IR Code's restrictions on article 19(1)(c) are reasonable and proportionate. A comparison with the ILO framework and the statutory regime in the United Kingdom shows that the Code's universal notice rule is out of line with both.

Convention 87 does not expressly mention a right to strike. However, the ILO Committee on Freedom of Association (CFA) has consistently read it as an intrinsic corollary of the right to organise under articles 3 and 10 of the Convention.[53] The International Court of Justice's advisory opinion of May 2026 held that the Convention protects the right to strike.[54]

The CFA accepts that a State may impose procedural preconditions, including a requirement to give prior notice.[55] However, it draws a strict line on scope. Notice periods and conciliation mandates must not be so complex or delayed that a lawful strike becomes practically impossible. Crucially, the CFA holds that the right to strike can be strictly regulated or prohibited only in the public service (for public servants exercising authority in the name of the State) or in essential services, defined strictly as those whose interruption would endanger the life, personal safety, or health of the whole or part of

[44] Industrial Relations Code 2020 (n 1) s 62(1)(d)–(g).
[45] ibid s 62(2).
[46] ibid s 63.
[47] ibid s 86(13), (15)-(16); see also s 64.
[48] ibid s 86(14).
[49] *Syndicate Bank* (n 10).
[50] *Gujarat Mazdoor Sabha* (n 34).
[51] 'Industrial Relations Code, 2020 | Recognition of Negotiating Union, Prohibition on strikes & lock-outs without prior notice of 14 days [Key Highlights]' (SCC Online Blog, 30 September 2020) <https://www.scconline.com/blog/post/2020/09/30/industrial-relations-code-2020-recognition-of-negotiating-union-prohibition-on-strikes-lock-outs-without-prior-notice-of-14-days-key-highlights/ > accessed 4 October 2026.
[52] National Legal Services Authority v Union of India (2014) 5 SCC 438 [53]-[54].
[53] ILO Committee on Freedom of Association, *Compilation of Decisions of the Committee on Freedom of Association* (6th edn, 2018) paras 752–754.
[54] *Right to Strike under ILO Convention No 87* (Advisory Opinion) (ICJ, 21 May 2026).
[55] ILO Compilation (n 53) para 799.

the population.[56]

The UK offers a useful comparison because it also has no constitutional right to strike, protects industrial action through statutory immunities from civil liability, and regulates it closely. Until this year, the Trade Union and Labour Relations (Consolidation) Act 1992 required a union to give the employer fourteen days' notice, to hold a postal ballot with a fifty per cent turnout, and, in important public services, to secure the support of forty per cent of all those entitled to vote.[57]

The Employment Rights Act 2025 has changed this. Since 18 February 2026, notice of industrial action is ten days and the forty per cent support threshold has been removed. The turnout threshold was due to be repealed from August 2026.[58] The UK has therefore shortened its notice period while the IR Code requires fourteen days in every establishment. In the UK, notice also follows a ballot mandate. It is not a step that sets off a process of statutory bars.

Measured against these standards, the IR Code is more restrictive than both, mainly because it does not differentiate between services and because of what a notice sets off.

First, the ILO framework permits strict rules, including mandatory conciliation and advance notice, for essential services. The IR Code applies the essential services standard to every industrial establishment. By erasing the distinction between a hospital and a small manufacturing unit, section 62 is hard to square with the ILO principle that restrictions must be proportionate to the public interest at stake.

Second, the purpose of notice differs. In the UK, notice lets the employer prepare for the stoppage. Under the IR Code, a section 62 notice also requires the conciliation officer to hold conciliation proceedings,[59] and a strike is barred while they are pending and for seven days after.[60] The report is due within fourteen days of the proceedings starting, a period the parties can extend in writing.[61] If conciliation fails, any party may apply to the Tribunal within ninety days,[62] and the Tribunal bar then lasts as long as the proceedings and for sixty days after.[63] A notice therefore does more than warn the employer. It can start a chain of statutory bars that either side can lengthen.

Finally, the Code treats mass casual leave as a strike and attaches criminal penalties to individual workers who take part in it. UK law instead focuses on civil liability of the union when industrial action loses its statutory protection, rather than on criminalising individual workers.

The comparative position supports the constitutional argument in Part IV. A restriction on collective bargaining might be reasonable if it targets essential services or follows a democratic mandate. A universal notice rule that sets off statutory bars on action in all industries, however, operates as a prohibition in procedural dress.

Part VI: Recommendations

The proportionality framework requires a restriction to be no wider than its aim necessitates. The Code's strike regime fails this test because it regulates the general economy using tools designed for essential services. Four statutory amendments would align the Code with constitutional limits and international standards, while preserving the State's interest in industrial peace.

Section 62 should restore the distinction between essential services and general industry. If the State keeps a universal notice rule, the minimum wait should be tiered. A fourteen-day wait and mandatory conciliation are proportionate for a hospital or a power plant, where a sudden stoppage risks public health and safety. For a manufacturing unit or a services firm, a shorter period would let the employer secure the premises and prepare for a halt in production without stripping the union of its leverage. The exact figure is for Parliament, but three to five days illustrates the scale.

The definition of 'strike' in section 2(zk) should drop the fifty per cent threshold. An arbitrary numerical cut-off captures spontaneous, protests without establishing actual intent, turning a demonstration into an illegal strike by head-count alone. The provision should be amended to require a functional test: concerted absence combined with a demonstrable intent to compel the employer, resulting in a material disruption to operations. This would protect workers' freedom of expression while preventing unions from disguising formal strikes as routine leave.

Under the current regime, a strike notice requires the conciliation officer to hold proceedings,[64] and section 62(1)(d) bars a strike while they are pending. Conciliation itself is time-limited, but an application to the Tribunal by either party extends the bar for the length of those proceedings and sixty days after.[65] The Code should adopt a time-bound route for non-essential services. Once the conciliation report is due, the bar should lift unless the parties agree otherwise, and a Tribunal application should not extend the bar on a strike for which notice has already been given.

To meet the *Gujarat Mazdoor Sabha* requirement for procedural safeguards, section 86 must differentiate penalties based on the nature of the illegality.

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[56] ibid paras 830, 836.
[57] Trade Union and Labour Relations (Consolidation) Act 1992, ss 226(2)(a)(ii), 226(2B), 234A (before amendment by the Employment Rights Act 2025).
[58] Employment Rights Act 2025; Acas, 'Employment Rights Act 2025'< https://www.acas.org.uk/employment-rights-act-2025\> accessed 4 October 2026.
[59] Industrial Relations Code 2020 (n 1) s 53(1).
[60] ibid s 62(1)(d).
[61] ibid s 53(5).
[62] ibid s 53(6).
[63] ibid s 62(1)(e).
[64] Industrial Relations Code 2020 (n 1) s 53(1).
[65] ibid ss 53(6), 62(1)(e).

A technical breach, such as striking one day short of the notice period, should not attract the same mandatory minimum fine or risk of imprisonment as a prolonged, defiant stoppage. The statute must grade penalties to match the gravity of the breach.

Part VII: Conclusion

The Industrial Relations Code 2020 extends the mandatory fourteen-day strike notice to all industrial establishments and widens the definition of strike to include mass casual leave. A rule designed for public utility services now applies to almost all collective action.

The State's defence is that these are procedural regulations, and the Supreme Court has held that there is no fundamental right to strike. This paper has argued that the vulnerability lies elsewhere. Under article 14, the universal notice rule and the fifty per cent casual leave threshold are open to the charge of manifest arbitrariness. They lack an adequate determining principle, treating a hospital and a small workshop alike and turning a spontaneous protest into an illegal strike by head-count. The penalties add to this, since they do not grade the gravity of the breach.

Tested against proportionality, the regime is likely to fail at the necessity and balancing stages. A notice requires conciliation, and either party may then go to the Tribunal, so statutory bars can follow one another. The ILO standards and the recent UK reforms suggest that industrial peace can be secured by less restrictive means, such as tiering the requirements by the nature of the service.

Courts defer to the legislature on socio-economic policy, so a judicial invalidation of the Code is uncertain. The more reliable remedy is legislative: tiered notice, a functional test for casual leave, time-bound conciliation and graded penalties. Without them, the Code leaves lawful strikes available in form but hard to use in practice, and regulation shades into prohibition.