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THE RIGHT TO STRIKE: A BEAM TO LABOUR RELATIONS AND SUSTAINABLE DEVELOPMENT IN NIGERIA

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Abstract
Indeed, strike actions command change, where deemed fit, and remain the natural powers ascribed to workers, not just to ask, but also to force the employer to concede to their demands. The questions often raised are is strike a 'necessary evil' in Nigeria? Can an employer of labour, trample upon the right of workers to strike? What is the status of the right to strike here in Nigeria? This is the pivot of this paper. In a bid to resolve these issues, the paper adopted the doctrinal method of research, relying heavily on primary sources, such as the constitution of the Federal Republic of Nigeria 1999, (as amended) and relevant labour statutes. It highlighted the fundamental nature of this right, in labour relations, where optimal peace is the target. It further, underscored the present status of the right here in Nigeria. It was established that, trade disputes are inevitable and ought to be addressed through the emancipation of the right to strike. It was observed in the paper that, there are challenges to the recognition of the right to strike here, which are, that the right is not yet a positive right, and the onerous process for engaging in strikes, under the law. To this end, the paper recommended that, collective agreements reached here in Nigeria must be respected and honored. In addition, the right to strike must be constitutionalized. Lastly, the judiciary must wake-up, to give the right to strike, the desired esteem.

Keywords: *Right, Human Rights, Strike, Beam, Labour Relations, Sustainable Development.*

1.0 Introduction

Workplaces in Nigeria, whether private or public, are run as dictatorships. The discovery that a boss does not have absolute power over the worker that in fact, the workers can exert powers too, over the boss, and the success of the venture, is a timely revelation. This no doubt, necessitates strikes. Thus, strike actions are predominant in workplaces, whether it be private or public institutions. This fact cannot be overemphasized. Strikes are considered the only means of accomplishment for workers in labour relations. Indeed, it is said to be the strongest and most valuable tool in the armoury of workers, and, an infallible piece in the pursuit of industrial peace and harmony. This is better explained by the fact that, they are the weapon of the worker in the process of collective bargaining and collective agreements.

Little wonder why strikes are unprecedented in Nigeria and the world over. Candidly, without strikes, there is little or nothing left for workers or employees to do, where their interests are the prerogative.

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Thus, strikes have been and will remain an indelible part of labour relations. This is the crux of this paper. The paper examines the concept of strike in part one, by defining and highlighting its constituents, whilst expounding a brief literature review of the subject matter. Part two on the other hand, resonates the fact that, the right to strike is a fundamental right of the worker in labour relations.

Part three, illuminates the Legal Framework of the right to strike in Nigeria. It actually attempts an espousal of the right to strike in the Nigerian jurisprudence, as a domestic law. It is pertinent to note here that, this part of the article argues that, though there are extant laws on the regulation of strikes, Nigeria is bereft of a 'right to strike' *per se.* Thus, the worker in Nigeria still stands the chance of being bullied, overused or somewhat, tortured, directly or indirectly, until the lawgivers do the needful. Part four on the other hand, reverberates the status of the right to strike in International law. It reveals the fact that, on the International plane, the right to strike is indelible, and, a recurring decimal, whether state parties, subscribe to the law as it is, or not. Indeed, there is no gainsaying that, State parties are somewhat mandated to guarantee the right to strike owing to the provision of International conventions, and, the International Labour Organization. However, these are not without reservations, which are revealed in this paper. Mind-bogglingly, Nigeria is a State party to these conventions on the right to strike, as it appears in International law. However, this right is yet to be domesticated here in and is thus, not binding. This is because it is not yet incorporated into the Nigerian municipal laws. This is better explained in the body of the paper. It also highlights the status of the right in a few jurisdictions.

Part five of the paper, reverberates the essence of the right to strike in labour relations in the Nigerian workplace. It contends that, the right as it ought to be, is a beam to industrial peace and labour relations, where sustainable development is the target. It further holds that, until this right is emancipated, work in Nigeria, is yet labourious and unduly lopsided. This may very well, have devastating effects on the lives of the workers, as it pertains to their interests. Hence, a call for prompt attention, on the lawmakers and, the judiciary, in its interpretative capacity.

The paper draws its conclusion in this part, highlighting the need for the right to strike to be aptly adopted and binding, here in Nigeria. It further proffers plausible suggestions, by way of recommendations, to boost the usability of the right in the workplace in Nigeria. This will no doubt, rejuvenate industrial health and invariably, the tranquility of the Nigerian society and the world over. This been said, it may be apt to begin by defining salient terms in the article.

1.1 Definition of terms

Right: A right is said to be an entitlement, something to which a person is entitled[1]. Thus, it is that which accrues to a person, as benefit, or, for the pursuit of his/her interests. According to Salmond, *"a right is an interest, respect for which is a duty, and the disrespect of which is wrong*[2]. Human Rights are thus, claims, assertions or entitlements, which a person is endowed with, by virtue of humanity. They are rights and freedoms, which every person is entitled to enjoy, possibly deriving from natural

[1] The Oxford English Minidictionary, 5th Ed, Oxford University Press Inc., New York, 1999, p. 443.
[2] See Salmond's definition of a legal right, as an interest recognized and protected by a rule of justice. The word 'interest' implies any interest, respect for which is a duty, and disregard of which is a wrong. <https://old.amu.ac.in>studym> accessed Oct. 24, 2023.

law[3]. These are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, or religion, or any status[4]. In *Ransome Kuti v. Attorney General of the Federation,* the court per Kayode Eso JSC, as he then was, stated that, *"human rights are rights which stand above the ordinary laws of the land… and, it is antecedent to the political society itself…"*[5]. He also said that, 'it is a primary condition to a civilized existence'. Thus, where these rights are infringed or denied, such society is better described as uncivilized. Indisputably, human rights are inalienable and imprescriptible. They are inherent in all human beings and must be respected as it is.

Strike: Strike is said to be a stoppage of work by workers. It is a concerted and deliberate stoppage of work, by a group of workers. It is a partial or complete withdrawal of labour by workers[6].

Beam: A Beam is a long piece of timber or metal carrying the weight of part of a building. It is also a ray of light or other radiation[7]. Hence, in this article, it is described as a support or pivot of labour relations in Nigeria and the world over.

Labour Relations is basically the relationship between employers and employees in industry, and the political decisions and laws that affect it[8].

Sustainable Development is here described as development that meets the needs of the present, without compromising the ability of future generations to meet their own needs.[9]

With these, it is now apt to begin the crux of the article, which is the Right to Strike as a concept.

1.2 Conceptual Framework:

1.2.1 What is Strike? This is said to be refusal to work, because of a disagreement over pay or conditions. It is a period of time when an organized group of employees of a company stops working, because of a disagreement over pay or conditions.[10] It is further defined as to stop work, in order to force an employer to meet their demands.[11] It suffice to state that, there is no universal definition of strike, and however a variety of attempts has been made at defining the term.[12] To Hitler, it is the simultaneous and coordinated withdrawal of labour by workers.[13] Importantly, in legal doctrine, strike is understood to be a deliberate stoppage of work by

[3] Osborn's Concise Dictionary, 8th ed, Sweet and Maxwell, London, 1993, p. 168.
[4] Human Rights – The United Nations <https://www.un.org> global issues, accessed Oct. 23, 2023.
[5] (1985) 2 NWLR (Pt. 6) 211
[6] See n.3, p. 314
[7] See n.1, p. 38
[8] <https://www.collinsdictionary.com> accessed Oct. 24, 2023.
[9] <https:www.iisd.org> sustainable> accessed Oct. 24, 2023.
[10] Oxford Advanced Learner's Dictionary of Current English, 8th ed, Oxford, New York, Oxford University Press, 2010, p. 1479.
[11] Merian Webster English Dictionary <https://www.merianwebsterenglishdictionary.com> accessed Oct. 23, 2003.
[12] There are many definitions of the term strike. For instance, it is said to be *"a collective stoppage of work undertaken, in order to bring pressure to bear in those who depend on the sale or use of the produce of that work. The strike must involve a group of employed workers – there must be a definite employer – employee relationship, between the parties involved in the dispute".* K.G.J.C. Knowles, 'Strikes – A study of Industrial Conflict' New York, Philosophical Library, 1952, p.1
[13] T. Hitler, 'The Strike: A study in Collective Action', Chicago, ILL: University of Chicago Press, 1982, p.12.

> workers, in order to put pressure on their employer, to accede to their demands. This may be done by a body of employed persons either acting in combination, or a concerted refusal, or a refusal under a common understanding, of any of the employed persons, to continue to work for an employer, in consequence of a dispute, done as a means of compelling their employer or employed person or body of employed persons, or to aid their employees in compelling their employer to accept, or, not to accept terms or conditions of, or, affecting employment.[14]

In Nigerian Legislation, the concept has been thoroughly defined in the Trade Disputes Act, 2004 as thus:

> *"Strike means the cessation of work by a body of persons employed, acting in combination or a concerted refusal… to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person… to accept or not to accept terms of employment and physical conditions of work".*[15]

The thoroughness of the aforementioned is seen in its clarity on the meaning, the actors or persons involved, the mode, the act, the need for the act, the objectives or goals of the act, and the targeted audience. The Act further stipulates that, 'cessation of work' includes, deliberately working at less than usual speed or with less than usual efficiency and refusal to continue to work; it also includes, a refusal to work at usual speed or with usual efficiency.[16] Indisputably, this definition has been given judicial approval in the case of *Federal Government of Nigeria v. Adams Oshiomole.*[17]Similarly, in *Tram Shipping Corporation v. Greenwich Marine Incorporation,*[18] Lord Denning MR stated that a strike is:

> *"A concerted stoppage of work by men, done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something… It is distinct from stoppage brought by an external event such as a bomb scare or by apprehension of danger".*

In a bid to dissect the concept of strike, Okene,[19] identified and elaborated the constituents of strike as thus: *(i) Cessation of work (ii) Concerted refusal to work (iii) Strike against an employer (iv) Purpose of cessation of work.* Thus, in his analysis there must be an absolute stoppage of work, to the extent that, there is a stay off work. He argues that, there is an absence from the place of work. That is, this stay off work distinguishes a strike from other forms of industrial actions such as, 'work to rule' and 'go-slow'. He further enunciates that, there must necessarily be a concerted refusal to work by a body of workers or employees acting collectively. This no doubt, presupposes a combined action or effort of the employees. As such, an individual employee can neither act alone, nor a group of individuals acting

[14] Ibid
[15] TOA, 2004, S. 48. Cap. 123, p. 123
[16] Ibid
[17] (2004) 3 NWLR (pt. 860) 305
[18] (1975) ALL ER 898, p 990. See also, Miles v. Wake Field Metropolitan District Council, (1987) 2 ALL ER 1081, 1097
[19] O.V.C. Okene, Labour Law and Industrial Relations in Nigeria, 4th ed, (Port Harcourt; Faculty of Law, Rivers State University, 2019) p. 239-240.

independently of each other, or, at cross-purposes.[20] Hence, there ought to be a sort of unison and a common purpose between the workers, for striking, and, this must be done concurrently.

Little wonder why he argues that, a stoppage of work by just one person cannot constitute a strike.[21] Indeed, this feature displays the uniqueness of a strike action, because no one employee can act alone, at his will. He must necessarily, be supported by other employees, concomitantly and over a similar subject. It is therefore, this concord between the employees that tends to exert pressure or force, which propels the employer into an action of compromise or reprisal. He further argues that, a strike must be against an employer and in the course of an employment. Hence, there must be a labour relation between the employees (actors) and the employer (the purported recipient). In addition, he opines that, strike must be for a recognized purpose. This he says, must revolve around the terms of employment and the physical conditions of work, which may include, but not limited to, pay and allowances, social security benefits, and the conditions of work, such as, the provision of a safe workplace, good and adequate working materials and the employment of competent staff. Therefore, the strikers must intend their strike action to remedy or resolve a grievance, or, dispute concerning the terms of employment.

From the foregoing, it is clear that, the constituents of a strike include cessation of work, a concerted refusal to work, whether absolute or otherwise, necessitated by conflicts, or disputes relating to the terms and conditions of work, to achieve a common purpose.

1.2.2 The Right to Strike

This depicts a lawful or legitimate claim to strike. It denotes the assertion, claims, and interests concerning strike actions. It pertains to the capacity of the actors in a strike to carry out such actions within the ambit of the law. Hence, the right to strike here entails the right of the employee to engage in a strike action against an employer. That is, whether or not the employees reserve the right to go on strike against the employer. This issue is resolved by the fact that, the right to strike is duly provided under the law. A plethora of laws speak comprehensively on the issue, though, relative. It varies based on legislations, jurisdictions, and the process of domestication. However, in Nigeria, the right to strike is not yet a positive right. It is not stated as a right of the worker, per se. It is merely mentioned as that which workers may engage in or, undertake. Thus, the law does not out rightly entitle the workers to engage in strike actions, as it ought to be, but states that, they may engage, whilst prescribing onerous conditions for it.[22] The position of the law as it is is that, the right to strike here in Nigeria is circumscribed. However, internationally, it is recognized and stated explicitly in some international conventions.

1.3 Theoretical Framework

For the purpose of this paper, a few theories of strike will be summarily considered, to give a better insight to the subject matter. Hence, a number of perspectives will be examined as follows:

1.3.1 Unitary Theory

[20] ibid, p. 239.
[21] Ibid. Here, he refers the reader to *Bowater Containers Ltd. v EAT 522/81* of 27 May, 1982; *Coates and Venables v Modern Methods and Materials Ltd*. (1982) IRLR 318, 323. Also, see, J. Bowers, Employment Law (London: Blackstone Press, 1990) p. 253. Further, see, S. Deakin and G.S. Morris, Labour Law, Oxford and Portland (Oregon: Hart Publishing, 2005) p. 1067
[22] See the Trade Disputes Act, 2004, as earlier mentioned, though, this will be considered in the subsequent pages

This theory identifies an organization as comprising of groups of individuals who share same goals and work as members of a team.[23] It views the workplace as a big happy family, with a source of authority – management, and a focus of loyalty – labour.[24] Here, teamwork is extolled, where everyone strives jointly to a common objective, with all parties pulling their weights together, whilst accepting and appreciating their differing rights and duties, place and function, gladly.[25] This theory is quite optimistic about the labour relations. It envisages a 'conflict-free' atmosphere in the industry. It encourages an 'accommodationist' approach to work, to such extent that, each party will do his bid, with no room for interruption. Consequently, this theory forbids strikes or any form of conflict in a workplace. To proponents of this theory, strikes or any form of conflict hinders the achievement of mutual objectives of both management and labour. Nonetheless, this theory is greatly criticized as being unreal, autocratic and authoritarian.[26] This must be because of the fact that, it is impracticable to have an unhindered flow of work, where every party undertakes his bid effectively. It must be stated that, given the realities of life, an organization or industry is usually made up of individuals and groups with divergent and often, conflicting, interests. This theory tends to leave the fate of the employee in the hands of the employer, thus, subjecting the worker to the absolute whims and caprices of the employer. Indeed, this theory lacks the essence of contemporaneity.

1.3.2 Marxists (Conflict) Theory

This presupposes that, workers strikes are an indispensable element of labour relations. Here, strikes are seen as integral parts of the organization or industry. Thus, they hold that, given the nature of a typical society, which is characterized by a class struggle between the elites and the working class, or, the Proletariat and the Bourgeoisie, it is important that workers be united in their struggles and pursuits, in order to wedge the intimidation and oppression of the elites. That is, in the face of capitalism, the only weapon available to the employee is the strikes carried out against the employers of labour, concerning the affairs of work. Hence, due to the unavoidable class stratification which exists in a given society, the labourer may be unvoiced and thus, insignificant, without the weapon of strike.

The progenitor of this theory, Karl Marx, in his article published in 1853,[27] made a lasting impression on the 19th century British Society. In his perception, conflicts between masters and servants are necessitated by the encroachments of the ruling class. He states thus:

> *"I am, on the very contrary, convinced that the alternative rise and fall of wages, and the continual conflicts between masters and men resulting therefrom, are, in the present organization of industry, the indispensable means of holding up the spirit of laboring classes, of combining them into one great association against the encroachments of the ruling class, and of preventing*

[23] Wokoma, C.U, 'The Effects of Industrial Conflicts and Strikes in Nigeria: A Socio-Economic Analysis' Department of Sociology, Abia State University, Uturu, Abia State, email: cunwokoma@gmail.com, International Journal of Development and Management Review (INJODEMAR) Vol. 6, June, 2011.
[24] Armstrong, M., "Handbook of Human Resource Management Practice" (London: Kogan Page, 2009).
[25] ibid.
[26] ibid.
[27] Karl Marx, "The Labour Movement in Britain" (New York: The New York Daily Tribune, 1853)

> *them from becoming apathetic, thoughtless, more or less well-fed instruments of production".*[28]

Consequently, it is clear that, Marx asserts that, a typical industry is beclouded with differing groups and persons. Hence, these differing groups (laboring classes) may have divergent opinions. Thus, a combination of these units into one, remains the means of relevance in the industry, because, the ranking or stratification of persons in the industry, makes it somewhat impossible for peaceful existence (conflict-free). As such, the interface of these differing units, may give rise to undesired and manipulative tendencies; to the end that, the rich may take undue advantage of the middle class, or the middle class may in turn, take advantage of the lower class. Therefore, these encroachments can only be avoided by strikes and other forms of protests, by the protesters, else, they may end up becoming well-fed instruments of production and not consumption. Therefore, the proletariats must maximize the opportunities of strikes and other industrial actions, where need be. Accordingly, Adams,[29] in his analysis of Marx's view, elucidated the Marxists' position on the subject matter. He opines that, strikes unified the working class. That, these strikes were a manifestation of class struggle and, directly undermined elite members of the society, in order to create a balance. He further states that, the result of strikes were irrelevant, insofar as, the protest was achieved. Consequently, through strikes and protests, workers won a moral and political victory. This he believes, brings economic change.

Against this backdrop, it may be argued here that, strike actions and other industrial actions, are means to an end, targeted at achieving optimal peace in the work place, to better the lives of the actors, and, the society at large. This arguably, perfects the imperfections emanating from social existence and relations. This may very well, be typical of the modern society, as it is.

1.3.3 The Sociological Theory

This school of thought is deeply characterized by divergent views on strikes. However, a few of these may be considered here. To some sociologists, strikes are likely tendencies in the workplace or industries, which occur because of social structures, or agents of socialization. These structures are fundamentally hinged on human relations in the workplace and the society. Proponents of this argue that, the key to worker 'morale', high productivity and industrial peace lies in the quality of 'human relations' in the industry.[30] Thus, to engender peace, harmony and high productivity in the workplace, employers must encourage cohesive, social relationships, by providing workers with 'supportive leadership', and, by ensuring the existence of effective channels of communication between management and employees.[31] Nonetheless, this is not without criticism. Its advocates have been charged with managerial bias, a manipulative approach to workers, and the treatment of the factory as a closed community. Yet, while these naïve views of human relations are discredited, they remain widely influential, particularly within management education. In their view, Scott and Homan, argue

[28] Ibid, Marx, 127.
[29] Adam Bischoff, 'Karl Marx's view of Striks', <https://www.homepages.gac.edu> accessed Oct. 23, 2023.
[30] Hyman R., 'The Sociology of Industrial Conflict' (London: University of Warwick, U.K., Published in Palgrave Macmillan, 1989) <https://www.unk.springer.com> accessed Nov. 2022. In his analysis, he addressed the issue of industrial conflicts in variations.
[31] This was Hyman's statement on the position of American Industrial Sociologists and Social Psychologists, who developed their theories in the 1930's and 1940's, led by Elton Mayo.

that, *'whatever the immediate issue involved in disputes, in the long run, a number of strikes emanate from faulty communications'.*[32]

On another hand, some sociologists are of the view that, certain industries appear to be consistently, strike-prone. In particular, Miners, Dockers, and, Seamen, show the highest propensity to strike, with textile and lumber workers close behind. The proponents of these tend to argue that, the location of the worker in the society, tend to persuade or dissuade (as the case may be) the workers from strikes. In their view:

> *'The miners, the sailors, the longshoremen, the loggers and to a much extent, the textile workers, from isolated masses, almost a 'race-apart'… These communities have their own codes, myths, heroes and social standards… All people have their grievances, but, what is important is that, all the members… have the same grievances".*[33]

They therefore argue that, such workers as mentioned, readily develop a consciousness of collective grievance, form a strong emotional attachment to their unions, and are insulated from societal norms deprecating overt industrial conflict. Contrarily, workers with a lower propensity to strike are more closely integrated into the wider society.

Similarly, some sociologists hold the view that, the technology of a firm or industry can have an important conditioning effect on worker – management and union – management relations. To them, all relevant variables are related to the technological system designed by the company to organize the work process.[34] This theory ascribes all issues relating to strike and other industrial actions to technology.

1.3.4 The Positivists Theory

Legal positivism is attributed to the ideology that laws are posited. It holds that, in any legal system, a norm is valid as a norm, insofar as, at some relevant time and place, some relevant agent or agents announced it, practiced it, invoked it, enforced it, endorsed it, or otherwise, engaged with. It is no objection to its counting as a law, simply because it was an appalling norm that those agents should not have engaged with, by any relevant agents, then, it does not count as a law, even though it may be an excellent norm that all the relevant agents should have engaged with unreservedly.[35] This of course, is in consonance with Austin's famous argument that *"The existence of law is one thing, its merit or demerit is another, whether it be or be not, is one enquiry…"*[36]

[32] Scott and Homan, as reported in Hyman's work on Sociology of Industrial Conflicts, ibid, n.30
[33] Ibid (1954:191-2).
[34] Sayles (1958:93); Kuhn (1961:148); Woodward (1958:18); Chinay (1955); Walker and Guest (1957), as contained in Hyman's work earlier stated.
[35] John Gardner, 'Legal Positivism: 5½ Myths', The American Journal of Jurisprudence, vol. 46, 2001, pp 199-200.
[36] John Austin, The Province of Jurisprudence Determined (1832); ed. W.E. Rumble, Cambridge: Cambridge University press, 1995, p. 157

To the positivists, laws are commands handed from the sovereign to the subjects, backed by threats or sanctions.[37] This connotes laws as commands, which demands obedience of the subjects. It depicts the existence of a sovereign (law-giver), who makes the laws for the inferior (obedient subjects).

Thus, for the positivists, the only legitimate source of law are those written rules, regulations, and principles that have been expressly enacted, adopted, or, recognized by a governmental entity or political institution. Thus, the basic questions are: *'what is law? Is it written? Where does it come from? Who made it? For who?'* on this premise, it may be argued that, for them, the only reason for strike is, if in fact, it is permitted by the law. That is, if it is duly accepted and provided for under the confines of the law, then there can be a strike. However, if the reverse is the case, then, there cannot be strikes, undertaken by workers in the industry. Thus, they are more concerned about the enactment of a law. Thus, laws are validated here, by the fact that, they are codified and accepted as law of the given polity. Contrarily, any rule not codified, recognized and, or, practiced by the specified structure of the society, is largely, invalid and should not be committed as law. By implication, the positivists' theory of strike will only recognize strikes where they are duly written and provided for, in the law, as it is. Anything contrary will be offensive.

From the foregoing theories, it is clear that, strike is not an alien concept. It is a natural phenomenon. However, it may be offensive to engage in a strike action where it is not codified or pronounced as law. This explains the reason for the emancipation of the right to strike.

2.0 The Right to Strike as a Human Right

Here, it may be apt to consider the right to strike as a human right. It suffice to say that, human rights are claims, assertions and entitlements, which are ascribed to human persons, by virtue of being human. They are inalienable, inviolable, and imprescriptible. They ought to be respected, and hallowed.

In the Nigerian legal system, these fundamental rights and freedoms are duly enshrined in the Constitution of the Federal Republic of Nigeria, 1999, as amended.[38] These include the justiciable and non-justiciable rights.[39] It must be stated here that, the right to strike is not explicitly pronounced as a right in the constitution; however, it finds expression in related rights, which are duly provided and pronounced as rights.

Firstly, the right to dignity of human person, as enshrined in the constitution,[40] denotes freedom from torture or any inhuman or degrading treatment. It further prohibits slavery or servitude, and, forced or, compulsory labour. Hence, no person shall be made to suffer any pain or hardship in consequence of labour, or, any relation whatsoever. This therefore, connotes that, any labour relation, which denies the labourer or employee of his dignity, whether because of torture, servitude, humiliation, intimidation or

[37] Ibid, Austin's position on Law is clear and emanates from his support of Jeremy Bentham.
[38] CFRN (1999) as amended, Chapter IV and Chapter II respectively.
[39] These are rights that cannot give rise to any action under the law. These are provided as fundamental objectives and directive principles of state policy, as provided in Chapter II, Ss. 13-24 respectively.
[40] CFRN, 1999, as amended, s. 34(1)(a-e).

suffering howsoever, tantamount to an infringement. In essence, where an employee is subjected to an unfair or unjust practice because of his job, it touches on his dignity as a person.

Similarly, there is the right to peaceful assembly and freedom of association**,** as contained in the constitution.[41] This is to the effect that, every person shall be entitled to assemble freely and associate with other persons, and in particular, form or belong to any political party, trade union or any other association, for the protection of his/her interests. Consequently, the employee in a labour relation is entitled to his choice of association, and, to engage in any meaningful activity of such preferred association. Hence, the trade union to which the employee belongs may carry out its activities within the ambit of the law. This no doubt, suggests an empowerment to function as deemed fit by the trade union, within the confines of the law. Therefore, where a trade union considers an industrial action such as strike necessary, the employee who is a member of such union, reserves the right to partake in such strike action, for his/her benefit and for the overall interests of the union. Thus, a restriction or denial of this right, shall amount to an infringement, because, it is incorporated as a legal right of the employee.

Further, the right to freedom of expression, including freedom to hold opinions, and, to receive and impart ideas and information without interference, is enshrined in the constitution.[42] This clearly, makes it lawful for the employee and the trade union or association, which he/she belongs, to, freely express and hold its opinions without any interference. Therefore, any contrary position or act, suggests a contravention of the law, as laid down. This therefore, in a sense, gives legality to the right to strike.

Hence, it is clear that, these fundamental rights as aforementioned, are inalienable and justiciable rights of the employee (being a person in the eyes of the law), and can therefore, not be derogated or denied absolutely. Thus, an employee in a labour relation may aptly engage in a strike action, to resound his/her rights, thereby securing and safeguarding his/her interests. Consequently, where an employee as a member of a trade union deems it fit to engage in a strike action, to express an ill feeling about a specific labour relation, or about an opinion in the State, regarding the interests of workers and incidences relating thereto. It will be unjust to deter or deny him/her the right to strike, or, even mete out punishments, or, any sort of sanction on the employee for such decision. Therefore, he/she reserves the right to give or withdraw his/her services, by giving notice to the employer, in accordance with the terms and conditions of work, and within the purview of the law.

A denial of this right as a result of strike, will no doubt amount to forced labour and will thus, offend the provisions of the constitution, as afore-stated. It may be necessary to reverberate the fact that, the constitution is the supreme law of the land; therefore, any contrary provision or law is null and void, to its extent of inconsistency. This is evident in section 1(3) of the CFRN, 1999, as amended. The point is that, if these rights cannot be withdrawn unjustly, except as prescribed by the law, then the right to strike ought not to be denied or impinged, because, it is legal.
It may be apt to note that, even in International law, these fundamental rights are respected and protected. The Universal Declaration of Human Rights[43] provides for the respect and protection of rights

[41] Ibid, S.40.
[42] Ibid, S.39(1).
[43] UDHR, 1948 <https://www.hrlibrary.un.eu> accessed November, 2022.

of every person, being human. It specifically provides for freedom from slavery;[44] Right of Peaceful Assembly;[45] and, the Right to desirable work and to join trade unions.[46]

In similar vein, the International Covenant on Civil and Political Rights[47] also stipulates rights that accrue to a person by virtue of humanity. It provides that, no one shall be subjected to torture or to cruel and inhuman or degrading treatment or punishment.[48] Thus, where an employee is denied rights to vent his/her grievances or express his/her displeasure about his work, this will automatically amount to psychological torture and cruelty on his person. It also provides that, no one shall be held in slavery and servitude.[49] Further, no one shall be required to perform forced or compulsory labour.[50] Consequently, the employee who is aggrieved in respect of his job, and has no medium to complain or refute the terms and conditions mete out, or introduced in course of his employment, by his employer, is practically in a forced labour, and may not wish to continue his job in good faith. The Right to hold opinions without interference and the right to freedom of expression are also fundamental provisions of this International Convention.[51] This enables the employee to hold his opinion on any subject matter desirable to him, without any form of interference, albeit, within the ambit of the law. Article 21, also makes it legitimate for the labourer to assemble peacefully with other persons.[52] He is empowered to form and join trade unions for the protection of his interests. Hence, these rights may be employed, where deemed fit, for prevailing circumstances.

A further proof of the fundamental nature of the right to strike is seen in the International Covenant on Economic, Social and Cultural Rights of the United Nations.[53] By its basic provisions, every person reserves the right to enjoy just and favourable condition of work, which ensure in particular, remuneration for all workers, as minimum and fair wages, and; equal remuneration for work of equal value.[54] It also provides for the right to form and join trade unions of choice, for the promotion and protection of economic and social interests.[55] Interestingly, it specifically provides for the right to strike, if, it is executed in conformity with the laws of the particular country.[56] This is mind-blowing, given that, it specifically pronounces the right to strike as a right. However, it leaves this right at the discretion of the State, though subject to the test of reasonableness. Nonetheless, it is impressive and comforting that it makes it lawful to engage in strike actions. If this were the case, then, it is arguable that, strike actions are legitimate and enabled by the law.

[44] Ibid, Art 4.
[45] Ibid, Art 20.
[46] Ibid, Art 23.
[47] ICCPR, 1966 <https://www.ohchr.org> accessed November, 2022.
[48] Ibid, Art 7.
[49] Ibid, Art 8(1)(2).
[50] Ibid, Art 8(3).
[51] Ibid, Art 9.
[52] Ibid, Art 21 provides for the right to peaceful assembly.
[53] ICESCR, 1966 <https://www.ohchr.org> accessed November, 2022.
[54] Ibid, Art 7(a)(b)(c).
[55] Ibid, Art 8.
[56] Ibid, Art 8(d).

Other rights in this convention are, the right to social security, including social insurance,[57] the right to an adequate standard of living for one's self and family;[58] and, the right of everyone to the enjoyment of the highest attainable standards of physical and moral health.[59] It is hereby submitted that, all these rights are issues that necessarily constitute terms and conditions of work in any given employment. They touch on every ramification or stratum of the human person. Again, this includes the worker in a labour relation.

Flowing from the above, if these rights as enshrined in these treaties, as aforementioned, are globally promoted, protected and respected, then the right to strike is no new development, and should be upheld here in Nigeria, owing to the fact that, Nigeria is a State party to these covenants; as a legal right of the employee in a labour relation. Albeit, a jurisprudential debate may ensue in the context of the sovereignty and independence of States, as it pertains to the grant of this right. It is submitted here that, this may be unnecessary and unhealthy because, each State ought to do all within its capacity, to engender social health and tranquility. In addition, it must be re-emphasized here that by being a State party to these conventions, Nigeria as a nation has therefore, subscribed to these treaties and ought to adopt and practice same.

Regrettably, it is important to state that, by the provisions of the constitution of the Federal Republic of Nigeria, 1999, as amended, no treaty shall apply here in Nigeria except, it is ratified and enacted into the municipal law by the National Assembly.[60] Thus, these conventions cannot hold sway except the lawgivers do the needful. This is based on the theory of dualism of law. Dualism holds that international and domestic law are separate bodies of law, which exist independently of each other. Thus, they regulate different subject matter.[61] Consequently, to become one piece, the treaty must go through the process of ratification.

3.0 The Legal Framework of the Right to Strike in Nigeria

3.1 The Constitution of the Federal Republic of Nigeria, 1999, as amended

As aforementioned, the constitution is bereft of the right to strike. However, this right is enveloped in the fundamental rights in Chapter IV, as already stated. These are justiciable rights, where occasion demands.

Nevertheless, Chapter II of the constitution, which provides for the Fundamental Objective and Directive Principles of State Policy, particularly, in section 17(3), also re-echoes these rights and related labour issues. Sadly, these provisions are not actionable and as a result, unusable and unenforceable. This is evident in section 6(6)(c) of the constitution, which makes it non-justiciable.

3.2 The Trade Dispute Act, 2004 (TDA)

[57] Ibid, Art 9.
[58] Ibid, Art 11(1).
[59] Ibid, Art 12..
[60] S. 12(1)
[61] M.N. Shaw, International Law (Cambridge: Cambridge University Press, 1997), 102-104

The TDA takes cognizance of the right to strike.[62] By virtue of section 2(1) of the Act, the parties to a trade dispute are enjoined to attempt to settle their dispute amicably by any agreed means, if any exists. However, where settlement fails, or, where there is no agreed means of settlement, section 3(2) enjoins the parties to settle such dispute by mediation within seven days. Thus, workers who have complied with the requirements, can legally embark on a strike action, though this is dependent on the majority vote of the workers, who must have done so by way of a secret ballot, and, must give due notice to their employer, of the intention to proceed on a strike. Indeed, section 18 of the Act recognizes the existence of this right. However, there is an outright limitation to this right.

The Act provides for the prohibition of lock-outs and strikes, before the issue of Award of the National Industrial Court.[63] Sadly, section 18(2) makes it a crime for any worker to engage in a strike action in connection with a trade dispute, without first exhausting the onerous procedures prescribed in the proceeding subsection. By this, the Act circumscribed the workers' right to strike, and thus, incorporated both voluntary and compulsory settlement of disputes, even against the wish of the parties. This goes to say that, before workers can go on strike in Nigeria, they ought to have fully exhausted the rigorous procedure outlined in the proceeding subsection. Little wonder why section 18(3) provides thus:

> *It is hereby declared that, where a dispute is settled under the foregoing provisions of this Act, either by agreements or by an acceptance of an award mode… under this Act, that dispute shall be deemed for the purposes of this Act to have ended; and accordingly, any further trade dispute involving the same matters… shall be treated… as a different dispute.*

It is therefore argued here that, by the wordings of this section, there cannot be a lawful exercise of this right here in Nigeria. This is the position of the right to strike now in Nigeria, and has thus, given room for debates on the subject.[64]

3.3 The Trade Union Act, 2004 (TUA)

This Act on another hand recognizes the right to strike. By virtue of section 4, every trade union must have registered rules, which must contain amongst others, a provision that no member of the union shall take part in a strike, unless a majority of the members have in a secret ballot, voted in favour of the strike. Contrarily, sections 23 and 43 of the Act, stipulates that no court action can lie against union officials for acts committed during strike actions. However, it is pertinent to state that, this Act stands amended, by virtue of the Trade Union (Amendment) Act, 2005. Section 30(6) of the TU(A)A, outlaws strikes and lock-outs, unless they occur in specific situations, which include strikes by non-essential services sectors; strikes over dispute of right; strikes occurring after having exhausted the provisions of the Trade Disputes Act, and provided that, a simple majority of all registered members voted to

[62] TDA, Cap T8 LFN, 2004.
[63] See S.18(1)(a-f) TDA, 2004.
[64] See Agomo, C., 'Nigeria Employment and Labour Relations Law and Practice' (Lagos, Concept Publications Ltd, 2011) p. 297.

undertake the strike.[65] Thus, strike is outlawed in the essential services, no matter whose ox is gored, and, in spite of the prevailing circumstances at the time being. This is so, even where it is a fundamental breach of contract of employment. This and more, explains the fact that, the right to strike is impinged, despite the fact that it is a fundamental right of the worker, as aforestated.

3.4 The Trade Unions (Amendment) Act, 2005 (TUAA)

This is another legislation that recognizes the right to strike. Stemming from the provision contained in the TDA, section 6 of the TUAA[66] provides stringent rules, which must be adhered to before engaging in a strike. Amongst these, is the fact that, the onerous procedure outlined in the TDA, 2004, must be strictly adhered to.

3.5 The Trade Disputes (Essential Services) Act, 2004[67]

The concept of 'essential services' suggests that, certain activities are of fundamental importance to the community, and that, their disruption will have harmful consequences,[68] on the community or the health of the polity. Notably, workers in these services are required to give fifteen (15) days' notice before going on strike.[69] Contrarily, the Trade Unions (Amendment) Act, places a total ban on strike by workers in these essential services,[70] as unduly listed.

Permissively, the right of 'essential services' workers to strike ought to be restricted, given that these services have direct impact on lives of the citizenry. Thus, any disruption of these services will endanger lives and public health. However, it is important to note that, many Nigerian workers are denied their right to strike, under the guise of essential services, even where their active participation in strikes, will have little or no effect on the health of the polity. This is basically, due to the 'catch-all' phrase or unending list of essential services provided in the Act. Indeed, the list has been used to muzzle the entire civil and public servants, among others, from exercising their right to strike. It is submitted that, even the International Labour Organization (ILO) acknowledges essential service in itself.[71] The ILO admits the slight restriction and regulation of the right to strike of these services; however, they must not be totally banned from engaging in strikes. Consequently, the Nigerian experience must be remedied. In addition, the list of essential services as prescribed by the ILO, is slim and streamlined, unlike the Nigerian situation. This is the view of many writers such as Otobo.[72]

3.6 International Legal Framework

[65] TUA, Cap. T9 LFN, 2005.
[66] Section 6, TU(A)A is seemingly admissive of a right to strike, but it leaves the striker or worker at the mercy of the employer, by prescribing a hard and fast rule, of, 'all registered members'. How possible is it to get all registered members of an organization or industry together, given the realities of companies and industries today, who may be scattered all over the country and at varying locations. Indeed, this opinion is also held by Umoh. See, U.J. Umoh, a labour correspondent of the Daily Times Newspaper.
[67] Cap, T9 LFN, 2004.
[68] Morris, G.S., 'The Regulation of Industrial Actions in Essential Services', Industrial Law Journal, 1983, vol. 12, p.69.
[69] See TDA, 2005.
[70] S. 30 TUA, 2004 (as amended).
[71] Freedom of Association and Collective Bargaining, 1994, General Survey, Para 159.
[72] Otobo, D., 'The Generals, NLC and Trade Union Bill, in Otobo, D., 'Essentials of Labour Relations in Nigeria (Lagos, Malthouse Press Ltd., vol. 1, 2016) p. 129.

On the International plane, the right to strike is duly recognized. The United Nations through its specialized agency, the International Labour Organization (ILO), has proclaimed this right in her covenants and protocols. It must be stated that, the ILO is an agency geared towards developing and maintaining a system of international labour standards, which are aimed at promoting opportunities for people, to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

The ILO maintains a supervisory role over member States, thus, it oversees and scrutinizes the conduct of its State parties on the issues of labour relations. It is imperative to state that, in spite of the vital position of the ILO as the chief source of all international labour laws, and with its long established tradition and rich jurisprudence, it appears that the right to strike is not explicitly provided in any of its conventions and recommendations thereto. However, the absence of its explicit provisions on the issue does not hamper its pursuit of the right to strike. The ILO has not ignored this right, or, refused to deal with means of safeguarding same.[73] This is evident in its actions and declarations through its committee of Experts on the Application of Conventions and Recommendations (CEACR) and, the Committee of Freedom of Association (CFA). The ILO lends its voice on the issue through these bodies.

In summary, the principles and minimum rules of conduct established by these committees as regards the right to strike are amongst others, thus: that the right to strike is a fundamental right to be enjoyed by workers and their organizations. That there is a general recognition of the right to strike for workers in the public and private sectors, with the exceptions being, members of the armed and police forces, public servants who exercise authority in the name of the State, and, workers employed in essential services in the strict sense of the term (the interruption of which could endanger the life, safety or health of the whole or part of the population), or, in situations of actual national crisis.[74]

Candidly, the CFA believes that strikes are part of trade union activities.[75] This right is generally recognized as a legitimate means of defending their occupational interests and thus, an essential one.[76] As the CEACR has further elucidated:

> *'The committee considers that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with obtaining better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic*

[73] Gemigon, B., et al, contend that, the 'right to strike' appears incidentally in Article 1(d) of the convention on the Abolition of Forced Labour Convention No. 105, 1975, which prohibits the implementation of compulsory labour, as punishment for participating in strikes. In same vein, paragraph 7 of the Voluntary Conciliation and Arbitration Recommendation, No. 92, 1951, declares that none of its provisions is to be interpreted as limiting in any way whatsoever, the right to strike. Further, see Gemigon, J. et al, 'ILO Principles Concerning the Right to Strike, International Labour Review 137, no. 4 (1998:441). Hodges – Aeberhad and Odero, D., 'Principles of the Committee on Freedom of Association Concerning Strikes, 501.
[74] See Gernigon J., et al, 'ILO Principles Concerning the Right to Strike, op. cit. p. 55-56, paras a-m.
[75] ILO: Digest of Decisions and Principles of the Freedom of Association Committee, 5th ed (Geneva: International Labour Office, 2006) paras, 520-676. Particularly see para. 521.
[76] Ibid, para. 522.

> *and social policy questions and to labour problems of any kind which are of direct concern to workers.*[77]

Despite the potential of the ILO as a tool to enforce International Labour Standards, there are significant weaknesses in its practical application. While member States have an obligation to ensure the right to strike and other labour rights, the ILO does not have the authority to enforce compliance,[78] where they (member States) fail. Indeed, it has been said "the ILO has no teeth"[79] because, it could not effectively enforce compliance by member States.[80]

Again, the ILO appears to be susceptible to political influence and dynamics.[81] Indeed, as the chief source of labour standards and precepts, the ILO has found its policies and deliberations politicized, thus, making it somewhat ineffective in its actions.[82] This has therefore, hindered the ILO's implementation scheme and sanctions against violators.[83]

Nonetheless, these flaws have not deterred the ILO's efficiency in holding governments accountable based upon its ability to investigate and publicize governmental infractions.[84] Indeed, the ILO can no longer be described as a toothless dog, but one that bites with fury.[85] Where serious complaints lie against violators, by non-state actors, pursuant to Article 26 of the ILO constitution, the Commission of Inquiry is appointed to examine the alleged violations and to make a report. A State which fails to abide by the decisions of the Commission of Inquiry, can be sanctioned under Article 33 of the ILO Constitution. This of course, necessitates sanctions.[86] This was also evident in the Nigerian experience.[87] Consequently, it may be argued that, ILO has not lost its glory or capacity, because, it still upholds its principles and would take necessary actions, where situation demands. Thus, it has teeth and will bite, where deemed fit.

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[77] ILO: Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Report 111(48), International Labour Conference 69th Session (Geneva: International Labour Office, 1983), para 200.
[78] F. Maupin, "Is the ILO Effective in Upholding Workers' Right? Reflections on the Myanmar Experience" in P. Alston (ed), 'Labour Rights as Human Rights' (Oxford: Oxford University Press, 2005), 86; L.A. Visano and N.A. Bastine, 'Law and the Culture of Capital: A Critical Perspective on Labour's Right to Associate in Developing Societies', (2002) 18(1) Journal of Developing Societies, 1; International Standards and Workers' Rights in APEC Countries <https://www.ddrd.ca/site/publications/index.php?id/314&page=3&subsection> (February 17 2009).
[79] Ibid, F. Maupin, supra.
[80] Ibid.
[81] See L.A. Visano and N.A. Bastine, supra, n.77
[82] Ibid.
[83] Ibid, n.78
[84] Ibid.
[85] Ibid.
[86] See Report of the Commission of Inquiry established to examine the complaint concerning the observance by Myanmar of the Forced Labour Convention, 1930 (No.29), made by delegates to the 83rd Session (1996) of the International Labour Conference under Article 26 of the Constitution of ILO, Governing Body, G.B.273/5273rd Session, Geneva, November, 1998. For an excellent account of the success story of enforcement of International treaties by the ILO, see F. Maupin, 'Is the ILO Effective in Upholding Workers' Right?: Reflections on the Myanmar Experience', in P. Alston (ed), Labour Rights as Human Rights (Oxford: Oxford University Press, 2005), 85-142.
[87] Nigerian Labour Practices Under Scrutiny: ILO Governing Body Establishes Commission of Inquiry, <https://www.ilo.org/global/About_the_ILO/media_and_public_information/press_releases/lang-en/WCMS_007974/index.htm> (February 17, 2009).

It may suffice to state here that the African Charter on Human and Peoples' Rights though extant as a regional legislation in Africa, it does not provide for the right to strike, but recognizes a few rights associated therewith.

4.1 Rights to Strike in other Jurisdictions

Summarily, it may be apt to bring to bear the status of the right to strike in other jurisdictions, though just a few will be considered here. It is imperative to note that, the right to strike is duly guaranteed in some States. Indeed, it is a full-blown constitutional right in some States, while it is yet to be actualized in some States like Nigeria. As Novitz puts it:

> *Within some States, there is a "positive" entitled mentor right to take industrial action guaranteed as a constitutional right or as a key feature of labour legislation. Within others, this is phrased as a "negative" liberty, such that, workers and organizers are immune from what would otherwise be the legal consequences of industrial action.*[88]

4.2 Ghana

In Ghana, the right to strike is recognized under the Ghanaian Labour Act, 2003. Parties to a trade dispute are encouraged to settle their differences, however, where settlement fails, workers may go on strike, though with proper notice. However, the unique feature about the Ghanaian position is that, though the right to strike is absolutely prohibited in essential service, the list of essential service is defined strictly in line with the standards of the International Labour Organization (ILO).[89] In addition, it is important to note that, Ghanaian Law protects against dismissal and hiring of replacement Labour during a Lawful strike,[90] unlike the Nigerian situation.

4.3 South Africa

Impressively, the South African Constitution, Act 108 of 1996, which was adopted on 10th May, 1996, and took effect on 4th February, 1997, duly provides for the right to strike. This is entrenched in Section 23(c) of the constitution, which provides that, "every worker has the right to strike". It places no restrictions on the right to strike. Thus, the right to strike is a positive right in South Africa, because it is constitutionally enshrined. However, certain limitations are provided in the Labour Relations Act, 1995.[91] This pertains to procedure,[92] subject matter of the issue in dispute,[93] and persons entitled to exercise the right.[94] These are merely procedural, but do not exclude the right to strike. Indeed, Nigeria must take a clue from the position in South Africa.

4.4 Other African Countries

[88] See Novitz, T., 'International and European Protection of the Right to Strike (2003) p.1. See also, R. Ben-Israel, 'Introduction to Strikes and lock-outs: A Comparative Perspective', in Blanpain, R., and Ben-Israel, R (eds), strikes and lock-outs in Industrialized Market Economics, Bulletin of Comparative Labour Relations (1994) 8-9
[89] LA, 2003 (Ghana) S. 175.
[90] Ibid, S. 170.
[91] LRA, 1995 (South Africa)
[92] Ibid, S. 64
[93] Ibid, S. 65(1)(c)
[94] Ibid, S. 65(1)(a)(b) and (d)

Indeed, so many other African countries clearly recognize the right to strike and have thus, imputed same in their respective constitutions and their specific legislations. These include, Malawi;[95] Namibia;[96] Zambia;[97] Lesotho[98] Tanzania;[99] Mauritius[100]; and Swaziland.[101]

4.5 United States of America

The right to strike is guaranteed in the United States Law. This is evident in sections 7 and 13 of the National Labour Relations Act, 1935 (NLRA).[102] Section 7 of the Act clearly affirms the right of workers to go on strike in the United State. The right is further secured and assured by section 13, which states thus:

> *Right to strike is preserved – Nothing in this Act, except as specifically provided for herein, shall be construed, so as either to interfere with or impede or diminish in any way, the right to strike or, to affect the limitations or disqualifications in that right.*[103]

In *UAW v. O'Brien*,[104] the Supreme Court of USA construed this language as "expressly recognizing the right to strike".

5.0 The Right to Strike as a Beam in Labour Relations in Nigeria

It cannot be overemphasized that, the right to strike is a beam in labour relations. From the foregoing, it is clearly proven here that, this right is the most useful tool, which the workers bring to the bargaining table, to pursue their occupational, economic and social interests. In fact, it goes down to the private lives of these workers. In addition, where policies of government and the private enterprises are unfair, the only viable tool for the worker is, the strike action.

Consequently, there is an urgent need for the emancipation of the right to strike in Nigeria. This must be done to assuage untold hardships and injustices meted out in workplaces. This accounts for the unprecedented strike actions in Nigeria presently.[105] There is no gainsaying that, the right to strike must be constitutionalized in Nigeria, to give the worker the desired assurance and security needed. Else, employers will fire the workers who go on strike, as is the case in Nigeria.

5.1 Challenges to the Right to Strike

[95] Constitution of Malawi, 1990, Art 21(1)
[96] Constitution of Namibia, 1994, S.31(4)
[97] Industrial and Labour Relations, Act, 1993, S. 78(1)(b)
[98] Labour Code, 1992, Ss. 229, 230.
[99] Employment and Labour Relations Act, 2004, S. 75
[100] Industrial Relations Act, 2003, Ss.2, 92.
[101] Industrial Relations Act, 1995, S. 61(3)(c)
[102] (49stat.449) 29 U.S.C. 151-169. This is popularly referred to as the 'Wagner Act', after its creator Senator Robert Wagner of New York; in his Bill, Senator Wagner promised that, the Government enforcement of the Right to organize would bestow upon workers "emancipation from economic slavery and… an opportunity to walk the streets, freemen, in fact, as well s in name. see 79 CONG.REC. 6184 (1935) (Address by Senator Wagner), reprinted in 2 NLRB, Legislative History of the National Labour Relations Act, 1935, at 2284 (1949).
[103] S.13(163) NLRA 29, Cap 7(11) U.S.C.
[104] 329 U.S. 454, 457 (1950)
[105] The rate of strikes in Nigeria is unimaginable. Even where there are no strikes exactly, there are threats of strikes. This is because, this is the only way out for the workers to vent their grievances.

It is imperative therefore, to state that, there are challenges to the recognition of the right to strike in Nigeria. For the benefit of this paper, it is impossible to elucidate these challenges, as it ought to be. However, a few shall be outlined as follows:

i) That the right to strike is not yet a positive right in Nigeria, as evident in this paper. This is here, proven.

ii) The onerous conditions for exercising the right to strike in Nigeria must be discarded. This is seemingly, unjust and unhealthy. This is evident in the legislations pertaining to the subject, especially the provisions of the TDA, 2004. The voluntary and mandatory provisions of the law, are somewhat unfair and unhealthy to labour relations.

iii) The undue and wide definition of 'Essential Services' in Nigeria. This is mindboggling and must be circumscribed to meet international labour law standards.

iv) The multiplicity of laws on strike in Nigeria. This connotes a conflict of interests. There are too many extant legislations on the issue of strike in Nigeria, as evident in this paper. A sole legislation will be most preferred, rather than the multiple situation on ground. This therefore, calls for prompt action.

v) The undermining of the Right to Strike by the government and the employers of labour. This has been stated here. In fact, the cloak on this right is a challenge to its use, here.

vi) The total ban on strike by workers in Essential Services. This is a major challenge because; the cloak of Essential Services has been used to deny the listed workers their right to strike.

vii) The 'Impasse' strategy in strikes. This refers to a strategy wherein, parties deliberate on issues, with no resolutions or meritorious awards, leaving parties in a deadlock situation, with little or no headway to progress. This is evident in the ***ASUU v. FGN case***[106], which appears to be unresolved till date. Disheartening, is the fact that it appears to be a 'strategic win for the being' for the parties, especially where it concerns the government.

viii) The disregard for international laws and conventions. It is here proven to be so, and is thus, disheartening to know that, though Nigeria is a State party to most of the international conventions, she is yet to domesticate same in her laws.

ix) The divide between parties in labour relations. There appears to be an imbalance and indeed, a gap between the actors in labour relations, because, there is an obvious imbalance between the workers, the employers and to an extent, the government. Thus, what obtains here is more of a 'hire and fire' relationship in the workplace, and this of course, threatens the use of the right to strike.

x) The in-conclusion and non-implementation of collective agreements by the parties to Collective Bargaining and Alternative Dispute Resolutions, especially the government. This leaves parties at crossroads. Therefore, the reverse ought to be the case.

[106] The present situation in Nigeria, between the Academic Staff Union of Universities, is evident of the impasse strategy. There appears to be no headway between the parties. See Tunde Leye, 'Solving the issue of ASUU strikes permanently', Premium Times, September 1st, 2022, <https://www.premiumtimes.ng.com> accessed 29th October, 2022.

xi) The need for a clear-cut distinction between political and industrial strikes in Nigeria, thus, not making strike a tool for greedy and selfish politicians and business moguls, who tend to use strikes as the means to achieve selfish goals.

xii) The non-domestication of international treaties, especially that of the International Labour Organization. This is as aforestated.

xiii) The inefficiency of the judiciary on labour related issues. Without prejudice, it may be argued that the judiciary appears to be passive about labour related issues. This ought not to be. Labour issues are fundamental and pressing and must be dealt with seriously, and as a matter of urgency.

6.0 Conclusion

From the foregoing, it is clear that, the right to strike is a natural right of the worker/employee in a labour relation. Thus, it is inalienable and imprescriptible. It is the most potent weapon of the employee in the workplace, for the protection of his/her rights and interests. This is due to the fact that, it creates a balance in the collective bargaining and collective agreements process. In fact, it is the most useful tool, which the employee brings to the bargaining table. Thus, an infringement of this right, will amount to injustice and unfair practice. Therefore, this right must be hallowed and assured here in Nigeria.

This goes to say that, the present status of the right should not be. There must be a positive right to strike in Nigeria. This no doubt is the best practice as argued in this paper.

Further, it is evident here that, there are challenges to the right to strike in Nigeria. These have been outlined earlier in this paper. It therefore, calls for prompt and permanent response, to assuage these challenges. A basic challenge to the Nigeria experience, is the unused and non-domestication of international conventions, due to the rigorous ratification process, as stipulated in section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended. This has unfortunately, hampered the full actualization of these conventions, here. However, it is pertinent to state that, international best practices may be adopted and automatically maximized, even without domestication, by virtue of the fact that, these conventions and practices have already gained international judicial recognition, as international customary law. Also, the International Labour Organization and all parties concerned, must uphold the precepts of international labour relations. Thus, these standards must be encouraged and copiously enacted here in Nigeria. This remains a path to industrial peace.

Nevertheless, it must be resonated here that, the right to strike is, and will remain, a beam to labour relations in Nigeria, if and only if, it is duly incorporated into the laws of the land. Indisputably, this will promote the peace and health of labour relations and the Nigerian society, and, will automatically, guarantee sustainable development in Nigeria.

6.1 Recommendations

To this end, the underlisted suggestions are preferred, as remedy for the situation of the right to strike in Nigeria.

1. There ought to be a positive right to strike in Nigeria.
2. The multiplicity of laws on strikes must be dissuaded.

3. There is the need to practice and encourage empathy in the workplace, for tranquility and warmth, to avoid undue and unhealthy squabbles between the parties in labour relations.
4. The International Labour Standards on strikes, especially, the South African and American positions on the right to strike, must be adopted, domesticated and ratified, in the best interest of labour relations in Nigeria.
5. The gap between management and workers must be bridged by creating avenues for positive decision-making.
6. Collective bargaining and agreements must necessarily be safeguarded, respected and honoured by all parties in labour relations.
7. The courts must wake up to its judicial functions. It must do justice where need be and not an injustice. It must exhibit its independence, at all cost.