RIGHT TO STRIKE IN NIGERIA AND SOME SELECTED JURISDICTIONS*

Abstract
The issue of workers right to strike has over the last several years become a contemporary issue in International Labour Law. Much juristic ink has been spilled on the issue of right to strike and a fascinating aspect of Labour Law which has irked considerable academic argument as a fundamental feature of many industrial relations systems. The right to strike is an indispensable component of a democratic society and a fundamental human right. The right to strike is an essential tool of trade unions all over the world for the defense and promotion of the rights and interests of their members, and a counter veiling force to the power of capital. There can be no equilibrium in industrial relations without a right to strike. Regardless of the importance of the right to strike, the right to strike has been restricted by our labour laws and has not been expressly provided for by the Constitution which is the grundnorm of the society and the International Labour Organisation. The Paper appraises the Nigerian law and practice on the right to strike in a democratic society in comparison with the position in some other jurisdiction. In other to achieve this aim, the researcher adopted doctrinal research method relying on primary and secondary sources of law on the right to strike. It is found that the right to strike is a vital tool used by workers to achieve their demands from their employers and thus an essential component of a democratic society but the nature and scope of the right to strike in Nigeria renders the right chimeric and most importantly violate international legal principles on the right to strike. Among other recommendations, express provision should be made of a positive right to strike by the Nigerian labour laws in conformity with international standards.

Keywords: Right to strike, Labour Organisations, Nigeria, Some other Jurisdictions

1. Introduction

The right to strike is a keystone of modern democratic society. It has been described as an indispensable component of a democratic society and a fundamental human right.[1] It is clearly a crucial weapon in the armoury of organised labour.[2] There are no constitutional or statutory right to strike in Nigeria as is obtainable in other jurisdictions like France, Russian, South Africa, Italian and other national constitutions where this right is clearly and explicitly provided for either in their Constitution or in a labour statute. Considerably, the right to strike upon entrenchment in legislations varies from country to country. Whereas, some countries consider it vital as to entrench it in their Constitution, others who do not see its very fundamental nature enact it in their various labour legislations.[3] According to Novitz, within some states, there is a 'positive' entitlement or 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.[4] In this Paper, consideration shall be had to the laws of South Africa, United States of America, Italy, United Kingdom, Kenya, France and Ghana in juxtaposition with the position in Nigeria on the right to strike.

2. Right to Strike in Nigeria

Strike is one of the most effective modes employed by employees to compel a recalcitrant employer to accede to the needs of his employees. One of the objectives of trade union is to improve the welfare of its members and win for each member a greater purchasing power. Management objective on the other hand is to ensure uninterrupted production and the greatest possible returns on investment. To achieve both objectives, the parties through collective bargaining agree on terms. This collective bargaining however, on occasions, does not produce the required result and in such instance, negotiations break down and workers resort to strike to pressurize management into acceptance or the management, or on lockout.[5] Knowles[6] contends that Strike is a collective stoppage of work taken in order to bring pressure to bear on those who depend on the sale or use of the products of that work; and that the strike must involve a group of employed workers; also there must be a definite employer-employee relationship between the parties. Hiller,[7]expressed the view

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[1] O Kahn-Freund and B.A. Hepple, 'Laws against Strikes: International Comparison in Social Policy' (Fabians Research Series 1972) 4 cited in O V C Okene, 'Internationalization of Nigeria Labor Law: Recent Developments in Freedom of Association' *University of Botswana Law Journal* 93 at 106-107

[2] *ibid*

[3] O V C Okene, 'The Status of the Right to Strike in Nigeria: A perspective from International and Comparative Law' Available at <https://www.researchgate.net/publication/250228471> accessed 12 August 2024

[4] T Novitz, *International and European Protection of the Right to Strike* (Oxford University Press, 2003) p 333; R Ben-Israel, 'Introduction to Strikes and Lock-outs: A Comparative Perspective', in R Blanpain, and R Ben-Israel (eds), *Strikes and Lock-outs in Industrialized Market Economies* (Bulletin of Comparative Labour Relations, 1994) 8–9

[5] Richard Idubor, *Employment and Trade Dispute Law in Nigeria* (1st Edn Sylva Publications Ltd 1999) 126

[6] K G.J.C Knowles, *Strike-A Study of Industrial Conflict* (Philosophical Library 1952) 1

[7] E T Hiller, *The Strike: A Study in Collective Action* (University of Chicago Press 1982) 12

that a strike is the simultaneous and coordinated withdrawal of labour by workers. In *Tramp Shipping Corporation v Greenwhich Marine Incorp.*[8], Lord Denning MR stated that:

> A strike is a concerted stoppage of work by men, done with a view of improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or sympathizing with other workmen in such endeavor; it is distinct from stoppage brought by an external event such as a bomb scare or by apprehension of danger.

The Trade Disputes Act, s48 defined strike as:

> The cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employed in consequence of a dispute, done as a means of compelling their employer or any persons or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.[9]

Notably, the statutory definition is broader and more comprehensive. To constitute strike from the definitions above, the following must exist:

a) The action must relate to cessation of work. This includes deliberately working at less than usual speed or efficiency; there must be a common cessation of work and the stoppage of work must be deliberate, that is to say there will be no strike if a group of workers stopped working as a result of an external event such as a bomb scare or apprehension of danger. Cessation of work here include deliberate working at a less or unusual speed or with less usual efficiency and refusal to continue to work thereby implying that it is not in every strike action that there is actual cessation of work, for instance, where workers employed to lecture at least twice in a week but as a result of non-payment of their salaries collectively agree to lecture only once weekly or twice monthly as a way to show their employers that they are aggrieved or draw their attention to meet their demands, it amount to 'strike'.
b) The action must be by employees acting in concert, combination or common understanding
c) The action must be in consequence of a trade dispute.[10]
d) The purpose must be to compel an employer or person or body of persons employed to accept or refuses to accept respectively terms of employment and physical conditions of work.

In light of the views on what the concept of strike entails, it is gathered that to be effective, the employees must put down tools and interrupt the work of the employer. Interestingly, despite all the elaborate statutory provisions made for ensuring peace in the industry, hardly any week passes without strike action or threat of it in one form or the other.[11] Therefore, the contention have arisen as to whether an employee have a right to strike in a democratic society like Nigeria. According to Okene,[12] the question of whether workers generally have a right to strike in a democratic society is a fascinating aspect of labour relations law which has provoked considerable academic debate as a central feature of many industrial relations systems.

The law in Nigeria does not lend its weight to the employees and trade unions to exercise this right to strike. The Nigerian State declared the June 2007 nationwide strike illegal on the basis of the judgment of the Court of Appeal in *Adams Oshiomhole and Nigeria Labour Congress v Federal Government of Nigeria and Attorney-General of the Federation*[13], where the Court declared the strike action illegal. The major issue in the case was the imposition of a 1.50 petroleum tax with effect from 1 January 2004 by the Obasanjo regime. Labour and other civil society organizations declared a strike against it. The Court held that the Nigerian Labour Congress had no right to call out workers on strike against general economic and political decisions of the Federal Government because such have nothing to do with breach of individual contracts of employment with various employers as envisaged in the Trade Disputes Act.

It is respectfully submitted that the above decision of the Court runs counter to the principle established by the International Labour Organisation (ILO) Committee on Freedom of Association, which stated that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions. In the same spirit, the Committee has stated that workers and their organizations should be able to express their dissatisfaction regarding economic and social matters affecting workers' interests in circumstances that extend beyond the industrial disputes that are likely to be resolved through the signing of a collective agreement.

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[8] [1975] All E.R 898 at 990
[9] Cap T8 Laws of the Federation of Nigeria 2004
[10] See the Trade Disputes Act, s 48 (1)
[11] A Emiola, Nigerian Labour Law (Ibadan University Press 1982) 239
[12] O V C Okene, 'The Right to Workers to Strike in a Democratic Society: The Case of Nigeria' [2007] (19) (1) *Sri Lanka Journal of International Law* 193
[13] (2007) 8 NWLR (Pt 1035) 58

Section 18 of the Act expressly prohibits the workers from undertaking any form of strikes or lockouts during the pendency of the negotiations or arbitral proceedings; they are also restrained from embarking on industrial actions after the tribunal has determined the issues in dispute. By the said Section 18 therefore, workers in Nigeria are prevented from going on strike and employers in Nigeria are prevented from imposing lockouts where negotiation or arbitration proceedings are in progress and where industrial tribunals have finally determined the issue in controversy. Thus, the net effect of the above provision is the ban on strike and lockout in Nigeria, the consequence of which is a criminal offence (fine of #100.00- or 6 months imprisonment).[14] The Trade Union (Amendment) Act 2005, s. 6 (6)(a)[15] provides in cases where the prohibition on the right to strike is breached for a fine of up to N 10,000.00- or six-months' imprisonment or both the fine and imprisonment. Clearly, these provisions conditionally outlaw the right to strike except the workers have first, exhausted the stipulated dispute settlement mechanisms.[16]

It is pertinent to note yet another restraint on the right of workers to strike. Section 43 of the Trade Dispute Act provides that any worker who take part in strike shall NOT[17] be entitled to any wages or other remuneration for the duration of the strike and for the purpose of reckoning the period of continuous employment, any such period shall not be computed, it further prejudicially affects rights which are dependent on the continuity of employment. An employer is therefore under no obligation to pay and where he refuses to pay, the worker cannot as a matter of law insist on payment and consequently voluntary payment of wages by an employer does not involve any illegality and such payment in the hands of the worker is not tainted with illegality. The Trade Union (Amendment) Act[18] further exacerbated the plight of workers to the conditional exercise of the right to strike.[19] Section 6(d) of this Act amends Section 30 of the Principal Act[20] by providing for a new subsection (6) as follows: 'No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless; (a) The person, trade union, or employer is not engaged in the provision of essential services.'[21]

3. Right to Strike in Some Other Jurisdictions

South Africa

There exists a positive right to strike under the South African Constitution. The Constitution of South Africa, Act 108 of 1996 was adopted on 10 May 1996 and came into effect on 4 February 1997. Commendably, the Constitution of the Republic of South Africa 1996, s17[22] provides that everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petition. While the Constitution of the Republic of South Africa 1996, s18[23] provides for the right to freedom of Association. Explicitly, under the Constitution, it is provided that 'Everyone has the right to fair labour practices; every worker has the right to form and join a trade union; to participate in the activities and programs of a trade union; and to strike.[24] Categorically, the Constitution places no restrictions on the right to strike. However, there appears noticeable limitations in the Labour Relations Act[25] as to procedure, subject-matter of the issue in dispute and persons entitled to exercise the right.[26] In *Numsa & Others v Bader Bop (Pty) Ltd*,[27] the South African Court held that the Constitution recognizes the importance of ensuring fair labour relations; the right to strike is essential to the process of collective bargaining. Considering in-depth the position of the court, the conclusion will not be far from the fact that the minority union is granted the right to strike despite they not being entitled to participate in collective bargaining as their constituency requirement were not met.

Apparently, the paper has considerable proffered discuss on the pertinent issues relating to democracy as practiced in Nigeria on the one side and the right to strike on the other. In a stern bid to espouse this relationship, the chapter has interrogated the various laws limiting strike actions in Nigeria, and the liability it opens the workers to. Furthermore, the chapter engaged on a jurisprudential voyage to interrogate the industrial regime of other advanced climes where democracy is the practice to proffer a soft landing to the practice in Nigeria. In this consideration, a clear distinction is

[14] Section 18(2) of TDA
[15] TUA (as Amended) 2005, section 6(6); O V C Okene, The Decriminalization of Nigerian Labour Law [2014] (4) (1) *Journal of Private and Property Law,* 195
[16] See generally Section 18 (1 -3) of TDA
[17] Capitalization is for emphasis and mine. This is also known as the 'no work no pay' rule
[18] Trade Union (Amendment) Act CAP T 14 LFN 2004
[19] Section 30 (6) of the Trade Union (Amendment) Act is instructive
[20] Trade Unions Act (as amended)
[21] Section 7 which is the interpretation section of the Trade Disputes (Essential Services) Act defines essential services and elaborately outlines services considered to be an 'essential service'
[22] Constitution of the Republic of South Africa 1996, s17
[23] Constitution of the Republic of South Africa 1996, s18
[24] Constitution of the Republic of South Africa 1996, s23 (1)(2) (a-c).
[25] Labour Relations Act 1995
[26] Constitution of the Republic of South Africa 1996, s64 & 65(1)(a)(b)(c) & (d)
[27] [2003] 24 ILJ (CC) 305 at 367

made between the positive rights to strike and those none positive. In the analysis, the positive right to strike is those enshrined in the Constitution of the Country.

Ghana

The right to strike is recognized under the Ghanaian Labour Act of 2003. The parties to a trade dispute are first encouraged to negotiate in good faith to settle the dispute using their own agreed procedures. The National Labour Commission can also intervene in disputes and seek settlement by mediation and thereafter by arbitration.[28] The Labour Act of Ghana 2003, s160[29]which contains the substantive provision on right to strike provides that a worker can go on strike subject to the giving of seven days' notice which must expire before the strike action is embarked upon. The right to strike is, however, is absolutely prohibited in essential service which is defined strictly in line with the standards of International Labour Organisation[30]. Furthermore, Ghanaian law protects against dismissal and hiring of replacement labour during a lawful strike.[31]

Kenya

The right to[32] strike is also recognised in Kenya. The Trade Disputes Act 2003 confers the right to strike which it interprets as 'the cessation of work by a body of persons employed in any trade or industry acting in combination … including any action commonly known as a sit-down strike or a go slow'.[33] However, a lawful strike takes place only when the procedure laid down in the Trade Disputes Act is exhausted. This procedure goes through the reporting, the decision of the Minister, conciliation, investigation, the Board of Inquiry, and the Industrial Court procedure.[34] In the case of strikes in the public sector, the Minister may take such appropriate action that would affect settlement of disputes in line with the specific set regulation. He or she may also order the parties to adhere to their agreements or any court award.[35] Workers in essential services are also denied the right to strike in Kenya. The list of essential services is very broad and does not conform to ILO standards.[36] Finally, the Trade Disputes Act provide for the reinstatement of dismissed workers who exercise the right to strike.[37]

United Kingdom

Unlike other jurisdiction, the position in the United Kingdom differs considerably. There is no positive right to participate in industrial action exist in the United Kingdom. This difference is rooted in it not having a written constitution. According to Honeyball and Bowers:

> It is virtually impossible in modern Britain to take industrial action which is lawful… The consequences of this are naturally serious. To take part in industrial action may mean the worker can be dismissed or lose pay and lack qualification for job seeker's allowance or other benefits. This is so even if the employer is totally to blame for the breakdown in relations that leads to the action.[38]

This lapse notwithstanding, the law makes provision for certain immunities from liability at common law for the civil wrong of 'torts' most frequently committed in the course of taking industrial action. However, these immunities as apparent are subject to a number of restrictions and mandatory rules. The rules to which the immunities are subject are as contained in the Trade Unions and Labour Relations (Consolidation) Act.[39] It is of material importance to note that the protection or immunities does not inure in vacuum as the industrial action must be 'in contemplation or furtherance of a trade dispute.' Clearly, the purport of the law as applicable in the United Kingdom is to the effect that even there exist a trade dispute the union will lose its statutory immunity unless the industrial action has been properly instigated in accordance with the procedures laid down in TULRCA and the Code of Practice on Industrial Action and Ballot and Notice to Employers 2000.[40]

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[28] LA 2003 (Ghana) s153
[29] LA 2003 (Ghana) s160
[30] L A 2003 (Ghana) s159
[31] L A 2003 (Ghana) s175
[32] [2003] 24 ILJ (CC) 305 at 367
[33] Trade Disputes Act 2003 (Kenya)
[34] *ibid* at s 27
[35]*ibid* at Sections 5–21
[36] *ibid* at Sections 36 and 43
[37] *ibid* at s 15
[38] S Honeyball, and J Bowers, *Textbook on Labour Law* (8th edition, 2004) 388
[39]Trade Unions and Labour Relations (Consideration) Act 1992 (TULRCA)
[40] Okene (n 5); Okene, (n 14) 203

United States of America (USA)

Although not inserted in the Constitution of the USA, the right to strike is guaranteed in the United States (US) law. Particularly, the National Labour Relations Act 1935, s7&13[41] secures the Right to Strike in America.[42] Basically, the National Labour Relations Act 1935s 7[43]provides that employees shall have the right to self-organization to form, join, or assist labour organisations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. From the tenor of the provision of section 7, there appears visible affirmation of the Right to strike in the United States. Also, in a clear bid to secure the right to strike of workers, section 13 provides: 'Right to strike 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 qualifications in that right'.[44]

The Supreme Court of America received invitation in the case of *UAW v. O'Brien*[45]to construe the language, 'expressly recognizing the right to strike.' The Court concluded that Section 13 has been inserted to ensure that the right to strike would not be suppressed as a means of obtaining industrial peace. In a nutshell, under the American industrial legal regime, the right to strike is legally protected so that it can provide workers with a source of bargaining power.[46] It has been vehemently argued that the recognition of this very dear right to the worker in the United States of America has helped the system of labour relations. This assertion as it where finds expression in the fact that prior to the passage of the law, there was a recurrent case of long and sometimes violent strikes. Therefore, the long established trend of event masking itself in boycotts, city-wide shut-downs and picketing were eliminated.[47]Also, the right to strike exist in other specialized legislations in America. These specialized legislations in the United States include the Railway Labour Act of 1926 (RLA), the Norris-LaGuardia Act of 1932 and the Labor Management Relations Act of 1947 (LMRA or Taft-Hartley Act).

Italy

The Italian Constitution clearly provides for a positive right to strike. Section 40[48] provides that: 'The right to strike may be exercised within the limits of the law which regulates it.' Thus, there is express recognition of the right to strike in Italy. This flows from the fact that the Constitution gives a broad bandwidth to the workers to engage in strike action as much as the exercise is within the limits of the law which regulates it. Suffice it to mention that this expressed right is an offshoot from the formal recognition of trade union freedom of association enshrined in the Italian Republic Constitution 1948, s39[49]and recognized by the Italian Legal system.[50] Categorically, where statutory law fails to make provision as is visible as to the limits of the right to strike, the position of case laws become inevitable. Thus, case law is of crucial importance in delineating the limits of legitimate industrial action, particularly that of the Constitutional Court. In this regard, the 'limits' identified by case law have traditionally been divided into 'external' limits, i.e. those deriving from the presence of other constitutionally recognized rights, and 'internal' limits, i.e. those inherent in the intrinsic structure and very notion of a strike.[51] It is noteworthy that other statutes in Italy also provides for the right to strike such as; The Workers' Statute Law 1970[52] which is introduced in the Articles 15, 16 and 28 – workers' protection provisions against anti-union abuses. However, the Armed Forces 1978,[53] and Police Force 1981,[54]prohibit the right to strike with the aim of not compromising public order or security protection and judiciary police activities.

[41]National Labour Relations Act 1935, s7&13; J G Pope, 'How American Workers Lost the Right to Strike, and Other Tales' [2004] (103) (3) *Michigan Law Review*, 519–553 at 524

[42] Okene (n 5)

[43] National Labour Relations Act 1935, s7

[44] National Labour Relations Act 1935, s13<http://www.nlrb.gov> Accessed 12th of August 2024

[45] 329 U.S. 454, 457 (1950)

[46] Okene, (n 5)

[47]J J Sweeney, A Need to Amend the NLRA*?* (1984) (6) *Fordham Law Review*, 1143. Also, the right to strike exist in other specialized legislations in America. These specialized legislations in the United States include the Railway Labour Act of 1926 (RLA), the Norris-LaGuardia Act of 1932 and the Labor Management Relations Act of 1947 (LMRA or Taft-Hartley Act)

[48] Italian Republic Constitution of 1948, s40

[49] Italian Republic Constitution 1948, s39

[50]Strikes in Italy: Background Summary; <https://www.etui.org> Accessed on the 14th of August 2019; National Labour Law Profiling: Italy, <https://www.ilo.org> Accessed on 14th of August 2024; B Waas, 'Strike as a Fundamental Right of the Workers and its Risks of Conflicting with other Fundamental Rights of the Citizens.' (2012, General Report III, XX World Congress, Santiago de Chile, 2012) <https://www.islssl.org> accessed on the 14th of August 2024

[51]The Right to Strike in Italy.<http://www.eurofound.eu.> accessed on the 14th of August 2024; T Treu, 'Italy', in R. Blanpain (ed.) *International Encyclopaedia for Labour Law and Industrial Relations* (2004) 479–488

[52] The Workers Statute Law No 300 of 1970

[53] Armed Force Law No 203 of 1978

[54] Policy Force Law No 121 of 1981

France

The French arrangement of the right to strike is very intriguing and commendable. It enshrines the right to strike as a positive right. Positive in the sense that the right is specifically provided for under the Constitution. A perusal with a fine tooth comb of the 1946 Constitution as amended in 2006[55] bears witness to this salient fact. Paragraph 6[56] of the Preamble to the constitution provides that; 'Every man can defend his rights and his interest by collective action and belong to the association of his choice.' Similarly, Paragraph 7[57] provides; 'The right to strike is to be exercised within the framework of the laws which regulate it.' From the tenor of the above lucid provisions of the constitution, it leaves no doubt in the mind of any as to whether the right to strike exist in France. In fact, it can safely be concluded the right is constitutionally protected. The import of this protection is that it limits the restrictions that could be placed by the law on the exercise of this right.[58] This feat notwithstanding, there are noticeable gaps in the French industrial jurisprudence as same has not attained certainty. A cursory look at the *corpus juris* of its industrial jurisprudence reveals that there has been no real legislative regulation defining and spelling out the scope of the right to strike and the conditions governing the implementation thereof, as these has been left to the whims and caprices of case law.[59] When put to critical consideration, it becomes obvious that the holder of the right to strike in France is the individual employee and same is not a union prerogative. Hence, in France, an individual who takes part in a lawful strike cannot be dismissed on the ground that he engaged in the strike.[60] Thus, strikes by a majority of employees, strikes confined to a single workshop and lightning strikes without advance notice (except in the case of the public service sector) are all lawful forms of its exercise.

4 Conclusion and Recommendations

The Nigerian law does not sufficiently safeguard or protect the right to strike in Nigeria and that there is a need for reform. It is submitted that the wide range of prohibitions in essential services and the conditions to be fulfilled before embarking on a lawful strike openly indicates that there is no real protection of the right to strike in Nigeria. It is not unexpected, therefore that the ILO supervisory bodies, the Committee of Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) have voiced outrage at the extent to which, and the manner in which, Nigerian law prohibits and frustrates the exercise of the right to strike in Nigeria. This absolutely supports the case for reforming Nigerian labour law in this area. The right to strike in all sectors of the economy (including the essential services) must be strengthened in order to enable collective bargaining to perform their important role envisaged in Nigeria's system of industrial relations. It is submitted that if Nigeria is to meet minimum international standards on the protection of the right to strike, radical reforms will be required of its labour law and policy. The status of the right to strike in the various sectors of the economy including the essential services sector reflects a legislative policy that severely restricts and frustrates the rights almost to the point of extinction and there is indeed a need for urgent reform of the right to strike in all sectors in Nigeria.

This paper has clearly stated out the existing gaps on the right to strike in Nigeria and the need to close the gaps in other to protect and strengthen the legitimate interests of workers to embark on industrial actions. There should be a review on the provisions on strike, as the present provision appears more like an attempt to frustrate the enforcement of collective agreement. The right to strike must be strengthened to enable collective bargaining perform the important role envisaged in Nigeria's system of industrial relations. The absence of the right to strike weakens the right of the employee in the employer-employee relationship and increases the powers of the employer to exploit his worker; it also weakens the job security as the worker who embarks on a strike is not protected. It is therefore recommended that legislations which heavily detract from the worker's right to strike be amended especially Section 18 of the Trade Disputes Act which requires the worker to embark on all the stipulated procedures before being able to commence an industrial action. Furthermore, providing for a positive right to strike would be meaningless if the law still regards the exercise of the right to strike as a breach of contract. Thus, the proposed legislation must expressly provide that an employee who exercises his or her right to strike or who has been dismissed contrary to the provisions of the relevant statute remains an employee entitled to the protection of the statute. In fact, it is suggested that participation in a strike shall not constitute a breach of contract. Additionally, there is the need to redefine what constitutes essential service. The present list of essential service in Nigeria is over inclusive and farcical. A more useful and practical categorization would be the one that looks at the particular type of service being rendered in order to determine essentiality.

[55] Constitution of France 1946 (as amended)
[56] *ibid*
[57] *ibid*
[58] O. V. C. Okene (n 14) 203
[59] Constitution of France 1946 (as amended)
[60] O V C OKene, 'Different Dimensions of the Right to Strike: A Critical and Jurisprudential Exposition'. <https://workbepress.com> accessed on the 18th of August 2024; 'The Right to Strike in France' <https://www.eurofound.eu.> Accessed 18th August 2024; R. Youngs, *English, French and German Comparative Law* (Cavendish Publishing Ltd, 1998) 197 – 198