Analytical examination of the basics of workers' right to strike with an approach to jurisprudence and Iran's legal system

Various unfortunate events such as the First and Second World Wars have affected the life of humanity throughout history; an effect whose results can be seen in the increasing importance of components such as peace and development and attention to fundamental human rights. The experience of these historical ups and downs shows that the lack of attention to fundamental human rights and fundamental freedoms of man will be the starting point of challenges and protest movements and strikes; protest actions that have manifested themselves in different ways in different systems; therefore, freedoms such as the right to organize and unionism, along with the right to strike, gain double importance. The universality and dependence of these rights on each other shows the inverse and two-way relationships between them. The International Labor Organization, while emphasizing such rights, has also considered them to be signs of democracy and democratization in societies, the exercise of which entails the power and sovereignty of the people and sovereignty. Historical and legislative experiences show that until the early 19th century, the legal systems of the world considered the right to organize and, consequently, the right to protest and strike as a criminal act, reprehensible and punishable. Studies show that the Iranian legal system was no exception to this, and the approach to laws and regulations, both before and after the revolution, was accompanied by a lack of clarity in the regulations and the constitution. A careful study of the subject's history also shows that various studies have been conducted on trade union movements and strikes and protests by various labor committees in the world and Iran; cases such as the research of Mr. Yervand Abrahamian, in an article entitled: "Iran Between Two Revolutions" (1998) and Hossein Basharieh, in a study entitled: "Sociology, the Role of Social Forces in Political Life" (2002), are examples where the author has benefited from the results of such sources in completing the present study. In the field of jurisprudence, sources such as the book: Al-Qawwa'id al-Fiqhiyah, by Muhammad Fazel Movahdi Lankarani (1416 AH) and the book: Minyat al-Talib fi Sharh al-Makasib, by Muhammad Hussein Nayini with the commentary of Musa Khansari Najafi (1418 AH) and Al-Qawwa'id al-Fiqhiyah, by Nasser Makarem Shirazi (1411 AH) have been studied, and the foundations of jurisprudence and its application to the Iranian legal system have been stated in two separate sections in this article. What further concerns the author in this regard is the lack of attention to these fundamental rights, especially the right to strike and protest, in domestic laws and its lack of clarity in the country's Constitution and Labor Law today, despite its foundations in jurisprudential teachings; In particular, arguments such as: the inviolability of an inalienable right and the principle of non-harm and the negation of hardship and hardship, which indicate the permissibility of a strike and, exceptionally, are in conflict with arguments for the permissibility of a strike, including: the reason for the expediency and necessity of maintaining order and the prohibition of acts contrary to public order; therefore, this research seeks to answer the question of what is the position and foundations of the right of workers to strike in the jurisprudential teachings and legal system of Iran? It is evident that despite the jurisprudential foundations and religious permissibility in this case, the explanation of these fundamental rights has removed many obstacles and understanding the course of these developments is vital, especially for the Iranian legal system, which is at the beginning of the path of regulating and identifying these new social phenomena.

The right to strike is one of the fundamental rights that has been emphasized and guaranteed in numerous international documents, and most countries have stated this human right in their mother and basic laws, sometimes explicitly and sometimes implicitly. The United Nations, based on paragraphs a and b of Article 55 of the Charter of the United Nations and on important conventions such as: Convention No. 87 and 98 on the subject of freedom of association and trade unions, has obliged countries to take effective and desirable measures by creating a wide international communication network regarding the right to strike in order to improve the standard of living, livelihood and welfare and grant freedom of assembly and formation to their workforce. The recognition of this right in Iranian legal structures also has a history spanning several decades; In a way that, in addition to the Constitution, Article 149 of the Labor Law (1980) also implicitly refers to this right and emphasizes it without stating its legal consequences; of course, with the inclusion of

the right to strike in domestic legal texts, it cannot be claimed that this right is not accepted in domestic regulations. Studies show that this right is emphasized in the law under a different name and form and is guaranteed with the focus on the right to organize and the right to assemble; so that there is a meaningful relationship between these two components; therefore, the course of studies on the subject in question shows that one of the methods of balancing the legal system that includes the relations between workers and employers and specifically supports the labor group against the employer group. This is the consideration of a specific and legally based mechanism, in order to, in addition to using the right to strike for workers, the last tool and weapon, also moderate the extreme protections of the aforementioned labor law for workers. Therefore, by examining the international standard documents in this regard and the emphases and permissions of the jurisprudential and Islamic principles that have been stated, it shows: Today, the issue of accepting or not accepting such a right in various legal systems is no longer a question; rather, this right is one of the basic and fundamental human rights, and the recognition of this human right does not require or be conditional on the occurrence of another event.