

The Right to Engage in Collective Bargaining in South Africa: An Exploratory Analysis

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Abstract : Whilst the system of collective bargaining is well-researched in South Africa, recent studies reveal that this is an area of law and practice that is poorly understood. Despite the growing attention being paid by most scholars to the role of collective bargaining in the labour relations system, only a handful of the studies have considered collective bargaining as a mechanism of dispute resolution. The purpose of this paper is to provide a critical analysis of the current understanding of the right to engage in collective bargaining in South Africa to assess the extent to which collective bargaining is used to resolve labour disputes. The overall objective is to offer a deeper understanding of the role of collective bargaining in dispute resolution process within the South African constitutional labour law context. To this end, the paper examines the applicable legal framework of collective bargaining to address two fundamental questions that are critical to the proper understanding of the functioning of the South African collective labour dispute resolution system. The first concerns the extent to which the current South African legislative framework supports the fundamental labour rights entrenched in the Constitution of the Republic of South Africa. The second addresses the role of trade unions in collective dispute resolution processes and the extent to which they can best utilize collective bargaining to resolve labour disputes. Finally, the paper discusses the general implications of the findings to stimulate further research and to enhance the constitutional development of collective labour rights in South Africa.

Keywords : collective bargaining, constitution, freedom of association, labour relations act

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