

CHAPTER – IX

EFFECTS OF STRIKES

**O citizens of the world!
Live in harmony and concord.
Be organised and co-operative.
Speak with one voice
And make your resolutions with one mind,
as our ancient saints and seers,
leaders and preceptors
have performed their duties righteously,
Similarly, may you not falter
to execute your duties**

.....Rig Veda 10.191.2

7. 1 Effect on employees

The activity of strike not only effects the employees and their families but also the employers, government and general public also. Employers will be the immediately effected person out of strike as the production will be effected. The employees initiate strike after receiving salary, hence he may be effected by the next pay day. Strike not only paralyses the production, but also cripples the economy of the country. Hence the government also will be effected by the strikes of the workmen. During the strike period production and supplies will be effected, hence general public will be effected either due to short supply goods or increase in price. The judiciary which was untouched by any one was also dragged in by the politicians on the basis of decisions given by them. Now judiciary is not an exception to criticism. Even the decisions given in the matters of strikes also pulled the judiciary in to the

arena of criticism. In this chapter the effect of strike on employer, employee, Government, and general public is discussed with update events.

The fundamental source of power of workers over their wages and working conditions is the power to withhold their labour. While the right to strike has long been regarded by workers as a basic fundamental right, the legal community has been very narrow in its recognition of the right to strike. Is it possible for a man who cannot write his own name to understand the basic facts about the cause of strike or bandh? Has anybody ever bothered to explain to him about the winter of strike or bandh? Does he not matter at all this man? Does the union ever thought of educating the member about the pros and cons of strike? Probably the answer for all the questions may be no. The quality and quantity of work in any organisation depends intemperately on the relationship between the employer and employees. If they have cordial relations, it will take away the tension from the minds of both. But in between employer and employee there is a middle man called union leader. The duty of the union leader is to reduce the tensions between the worker and management and has to mediate in case of dispute in the interest of both. He must take all measures aimed at strengthening the law and institutions like judiciary undermining the interest of any minority group which may include political. The trade unions of employees shall aim at nationalism, security of the State and social stability, and to justify the crack-down the anti-union interests. The trade unions shall entertain the activities that could encourage legitimate rights to freedom of expression and association and suppress the activities that depart from the practice that may go against the interest of the working community without fear or favour. The government as a custodian must also contribute its share by timely prevention and or speedy settlement of disputes. An employee (individually) is of the opinion that voluntary arbitration is the most suitable method of dispute settlement. Trade union also requests the government to act strictly to promote a greater readiness among

employers to accept arbitration. Where arbitration is not possible, however, trade unions accept compulsory adjudication as “better alternative than strike or lockout which may lead to dislocation of production and upset the planned progress of the nation. Majority of workers are of the opinion that strikes are not prohibited when both arbitration and adjudication are not available, they are always to be recognised as “extreme measure(s)”, and therefore may be used only in “extreme cases”. Employees who claim ‘strike’ as their inherent and inviolable right fail to protect it. The employees after great struggle from time to time with the active support of social workers and political leaders achieved the right to strike. Though, the strike was essential during the British India region fail to modify it according to change in time and circumstances.

Generally it is said that only 10% of the employees are in favour of strike, 10% are against and the remaining 80% are simple followers. Apart from others the employees who participate in strike can be divided in to the following categories:

- (i) Workers who understood the reasons and consequences of strike,
- (ii) Workers who participate in spite of knowing that it is not in the interest of the workmen,
- (iii) Employees who participate simply at the direction of the union leaders,
- (iv) Employees who doesn't know cause and consequences of strike.

Though the statutory conditions are there, hardly any union is following them totally before and/or during strike. In large number of undertakings where branches are spread through out the State or country, its connected trade unions must declare strike only after seeking the opinion of each and every member. But in practice the trade unions take decision in the executive meeting (informally) and later it will be communicated to the other members

and other procedures will be fulfilled to fulfil the statutory formalities/obligations. Number of workers/ employees including the persons holding the constitutional posts though ready to express their opinions before the research scholars with a condition not to use their name in the thesis. During field research while collecting the opinion from various cadres this scholar found that both employers and are employees are expressing their opinions fairly but not the union leaders. Number of union leaders of middle class though gave fair opinion but requested not to use their name. During opinion survey even the persons holding class – I gazetted posts and even persons holding constitutional posts failed to give any alternative to strike in the times to come all employees requested to keep their names secret). Out of 200 persons surveyed only 1 (one) person working as a conductor in the Andhra Pradesh State Road Transport Corporation, Guntur- I depot, Andhra Pradesh came out with a opinion that there should be direct collective bargaining between the workers and management and educating the workers with national and international standards will work as an alternative to strike. Cardinal relation between the union leaders and the managerial staff will reduce the number of disputes to its low.¹

Leaders were usually satisfied with workers' attitude and their participation in union activities. The union leaders who are democratic in their functioning, and not involved politics are hardly regarded by the political parties or its leaders. During the period of strikes or lock-outs etc., management also doesn't pay any heeds to them. Hence all the trade unions seek political affiliations to have support in times of need². Likewise the union leaders also for safeguarding their interest support the pet members and

¹ Details are given in the Chapter of Collective bargaining.

² Political affiliation is used by leaders to gain the power and the confidence of workers. Management has indirectly supported the political affiliation of unions in case of breach of contract they sign to settle their problems after bargaining, as internal leaders' failure to comply with the settlement. Union rivalry, fear to loose membership is the major causes of the leaders going for politicalisation of unions. Even the members who join for betterment of their socio-economic conditions are also politically motivated.

demoralise the other neutral members. The members of the trade unions if objected to any procedural or irregularities or claim for any right will be kept in margin and will not be supported in case of necessity.

During the period of strike the worse effected employees are those having big families, habituated to vices, who is undergoing severe liabilities etc. (like construction of a house, performing his/her son/daughter's marriage etc).

If one translates the language of "natural impulse" in terms of modern psychology one gets the reference to the socially legitimated needs. The legal right to property is thus an aspect of the satisfaction of this basic human need; the need is itself converted into a right. Firstly, strike is a need and then only and then converts this need into a right or an aspect of guaranteed right. The word 'duty' can be used in an undifferentiated sense. In another sense, the citizen is also under an obligation to participate intelligently in civic affairs, to acquire a civic competence: this is another distinct jural relation. Indeed because of this duty that "his interest acquires the status of a right".

This conversion of need into a set of right-duty relations, whose scope include the state, the press and people at large is justified on the ground that the market leaves the consumer totally dependant on what is produced and how it is produced: justice Mathew has found and shown an illuminating way of converting 'needs' into 'rights'. In this process, he has constantly enriched the social content and meaning of the right. An employee who is observing strike may also a consumer from another point of view. The employees those who are doing some other part-time or full-time avocation either directly or indirectly, either by himself or through their family members (like tailoring, running shops etc.) are least interested in conducting strikes rather they are interested in cultivation and promotion of work culture among the employees. These employees perform their duties properly. This category of employees

comes with in 80%. Expressly neither they show their interest nor resentment in conducting a strike. During the strike period they concentrate on alternative income. It was found that these categories of employees are duty conscious rather than right.

The employees who habituated to vices come very close to the executive so that they can come to the notice of the union leaders (unofficially). They also take active part in the strike by staying in front line and raise slogans, and also actively participate during hard and dangerous activities like 'picketing', gherao' etc. Some members of the trade union actively involve in the activity of strike(s) with an intention either to become a member of the executive of the trade union so that they can become a leader in future. A member who stays in frontline in order to get the active assistance of the leaders during normal period are being exposed to danger and some times they are loosing even their life or limb also. After such incidents they or their families are hardly taken care of either by the trade union or their members or the management. These employees are the inevitable source for the trade union leaders. During normal period these members get their work done (like obtaining leave out of turn, transfer to place of choice, placement in easy jobs etc.) through union leaders when compared to other workers. During strike period generally these members runs in heavy debts for unusual interest. The liability of debts incurred by them during strike period lasts for more than 6 months (depending upon the duration of strike) or more. For collection of debt amount it can also be seen that the money lenders (creditors) go to the office on the pay day and collect the debt amount from the employees (debtors) immediately after receiving the salary. These categories of employees always speak about rights rather than duties with co-employee, employer, and union leaders etc. Though they know their duties, in order to continue the pressure and keep the employer and union leaders in same tune continuously avoid discharging duties as per rules and regulations.

Most of the strikes were declared after receiving the salary and were concluded before the next pay day with an agreement that the salary will be paid as per schedule. The strike if continues near the next pay day, the pressure will be more upon the employees as well as unions. It can also be seen that where the pay day is due within a day or two, some employees try to cross the strike lines and join the duty even undermining the suggestions or directions or even threats from the other members or leaders on whose direction they have initiated strike.

The strike can't be supported blindly as it affects millions of workers and their family members apart from others. During the period of strike employees kidnapping their colleagues who join or attempt to join the duty or those who are believed to be the informers or messengers or (secret) agents of the employers. [It may also include the members of the rival union(s)]. Under these circumstances the employees who were kept as hostage and their families will be under severe stress and will be living with very little or no hope of survival. This practice can be seen in number of countries.³

The workers who indulge in destructive activities either directly or indirectly are exposed to dangers and punishments (like sustaining injury during operation and suspension or termination after domestic proceedings). Generally a suspended person will not get even sympathy from the other union members or leaders and will have to face a situation which is closer to social boycott. A bandh not only entails heavy losses for a port but also for those industries that are dependent on it and for trade. Being vexed with the activities of strike some employees requested the State/Central Government to

³ Unarmed Striking Nigerian oil workers have been holding 270 fellow workers, including 17 Americans, as hostages on oil rigs off the coast of the country. The striking workers are unarmed. (Somini Sengupta (NYT) World Briefing, Africa: Nigeria: *Oil Workers Are Held Hostage* 04-30-2003)

take steps to designate their services as “essential services” so as to protect them from the onslaught of strike or bandh.⁴

Another reason for out break of strike is unaccountability of the corrupt Government officials. In August 1947, when India became independent, the country’s bureaucracy was, by and large, regarded as efficient, discipline and devoted to its own responsibilities. But by 1998, the Indian bureaucracy was adjudged as one of the worst in Asia, let alone in the world. This is indeed a very depressing state of affairs for a country once proud of the quality of administration and dedication of its senior bureaucrats⁵. Corrupt bureaucracy placed India in ninth position (with eight points) among the 12 Asian countries where as Singapore was rated the best at 2.53 points. By May 2004 “out of 186 cases pending against IAS and IPS officers the overwhelming majority related to corruption charges”. In the absence of responsible bureaucracy total administration will collapse. It is the duty of the bureaucrats who are endowed with the duties of looking after and implementing the welfare provisions are made silent, the labour unrest is bound to increase. The head of the anti-corruption units in the States also acts as a hatchet men of government.⁶ Not taking any action against the employer or employees who undergone illegal or unjustified strike indicates the state of inactive bureaucracy. Once the bureaucracy failed all its supporting branches also bound to cave in. It is futile to hope speedy relief in labour issues in the presence of corrupt bureaucracy and delayed judicial proceedings and veritable union leaders. The employee who does not have any faith in the administration which is crowed with corrupt bureaucrats had no alternatives but to declare strike for achieving his demand(s). Long pending litigations

⁴ Port officials of Haldia port demanded the state government to take steps to designate port services as “essential services” so as to protect them from the onslaught of bandh supporters. A bandh not only entails heavy losses for a port but also for those industries that are dependent on it and for trade.

⁵ Sankar Sen, *Suspect Bureaucracy-I (Corruption a high-reward and low-risk activity)*, Editorial, The Statesman (Siliguri edition), 7.6.04.

⁶ Sankar Sen, *Suspect Bureaucracy-II (Corruption a high-reward and low-risk activity)*, Editorial, The Statesman (Siliguri edition), 8.6.04.

before the government and courts are another cause of unrest among the workers' community.

It is well known fact that 'Skill will not develop all of a sudden'. After opening the doors for foreign investments in India, number of foreign companies came to India and started their business with a view to earn profits. The working conditions in developed countries are far different from that of India. The companies of the developed countries pay very high salaries but will employ only highly skilled persons. They won't follow policies like reservations and concentrate only on production and profits. But quick change introduced by these multinationals crippled the peace of the employees as they have to devote their total intelligence towards the work. It caused severe stress upon the employees. Like wise lack of job security is another concern to the employees. In a survey conducted by the multi-nationals it was revealed that "Job stress, a problem long ignored in the Indian work place has arrived on centre-stage because it is so clearly a part and parcel of life in business process outsourcing (BPO) companies. The odd hours, the lack of a social life and the monotonous nature of the job have all contributed to create a major crisis".⁷ There is definitely a partnership, kinship and affinity interwoven and the rare judicial vision of our Apex Court would delineate the thin divide. However, in the changed context lacklustre performance by Government servants or employees of industrial establishments has no place in economy whose caravan shall push on traversing all these terrain of employment styles⁸.

From the above material it is clear that, neither the unions nor the Government made bona-fide efforts to educate the employees or union members

⁷ Frank Kenna III, *Job stress is the emotional toothache of the workplace*, The Telegraph, (Jobs), 29.6.2004.

⁸ Justice Panachand Jain (Retd), *Boundaries of contra- strike – Verdict of Supreme Court*. 2004-I-LLJ Articles p. 20.

regarding their rights and duties towards the undertaking, union and the Government. The workers build their lives around their jobs. The employees who are solely dependant upon the job are the worst effected persons next to the employees who are habituated to vices. From the survey conducted by this scholar it is clear that employees are not thinking about the alternatives to strike. After T.N. Rangarajan case the employees would have start thinking about the alternatives to the strike. The trade unions would have moved a programme educating their members about the decision and its possible consequences in future and need to find for an alternative. Surprisingly the trade unions start blaming the Government(s) and judiciary stating that the judiciary is encroaching into their constitutional right that was acquired by the working community through fight and sacrifices by generations of workers. Political parties through its leaders in one way or the other added its tone to the voice of the employees and unions.

7. 2 Effect of strikes on employer

Employers run the business for profits and employees render their labour for salaries. Both persons ultimately depend upon the Government to have legislation in their favour. Employees expect the Government to pass legislation restricting the employees' right to strike so that they can get more profits and employees want the Government to pass legislation to restrict the employers' right to lock-out so that they get more salary. They will threaten the Government to go on strike or lock-out if the Government took lenient view towards the other.

It is well known fact that the attitude of the management towards workers and unions is concerned it can be seen that top-level management hold anti-union attitude, middle and junior level managements have anti-worker attitude. Majority of the workers who were victimised and harassed by the management (due to strike) were the members (officials) paid by the

union and had political affiliation. They also were fairly militant. According to the view of the management, the strikes are being done only due to interference of mediators like trade unions, political parties, etc. Historically it is evident that the union leaders are politicians or connected with political parties directly or indirectly and their main source of avocation or income is trade unions. They generally won't attend the normal work like other workers. The management and workers are frustrated with this attitude of the union leaders which the management and Government(s) failed to control.

On the other hand there are some employers those who are taking advantage of the union leaders. They are continuing their business with daily wagers for decades, by taking the union leaders into confidence. Some times management is sponsoring some trade unions, which are working to the will of the management. Sometimes they sponsor the activities of the trade unions in order to counter the activities of the other trade unions. Mahatma Gandhi, when for the first time introduced it in 1918 in Ahmadabad Textile Mills in wage dispute⁹ to put the employers under pressure, workers pledged not to return to work until the demands were fulfilled. Any how employers were successful in breaking the strike. Finally, Mahatma Gandhi himself went on fast who is not a worker but a union leader. From times immemorial managements or employers are breaking strikes with the techniques like hiring strike breakers, etc. In an effort to break the strike they take the assistance of either government or its officials directly or indirectly. Some times government directly support the attitude of the management to break strikes.

Generally management is in favour of multi-union system as it dilutes their morality and strength. Some unions are established by breaking the existing strong unions, which were sponsored by the management (pocket

⁹ Times of India, (Editorial) 6th July, 1977(New Delhi) p.5.

unions). This is also other wise called as “Divide and Rule technique or formula.” Due to active support of the management these union are indulging in destructive activities, which in turn is destroying the main objective of the trade unionism for which it was formed. They dance to the tune of the management only. Some times some workers who are supporters of the ruling party either at Centre or State will establish the separate union (with very little membership), which compel that political party to give active or passive support to that union for the survival of the government.

Employers are not in favour of formation of any trade union in their undertaking. Under unavoidable circumstances they prefer multi-unions as it dilutes the efficiency of the unions. They are of the opinion that even if one union goes on strike, they can continue their business with others so that the total work will not be blocked. In addition to it some employees form trade union which is affiliated to the ruling party. These unions will continue their existence during the continuation of the political party in power and wind up or amalgamate with other unions. The management also give preference to these unions in case of bargaining etc., to gain the support of the ruling political party or the government.

Management is not in favour of “*one union –one undertaking.*” Multi-Union system in an undertaking reduces their bargaining capacity. If there is only one union it will be strong enough to achieve their demands, and the management is bound to accept the demands raised by the unions or it has to suffer loss due to work stoppage. Some workers were also in favour of two unions in an undertaking, as they were of the fear that in case of single union, if the union leader becomes corrupt, the worse sufferers will be its members.

Employers are of the view that bribing the union leader will be economical than accepting the general demands of the union(s). In practice it

yielded good results also. Some management are also of the view that though they are looking after the interest of the workers properly, they are interested towards union formation and its leaders. Number of strikes were conducted by some union for the purpose of showing their existence. These types of strikes not only created disturbances in the undertakings but settled with very little benefit to the workers compared to the loss suffered by them.

Employers threatening the government is not only confined to India. Employers' group of United Kingdom warned the government that a new law making it illegal to sack workers who go on strike could herald a return to the "industrial climate of the 1970s" as it introduced the "right-to-strike by the back door."¹⁰ Employers by the year 2000 can dismiss all workers engaged in a strike without facing unfair dismissal claims, even if there has been a lawful ballot. The law, part of the Employment Relations Act, in UK will protect millions of employees from dismissal in the first eight weeks of a dispute. Employers' groups have warned that a new law making it illegal to sack workers who go on strike could herald a return to the "industrial climate of the 1970s".¹¹

Employer(s) threatening the workers/unions to shut down the undertaking if the employees form a trade union or the union go on strike.¹²

¹⁰. BBC News Online, 24.4.2000, G:\BBC News UK Employers warn over right-to-strike law.htm. Davis Yeandle, deputy director of the employment policy at the Engineering Employers Federation (EEF), said that " We are now concerned that if employees are told that they cannot be dismissed for striking they are more likely to vote in favor of taking industrial action."

¹¹ *Employers warn over right-to-strike law*, BBC News on line, Monday, 24, April, 2000, (02.48 GMT 03.48 UK)

¹² A study by a leading labor researcher, Cornell University professor Kate Bronfenbrenner, found that when faced with employees who want to join a union, 92 percent of private employers force workers to attend closed-door meetings to hear anti-union propaganda; 80 percent require supervisors to attend training sessions on attacking unions; 78 percent require that supervisors deliver anti-union messages to workers they oversee; and 75 percent hire outside consultants to run anti-union campaigns. Her study, commissioned by the U.S. Trade Deficit Review Commission, also found that half of employers threaten to shut down if employees unionize and that in a quarter of organizing campaigns, employers

Employer won't hesitate to take the advantage of the union's weaknesses for their selfish needs. Unemployment problem is rampant throughout the world now-a-days. A survey conducted (in 2000) by Economic policy institute in USA found that American families work 247 hours more in the year 2000 , than they did in they did in 1989.¹³ This categorically shows that the Americans are over burdened with work. Delay in judicial proceedings might be a universal practice which breaking the backbone of the workers.

Collusion of employers and Government for suppressing the union activities is not only confined to India, it can also be seen in developed countries like USA. Workers whose rights have been violated (in USA) can try to use the law to fight back, but these days that's a thin reed on which to lean. Business owners know that the federal government long ago abandoned serious enforcement, and cases brought before the National Labour Relations Board can drag on for years before workers get justice.¹⁴ The government of USA perhaps kept its heavy hand on the unions of public sector, probably after the great depression of 1930s.¹⁵ After the collapse of the USSR, the Government of USA further tightened its law with regard to ban of strikes,

illegally fire workers because they want to form a union.
<http://www.ustdrc.gov/research/bronfenbrenner.pdf>

¹³Bronfenbrenner also discovered why these tactics are so common -- they are effective, increasing employee insecurity and applying downward pressure on real wages and benefits. The negative effect on communities is widely felt; a 2000 study by the Economic Policy Institute found that American families, on average, work 247 more hours per year than they did in 1989. (Pat Young blood and Robert Jensen, *Observe right to unionize by making it reality*, (December 10, 2003) (www.zmag.org))

¹⁴ Derek Seidman, *Columbia University Graduate student strike*, (May 14, 2004) (www.zmag.org/laborwatch.htm)

¹⁵ Public-sector unions are feeling the squeeze as well, with states facing their biggest fiscal crisis since perhaps the Great Depression of the 1930s. And the Big Three auto makers are gearing up for contract negotiations with the United Auto Workers by announcing their intent to close assembly plants and reduce pensions. In the crisis-ridden telecommunications industry, even relatively healthy companies like SBC and Verizon will use the slump to try to extract more concessions.

which forced the workers to work unwillingly under unfavourable circumstances.¹⁶

The strike hits the profits of the employer.¹⁷ The effects of strikes may vary on the employer of the Public Sector Undertakings (government) and private employers. Public sector undertakings are like no man's land. Even the top executives of the undertakings (like MD, CMD, CGM etc) won't feel responsibility or take liability towards financial implications of the undertaking, as they are responsible to the concerned ministry. They also feel that they are also employees of the undertaking working for salary like others. The politicians or ministers are also not interested in the well being of the PSUs as they want to en-cash the position as early as possible because of uncertainty of future¹⁸. Whenever any notice of strike or otherwise comes from the union of PSU immediately the pressure will be on top executive (the government may change them if they fail to settle the dispute as early as possible without effecting the political interest of the government) and on the politicians (ministers) as the pressure comes from the Chief Minister (in case of State) or Prime Minister (in case of Central Government) to settle the dispute as early as possible so that it may not effect the reputation of the

¹⁶ Spurring on these attacks is George W. Bush, whose bans on strikes in the airlines, intervention in the West Coast dockworkers' struggle and elimination of union rights in the Department of Homeland Security has only emboldened Corporate America. A few weeks later, officials at the International Longshore and Warehouse Union (ILWU), having failed to call a strike vote, found themselves forced to back a work-to-rule initiative by the rank and file after a series of management provocations--which then provided the pretext for a lockout. Under the gun of Bush's intervention with the anti-union Taft-Hartley Act, the ILWU accepted a concessionary deal (Lee Sustar, 2002: *Year of the almost strikes* (February 20, 2003) (www.zmag.org/))

¹⁷ Owners of bidi-companies explained that the state's bidi-workers make 50 crore rolls daily which has a market price of Rs 10 crore and at the end of five days' strike the amount stands at Rs 50 crore of which rupees five crore would have gone to the government. (*10 lakh workers hit by bidi strike*, Statesman News Service, 28.09.2004. (The statesman.net) (Visited on 28.01.05).)

¹⁸ Former tourism minister Ananth Kumar Sen shifted a phone line from Hotel Ashok, Bangalore to his private office. Hotel rooms are booked for Kumar's weekend trips to the city for free. A room in the hotel was used by the BJP for months. General Managers are also entitled to stay in the hotel with families. Managers frequently host parties free of charge for family and friends. Dozens of Mercedes cars that were brought for Ashok Tours & Travels (ATT) in the 1980s have been sold for a pittance- as little as Rs. 4 lakh-over the years. (India Today, July 15, 2002).

concerned Government. Hence the authority of the undertaking informs it to the Government which in turn refers it for conciliation. In any case the employees/union are the beneficiaries as the government gave benefit to the employees. The practice of granting unwarranted financial benefits to the employees (of the PSUs) made them (PSUs) sick, which further led to privatisation. Because of the inability of the government to control the unwarranted strikes by the unions of the PSUs, financial burden was increased upon them (PSUs). The PSUs which were started with an aim to cater the public needs like employment, uninterrupted supply of goods to the public at reasonable prices etc, fail to serve its purpose and fell in the well of losses. The private undertaking which were nationalised with the aim of protecting the public good were again forced to be privatised for the reasons mentioned above.

The employers of private undertaking while eating and walking also think of getting profits by any means. Hence he always tries to prevent or settle the dispute as early as possible. He will take all effective steps to prevent or settle the disputes as early as possible in order to keep financial burden as low as possible. Being frustrated with the activities of strikes by the students either for their cause or for the sympathy is causing serious damage to the valuable carrier of the students. Hence the college management association in several states banned strikes in their colleges.¹⁹

The effect of strikes upon employers will be influenced by several factors which include the biased treatment of the government. Sometimes the management faces severe hardship because of union rivalry or political rivalry not only of the workers/unions but also of the political leaders (of trade unions or political parties). The strike effects all the persons irrespective of

¹⁹ Teachers' council of Presidency College, Kolkata banned militant agitations by student unions. (*Presidency reopens, but militancy on campus banned*. 24.8.02, (thestatesman.net) visited on 28.105.

the party to which they are affiliated to. The management had to take disciplinary action against all the workers who had participated in illegal strike. But the trade unions affiliated to ruling party demanding the management to take action only against the workers or unions affiliated to the party in opposition.²⁰ Because of the support given by the persons in position, with the active assistance of the politicians trade unions occasionally use unlawful activities against the employers or their representatives.²¹ Likewise minority workers may strike on one or the other ground. In case of strike declared and or conducted by the minority trade unions hardly any attention will be paid by either employer or government. The employer must have the discretion to employ or transfer his employees whichever he feels to be convenient and economical. But the workers without understanding the same (or to retain their political power and position) may go on strike against the action of the employer of transferring the other employees.²²

Generally, before and during elections all political parties demand and collect the money in the name of donations, funds etc, from the employers. Likewise, the trade unions also occasionally or periodically collect funds from

²⁰ The mine authority had ordered curtailment of wage of 145 workers as a punishment against an AITUC-sponsored strike 3 July. The CITU demanded withdrawal of the penal measure. It said that the penalty should be imposed on the AITUC leaders only. (*Militant trade unionism in industrial hub*, Durgapur, Jan.02. Thestaesman.net.03.01.05. (Visited on 28,01.05).

²¹ On 17 August, at another ECL mine at Jambad in Kajora the AITUC detained an official, Mr Parasnath Mallah, inside his office for hours. The mine authorities had deducted some amount of the wages of some workers for assaulting an officer, Mr Mukhtar Mondal. As a result, 70 leaders of the Naxalite-backed IFTU of the Nakrakonda colliery, ECL started a dharna on 24 September, hampering the production of coal for two days. They demanded refund of money that have been deducted from the workers' wages owing to cash penalty. The chairman cum managing director, ECL, Mr Abdul Kalam said: "There have been militant trade unionism throughout the year and some times the agitation was arbitrary. In spite of all these, in November, the ECL mines had a profit of around Rs 2 crore." He also said: "The trade unions have been very stubborn with their demand at some places but many of them try to discuss things and see reason. (*Militant trade unionism in industrial hub*, Durgapur, Jan.02. Thestaesman.net.03.01.05. (Visited on 28,01.05).

²² Thirty miners of ECL's Nabakajora colliery on 3.9.02 began an indefinite strike to protest the "arbitrary transfer" of 310 miners to a neighboring mine. (*ECL miners on hunger strike*, September 03, 2002 (Thestaesman.net) visited on 28.1.05.

the employer(s) for their unions. The above situations does not include the money that may be paid by the employer to some trade union leaders in order to have their indirect support to them which may go against the interest of the trade unions or their members. The competitive market force the employer to keep the wages or benefits of the employees as low as possible so that the cost of production will be less and their products can well compete in the open market. In order to keep the wages of the employees low, the employers are bribing union leaders so that they cannot go on strike for increase in wages or benefits. This practice further led to corruption and increase of black money.

The trade unions having the strength and support of the political parties some times are exploiting the employers mercilessly which forces them to close down the undertaking, in which case ultimate sufferers will be the employees.

7.3 Effect on State/Government

In a planned economy it will be unwise for the parties to engage themselves in a free fight every time there arises a dispute.... It is equally unwise for the Government to sit back and look on such a free fight in a do-nothing attitude. With the advance registered so far in the field of labour-management relations, strikes seem to be an out-modelled weapon, not in keeping with the progress of the times”.²³

Government is the model employer of the largest body of employees of all types – ministerial, supervisory, executive and managerial. In this capacity

²³ Ramanujam, G, *Industrial Relations: A Point of view*, New Delhi, INTUC, 1965, pp. 29-30.

it has to observe all the laws of the land and rules and regulations framed there under from recruitment to retirement. Government employees who are governed by various service rules under the service conditions applicable to them may at times suffer hardship by wrong interpretation of the rules resulting in injustice and discrimination. The aggrieved employees ultimately may approach the courts to get relief. Ever since the adopting the Constitution of India, courts in India decided number of cases relating to industrial disputes. Many of them facilitated the Government to pave its way for future administration. The judgements delivered so far have therefore become a valuable asset to the Government. Particularly the decision given by both High Courts and Supreme Court with regard to 'strike' or 'bandh' gave some relief to the society, but they had their impact upon the Government itself. Under this head some facts as to the persons/organisations who are responsible for declaration and enforcement of 'strike' or 'bandh' in the name of the public interest and the persons or organisations who are responsible for not taking preventive steps for foiling the activities of strikes or bandhs and its consequences are discussed. It also highlights the failures on the part of the Government, and how it failed to follow the guidelines or utilise the helping hand extended by the judiciary.

Power corrupts few while weakness corrupts the many²⁴. It is the duty of the state to treat all its' subjects equally without any fear or favour. From the inception, man used to associate with his fellow beings in the name of association or alike. Even before the Vedic period, king use to rely upon different forms of associations for finance which is necessary for administration and also for armed persons for protection of the kingdom. Slowly this system led to increase of ego in the minds of leaders of the associations. Slowly some associations start acting in an anarchy which led to lawlessness in the society. This situation forced the king to control the activity

²⁴ Eric Hoffer

of association in the interest of security of kingdom. Narada Smriti²⁵ lays down that the king shall take all necessary steps in the interest of the State. The provisions of Narada Smriti are very significant; wherein the right to form an association or an assembly of persons was recognised and the king was required to give all encouragement and respect to them, his power to prevent wearing of arms unlawfully as also the powers to prevent acts which are opposed to the interest of the State and of morality was recognised.

Unless the activities of associations are controlled the monopolic activities of the associations or unions may lead to civil disobedience and ultimately the prevailing system may collapse. In former USSR in the name of communism trade unions were promoted but without controlling their activities from time to time. When the defence production in Russia comes to a halt, whole cities are liable to lose their source of income, as the land of the “city-forming enterprise”, of the giant industrial complex on which almost everyone in a large provincial centre depends, directly or indirectly, for their livelihood.²⁶ The membership or leadership of an association or union does not absolve the member from his duty which he was expected to do. Union activities are the duties to be discharged by the worker in addition to his normal duties. If the unions are allowed to grow as per their wishes it may ultimately lead to revolution²⁷. In China also situation is not different. In China also labour disputes raised dramatically for the reasons of low wages,

²⁵ (1). The king shall prevent them (associations) from undertaking acts which are injurious to the interest of the King (State).

(2). He shall also prevent them from wearing arms unlawfully and also from making mutual attacks.

(3). He shall also take appropriate action against associations indulging in criminal acts opposed to the dictates of morality. (Narada Smriti p.154. 4-5 (Dharmakosa p. 871) Renfrey Clarke, *Russian defense workers strike as production search collapse*, (www.greenleft.org)

²⁷ Perhaps the most significant wave of political strikes in all history is that which broke out in Russia in 1917, largely as a result of the revolutionary agitations conducted by the Bolsheviks. These strikes constituted a major influence in the overthrow of the Russian monarchy in March 1917, and later in the deposition by the Bolsheviks of the moderate government headed by Aleksandr Kerensky

corrupt management, mass lay-offs, dangerous working conditions and respective working practices in factories. Many protests were met with excessive use of force by police, resulting in casualties. Protesters were detained and harassed, and some were sentenced to long term imprisonment²⁸.

In India before independence the right to strike was necessary as the management(s) was paying only bare (subsistence) minimum wages which are not even sufficient or minimum survival of the workers and their families. Hence, the social workers and later on political workers took the cause of the workers and fought for minimum wages to the workers. The agitations or strikes by workers considerably weakened the economy of the Indian administration that forced the British administration to declare independence in the year 1947. After independence the framers of the Constitution recognised the importance of education which is very much necessary for the development of persons and self-reliance of the country.²⁹ Even after the independence also the same drift continued and the workers forming unions/associations developed multifold. Though the government encouraged these unions failed to control or restrict their activities through proper check. This fact led to unionism as a white collar profession. In public sector undertakings this practice opened a new era of white collar unionism. The politicians for their selfish needs supported and promoted unions in all spheres (both private and Government). Slowly the unionism spread to all sectors and later it became an ineluctable poison for the political parties.

²⁸ *Amnesty International – Library Report 2003 – China*, www.amnesty.org, (visited on 6,4,2004)

²⁹ “The knowledge and skills that can be imparted in new style of education are like seeds of the future, capable of transforming the communities in which they are planted. But, i.e., seeds, they cannot grow well without good soil, water and fertilizer. If they are to have their desired effect, the social system must be capable of absorbing them and making full use of them.

Education alone cannot transform under-developed communities. Unless it is integrated with social and economic changes that puts more resources and power into the hands of the rural and urban poor, it will simply lead to frustration, bitterness and revolt”. (Paul Harrison on the *Third World Malady*).

The political parties who supported the cause of workers and others when they were not in power, failed or refused to support them when they came to power, which shows that the support being given by the political parties and leaders is either to get their sympathy or to put the government in trouble but not to support a right case or to keep the union in right direction.. Keeping the unions in tune with the harmony with the society is not the principle of any union or government which is in the interest of the society. To have timely support every political party promoted its own pet trade union. This practice led to abnormal and unwarranted amoebic development of trade unions. Being tasted the weaknesses of the political parties and governments, the trade unions started giving troubles to the elected governments from time to time. Political parties in opposition added their share of fuel to the fire on “strike” by both the Government and private employees with a vested interest to put the Government in trouble. The union leaders for their survival and for other reasons went on strike number of times which are totally unwarranted. Government also number of times gave financial benefits to the workers only to overcome the criticism of the public against them particularly before elections. Ministers and persons in position kept a blind eye on the corrupt activities of the bureaucrats. This fact proves that corrupt ministers and corrupt bureaucracy are hand-in-glove. This practice led to abnormal increase of taxes and prices of the commodities. On certain commodities like oil, steel, fertilisers etc. where the government is having monopoly, increase the prices of the commodities to meet the economic burden of the increase in salaries etc.

The State is the totality of the governance in a country. It covers central, provincial and local government agencies and enterprises, the legislature, the judiciary, and so forth. The modern state is huge because in democratic societies there is great pressure on it to satisfy a vast range of

needs: security and justice, support to the poor, the socially disadvantaged, the sick, the elderly, the children, the mothers and the unemployed.

During the period of strike it became always difficult for the administration to control law and order situation in the society. Once the workers declare strike the political parties (in opposition) support the cause of the workers irrespective of the cause and justifiability. This is purely to place the ruling party in trouble and to get the support of the workers. Declaration of strike by both government and private employees is common throughout the periods. During the period of strike the prices may be increased as the supply of the commodities will be affected seriously. The government has to discharge multifold function even during the strike period viz. (i) to take steps to settle the dispute(s) (ii) to maintain law and order situation in the society (iii) to control the prices of the commodities (iv) to prevent the black marketing of the essential commodities etc. If the government fail in any of the above duties, there will always a chance for collapse of the government. Running of the government involves lot of financial implications. For revenue the government has to adopt the schemes in consultation with employers and employees. The state must intervene in economic activities to speed up economic development, reduce unemployment, curb inflation, maintain macro-economic stabilisation, regulate economic activities so that business forms do not have monopoly power, prevent discrimination in employment practices, prevent pollution and the sale of injurious products etc.³⁰ If the government's attitude in implementing its policies while discharging its duty adopts oppressive attitude or effects the interest of any person or group of persons there arises a problem which again need to be solved or settled by the organ of the state. In this race the workers are if affected show their protest in the form of strike either in small or big groups. Though, number of strikes may be petty in nature may not show effect upon the government

³⁰ Prof. Pradip N Khandwalla, *How to manage a large state*, Centralman, May 2000, p. 83.

immediately, still show its effect in times to come. The government for protecting its interest, it accepted the demands of the workers number of times. The prices may increase and the interest of other sections may be affected. On the other side if the government take strict action to control the activity of strike, the working community may vote against the ruling political parties in next elections and may be defeated.

However, the experience of different countries shows that imposing restrictions or controlling the activity of strike in time was proved to be healthy for country's economy (like USA).³¹ Unnecessary and blind support to the activities like 'strike' in the name of communism, socialism etc, lead to collapse of one of the greater economy (like USSR, India etc). In order to keep the country in race of international competition the government must be more businesslike and effective and must be labelled as "reinventing government".³² In India governments are concentrating on settlement of

³¹ (1) In 1982 President Ronald Reagan fired 20,000 striking air traffic controllers and destroys the PATCO Union. [Selected Historical dates in the US Trade Union Movement, (<http://www.reainc.org/>)] visited on 31.3.2004.

(2) In China reforms to the trade union law introduced in October 2001 brought some improvements as well as further restrictions to labour rights. The revised law still restricts workers' rights to freedom of association and expression. (*Amnesty International Report on China, 2003*).

³² The basic idea, as enunciated by David Osborne and Ted Gaebler, authors of *Reinventing Government* is to create an entrepreneurial businesslike state. They enunciated the following "principles"

- i) The government should catalyse rather than carry out itself beneficial and economic activities, that is, steer rather than row.
- ii) It should empower communities to serve themselves rather than itself get involved in community services activities.
- iii) The government should set out to create competition in public sector service delivery so that customers get the best value for money, say, by breaking up government monopolies, or by inviting bids for the supply of public services.
- iv) The government should driven by a vision of excellence and a sense of mission, rather than by rules.
- v) The government should be result-oriented, and stress outcomes rather than financial allocations.
- vi) The government should be customer-driven, meeting the needs of the citizen-customer rather than mainly the needs and requirements of the bureaucracy.
- vii) The government should become more business-like, and price its services to generate a surplus.

disputes rather than prevention. Plans that were made are for short period without any vision for future. The objectives of the government should be customer oriented, cost-effectiveness, accountable, and empowerment. From time to time the government should analyse the results and try to find out the reasons for failure or causes for lesser results. If necessary the government should close down the undertakings and utilise the manpower of those undertakings in other effective sectors. But, allowing some employers to monopolise in some business areas and the government itself monopolising the sectors like steel and oil resulted in crackdown of policy which in turn led to failure of system.

It is the duty of the State and trade unions to promote work culture among the workers of the country. For several reasons the work culture was not promoted strictly in number of countries including India. For work culture Japan is a living example wherein supervisory employees can hardly be seen. Whereas, in countries like India supervisory cadres can be seen from 1 (one) to 10 (ten) levels which, is causing tremendous economic burden upon the employer particularly in public sector. In private sector the level of work-culture is though not satisfactory better than the public sector. It is not due to the act of the employer or employee but due to fear of losing job in case of inefficiency. In infotech sector even the speed and efficiency will be measured by the computers [working speed of the employee will be assessed by the computer in percentage (%)]. There is no place for reservation and sympathy. Efficiency of the employees will be identified at the earliest (if not immediately) and will be given due regard. Efficient employees will be promoted and wages also will be paid without any limit. Any one found to be

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- viii) The government should concentrate on prevention of problems rather than cure, and learn to anticipate problems.
 - ix) The government should decentralise its operations and get its work done through participative management and team work rather than through orders.
 - x) The government should utilise incentives and markets rather than controls and regulations to bring about desired change.

inefficient or whose services no more required (who does not possess latest technology with regard to either hardware or software will be terminated from service in no time). Job security to these employees will be determined by their efficiency but not by any Statute. Hence, the employees of the infotech sector are striving day and night for improving their efficiency, which in turn is bringing tremendous profits to the Information Technology (IT) sector. In this sector the information regarding strike by the employees is yet to be heard. The employees in IT sector won't find any time to think about the rights (as such they won't think of going on strike). They always think of the work and efficiency throughout. It is efficiency that guarantees their job but not the legislation. Therefore for securing their job it is necessary for them to improve their efficiency which can be done only through work-culture. This is the reason why the work-culture is at its peak in IT sector in India. If the employers and Government take proper steps in this line work-culture can be developed among employees of the other sectors.

The discriminatory activities of the government are also another cause of concern of the government. Sympathy in the area of employees' strike did more harm than good to the worker's community. Showing sympathy towards their affiliated union and hectic activities against the others by the governments led to inter union rivalry. The efforts of the State governments and Central Government to prevent and settle the disputes had their impact in different ways. The government must work in the interest of all its subjects but not for a few at the cost of other. A Government working for the welfare of the general public is different from one that functions at the will of a section of it. The main purpose for which it was elected will be defeated if a Government that functions at the will of a section of the subjects. Though strikes were initially intended for ventilating the grievances of the workmen, broadened its area and extended to other field. The act of strike was widely used by politicians than the workers for political issues rather than issues of

the labour. Number of times general strikes are aimed at removing existing governments.³³ General strikes will serve both economic and political purposes. General strikes may paralyse the total economy of the country. These strikes may be declared to render support to the strike launched by other workers. The British Trade union Congress called one of the greatest general strikes in 1926, in support of British Coal miners on May 1, of that year. During this period which last for 9 days paralysed the British economy. In all these cases the workers were grossly misused by the politicians. The result was number of workers lost their lives and the politicians/political parties were the ultimate real beneficiaries. In these cases it may be right to say that it is the case of strike by general public for their cause which was the part of revolution but not the cause of workers strike. Non-implementation of wage revision etc. is occasionally paralysing the administration, particularly in finance sector like banks³⁴. Even after few experiences also if the Government take steps to prevent such activities it would have prevented number of strikes. But once the issue is solved the Government instead of taking permanent measures forgets it, which is allowing the disease to continue instead of permanently curing it.

General strikes are also not uncommon in India. Occasional declaration of strike for monetary benefits by the workers and increase of benefits to the workers by the government without taking its effect upon the rest of the society into consideration led to gross difference in wages of the workers discharging the same duties, but in different sector (i.e. public sector and private sector). Some times not following certain minimum formalities and undermining the interest of the general public may be the reason for declaration of strike. The government for controlling vehicular pollution

³³ (i). Russian revolution, 1917. (ii). An attempt to bring down the government of President Charles de Gaulle (France) was made by labour leaders and students in France in 1968.

³⁴ *PSU banks hit by strike, two-day stir likely in September*, The Economic Times, 24.8.2004, p.1.

decided to keep vehicles older than 15 years out of roads. But in State of West Bengal, the decision was taken by the government without discussing it with the owners of the oil tankers. Therefore the West Bengal Oil Tankers' association decided not to lift oil from the terminals.³⁵ In this case though the right to be consulted of the West Bengal Oil Tankers' Association was denied, at the same time the association failed to take note of the pollution caused by the old tankers which in turn affecting the right to clean environment enshrined in Article 21 of the Constitution of India of the other citizens.

The judiciary when slowly started imposing restrictions upon the activities of strikes and bandhs which is common (in the State of West Bengal), the veteran politicians like Buddhadeva Bhattacharya, the Hon'ble Chief Minister of State of West Bengal said that "judiciary is overstepping its jurisdiction at times and intruding in to the executive and legislative domains". (The reason behind passing such comments seems to be that the courts earlier fired the state government on the issues like holding rallies in the week days, auto emission, paging out old cars, pandals blocking traffic, bad condition of the roads etc.)³⁶ The Constitution of India required to function both (Legislature and Judiciary) on the basis of 'mutual trust and respect' in order to serve the interest of the people of the country. If legislature or executive fails to discharge the duties cast upon them (by the Constitution), the judiciary can interfere and direct the steps to be taken by the respective wing to discharge their constitutional and/or statutory duties. The orders passed by the court may some time put the administration in troubles. In is noteworthy that, the decision given by the court if esteemed or not by the public is not going to benefit the judges or the judiciary in any way, as they

³⁵ The Telegraph, (Siliguri edition) 08.09.04.

³⁶ The Statesman, (Siliguri Edition) 12.10.04, p.1. (Opening a symposium on the relationship between legislature and the judiciary, the chief minister sought for formation of a Judicial Commission, headed by the Chief Justice of India, to look into "accountability of the Supreme Court and High Court Judges").

are not going to be benefited or suffer out of it either directly or indirectly. Where as a decision taken by the government may either give life or root out the party (in power) from power.

The management invests the capital and the worker invests his labour. The result of mutual investment is profits that can be shared among them at prescribed proportion. Change in time also brought changes in the shares of the profits among the capital and labour. Later for several reasons the employees were given certain fixed wages not as a share from the profits but towards his labour irrespective of the profits. The Government which is dependant upon the taxes being paid by the industries for running administration (though some employees also pay tax in the form of Income Tax etc, it's share in the GDP is negligible) has to look after the well being of the employers on one hand and on the other side has to look after the well being of the workers since they are the citizens of that state (country). The Government though knowing that the industry is not in a position to bear the extra financial burden due to stiff market competition, low productivity and unsustainable costs, allow its pet unions to go on strike to get all kinds of benefits for the workers which may further throw the industry into chronic sickness.³⁷ The government also in order to satisfy its affiliated unions and to settle the dispute (any how?) unwillingly forces the employers to raise nominal wages of the workers by way of an agreement which is totally unsatisfactory to the workers. Such acts of the Government not only are disastrous to the industry, but also to the economy State.

³⁷ Low productivity, unsustainable costs, and above all, stiff market competition have doomed Bengal's Tea industry to chronic sickness. But the trade unions affiliated to Mr. Bhattacharjee's own Communist Party of India (Marxist) seems to be intent as even on squeezing the industry dry in order to get all kinds of benefits for the workers. This clearly is aimed at serving partisans' interest at the cost of the industry. (*Tea & Sympathy*, (Editorial) The Telegraph, 28.7.05, p. 16.)

Failure on the part of some officers of the State Government, who fail to discharge their duties, is resulting in occasional out break of strikes. Though some employers fail to deposit statutory benefits (like Provident Fund etc.) to the accounts of the employees for years together, and left untouched by the government machinery for several reasons could not take action, shows the failures on the part of the government and if brought to light, such incidents may result in change of government.³⁸

Publication of news items in the reputed news papers which may put the government to troubles. These include the government's failure to implement the labour welfare legislation both in letter and spirit. Though the ruling government wants to handle the situations strictly and with power (with in constitutional limits), may withdraw its stand later when it is going to effect the vote bank in the forth coming elections. The Tamil Nadu Government headed by the Chief Minister, Ms. Jayalalitha terminated thousands of Government employees, who refused to join the duty in spite of the directions issued by the government in August, 2003. Later when the Apex court directed the Government to take back all its employees (except those against whom the criminal cases were pending) obeyed the order but later withdrew all the cases pending against the other workers also when the ruling party failed to meet its expectations during the general elections, 2004 (It is opined that the AIDMK could not get even a single seat in general election, 2004 because of the decision taken by the Government in respect of the employees who carried out strike in 2003). Later on the Tamil Nadu Government also

³⁸ Barely a week after the re-opening of the tea gardens in North Bengal, a crisis gripped the Panighata tea estate, situated 30 Km from Siliguri, when hundreds of workers gheraoed the senior manager and heckled him after they came to know that their Provident Fund has not been deposited since last 4 years. The permanent workers have not received their ration for last 8 weeks.(Trouble strikes Tea garden, The Statesman 30.7.05 (North Bengal & Sikkim III)

decided to withdraw all the pending cases against the print and electronic media filed by them.³⁹

Having experienced the failure of the government in controlling the activity of strike, bandh etc, the judiciary took active steps to curb them. The Hon'ble High Court of Bombay imposed a fine of Rs. 20 lakhs each on the political parties of Siva Sena and BJP for causing inconvenience to the public by conducting bandh in the year 2004. This act of judiciary was severely criticised by the political parties like Congress⁴⁰ and CPM⁴¹. The left parties termed the decision as "an effort to throttle the democracy". It was further stated that "in recent times, the judiciary is curbing the right to strike....This would have serious implications on democracy".⁴² On appeal to the Supreme Court by BJP and Shiva sena the Hon'ble court directed to deposit the fined amount before the date of hearing. It shows that the judiciary is committed to curb the activity of 'bandh' that causes severe inconvenience to the public at large. Ms. Mamata Banerjee the leader of Trinamool Congress while speaking in favour of bandh called by her (declared and proposed to be conducted on 17. November, 2004) said that "I will be happy to go jail for calling bandh". The Hon'ble High Court of Bombay while speaking for the court by way of issuing guideline for future held that "Any political party calling for a bandh

³⁹ Sam Rajappa, *Regime change*, Editorial,, The Statesman, (Siliguri Edition), 24.05.05.

⁴⁰ Mr Asit Mitra (Congress) said that the right to call a strike is a fundamental right of the people and the intervention of judiciary in this matter is uncalled for. He said that even the British government before Independence had acknowledged the right to call a bandh or hartal.

⁴¹ MLAs, irrespective of political colour, today pleaded strongly in favour of the right to call a bandh. Raising the issue in the Assembly, government chief whip and CPI-M MLA Mr Robin Deb said that the judgment of the Bombay High Court imposing a fine of Rs 20 lakh on the BJP-Shiv Sena for calling a bandh is unfortunate. The right to call bandhs or agitate peacefully is a fundamental right of the people and has been guaranteed in the Constitution. The judiciary is considering the effects of bandh only and not the cause. Mr Sobhandeb Chattopadhyay (Trinamul Congress) said irrespective of the decision of the Bombay High Court, bandhs should be called to protest against decisions that have affected common people. (*All sides on same side when comes to bandh*, thestatesman.net, 27.7.2004, Visited on 28.1.05)

⁴² *The Telegraph*, Sunday, 25-7-2004, Siliguri edition, p.1

will be issued notice under Section 149 of the Cr. P. C. The parties will be warned that they would have to pay compensation in case of losses as a result of the bandh.” The parties will be warned that they would have to pay compensation in case of losses as a result of bandh. The court also issued directions to the government, steps to be taken in case of call given for bandh.⁴³ The parties that criticised the court’s decision failed to take note of the deteriorating road conditions (gaping potholes, missing manhole lids etc) because of the contractor’s strike for more than six months.⁴⁴ Though they have criticised the verdict of the Hon’ble High Court of Bomaby, later themselves called for strikes on various reasons both against the employers as well as Government. This practice makes it clear that political parties either support or criticise the bandh or strike purely for personal benefits but not in the interest of either employees or general public.

The congress party that criticized the bandh⁴⁵ called by the political parties, (Siva Sena and BJP) itself called for bandh in West Bengal to express their protest against the discrimination shown by the government of West Bengal against the congress ruled all 123 municipalities.⁴⁶ Though the rival political parties fight among themselves in different matters, when dealing with the matters like strikes or bandh they either mutually support each other

⁴³ Role of the government: The government has to bring out a resolution directing the executive arms to prepare to pre-empt bandhs. It has to ensure visible police presence and take preventive actions. There should mobile patrolling outside railway station, bus depots, main roads, junctions, hospitals and educational institutions.

Evidence: The state has to record proceedings during the bandh so that the video footage can later be used as evidence while identifying culprits for criminal prosecution.

Police: Police have to be alert, more efficient. (The Telegraph, Sunday, 25-7-2004, Siliguri edition, p.1.)

⁴⁴ September, 02, 2002, The statesman.net. (visited on 28.1.05).

⁴⁵ “Political parties must not disrupt civil life while organizing public protest” said party Congress spokes person Anand sharma. They should act with responsibly and ensure that the normal life of citizen is not be disturbed. . (The Telegraph, Sunday, 25-7-2004, Siliguri edition, p.1.)

⁴⁶ *Congress calls civic strike on September 13*, August, 27, 2002.thestatesman.net, (visited on 28.1.05).

or criticise with the flavour of indirect support.⁴⁷ Showing protest is not restricted to the employees of lower cadre alone. Even the bureaucrats also, though not in the form of strike that can generally be seen, show their protest by applying for indefinite leave etc.⁴⁸

Lack of proper planning on the part of the government is giving way to declaration of strikes. All political parties (particularly in opposition) supporting the associations or unions that call strikes or bandhs. Every matter irrespective of its nature and size will be taken to streets not for the benefit of the members of the association or the public but for political benefits and reasons. In proportion to the increasing population the authorities of the universities in consultation with government should increase the seats in different departments. Failure in this regard by the authorities is fuelling the striking attitude of the students union.⁴⁹

In bidi strike in the year 2004 the Government suffered loss of rupees five crores.⁵⁰ Cargo weighing around one lakh tonnes is loaded or unloaded every day at the Haldia dock. The port earns about Rs. 100/- per tonne which in turn comes to Rs. 1 crore per day. During the period of strike/ bandh the port loses the revenue to this extent, which cannot be compensated at any

⁴⁷ Making a complete turnaround on their stand, the CPI-M today described the Trinamul Congress- sponsored bandh as “partially successful” because “people wanted to exercise their democratic rights. (*Rivals find common cause*, Ttestatesman.net, Visited on 23.1.05)

⁴⁸ Causing major embankment to Bihar Governor Mr. Buta Singh, Chief Secretary Mr. G.S. Kang today went on indefinite leave and returned his official vehicle, Cellular phone and land line phones, apparently to protest against the Governor’s action in posting some “tainted IPS officers in key positions and the transfer of the Siwan SP Ratan Sanjay.” (*Bihar Chief Secretary goes on leave*, The Statesman, 30.7.05, page,1).

⁴⁹ Protesting against North Bengal University’s refusal to increase the student-capacity in colleges, the students federation of India has called a student’s strike on 2 September in Siliguri sub-division. (*SFI calls students’ strike*, 01.09.02, the staesman.net. (visited on 28.105)

⁵⁰ *10 lakh workers hit by bidi strike*, Statesman News Service, 28.09.2004. (the statesman.net) (visited on 28.01.05).

cost.⁵¹ Being frustrated with the indefinite bandhs called by the political parties, even the managements of the educational institutions in Darjeeling district, West Bengal appealed to them to keep the educational institutions out of the purview of strike or bandhs.⁵² However, the world is moving towards the future whether the developing countries like India participate in the race or not. Those who fail to meet the standards of globalization would be lagging and has to depend on other countries for their survival. It is mandatory for the government to take strict measures for developing the country's economy by imposing reasonable restriction on the activities of strikes and bandhs in the interest of the State. For this purpose all the political parties must raise themselves above politics and must work in the interest of the country but not for their selfish needs.

The incident that took place in Kolkata the capital of the State of West Bengal on 29.9.05 made it clear that the administration is not in a position to curb the activities of strikes or bandh. Sri Buddhadeb Bhattacharjee, the Chief Minister of West Bengal while on his way to Writers' Building (Cm's office) came across a mob who were preventing the employees from attending the office requested them by saying that "please don't stop people. Let those who want to observe the bandh do so, but don't force others".⁵³ When his wife was stopped on the way to her office at 8.30 A.M. she came out of car and when shouted the leader of the mob said "Meeradi, your car, sorry it's a mistake". A grim faced CPM State secretary Anil Biswas said "I am aware of the

⁵¹ *Essential services tag demanded*, The statesman news service, Haldia, 26.2. 04 (thestatesman.net, Visited on 28.1.05)

⁵² Christened, Association of Heads of Educational Institutions, appealed to the GNLFC and Chairman of DGAHC, to prevail upon the strikes sponsors, impressing on him how adversely the progress of the students were hurt by strikes. (Principals want schools to be outside bandh purview, 8.3.2004, thestatesman.net (West Bengal) visited on 28.1.05.

⁵³ At about 11.30 A.M. when the Chief Minister on his way to Writers' building while passing through Park Circus saw a mob and said "please don't stop people. Let those who want to observe the bandh do so, but don't force others". When he went to go by VIP lift it was found to be out of order as maintenance staff had struck work. The general lift could not operate as the liftman had joined the strike. [*Bandh boomerangs Buddha's wife faces CPM mob's might*, The Telegraph, 30.9.05 9Siliguri edition) p.1.]

incident...people responsible have been warned". As rightly commented by the print media, CPM activists observes the classification of "right car" and a "wrong" car" during the period of bandh/strike. This incident shows that the activists are observing dual standards of allowing the persons of 'known face or reputation' and preventing the others. Jyoti Basu who cultivated and promoted the culture of strikes and bandhs during his tenure said "they should have allowed people to move freely".

The above incidents show that the activities of strike or bandh effects severely even the official like Chief Minister of the State and he could not do anything except to request his own party activists to conduct the strike or bandh with some leniency because the organisation that called and observing bandh is affiliated to his parent political party. The government on the one hand gives call for promotion of work culture and on the other side keeps a blind eye on the activities of the trade union when they take steps that cause hurdle to the normal working of the office even against the wishes of the members⁵⁴. At this stage it is worth noting that in January 2005 Jyoti Basu in a party meeting said that "time came to an end to the Trade unions that adopt militant activities". He also said that "gheraoes" can never be the substitutes for exploitation of labour. Budhaddeb Bhattacharya the Chief Minister of West Bengal commented that trade union stand in the way of industrial development which was supported by Jyoti Basu also. In the party meeting he said that during his chief minister ship between 1980 and 1990 he committed mistake by supporting such unions. He said that he is not against foreign

⁵⁴ The left affiliated Kolkata Metropolitan Development Authority (KMDA) Employees' Union felicitated Sri Jyoti Basu, former Chief Minister (as he was former chairman of the association) on the occasion of 30th anniversary of the union on 05.10.05 at KMDA's office. The function was organised when the Chief Minister gave call (Mantra) of "do-it-now". Senior KMDA official said there had been practically no work at the KMDA head quarters for past two days as the employees were busily making preparations for the function. They wondered why was not it organised either on a holiday or after officer hours.

investment until they affect the interest of the workers.⁵⁵ Budhadeb Bhattacharya the Chief Minister of West Bengal, who is wrestling for inviting the information technology to his state had stated that “we hope to review whether these strike calls are helping us or not”. He further stated that “information technology is not like jute or engineering. He also stated that “I am not going to budge from the stand I have taken on strike. But let me first discuss the issue with my party”.⁵⁶ On October 27, 2005, the polit buro struck the midway between the Chief Minister and CITU or West Bengal. According to it the employees of the infotech can form unions and bargain collectively. According to the Prakash Karat, of polit buro “Collective Bargaining includes strike”⁵⁷. These incidents shows that the political leaders though criticising the activities of the trade union, still show leniency when it comes to their benefit and indirectly support their activities, otherwise they would have taken serious steps like expelling them from the party etc., against those who conduct strike or bandh. In addition to it if any person after reaching the highest stage (of his level) if attempt to take any steps for the development of the State his own party cadres are creating hurdles. It is highly unfortunate that on policy matters authorities like Chief Minister first are getting clearance from his party instead of the cabinet. Lack of whole hearted effort to curb the activities of strike or bandh on the part of the politicians and the political parties, boosting the morals of the trade unions or associations to continue their activities further.⁵⁸ The administration also cannot do anything as they are doing it with the active assistance of their own (ruling) party.

⁵⁵ *Eenadu*, Hyderabad edition, 8.1.05

⁵⁶ Chief Minister Bhdhdeva Bhattacharjee today looked set to the campaign against strikes in information technology to the apex policy making body of the party, *The Telegraph* (Siliguri edition) 18.10.05 p. 1.

⁵⁷ “CITU has not been able to organize infotech workers. We have to first find out whether they want unions or not. Workers should not be forced to strike” said the member polit buro. (*The Telegraph*, (Siliguri edition) 27.10.05 p.1.

⁵⁸ *Militant trade unionism in industry hub*, (West Bengal) 2.1.05, thestatesman.net, visited on 28.1.05.

In spite of the orders issued by the High courts the unions/associations declaring and observing bandh is causing serious effects on the administration.⁵⁹ The strikes or bandhs conducted by the militant trade union in spite of frequent appeals by the Chief Ministers of the States hindering the production in both State and Central public sector undertakings and at private sector units also amounting to thousands of crores. It is important to note that the ruling party are also incapable of taking any action against them as the trade union are affiliated to them and even a call given by the chief minister also will be paid a deaf ear. They also even go to the extent of manhandling the official of the undertakings when they try to educate the workers or prevent strike or bandh activities.

The above material made it clear that it is the duty of the Government to look after the interest of the general public during the period of strike or bandh called by any political party or trader union(s). It is also experienced that the political parties when not in power are calling for or supporting strikes or bandhs on one or the other pretext and opposing the same when they to power. Strikes or bandhs called for by the trade unions or organisations affiliated to the parties in ruling is seriously bothering the Government. The criticism made by the politicians against the courts and judges, particularly by those who are holding constitutional posts is causing serious threats to the independency of the judiciary. Avoiding the summons of the court which issued prohibitory orders against the proposed strike or bandh became a regular phenomenon. Like wise Government failing to implement the orders or suggestions given by the courts to prevent the proposed strike or bandh is furthering the morals of the organisers. Persons in position like Chief Minister requesting the organisers to allow the employees to attend the duty is considerable degrading the image of the post as the organising groups are

⁵⁹ The CITU (West Bengal) is going ahead with tomorrow's half-an-hour chakka bandh irrespective of the orders issued by Calcutta High Court on 30.11.04 (*Citu to go ahead with chakka jam*, thestatesman.net. Visited on 23.1.05)

affiliated to their party. It is important to note here that the persons once elected to a post, must forget its party and shall start functioning in the interest of the citizens and State, but in practice this principle was totally ignored and they are favouring their party men in utter disregard of the public interest.

The idea of enforcement of the fundamental rights was from the very beginning present in the minds of the framers of the Constitution. As to the precise means by which the fundamental rights of the citizens were to be guaranteed, Munshi pointed out in his note (before the drafting committee of the Constitution of India) that fundamental rights in the United States and Civil Liberties in Great Britain had been preserved by reason of two factors: (a) an independent judiciary, and (b) the prerogative writs. Without prompt machinery of enforcement, the Union and State Governments might conceivably lapse into a programme inimical to freedom. The existence of a legal right in the Constitution necessarily implies a right of the individual to intervene in order to make the legal right effective. But these constitutional goals (which lost its original shape) undergone a major change after passing for a period of 58 years (from independence), and is trying to find suitable position in the Constitution.

Judiciary is the only option where the citizens or persons who are aggrieved by the act of the legislature or executive can go for remedy. However, judiciary is dependent upon legislature for several purposes like pay revision. (Though it is a constitutional duty still the legislative and executive exercise their power in appointments, transfer and pay revision etc., either to have favour or show their power). Though immediately after framing of the Constitution nothing came/rose against the judiciary, later it was subjected to severe criticism. Though the Hon'ble Apex Court in number of case passed orders in relation to strike, it never faced criticism prior to 2003

i.e. after passing the judgement in *T.N. Rangarajan v. State of Tamil Nadu*. It is the duty of the elected Government to safe guard the interest of the judiciary. The State Government shall not play to the emotion of the people. It is also the duty of the Government to take steps to ensure the implementation of the orders passed by the courts for which it shall direct its officers to take proper steps as per the direction or opinion of the court. Number of instances can be seen where the legislature passed the Act and the executive took no steps to implement it. Judges for protecting their rights going to the court is also not uncommon in India. When they feel that they are aggrieved by the decision of the executive they are challenging (protesting) it in the courts of law, wherein active assistance of the Bar(s) was also was taken. While dealing with the cases of transfer of judges case Chandrachud J. has mentioned that a judge who is to enter into an unequal contest with government will not be without assistance of able lawyers. Perhaps the Supreme Court judges were not aware of that the cost of such litigation – even the out-of-pocket cost can be prohibitive⁶⁰

In rare cases the Government assured the court to implement a particular order but failed to do so either to save the present (the then) Government or to protect the vote bank.⁶¹ In 1971 when Sri A.N. Ray was

⁶⁰ This statement has been born out by what happened in the judge's case. In the petition filed in Bombay High Court by Mr. Iqbal Chagla and others and transferred to the Supreme Court, 3 Senior advocates instructed by a junior advocate on record of high standing appeared to the petitioners. Following the traditions of the Bar, no professional fee were charged. The case began on 4th August 1981 and ended in the last week of October. Counsels were present throughout. It involves 12 journeys by air from Bombay to Delhi and Delhi and Bomaby. In order to meet the fare out-of-pocket expenses of transfer by air and stay in a hotel in Delhi, advocates and solicitors of Bombay collected a fund of about Rs. 1,16,000. at the end of the day even fund was inadequate and a further amount about Rs. 10,000 was collected. (H.M. Seervai, *Constitutional law of India*, Vol-II, 1984, p.2274).

⁶¹ In Kaveri water issue when Mr. Krishna Chief minister of State of Karnataka conducted 'Pada Yatra' which was clearly intended to disobey the Supreme Court's direction to release water for the State of Tamil Nadu, (at the same time to protect his position as Chief minister). The Hon'ble Supreme Court held that "there are lot of cases pending in the Apex court where emotions can be aroused but it will be unfortunate if the Chief

appointed as chief justice of India undermining the 3 (three) senior judges viz., Shelat, Grover, Hedge, within an hour of swear-in-ceremony of Sri A.N. Ray all three senior judges resigned to their posts. Their resignations were simply accepted by the Union law minister. In Ayodhya case also “a solemn assurance was given to protect the monument but that was broken and it was demolished”.

The Government if feels any difficulty in implementing the order issued by the court, they can go for modifications. The pleas of bandhs and agitations have been unfortunately raised by the chief ministers of several states as a ground for non-implementation of the courts' orders. From the decisions given by the courts and tribunals it is clear that the pendulum swung toward the workers because of economic, social and other reasons. Trade union leaders and politicians till 2000s remained silent though the decision was given against the union and its leaders (Except in rare circumstances). From the beginning the employees are claiming the strike as their inherent and inviolable right but judiciary from time to time (particularly after 1970s) started imposing restrictions upon the exercise of right to strike. It is submitted that in India an unwarranted hair-split technology was allowed to be used in the arguments and lot of favour was done to the workers in the form of sympathy (though not expressly said). In the decisions given by the courts the Government employees won majority cases compared to the cases contested by the private employees. In several cases though the evidence is clearly against the striking employees the benefit was given to them on one or the other pretext.

In T.N. Rangarajan case the Hon'ble the Hon'ble Supreme Court (judgement delivered on 6.8.03) held that “Government servants have no right

Minister come and say that they cannot implement the court's order because of emotions of the public” (For further details see *The Hindu*, Vijayawada Edition, 25.10.02, p.1)

to go on strike (Neither fundamental nor statutory nor moral). Law on this subject is well settled and it has been repeatedly held by Supreme Court that the employees have no fundamental right to resort to strike (There is no legal / statutory right to go on strike). There is no statutory provision empowering the employee to go on strike. It was also further held that "There is no moral or equitable justification to go on strike". Further, there is a prohibition to go on strike under R.22 of Tamil Nadu Government servants Conduct Rules, 1973. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which result in chaos and total mal-administration. Strikes affect the society as a whole in a society where there is large scale unemployment and number of qualified persons are eagerly waiting for employment in government departments or public sector undertakings. Strikes cannot be justified on any equitable grounds". The Hon'ble Apex Court suggested that "for redressing their grievances, instead of going on strike, the employees do some more work honestly, diligently and efficiently. Such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the society". The Bombay High Court also on 12th August 2003 issued restraint orders against the ONGC employees from ceasing work from 13.8.03 and also directed the management to conduct inquiry in to the MI-17(2) helicopter crash and directed to pay compensation to the victim's kins.⁶²

Later on CPI and CPM along with other political parties and trade unions called for an all-India strike on 24th February, 2004 against the verdict

⁶² The Statesman (Siliguri edition) 13.8.03.

of the Supreme Court in T.N. Rangarajan v. State of Tamil Nadu. The justification given by the CPM for this call was “The working class has gained international recognition and respect for the right to strike, through many decades of heroic struggle. Several generations of workers in India have contributed to this struggle, and so have the workers of Europe, America, Asia and all over the world. By daring to deprive lakhs of workers in India of the right to strike, the Indian bourgeoisie is striving to take society backward”. Hence, it is a step to defend the workers’ right to strike.⁶³

On the proposed day all-India strike was conducted which the political parties like CPM claim to be successful and the media says that it was partially successful as about 30 million workers were said to have participated which include 1.5 million Government employees and officials of the finance sector⁶⁴. The government on 17.12.03 said in Rajya Sabha that the right to strike by workers had not been taken away by the recent Supreme Court judgement on striking Tamil Nadu government employees. While clarifying doubts in the minds of agitated opposition members who were alleging that the fundamental right to strike had been taken away from employees by the Supreme Court, (the then) Labour Minister Sahib Singh Verma said that as long as it did not involve essential services, workers had the right to strike.⁶⁵. The statement given by the Labour minister in Rajya Sabha though not in direct confrontation of the Supreme Court’s verdict still it dilutes the ambition of the court to restrict the workers’ right to strike in the interest of the public at large for the grounds mentioned in the judgment. Had the intention or opinion of the judiciary in the case of T.N. Rangarajan taken in to

⁶³ *Defend the right to strike –a right of all workers in all sectors! Support and participate in all-India strike on 24th February!* (Statement of Communist Gadar party of India, 10.2.04). People’s voice, www.peoplesvoice.org. (visited on 6.4.04)

⁶⁴ *30 million workers go on strike against Supreme Court ruling, 24.2.2004.* www.webindia123.com visited on 6.4.2004.

⁶⁵ *SC has not taken away the workers’ right to strike*, Deccanherald.com, 17.12.03. (visited on 6.4.2004)

consideration either by the Central government or the State governments, they would have taken steps to prevent the proposed strike on 24.2.04. In number of occasions courts issued “stay orders” against the proposed bandhs or strikes, but hardly any constructive step was taken by the respective government to implement the court’s order. It is the trade unions or associations who stopped the strike(s) intermittently purely for the reason if they go even against the court order they may have to suffer (by way contempt of court, loosing job etc.).

Major shift was seen from the year 2003 where from the trade union leaders and politicians who openly started criticizing the judiciary in the name of fair criticism and the judiciary encroaching into the democratic rights guaranteed to them by the Constitution. Unfortunately the political leaders went to the extent of defying the orders of the court and conducting the strikes or bandhs by saying that they are answerable to “Peoples’ court” (public) but not to the judiciary. For the first time in 27 years’ Left rule, the government of West Bengal formally asked the vast body of its employees to face deductions of salaries in the event of absence from work without intimation and sanctioned leave on bandh day i.e. 17.11.2004. Police have been instructed to immediately arrest those who set up roadblocks⁶⁶. The CPI led government in West Bengal proved that bandhs cannot succeed if the full might of the administration is arrayed against it in the absence of a ground swell of popular support on 17.11.04. Pratap kumar Roy and Jyotirmoy Bhattacharya, JJ, of the Calcutta High Court held that, “we will not hesitate to direct the authorities concerned to derecognise the party by cancelling its registration”. Although this is the first time such a threat has been voiced, in two earlier cases, the Supreme Court has said if political parties or organisations call bandhs, they can be penalised. In spite of all these efforts the statements being given by the politicians shows that they (the orders of the

⁶⁶ *Twin strikes on Bandhs*, The Telegraph, (Siliguri edition) 18.11.2004, p.1.

courts) fail to show any impact upon. On December 04, 2004 Miss Mamata Banerjee, president of Trinamool Congress while claiming the 12 hours bandh called by her as success and said that “The Trinamool Congress got endorsement of its bandh in the ‘people’s court’.”⁶⁷ Bearing such comments silently led the judiciary to a stage where every one feels that judiciary became a hums in the hands of the executive and cannot do any thing as it is dependant upon the executive for execution. It is submitted that it lead to loss of confidence in the judiciary which is well within the knowledge of the judges also. Hence immediately after swear-in ceremony almost every Chief Justice of India says “the priority will be to improve confidence in the minds of the public towards the judiciary”.

The Chief Minister of West Bengal saying he is not able to eliminate the part’s control on (Alimuddin street is still interfering) education indicates the role being played by the party cadres. The rate of strikes is very high on small firms compared to big establishments. Outsiders forcing the employees is also a cause for increase in the rate of strikes. Issuing notice became a formality before going on statute (as per Industrial Disputes Act, 1947). Poor education is the main cause for increase of hooliganism in the trade union activities. The using of the word “hooligans” in strikes and educational institutions by the senior politician and the Chief Minister of State shows the nature of persons involved in the activities of strikes and bandhs.⁶⁸ These steps being taken before election which is scheduled next year (it is submitted that these steps may be aimed at attracting the voters for forth coming elections), but whether the Government will continue the same even after election or will come under pressure of its affiliated trade unions is to be seen.

⁶⁷ *Spontaneous response*: Mamata, 04.12.2004, thestatesman.net (West Bengal) visited on 23.1.05.

⁶⁸ CM declares war on hooligans, faces a home truth, The Telegraph, (Siliguri edition, 6.11.05.

Advocates are said to be the pillars of democracy. Underlying the loss caused by strike the Hon'ble Supreme Court held that "For just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realized that the weapon does more harm than justice". Hence the Hon'ble Supreme Court after identifying the importance of the advocated in smooth running of the judiciary held that "The lawyers have no right to go on strike or give a call for boycott and even they cannot go even on token strike".⁶⁹ Still incidents of lawyers declaring strikes can be seen even today. Y.K. Sadharwal J. of the Hon'ble Supreme Court reproached the lawyers for resorting to strike saying they cause hardship to lakhs of litigants by their "misconduct". He also further stated that "a sense of responsibility should be inculcated" among lawyers.⁷⁰

In 1998 the law ministry and the Chief Justice of India engage in a tug-of-war over the appointment of judges. At this stage (the then) Chief Justice M.M. Punchi said to have recommended for promotion of 6 (six) judges to the Apex Court, reportedly superseding a number of senior judges in the process. L.K. Advani (the then Home minister) stated that "the judiciary has to be more responsive".⁷¹ The rift between the judiciary and executive further deepened from time to time and in August, 2005, it reached the acme when the Hon'ble Supreme Court quashed reservations in private professional colleges, the government came openly saying they will bring legislation to provide reservations in private professional colleges. Some politicians went to the extent of saying that they are ready to sacrifice themselves for the cause of minority. Being aggrieved by this statement the Hon Chief Justice R.C. Lahoti of Supreme Court of India said that "if the government want to go after a judgment without understanding it then wind up the courts and do whatever you want". The Supreme Court bench commented that "if this is the attitude

⁶⁹ Ex-Capt. Harish Uppal vs. Union of India and others AIR 2003 SC 739

⁷⁰ *The Telegraph* (Siliguri edition) 9.10.05, p.6.

⁷¹ Ranjit Bhushan, *Outlook*, August 3, 1998.

of the government towards the court then we will go on doing our duty and let them do others".⁷²

After this incident (just hours after the court's outburst) all parties at a scheduled meeting decide to set up a committee which will interact with the government to devise legal remedy to amend the Constitution if necessary to protect reservations in private professional institutions. The government on 24.8.05 announces its intention to bring in Bill to cleanse the judiciary and make it accountable, fuelling already widespread perceptions of a turf war between arm of the government on the ground that "if every institution including the parliament is accountable then why not judiciary and the idea is to make the judiciary corruption-free"⁷³. The speaker of Lok Sabha, Mr. Somath Chaterjee, (who was a cadre of CPM) took strong exception to Supreme Court's outburst where it had protested against what is called government's bid to precipitate a confrontation.⁷⁴ These incidents categorically prove the confronting attitude of the legislature and executive with the judiciary. It is submitted that, the comment made by the speaker and the union law minister clearly indicate to put pressure upon the judiciary so that they may not pass the orders against the crucial interests of the (prevailing) ruling government(s) which is wholly a threat to the democracy.

Judicial review is the basic structure of our constitution. The entire constitutional machineries must function in the interest of the country. If any wing fails to function in the interest of the country the other wings must try to

⁷² *The Times of India*, Hyderabad edition, 24.8.05, p.1.

⁷³ It is to be noted that already judges adopted 15-point code of ethics much earlier and the same is in force. Hon'ble Chief Justice of India A.S Anand, while speaking in the conference wherein the Chief Justices of all high courts have adopted a resolution which is to be known as the "restatement of values of judicial life" said that "in a democracy where the sovereignty vests in the people, every holder of public office must be accountable to the people". The justices have also accepted to adopt an "in-house procedure" under which a committee would take suitable action against which those judges who do not follow the code of ethics.

⁷⁴ *The Times of India*, Hyderabad edition, 25.8.05, p.1.

rectify it within constitutional limits but not with vested interest. If politicians and trade unions start criticising or disobeying the express orders issued by the courts it is nothing but defying the goals enshrined in the constitution. Such practices if continued for a long time, a time may come when the citizens will take the law in to their own hands and there may not be law and order in the society. In order to overcome these problems the gap between the policies and implementation should be reduced. The ruling parties should not have affiliation with any trade union or association. Confrontations between the judiciary and executive must be restricted.

7. 5 Effect on general public

The success of any strike is primarily a function of power, not of a legal right. The law is significant as it distributes power, by sanctioning or outlawing the use of particular tactics. Historically, this distribution of power by the legal community has served to undermine the power of unions through tight regulation of the use of economic pressure. The trade unions one side wants to bring pressure upon the employer, on the other side the government wants to use power upon the unions and/or employers for preventing or settlement of disputes in order to ensure uninterrupted supply of essentials to the society i.e., general public. In the struggle between the labour and management the sufferers will be the general public who has no role to play in the process of settlement of the dispute.

The employees generally raise dispute for getting more benefits (monitory) from the employer. The employer may also ready to pay the benefits to the employees by raising the prices of the commodities (out puts). The result will be increase in prices of the commodities. After every pay revision the prices of the commodities will be increased to meet the extra burden of the pay revision. In PSUs where the government is having monopoly increased the prices of the out puts after every budget prior to

1991. In 1991/2 for the first time Prime Minister P.V. Narasimha Rao (the then) stated that “we have cheated our public by supplying inferior quality goods at higher prices” and thereby he introduced the new policy of imposing the tax on the basis of the then prevailing circumstances. Though employees are satisfied with pay increase they are not getting much benefit as the prices of the commodities are also increased simultaneously.

50 millions of workers went on strike on 16.3.04 in protest at Supreme Court ban on strikes, shutting down government offices, schools and banks and hitting public transport. This national strike mainly involves government and financial sector employees. Trading in the government bond market was also thin with traders estimating total volumes about a third of the daily average volume of 40-45 billion rupees which affected the public at large. During the period of strikes by owners and drivers of trucks, which occurs every year after the increase in prices of the oil is resulting in artificial escalation of prices of all the commodities either directly or indirectly. During the period of strike by the government employees, lawlessness will be more as the vigilance machinery becomes functionless. The period of strike by the Government employees is a golden period for the black marketers and a curse for the general public.

Strike may not only affect the public directly. It may have its indirect effect. Increase in salary or benefits may result in increase of commodities. The increase in burden must be shifted by the management. Otherwise he has to suffer either loss or reduction in profits for which he may not be ready. Work stoppages at Canadian nickel producer Falconbridge and Cerro Colorado copper mine in Chile owned by BHP Billiton help push prices of several important industrial metals higher; copper prices for March delivery reach highest level since mid-1997, exceeding \$1.15 per pound in early trading on Comex division of New York Mercantile Exchange; three-month contract for

nickel, which is priced by metric ton (about 2,205 pounds), closes at \$14,900 on London Metal Exchange, after earlier breaking through \$16,000; graph (M)⁷⁵ the strike call given by the government employees' unions on May 13, 1995 paralysed the country administration and civil life. The strikes halted planes, trains, subways and buses across the country, canceled a vast majority of classes in schools and universities, cut services at hospitals and prevented most newspaper distribution and mail delivery. Those walkouts so damaged the government of Prime Minister Alain Juppé that it lost a general election two years later (1997).⁷⁶

9.5 Opinion of the employees and union leaders.

Western culture placed personal relationships above every thing. They are governed by individual inclination and choice. Though major change could not be seen in Indian tradition, the western culture had its impact upon Indian culture. While the West is rethinking of their way of life and diverting towards Indian (way of life), the Indians are on the blink of discarding their roles. Once the culture is changed it will have its impact on the other aspects of the life of the individual. This in turn changes the entire life of the human being and will change his character also. What is required is to recover the role that sets relationships in their proper place.

A workman must live in the company of the other either willingly or not. His personal relationship with his colleagues and employer or supervisor will guide his lifestyle. "Strike" is a concerted activity of the workmen. Now-a-days the concerted activity can be ascertained only once it is proved that the activity was approved by a majority vote. The method of balloting though in principle is in existence, in practice it took various shapes. The reasons shown

⁷⁵ Bernard Simon, *Strikes Push Up Prices of Industrial Metals*, The New York Times Company, 2004 (<http://www.nytimes.com>)

⁷⁶ Elaine Sciplino, *Huge strike by public workers paralyze France*, (www.nytimes.com)

for declaration of strike *prima facie* are different from the reasons that led to the patent reason. 'Oral interview' was conducted mainly in Andhra Pradesh State Road Transport Corporation, Guntur and ViniKonda depots, Singareni Collieries, (Coal Mines) Kothagudem, Adndhra Pradesh, ILTD Company, Chirala, Prkasam Dist, Andhra Pradesh and some class-I Gazetted officers and others at various places to ascertain the (latent) factors those are leading to strike. Andhra Pradesh State Road Transport Corporation is the nationalised public transport in the State of Andhra Pradesh, which is facing the threat of privatisation for last several years. An attempt was made to find out the reasons for declaration of strike and its psychological effect upon the employees. Likewise, Singareni Collieries is a world famous coal mines and number of time proposals were made to privatise certain pits. The psychology of the workmen working thousands of feet below surface and the effect of strike on those persons and their opinion with regard to strike was collected. Their opinions are summarised here under. It is unfortunate mention here that even after decision of T.N. Rangaran case hardly a trade union of any undertaking had conducted any meeting with their members to sort out the issue and to find out any substitute for 'strike'. Except one conductor of the APSRTC Guntur depot no one was capable of giving any answer for the question "What is the substitute for a strike in the present scenario?" It is also interesting to note that in spite of privatisation in other sectors trade unions in APSRTC and Singareni Collieries are not thinking how save the undertaking from the well of losses so that they can save from the axe of privatisation. Most of the workmen (including the persons holding the Constitutional posts) and leaders requested the scholar not to use their name in the report. Most of the workmen, union leaders and the officers are not prepared to give interview or express the opinion unless they were approached through a person known to him. Unfortunately the persons holding the constitutional posts also requested not to quote their names in the thesis but gave vary valuable information. Some union leaders directed their staff to close the doors when

the interview was at peak when some sensitive questions were asked and other members were send out of the room. During the period of interviews the union leaders are very aggressive, where as the union members are very co-operative and answered the question 9with a vision of seeking assistance to save them from the unwarranted activities of the union leaders and corrupt officer. This scholar is of the view that during the interview that had there been any prior information the union leaders would have forced the members not to give any opinion which may go against the interest of the union or its officials.

Opinion of the Union leaders

The union leaders are of the opinion that;

- A trade union which does not have support or not affiliated to any political party either short lived or may collapse at any point of time.
- Trade unions which run on the good will of its (a) leader may collapse after his death or the leader may use it for his selfish needs.
- The leaders like honorary president, General Secretary likes to collect the union funds through salary deductions. In such a case the reputation of the other cadres will not be increased. Whereas lower and middle cadre leaders like to collect the contribution by hand, which may develop rapport between the leaders and the members. (This is for the reason that at the time of payment of contribution the members will bring their problems to the knowledge of the leaders).
- They also admit that during the period of strike even 5% to 25% of employees if surrender, the union will be in trouble. The union leaders are also against the principle of 'one factory one union'. At the same time they are also against more than two unions. If only one union is in existence in an undertaking the possibility of corrupting the leader by the management is very high.

- The union leaders are though experts in dealing with management, some times they cannot understand the problems which are highly technical in nature; still they want to handle the issue, which is not in the interest of the employees.
- The union leaders feel that corruption, lack of accountability, and irresponsibility are the main reasons for out break of strike.
- Regarding the change of duties the management is discussing the matter with the union leaders (who does not have any practical experience) instead of the employees (who is experiencing the problems) those who are going to be effected (e.g. change in timings of the drivers and conductors of a transport undertaking). This practice is not benefiting employees who are going to be effected by the policy.
- The management for the purpose of maintaining their status and to satisfy their ego, refusing to deal with the workers directly even in case of minor issues. Another reason is, if any case in which the matter was discussed and settled without interference of the unions, the union leaders may later either create a dispute or may refuse to co-operate in other matters on one or the other pretext.
- Union leaders are also not taking risk of complaining against the managerial staff as in some cases they (managerial staff) resort to unfair labour practices (like imposing false cases, transferring the leaders to other rural areas etc) against the leaders also.
- Lack of work culture on the part of workmen and strictness on the part of the managerial staff, is resulting in loss to the undertaking.
- The unions also failed in controlling the minor misconducts of the members (like bus conductors not returning the change (coins) to the passengers, office staff attending the duty late by 15 to 30 minutes etc).

- The union leaders say only 2 to 5% of the employees are only responsible for the total work disturbance in the undertaking⁷⁷. Generally these persons are habituated to vices and active participants in militant activities of the trade union. In a transport undertaking even of a single workman like driver or conductor if goes on leave (or absents) all of a sudden, for accommodating his pace lot of exercise has to be done by the officers. Another person will be forced to work for more time in the place of absented workman on leave. This factor may again result in granting special leave to the workmen who did double duty or overtime. This may also result in accidents. In order to break this circle (which is almost impossible) it will take at least a week for the supervisory staff.
- Generally, highly educated technical staff hesitates the directions of the leaders (who is illiterate leader or under educated) of a union. In order to bring him (educated member) to his terms the leaders try to trap him in any false case and pretend their support later.
- The practice followed by the leaders generally is to take unanimous decision in case of strikes etc. As per rules the trade union has to conduct ballot to know the opinion of the members, but in practice that the trade unions unanimously take the decision by either undermining or suppressing the opinion of others⁷⁸.
- The workmen want that his problems should be solved with in 2 or 3 days without hearing others. Management is taking decision undermining the difficulties of the workers.

⁷⁷ Some employees who got Rs. 6 lakhs by "Golden handshake" (Incoal mines of Singareni Collieries, Kothagudem, Andhra Pradesh) lost Rs. three (3) lakhs in an hour by playing cards.

⁷⁸ While conducting the opinion survey some union leaders closed the doors and kept some muscle man out side the and inside the room, when the scholar pointed out the issues like educating the members by the unions, unions duty not to interfere in minor issues between the labour and managements like Casual leave, one hour permission etc). Some union leaders in the beginning of the interview expressed their intention to express their views in the presence of the other member as the progress simply they withdraw themselves to other isolated places on one or the other reasons.

- The union leaders are reluctant to accept the facts like corruption in union, collusion between union and management etc. they are also not prepared to accept the fact that members are loosing faith in union leaders.
- Some leaders expressed their opinions that they are collecting monthly contribution from the members, as they are not sure whether the members continue in the same union or change to the other in the next month.
- The union leaders are not in favour of joint action committee or proportional representation.
- Young leaders want that the members for each and every cause the members should approach them which they feel is necessary for improving their influence among the members of the union.⁷⁹

Opinions of the member(s) (workers)

- Most of the workmen though having sympathy, towards the public during strike period cannot express anything because of fear from the union and its leaders.
- The present day union leaders comparatively selfish than the leaders of the olden days.
- The leaders are much interested in safeguarding their post rather than serving the union and the members.
- The union leaders receiving money (bribe?) from the members who need their need. They are biased towards the members who blindly support them.

⁷⁹ The reason given by them are:

- (i) If them employees deal with the management directly what is their importance?
- (ii) For minor issues if they go to officers directly, how they can help them in serious matters?
- (iii) If they are allowed or trained to deal with their own matters personally their importance will be reduced slowly.

- The member of the trade unions are not believing the leaders whole heartedly. (when reason was asked for this one union leader in APSRTC Guntur Depot (in a bit of anger) replied that “he who do does not believe his union leader can’t believe his own wife).
- The high cadre leaders also cannot do any thing with regard to high-handedness of the other leaders.
- Instead of resorting to strikes, the disputes may be referred to forums like labour - adalats (instead of courts) where the matters can be settled speedily (preferably with in six months).
- Some employees for their own reason are not accepting promotions (because of fear of transfer etc.), which is blocking the promotional avenues of the other employees.
- In case of unfair labour practice committed by the officers, neither the union nor top officers are taking any steps to resolve it.
- The unilateral decision taken by the management without consulting the workmen is the main cause for misunderstanding between the labour and management⁸⁰.
- In case of problem with work, the management must consult the workmen instead of the union. Periodical discussions with the workmen will considerably decrease the tension between the labour and management.
- Both management and workmen must divert their attention toward the quality but not the quantity of the work.

⁸⁰ When the scholar was collecting the opinions of the workmen (both officers and subordinate staff) a decision was taken in the meeting of the officer in order to elevate undertaking from losses to profits, the staff must run busses one hour extra per duty (i.e. workman per day). Even if the drivers and conductors are ready to run the busses one hour extra per duty the revenue cannot be increased for the reason that the movement of the passengers cannot b increased at the will of the workers or the management. The management had taken a decision on the basis of the power they can exercise over their subordinated but failed to take not of the view f the passengers (general pubic). The income of the transport undertaking can be increased only after taking consideration of the views and problems of the staff (workmen) passengers (general public) together.

- Employees highly qualified (than required to the respective post) persons is creating problem (directly and indirectly) because of (i) egoism (ii) they try to pass on time so that they can go for other posts either by appointment or promotion or otherwise⁸¹.
- The workman who got the job on compassionate appointment is proved to be more corrupt than others, because they got appointment without any competition. Sympathy of the other staff towards them also adding its' share to it. Separate check must be mad upon them.
- Moral values must be developed in order to increase the workcultures.
- Use of language (abusive?) is another concern in mechanical area workmen. Now-a-days where the both highly educated and moderately educated persons are going to the same post use of same language by supervisory staff is creating unrest.
- Neither the unions nor the management are taking steps to educate the employees to meet the challenges of the new technology and development. (in some undertakings though some steps were taken to educate the employees they are not adequate). In some cases the management and unions are causing hurdles to the employees who want to update his knowledge out of his own effort and expenditure. A union educating the members through its educated members is yielding good results.
- Mental tension of the workmen is increasing day-by-day. Number of employees are unable to adjust themselves to the post as it not of their choice. Likewise employees not getting their dues (like increments, promotions etc.) in time is also causing dissatisfaction towards the post. If they adopt themselves to the prevailing circumstances he will

⁸¹ The highly educated persons (generally Graduate or post-graduate including engineering graduates) if appointed to the posts like driver, conductor, attender, etc., are not blindly obeying the directives of the union leaders and managerial staff who are less educated. Some times they try to correct the language and the mistakes or wrong (committed or going to commit) committed by the union leaders and supervisory staff which hurt the ego of the management and leaders.

get job satisfaction and can discharge the duties efficiently⁸². This in turn will reduce the tensions between the labour and management. In stead of using official position, if the officers maintain friendly relations it will reduce the tensions between the both.

- Appointing or promoting a person to a post for which he doesn't possess the required special skill or knowledge is causing tremendous complications. A workman must be properly trained or educated to discharge his duties efficiently.
- A workman must be mentally prepared for discharging his duties.
- Selfish union leaders are artificially increasing the gulf between the workmen and the management. They are also not guiding the members properly in day-to-day transactions. Strained relations between the workmen and employer, and member and union leader are the root cause of any dispute.

⁸² Adjustment means 'reaction to the demands and pressures of social environment imposed upon the individual'. The demand may be internal or external. To whom the individual react. Worker has to follow certain beliefs and set of values which as a member of the group he has to follow. His personality develops in the continuous process of interaction with his co-workers' environment. Apart from these he has to satisfy demands like providing food, clothing, shelter and welfare of self and his family members. The needs of the worker changes, proportionate to his positioning the society. Non-satisfaction of the needs leads him to frustration.

Criteria for good adjustment:

Adjustment as an achievement means how efficiently an individual can perform his duties in different circumstances. There are four main factors which influence the adjustment of a person are:

1. Physical health; It was rightly said that 'health is wealth'. The individual should be free from physical ailments like headache, ulcers, indigestion and impairment of appetite etc. as these ailments impair physical efficiency.
2. Psychological comfort; one of the most important factors for adjustment is that an individual must not have psychological diseases such as obsession, compulsion, anxiety and depression etc.
3. work efficiency; the person who makes full use of his occupation or social capacities, may be termed as well adjusted in his social set up.
4. social acceptance; Everybody wants to be socially accepted by other person. If a person obeys social norms, beliefs and set of values, he will be called as well adjusted, other wise (by illegal or immoral means) he will be called as maladjusted.⁸²

- Union leaders exercising supremacy over the members is creating distance and leading to unrest.
- Political affiliation of the trade unions and/or its leaders is leading to control of unions by politicians. Hence, political affiliations of the trade unions should be abolished. In case of necessity only, the assistance of the political parties may be taken. (Under these circumstances the political profession may collapse entirely in trade unions).
- Workers' participation in the management must be increased.
- In case of discussions with management with regard to major labour issues the method of 'proportional representation' must be practised. (In this case all the unions will feel responsibility and union rivalry will be decreased considerably which will be a welcoming event).
- Where the strikes were conducted against the corrupt activities of the management, matter will be settled speedily, whereas in case of labour issues it takes a lot of time to settle.
- Managerial staff has to take certain decisions for the development of the undertaking which may be successful or not. Unsuccessful attempts of the managerial staff are criticised by the employees and unions simply to point out the defects of the managerial staff but are failing to appreciate the steps taken by them in the interest of the management.
- Disciplinary action against the misconducted employees in time will reduce corruption and make system alert.
- Though the managerial staff like Depot manager (in case of transport undertaking), General Manger, Accountant Generals say that they are also employees like others, the activities shown by them towards the subordinate staff make the other staff feel that he is an employer.
- After settlement of a dispute follow up action must be taken, otherwise the problem will remain as it is.

- Time bound settlement of disputes will increase the efficiency of the staff. A matter if settled within six months, discipline and accountability will be increased.
- Unions must divert its attention towards the corrupt activities of the management or managerial staff. This may reduce the loss to the undertaking and its result will be beneficial to all.
- The decisions given by the courts cause fear in the minds of the workmen. Now they are afraid of going on strike.
- During the period of strike (in Coal mines of Andhra Pradesh) managements are giving extra benefits and even gifts also. This practice is causing guilty conscious in other workmen.
- Payment of incentives and gifts to the hard working employees is increasing work-culture. In APSRTC fixed percentage will be given after prescribed amount) to both drivers and conductors on the income every day. (For getting this amount the drivers and conductors are working like private employees).
- Lack of proper planning on the part of both employer and unions is the main cause of unrest.
- During the period of proposed strike certain percentage (%) of the demands of the workmen or union should be deposited in the bank account and the matter must be referred for arbitration. If the employees win the arbitration proceedings the difference amount of the salary must be paid to the employees otherwise the amount deposited in the bank must allowed to be withdrawn by the employer⁸³.

In order to prevent the effect of strike on general public during strike period, black marketing must be restricted with iron hand. Public awareness

⁸³ 1977 (N) SEN 35-6.

campaigns must be conducted to educate the public about their rights and steps to be take during the period of strike.
