

CHAPTER –I

INTRODUCTION

**O Lord Almighty, bestow on me
The privilege of enjoying the wealth
Earned by honest, hard labour**

.....Rig Veda 8.4.17

India is a country with splendored traditions. Its unmatched and unleashed cultural and traditions drew the attention of the world community even before 6000 B.C. In the form of religious faith and believes the king was ordained with the duty of protecting the subjects as a farthermost 'Dharma'. Likewise, the citizens or subjects of the king were also consecrated with the civic responsibility of obeying the ordains of the king with whole heartedness. Sociologically man is habituated to live in groups. In Vedas also great emphasis was laid down on the king's duty to safe guard the interest of the public at large and the duty of the subjects to obey the king. All the times it is the industry that kept the status of the country in high or low among the family of nations. The meaning of the industry may vary from time to time.

Workmen are the back-bone for the development of economic conditions of any country and accordingly they are required to be provided with at least all necessities, on the other hand employers are also required to have confidence on the Government policies that their right should not be sacrificed for the political purposes. At the present scenario "strikes" has become very important topic and accordingly various courts have changed

adopted approaches previously and sometime declared strike to be their right and sometime it is stated that the strike is no way legal. Thus I was of the opinion that this topic has to be thoroughly investigated, so that all may be benefited. Hence I preferred this task.

The activity of strike indisputably improved the living conditions of the workmen from 'slavery to equal social status. It not only benefited the workmen but also (some times) shaken the economy of several countries. What is required at a particular point of time may not be suitable all the time. The research work on the topic captioned "CHANGING DIMENSIONS OF STRIKES AND ITS LEGAL CONSEQUENCES IN INDIA" has been desire to find out the origin and causes of strikes. It aims at finding out whether the activity of strike by the workmen in the present day circumstances is necessary or not? It also looks into the necessity of strike in the present form or in any modified form. An attempt also has been made to find out impact of the changing global situations on the activity of strike by the workmen. The research work reviews the relevant information in order to find out the need of the workmen to go on strike and ways and means for settlement of the same.

Under chapter two general meaning of the word 'strike' is explained. Section 2(q) of The Industrial Disputes Act, 1947 defines the word strike. Different authors defined the word 'strike' in different way. In this chapter the meaning of 'organisation' and need to form organisation by different groups is also discussed. Discussing the need to organise is not enough. It is historically evident that, 'conversion of need into a right may take long time and huge sacrifices'. The needs of the majority may if brought to the knowledge of the government and gets its assent will take the shape of right. Right once granted by the legislature must be communicated to the beneficiaries by one or the other means. Hence the trade unions are endowed with the duty of communicating the right to organise to all the workers. Once they come to know of their right they start thinking how to protect their right. Man always

thinks for the betterment of the surroundings where he live in and the factors that influence the surroundings. Once the group of persons organise to safeguard their rights will definitely claim for the improvement of their rights. A workman who is also a human being is deprived of his natural right to live like a human being with dignity and honour by his employer will bargain with him. Methods of bargaining may vary from time to time. But the principles and contents of bargaining are more or less same all the time. In chapter two the essential points of bargaining points are discussed. Strikes though in the beginning was confined to the activity of withdrawing labour by the workmen, later adopted several way and means. Now-a-days even without withdrawing the labour also workmen are observing strike. The workmen, who were striking for their own cause in their respective places in the early stages of industrialisation, are now striking not only for their own cause but also for the cause of the workers working in another continent. The mode of strike is fast changing from time to time. Types of strikes discussed in the chapter reveals how the workers are adopting modes of strikes depending upon the need and necessity.

Origin must be taken into consideration for deciding the validity of any act or omission. Likewise for deciding the nature of strike and its validity and status it is necessary to know its origin and development. In chapter three, the nature and scope of the activity 'strike will be explained with a view to find out the validity from all the corners (legally, morally, etc). An act may be legally correct and may not be correct morally and *vice versa*. An act which is valid under certain circumstances may be not be valid at other point of time and circumstances. In this chapter the nature of the activity 'strike' will be discussed from sociological aspect also. The activity of strike shall not live long unless it is essential for any section of the society. The act of protest is an in-hidden human character which he inherited from his ancestors. Protest is very much essential for the survival of the human being otherwise he may loose his existence also in the nature. The importance of strike will be

discussed with examples. All fundamental rights are legal rights but not *vice-versa*. Whether strike is fundamental right or not will be discussed along with its possible consequences if strike is banned. In this chapter possibility of imposing permanent ban on strike along with globalisation and implementation of new economic policies will also be discussed.

Strike in the present form was started in Great Britain. Its roots can be seen in the United Kingdom as early as 14th Century A.D. Slowly strike in the form of protest expanded to the other colonial countries of Great Britain. Next to United Kingdom the activity of strike was well developed in the United States of America. In the chapter four the development of right to strike in United Kingdom and United States of America is discussed apart from its development in India.

In India industrialisation took its birth after the intrusion of the Britishers. Establishment of factories and industries in India gave birth to urbanisation which broke down the entire Indian family system. Indian citizens (who were called as blacks during the British India period) were forced to accept employment in the factories owned by the British citizens under inhuman conditions. Slowly during 1860s the social workers and later on freedom fighters took the cause of the Indian workers and after a great deal with the government and employers, they succeeded in getting implementation of some social and labour welfare measures. Till independence trade unions and workers contributed their reasonable share to the independence of the country. After independence also the workers continued to form the unions and associations and continued to declare strikes as and when they feel necessary. Development of right to strike in India covers the study of several phases that was undergone by the Indian trade union movement. Though, the activity of strike is much an older concept, in the present form it started in the year 1800s. Social workers and politicians for upliftment of the Indian workers expressed their protest to the company and Crown which yielded good results.

Under the Chapter five the causes of strike have been discussed. It is said that "well started is half-done". Likewise "right diagnosed is half cured". There are number of causes for out break of strike. If the management and Government find the root cause of disharmony, prevention or settlement of the dispute will be easier. Various factors i.e. leading the workers to strike will be discussed in this chapter. Terms and conditions of the employment of employees, such as wages, working hours, working conditions and grievances settlement etc., are some of the causes of strike.

Globalization added its share to the industrial unrest. Globalization and development of technology pushed the workers to a corner. Workers who were working under job security measures provided by the statutes in India were habituated to a sort of laziness, which made him incompetent to compete in the global market. Like wise the evil effect of employment in public sector undertaking is also discussed in this chapter.

Work culture on the part of he employees may make the nation to stay with its raised head among the family of nations. It is believed that the soul of the workers who died after discharging his duties with total devotion and dedication, also discharges its duty even it left the body. It is also believed that the same soul forces the other employees to discharge their duties with dedication. Trade unions are formed primarily for the purpose of ventilating the grievances of the employees. In the beginning unions were controlled by the social workers and politicians who devoted or sacrificed their whole life for the improvement and welfare of the down trodden and suppressed, weaker workers' community. Slowly due to change in circumstances the trade union leader ship became a profession and slowly the leaders started concentrating upon protecting their positions and making money out of it. Every body wants that his/her, son/daughter be placed in a higher position than him in their carrier. Same is the case with that of the trade union leaders. The situation still worsened when the leaders started dumping their legal representatives in the

executive of the trade union with a view to make them leaders after their retirement. This situation gave birth to new cadre of leaders viz., young leaders and imposed leaders. The evil effect of these cadres will be explained in the chapter five. The Trade Union Act, 1926 allows any number of trade unions in an undertaking. Multiplicity of trade unions opened an area for union rivalry which is necessary for their survival. The impact of union rivalry will also be explained in the chapter. This chapter also deals with the expectations of the employees. A man lives and acts in hope. Likewise an employee, a human being will have certain expectation from the employer or supervisor. Failing to meet those expectations is resulting in labour unrest. The historical background of strikes shall reflect the modes, causes, and effects in the early period. Therefore, a glimpse of the background has been noted in the fifth chapter.

Chapter six deals with the constitutional provisions relating to 'right to strike'. This study envisages the conditions which permit the employees to form associations or unions and the reasonable restrictions imposed upon their formation in the interest of social security etc. The relevant provisions of fundamental rights, fundamental duties and other relevant Articles will also be explained. The right of individual is not superior to the interest of the society. Article 21 which is a fundamental right guarantees the right to life to all the citizens. It is the duty of the State to safeguard the fundamental rights of the citizens. If a section of society wants to go on strike or declare bandh, it definitely affects the rights of others like right to movement, right to trade, personal liberty etc. under these circumstances the Government has to take steps to save the life and property of the citizens at large. The Government is being run by its employees. If the Government employees go on strike a part of the constitutional (Governmental) machinery may come to stand still. Hence, some restrictions were imposed upon the right of the Government employees to conduct strike. As a compensatory measure to these restrictions of the Government employees' right to strike, special protection is provided to them

under Articles 310 and 311 of the Constitution of India. These provisions are also explained in this chapter.

Defence personnel are aerated with the duty of protecting the country from external aggression and internal disturbances. Military personnel save the country from external aggression during normal period and during emergent period they protect the country from internal disturbances by assisting the Para-military forces. During normal course of time it is the police personnel, whose duty is to control the law and order situation in the country. If the defence personnel and para-military forces are allowed to form associations or unions, the security of the country and maintenance of the law and order in the country will be in danger as they may go on strike to further their interests. Hence, Article 33 rightly imposed restrictions upon the defence and Para-military forces on their right to formation of associations or unions. Likewise the persons who are associated or connected with these military or Para-military forces are also refrained from forming associations or unions. Critical analysis will be made with regard to the right to strike of the defence personnel in this chapter. Ann attempt will be made to find out the necessity of imposing such restriction with relevant evidences including case law.

Chapter seven covers the statutory provisions of law relating to the concept of strike. The Trade Union Act, 1926 deals with the procedure to be followed before going on strike in public sector undertakings and non-public sector undertakings. The consequences that follow when the employees fail to follow these norms are also laid down in separate provisions of the Act. In order to protect the services which are necessary for the day to day life of the human being from the clutches of strike The Essential Services Maintenance Act, 1981 was passed. The services like power, water, health etc., are covered by this Act. The State and Central Governments depending upon the situation adding the other services to Schedule of the Act, 1981 thereby they can effectively pass orders prohibiting strikes, in those undertakings or industries.

The Right to Information Act, 2005 (NO. 22 of 2005) is passed with an object of providing necessary information to the needy person and the preservation of confidentiality of sensitive information. Possibility of getting information from the employer by the employees with regard to his financial capacity (which is necessary for knowing his ability to pay wages, bonus, etc) will be made after passing this Act.

Chapter eight deals with the cases that were decided by the judiciary. Immediately after independence the workers were since just liberated from the almost slavery of the colonial leaders, were given the advantage of showing protest as and when they feels necessary it is also can be seen . Failure on the part of the judiciary to impose severe restrictions upon the employees' right to strike in phase wise manner led to uneven growth of right to strike. The judiciary in rare instances declare strike as illegal. But it failed to impose penalties upon the erring officials or persons. It also failed to direct the Government to take strict steps against the erring employees or trade union leaders. The attitude of the judiciary has been changed since 2003 in imposing restriction upon the activities of strikes or bandhs. The evolution of right to strike as analysed from the decisions of the courts reveals that the judiciary and government would have taken preventive and prohibitory measures to safeguard the interest of the society. A categorical and detailed analysis and examination has been done in the present chapter.

Chapter – IX deals with the effects of strikes on different agencies like employees, employers Government etc. the main intention of the employee in declaring the strike is to bring economic pressure upon the employer. If the employees go on strike the production will be hampered and employer will suffer huge losses. But change in time forced the employer also to take preventive measures to stop or break strike, either individually or with the active or passive assistance of the Government. The employer who is fed up with the activities of strike etc., started adopting new techniques like shifting

the production centres to new places and also adopting labour saving techniques, etc. sometimes the employers were forced to close down the undertaking where strikes or bandhs are very common. Though the government are inviting the industrialists to open industries in their states, the employers could not go there for the reasons of occasional outbreak of strikes or bandhs.

Strikes not only effect the employer but also employee. The technique of declaring the strike in the first week and closing in the last week of the pay month, though survived for few decades, proved to be unsuccessful later on. The frustrated employer in some occasions refused compromise with the employee with in a month that forced the trade union leaders to adopt new methods or techniques. During the period of strike the family of the employees are severely affected as it creates lot of mental stress upon them. In spite of passing more than five decades after independence neither employees nor trade union ever thought of searching for an alternative to the out dated old model strike. During the period of strike in order to meet, the family needs employees had to incur debts. For discharging those debts with or without interest they have either to adopt budget saving methods or to adopt illegal methods to earn more money. In the later case if the employee is succeeded ad left uncaught or unpunished its paves way for him to continue the same method in future which in turn leads to corruption. The effect of strikes on employees and their families are highlighted in chapter eight.

The Government is the largest employer. Apart from employer, the Government is also is the guardian of fundamental rights of the citizens. The government functions through its employees but government employees including defence and civil personnel. In the interest of security of nation the right to form association or union is curtailed by article 33 of the Constitution of India and Section 21 of the Army Act, 1950 etc. whereas the Government employees whether of States or Centre is prohibited from participating in a strike by express provisions incorporated in respected statues passed by the

respective legislature. Right to form association or union of the State or Central Government employees is guaranteed by Article 19 (1)(b) and speech and expression is guaranteed by Article 19(1)(c) of Constitution of India. But workers continue to declare strike under the guise of Article 19(1)(c) by interpreting that 'the strike is a visible form of expression' which was accepted by the Hon'ble Supreme Court also. Trade Unions affiliated to the political parties to have more power to further the interest or objects for which the trade union are formed. Though, it reaped good results in the beginning, started revealing its evil effects later, The political parties to cater their interests started supporting all activities of trade unions without judging them. This practice at present reach such a stage where politicians had no alternative except to request the associations or trade unions not to do particular activities which causes in convenience to the public. The effect of strikes on the government shows how it is affecting the Government employees including the persons holding constitutional posts Like Chief Minister of the State etc. this part also explain how the trade union are misusing their powers with passive support of the Government.

Judiciary is an inevitable alternative of the general public through out the world. The Constitution of India granted review power to the judiciary. Indian judiciary though was popular in first few decades, failed to retain its image in later point of time. The judiciary in the beginning passed judgements favouring the worker community with a fragrance of labour welfare measure. Judicial activism in India though started much earlier, it failed to entertain any matter with respect strike till 2004. the failure of the judiciary to take proper steps like imposing penalties etc on the erring trade unions or it leaders or its members or employees who is responsible for declaration or continuation of strike, or directing the Government to take appropriate steps against those responsible for declaration or continuation of illegal or unjustified strikes opened doors for criticism. Whether in ruling or opposition political parties are hands in glove and assist mutually in case of need. Any association or union if

prohibited from observing strike or bandh will be protected by its related political party on one or the other pretext. Once it is succeeded and left unpunished the same practice will be adopted and continued by the other associations or unions and political parties. The political leaders observing bandhs or strikes, in spite of the propitiatory orders issued by the courts under the shade that “they are answerable to the public only” or “whatever they are doing is in the interests of the people”, or “the judiciary is encroaching in the fundamental rights of the citizens guaranteed by the Constitution” etc. considerable degraded the image of the judiciary among the public. It is pertinent to note that judiciary had done anything to curb these activities. The effect of strike on judiciary in chapter eight highlights the steps taken by the judiciary from time to time with respect to strike and how the judgements affected the image of the Indian judiciary both in positive and negative. The relevant decisions from law journals and materials from different magazines including news pases till 2005 have been taken into account and analysed critically to find out the directions of industrial justice with regard to strikes in India. After analysing the available case law in order to find our the views of the employees survey was conducted in Andhra Pradesh State Road Transport Corporation (Guntur and Vinukonda depots) and Singarene Collieries (coal mines) KothaGudem, in Andhra Pradesh. And their opinions will be given at the end of the chapter.

The work concludes with conclusion and suggestions based on the analysis and interpretations of facts, judicial decisions there upon and opinions revealed by the employers and employees as discussed in the preceding chapters of the thesis.
