

CHAPTER – III

Nature and Scope of Right to Strike

Cast off anger

From your heart

Like an arrow from the bow,

So that you may again be friends

And live together in harmony.

.....Atharva Veda. 4.36.2

O non-violent seeker! O persistent devotee!

Get rid of the feeling of envy, greed

And other evil impulses.

.....Sama Veda. 308.

Even when there is no law there is conscience - Publicius Syrus

3.1 Right – Meaning

Society is a web of social relationships. Every society is characterised by an inter-play of those forces that make for cultural stability and those that make for change. Culture is never really static¹. According to Hindu mythology “man originally lived in a perfect state of happiness in a golden age, subsequently

¹ Raymond Mack and Kimball Young.

however, deterioration began to take place with the result that man reached an age of comparative degeneration. According to Karl Marx “economic factors alone are responsible for change in society. Economic conditions are the deciding factor in change in the society”. A constant and regular struggle is going on in the society in which, economically weaker sections of society who are being exploited by those who economically strong are trying to exist and survive. In this chapter the act of ‘strike’ is discussed from the view point ‘right’. On the basis of the judgements pronounced by the Courts and the views expressed by different authors and political leaders and heads of the States it is also discussed whether it is an ‘ordinary right’ or a ‘fundamental right’. The views of the employer, employee, Government and judiciary with regard to strike also discussed.

Employer says that he is entitled to more share in profits since he invested the capital, and employee claim he is entitled more share in profit since he invested labour, without which production and profit is impossible. Right is “of any advantage or benefit conferred upon a person by a rule of law”. The term ‘right’ is often used in a wide sense to include ‘liberty’. But a person doesn’t have a right or liberty to interfere with what is of others.

Right of one class are concerned with those things which one person ought to do for the other; rights of the other class are concerned with those things which one may do for him self. Both are advantages derived from the law, but they are two distinct species of the same genus.

Whether strike is a right?

It is often said that all rights whatsoever correspond to duties, legal liberty is in reality a legal right not to be interfered with by other person in the exercise

of one's activities. It is alleged by the trade unions that the real meaning of the proposition that trade union has a legal right to go on strike as and when they wish is that other section of the society is under a legal duty not to prevent them from going on strike. But, in fact the position turned turtle. Trade unions or workers cannot go on strike, which may put the rest of the society to disadvantage, particularly during the period such as of bandh.

If the law allows the trade unions a sphere of lawful and innocent activity, it usually takes care at the same time to protect this sphere of activity from alien interference. The association can take steps to further their legal and reasonable objectives for which they have formed. Workers feeling as to that they are at liberty to work or not, may not be correct but once the worker enters in to a contract with his employer the discretion of rendering or not of the services ceases to exist. Considering the other related considerations as to payment of wages, providing statutory benefits, observation of welfare legislations, etc., the only question remains is as to whether the work being rendered by the workmen as per contract is legal or not ? The dispute between the workers and management not only affects to them but also effects to the rest of the society. Therefore, if workers having right to go on strike the effected society must have right to question the same especially when the rights of the society are larger than the right of the workmen. It can not be disputed that the right of the workmen to go on strike is subject to the larger interest of the society and morality of the public etc. The right to go on strike was not granted by any of the statute but some restrictions were provided, or conditions were imposed required to be fulfilled by the workmen before going on strike². Imposing restrictions before going on strike itself indicates that the citizens (workers) were not vested with

² Section 22 and 23 of Industrial Disputes Act, 1947.

any unconditional right to go on strike. It also implies that they can go on strike without following certain statutory formalities.

If the right of the workers is understood and claimed to be 'right' but the employees claim to have such right in fact is liberty which can not be equated with a right by which they otherwise could claim to go or not to go on strike. While going to strike, in some cases, the reasons given by the workmen as that they are less paid or other benefits were not paid, may be correct but at the same time, in the case where the employees of the institutions like Banks, Life Insurance Corporation of India, etc, where the job security and wages are at its peak, are also going on strikes on several issues like pay revision, bonus etc., can not be correct. In private undertakings employer generally think of getting more profits and profits alone and ignoring of the other factors such as of welfare of his employees. But at the same time the workmen of the public sector undertakings are seen to occasionally going on strike. It is also observed that the reason for going on strike is not that can be seen expressly but there are some other reasons. No doubt, we all always think of progressing, and developing our living standards in all the respects, but it should not be allowed at the cost of the others or of the society. In theory it can be stated that the rights of the person are subject to the interest of the society, but in practice it is not true otherwise.

In the prevailing system of administration of justice, when wages are not paid in accordance with law, the employees cannot think of going to court and wait for years for redressal of their grievances. It is the time when they resort their right to strike to have fast solutions for them and to resolve the matter otherwise they may suffer for their daily bread. Nevertheless, the management who is profoundly interested in the profits won't find time to think all the problems of the employees, as they are generally concerned only about their benefits. Under those circumstances, some times, it becomes necessary to show

protest in order to attract the attention of the management towards their problems. Further, the right to strike was nowhere provided in any statute but in fact, is earned through heavy fights and sacrifices by the workmen. However, the workmen don't want to accept that mere reorganization of strike as their right which is interpreted as to be liberty only and that is also subject to other restrictions, does not mean to be 'right' in true sense.

I submit and conclude that the employees may be given right to strike when it is necessary to defend themselves from exploitation by the employer and to live like a human being with minimum standards and dignity. I agree with the view of Karl Marx that "Protest" is a natural right inherited by the human being from the inception and from the nature, now it is termed as 'human rights'. 'Protest' by a group of person in order to safeguard their common interest may take the shape of 'strike' either it is by slave or free labour.

3. 2 Social aspect of strike

Social aspect played always very important role in the matter of strikes whether it the case of judicial pronouncement or it is the case of claims by workmen or the employer, the social aspects always considered to be important ratio applied in all cases. Thus it is not only necessary but my all discussion shall be incomplete if I will not discuss the various social aspects in regards to strike.

A worker is under an obligation to maintain his family members, as it is his social as well as legal duty. Likewise, it is the duty of the employer to pay wages to his employees which enables him to maintain his family as prescribed by minimum social standards at the relevant time. It is the legal as well as constitutional duty of the State to create and provide the environment for all so that everyone should perform their duty in the larger interest of the society within

the bounds of laws. At the same time different groups of the society also shall discharge their duties respecting to others right and larger interest of the society.

Social change has occurred in all periods of time. But the rate of change differs from society to society. In one society the rate may be rapid while in another it may be slow. The economy of the country show its effect on both employers and employees who are the subjects of the country particularly when it is undergoing a change. The Hon'ble Supreme Court³ held that:

“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. For redressing their grievances, instead of going on strike, if 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 woe duty to the society”.

I will discuss in detail in chapter III as how the workmen get recognised strike to be his right and subsequently changes thereof by various judicial

³ T.N.Rangarajan vs. Government of Tamil Nadu and others. AIR 2003 SC 3032

pronouncement. However, It is pertinent to refer here that after independence, the strike was recognised as right of the workmen without any qualification. Subsequently with the change in the social aspect at different relevant time, the Courts by its various judgments denied to accept the right to strike to be fundamental right and thereafter diluted the force of it reorganisation as a right by introducing different type of riders in the name of reasonable restrictions. On the other side, though the State legislated different laws in favour of workmen also were amended keeping social changes in the society. The workmen also with the development of the society and development of the economic conditions and changes therein developed themselves and positioned themselves in a position that the employer can not exploit themselves though they do not prefer strike. Thus I am of the view that it is not the legislation or the strike by which today the workmen is driving their life in better condition than ever but it the social change.

3. 3 Importance of strike

It is often argued that human beings, like animals, have a need for aggression. For this to be plausible, either aggression must be very widely defined (to include, for instance, digging the garden), or the need can be met by low levels of it. In any case, it is not clear that animals have such a need. The aggressiveness of baboon troops, for instance, varies markedly with their history and geography. Nor, among human beings, are the inhabitants or country that have kept out of war for long periods, such as Sweden and Switzerland, more than averagely aggressive, or those who engage in physically aggressive sports less so in others contexts. There does seem, however, to be phenomenon of over control. The perpetrators of some particularly violent and brutal crimes were reported by those who did not know what they had done or had gone on to do as “well behaved and unaggressive”.

Their explosions in to violence could be explained in two days. Either we do or have some modest need to express aggression, and theirs was not being met, or in their “over-controlled” state, they were frustrated in respect of other needs, such as those for sex and for self-esteem. Hence the persons were if kept fully satisfied and out of the arena of struggle, will feel losing some thing and wants to get it. Therefore the human being possesses the character of ‘aggression” which he will use in case of ‘need’ which, may vary from person to person.

A strike, moreover, opens the eyes of the workers to the nature, not only of the capitalists, but of government and the laws as well.... Strikes, therefore, teach the workers to unite; they show them that they can struggle against the capitalist only when they are united; strikes teach the workers to think of the whole working-class against the whole class of factory owners and against the arbitrary police and government. This is the reason that socialists call strikes 'a school of war', a school in which the workers learn to make war on their enemies for the liberation of the whole people, of all who labour, from the yoke of government, officials and from the yoke of capital⁴.

All strikes conducted by the workers are not related to service conditions⁵. During the period of strike the workers can use all available recognized means employed by workers throughout the democratic world to protect workers' rights. Employers won't hesitate to play any trick to create a rift between the striking employees which may include racism. They may pay higher wages to some employees and lower wages to the others.

⁴ V. I. Lenin, *Collected Works*, vol. IV (1960), pp. 315-17.

⁵ In Durban, (South Africa) there had been a long history of resistance by the dockers, who refer to themselves as 'oNyathi (meaning 'buffalo' in Zulu). In 1930, they led struggles against the poll tax, against the passes (culminating in the death of Johannes Nkosi) and against the institution of a municipal monopoly in beer-brewing. These workers continued to carry out strikes and other actions throughout the 1940s, a period of intense conflict in Durban. [8 strikes and Industrial actions, www.anc.org. visited on 20.10.05)

3. 4 Technological factors

Today, technological factors become so importance in all type of political setups and are changing all our social and economic conditions. Therefore, though the change in social aspects due to technological factors is part of the social aspects which also effected the strikes, I feel is necessary to deal with this aspect separately. Technology changes the society by changing our environment to which we in turn adopt. The technological factors have tremendous influence on the society. Society is under going drastic change as a result of development in invention of transport, communication etc. Inventions and discoveries are significant characteristics of all the ages. Most novel and pervasive phenomenon of our age is no capitalism but mechanisation, of which modern capitalism may be a “by-product”. Mechanisation and technolisation has changed not only the economic structure of the society but has also profoundly altered the modes of life and thought the people which also affected the “right of strike”.

Changes in circumstances were never accepted out of free will by the people. Likewise technological inventions were opposed by the people throughout the ages. In the United States the abolition of slavery and introduction of woman suffrage were stubbornly resisted. It was only after a prolonged and devastating war that abolition of slavery could be accomplished. In France Government reforms was opposed so vigorously by those in power that the culmination was revolution in 1789. In India people opposed the enactment of Hindu Code (that changed the customs relation to marriage and divorce). The control system has created the black market, the anti-corruption department and new ideas or morality.

Technology improves the production rapidly. This in turn increased the profits of the employer multi-fold. But the employer who is living in the light of

wealth always failed to see the workers living in inhuman conditions. Scientific invention may effect on the society in the form of bonus to wage earners (particularly production oriented bonus), old age pension, women suffrage, non-co-operative movement etc. From these factors there generates new ideas and morality. Thus technology changes social values and norms. The workmen for raising their living standards start bargaining with the employer collectively. In this struggle the employer ultimately was forced to accept the demands of his workmen because of the work suffered by him (because of withdrawal of labour by the workmen i.e. strike).

3.5 Progress

According to Ogburn “Progress is a movement towards an objective thought to desirable by the general group, for the visible future”. Maclver defines progress as “By progress we imply, not merely direction, but direction towards some final goal, some destination determined ideally not simply by the objective consideration at work”.

The nature of progress depends on two factors viz.,

- (i) the nature of the end and
- (ii) the distance at which we are from it.

Evolution is merely a change; the change may be for the better or the worse. The reference is to an objective condition which is not evaluated as good or bad. Progress means change for the better, and hence implies a value judgment.

The conditions conducive to progress are not the same everywhere. They will vary with the different spheres of progress. However, the following can be said to be few major general conditions of progress:

Physical and mental health of people

A healthy mind and a healthy body in a society are the first condition of progress. A workman in order to be physically and mentally fit must have resources which he can get only out of fair wages. Employer will not pay statutory wages unless there is a pressure either from the government (which is alert in enforcing the statutory provisions) or employees (who can maintain constant pressure through their associations or unions). For creating pressure upon the employer, it is necessary for the employees to have the right to strike.

Education

Without education, science and knowledge would remain undeveloped. This is the reason the educated persons from developing countries are migrating to the developed countries. The developed countries are simply investing the money and the knowledge (Science and technology) will be invested by the migrant educates. In the out come a minor share will be paid to the employees in the form of wages and a major share will be retained by the employer, which becomes the economy of the country. The workmen if not educated to the changing circumstances of the society and the world, he cannot adopt himself for the changing circumstances. The workman who is not educated with update technology will be either suppressed or sidelined in the race. Though, it is the duty of the workman to update his knowledge, because of his position in the society and financial conditions, it does not allow him to do so. Under these circumstances it is the duty of the trade unions and employers to educate their members or employees (as the case may be) with latest technology so that he can equally contribute his share in the production.

After starting mechanisation or computerisation number of workmen of several countries conducted strike against the proposed change. But ultimately they should not resist either mechanisation or computerisation which is a symbol of development. During computerisation number of trade union conducted strikes against the process. First when the software companies choose west Bengal for establishing their companies the trade unions vehemently opposed it as a result they shifted the proposed premises from west Bengal to Karnataka (who invited them). As a result Bangalore (the capital of the State of Karnataka) and its surrounding places became hub of computer and its allied companies. After lapse of not even half-a-decade, now, the State of West Bengal is vehemently welcoming the soft-ware companies and other foreign investors. Hence, it is clear that the activity of strike if allowed to be misused by any political party or the Government may result in tremendous loss to both Government and the society.

Social Security

Social security is the security that the State furnishes against risk which an individual of small means cannot, today stand up to by himself even in private combination with his fellows⁶. In ancient times when a worker is unable to work on a particular day, he was cared by the village community or by the members of the society⁷. As industrialisation advances the worker is increasingly alienated

⁶ Report of National Commission on Labour, 1969, p. 162.

⁷ The rich man who does not utilise his wealth for Noble deeds or does not offer it for the use of his Fellow beings, but looks after his own needs, is Selfish and has earned the wages of sin. It is Undeniably true that the wealth of a person Becomes meaningless if it is not distributed and Utilised. That hoarded wealth eventually proves to Be the cause of his ruin.....Rig Veda 10.117.6

from his previous socio-culture world and thus faces various insecurities with regard to income and employment in addition to the natural ones (Like sickness, maternity, old age etc.) for which the new order does not have structural provisions. In the era of globalisation where a company of any country can go and invest and do business in any country, expecting security from the employer is unwarranted in the developing country like India. From this point of view if seen the employees must remain in groups (associations or unions) and in order to protect their rights.

Liberty and Equality

Both of these render much assistance in progress. The American Revolution of 1776 and the French Revolution of 1789 introduced the ideas of liberty, citizenship and equality which have come to be fundamental values in modern political life and laid foundation of a new social and political order. Liberty and equality later was found by very essential elements for the development of the 'human being'. Revolution does not come all of a sudden. It is not the act of a group or tiny groups. It is the combined act of number of groups which also includes the associations or trade unions of the workmen. Trade unions of the workmen always played an important role in either revolution or independence movement. (e.g. Russian revolution, 1917, French revolution, 1789, American revolution, 1776. etc). From the history of evolution and independence movements of different countries shows that presence (existence) of trade unions or associations of the workmen is necessary otherwise both country and the employees are bound to suffer. In India importance of common social objective was well recognised and it was utilised for the development of skills and accomplish their objectives satisfactorily⁸.

⁸ May all the members of the society have a common Objective! May their hearts beat as one and their

Possibility of progress

People must have faith in the possibility of progress and should be free from fear. Everybody wants to progress in his carrier. Employer and employee are not an exception to it. Employer progress in his carrier (business) by investing more money and getting more profits for which, the restrictions are very limited. Employee can progress in his career only out of benefits being paid by the employer. In a market like India, where the commodity of labour is available abundantly, the employer can easily exploit them by forcing them to work for extra hours or by paying fewer amounts. Under these circumstances the possibility of the employee's progress is very bleak. The only alternative left out to the employee to progress in his life is collective bargaining. The method of collective bargaining historically proved to be an efficient weapon and helped in progress of the carrier of the workmen. In order to bargain collectively it is necessary for the employees to remain in groups (i.e. form of trade unions or associations).

Status

In popular usage, the work "status" refers to a person's ranking in terms of wealth, influence or power and prestige. It is a position in a group or society, with rights and duties it entails. It means the location of the individual within the group – his or her place in the social net work of reciprocal obligations and privileges, duties and rights. The status of an individual workman in society is more or less the lowest. His status compared to the employer is uncomparable. In

Minds think alike, so that with their combined energy and diverse skills, they may be able to accomplish their objectives satisfactorily.....Rig Veda 10.191.4.

the process of dispute between the employer and employee before the Government, the position of the employee (practically) is nowhere. The government which is dependant upon the revenue being paid by the employer (in the form of taxes) undoubtedly favours the employers in ascribing the 'status' between the employer and employee. Even in society also the employer enjoys higher status, privileges and rights than his workmen because of his wealth, influence, prestige etc

Voluntary association

Voluntary associations are a type of formal organisations that are found throughout the world from ancient times. In a strict sense, however, a voluntary association is not a formal organisation because people join some association is not a formal organisation because people join some formal organisations out of necessity, whereas they join voluntary associations by choice. In short, voluntary associations are those that people join and leave freely. Employees forming into groups or associations in the earlier times were more or less temporary in nature once the purpose was served they use to cease their existence. Passing of time saw change even in the life of the trade union or associations. Slowly these unions formed on perpetual basis. Though joining the trade unions may be compulsory in some developed countries (close-shop or open-shop), in India it is purely discretionary on the part of the employee.

Social movement

Collective attempt of a relatively large number of people to promote a common interest or achieve a common goal, through collective action outside the sphere established institutions. For social movement both employer and

employee contribute equally. The goal of every government at every point of time is to be the developed one among the family of nations. The goal of the employer will be the highest producer, so that he can have control over the economy of the country and status in the society. The goal of the employee will be to have reasonable status (equal to that of the employer) in the society. The development of the country is the development of government, employer and employee. The collective activity of these three entities i.e., Government, employer and employee, will lead to proper social upliftment. Failure on the part of even one of these entities may be disastrous to the social movement.

The government may be the combination or group of political parties. Sometimes even in the same party there may be several groups. Withdrawal of support of groups (within the same political party) or political party may result in fall or collapse of the government. Disputes within the government are advantageous to the political parties in opposition. Likewise disputes in trade unions or associations are advantageous to the employer. Hence the employees must have a right to protest the unlawful activities of the employers.

Social mobility

Movement of persons and groups up or down the ranking changes the order of a social stratification system. It means a change in socio-economic position. A person's class status is determined originally by the class status of his parents. But when he gets a different amount of education from that of his parents or moves into different occupational group, or adopts a different "style of life" he has been socially mobile. For investing in India the governments are eagerly inviting the foreign investors, whereas creating lot of restriction or impediments to the domestic investors. The opinion of the West Bengal government opening new jobs in the area of information technology without a right to strike, may

serve the purpose for the present, but in future it cannot be successful. This proposal will create difference in labour community i.e., one with right to strike and the other without right to strike. This proposed practice is against the ILO convention 98 of 1949 which is ratified by 141 States⁹. Social movement of the workers must be through 'Decent work'¹⁰.

Economy-society

All societies, whether preliterate or modern, have an economy which refers to the activities responsible for provisioning a society with its goods and services. More specifically, an economy is a set of institutions and associations which combines natural resources, human labour and technology to produce and distribute goods and services for the satisfaction of the needs. It is the resources that forced the countries to fight against the others. In the phase of globalisation resources doesn't make any country rich. It is scientific inventions and power to control that matters. Economy of the country as discussed above is the combined

⁹ International Labour Organisation *Convention 98*:

The Right to Organize and Bargain Collectively (1949; Ratified by 141 states.)
The right to organize and bargain collectively, and protection against anti-union discrimination and employer interference.

¹⁰ Decent work means productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards. Tripartism and social dialogue are both objectives in their own right, guaranteeing participation and democratic process, and a means of achieving all the other strategic objectives of the ILO. The evolving global economy offers opportunities from which all can gain, but these have to be grounded in participatory social institutions if they are to confer legitimacy and sustainability on economic and social policies. [From the Decent Work, Report of Mr. Juan Somavia, ILO Director-General, 87th session of the International Labour Conference, 1999]
[ILO Website on Decent Work
<http://www.ilo.org/public/english/bureau/integration/decent/index.htm>] Reported in the article "What is the International Labour Organization (ILO) and what is "Decent Work"?" published in 'Association for women's rights in development' (visited on 22.10.2005)

effort of the Government, employer and employee that decides the status of a particular society.¹¹

Work

Work is the most important, primary, social activity. “Work is a central focus in society” for without it society could not survive. Society depends upon food, and consumer goods, the building of roads, houses, hospitals, schools, shops and factories, the education of children, the provisions of services, health, welfare and leisure activities – all involve people working. Even when we relax by watching television, going to a cinema or to a sports centre, going out for a meal, someone else is working to provide these services. Work is a major factor in building person’s relations with others, in determining a person’s social class and social status. Production process is a basic condition of human existence, common to all forms of human society. Without an employer there can be production, but without the labour production is not possible. Hence labour is the core of the economy. The developed countries neither having resources nor labour but only capital is surviving on the resources and labour of the other countries. The countries having resources is importing human labour to their countries for production.

Power

“Elite” a word of French origin, is used to distribute people who emerge in position of leadership, power and influence within groups in society. According to Marx ‘the source of power in society lies in the economic infrastructure: the dominant economic classes effectively the ruling class, because the ownership of the means of production largely determines the

¹¹ See “Social movement”.

distribution of power. There may be other bases of power such as political skill of individuals, gender, professional expertise, occupation, etc., but the most important power base is economic power. A political system will be more stable and effective if it is based on the norms and values of a society, when the power is made legitimate. Legitimate power is called authority.

The power, if properly utilised will yield good results which in turn will benefit the society¹². Power may be used by any one i.e., Government, employer or employee. The government if misuses the power in the form of corruption etc., may result in lawlessness in the society. The power misused by the employer may result in disputes between him and his workmen. The power misused by the workmen may result in the form of strikes. The corrupt government may not be in a position to prevent or settle the disputes between the employer and employee in time. Finally it is the power of the concerned group that creates dispute which in turn show its effect upon the social mobility of the employer or employee and ultimately the economy of the country.

Judiciary which is having the review power over the legislation passed by the legislature and act done by the executive also was not spared from the power of the power. In 1998 against the recommendation (for promotion of 6 (six) judges to the Apex Court)of Chief Justice of India (the then) M.M. Punchi

¹² Love and respect society;
 Protect it by feeding the hungry
 And helping the distressed.
 May you have strength to fight
 For noble and righteous causes.
 Associated with valiant fighters of diverse qualities,
 May you be armed with mighty weapon
 Never succumb to your enemies;
 Let your courage soar high
 In espousing a great cause;
 Summon up your innate greatness.
 Lead and guide the wayward straggling masses.....Rig Veda 6.75.9

some senior judges gave complaint to the law ministry stating that their seniority was undermined in preparing the list. The Hon'ble Home minister L.K. Advani (as he was then) said that "the judiciary has to be more responsive".¹³ In Ayodhya case also "a solemn assurance was given to protect the monument but that was broken and it was demolished" which was condemned by the judiciary. In 2002 in Kavery water issue case when the Apex Court issued direction to the State of Karnataka to release water to Tamilnadu, Mr. S.M. Krishna, the Chief Minister conducted 'padayatra' with an intention to disobey the direction of the Court, but within the shade of public opinion. (It was condemned by the Supreme Court)¹⁴. In 2003 after T.N. Rangarajan case¹⁵ all trade union and political parties criticise the verdict of the Supreme Court stating that the judiciary is encroaching in to the democratic rights guaranteed by the Constitution. Against this verdict CPI and CPM called and conducted r all India bandh on 24th February, 2004 wherein lakhs of government employees participated. No one could dare to stop that bandh. Number of times the State governments failed to implement the orders of the Court for administrative reasons. There are instances where the political leader refused to obey the orders of the court stating that they are subject to 'peoples' court only', but later changed their voice stating that they are having respect towards the judiciary. Being frustrated with the order passed against the administration of West Bengal the Chief Minister sought for formation of judicial commission to look into the accountability of High Court and Supreme Court Judges¹⁶. On December 04, 2004 Miss Mamata Banerjee, president of Trnamool Congress while claiming the 12 hours bandh called be her as success said that "The Trinamool Congress got

¹³ Ranjit Bhushan, *Outlook*, August 3, 1998.

¹⁴ *The Hindu*, (Vijayawada edition), 25.10.2002, p.1.

¹⁵ Judgement was delivered by the Hon'ble Supreme Court on 6.8.03

¹⁶ *The Statesman*, (Siliguri edition) 12.10.04, p.1.

endorsement of its bandh in the ‘people’s court’¹⁷. Likewise, on 4.8.05, same M.P. threw papers on the table of the Speaker of Lok Sabha. In 1988 the Member of M.P snatched the papers relating to women’s bill¹⁸. when he refused to consider the motion on the issue of illegal migrants¹⁹. In 2005 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. Aggrieved judiciary expressed its resentment to the Solicitor General. Immediately after the reaction by the judiciary, all parties convened a meeting and announced their intention to bring legislation to cleanse judiciary which is an act of threat against the judiciary. Under unavoidable circumstances the Judges of both High Courts and Supreme Courts expressed their resentment (protest) to the governments.

The intention to rule (over power) and ability to resist are the inherent characters of the human being which he inherited from the nature. Nature also revolts when the man attempts to tamper it. Naturalistic writers regard human behaviour as controlled by instinct, emotion, or social and economic conditions,

¹⁷ Spontaneous response: Mamata, 04.12.2004, thestatesman.net (West Bengal) visited on 23.1.05.

¹⁸ In 1988 Rastriya Janata Dal (RJD) leader snatched the women’s reservation bill from the then minister for state for law when he rose to present the bill before the house. The then Railway minister, Mamata Banerjee had spoken out strongly against the hooliganism.

(*The Telegraph* (Siliguri edition) 5.8.05, p.1.)

¹⁹ Mamata Banerjee, M.P. threw a sheaf of papers at the speaker’s chair today taking street level protest into parliament and drawing condemnation from fellow M.ps on the other side who sought her apology.

Illegal migrants from Bangladesh are also part of the voters’ list in West Bengal. The state government has done nothing about it. Therefore, the issue must be discussed said Mamata in Parliament.

Atwal (Deputy Speaker) said the subject had already been debated for 4 hours on the opening day session. “Whenever I want to raise an issue, I am not allowed to speak by the speaker. As a member of the house, I also have the right to raise issues of concern to my people” she said attributing mother to the speaker. She said the speaker was politically biased, but the comment was expunged. (*The Telegraph* (Siliguri) 5.8.05, p.1.)

and reject free will, adopting instead, in large measure, the biological determinism of Charles Darwin and the economic determinism of Karl Marx.. Though, natural law survived for several centuries, its status started declining from middle of 18th century A.D. Rapid growth of industrialisation forced the human being to be selfish and for his survival in the society, forced him to be realistic and idealistic.

Though, alternative remedies of compulsory arbitration and Joint Consultative Machinery have been instituted, there still absent the willingness to adopt the path of 'joint problem solving as the first and only recourse. Strikes continue to be perceived as inherent dangerous to national security and public peace, rather than vent for employee ire and as a weapon of last resort. Recent studies on the collective bargaining rights of workers in an industry revealed that there existed a negative correlation between man-days lost and trade unionisation, there by nullifying the proposition that trade unionisation would lead to increased disputes. There is no reason to believe that the same cannot hold true for unions of Government employees. A threat of strike may act as a deterrent to actual resort to strike, since it would make the State more willing to negotiate with employees when all recourses fail. It must be realised that strikes by Government employees cannot be prevented impact, the increasing incidences of strikes to beget the right to strike, combined with the stoic resolve of strikers to undergo arrest in support of their demands is indicative of the urgency required in reconsidering the domestic prohibition on this form of collective bargaining by Government employees²⁰. In epilogue, without the right to strike Government employees' right to associate is but a 'legalistic, ungenerous and vapid' right²¹.

²⁰ Proorva Kurup, *Perspectives on Collective Bargaining in India: Should Government employees have the right to strike?* 2005 LLJ Articles, p.21

²¹ Alberta reference, (1987) 1 SCR 313 at 362-363 (Canada), Dickinson C.J.

The above material makes it clear that either government (including judiciary) or employer or employee can retain their status in the society so long they are powerful. It is imminent for them to remain united in order to be powerful. It is also necessary for them to be united for protecting their rights. Right²² may mean “an abstract idea of that which is due to a person or governmental body by law or tradition or nature”. If they fail to remain united the other wing will certainly dominate. Hence formation of associations or unions (express or implied) is necessary for all including the employees to bargain collectively with the employer. When the judges and heads of government expressed their protest under unavoidable circumstances it is submitted that saying that the workers can not protest against the atrocities of the employer in the form of ‘strike’ may not be justified. In the same way when the rights of the employees can be protected only through expressing their resentment or protest against the employer either in the form of “strike or otherwise. It may be concluded that the act of ‘protest’ (strike?) by the workmen either in the name of strike or otherwise will remain as their right otherwise there may be a lead to revolution. Hence ‘strike’ is a form of protest is the legal right of the workmen. But this right is an imperfect right²³. This right though can be exercised by the workmen, not at his free will but subject to some (reasonable) restrictions. Apart from Indian constitution, the constitutions of France, Germany, Italy and Spain, to mention a few, protect the right to strike of the working population.²⁴ Though, change in time brought major change in the attitude of the employees, leaders, political parties, and the general public the opinion of all the sections of the society with regard to the importance of the

²² Portion of the political spectrum associated with conservative political thought. The term derives from the seating arrangement of the French revolutionary parliament (c. 1790s) in which the conservative representatives sat to the presiding officer's right. In the 19th century, the term applied to conservatives who supported authority, tradition, and property. In the 20th century a divergent, radical form developed that was associated with fascism.

²³ An ‘imperfect right’ is one which a system of law allows the subject to sue the state to obtain a judgment recognizing his rights, the judgment cannot be enforced.

²⁴ Manfred Davidmann, *The Right to Strike*, 1996

activity of strike remained untainted. Only change is the way and the purpose it is being used. All or a section of the political parties or the Government(s) on several occasions highlighted the need to rethink about the mode and manner of the use of the weapon strike by the workers. Though, judiciary on several occasions took a lenient view with regard to the strike undergone by them, finally in 2003 took harsh step and stated the need to work more to get the appraisal of the society particularly when the large number of unemployed youth are eagerly waiting for a job. Therefore it is submitted that the verdict of the Hon'ble Supreme Court in T.N. Rangarajan case is correct (which was passed by taking all the prevailing (present) circumstances into consideration). Not only Government, employers, and general public, but also the employees themselves requesting the government to categorising them as essential services indicates that the all sections of the society are fed up with the activity of 'strike' and needs some change. All the sections of the society feel that the weapon of 'strike' must be there but shall be exercised with due care and caution under exceptional circumstances.

All the above reasons makes it clear that, if withdrawal of labour is treated as "strike" it will be bound to be there as it is an inherent human right inherited from nature if not borrowed. An activity which is in the nature of the human being if gets the assent of law may become a "legal right" otherwise it is bound to remain as a natural right in the name of one or the other. Hence the activity of "strike" (withdrawal of labour by workmen) is the "Right" of the workmen and it is bound to remain as the 'right of the workmen' whether in the present or other form.

3.6 'Strike' and Fundamental right

The right to participate is a definite feature of democratic system, but in general is not exercised. The main advantage of a successful democracy²⁵ is "responsible and efficient government". "Democracy is like a raft. The citizens never have a comfortable voyage. But they never drown, because, it is so difficult to sink a raft". The main disadvantage of the democracy is "the power of money interests which prevents administration and legislation". The (ordinary) rights which sprang up from the mutual dealings of men have to be regulated by law, so that in case of grievance, the person aggrieved can take recourse to political power of State to give an appropriate decision upholding the true spirit of the right alleged to have been invaded. In the interest of smooth administration of rights, it becomes within power of the State to abolish some rights altogether or to create new rights under special statutes. In effecting its regulating measures, over individuals, the State acts as a *persona ficta*, assuming to itself a judicial personality. The area of rights, thus, no longer confined to dealings of men *inter se* but extends also to dealings of men with the State.

The fundamental Rights are primordial rights necessary for the development and expression of human personality. The rights are fundamental because they enable a man to chalk out his own life in the manner he likes best. They are natural rights, but, since there did not exist an ordered mode for the

²⁵ Conditions for successful democracy:

1. People should possess high level of intelligence and judgment, so that they can make a wise choice between alternative policies.
2. The people should be conscious of the community as a whole. They should possess keen public responsibility.
3. There should be a strong, vigorous and sound public opinion.
4. The successful working of democracy requires the spread of universal education.
5. A mental habit of agreement upon a number of axioms.
6. There should be an adequate extension of local self-government, for active participation of the people in the process of government is a necessary prerequisite of democracy.
7. There must be a feeling of well-being and Security.

enjoyment of such rights in a pre-political order, men expected a guarantee of these rights in an ordered society. They are the rights the inviolability is the duty of all civil governments to insure²⁶.

The fundamental rights are, however, another category of rights assuming a marked superiority over civil or legal rights. The fundamental rights are not determined but which determine other rights. It is difficult to imagine an absolute right so long as society and civilisation exists. Every right has a corresponding duty limiting the exercise of that very right. This renders the right to be 'reasonably' exercised so as not to come into conflict with rights of others. The exercise of any right must not lead to a wrong, or individuals, society or state. Hence the enumeration of the 'seven freedoms' in Article 19 brings on its wake a further enumeration of the limitations to which each such right is subjected to. In all modern states be it the unwritten constitution of England²⁷ or the written federal democracy of USA, there are in operation certain fixed principles of law enunciated and expanded by decisions of codes or by statutes which demonstrate that individual rights are never absolute but are restricted by certain limitations in the interests of decency, public order, public health, morality, security of the State, etc.

As already discussed strike [a form of protest is the right (a modified form of natural right)] of the workmen. In India the fundamental rights guaranteed in Part-III of the Constitution represent the inalienable rights of the citizens while the non-fundamental rights are created by agreement between parties. The former are the gifts of the law while later is the result of agreement. One is absolute but

²⁶ Dr. R.G. Chaturvedi, *Law of Fundamental Rights*, 3rd ed.1985, Eastern book company, p.3.

²⁷ *Liversidge v. Anderson*, (1942) AC 206

not the other.²⁸ Though, the rights are declared 'Fundamental' as in America in the interest of the State or public welfare, the police power of the State is invoked to empower the laying of certain restrictions on the exercise of the guaranteed freedoms. Thus in *Gitlow v. New York* [(1925) n268 Us 652] where the constitutionality of the 'Criminal anarchy law' was in question, the Supreme Court said: "it is fundamental principle long established that the freedom of speech and of the press, which is secured by the constitution, does not confer an absolute right to speak, or publish, without responsibility what ever one may choose, or an restricted or unbridled license that gives immunity to every possible use of language and prevent the punishment of those who abuse this freedom."

Like other rights 'right to strike' is only relative and not absolute. The workers must aim at how little restraint the society can subsist but not how much. The right of the workmen does not make them a nuisance to others. As said by Aristotle, 'no one is independent in the society and can survive without the assistance of the others'. An individual is a part of the society as such his rights are subject to the rights or interest of others i.e. he is at liberty to do a particular act that does not effect the rights or interests of the rest of the same society. Article 19 is the chapter of liberty assuring the Indian citizen the 7 freedoms. The concept of liberty in consonance with the concept of the act of the Government and does not hinder it. The former is the objective of all democratic Government. In the words of Baruch Spinoza²⁹,

"The ultimate idea of Government is not to rule nor to restrain by fear, nor to exact obedience but, contrariwise, to free every man from fear, that he may live in possible

²⁸ Vide Constituent assemble debate for Nov, 4, 1948, P. 40, Dr. Ambedkar's view as chairman of the drafting committee.

²⁹ Konvitz, '*The Constitution and Civil Rights*'.

security; in other words, to strengthen his natural right to exist and to work without injury to himself or others. No, the object of Government is not to change from rational beings into beasts or puppets, but to enable them to develop their minds and bodies in security, and to employ their reason unshaken; neither showing hatred, anger or deceit, nor watched with the eyes of jealousy and injustice. In fact the true aim of the Government is liberty.”

The elementary function of the government is to maintain public order. Generally there is a gap in between Constitutional theory and governmental practice. In spite of passing several legislations for prevention and settlement of industrial disputes in industrial establishments, lack of whole hearted intention on the part of the Governmental machinery and trade unions to implement it resulted in miserable failure of the object of the legislation. Political party's interference in the administration is one of the main causes of it. Political parties relying upon the local leaders for votes and for other reasons, forcing the administrations to keep blind eye upon their unwarranted activities in the society. The Chief Minister of West Bengal, who is hanging in ambience with respect to prohibiting strikes in Information Technology area as CITU an affiliate of CPI(M) is opposing it, after centre's interference, he is now set his mind to pass legislation banning strikes in Special Economic Zone (wherein Infotech and its related industries are expected to start their business)³⁰. The reason for success of conditional implementation of the 'right to strike' in Great Britain is close

³⁰ The Central Government has proposed to pass legislation amending the law (i) to allow units with less than 300 employees to retrench and close down without prior approval. But now the Centre has proposed to give this benefit to units with less than 100 hands, (ii) plan to reverse official policy to abolish contract labour, (iii) Ease inspection rules on small units. (*The Statesman* (Siliguri edition), p. 1.

relation between the Constitutional theory and governmental practice. There (in Great Britain) the monarch possesses absolute power, but in practice does not exercise power, without ministerial advice. But in India the government give much weight to the (its) political party rather than the policies or the members of the 'House'. The freedom of speech is not a fixed or isolated value the same in every society and in all times. It is a function within a society and must vary with the social context. It must be different in times of general security and in times of crisis. Now legal remedies and preventions are not to be excluded as aids to checking the more patent abused of the unions.

Time and again the judiciary kept the trade unions under control, which started claiming to declare the strike as a fundamental right. Several times the courts declared that the strike is an essential and inevitable safe guard of the workers. It went to the extent of saying that; the absence of strike may result in lawlessness in the society. In this context it is necessary to know the origin of right to form associations or unions and necessity for imposing limitations to this right.

In *A.K.Gopalan v. State of Madras* (1950) SCJ 174 (191) Kania C.J. while speaking the court held that:

“Where the fundamental law has not limited, either in terms of or by necessary implications the general powers conferred on the legislature, we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles, to limit the competence of the sovereign legislative power by judicial interposition, except so

far as the express words of a written constitution give that authority.”

Das, J. put the same idea in another way in the Keshav Menon’s case:

“An argument on what is claimed to be the spirit of the Constitution is always attractive for it has a powerful appeal to sentiment and emotion; but a court of law has to gather the spirit of the Constitution from the language of the Constitution. What one may believe or think to be the spirit of the Constitution cannot prevail if the language of the Constitution does not support that view.”

In *Conway v. Wade*³¹ Lord Louwhunn L.C. described strike as a weapon allowed by law. In *Morgan v. Fry*³², Lord Denning M.R. said that “the nature of the right is such as in my view cannot be abridged or taken away save in strict conformity with the provisions of the Statute providing for such abridgment or taking away.”

The right to strike is not guaranteed and is not included in the right to form association or unions. The freedom in Clause (1) (c) of Article 19 does not extend to the concomitant right to effective collective bargaining or to strike.³³ What is reasonable primarily for the decision of the legislature and the ultimately for that of the court. The view of Punjab High Court³⁴ was that as Act (statute) is reasonable when it confirms to reason and unreasonable when it is grossly and

³¹ 1909 AC 506

³² 1968 (3) WLR 506

³³ *All India Bank Employees Association v. National Industrial Tribunal* AIR 1962 171.

³⁴ *Sardharam v. Haji Abdul Majid* AIR 1966 Punj. 196

plainly oppressive and opposed to reason. If the court is of the view that the provision is reasonable it has to uphold the statute, but if it is in doubt it may defer to the legislative wisdom in favour of constitutionality of the statute. But if it views the provision to be unreasonable it would be its duty to strike down the impugned provision.

To decide if restrictions are unreasonable, clause (4) of Article 19 suggests looking in to “prevailing conditions”. This phrase includes the state of affairs realm in all their aspects, political, economical, as well as the urgent need of society and the public interest at any given time.³⁵

Where restriction reaches the stage of prohibition, special care has to be taken by the court to see that the test of reasonableness is satisfied. The Supreme Court opined that it is reasonable to think that the maker of the Constitution considered the word ‘restriction’ to be sufficiently wide to save laws in consistent with Article 19(1) or taking away the rights conferred by the Article, provided this inconsistency or taking away the reasonable in the interests of the different matters mentioned in the clause. Restriction, therefore, includes prohibition. The question always is of the interests of the general public³⁶

Every constitutional system of government must provide methods for bringing about modifications peacefully. A successful Constitutional system is dynamic, constantly self-adjusting arrangement that constantly receives “inputs” from environment. Though Indian Constitution is capable of absorbing the new changes its excessive ness caused more harm than good to the citizens. All

³⁵ Utter Pradeshik Shramik Mahasangh, Lucknow v. State of U.P, AIR 1960 All, 45.

³⁶ AIR 1963 SC 1967

legislations are directed to the preservation and protection of the safety, health, morals and general welfare of the people will be in the interest of general public. But in practice the executive failed in implementing the objectives of the Acts which is main cause for major unrests in the country. Similarly Preserving people from imposition, fraud and deceit would also be a legitimate object of state policy as that would be in the interests of the general public³⁷.

Restrictions will be void if it is vague and uncertain. To leave the verdict of reasonableness to the satisfaction of executive officers or even an advisory Board, which takes its materials only from the Government for review, is hardly a substitute for a judicial inquiry, when 'the Government seeks to override a basic freedom.'³⁸ Delegation to a subordinate of an official unfitted to exercise the discretion is also unreasonable.³⁹ There must be adequate safeguards against abuse but if the law is reasonable, the absence of safeguard is immaterial⁴⁰.

In 1954 the Labour Appellate Tribunal, 1960 the Hon'ble Supreme Court⁴¹ 1988 the Hon'ble Calcutta High Court and in 1997 the Hon'ble Kerala High Court⁴² held that, 'Strike is a weapon in the hands of the employees.' In 1960 the Hon'ble Supreme Court⁴³ and in 1965 the Hon'ble Punjab High Court⁴⁴ held that "strike is a last weapon." In 1963⁴⁵, 1989 the Hon'ble Supreme Court⁴⁶,

³⁷ K.L. Chaturvedi v. State of Madhya Pradesh, AIR 1960 Madh. Pra, 369.

³⁸ State of Madras v. V.G. Row, AIR 1952 SC 196, PER Patahjali Sastri, J.

³⁹ Raghubir Singh v. Court of Wards, Ajmere, 1953 SC 373.

⁴⁰ N.B. Khare v. State of Delhi, 1950 SC 211.

⁴¹ Management of Kairbeta Estate, Kotagiri v. Rajamanickam AIR 1960 SC 893 (895)(Gagendragadkar. J)

⁴² T.C.M. Ltd. V. District Collector 1997 I LLJ 1061 (Ker).

⁴³ Supra 41

⁴⁴ 1965 Cur.L.J. 251 (Punj).

⁴⁵ O.K. Ghosh v. Ex. Joseph, AIR 1963 SC 812.

⁴⁶ B.R. Singh v Union of India (1989) II LLJ 591 (SC) In this case it was held that "It was held that the strike is a form of demonstration. Though the right to strike or right to demonstrate is

held that “demonstrations or picketing are visible manifestation of one’s ideas and in effect a form of speech and expression” hence they are recognised as a mode of redress for resolving the grievances of the workers. In 1980 the Hon’ble Supreme Court held that “strike is an integral part of collective bargaining.” In 1962⁴⁷ and 1963⁴⁸ the Hon’ble Supreme Court held that “The workers have a right if not a fundamental right, to go on strike. There is no fundamental right to go on strike in the Constitution of India.” In 2000 the Hon’ble High Court of Karnataka⁴⁹ and in 2003⁵⁰ the Hon’ble Supreme Court held that “The act of strike die more harm than good to the society”. All the decisions delivered by different tribunals, high courts, and Supreme Court makes it clear that strike was expressly recognised as a ‘right’ of the workmen, but it was never recognised as a ‘Fundamental Right’ in the interest of the general public and security of the State.

The Hon’ble Supreme Court of India in T.N. Rangarajan Case held that:

“Government servants have no right 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 resort to strike. There is no statutory provision empowering the employee to go on strike. Further, there is prohibition to go on strike under R.22 of Tamil

not a fundamental right, it is recognised as a mode of redress for resolving the grievances of the workers.”

⁴⁷ Kameswar v. State of Bihar, 1962 SCR 369. Air 1962 SC 1166. (P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C.Das Gupta and Raj Gopal Ayyangar. JJ)

⁴⁸ Ok. Ghosh v E.X. Joseph, AIR 1963 SC 812.

⁴⁹ In BPL Group of Companies Karmika Sangh vs. State of Karnataka and another 2000 II LLJ. 641 (Kant) (V.G. Gowda. J) (D.O.J. 12/4/1999)

⁵⁰ Ex-Capt. Harish Uppal vs. Union of India and AIR 2003 739, and T.N. Rangarajan v Government of Tamilnadu and others AIR 2003 SC 3032.

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. For redressing their grievances, instead of going on strike, if 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 woe duty to the society.

In Para-23 “....However, considering the gravity of the situation and fact that on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage strike, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others.”

The word “morality” used in the judgement needs to be analysed in the interest of the “public”. Morality may be “positive” and “Critical”. People in general agree that something should morally be done or is morally permissible, cannot be a sufficient justification for doing the thing, otherwise, slavery, would have been right once. What people believe, namely, what is a positive set of beliefs, is not a ground for saying that what they believe is true, and so constitute morality. Or, other way of putting exactly the same point, is to any that morality is not explained merely by reference to conventional morality.

Social morals are to a certain extent a matter of faith. Public morality may be manipulated by propaganda, but it does not live long. Thus relying upon what people’s ‘revealed preferences’ are may succeed in producing moral norms that offend against many people’s conscience. This problem has plagued moralists and lawyers for centuries. The obvious response was to find a way in which moral imperatives could be translated into practical imperatives, without perverting the original moral intentions.

Hence the faith of the general public rest with employees (particularly government employees) was manipulated for several decades. The Governments and Political leaders instead of taking permanent measure for settling the disputes tamed the unions and their activities (including strikes) for their political survival. This practice deprived the general public from what they deserve. I the name of rise in salaries of the employees the governments exorbitantly increased (and increasing) the price of the commodities (including essential commodities) and services (like power, water, sanitation etc). One side

the general public is deprived of their services because of corruption and increase in prices, on the other side the employees are always going on strike by taking advantage of the government(s). Hence the Hon'ble Supreme Court rightly used the work "morality" in the judgement.

So long the individuals ignore the interest of the community and does not possess the public responsibility, which is a requisite of a 'valid democracy' the activity of strike by the workmen will remain as a "right" only and it cannot attain the status of a "Fundamental Right". Fundamental rights are not rights by themselves but they determine other rights. Hence the activity of strike is not a "fundamental right" as it does not give right to any other right. The right to form association is guaranteed under Article 19(1)(c), that allows the member of the association or union to strive for common interest. The other factor is fundamental rights are incorporeal and intangible in nature. Strike is an activity that can be perceived by senses. Hence 'strike is not a "Fundamental Right" of the workmen/employees.

If 'No strike' ?

Motivation is influenced by the needs of a person. There is a priority of certain needs over others. The importance of needs will influence the level of motivation. The human being tries to achieve first category first and then moves on to the next and so on. Employee being a human being also requires certain needs for his and maintenance of himself and his dependants. During the early stage of industrialisation the employees in India are in need of 'physiological needs' (these include food, clothing, drinking, shelter, rest, exercise, etc). the movement his physiological needs are satisfied he will start thinking for the safety of himself and his family members. It is the duty of the employer and the Government to look after the safety of the workmen. Once his safety needs are

satisfied he will strive for the development socially which involves financial liabilities. Every workman needs that he should be respected in the society. The workman tries to do whatever he can and has a sort of self-development. A person tries to do whatever he is capable of doing. He tries to bring out something hidden in him. The self-fulfilment needs give satisfaction to the person concerned and are good for the society also. The needs of the person may force him to do any unwarranted activities. But the unwarranted needs of a person are also disastrous not only to the workman but also to the society. The employee who is allowed to satisfy his physiological needs went number of steps ahead and now he is giving priority to his needs only in utter disregard of the society. He went to the extent of imagining that he is the backbone of the society, but he failed to understand that he is only a part of the society. His needs are secondary to the interest of the society. Depending upon the needs of the workmen time to time emoluments were given in different name like "Dearness allowance, gratuity, and Group insurance etc. employees of certain undertaking in spite of given higher pay scales and benefits (like LIC, Nationalised Banks, etc) are declaring and observing strikes. The need for controlling the activity of strike was felt much earlier but for political reasons it could not be done. Though going on strike was necessary in 1800s, unwarranted support of the political parties leads it to miserable misuse by the workmen.

If statutory protections provided to the members of trade union under The Trade Union Act, 1926 are taken away the government may take civil and criminal actions for damages and compensation etc. against the workers who undergo strike. The government and employers for creating undue pressure upon the working community may direct the concerned authorities not to renew the licences of the workers or to do any likewise act against the workers who are participating in strike or attempt to strike. The officers of the trade unions may be

fined and or imprisoned.⁵¹ The consequences, if the right to strike is taken away from the employees, are not limited but may be beyond imagination. The employees will be again taken back to the conditions prevailing in 18th century A.D which were equivalent to slavery.

Even today in so-called developed society we may take lesson from the instances such as in 1995 the right wing Popular Party (of Spain) and the authorities of Spain had casualised 32% of the workforce (72% among young workers). Work place accidents were increased by 48%, five workers die every week. In 1998 average wage increase was 2.3% with an inflation level of 4% and national income went up by 4% while the average income per worker went down by 1.7%. At the same time corporate profits went up by 30% and the profits of the banking sector reached 1 trillion pesetas for the first time ever (£3.7 bn approximately). On top of this the government (of Spain) is also adopting the methods of privatisation of most of the publicly owned companies, the partial privatisation of the hospitals, the increase in indirect taxation, etc⁵².

In the another case of Galicia, a recent report commissioned by the regional government, the Xunta, which is controlled by the PP, contains some very telling statistics: 52% of the workers in Galicia do not receive payment for overtime, 25% have no paid holidays and 120,000 have no legal contract and pay no National Insurance. Thus, on March 3rd, the PP government passed a new reform of labour legislation. The worst aspect of this reform was the elimination

⁵¹ On 8 July 1954, 340 African workers at United Tobacco Company (UTC) took decisive strike action to achieve their demands (recognition of their trade union). The Secretary of the Union was fined £ 100 or 6 months hard labour (suspended for three years) and one other strike leader was fined £25 or 3 months hard labour, plus 6 months hard labour suspended for three years. All the remaining accused were fined £5 or one month hard labour. [8 strikes and Industrial actions, www.anc.org. visited on 20.10.05]

⁵² The Meaning of KCTU Representative Meeting's Decision "Focus on First Half Year Struggle And Protect Our Living Rights PICIS Newsletter No. 51 - 1 March 1999, Edited by Anna, Published by PICIS (Policy and Information Centre for International Solidarity) March 1, Monday, 1999" (<http://www.laborstart.org/>)

of the distribution of hours in part time contracts. This means that now the bosses can decide when they call part time workers in. This law marked the end of the social partnership⁵³. The union leaders were forced to entering in to “no strike clause” even without any consultation or debate with the other union members or even leaders.

No Government, whole heartedly ever seen to have supported the act of strike. The court also supported the act of strike after taking in to consideration of the living conditions of labour and the prevailing social conditions. Even though several steps were taken by the Governments number of times they were only proved to be eye wash. In spite of the promulgation of ordinance imposing ban on strike with penal sanctions, the central government employees went on strike both in 1960 and 1968. In 1960 strike, about 20,000 employees were arrested (including leaders), about 27,000 were suspended, and about 3,000 were dismissed from service. The government withdrew the recognition of 85 unions that had participated in the strike.

It may also be noted that in 1960 and 1968, the government took steps to ban the strikes only few days prior to the scheduled dates of strikes. In 1960, the strike was due on July 11, and the ordinance was passed on July, 8; and in 1968, the strike was scheduled for September 18, the ordinance was promulgated on September 13 only. The wisdom of issuing the ordinance to ban strike at the last hour, when the union have completed the preparation for a national strike and the employees would have prepared themselves, physically, financially, mentally as well as physiologically for the strike is questionable. Imposition of ban, suddenly or in a very short term, provokes the people and gives an adverse psychological reaction.

⁵³ *ibid*

Later, under various political pressures the government, however, released all the employees without trial, and reinstated almost all the employees who were suspended or dismissed during strike, and re-granted recognition to all the unions. One has to analyze the ultimate impact of these kinds of actions and policies. Perhaps this was an inevitable result of providing an extreme penalty which cannot effectively be imposed on a large group as such.

If it is accepted that such severe penalties cannot be effectively enforced, it might better not to provide them. There is no use of law which cannot be effectively enforced. The failure on the part of the government to enforce the law undermines the value of law and brings disrespect both for the law and the authority. The Government and the employers would have jointly restricted the 'right to strike' phase wise. The Governments and employers of the developed countries failed to ban the "right to strike" of the workmen. For controlling the activity of strike new systems adopted by the bureaucracy to resist the liability and responsibility must be checked and controlled in time. Hence in India the employers and Governments may if try to takeaway the right of the workmen (which is their natural and inherent right), it may lead to revolution for which the Government may not be in a position to overcome. Thus, I am of the opinion that if the right to strike is taken away the basic purpose of the law (natural law) will be forfeited and the unprivileged workmen shall be left at mercy of the privileged.

3.7 Possibility of permanent ban on strikes

Immediately after 1960 strike, the central government began to think of enacting an anti-strike law. On August 8-9, 1960, the Lok Sabha discussed the Essential Services Maintenance Ordinance of 1960 and the central government employee's strike of July 12-17 and approved the Government's action thereon.

Even political parties are also never supported the activity out of free will after independence. The workers they themselves requesting the government to keep them out of the purview of strike by declaring their undertaking⁵⁴ as 'essential service,' senior political leaders stating that they had committed mistake by supporting the militant trade unions⁵⁵, Governments planning to establish 'strike-free' industry (Information Technology),⁵⁶ and the judges saying that the employees do not have any right either legal, moral, to go on strike makes it clear that no wing of the constitutional machinery is in favour of strike. The heads of the educational institutions requesting the political parties to keep the educational institutions outside the purview of strikes and bandhs etc., also further strengthens the view that neither employer nor employees are in favour of strikes. Political parties during the proceedings of the House (either in Legislative Assembly or Parliament) walkout against the attitude of the government or against any motion (relating to any bill or discussion) that may go against the interest of the people of the country (to express their protest). This is equivalent to the workmen withdrawing their labour when working conditions are not suitable to them. If the right of the legislators are taken away and if they are forced to be in the house, the monopoly of the government will not come to the knowledge of the people and ultimately it may lead to anarchy. Even according to the ILO report compiled in 2002 the police (in India) are brought in to deal with strikers, sometimes violently. In practice, the legal protection of workers' rights only concerns some 30 million people in the organized industrial

⁵⁴ 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. The statesman news service, Haldia, 26.2. 04 (thestatesman.net, Visited on 28.1.05)

⁵⁵ Senior cadre of CPM Sri Jyoti Basu (former Chief Minister of State of West Bengal) in January 2005 said that "during his chief minister ship between 1980 and 1990 he committed mistake by supporting such unions." (Eenadu, Hyderabad edition), 08.01.05.

⁵⁶ Strike-free It in Buddha's reach, *The Telegraph*, (Siliguri edition) 24.10.05, p.1

sector, out of a total workforce of 400 million. It is difficult to enforce legislation in the informal sector. India has seven export processing zones. Entry is restricted to the workers, who are bused in by their employers. They have the right to join trade unions and to bargain collectively, but the fact that trade unionists are not able to enter the zones makes it very difficult to ensure the exercise of these rights. The Government clearly wants to limit trade union action in the zones as much as it can, and encourages states to apply flexible labour legislation. It has decided that factories operating in the zones are to be considered public utilities, thereby limiting the right to strike. It is submitted that, even the ILO report (2002) also criticized the Indian policy restricting the right of the Government servants' right to strike.

Furthermore, this was considered essential in the context of the country where trade unions are highly politicized and affiliated to one of the political parties, and very often, they in turn are formed on the basis of sectarian considerations. In these circumstances, the political neutrality of civil servants is absolutely essential for the functioning of a constitutional democracy. These reasonable restrictions imposed on the civil servants have, on several occasions, been challenged in the highest courts of India and the courts have upheld the constitutionality and reasonableness of these restrictions. Civil servants, however, enjoy a high degree of job security as laid down in the Constitution. It may be noted that the spirit behind ILO Conventions Nos. 87 and 98 have already been implemented in India through domestic laws and regulations. As far as the association of civil service employees is concerned, the central civil service employees' associations are recognized by the Central Civil Services (Recognition of Service Association) Rules, 1993. Similarly, the State civil service employees' associations are recognized by the respective State Governments. The mechanisms available to civil servants for settling grievances in India are the Joint Consultative Machinery (JCM) and Administrative

Tribunal. They provide a forum for the amicable settlement of grievances. The Board of Arbitration under the JCM, which was set up in July 1968, has a panel of members representing staff and officials. During 1999-2000 (up to 31 December), 241 cases were referred to the Board, of which 238 were settled. Central Government employees also have a right to form and join any association. However, workers and employees in the public service, working in public sector undertakings, are covered by the Trade Unions Act, 1926⁵⁷. Though, Labour legislation does not distinguish between the organized and unorganized sectors in so far as the protection of workers' rights is concerned. The Government has been organizing special task force and crash programmes of inspection to implement the labour laws in the unorganized sectors. Trade unions are free to organize the unorganized instead of concentrating on the organized sector alone. However their presence in the unorganized sector in urban and rural areas is negligible. It clearly shows that the advantages of the welfare legislation are not available to all the workmen and only to a section (less than 10%) of the workforce. If the right to strike is taken away the minority workmen (10%) who are getting the advantage of the trade union and other labour welfare legislations will also be deprived of it. In *Visakha v. State of Rajasthan*,⁵⁸ verma, J., opined that any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. In *peoples' Union for Democratic Rights v. Union of India*⁵⁹, the court followed the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) THE Universal Declaration of Human Rights (UDHR) AND International Labour Organisation's conventions, to interpret and expand the ambit of Article

⁵⁷ *ILO report*, compiled in 2002.

⁵⁸ (1997) 6 SCC 241 at 249

⁵⁹ AIR 1982 SC 1473 AT 1487

21 of the Constitution. If the 'right to strike' of the workmen is taken away, "Welfare State" which is the basic feature of the Constitution will be tampered which is beyond the purview of the legislature and even unwarranted also.

World is changing beyond imagination and recognition. Flow of liberalisation and increasing unemployment made the future of the employees uncertain. In this scenario, stoppage of work, go-slow, work- to- rule, absenteeism etc are nor work out and warranted. Trade unions and workers have or change their philosophy. Change is the law of nature, Unions or workers are not an exception to it. Meanwhile Government should play fair game with union and employees. Therefore, Government is equally responsible for unwarranted stoppage of work, maladministration or break down of administration. Needless to say, that employees consists small segment of society, hence not entitled to cause any loss or harm to health, safety and interests of the society. In a democratic welfare state every Citizen should be lover of rights and duties but nor of disputes or litigations⁶⁰. Even the developed countries like USA and Great Britain vehemently tried to impose permanent ban on strikes but miserably failed in their attempts to do so. As said by Austin,

"The existence of law is one thing; its merit or demerit is another. Whether it be or not is one enquiry: whether it be or be not comfortable to an assumed standard, is a different enquiry. A law, which is actually exists, is a law, though we happen to dislike it.

Whether it is employers or the Government who from time to time were taking steps to take away the right of the workmen to strike,

⁶⁰ V.V.N. A. Rao, *Alternative disputes resolution system and strikes – A study*, 2003 Lab.I.C, Journal, 377.

they could not do as it is against the conscience of the community. Whenever the executive tried to take severe steps to suppress the working class ruthlessly, it is the community who protested it by showing solidarity to the working class by bearing the sufferings which is the highest respect for the law⁶¹. It is the duty of the State to provide adequate protection to the individual and provide reasonable opportunity to every one for full development of individual personality. Employee has an inherent dignity and worth and they must be preserved. It is his right to seek his own happiness. Rights can of course be outweighed by other rights- even by less important ones if these are much seriously threatened in a particular case. But rights-even the important ones-can also be overridden in order to prevent disaster⁶². The most important human right⁶³ is the freedom of any person to think and talk without interference from the State or from other person. The human rights of the workman are to have reasonable share in the profits of the business. In some countries like China when relaxation was given in labour laws number of industrial accidents increased abnormally. Likewise, if the right of the workmen to strike is taken away, the workers' right to life and liberty will become meaningless. When the Government or employers does not have any fear of strike (the only weapon the workmen can use against the employer and Government)

⁶¹ I submit that an individual who breaks a law that
Conscience tells him is just, and who willingly
Accepts the penalty of imprisonment in order to arouse
The conscience of the community over its justice, is
in reality expressing the highest respect for the law.....Martin Luther King Jr.

⁶² Dr. Hydervali *The Jurisprudence of human rights*, Indian Bar Review, vol. xxx (4) 2003, p.577.

⁶³ Human rights in simple language may be categorized as those fundamental rights to whichever man and woman living in part of the world is entitled by virtue of having been born as a human being. The preamble of the Universal Declaration of Human Rights states ".....it is essential if man is not compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law". Article 3 of the Universal Declaration of Human Rights adopted by the General Assembly on 10-12-1948 provides "Every one has a right to life, liberty and security of person".

the employees cannot expect the implementation of welfare legislation and they must everyday have to render their services under severe threat of dangers. Hence, the possibility of imposing permanent ban on the workers' right to strike may not be possible in the near future. Restrictions can be imposed upon the right of the workmen.

3. 8 Globalization and implementation of new economic policies and role of multinational companies

Since 1990 Indian economy was driven for globalization and to call multinational companies to invest in India and accordingly many new policies have been introduced by the Government. There is no doubt that by implementation of those policies our country headed towards development and today we are in a position to compete other developed countries. Nevertheless the multi national companies also attracted towards India due to cheaper labour available and the huge market. The multi national companies as the Government intended invested huge capital in India. However, such multi national companies pressurizing to the Indian Government for making changes in the labour laws specially for taking away the "right of Strikes" from the workmen. As I have discussed above that in the other developed countries wherever Governments attempted to take away the right of the strike from the workmen, it never succeeded. It is also pertinent to state that today we have developed our economic conditions but not equivalent to such other developed countries and we have miles to go to compete the other living standards with the developed countries. Thus I am of the opinion that we may sacrifice the investment of the multinational companies in our country and prefer to develop without their participation, but we cannot afford taking away the right to strike from the workmen.

In the period of rampant corruption, delay in judicial proceedings etc., the only alternative left out to the general or ordinary employee is only 'strike'. If at all the legislature or the government or judiciary wants to take away the employees 'right to strike' they should also take away the right of the employer to 'lock – out' (which will not be accepted by them at any cost) and they can't dare to do. Even if this right also taken away the employees will be left to the sweet will of the employers and political leaders who were never good to them.

Therefore, it can be concluded that the activity of 'strike' is a 'right' of the workmen. For the reasons mentioned above it is a natural and legal (implied) right but not a "Fundamental Right" which is equivalent to that of lock-out of the employer. Taking away the right of the workmen amounts to allowing them fight without any weapon with the employer who is fully armoured. If the legislature wants to take the right of the workmen from them, they also must take away the right of the employer to lock-out which may not be possible in the near half-a-century to come. Hence, it is submitted that, in the near future the possibility of taking away the right of the workmen to strike is negligible, without providing an alternative to compensate the right of the workmen to 'strike'.
