Chapter – VI

Strikes – Constitution of India

Bless that our prosperity lead us to peace;
The social discipline lead us to harmony;
The intellectual pursuits result in sublimity;
The aims of our riches is harmony varied in all nature and society;
May our varied system of law and order
Result in all round peace, progress and prosperity.....Rigveda 7.35.2.

Mahatma Gandhi, the father of our nation said "Governmental institutions are models of service and sacrifice. They are the massive machine of service". In every legal system there is always a "Grundnorm" although its forms are different in different legal systems. For example in Britain the "Grundnorm" is "issue in parliament" and in USA it is the constitution. The Grundnorm can be recognised by the minimum effectiveness it possesses. Likewise in India 'Constitution' is Grundnorm. Constitution is the basic documents which expresses the views of the citizens and persons of that country. A Constitution necessarily reflects the interests and values of those groups or classes in society who have been responsible for its formulation. Indian Constitution, the largest constitution in the world contains detailed provisions regarding the formation of associations and unions. On the basis of these provisions only the employees are claiming that they

are having the right to strike. But the framers of the Constitution gave priority to the interest of the general public and security of the State. In this chapter various Constitutional provisions in relation to strike are discussed with relevant case laws.

Public employment though, can be seen even during the ancient periods when guilds of businessmen use to send its employees to the king during emergency and were getting salary from the treasury of the king. Later kings for defence and other purposes employ certain on regular or part-time basis and were paid wages from the treasury. During British India period the British administration in the country was hailed for its capability, competence and incorruptibility. Following the British model many states administered by Rajas and Maharajas had good governance.[1] Crash and crush of civil service by the elected representative-ministers both at state and central level may lead to corruption. Government whether Union or States, operates through its Secretaries. Origin of government services in India dates back to 1858 when The Government of India Act, 1858 transferred Government of India from the hands of the East India Company to the Crown, and all the rights regarding the revenues of Indian territories and paramountcy were vested in the Crown. Civil services were to be made through open competition according to rules framed by Secretary of State in Council with the help of Commission of Civil Service. To aid the Secretary of State there was to be an under Secretary and a Council of fifteen (15) members. This was known as the Council of India. They were to hold office during behaviour, subject to removal on petition of both houses. Ten of these members were to possess Indian experience of at least 10 years' service, which should not have terminated more than 10 years before appointment. The Council was, therefore, a body of permanent civil servants chosen for their knowledge of Indian administration to safeguard Indian reserve against inroads by a British Secretary of

[1] D. Lingegowda, editor, *Humanism*, Bangalore, June, 2005, p.7.

State. Lytton and his Council in their letter dated 02.05.1878 recommended the Crown for setting up of Native Civil Service, wherein appointments will be made by selection and not by competitive Examination.

The guiding principles of Civil Service organisation are very simple and obvious. They are (i) unified services, (ii) recruitment by open competition (iii) classification of posts into for policy and clerical for mechanical work to be filled separately by separate examination. This classification of civil servants in to different categories is essential for the proper performance and co-operation of functions and for making policy responsive and responsible.

An honest and efficient bureaucracy is an important and indispensable limb of a sound administration. Lord Macaulay tersely stated this famous truth when he declared in British parliament that "the character of the Governor-General is less important the character of the administrator by whom the administration is carried out".

The law governing the associations can be seen even in Vedic period. The principle of freedom of association and the effective recognition of the right to collective bargaining is recognized in India. Law governing associations was laid down under the title *Samvidvytikrama.* The set of rules or conventions arrived at among the members of a particular group of association, mean to regulate their internal affairs, was called Samaya (Compact), and the violation or transgression of these provisions (Vyatikrama) gave rise to the topic of law called Samvidvyatikrama (transgression of compact)[2]. Narada Smriti (p. 153-2; Dharmakosa-870) lays down that "The king should ensure the observance of compacts settled among associations of heretics, believers in the Vedas

[2] M. Rama Jois, *Legal and Constitutional History of India*, Vol I, 1984, (National Book Trust)p.174.

(Naigamas), guilds of merchants, corporations (pugas), troops of soldiers, assemblages of kinsmen and other such associations.

Immediately after independence it may not be possible for the government of any country to have fair and strict deal with its citizens as they were under the severe exploitation under the sovereignty of other country. Same is the case with India. Immediately after independence the living standards of the employees' community in India was more or less equal to that of slaves. Much care was taken by the drafting committee of the Constitution of India to look after the security of the country and welfare of the citizens including working community. Hence all the wings of the constitutional machinery were in favour of providing welfare to the labour community. Even the judicial opinion was also in favour of the trade unions. The duty and responsibility of the Government employees towards the society was felt as early as 1951 itself and the courts opined that the government servants may be forbidden from going on strike. In USA first strike by government employees was recorded in 1836[3]. The decade of 1950 started recognised the 'strike' was recognised both as express and implied right. The importance of preventing the employees participating in politics was smelled as early as 1958. The employee if allowed to participate in politics the main intention behind his recruitment to that particular post will be defeated as the employees will pay more attention towards politics than exercising his skill towards his job.

Man is a social animal, and instinctively likes socialization. He associates with others for common social, religious, cultural, economic, political and other

[3] The workers walked off the job at the Washington, D.C. Naval Shipyard in 1836. After several weeks of striking with no results the workers were forced to make a change in their strategy to pursue their ten-hour workday. A mass demonstration by strikers and private sector organizations confronted President Andrew Jackson. Help from private sector organizations was common due to competition for jobs and the relationships made during past jobs. President Jackson intervened in the strike and the workers were granted a ten-hour workday (Eric J. Power, *Public employees Strike,* www.iejs.com. Visited on 27.10.03).

objectives.[4] The Constitution gives recognition to this natural desire, and confers a fundamental right on the citizens to form association, subject to restrictions in the interest of public order and morality.[5] Associations may include associations for cultural activities, trade unions or labour unions, or political parties. The citizens' freedom to form an association includes his right to become a member of an association already in existence, right to continue to manage and organize an association already formed, to formulate and implement the lawful objectives of such association,[6] or to refuse to join[7] an officially sponsored, or supported associations to boycott a hostile association or to dissolve an association which becomes obsolete. Any association, which constitutes a menace to the public peace, and plans, carries on sacrilegious, subversive or terrorist acts, such an association can be declared unlawful, banned and its membership can be made a continuing offence.[8]

The freedom of the citizen to form and participate in the activities of an association is spelled out in the constitutional provisions in its widest amplitude, and is subject only to the appropriate reasonable restrictions clause. The reasonableness of the restrictions is determined by a direct *nexus* between the demands of social control conducive to public interests and the imposed restrictions. It can be judicially determined in the context of each individual case, after taking in to consideration both the substantive and procedural aspects of the proposed statutory restrictions. The workers need to join association or union is

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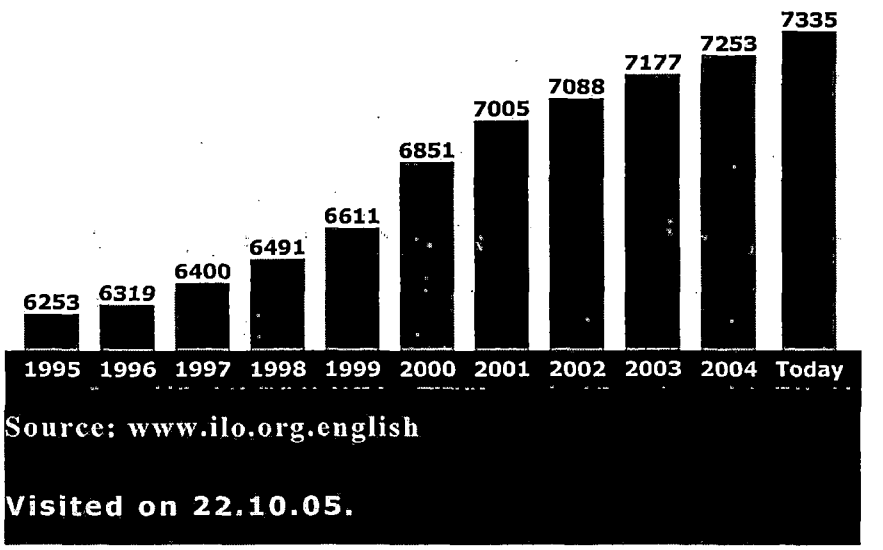
[4] M.C. Jain Kagzi, *Kagzi's The Constitution of India*, Vol. 2, Ed. 6, 2001, p. 1201.
[5]. Article 19(1)(c) /(4).
[6]. Damayanti Narang vs. Union of India, AIR 1971 SC 966;Assam Rastrabhasha Prachar Samithi vs. State of Assam, AIR1989 SC 2126; D.A.V. College vs. State of Punjab, AIR 1971 SC 1737; Damayanti vs. Union of India, AIR 1971 SC 966; H. Puttappa vs. StaTe of Karnataka, AIR 1978 Raj. 148; Sitharachary vs. Deputy Inspector of Schools, AIR 1958 AP 78.
[7]. S.M. Kala vs. University of Rajasthan, AIR 1987 SC 700.
[8]. Winfield, *Text Book of Tort* (Ch. 17 (p. 524) Street. Ch. 18 Section 2pp 353-357.

identified by the International labour Organisation. Hence it has summarised the rights of the workers which are as follows:

5. 1 Workers' Rights

a person is first a human being and then only a worker. His inherited human rights shall not be disturbed by any one under no circumstances. For protecting the rights of the workmen throughout the history several steps were taken by both the State and the social workers. Number of conventions were conducted with regard to the protection of well being of the workmen in order to protect them from exploitation Conventions of the International Labour Organisation though increased in number day by day the problems of the workers are also increasing proportionately. The number of conventions was increased from 6253 in 1995 to 7335 in 2005[9]. Internationally recognized worker rights include "(A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labour; (D) a minimum age for the

[9] Number of ratifications of the ILO Conventions



Source: www.ilo.org.english

Visited on 22.10.05.

employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." The discussion of these rights is essential to find out whether 'Strike' is a right or not. The discussion of worker rights considers not only laws and regulations but also their practical implementation, taking into account the following additional guidelines:

(a). "The right of association" has been defined by the International Labour Organization (ILO) to "include the right of workers and employers to establish and join organizations of their own choosing without previous authorization; to draw up their own constitutions and rules, elect their representatives, and formulate their programs; to join in confederations and affiliate with international organizations; and to be protected against dissolution or suspension by administrative authority". The right of association includes the right of workers to strike. While strikes may be restricted in essential services (i.e., those services the interruption of which would endanger the life, personal safety, or health of a significant portion of the population) and in the public sector, these restrictions must be offset by adequate guarantees to safeguard the interests of the workers concerned (e.g., machinery for mediation and arbitration; due process; and the right to judicial review of all legal actions). Reporting on restrictions affecting the ability of workers to strike generally includes information on any procedures that may exist for safeguarding workers' interests.

(b). "The right to organize and bargain collectively" includes the right of workers to be represented in negotiating the prevention and settlement of disputes with employers; the right to protection against interference; and the right to protection against acts of antiunion discrimination. Governments should promote machinery for voluntary negotiations between employers and

workers and their organizations. Reporting on the right to organize and bargain collectively includes descriptions of the extent to which collective bargaining takes place and the extent to which unions, both in law and practice, are effectively protected against antiunion discrimination.

(c). "Forced or compulsory labour" is defined as work or service extracted from any person under the menace of penalty and for which the person has not volunteered. "Work or service" does not apply in instances in which obligations are imposed to undergo education or training. "Menace of penalty" includes loss of rights or privileges as well as penal sanctions. The ILO has exempted the following from its definition of forced labour: compulsory military service, normal civic obligations, and certain forms of prison labour, emergencies, and minor communal services. Forced labour should not be used as a means of (1) mobilizing and using labour for purposes of economic development; (2) racial, social, national, or religious discrimination; (3) political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system; (4) labour discipline; or (5) as a punishment for having participated in strikes. Constitutional provisions concerning the obligation of citizens to work do not violate this right so long as they do not take the form of legal obligations enforced by sanctions and are consistent with the principle of "freely chosen employment."

(d). "Minimum age for employment of children" concerns the effective abolition of child labour by raising the minimum age for employment to a level consistent with the fullest physical and mental development of young people. In addition, young people should not be employed in hazardous conditions or at night.

(e). "Acceptable conditions of work" refers to the establishment and maintenance of machinery, adapted to national conditions, that provides for minimum working standards, i.e., wages that provide a decent living for workers and their families; working hours that do not exceed 48 hours per week, with a full 24-hour rest day; a specified annual paid holiday; and minimum conditions for the protection of the safety and health of workers. Differences in levels of economic development are taken into account in the formulation of internationally recognized labour standards. For example, many ILO standards concerning working conditions permit flexibility in their scope and coverage. They may also permit countries a wide choice in their implementation, including progressive implementation, by enabling countries to accept a standard in part or subject to specified exceptions. Countries are expected to take steps over time to achieve the higher levels specified in such standards. It should be understood, however, that this flexibility applies only to internationally recognized standards concerning working conditions. No flexibility is permitted concerning the acceptance of the basic principles contained in human rights standards, i.e., freedom of association, the right to organize and bargain collectively, the prohibition of forced labour, and the absence of discrimination. These rights are equally available to workers working in both public and private sector.

Government workers often strike in India, the world's second-most populous country, crippling services and pinching tax revenues[10]. In India, the government servants exercising functions flowing from the sovereign functions of the Government, as they do, are not treated at par with industrial workers so far as trade union rights are concerned. A differential treatment to the government servants is to facilitate their functioning in an unbiased manner in an otherwise

[10] Almost all the member countries of ILO recognised the right of 'freedom of association' of Government servants.

politically active free society[11]. This was considered further essential in the context that trade unions in the country are highly politicised and are affiliated to one or the other political parties, and very often, they in turn are formed on sectarian considerations. In these circumstances, the political neutrality of government servants is absolutely essential for the functioning of a constitutional democracy.[12] But most government servants either through their trade unions or otherwise associated with political parties, which they feel necessary for safeguarding their interest.

Ethics in Government means that the government including the government servants of all the categories should keep the people in trust and fulfil their needs and aspirations above their personal prejudice, interest and bias. They are the trustees of people and of the society and they should meet the expectations of the public as trustees and should conduct themselves in that manner.

In the present day context Government servants can be divided into two categories - *first*, consists of those who follow rational and impartial principles and have respect for social and cultural values. The *other* category represents those who are greatly under the political pressure or other regional influences. There is no denying of the fact that the second category at present is predominating our country. A nation should have a definite, pre-determined and fixed set of ideologies and spirit behind the building of the administrator. He is supposed to

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[11] Jaipal Reddy, Chief Spokes person and former Union minister while agreeing with Madhu Dandavate's opinion said, "we cannot deny that Government servants are better treated than other employees. It cannot be basis for denying the right to strike." (Workers and the Right to strike, Consultation made on 16.10.2003 conducted by Institute of Human Development & Indian Society of Labour Economics.(ISLE).(Summary submitted by Summary by Sadananda Sahoo).

[12] The Government of India itself told the ILO that the law draws a broad distinction between public servants and other workers, severely restricting the trade union rights of the former. (*Freedom of Association and Effective recognition of the right to Collective bargaining*, Collected and Compiled by ILO- 2001)9Visited 0n 16,08,2001)

work with missionary zeal and enthusiasm to eliminate the prevalent discrepancies in the social order and to fulfil the socially relevant objectives. But it seems to be a purely a ideological view, administration to is under the severe attack of media as well as of the general public regarding the distortion of the ideology of administration, deviation in the ethical principles or irrational interference of the politicians. Development of administration demands creativity, flexibility, innovation as well as freedom of decision making along with the atmosphere of trust and co-operation among the people.

Despite these similarities of Indian laws and practices and the provisions of International Labour Organisation Conventions Nos. 87 and 98, India could not ratify these two Conventions mainly because of the problem of a technical nature related to government servants in India. The government servants enjoy a high degree of job security as laid down in the Constitution. There are also alternative mechanisms for handling grievances like the joint consultative machinery as well as administrative tribunals. Government servants who are excluded are provided with a high degree of job security and alternative grievance redressal mechanisms by legal and constitutional provisions.

There are also alternative mechanisms for their grievance redressal like the joint consultative machinery as well as administrative tribunals. The legislation provides for settlements before conciliation officers as and when disputes are raised. The means of implementing the principles are as laid down in the Constitution:

5. 2 Constitutional provisions

5. 2(a) Article- 19

19. Protection of certain rights regarding freedom of speech, etc.

(1). All citizens shall have the right –

(a). to freedom of speech and expression;

(b). to assemble peacefully and without arms;

(c). to form associations or unions;

(d). to move freely throughout the territory of India;

(e). to reside and settle in any part of the territory of India,[13] (and)

(f). [****][14]

(g) to practice any profession, or to carry on any occupation, trade or business[15]

(2) Nothing in sub-clause (a) of clause (1) shall effect the operation of any existing law, or prevent the State from making any law , in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said-clause in the interest of [the sovereignty and integrity of India,] the security of the state, friendly relations with foreign states, public order , decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3). Nothing in sub-clause (b) of the said clause shall effect the operation of any existing law in so far as it imposes, or prevents the state from making any law imposing, in the interest of [16][the sovereignty and integrity of India or] public order or morality, reasonable restriction on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-Clause (c) of the said Clause shall effect the operation of any existing law in so far as it imposes, or prevent the State from making any law

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[13] Inserted by Constitution (forty-fourth) Amendment Act, 1978, S.2 (w.e.f. 20.6.1979).

[14] Omitted by Constitution (First amendment) Act 1951

[15] Substituted by the constitution (First Amendment) Act, 1951, S. 3. for the original clause (2) with retrospective effect.

[16] Inserted by the Constitution (Sixteenth Amendment) Act,1965, S.2.

imposing, in the interest of [17][the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said clause.

(5) Nothing in [18][sub-clause (d) and (e)] of the said clause shall effect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [19][nothing in the sub-clause shall affect the operation of any existing law in so far as it relates to, or prevents the State from making any law relating to,-

the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizen or otherwise]. The contents of the article in the draft Draft

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[17] ibid.
[18] Substituted by the Constitution [Forty-fourth Amendment) Act, 1978, s.2 for "sub-clauses (d), (e) and (f) (w.e.f. 20.6.1979).)
[19] Substituted by the constitution (First Amendment) Act, 1951, s.5, for certain original words.

Constitution, Constitution of India, Constitution of India as adopted and Provision as it stood now is note worthy.[20]

A right to form union is guaranteed by Article 19(1)(b) of the Constitution of India, this does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed. Even a very liberal interpretation of sub-clause (c) of clause (1) of Article 19 can not lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or declare lock-our may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations.

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Draft Constitution	Constitution of India 1949	Constitution as adopted	Constitution of India Now.
Art-13. Protection of rights regarding freedom of speech, etc.- **(i).** Subject to the other provisions of this article, all citizens shall he the right- **(a).** to freedom of speech and expression; **(b).** to assemble peaceably and without arms; **(c).** To form associations or unions; **(d).** to move freely throughout the territory of India	Art-19 Protection of certain rights regarding freedom of speech etc. **(1)**...All citizens shall have the right- **(a).** to freedom of speech and expression; **(b).**to assemble peaceably and without arms; **(c).** To form associations or unions; **(d).** to move freely throughout the territory of India;	Art-19 Protection of certain rights regarding freedom of speech etc. **(1)**....All citizens shall have the right; **(a).** to freedom of speech and expression; **(b).**to assemble peaceably and without arms; **(c).** To form associations or unions; (d). to move freely throughout the territory of India;	Art-19 Protection of certain rights regarding freedom of speech, etc. **(1).** All citizens shall have the right – **(a)** to freedom of speech and expression; **(b)** to assemble peacefully and without arms; **(c)** to form associations or unions; **(d)** to move freely throughout the territory of India;

Industrial Disputes Act, 1947 forbids strikes in protected industries as well as in the event of a reference of the dispute to adjudication under section 10 of the Industrial Disputes Act, 1947 was considered as reasonable restriction on the right guaranteed under Article 19(1)(c).

Right to strike were by implication a right guaranteed by Article 19(1)(c) cannot be accepted in the interest of general public viz. of national economy, while perfectly legitimate if tested by Article 19(6).

The right to form union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-Clause (b), their right to move from place to place with in India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (e), their right to hold property would be guaranteed by sub-clause (f) and so on-each of these freedoms being subject to such restrictions as might properly be imposed by clause (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in part-III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of the rights.[21] A rule can't be struck down as it prohibits strikes, as there is no fundamental right to resort to strike.[22]

Right to speech, expression and assemble peacefully etc, are enshrined in Article 19 of the Constitution of India. Peaceful and orderly demonstrations would fall within the freedoms guaranteed under Article 19(1) (a) and Article 19(1) (b) of the Constitution. The right to form union is guaranteed by sub-clause (c), the right

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[21] All India Bank Employees Association vs. National Industrial Tribunal, AIR 1962 SC 171.
[22] Kameswar Prasad vs. State of Bihar, AIR 1962 SC 1166.

of the members of the association to meet would be guaranteed by sub-Clause (b), their right to move from place to place with in India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (e), their right to hold property would be guaranteed by sub-clause (f) and so on. Each of these freedoms being subject to such restrictions as might properly be imposed by clause (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by several Articles in Part-III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of the rights. The Supreme Court held that every demonstration cannot be restricted under Article 19(2), of the constitution.[23] In A. Suresh's case[24] Section 4A of the Bihar Government Servant's Conduct Rules, 1965 was challenged being violative of Article 19(1)(a) of the constitution. This Rule prohibits any form of demonstration by the government servants including strikes for the redress of the grievances. The Supreme Court held that the rule so far it prohibits a strike is valid as there is no constitutionally guaranteed right to strike, but when the rule prohibited every form of demonstration it is violative of Article 19(1)(a) and Article 19(1)(b) of the Constitution as there was no classification under the rule, which was likely to lead to disturbances of public order. In G.K.Ghosh vs. E.X. Joseph,[25] the Supreme Court held that mere preparation for strike does not amount to participation in strike. In the same case it was held that the Government may by rule prohibit strikes.

The constitution of India has taken care to lay down limitations on such persons from forming associations by exercising right under Art.19 (1) (c). But with regard to the genuineness of the restrictions and its possible misuse was

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[23]. Kameswar Prasad Vs. State of Bihar, 1962 Supp. (3SCR) 369=AIR 1962 SC 1166 (1167)
[24]. A. Suresh, 1997 (1)SCC 319=AIR 1997 SC 1889.
[25]. AIR 1963 SC 812.

smelled at the stage of drafting the constitution and suggested for specifying the limitations for making legislations for the State.[26] Innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in Article 19. The members of the Police Association come within the ambit of Art.33 of the constitution and the provisions of the Act or the rules taking away or abridging the freedom of association have been made strictly in conformity with Article 33 and Art. 19(4) specifically empowering the State to make any law to fetter, abrogate or abridge any of the right under Article 19(1)(c) in the interest of the public order and other considerations.[27] The Supreme Court held that right to form association or union does not include the right of the trade union to an effective collective bargaining or to strike or the right to declare lock-out. Article 19(1)(c) does not recognize it as a fundamental right for the union to achieve its objective for which it is formed.[28]

5. 2(b) Article 253

This Article is in conformity with the object of Article 51(c) grants parliament the instrumental legislative power to implement treaties and other

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[26] Shri Damodar Swarup Seth (united Province: General)
..... "Sir, the guarantee of freedom of speech and expression which has been given in this Article, is actually not to affect the operation of any existing law to prevent the state from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the state. It is therefore clear Sir, that the rights guaranteed in Article 13 are cancelled by the very section and placed it at the mercy or the high-handedness of the legislature.....So, while certain kinds of freedoms have been allowed on the one hand, on the other hand, they have been taken away by the same Article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. (Wednesday, the 1st December 1948. (New Delhi at 9.30 A.M. Mr. Vide-Persident Dr. H.C.Mookerjee in the Chair). (Constituent Assemble Debates Vol. No. VII, Book No.2,Lok Sabha Secretariat, New Delhi, 1999 Jainco Art India, New Delhi.)

[27]. Gopal Upadhyay v. Union of India, AIR 1987 SC 413 = 1986 Supp. SCC 501.

[28]. All India Bank Employees' Association vs. National Industrial Tribunal AIR 1962 SC 171 =1962 (3) SCR 269.

interbational obligations. The provision also resolves any Centre-State dissatisfactions they may arise with respect to the jurisdiction to regulate conduct of Central and State Government employees. The words "notwithstanding the foregoing provisions" employed in the Article grants Parliament the supreme authority to make law over riding State legislation[29]. The incursion of Parliament's jurisdiction into that of States is permissible for the purpose of giving full effect to the treaties and agreements sought to be implemented.

5. 2(c) Article 310 of the Constitution lays down that:

> "Except as expressly provided by the Constitution, every person who is a member of the defence service or of a civil service of the union or of an all-India service or holds any post connected with defence or any civil post under the union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State".

Constitution of India provides extra protection to the government servants in order to protect them from the acts or omissions committed while discharging their duties.

5. 2(e) Article 311 of the Constitution provides that;

> "No person who is a member of a civil service of the union or an all-India service or a civil service of a State or hold a civil post under the union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed". Comprehensive laws and regulations have been framed to implement these provisions.

[29] D.D. Basu, *Shorter Constitution of India*, 1175, Wadhwa, 2001.

Grievance redressal mechanisms like the joint consultative machinery and administrative tribunals also exist for government servants".

In order to restrict the Government servants from going on strike a restriction has been imposed, prohibiting them from participating in demonstrations or strikes.[30]

Other Constitutional provisions

5. 2(f) Article 51(c), which is part of Directive Principles of State Policy enshrined in part-IV of the Constitution of India, provides that:

"The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another."

5. 2(f) Article 37 of part-IV reads as under:

"37 Application of the principles contained in this part-
The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in governance of the country and it shall be the duty of the State to apply these principles in making laws."

[30] "No Government Servant shall participate in any demonstration or resort to any strike in connection with any matter pertaining to his conditions of service." (Rule 4-A of the Central Civil Services Rules).

A combine reading of Articles 51(c) and 37 implies that principles laid down in international conventions and treaties must be respected and applied in governance of the country.[31] In Life Insurance Corporation of India v. Consumer Education and Research Centre,[32] it was held that fundamental rights are subject to the directive principles of state policy enshrined in part-IV of the Constitution, the Universal Declaration of Human Rights, the European Convention of Social, Economic and Cultural Rights, and other international treaties such as the Convention of Rights to Development for Socio-Economic Justice. The right of the government servants is not superior to that of the general public. In M.C. Mehta v. Union of India and others[33] the Hon'ble Supreme Court held that;

> "It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed".

While dealing with the necessity of imposing restrictions upon the government servants' right to formation of association the Hon'ble Supreme Court held that:

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[31] In Visakha v. State of Rajastan, (1997) 6 SCC 241 at 249 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, AIR 1982 SC 1473 AT 1487, 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 21 of the Constitution.

[32] (1995) 5 SCR 482.

[33] AIR 1998 SC 186.

> "joining Government Service has, implicit in it, if not explicitly so laid down, the observance of certain code of conduct necessary for the proper discharge of functions as a government functions as a Government Servant. That code cannot be flouted in the name of other freedom. Of course, the courts will be vigilant to see that the code is not so widely framed as to unreasonably restrict fundamental freedom. But reasonable code designed to promote discipline and efficiency can be enforced by the Government organization in the sense that those who flout it can be subjected to disciplinary action"

It is also important for the persons going on strike to see whether the period/time is suitable for going on strike or not. When the country is passing through a process of crucial change, may not be suitable for the employees particularly Government Servants to go on strike.

5. 3 Balance between Individual rights and Social Control

The fundamental rights guaranteed by Part-III are more specific and detailed. They have to be exercised subject to the limitations embodied in the very Part itself. So to say, the rights are not absolute or unrestricted. For absolute rights cannot exist in any modern state. An organised society is a pre-condition for civil liberties. Possession and enjoyment of all rights are subject to "such reasonable conditions as may be deemed, by the governing authority of the country, essential to the safety, health, peace, general order and morals of the community."[34] The question arises in each case, of adjusting the conflicting interests of the individuals and of the society. Though, "restrictions have to be placed upon free exercise of individual rights to safeguard the interest of the society, on the other hand, social control, which exists for public good, has got to be restrained, lest it should be misused to the detriment of individual's rights and liberties."[35] What is therefore, required, is "to strike a balance between individual's liberty and social control." It is what our constitution attempts to do.[36] As Clause (1) of Article 19, guarantees to the citizens of India, six freedoms, at the same time, the subsequent Clauses

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[34] A.K.Gopalan v. State of Madras, AIR 1950 SC 27
[35] ibid
[36] Basheshar Nath v. Income Tax Commissioner, AIR 1959 SC 149.

(2) to (6) empowers the State to impose reasonable restrictions on the exercise of the freedoms.

5. 4 Formation of unions

As far as right to collective bargaining is concerned, the Industrial Disputes Act, 1947, recognizes the settlement reached between employers and workmen. Under section 2(p) of the Industrial Disputes Act, 1947, settlement means "a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings". Further, Section 18(1) of the Industrial Disputes Act, 1947, lays down that a settlement reached between the employer and his workmen shall be binding on the employer and the workmen who are party to the settlement. Though there is no central law as yet to recognise trade unions in the context of multiplicity of trade unions for the purpose of collective bargaining, many state governments have enacted such laws. There is no law restricting the number of trade unions in any undertaking/industry. Hence, number of trade unions is increasing day by day. It is increasing proportionately with the number of political parties from time to time. In order to restrict the number of trade union and involvement of outsiders in the trade unions National Commission on Labour recommended for passing suitable legislation by the legislature.[37] The trade unions in such states are recognized under the law to facilitate collective bargaining with the employers. No category of employers or workers is denied the right to organize at any level except the members of armed forces, police services and other paramilitary forces. Prior authorisation is not necessary to establish employers' or workers' organizations. Government intervention is limited to the submission of returns by trade unions to the Registrar of trade unions. In case the

[37] To overcome the multiplicity of trade unions it is recommended to impose limit on the number of trade unions.(Report of the National Commission of Labour-2002. Page-338 (Vol-I) (part-I) 2002 GOI.

returns are not submitted in time or the registration has been taken by misrepresentation or fraud, the Registrar is empowered to cancel the registration of the trade union under the Trade Union Act after giving due notice.[38] The recognition of trade unions, wherever provided under the state laws, also requires the trade unions wanting grant of recognition to furnish certain information to the authority specified, for verification of membership/following of the trade unions on the basis of which the recognition is granted.

The Industrial Disputes Act, 1947 was passed with an intention to prevent and settle disputes in industries. The scheme of the Industrial Disputes Act, 1947 implies a right to strike.[39] A wider interpretation of the term 'industry' in Bangalore Water Supply and Sewerage Board v. Rajappa[40] the court included hospitals, educational institutions, clubs, and Government departments, which account for almost 18,000 out of 34,000 Central Government employees. Government servants are citizens like any other employees working in non-governmental undertakings, as such the rights guaranteed to other citizens cannot be denied to the government servants. As said by the Supreme Court it is the 'employer and employee relation' that should be taken into consideration in deciding whether a particular under taking is an 'industry or not. Likewise, it is the relation that counts between the workman and his controlling authority, but not any other factor. Neither constitution nor any Statute requires prior permission for formation of association or union.[41] It is required only in the case of recognition.

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[38] Section

[39] It was held that the right to strike as a mode of redress of the legitimate grievances of the workers and the employees is expressly recognised under the Industrial Disputes Act. [1979 Lab.I.C. 1079(1084(DB)(Punj)]

[40] AIR 1978 SC 548.

[41] In Jordan Government authorization or approval is required to establish employers' or workers' Organizations, for the purpose of registration and announcing a union, but not to conclude Collective agreements.

The past experience shows that it is not correct to say that the government employees' right to strike is restricted. It is always the government or semi-government employees who very frequently, particularly before elections declare and go on strike. Rarely employees working in private sector undertakings go on strike for the issues like manhandling of the employee by the employer or managerial staff etc. in spite of incorporating the provisions in the service rules or conduct rules, the employees of the public sector (whether government or semi-government) and some corporations like Delhi Road Transport Corporation, Andhra Pradesh State Road Transport Corporation etc., Life Insurance Corporation of India, Bharat Heavy Electricals Limited, Port Trust etc., occasionally go on strike on one or the other reason. It is due to employees' strength the some offices are functioning very nominally and no one could dare to take any action against the absenting employees or the employees not discharging duties as per rules. In this context the statements given by Mr. Jyoti Basu the former Chief Minister of West Bengal and CPM supreme, and Sri Budhadev Bhattacharjee commenting that "they had committed mistake by supporting the militant activities of the trade unions, time has come to reconsider the justifiability of the strikes, to review whether these strike calls are helping us or not" etc., are mind blowing. The reason is the developed countries long back had realised this fact made necessary amendments in their labour statutes. The main reason for the collapse of USSR is also said to be the trade unionism. As long as in power Sri Jyoti Basu (as Chief Minister of State of West Bengal) supported the activities of the trade unions and years after leaving the post started criticising the activities of the trade unions is an unwelcoming event. He would have regulated the activities of the trade unions those are affiliated to CPI (M) periodically so that they can be brought under control after specified time.[42]

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[42] In Galicia debate on the workers right to strike was started even prior to 1999. Before saying yes or no to any strike generally there shall be a debate, Document updated on 08.12.2003.(www.labourstart.org) visited on 25.2.05.

Right to form association in USA

Imposing reasonable restrictions on the right to form association is existence not only in India, but also in all the countries where the formation of association is recognised as a right. There is no specific freedom of association under the Constitution of USA but the court by interpretation acknowledged the right to collective bargaining in National Labour Relations vs., Fantsseal Corporation[43]. The Supreme Court of the USA in Bryant vs. Zimmerman,[44] held that State may impose restrictions in the interest of public peace and safety on the right to form association.

5. 4(a) Freedom of association-reasonable restrictions

The economy of the country relies upon the industrial harmony. No economic activity is end by itself. Industry is not an end in itself. It is a social activity, an activity undertaken by members of society, or constituent groups of society, to meet the needs of society. As far as one can see, it will not cease to be a social activity. What makes industry possible, are the paradigms of interdependence within which society functions and progresses. There can be no industry, if there is no consumer. There can be no consumer, if there is no producer. There can be no marker without producer and consumer. There can be no production for the market without tools or machines, without capital, without labour, without managerial skills that brings all these together to produce goods or services that are in demand. There can be no effective demand without purchasing power, and there can be no purchasing power unless there is income, and there can be no income without inherited property or earning from labour/employment, or interest on deployed capital. It is clear thus hat all economic activities is the result

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[43]. 306 US 31.
[44]. 278 US 63.

of interdependent interests, and co-operation among various factors that together constitute the cycle of economic activity. Compulsion that flow from interdependence can be ignored or violated only at the cost of success in one's efforts or at the cost of one's goals[45].

The right to form association does not include right to strike and lock-out[46] or right to collective bargaining. The right guaranteed under Art 19(1)(c) is subject to restrictions. Several provisions of the Essential Services Maintenance Act deal with illegal strikes and the Court upheld the Constitutional validity of such provisions[47]. The Supreme Court in Bidhu v. State of West Bengal[48], held that the law that requires only those unions which represent not less than 15% of the work force in an industry would be recognized, does not offend the fundamental right to form association or union. A restriction based on religion race or caste content in bye-law of housing society, requiring members to belong to, says Parsis; or a restriction requiring a member to transfer his membership with his right to alienate his interest to another Parsi is bad law.[49]

The workers have a right to form unions, and the employers are under an obligation to recognize them and deal with the workers' unions. The freedom to form, a trade union is conferred on the citizens in sub-clause (c) of Clause (1) of Art. 19. This freedom is subject to restrictions that can be imposed in the interest of public order and morality. Stipulating minimum percentage of member-workers in any industry before a trade union can be recognised was held to be valid.[50] The

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[45] *Report of the Third National Commission on Labour, 2002*

[46]. Raghubar Dayal vs. Union of India AIR 1962 SC 263 = 1962 (3) SCR 547.

[47] Rodney Sham Sharma vs. Post Master General, Nagpur, AIR 1965 SC 311 = 1964 (7) SCR 403.

[48]. AIR 1952 Cal 901.

[49]. Zorastrian Cooperative Housing Society, vs. District Registrars, Cooperative Society, AIR 1997 Guj. 136; Damayanti Narang vs. Union of India, AIR 1971 SC 966.

[50]. Raja Kulkarni vs. State of Bombay, AIR 1954 SC 73. (The provision under the Bombay Industrial Relations Act, 1946, for a representative union was held good.)

Supreme Court held that, in the interest of the workers generally would put a non-recognised union in an inferior position; and the members of such union would not be able to "fully enjoy their fundamental freedom of speech and expression also to form the association"[51] as the requirements of minimum percentage of membership and condition of official approval of a union constitute only reasonable restrictions by way of regulation of he union, and its functioning in the public interests.

5. 5 Article 21

Mahatma Gandhi said "Every human being has a right to live and therefore to find the where-withal to fee himself and where necessary; to clothe and house himself". And Article 25 of the Universal Declaration provided: "Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care". Violation of right to life is much more shocking than the violation of individual right. Violation right to life guaranteed under Article 21 which includes food, health, and other basic necessities are concerned, it can be found that there are mass violations of human right.

5. 6 Article 38

It is a basic value dire directive and a good starting point. It reads as follows:
"38 State to secure a social order for the promotion of welfare of the people:

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[51] Balmer Lawrie Workers' Union vs. Balmer Lawrie & Co. Ltd. AIR 1985 SC 311. See also Santaram Khudai vs. Kimatrcei Printers & Processor Pvt. Ltd AIR 1978 SC 202; Girja Shankar Kashiram vs. Gujrat Spinning & Weaving Mills Ltd. All (1962) 3 Suppl. SCR 890; Raja Kulkarni vs. State of Bombay, AIR 1954 SC 73.

(1) The State shall strive to promote the welfare of the people by securing and protecting as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations".

India has its cultural roots from times immemorial. Political, constitutional pledges and tryst with destiny which together constitutes the nation's founding faith of social justice with an egalitarian bias and participative accent. In this context, our legislatures and courts and our governments must be judged by fundamental evaluations of their performance, dismissing the propagandised plans of development and social justice litigation as misleading flares.[52]

Combine reading of Article 19 and 38 makes it clear that right to form association or unions must be protected by the State in order to promote the welfare of the citizens and to minimise the inequalities. Underlying the importance of right to development which is one of the most important basic human right Chief Justice Bhgawati (as he was then) in 1986 in his address in Bombay, emphasized what is a text book-lesson for developmental jurisprudence. He argued:

"The right to development is one of the important basic human rights and it constitutes the culminating point of the evolution of the concept of human rights. This super light, transcending the differentiation of civil and political

[52] Krishana Iyer, J, (Retired Chief Justice of India), Social Justice-Romance and Reality Social Justice-Sundown or Dim down?

rights and socio-economic rights into the future dimension, has been termed a "human right of the third generation". It has been recognised as an individual as well as collective right..."[53]

Hence the government shall strive for the development of the citizens of the country in a way their basic human rights shall be recognised and fit for future and can be recognised by future generation as an individual as well as collective right. However, the rights of one class of citizens shall not transgress the rights of the other sections of the society. Hence the rights guaranteed by Article 19 (1) (c) is not an absolute right but subject to public interest and security of the State as mentioned Article 19 (6).

5. 7 Freedom of Association-Defence personnel

Origin of the Indian Army

The Indian Army sprang from very small beginning. Guards were enrolled for the protection of the factories or trading posts which were established by the East India Company at Surat, Masulipatam, Armagaon, Madras, Hoogly and Balasore in the first half of the Seventeenth Century. These guards were at first intended to add to the dignity of the Chief Officials as much as for a defensive purpose, and in some cases special restrictions were even placed by treaty on their strength, so as to prevent their acquiring any military importance. Gradually, however, the organisation of these guards was improved and from them sprang the East India Company's European and Indian troops. Both these steadily increased in numbers, until in 1857, it numbered (including local forces and contingents, and a body of 38,000 military police) on less than 3,11,038 officers and men.[54]

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[53] Mainstream, Vol. XXIV, No. 28, dated 25.3.86, p. 11.
[54] Imperial Gazetteer of India, 1907, Vol IV (Ch, XI).

East India Company's Mutiny Act

Statutory provision was first made for the discipline of the East India Company's troops by an Act passed in 1754 for "punishing Mutiny and Desertion of officers and soldiers in the service of the United Company of Merchants of England trading to the East Indies and for the punishment of officers committed in the East Indies, or at the Island of Saint Helena". Section 8 of the Act empowered the Crown to make Article of War for the Government of these troops, and such Articles were accordingly made and published. The terms of the Act were wide enough to cover both European and Indian troops, by the language of the Article themselves shows that they were originally intended for Europeans only. In the absence of any other Code however, the Government of Bengal , Madras, and Bombay seem to have applied these Articles, with such modifications and omissions as appeared necessary, to the bodies of Indian troops maintained by them, of which the present Indian Army if the descendant. In 1813, owing to doubts having arisen as to the legal validity of the existing arrangement for the discipline of the Indian troops, provisions were inserted in the Act (53G Geo. III, Cap 155 Ss. 86 and 97) which was passed in that year to extend the Company's privileges for a further term, which legalised the existing system and gave power to each of the Governments of Fort William, Fort Saint George and Bombay to make laws , regulations, and Articles of War for the Government of all Indian Officers and soldiers in their respective services. It was further provided in 1824 (4 Geo. IV, Cap 81, s 63), that such legislation should apply to the Indian troops of each presidency, wherever serving, and whether within or beyond His Majesty's dominions.

Thus the separate importance and status of the defence personnel was recognised even in 1750s. Defence personnel stand on different footing when

compared to other Government servants. If they are allowed to form associations or unions ultimately the security of the State may be in danger.[55] These factors were taken into consideration while framing the Constitution of India and the right to form associations and unions was restricted to the defence personnel.

Hence the framers of the Constitution had decided in prohibiting the defence personnel like police, military etc. from forming an association or unions. Article 33 of the Constitution of India empowered the parliament to restrict the rights conferred by Part-III to the members of the armed forces who are charged with the duty of maintaining the public order and peace.[56] This Article provides an exception to the provisions of Part-III. It says that the provisions relating to Fundamental Rights, which are otherwise applicable to all persons, may be restricted or abrogated by Parliament in their application to members of the armed forces,-in view of their special position, and the need of discipline among them. If the defence personnel were given the right to form association which in turn may lead to declaration of strike may lead to uncontrolled law and order in the society at times. As in England[57] military law in India is now contained in statutes, primarily, the Army Act (XLVI OF 1950), Air Force Act (xlv of 1950) and Navy

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[55] The officers and man of the armed and security forces, and police organisation are not free to form, or to member of any association/union. Society or institution, unless permitted by a law/ police regulation framed under legal authorization. Nor any association of their can seek, or can apply registration under the Trade Union Act, 1926. (Delhi Police Non-Gazetted Karamchari Sangh v. Union of India AIR 1987 Sc 379; Ous Kuttingal Achudan Nair v. Union of India, AIR 1976 Sc 1179.)

[56] Article 33.
"Parliament may by law determine to what extent any of the rights conferred by this part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

[57] In England, a member of the armed forces stands under a dual liability. on the one hand he is subject to all the special duties and discipline of the army (There is a Code of special law, called military law, to enforce discipline among soldiers. This is embodied in the Army Act, 1881, the King's Regulations and Army orders.); on the other hand, he is subject to all the duties and liabilities of an ordinary citizen.

Act (62 of 1957). it governs persons who are subject to these Acts.[58] Whether in time of war or peace, and such persons include not only members of the Regular Army, Air Force or Navy, but also persons, not otherwise subject to military laws, who are either employed by, or accompany, any portion of the regular forces,[59] e.g., a whole time nurse in a military hospital; a civilian storekeeper in an Army Depot or a member of the Military Engineer Services. Army Act, 1950 provides for the restrictions of certain fundamental rights which are conferred on every citizen under Part-III of the Constitution of India. These restrictions are contained in Section 21[60] and Army Rules 18 to 21. Under the said Rules the fundamental rights to form associations or unions and of speech and expression and assemble are abrogated. These rights have been abrogates because of the nature of duties performed by members of the regular army and for the maintenance of discipline among them. Defence personnel include not only persons recruited for that purpose but also the persons directly or indirectly connected to them. In O.K.A. Nair vs. Union of India AIR 1976 SC 1179 it was held that

> The contention of the "civilian" employees, designated as 'non-combatants' such as chowkidars, lascars, barbers, mechanics, boot-makers, tailors, etc. attached to the Defence Establishments were civilians and their service conditions were

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[58] Kohli v. Union of India, AIR 1975 SC 612.

[59] Achudan v. Union of India, (1976) I SCWR 80.

[60] Section 21. Power to modify certain fundamental rights in their applications to persons subject to this Act. -
Subject to the provisions of any law for the time being in force relating to the regular army or to any branch thereof, the Central Government may by notification, ,make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act-
(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society institution or association, or any class of societies institutions or association;
(b) to attend or address any meeting or to take part in any demonstration organized by any body of persons for any political or other purposes;
(c) to communicate with the pres or to publish or cause to be published any book, letter or other document.

regulated by Civil Services Rules and therefore they could not be called "members of the Armed Forces" within the meaning of Article 33 of the Constitution was rejected by the SC and held that the civilian employees of the Defence Establishment answer the description of the members of the Armed forces within the meaning of Article 33 and therefore were not entitled to form trade union. It is their duty to follow or accompany the Armed Personnel on active service or in camp or on march. Although they are non-combatants and in some matters governed by the Civil Service Rules, yet they are integral to Armed Forces. Consequently, under Army Act the Central Government was competent to make rules restricting or curtailing their fundamental right under Article 19(1)(c)."

Article 9 of Freedom of Association and Protection of the Right to Organize Convention (No. 87) concerning Freedom of Association and Protection of the Right to organize declares that

"1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation, the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention. Thus, the above domestic laws of India are in conformity with the International Conventions.

Para-military like Police, Central Reserve Police Force are also the employees of the respective government. Once they are allowed to form associations the next step would be collective bargaining for their demands (for high salaries, Bonus, etc). Failing in achieving their demands they may declare strike. If the police personnel were allowed to strike the society will be at the mercy of the anti-social elements. Some countries already experienced the bitter taste of police or Para – military forces. There have been many Police strikes (i.e. work stoppages) in various parts of the world over the last 100 years[61]. They usually occur for the

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[61] In the United States and Canada, for example, there have been no less than 11 such strikes including such cities like Boston (1919), Montreal (1969), Waukegan (1970) and New York City (1971). Of these, the Boston strike is one of the better known. In September 1919, the Boston Police went on strike for higher pay. Nineteen (19) men were fired for trying to organize a union. The public was struck with fear when the stike commenced. The city was plunged into a riot. Then Governor Calvin Coolidge of Massachusetts is quoted as saying ".. there is no right to strike against the public safety by anybody, anywhere, anytime." He reacted by mobilizing the National Guard and hiring an entirely new Police Force. It was the fame he gained from this strong action that secured him the US Vice-Presidential nomination in 1920.

A popular variant of a conventional strike in North America is what is known as "Blue Flu". All of a sudden, on the same days, all aggrieved policemen call in sick. This effectively paralyses operations without raising the sticky questions of violating the law or formally going on strike - which is illegal for public safety officials in many states. Cities like Winnipeg, Detroit, Los Angeles, Seattle etc. have had such "outbreaks" from to time. It is an often effective tool used in collective bargaining.

In Europe there was a serious Police Strike in Finland in 1976, one in Belgium in 2000 and another in Yugoslavia in 2001. In Australia, the Police Strike of 1923 continues to capture the imagination of pundits.

In South America there have been quite a few too, involving both civil and military police. The most prominent recent ones took place in Brazil in 1997 and 2001 and in Bolivia in 2000.

In Asia there was a major Police Strike in Pakistan in 1972. There have been quite a few strikes in India too.

In Africa, there was a strike in Egypt in April 1948.

More recently, in 1993, there was a Police strike in the Eastern Cape province of South Africa.

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In 1998, about 300 police officers in the state of Chiapas in Mexico, angered by the arrest of 9 of their colleagues on serious criminal charges, cited corruption at higher levels of the Police, in deciding to stage an armed mutiny.

In 1999, Police Special Forces (FEP) and anti-narcotics agents in Guatemala seized control of their headquarters and demanded the dismissal of their commander as well as better work conditions. After negotiations they surrendered peacefully. The FEP was disbanded and former FEP agents reassigned to other Police units while a new special unit was recruited.

In December 1999, extending to January 2000, an "arms down" strike was staged by the Manipur Rifles, the Police Training School (MPTS) and the 11th Indian Reserve Battalion (IRB) in India complaining about theft of funds and non-payment of arrears and allowances. The direct effect was that VIP security - usually provided by these men - was immediately compromised. The Fire service even joined in the strike in sympathy.

In December 2000, there was a serious Police mutiny in Djibouti, sparked by the dismissal of the Chief of Police, General Yabeh. Eighteen soldiers and civilians were killed in fighting with the Army, most of them at the police barracks in Artida. Scores of arrests were made.

Successful or unsuccessful attempts at outright usurpation or seizure of the levers of state power and authority by the Police - acting alone or in concert with the military - have occurred in history. Three examples will suffice.

On February 24, 1966, President Kwame Nkrumah of Ghana was overthrown in a joint Police-Army coup while he was on trip to China. The Police Special Branch (Intelligence) in particular, was neck deep in that operation, in collaboration with Colonel Kotoka, which led to the emergence of General Ankrah. Before then, there were tensions between the government and the Police after a police constable had tried to assassinate the President. Nkrumah reacted by disarming the Ghana Police, and replacing it with a secret security police unit, which he thought would be loyal to him. He was wrong.

Three years later in Somalia, General Siad Barre, who had been a Police Officer before transferring to the Army, seized power in a joint military and police coup in October 1969.

On July 29 1981, Sir Dawda Jawara, Gambia's President, was attending the wedding of Charles and Diana in London when he was informed by the British Foreign Office that Policemen had seized power in his country. [Nowamagbe Omoigui (South Carolina), *Police Strikes, Mutinies and Coups in world History*, www.Nowa@prodigy.net] visited on 27.10.04.

same reason – improved conditions of service; and in some cases discontent with corruption and incompetence within the force.

In 1978 the Apex Court in Bangalore water supply and sewerage board v. Rajappa, held that "A wider interpretation of the term 'industry' by the courts includes hospitals, educational institutions, clubs and government departments, which account for almost 18,000 out of the 34,000 Central Government employees".[62] This judgement is having its impact on the decision of the Same Apex court on the decision given in 2003.[63]

5. 7(b) United Nations

Article 17 of the United Nations Declaration of Human Rights postulates that: -

"Every one has the right to freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and import information and ideas through any media and regardless of frontiers."

Freedom to assemble when lawful?

Article 19(1)(b) guarantees to all citizens of India right "to assemble peacefully and without arms." The right to assemble includes the right to hold meetings and to take out processions. The right, however, is subject to the following restrictions: -

1. The assembly must be peaceful;
2. It must be unarmed;

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[62] AIR 1978 SC. 548.
[63] T.N. Rangarajan v. Governemnt of Tamil Nadu and others AIR 2003 SC 3032.

3. Reasonable restrictions can be imposed under Clause (3) of Article 19.

The right to assemble implies the very idea of the democratic government. The right to assemble thus includes right to hold meetings and to take processions. Freedom of Association and Protection of the Right to Organize Convention Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize which was adopted by the International Labour Organisation on 9th July 1948 (in its thirty-first session) lays down that, governments, employers' and workers' organizations to uphold basic human values - values that are vital to our social and economic lives. The declaration recognises 'freedom of association and the right to collective bargaining'. This right, like other individual rights is not absolute but restrictive. The assembly must be non-violent and must not cause any breach of public peace. If the assembly is disorderly or riotous then it is not protected under Article 19 (1)(b) and reasonable restrictions may be imposed under Clause (3) of Article 19 in the interest of 'sovereignty and integrity of India' or 'public order'.

When a lawful assembly becomes unlawful?

Article 19(1)(b) saves existing Indian law regulating public meetings in the interest of public order if the restrictions are reasonable. If an assembly becomes unlawful it can be dispersed. Chapter VIII of the Indian Penal Code lays down the conditions when an assembly becomes 'unlawful'. Under Section 141 of the Indian Penal Code, an assembly of five or more persons becomes an unlawful assembly if the object of the persons composing assembly is-

(a) to resist the execution of any law or legal process,

(b) to commit any mischief or criminal trespass,

(c) obtaining possession of any property by force,

(d) to compel a person to do what he is not legally bound to do or omit which he is legally entitled to do,

(e) to overawe the Government by means of criminal force or show of criminal force or any public servant in the exercise of his lawful powers.

Under Section 129 of Criminal Procedure Code, 1973 a lawful assembly when turns subsequently unlawful may be ordered to be dispersed if the disturbance to the public peace is reasonably apprehended. Section 151 of the Indian Penal Code makes it an offence not to disperse after a lawful command to disperse has been given.

Section 107 of the Criminal Procedure Code empowers the magistrate to obtain security for keeping the peace from any person who is likely to commit a breach of peace. Section 144, Criminal Procedure Code, 1973 empowers the magistrate to restrain an assembly, meeting or procession if there is a risk of obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of the public tranquillity or a riot or any affray.

The Police Act, 1861, empowers a public officer to direct the conduct and prescribe the routine and time of all assemblies and processions in the interest of public order. Under section 30 of this Act, prior licence has to be taken by members of the public to take out a procession. A law conferring authority to the magistrate to grant or refuse a licence to hold a meeting or a law imposing a restriction that no public procession could be taken out without a licence from a magistrate has been held to be void.[64]

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[64] Dasappa v. Dy. Additional Commissioner, AIR 1960 Mys 57.

5. 8 Article 358

Suspension of rights during emergency:- during proclamation of emergency, the courts will refrain from pronouncing upon validity of laws under Article 19 (1), for the reason that after the proclamation of emergency, nothing in Article 358, would restrict the power of the State of making laws or of taking any executive action, which, but for the provisions contained in Part-III of the Constitution, the State would have been competent to make or take.[65]

As soon as the president under Article 358[66] issues a proclamation of emergency, the provisions of Article 19 are automatically suspended.

State being a conglomeration of group of associations cannot expect to serve the interest of a group undermining the interest of the rest. A fundamental duty is imposed upon the citizens to protect the sovereignty of unity and integrity of India [Article 51A (c)],[67] to defend the country [Article 51A (d)],[68] to safeguard public property [Article 51A (i)],[69] to strive towards excellence in all spheres of individual and collective activities.

Indian Constitution is the largest constitution drafted by independent citizens as such if is aimed at their security, welfare and development. It is the duty of the person to utilise his intelligence towards the welfare of the society.

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[65] State of Madhya Pradesh v. Thakur Bharat Singh, AIR 1967 SC 1170.

[66] Article 358(1):
While a proclamation of Emergency declaration that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation, nothing in article 19 shall restrict the power of the State as defined in part-III to make any law or to take any executive action which the state would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetancy, cease to have effect as soon as Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect.

[67] Article 51-A (c) – to uphold and protect the sovereignty, unity and integrity of India.

[68] Article 51A (d) – to defend the country and render national service when called upon to do so.

[69] Article 51A (i) – to abide by the Constitution and respect its ideals and instructions, the National Flag and National Anthem.

From ancient times India is famous for its intelligence. After independence number of times Constitutions was amended but hardly any amendment was aimed at restricting the uncontrolled activities (including illegal activities) of the association or unions. The provisions of the Constitutions were not only misinterpreted by the unions but also misused thereby caused severe damage to the society. Had the provisions of the Constitution was interpreted and implemented in both letter and spirit India would have been the leading economy in the world today.