CHANGING DIMENSIONS OF STRIKES AND ITS LEGAL CONSEQUENCES IN INDIA

THESIS SUBMITTED TO THE
UNIVERSITY OF NORTH BENGAL
FOR THE DEGREE OF
DOCTOR OF PHYLOSOPHY IN LAW

SUPERVISOR

DR. ALI MEHDI
HEAD
DEPARTMENT OF LAW

SUBMITTED BY

KATARI KASI VISWESWARA RAO
LECTURER
SIKKIM GOVERNMENT OF LAW COLLEGE
GANGTOK

DEPARTMENT OF LAW
UNIVERSITY OF NORTH BENGAL
RAJA RAMMOHUNPUR
DIST. DARJEELING - 734 013
WEST BENGAL, INDIA
November, 2005

Tel: 0353-2581226 (O)
0353-2582354 (R)
Fax : 0353-2581546

UNIVERSITY OF NORTH BENGAL
DEPARTMENT OF LAW
P.O. NORTH BENGAL UNIVERSITY
RAJA RAMMOHUNPUR
DIST. DARJEELING. PIN -734430.
WEST BENGAL, INDIA

Dr. Ali Mehdi
Reader & Head

CERTIFICATE

This is to certify that Mr. Katari. Kasi Visweswara Rao, Lecturer, Sikkim Government Law College, Gangtok has pursued research work on the topic entitled **"Changing Dimensions of Strikes and its legal consequences in India"** under my supervision for more than two years and fulfils the requirements of the Ordinance relating to Doctor of Philosophy of the North Bengal University. To the best of my knowledge and belief the thesis contains the original work don by the candidate and it has not been submitted previously by him or any other candidate to this or any other University for any degree. In habit and character the candidate is fit and proper person for the Ph. D, Degree.

I recommend submission of the thesis.

30/11/95

Dr. ALI MEHDI
Supervisor

ACKNOWLEDEMENT

Team work has been the key to great achievements particularly in research work. But it is no panacea to serve all needs. I had set myself could not well be satisfied but, rather, were certain to be missed, by cooperative efforts. I hereby acknowledge with gratitude the help rendered by the following persons during my research work and preparation of thesis.

I wish to express my heartiest thanks to Sri Ali Mehdi, Reader & Head of the North Bengal University college of Law, who is also my guide. He not only suggested the title of this work entitled "CHANGING DIMENSION OF STRIKES AND ITS LEGAL CONSEQUENCES" at the inception, but also gave crucial support in searching decisions, painstaking comments on each chapter and bringing the work to completion otherwise, it would never have come what it is. I have received valuable help from my guide, through which I could do major work in a very short time.

I have greatly benefited from the comments and thoughts from the supplemented information provided by Sri Katari Devaiah, Chief Vice-President, National Mazdoor Union (Retired ADC, Guntur-II Depot), APSRTC, Andhra Pradesh. I would like to extend my sincere thanks to the staff of APSRTC, particularly Guntur and Vinukonda Depots. I fail in discharging my duty if I could not mention the name of Bodi. Venkateswarlu, Security Guard of Coal mines (who assisted me in collecting opinions of the workmen working in coal mined both on surface and deep mines), Singareni Collieries, Kothagudem, Andhra Pradesh and other staff of the coal mines.

My colleagues have been good enough to provide various thoughts and to give the benefit of advice. I wish to record my indebtedness to Sri Birendra

Chettri, State Informatics Officer, National Informatics Centre, Gangtok, Sikkim who rendered unforgettable help in the research work by allowing me to use his laboratory and extending the technical support which help is un-forgetful throughout my life. During my research I find him to be **"a man of help"** to any one in need. Every body in his life gets the chance of helping the others, but rare persons like Sri Birendra Chettri, utilize the chance to the maximum, which may allow the beneficiaries to develop their knowledge and qualifications. Any much I write here with regard to him is nothing before the help rendered by him to me and others. The other staff of the NIC, Gangtok, Sikkim is no less than the Scientific Officer. I sincerely thank Sri Gulshan Rai Nagpal, Advocate, New Delhi in sharing his valuable opinions with regard to analysis of the research material.

I am entirely not here to omit the names of Sri R.K, Agarwal & family, who did not find much to object to me from any help. I wish to thank the staff of the American library and British library, New Delhi. I am also indebted to my friends as well as present and ex-students (particularly Suraj Prakash Rasaily, Senior Accountant, O/O the Accountant general, Gangtok, Sikkim) for the help rendered by them in compilation of the work and technical support in computer related problems. I like to acknowledge the support rendered by Mr. K. Rajesh and G. Siva, Data Operators of BSNL, Gangtok in collecting the information from various sources particularly from VIPs. I am grateful to A. Appa Rao, Sr. A.O. (TRA), BSNL, Gangtok, for the help rendered by him.

Finally, I would like to extend my heartiest thanks to my wife Mrs. Chandravati, B.A., who did the major role of Steno, of taking notes and typing on computer. She did this Herculean task very easy. She is closely associated with my work all the time. She has been my critical superego, sternly insisting on logical and semantic clarity in the formulation of my thoughts and mode of expression.

K. Kasi Viswa Rao 29/11/05

KATARI KASI VISWESWARA RAO

CONTENTS

1.	**Introduction**		1
2.	**Meaning and Definition of strike**		12
	2. 1	Freedom of Association	16
	2. 2	Right to strike	18
	2. 3	Right to Strike: what it includes and what it implies?	20
	2. 4	Participation in decision taking (Upward flow of authority)	20
	2. 5	**Collective bargaining**	22
	2.5(a)	Bargaining factors	22
	2.5(b)	Prohibition of collective bargaining	29
	2.5((c)	Limitation of collective bargaining	29
	2.5(d)	Third party assistance in collective bargaining disputes	30
	2.6(a)	**Definition in general**	31
	2.6(b)	Definition by ILO	34
	2.6(c)	Definition under Industrial Disputes Act, 1947	35
	2.7	**Types of Strikes**	43
	2.7(a)	Primary strikes	44
	2.7(b)	Secondary strikes	54
	2. 7(c)	Non-Violent tactics	60
3.	**Nature & Scope of Right to strike**		73
	3. 1	Right - Meaning	73
	3. 2	Social aspects of strike	77
	3. 3	Importance of strike	79
	3. 4	Technological factors	81
	3. 5	Progress	82
	3. 6	Strike and fundamental right	97
	3. 7	Possibility of permanent ban on strike.	112
	3. 8	Globalisation and implementation of new economic Policies and role of multi-national companies	118

4	**Historical perspectives**		120
	4. 1	Development of right to strike in United Kingdom	121
	4. 2	Development of right to strike in USA	134
	4. 3	Development of right to strike in Russia	142
	4. 4	Development of right to strike in India	145
5	**Causes of strikes**		161
	5. 0	Motives for launching strikes	161
	5. 1	Multi unionism	163
	5. 2	Role of the Trade Unions	164
	5. 3	Non- Payment of wages	179
	5. 4	Privatisation	180
	5. 5	Down sizing employment	185
	5. 6	Sub-Contracting	187
	5. 7	Work-Culture	188
	5. 8	Job-redesign	192
	5. 9	Involvement of workers	193
	5. 10	Job security	193
	5. 11	Technology	196
	5. 12	Expectations from employer/supervisor	197
	5. 13	Expectations by the employer	198
	5. 14	Colleagues	198
	5. 15	Delay in Judicial Proceedings	199
6	**Strikes and Constitution of India**		200
	6. 1	Workers' rights	205
	6. 2	Constitutional provisions	210
	6. 2(a)	Article 19	210
	6. 2(b)	Article 253	216
	6. 2(c)	Article 310	217
	6. 2(d)	Article 311	217
	6. 2(e)	Article 51(c)	218
	6. 2(f)	Article 37	218
	6. 3	Balance between individual rights and social control	220
	6. 4	Formation of unions	221
	6. 4(a)	Freedom of association – reasonable restrictions	224
	6. 5	Article 21	226
	6. 6	Article 38	226
	6. 7	Freedom of association – Defence personnel	228

6. 8	Article 358	238
7. Strikes - Statutory provisions		240
7. 1	Industrial Disputes Act, 1947	242
7. 1(a)	Strikes in Public Sector Undertakings (Section – 22)	243
7. 1(a)(i)	Reasons for enacting section 22	245
7. 2)	General prohibition of strikes (Section 23)	254
7. 3	Section 24	258
7. 4	Consequences of illegal strikes.	259
7. 5	The Trade Union Act, 1926	262
7. 6	The Essential Services Maintenance Act, 1981	264
7. 7	The Right to Information Act, 2005	267
8. Judiciary on "Right to Strike"		269
8. 1	Phase – I	272
8. 2	Phase – II	280
8. 3	Phase – III	284
8. 4	Phase – IV	288
8. 5	Phase – V	290
8. 6	Phase – VI	295
9. Effect of strikes		308
9. 1	On Employees	308
9. 2	On employer	317
9. 3	On Government	325
9. 4	On General public	354
9. 5	Opinions of the employees and union leaders.	356
10. **Conclusion and suggestions**		368
Table of Cases		i to vii
Bibliography		I to VII

CHAPTER –I

INTRODUCTION

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

.....Rig Veda 8.4.17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Right to Information Act, 2005 (N0. 22 of 2005) is passed with an object of providing necessary information to the needy person and the preservation of confidentiality of sensitive information. Possibility of getting information from the employer by the employees with regard to his financial capacity (which is necessary for knowing his ability to pay wages, bonus, etc) will be made after passing this Act.

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

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

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

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

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

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

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

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

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

Chapter-II

Meaning and definition of "strike"

Too much wealth makes man greedy and slave to sensuous pleasures,
It makes him extrovert and darkens his inner vision;
Desires unfulfilled give rise to grief and their fulfilment cause greed;
Thus he feels miserably thirsty even standing in the fathomless sea of wealth.
The raging waves of worldly riches surround and submerge his senses, but he fails to quench the thirst of his soul.
He runs after countless mirages in search of peace, but all in vain.
At last he prays for one drop of God's love which may satisfy all his cravings.
He cries, "Release me, O God, from these shackles of exhausting sensuous pleasures and give me lasting peace."

..... Rig Veda[1]. 7.89.4.

The respect or importance of any country among the family of nations can be recognized not on the basis of ancient glory, either cultural or social; but on its economic status, which is based on present industrialization. In modern industrial organizations, a worker acts in different roles simultaneously. Organizations are social systems. Modern society depends upon organizations

[1] Pandit Satyakam Vidyalankar, The Holy Vedas, P. 211, Clarion Books, Delhi

for its survival. Organisations exist to serve people not vice-versa. A single organization does not exist alone. They influence each other mutually in a complex system that becomes life style of the people. If one wishes to work in them or to manage them, it is necessary to understand how they operate. Organizations combine science, people-technology and humanity. The uncontrolled increasing tendency of modern industrial system has constantly widened the gulf between those who own and manage the industry and those who work in it. A worker though a consumer, above all, he is an individual with his own special needs, desires, and motivations deriving from his home, community, and working environment[2]. The way he functions as how well he influences a producer fulfils his desires and aspirations in the other capacities. His approach to his job will certainly be different if he believes he is forced to suffer an unfairly low standards of living and occupy an inferior social status, of course, his attitudes towards what constitutes a fair standard of living will be continually revised upward as the economy grows. The desire for more benefits by the workers and profits by the management gave rise to conflicts in labour-management relations, which resulted in fall or production and hardship to the general public. The best efforts made by the government proved futile which is clear from occasional out break of strikes, lock-outs, closures etc. All that can be done is to increase our understanding and skills so that human relations at work place can be upgraded and worthwhile.

Industrial peace is a pre-requisite condition to secure effective industrialization of a country. Industrial unrest is an impediment for the industrial development of a country. The spirit of litigation grew and delayed legal process gave raise to widespread dissatisfaction. The litigation between the labour and management instead of reducing the difference further widened it. At this stage it is necessary to find the reason for raising disputes between the labour and management. One can work effectively with people if he is prepared to think about them in human terms. For the purpose of resolving the dispute between the haves and have-nots it is necessary to study and apply the

knowledge about how people act within an organization, which is otherwise called, as organizational behaviour. It is a human tool for human benefit.

Every human being because of his in hidden nature wants to keep the rest of the society under his control, but it is nature, which does not allow him to do so. The employee likes to dispose of his labour, as he likes where as the employer wants to get the labour at his disposal. However, the wage was attached to the labour, which is an inherited right of the worker for which he is working. The workman wants minimum wages if not fair wages; at the same time he wants to withdraw his labour when the terms and conditions of labour are adverse to him. For this purpose he wants to associate with other workers who are equally treated and working in unfavourable and inhuman conditions. At the same time the employer who invested the capital wants to get the labour as low as possible so that he can earn more profits. In order to over come the possible danger of withdrawing the labour by the workmen employer enters in to a contract with them. This system of contract was influenced by the system of equality. Most people thought that it is impossible for both parties to gain from trade. The common view was that someone had to win and the other had to lose. Hence the life of trade and contract was seen to be disreputable. Since the only contracts which were fair, and therefore legitimate, were contracts in which both parties gained equally, a great deal of scholastic endeavour went into determining what comprised a just wage. The fundamental essence of the just wage was that it was the only wage, which legitimised the contract between employer and employee, and thus neither party was free to vary the wage. Change in time had proved that wages once fixed couldn't stand for a long time. Factors like rise in prices change in standard of living etc. forced the workers to raise their voice for higher wages. In the struggle between the labour and the management for higher wages and more profits there arose a system of 'survival of the fittest'. In this struggle the strongest party i.e. the employer since is vested with the power of money succeeded and exploited the labour and as a result the working class was suppressed and the capital class

started to rule system. Since the administration of the state or the Government since dependant upon the tax being paid by the employers it started supporting the cause of the employers, which added fuel to the fire. For the purpose of survival the workman who is weak in all respects must take the shelter of other factors like co-operation from the other members of the society.

The labourer at wages has all the disadvantages of freedom and none of its blessings, while the slave, if denied the blessings, is freed from the disadvantages. The labour, ones he wakes up has to think about the bread he has to provide for his family if not for other facilities, which forces him to accept the job at any lower rate and under inhuman conditions. Yet these are no infrequent incidents in the lives of the labouring population. Even in seasons of general prosperity, when there was only the ordinary cry of "hard times," one can see hundreds of people in a not very populous village, in a wealthy portion of our common country, suffering for the want of the necessaries of life, willing to work and yet finding no work to do. A workforce, who cannot withdraw its labour at will, is either oppressed or enslaved. To overcome this problem the workers were forced to form 'association' or 'union'. In this chapter meaning of the word "Association" or "Union" is explained and its origin and development is also discussed. The need of the citizen to form 'association' or 'union' was recognised long before the Vedic period as such the kings allowed and promoted formation of associations or unions. Before and after independence also, in India, association and unions had played their respective role in welfare activities of the workers, and independence movement also. Need and importance of organisation can be understood only if one knows its effects. The activity of strike can be better exercised if one knows what it includes and implies. Collective bargaining is the only process which enabled the workers' community to deal with the employer who is both economically and otherwise also powerful. In this Chapter importance, essentials and effects of collective bargaining are discussed. In this chapter the

ingredients and definition of 'strike' by various authors is given and discussed. In the end different types of strikes in India and other countries are also given.

2 . 1 Freedom of Association

Man is a social animal, and instinctively likes association. The family, community, fraternity, dal samarah, samiti sngh are associations in which he is associated with his near ones. The journey or the process or the mode of claiming reasonable wages and humane working conditions was full of hurdles and countless number of worker (including slaves) had to sacrifice their lives in the struggle with both employer and the government. The way from slavery to statutory wages was proved to be full of horrendous experiences. The journeymen who pass in this way were to be drenched with blood[2]. Persons share his ideas, religious belief, or membership of his caste, race and political programmes with others. The association may be formed for common social, economical, religious, cultural, political and other objectives. The Constitution gives recognition to his natural desire, and confers a fundamental right on the citizen to form association, subject to restrictions in the interest of public order and morality.[3] This freedom implies that several individuals can get together and form voluntarily association with common aim, legitimate purpose and a community of interests. His associational freedom includes his right to attend, participate or address any meeting or take part in any demonstration organised by the association, union etc.

---

[2] The first of these events of 1676 (in USA) was a rebellion of the white workers and African slaves together against the planter class in a colony of Virginia. And the reason that this rebellion was important, was that at then time the white workers and the black slaves had roughly similar working conditions and the race difference, that later developed, did not exist. The second event of 1676 was a war in the North-East New England states that was known as the King Philip's War. And in this war the puritans, who were radical protestants from England, killed about 30,000 Indians and established a total military control of the New England North-East part of America.

[3] Article 19(1) (c) & (4).

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. 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.

Workers those who are week in status can be strong if come together for common interest or benefits. In order to protect the interest of the working class they were forced to unite and ultimately the system of 'protest' came in to existence. In the early phase though it was in the form of 'simple protest' later it got its shape through horrendous experiences. Going out on strike is a serious matter involving serious risks and dramatic sacrifices. Strike probably started in the form of protest (which is an in hidden character of the human being) that was undermined or severely suppressed by the management from times immemorial. Employers slowly realised that minority can't stand against the majority. But, later (slowly) they had started realising the importance of the workers and their safety. Some of the demands of workers were accepted and the system of protest (strike) was unanimously (impliedly) recognised as a weapon in the hands of the workers to bring pressure upon the employer. Being together they had won lot of rights, which are minimum requirements of the human being. Formation of workers in to organisation is essential for protecting their long fought rights. Such a society would be a free federation of workplace and community councils that would determine for itself how to co-ordinate the production, distribution and services that modern society needs. Economically it would aim to operate on the basis of 'from each according to their ability, to each according to their needs.'

Freedom is essential for the survival of a person to live like a human being with dignity. Organisation provides freedom to both collectively and

individually, take control of our lives. It enables every member of the organisation/association to have the opportunity to take part in the decisions, which affect them.

The only limit on freedom of the organisations should be that no one else's freedom should be denied. Organisation defends freedom of speech and organisation, the liberty to argue for the ideas of the members and seek support for them. Without society organisation cannot exist. Hence, organisations not only should stand for their rights but also the society wherein they live, as they are part and parcel of such society.

2 . 2 THE RIGHT TO STRIKE

Though, in the beginning the mode of showing protest might be in a different way change in time brought its present form of protest in the name and style of 'strike'. Fifty-five years ago, the Universal Declaration of Human Rights set forth basic standards for what many hoped would be a new world emerging from the devastation of World War II and the horrors of colonialism. Among the rights articulated in that document is, "to form and to join trade unions for the protection of his interests."[4] However, the difficult corollary to the doctrine that the job (and the just wage attached to that job) belongs, through custom or inheritance, to the man, and that he cannot be dispossessed of it, is that the man also belongs to the job. Strikes were therefore intolerable and Higgins certainly regarded those trade unionists who regarded his pronouncements on just wages as nothing more than providing a base from which to bid up the wage, if necessary through strikes or bans, as heretics. He attacked them in the strongest language.[5] In the struggle between labour and management not only the contesting parties are the sufferers but also the rest of the society. A quest for industrial harmony is indispensable for economic progress of the country. Economic progress is bound up with both industrial

---

[4] Pat Youngblood and Robert Jenson, Observe right to unionize by making it reality, (December, 10, 2003),(www.zmag.org/)

[5] Ray N. Evans, The right to strike and the law of contract, (www.nicholls.com)

harmony and industrial peace. Industrial harmony leads to more co-operations between employers and employees, which result in more productivity. It is founded on healthy industrial relations. Healthy industrial relations therefore, cannot, be regarded as a matter in which only the employers and employees are concerned; it is of vital significance to the community as a whole. Therefore industrial harmony involves the co-operation off employees and the community at large. As mentioned in First Five Year Plan[6], 'Peace in industry has a great significance as a force for world peace if we consider wider implications of the question. The right to strike includes the basic provision that the contract of employment is suspended for the duration of the strike, that a striker has not broken his contract of employment by striking, that those on strike may not be penalised for striking.

Some workers are of the view that right to strike needs to be protected by a written, secure and enforceable constitution. The right also includes workplace, national and multinational collective action. It was the extreme hardship and sacrifice of workers who violated the law by striking that forced the government to make the right to strike legal.[7] The right to strike is a basic human right and it would seem that other legislation and rules affecting the working population and trade union rights should only be enacted after a clear mandate has been received by secret, universal and fair referendum, its wording having been approved or written by the concerned parties.

The idea of the `right to strike' is a 20th Century update on the medieval notion that a man owned his job and the `just wage' that went with it. The concept of strike thus passed through different stages and ultimately got the recognition of the government and took the shape of statute by 1900. But the thought of strike first emerged from the skilled artisans and particularly by whites (in USA) on the assumption that they are only playing an important role in production and running of the industry and the others has no importance.

---

[6] Page 572

[7] Doug Bonney, Know your Rights, (www.kclabor.org/know_your_rights1.htm) (visited on 06.04.2004).

But, later they had to realise that all the workers whether technical, skilled or otherwise equally plays an important role in the production. Hence, formation of unions was slowly extended to the unskilled labour also which gave a great Phillip to the union activities that forced the government to pass legislation to protect the inherent interest of the workers at large.

2 . 3 THE RIGHT TO STRIKE: WHAT IT INCLUDES AND WHAT IT IMPLIES?

The right to strike consists of the right to withdraw one's labour. It includes the associated rights to free association, to take supporting and sympathetic action, and to receive support against hardship while doing so at workplaces, nationally, and multinationally.

CONDITIONS OF EMPLOYMENT

Related to the right to strike is job security, meaning by this protection against unfair dismissal and compensation for redundancy. There should be protection against unfair dismissal after no more than at least six months continuous full-time employment. One view is that all workers without discrimination whether organised or unorganised shall be given the protection of job security. All workers whether full-time or part-time workers and home workers need to be given the same protection and rights given to full-time workers. When using part-time workers and home workers, the employer saves office overheads but needs to be made responsible for increased costs of the home worker, for holiday pay, for pension and social security contributions etc.

2 . 4 PARTICIPATION IN DECISION-TAKING (UPWARD FLOW OF AUTHORITY)

The management and trade unions should follow the principles of democracy. In all decisions workers shall be consulted and their opinions shall

be given due regard where they (workers) are going to be effected. Imposed decisions are decisions taken by people who tell others (workforce, employees, party members, population) what 'is good for them' to do, what they have to do shall be avoided as far as possible. For example bitter struggle in 1985/86 in the UK between the community-owned Coal Board and its workforce, wherein the miners were defeated after about twelve months by the management of this community-owned coal-mining industry. The miners opposed the unilateral closure by the Coal Board of most of the UK pits. That is, they opposed the closing of pits without first consulting its employees and the local community.

'Consultation' in 'Works Councils' amounts to no more than asking for an opinion. A legal requirement for an enterprise to consult its employees in Works Council would seem to amount to a requirement to inform its employees of policies being considered which may affect the employees and for asking the employees' opinion about them. This seems a step forward but does not amount to participation in decision taking.

It would be different if the Works Council were the policy-setting body for the enterprise. Their duties must be restricted to prevention of disputes and promotion of harmony between employers and employees. 'Style of Management' discusses at some length the upward flow of authority in relation to decision taking. Participation in decision taking takes place when those affected by a decision themselves take the decision. Decisions about people need to be made by those concerned.

Participation in decision-taking means representation in boardrooms and wherever decisions are taken, by elected representatives who are elected by those affected by the decisions being taken. It also means open decision-taking and freely available access to media. The role of those at the top has to be to carry out the decisions taken and the policies set by those they represent, and to be quickly held accountable to them for doing so. This does not mean that each and every petty matter (like Casual leave for a day) shall be enrooted through unions. Otherwise the practice may improve the influence of the unions and its leaders, but, in long run it may lead to

suppression and revolution. The workers must be educated (by the unions and management) how to deal with the matters personally and when in need (in exceptional circumstances) only the matter(s) may be taken to union(s). The main intention behind formation of association or union is to bargain collectively with the employer who otherwise cannot be forced to hear the week employees. Hence, it is necessary to know meaning and the essentials of collective bargaining so that its importance can be understood.

2 . 5 Collective bargaining

O man ! may there be conformity in your lifestyle
And may there be equal share of food and drink for
All in the bounty of Mother Earth. I join you all
To the common yoke of social welfare. As all the
Spokes of the wheel joined at the centre give it
Acceleration, in the same way be united and equal,
And make progress.....Atharva Veda 3.30.6

Collective bargaining was recognised as an effective mode of settlement of disputes between labour and management. At one extreme in Austria, nearly 100% of private sector employees were covered by a system of sectoral agreements. Indeed, high bargaining coverage rates are found in most countries with a system of sectoral collective agreements, such as Denmark, France, Germany, Italy, the Netherlands, Spain and Sweden. In some cases – such as Austria, France, Germany and the Netherlands – systems of extending sectoral collective agreements to employers and employees that are not members of signatory organisations contribute to high levels of bargaining coverage. In Finland, Greece and Ireland, high levels of bargaining coverage are achieved by inter-sectoral agreements. At the lower end of the coverage spectrum is the UK, where bargaining occurs largely at company or lower levels – here only a little over a third of employees have their pay set by collective bargaining. On average, around 80% of the relevant workforce in the current European Union member States is covered by collective bargaining.

2 . 6 (a) Bargaining Factors

Through collective bargaining, workers gain strength when they *join together* to improve their situation and livelihood. Listed below are the top 10 factors[8] that affect a union's bargaining ability in the workplace. These factors should be kept in mind when it comes to negotiate a new contract and conditions for an individual employee or employees in general.

Percentage of Workers Organized

The bargaining is based on supply and demand. Where the number of workers organised in the industry is more their percentage of bargaining capacity will be more. More the unions in an industry lesser their bargaining power will be. The employer in this case may adopt the method of 'divide and rule'. But, some times it may also comes to light that though the worker united though in majority, still if the future of the industry is uncertain the bargaining power of the union will be at its low and ultimately they may have to surrender. In case where the market is over flooded with the goods or decrease in demand the management may declare lock-out when the workers go on strike. Some times conditions may be imposed by the legislature that shall be fulfilled by the trade union for bargaining with the employer. The Second Labour Commission said "a trade union with 60 to 65 per cent workers of a unit as its members is entitled to have bargaining power.[9]

Economics of the Industry

This is an important factor over which the union(s) and employers have little influence. If the local industry is in a slump, bargaining strength is weakened. But if a boom exists and only a small percentage of workers are union members, bargaining strength remains weak. Where there is demand for

---

[8]. International Association of Heat and Frost Insulators and Asbestos Workers, *Affiliated with the AFL-CIO Building Trades Department and the Canadian Labour Congress*, 2002. (Internet).

[9] Trade Unions won't give up right to strike: CITU, Thestatesman.net, 29.11.2002. (Visited on 28.1.05).

the goods in the market and earning good profits the management can afford to meet the demand of the workers for monitory benefits claimed by them.

There is a direct relationship between market share and bargaining strength. Both rise and fall together on the principle of supply and demand. Where the workers in majority are native residents of that particular area where the factory is situated, they can bargain effectively compared to the workers recruited from other areas. They may use political influence also apart from others. If there is competition between different companies regarding their goods, during the strike period other companies may try to capture the market. On the other hand during strike, since, the undertaking or industry is not in a position to supply goods to the consumers, they will be forced to opt for other brand goods to met their needs, which may later prove to be fatal even for the survival of the industry in competition, as the consumers may loose faith in it or the other company might improve the quality or reduce the price in order to attract the customer. For example when Colgate tooth paste was monopolising the market there was lot of criticism regarding its concentration and air in the tubes. Later on Close-up paste came to the market and snatched away the considerable part of the market. Hence, where the share of the goods in the market is more definitely the bargaining strength of the union will be more as the industry try to protect its own interest.

Ability to Strike and Win

Presently there is no restriction with regard to the percentage of a unit to vote through secret ballots for conducting or going on strike. The second Labour Commission recommended for minimum "51 per cent of workers should vote in favour of strike through secret ballot".[10] If a local union only controls a small percentage of the market, the strike will have little effect. A strike will only be effective if it can disrupt the industry. The ability to strike and win diminishes with decreased market share. As stated earlier more the

[10] Ibid.

unions lesser the bargaining power. Likewise, the unions before going on strike must see whether they can withstand to the probable consequences of the strike. That is the reason why the number of trade unions declares and goes on strike in the first week of the month or within a week after receipt of wages and will enter in to a settlement by the end of that month. Faster the date of next salary day approaches, higher the pressure on the union leaders for settlement by its own members. If that strike continues after the next pay day, number of the union members will be forced to join their duties or to compromise with the management because of economic pressure even against the will of their union leaders. But some times unions (minority) may declare strike even after knowing that they are necessary to show their existence (or importance?).

At Tirupati (the temple city) Andhra Pradesh State Road Transport Corporation running buses from Tirupati to Tirumala (the temple city) which is a valley (hill) road for about 20 minutes journey. In 1970s Mazdoor union (an employees union) which is a minority union (as it was) gave a demand for appointing conductors for each bus plying between Tirupati to Tirumala which was totally unnecessary, and the same was rejected by the management Corporation. Finally, strike was declared and was continued and finally withdrawn, as the Corporation decided to terminate the striking employees and appoint substitute staff in the place of the striking staff. The justification given by the Mazdoor union was, it is necessary to show their existence and importance (as per some members of that union).

Likewise, the management of the industry may some times take a decision to shift the plant or business to some other place/area (Soecial Economic Zones) where they can easily get labour at lower cost, which will severely affect the life and economy of the existing employees. Under such circumstances the union leaders must bargain with utmost care and caution in coming to an agreement with the management. David Jones, President of Local 808 of the IUE (International Union of Electrical Workers) in a newsletter to membership had stated that, "We did not make this decision easily," We had to

consider things like the weak economy and job market. Would we get public and news media support for a strike?" Jones also cited the cost of a strike to workers and their families and the possibility that Whirlpool could move production to Mexico, as it has with some products.[11] He also further informed that "In the 808 newsletter, Jones said the "worst parts" of the tentative agreement were those dealing with wages and medical insurance benefits. Good parts included the company boosting pension benefits, a general wage increase and a starting wage increase for new hires. The tentative five-year agreement would give assemblers, whose base salary is now $15.19 an hour, a wage increase of $1.05 an hour over five years, plus $2,300 in lump-sum and signing-bonus payments during that time. Wages for beginning assemblers, who now get $10.50 an hour under the company's two-tier system, would be increased by $1.75 an hour over the five years. They, too, would receive the $2,300 in payments[12].

Skilled Negotiators

Some members think this is most important but it is not. An adequate negotiator can get the most out of a situation but only if the union market share is positive. The best negotiator in the world cannot win a good contract if the union does not control the labour supply and a good market share. The negotiations (generally by the trade union leaders) will be more powerful if they enjoy the support of majority of the work force. At the same time they have to look after the probable consequence (success or failure) of the demands and agitation. If they declare and go on strike the management may shift the plant to any other area or location in which case the employees in majority may have to severely/adversely be affected. In such a case it is in the interest of the union members at large to settle the dispute at the earliest and with possible monitory benefits. Only union strength is not sufficient to win. The market position also must be taken into consideration before going on strike, otherwise

[11] Timing wasn't right for Whirpool Strike (http://www.ukwhitegoods.co.uk)
[12] ibid.

by taking the market position in to consideration the employer may either close the plant or shift to other place which is economical.

Reliable Information

The negotiating team needs to know the true percentage of the market share the union controls when entering into bargaining. Without reliable information the sessions can quickly deteriorate into empty bargaining.

Skill and Productivity

Some members believe this is true. The skill and productivity of union workers was once unparalleled. The union has its share of low skilled and unproductive workers. Today, non-union workers are also skilled and productive. It is a factor only if the union controls the supply of skilled and productive labour.

Good Relationship with Employers:

The union and the employer have mutual interests. They are in essence, business partners. If union employers cannot win work, union members suffer. A good relationship means nothing without good market share. Apart from the market share cardinal relations with the employer have its positive effects. It prevents lot of disputes. Where there are good relations both labour and management will sit together and settle the issues even at its earliest stage thereby prevent all possible future disputes. 90% of the disputes will be settled if there is a cordial relation between the employer and employee or, employee and his supervisor.

At Vinukonda Bus depot, Ongole District, Andhra Pradesh, India, (Owned by Andhra Pradesh State Road Transport Corporation) all the union leaders will sit with their depot manager at least a week prior to the festival and settle the issue of granting leave to the employees during that particular

festival. Generally as per their agreement, the responsibility of choosing the employees who genuinely in need of leave will be imposed on the union leaders and accordingly the applications will be forwarded by the unions and will be sanctioned by the management. At the same time running the busses by the staff (even by forcing its members to do extra work) without causing inconvenience to the general public also will be on the unions. This practice proved to be very effective where the sanctioning of leave will be a major issued throughout the year. But he same practice was failed in other places at its infant stage as there was resentment by several union leaders particularly younger generation as it may reduce their importance.

Public Support of the Union

Building Trade Unions do not generate public sentiment. Our negotiations do not attract attention like teachers and fire-fighters or large industrial unions. Public support plays a very limited role. But, some times public support may have its effect on the collective bargaining and strikes. It is evident in the recent years that the unions raise their demands and go on strike when failed to meet them out within a few months ahead of elections which embarrass the political parties and the ruling parties. Later on when they declare strike the Governments are taking severe steps against the striking employees and some time the striking unions withdrew their strike and the entire strike period was treated as leave and wages were also not paid as the strike was declared illegal. This is so because the trade unions are suffering from lack of public sympathy (particularly in the case of bargaining or strike for increase in wages). Lawyers can only review language and proposals and advice the negotiating team of possible loopholes. The best lawyer has absolutely no influence over a union's bargaining strength. Again it is interesting to note that the candidate countries for EU membership generally have a lower level of bargaining coverage than the current Member States, with an average rate of around 40%. There are exceptions such as Slovenia, Cyprus and Malta (and to a lesser extent Slovakia and Hungary). However, the

expanded EU is likely to have lower overall levels of bargaining coverage than at present, though not approaching Japanese and US levels[13].

2 . 5(b) Prohibition of Collective bargaining

Trade unions are banned in Bahrain. The partially suspended 1973 Constitution recognizes the right to organize, but the labour law makes no mention of this right, nor of the right to bargain collectively, or to strike. The 1974 Security Law forbids strikes, which would undermine the existing relationship between employer and employees or damage the economic health of the country. The law allows for selected workers' committees in larger companies, and a system of Joint Management-Labour Consultative Councils (JCCs), which can only be set up with government permission. There are JCCs in 19 large joint venture and private sector companies. The Minister of Labour favours setting up JCCs in all workplaces with over 200 employees. The workers' representatives on the JCCs are elected, but they are not allowed to hold election meetings or to campaign for election. Although they represent workers' interests in discussions with management, they can only act as advisers and have no real power to negotiate or bargain. Article 5, paragraph XVII of the Constitution of Brazil provides full freedom of association for lawful purposes; it is prohibited for purposes of a paramilitary nature.

2 . 5 (c) LIMITATIONS ON COLLECTIVE BARGAINING

In Canada groups such as members of the medical, dental, architectural, legal and engineering professions, when employed in their professional capacity, agricultural workers and privately employed domestics are excluded from coverage under the legislation of some jurisdictions, but are nevertheless entitled to negotiate with their employers on a voluntary basis. Such voluntary

[13] Industrial relations in the EU, Japan and USA, 2001, Industrial relations in the EU, Japan and USA, 2001 (http://www.eiro.eurofound.eu.int)

negotiations routinely take place in Canada, for example by the Alberta and Ontario Medical Associations, which negotiate physician fees.

2 . 6 (d) Third party assistance in collective bargaining disputes

The importance of conciliation and mediation as a means of helping the parties to come to an agreement voluntarily is recognized across Canada. Labour relations laws in Canada provide for conciliation or mediation assistance where the parties have been unable to resolve differences. Certain time periods are provided for the application of assistance and in a majority of jurisdictions the right to strike or lockout is acquired only after resorting to compulsory mediation/conciliation assistance.

Though third party assistance can be taken in India to settle the disputes the practice shows that it did more harm than good to the trade unionism. Politicians and some major union leaders involve in mediation dealt with the manner in which was not beneficial to the members of the unions. At the instance and advice of the union leaders though the members went on strike finally the agreement entered in to was neither satisfactory nor fulfilled the ambitions of the members. Hence the striking members of the union in majority are of the view that as third party, they are rejecting the government employees instead they are recommending for appointment of experienced persons in that filed. They want to abide by the verdict of the court. This categorically shows that the workers going on strike are having faith in judiciary as well as in the experts in that field or area but not in the government employees. It may be for the reason that the government employees for the vested reason of protecting their jobs (a mediator) and to maintain rapport with the government, they are axing the confidence reposed in them by the striking employees. Junior doctors of Andhra Pradesh while expressing their opinion to abide by the court verdict said that "in third party negotiations there shall not be high officials of the

government in settlement committee, if appointed by the court and in their place they recommend for appointment of experts in the field".[14]

Meaning and Definition of the word "Strike"

The meaning of the work may vary from person to person according to his needs and place to lace depending upon the circumstances. Hence in order to give authenticity to the well accepted meaning the legislature gives approval to it by defining the word in any Act. Likewise, the term "Strike" was also defined by the legislature in The Industrial Disputes Act, 1947. Prior to it several authors and judges (in their judgments) defined the term 'strike'. Hence, the definition of the work 'strike' by different authors and definition under section 2(q) is discussed hereunder.

2 . 6 (a) Definition In General

The term 'strike' is derived from old English "strican" which is akin to Old High German word 'str^hhan' to stroke, Latin word 'stringere' to touch lightly, striga, stria furrow. (These word dates back prior to 12th Century). Strike may be viewed as an exercise of the freedom to with hold one's labour[15], which is a fundamental human freedom of the individual[16]. Strike is used to indicate workers' concerted withdrawal of labour, as a means of putting economic pressure on the employer to coerce him (employer), to concede to them (workers)[17]. Strike means, "To make one's way to go"[18]. Section 13 of

---

[14] We will abide by the verdict of the court, Eenadu, (Telugu) Hyderabad edition, 23.1.2004 p. 9.

[15] The word 'strike' was used in the sense of "a work stoppage by a body of workers to enforce compliance with demands made on an employer" or "temporary stoppage of activities in protest against an act or condition" from 15th Century. (Encyclopedia Britannica, 2005).

[16]. Vithal Bhai B.Patel, *Law of Industrial Disputes*, Vol.I, Ed.III, (1984) p.344.

[17]. Suresh C. Srivastava, *Industrial Disputes and Labour Management relations in India,* 1984, p.52.

[18] Encyclopaedia America, p.1126.

the National Labour Relations Act gives unionised private sector workers a legal right to strike, but there is no moral right to strike.

Many attempts have been made to define the term '*strike*'. Lord Dennings[19] defines the word strike as "concerted stoppage of work by workers done with a view of improving their wages or conditions or giving vent to a grievance or making a protest about some thing or other, or supporting or sympathizing with other workers in such endeavour". Hanner.J[20] defines the word strike as "simultaneous cessation of work on the part of workmen". Strike in labour relations, organized work stoppage carried out by a group of employees, for the purpose either of enforcing demands relating to employment conditions on their employer or of protesting unfair labour practices.[21]

A comprehensive definition was given by an American judge as "a strike is an act of quitting work by a body of workmen for the purpose of coercing their employer to concede to some demands they have made upon him and which he has refused, but it is not a strike for workmen to quit work either singly or in a body which they quitted without intention to return to work, whether may be the reason that moves them so to do"[22]. In Encyclopaedia Americana it is defined as[23] "Strike is a concerted withdrawal from work by a group of workers employed in the same economic enterprise". According to the Columbia Encyclopaedia[24] in early times 'strike' was used in the poetic term as "to make one's way". Halsbury's Laws of England defined the word strike as[25]"A simultaneous cessation of work on the part of workmen, a body of persons employed in a trade or industry acting in combination or a concerted refusal under a common understanding of any number of persons, who are or have been so employed to continue to work or to have been so employed to

---

[19]. Tramp Sipping Corporation Vs. Green Which Marine Inc. 1975(2)All.E.R.989.
[20]. Farrer Vs. Close (1889)L.R.
[21] Strike (labour relations), Encyclopedia Article from Encarta, (www.encarta.msn.com) 2004.
[22]. Uden Vs. Scaffer, 110 Wash, 391.
[23]. *Encyclopedia Americana*, Vol.25, Ed. 1980, p.796.
[24] *The Columbia Encyclopedia*, 6th Ed. Gele group, Edited by Paul Lagase.
[25]. *Halsbury's Laws of England*, Vol.4, Ed. 193, Para.1144, p.581.

continue to work or to accept employment". Armstrong and Knight defined the term strike as[26] "Strike is a deliberate withdrawal of labour by workers in an attempt to persuade employer to give them other better terms".[27]

In International Encyclopaedia it was defined as[28] "Collective stoppage of work intended to influence those who depend on the sale or use of products of that work is almost as old as work itself". The withholding of labour by labour unions, workers, organizations, or unorganised group of workers in order to achieve demands from an employer[29]. The Columbia Encyclopaedia defined the term strike as[30] "concerted work stoppage by a group of employees be chief weapon of organized labour". Hill defined the term strike as[31] "A mutual agreement among workers to stop work in order to obtain or resist a change in working conditions". Black defined the term strike as[32] "Strike is an act of quitting work by a body of workmen for the purpose of coercing their employer to accede to some demand they have made upon him which he has refused". V.P.Arya defines it as[33] "Strike is said to be the notion of stoppage of work by employees to enforce a demand on unwilling employer". Edward I. Skyes defines as[34] "Strike is a concerted refusal to work with the object of thereby gaining some concessions or wresting some advantage from some other persons who in ordinary circumstances would be an employer". American Bureau of Labour defined the term Strike as[35] "A temporary stoppage of work by a group of employees in order to express a grievance or to enforce a demand". A strike is characterized by the fact that employees temporarily cease to fulfil their contractual obligation to perform work. "Non-performance of the work stipulated by the **contract of employment** constitutes the essence of a

---

[26]. Armstrong & Knight, *Trade Unions and Industrial Relations*, 1979, P.53.
[27]. Vithal Bhai B.Patel, *Law of Industrial Disputes*, Vol. I, Ed. III (1984) P.344.
[28]. *Encyclopedia of Social Sciences*, Vol.18, Ed. 1968,
[29]. *Encyclopedia of Japan*, 1983, Kodansha Ltd, Tokyo. page 250
[30]. *The New Columbia Encyclopedia*, Ed.1975, p.2631.
[31]. The Graw Hill, *Dictionary of modern Economics*, 1971, p.563.
[32]. Black's Dictionary Ed.IV.
[33]. V.P.Arya, *Strikes and Lock-outs* (1972), p.1.
[34]. Edward I. Skyes, *Strikes in Australia* (1960) p.2.
[35]. Hand book of Labour statistics, 1947 p.14 (American Bureau of Labour)

strike." It is therefore a temporary cessation of work. It presupposes that the employees have no intention of resigning from their jobs. Also, the work that they are temporarily refusing to perform must constitute a contractual obligation.[36] A strike is meant to project the demands of the workers as also their determination to resort to direct action or stoppage of work.[37]

2. 6 (b) Definition by ILO

On 28th day of January 1993, a resolution was adopted to replace the interim resolution adopted by the Fourteenth International Conference of Labour Statisticians wherein the word "Strike" was defined as:

> "a temporary work stoppage affected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances".

Definition of "Strike" (In some statutes)

A strike is meant to project the demands of the workers as also their determination to resort to direct action or stoppage of work.[38] According to the clarification issued vide M.H.A., O.M. No. 25/23/66-Ests. (A), dated the 9th December, 1966, 'strike' means refusal to work or stoppage or slowing down of work by a group of employees acting in combination, and includes-

(i) mass absence in work without permission (which is wrongly described as "mass casual leave);

(ii) refusal to work overtime where such overtime work is necessary in the public interest;

---

[36]. (http://www.eurofound.eu.int.htm)
[37] *Report of the National Commission on Labour 2002*, vol-I (Part-I), P. 334.
[38] *Ibid.*

(iii) resort to practices or conduct which is likely to result in or results the cessation or substantial retardation of work in any organisation,. Such practices would include, what are called 'go-slow,' 'sit-down,' 'pen down,' 'stay-in', 'token', 'sympathetic', or any other similar strike; as also absence from work for participation in a Bandh or any other similar movements.

The notification declares that the Government servants who resort to action of the above kind violate Rule 7(ii) of the Central Civil Services (Conduct) Rules, 1964 and action can be taken against them.

2 7 (d) Definition under Industrial Disputes Act, 1947

Section 2 (q) of Industrial Disputes Act defines 'Strike' as

> "Strike," means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under common understanding, or any number of persons who are or have been so employed to continue to work or to accept employment".

A strike is characterized by the fact that employees temporarily cease to fulfil their contractual obligation to perform work. "Non-performance of the work stipulated by the **contract of employment** constitutes the essence of a strike." It is therefore a temporary cessation of work. It presupposes that the employees have no intention of resigning from their jobs. Also, the work that they are temporarily refusing to perform must constitute a contractual obligation.

Strikes are usually of a collective nature. This is *firstly*, because number of employees join in refusal to work: only when a sufficient number of them participate in the strike can enough pressure or disruption be applied to ensure that any demands being made will be met. *Secondly*, a strike is collective

because of the collective commitment on the part of the employees as a group. A collective interest can sometimes stem from an individual case, for example, the dismissal of a "union delegation" member, which poses a threat to the principle of trade union freedom and union representation within the enterprise. Thus, a strike can be defined as a "temporary", usually collective refusal to fulfil the contractual obligation to perform work.[39]

Meaning and scope of definition under Industrial Disputes Act, 1947

The definition is exhaustive. The definition consists two parts, viz., the first part relates to cessation of work by a body of persons employed in any industry acting in combination and the second part relates to concerted refusal or a refusal under common understanding by a number of persons who are or have been so employed to continue to work or to accept employment. The following are the essential characteristics of a strike:

1. There should be cessation of work,
2. The cessation of work should be by a body of persons,
3. The body of persons ceasing to work should be employed in any industry,
4. The body of persons ceasing to work must be acting in combination,
5. There must be concerted refusal, or refusal under common understanding by such body of persons,
6. The persons refusing should be those who are or have been employed, and
7. The object of refusal is not to continue to work or to accept employment.

Cessation of work

[39]. (http://www.eurofound.eu.int.htm)

Period of cessation of work is not material in determining action as a strike[40], whether there is a concerted and combination of workers or not in refusing to resume to work[41] and short duration of strike cannot exculpate the participants from the consequences of an illegal strike[42]. But the Allahabad High Court held neither demonstration nor delay in starting work amounts to strike[43]. In deciding an act of the workmen whether amount to strike or not the tribunals should not assume any thing from its point of view[44]. In Standard Vacuum oil Company Madras v. Gunaseelan (M.G) and others[45] where the workers refused to work on May Day but accepted to compensate the work by working on other holiday was held not to be strike.

Workers may often leave the employment to fulfil some social obligations like attending the funeral of the co-workers, etc. But under such circumstances the workers at least are expected to consult and obtain permission of their employer before leaving the work place. Otherwise it may amount to strike[46]. If allowed, workers leaving the employment under such circumstances may prejudice the industrial peace.

Mere absence does not amount to strike

Actual participation of the employee in the strike is often insisted. Mere witnessing the strike along with crowd may not amount to strike[47]. Some times the employees in order to be risk free they leave the place of employment during the period of strike and instead of participating in strike they may move in the mob along with the procession of strikers. Had he not be with the striking

---

[40] Buckingham and Carnatic Co. Ltd. v. Their workmen, 1953 SC 47.
[41] State of Bihar v. Deodar Jha, Air 1958 Pat. 51; Raja Bahadur Motilal, Poona mills v. Tukaram Piraji Masale, 1956 SCR 939.
[42] Lakshmi Devi sugar mills Ltd. v. Pt. Ram Sarup, AIR 1957 SC 82.
[43] Mangaram v. Labour Appellate Tribunal, 1957 (1) LLJ 603 (614-615) All (DB) Per Kidwai J in this case reliance was placed on Dhirubha Devi singh Gohil v. State of Bombay, AIR 1955 SC 47,per Jagannath. J)
[44] Bharat Barrel and Drum Mfg., Co. Ltd. v. Their workmen 1952 (2) LLJ 532 at 536.
[45] 1954 (2) LLJ 656.
[46] National Textiles workers' Union v. Sree Meenakshi Mills Limited, 1951 (2) LLJ 516.
[47] Sitapur Sugar Works. V. State of Bihar 1958 Pat. 120.

workers he would have been either in the undertaking or some where else. Hence, it is submitted the court's rule declaring that 'witnessing the strike along with a crowd, may not amount to strike' appears to be a favoured judgement delivered sympathetically. Mere absence of the workman does not amount to strike, there must be evidence to show that the absence of workman was the result of concerted action between him and other workmen or that there was a common understanding, that they would not continue to work[48]. Mere failure to report for duty when a strike is on, does not amount to strike. Some times it is not possible for several workmen to attend the work even though they are willing to attend to work. Some times the union may ratify the action of the workers or the workers may withdraw their labour even without consulting their union. Absence without permission is no where permissible. Under these circumstances the workers must contacted the supervisor or employer and explain the reasons for his failure to attend his duty. Communication system in 1951 may not be so good as it is today. Still he by using available means should inform the employer or supervisor about his absence. Hence this ruling may not suit the prevailing circumstances.

In the era where sympathetic strikes are prevalent and conducting demonstrations and unions are adopting the techniques where it is not possible to prove prior understanding between the understanding it may be reasonable to remove this provision with suitable amendment.

Period of cessation of work

In order to constitute the act of the workmen a strike cessation of work must be in combination with others. Moreover, combination should be with intent to stop the work. The body of workers though, said to have been 'acting in combination' with in the meaning of the section, as well as actuated by a common object of assaulting or over powering the manager and police party by use of force, still the body of workers cannot be said to have entertained any

[48] Sirka Colliery Ltd. v. S.K.C. Mines workers Union, 1951 (2) LLJ 52.

direct idea of bringing about cessation of work, all that happen was that the pursuit of object actually entertained had the direct affect of causing cessation of work, as such there was no strike[49]. The Allahabad High Court in Mangaram and others' case[50] held that where the workers after punching the card refused to work and conducted a demonstration for half an hour, does not amount to ceasing of work but only delayed started work which does not amount to strike. If period is taken into consideration, absence even for a minute also amouns to strike. Hence, it is submitted that in this case, there was a strike for half an hour. The court would have declared it as a 'Strike' instead of declaring it as delayed as delayed work.

Refusal to work on a listed holiday

In accordance with prior agreement with the parties, offering compensatory holiday the management required the workmen to work on a listed holiday due to exigencies of work. A refusal to work on a listed holiday due to exigency of work as a concerted action, amount to strike.[51]

Cessation of work on an optional holiday of work

If workers seize to work in concert on an optional day of work (Sunday or holiday) it would be strike if other conditions were satisfied[52].

Inferences as to strike

Sometimes circumstances may warrant the employer to come to the conclusion that the action of the employees amounts to strike, like a very large number of employees and their representatives have applied for leave for various reasons and refusing to attend work in spite of best efforts made by the

---

[49] Shamnagar Jute Company Ltd. v. Their workmen, 1950 LLJ 235 at 238.
[50] Mangaram (Workers of Patiala Cement Works) and others v. Labour Appellate Tribunal, 1958 (1) LLJ 539 at 541.
[51] Upper India Caupper Mills Ltd. v. Workmen 1954 (2) LLJ 347 (LAT).
[52] Ram Naresh Kumar v. State of West Bengal 1958 (1) LLJ 567 (C); Piprach Sugar Mills Ltd. Its workmen, 10 FJR 413 (LAT).

officers amount to strike[53]. But, while coming to the conclusion the employer must look into the circumstances, which led to the workers not to resume work.[54] Workers working in boiling room may leave the place of employment as the boiler was over heated may burst at any time. Here the action of the workmen may not amount to strike[55], but the workers absenting themselves or refusing to attend to work after interval because of sudden demise of a worker amount to strike[56], as such things would be highly prejudicial to the industrial peace. Hence, though the workmen absented themselves without prior consultation it amount to strike even though the union had not sponsored it[57], and workers absenting for paying homage to the national leader[58] and refusing to do the remaining work from afternoon[59] and refusing work which they are bound to do[60].

The definition of 'strike' as laid down in [S. 2(b)] of The Sikkim Essential Services Maintenance Act, 1978 (Sikkim Act 7 of 1978) is an improved version of the Section 2(q) of the Industrial Disputes Act, 1947. Section 2 (b) of Act 7 of 1978 lays down that:

"strike" means the cessation of work by persons employed in any essential service acting in combination or a concerted refusal or a refusal under common understanding of any number of persons who are or have been so employed to continue to work or to accept employment, and includes-

a) refusal to work over time where such work is necessary for the maintenance of any essential service;

---

[53] Buckingham and Carnatic Co. Ltd . v, Certain workmen, 1953 SCR 219.
[54] Punjab National Bank Ltd. v. Bank employees federation 1960 (1) SCR 806;
[55] Patiala Cement Co. ltd. v Certain workmen, 1952 (2) LLJ 57.
[56] National textile workers Union v. Sree Meenakshi Mills Ltd., 1951 (2) LLJ 516.
[57] J.K.Cotton Spnning and weaving Mills co. Ltd. (Textile Mills, Kanpur) v. Their workmen, 1956 (2) LLJ 278 (IT)
[58] Goodlass Wall Ltd. v. Ameer Ahmed Bakuram & 8 others, 1954 (2) LLJ 573.
[59] Arun Motiram and 2 others v. Mafatlal Fine Spinning and Weaving Co. Ltd., and others, 1956 (2) LLJ 396.
[60] Ballu Goving v. Appollo Mills Ltd., and others 1957 (2) LLJ 55.

b) any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service.

In this definition refusal to work 'over time' where it is necessary is declared as strike. Even retardation (slowing down or go-slow) is also treated as a strike. It is worthy to note that a tiny state which became part of India in 1975 took several steps for modifying the definition of the term 'strike' in the interest of the State.

Analysis

After independence judiciary had shown lot of favour to the employees. In Bucking ham and Carnatic mills case in 1953 the Hon'ble Supreme Court held that the period strike is immaterial in determining the action as strike. In 1956 Raj Bahadur mills case the Hon'ble Supreme Court held that short duration of strike cannot exculpate the participants from the consequences of an illegal strike (in this case it was also held that "concerted and combination is immaterial"). In 1957 the Hon'ble Allahabad High court in Mangaram's case Kidwai. J held that "neither demonstration nor delay in starting work amounts to strike". Intentional delay in starting work if satisfies other conditions of Section 2 (q) amounts to 'strike'. If the decisions given by the Supreme Court are taken into consideration cases are cessation of work even for a minute also amounts to strike. Different groups of employees acting in different ways were held not a strike by the Hon'ble High Court of Patna in the year 1950.

Allahabad High court ruling in Mangaram's case[61] that "where the workers after punching the card refused to work and conducted a demonstration for half an hour, does not amount to ceasing of work but only delayed started work which does not amount to strike" does not holds any water. Once the employee punches his card indicates that his intention is to

[61] 1958 (1) LLJ 539 at 541

discharge the duties as per rules and regulations. Workmen instead of discharging the duties after punching the card if goes on doing demonstrations it is a clear case of misconduct of "not discharging the duties as per rules". The decision of the Hon'ble Supreme Court in Backingham & Carnatic Co (1950) if taken into consideration this decision is totally defective and the Hon'ble high court of Allahabad would have taken the previous decisions in to consideration while passing the decision in this regard. The decision of 1950 (SC) and 1958 (Allahabad) are mutually controversial. The courts would have avoided such controversial decisions and would have restricted such illegal or unjustified activities from the beginning instead of giving benefit (because of sympathy?). Later there was consistency in judicial opinions in this regard. In 1960 in Punjab National Bank case 'workers refusing to resume work in spite of best efforts made' was held to be strike. In 1951 (Meenakshi mills case) it was held that ".....workers absenting themselves or refusing to attend to work after interval because of sudden demise of a worker amount to strike". In 1956 (J.K. Cotton Mills case) it was held that "....the workmen absented themselves without prior consultation it amount to strike even though the union had not sponsored it" was held to be strike. In 1956 (Arun Moti Ram case) workers refusing to do the remaining work was held a strike. In 1958 (Good lass Wall Ltd. case) it was held that "absenting to pay homage to a national leader" to be strike. In spite of all these decisions of same or similar opinion, the Allahabad High Court deviating from the principle created a new chapter in the field of strike.

After taking the above rulings in to consideration the definition should be amended with the following suggestions:

i) The workers must have done any act or omission in the form of protest
ii) Cessation of work is immaterial
iii) Persons ceasing to work may not be working in combination
iv) Circumstantial evidence is sufficient to establish concerted refusal or refusal under common understanding

v) Period of cessation or protest is immaterial

From the above reading it is clear that the definition of the word 'strike' is unable to meet the needs of not only the employees but also the employers and the state. The amendment to the definition 'strike which was made in 1982 (but date of effect is still awaited) if brought into effect the effect of strike will be reduced to a considerable extent at least in hospitals, educational institutions etc. the amended definition will reduce the effect of the activity strike at least in essential services.

2 . 7 TYPES OF STRIKE

Launching of strike by the employees takes different forms and techniques with a view to achieving their goal, depending upon the then prevailing situations and circumstances. The employees against the employer basically use strike as a weapon when both the parties cannot come together for an amicable solution of a problem regarding the employee's welfare. As such, this is not limited to the industries in India only but a common phenomenon the world over.

However, for the purpose of clarity of knowledge, strikes can be divided in to two types: viz. (i) Primary strikes, and (ii) Secondary strikes.

Firstly primary strikes are those, which are being done by the employees for solving their own demands. In other words it may be said these types of strikes are confined and directed toward fulfilling the demands of the employees only. *Secondly*, the secondary strikes are those where workers are going on strikes for supporting the claim or the cause of other employees working in another industry or undertaking. This implies a kind of strike launched by the employees in order to provide a moral support for the cause of others who are working in another industry and which has nothing to do with their employer. Presently secondary strikes may be used as a weapon to support the act of employees working in another State or even Country also.

There are different forms of strike techniques. Strike is used as a weapon against the employer, against whom industrial dispute exists. The workers in different industries and countries have used different forms of strikes.

On the basis of the object of the strikes they can be basically divided in to two types viz. *Primary Strikes and Secondary Strikes.* Firstly, Primary strikes are those, which are being done by the employees for solving their own demands. Secondly, strikes are those where workers are going on strikes for supporting the claim of another industry or undertaking.

2 . 7 (a) Primary Strikes

Primary strikes are intended by the workmen for settlement of their grievances by putting the employer to economic pressure in other words a strike directed against an employer with whom the union or the wormen has a dispute is a primary strike,

The following are the different types of strikes:

a). Pen down or tool down or Sit down or Stay in strike

A technique aimed at ensuring the suspension of operations within a struck establishment and at preventing the entry of non-strikers is the sit-down strike, which came into widespread use in the U.S. during the 1930s. Workers engaging in this form of strike simply occupy the place of employment, refusing to leave until a settlement of the disputed issues is made. Such action constitutes trespass on the private property of the employer and is therefore illegal; nevertheless, the sit-down strike has proven highly effective in many instances. Sit down strike has been defined as 'occurring whenever a group of employees or others obtaining in a certain objectives in a particular business forcibly take over the possession of the property of such business establishment

themselves within the plant, stops its production and refuse access to the owner or others desiring to work.[62]Ludwig Teller more accurately defined the term 'Stay in or Sit in Strike' as

> "a strike in the traditional sense to which is added the element of trespass of the strike upon the property of the employer."[63]

Around 150 protesters burst into a cinema screening films for the Cannes buyers' market and staged a sit-in before being forced to leave by police, is an act of sit-down strike wherein 10 people were injured and several arrested.[64]

In pursuance of common understanding the employees if enter the premises and refuse to take their pens in their hands that would no doubt be a strike under Section 2(q) of the Industrial Disputes Act, 1947.[65]

Occupation of the work place (Bezetting)(Belgium)

Occupation of the workplace (also known in English as a "sit-in") is a form of **industrial action** not widely used in Belgium.

The term is used to indicate a situation where employees take over the premises or part of the premises, of the enterprise for longer than a merely token period. If the occupation is accompanied by a partial or total continuation of production it is known as a **work-in** or, in more extreme cases, a **takeover by workers** . These forms of action are usually taken with the aim of preserving jobs.

Occupations and takeovers by the workers are, obviously, against the law: they constitute a clear violation of the right of ownership; a possible infringement of the right to work of those who wish to work and of the freedom

---

[62] Howrah Foundry Works Ltd. Vs. Their workmen 1955 (2) L.L.J. 97.
[63]. Ludwig Teller, Labour Disputes and Collective Bargaining, Vol. I p.311.
[64] Michael Moore backs striking French workers, (Sunday 16 My, 2004) (Reuters, 18 May 2004, 07.41 BST)(http://reuters.com)
[65] Punjab National Ban Ltd. v. Their Workmen AIR 1960 Sc 160.

of enterprise of the employer and the employer's representatives; and in those cases where staff live there, a possible trespass against the inviolability of domicile. Employees who occupy work premises are liable for any damage, for the use of materials that do not belong to them, etc. An accident, which occurs during a takeover by workers, is not deemed an industrial accident within the meaning of the law. In some cases, but certainly not all the courts issue an order for the employees to be evicted, usually at the request of the employer

b). **Strike with folded arms**[66]

The workers after entering the work place fold their arms, and refuse to work.

c). **Strikes with knobs on**[67]

The French Sundicalysts also introduced the conception of "La Greva Perlee" (some times angualised as the strike with knobs on). In this type the workers inside and outside surrounds the work place with headed sticks which contains their metal rounded heads on them.

D). **Hunger Strike**

The credit of introducing hunger strikes goes to our father of nation *Mahatma Gandhi.* In this form workers will go on fast till fulfilment of their demands. The worker or workers may go on fast indefinitely (fast unto death) till fulfilment of demands, or on turn basis (relay hunger strike). He *(Mahatma Gandhi)* for the first time introduced it in 1918 in Ahmadabad Textile Mills in wage dispute.[68] To put employer under pressure, workers pledged not to return to work until the demands were fulfilled. Anyhow employers were successful in breaking the strike. Finally, Mahatma Gandhi

---

[66]. *Encyclopaedia Britannica*; Vol. 21, Ed. 1966, p.470.
[67] ibid.
[68] *Times of India,* (Editorial) 6th July, 1977(New Delhi) p.5.

himself went on fast who is not a worker but a union leader. Afterwards, this fast became popular in the name of "*hunger strike.*" The concerted action of the workmen who went on hunger strike may amount to strike within the meaning of the section 2 (q) of the Industrial Disputes Act 1947.[69]

e). **Slow down or Go-Slow Strike"**

It is an action in which workers stay on their jobs, but deliberately cut their rate of production and thereby cause loss to the employer. There is no much difference in go-slow and work-to-rule. But in go-slow workers can reduce frequency of work to any extent they want, whereas in work-to-rule they can't reduce the frequency below statutory requirement. Go-slow strike is not a "strike" within the meaning of the term in the Industrial Disputes Act, 1947 but is a serious misconduct which is insiduous I its nature and cannot be countenanced.[70] This type of action is legal in U.S.A.[71] In Go-Slow workers in concert slow down the work. If examined critically in the process of 'Go-Slow' the workmen in concert refuse to work in the speed as usual. Hence, they are withdrawing their labour (the work they are doing regularly minus the work they are doing while observing Go-Slow) in order to bring pressure upon the employer. Because of go-slow strike the machinery will be damaged and the employees will be habituated to laziness and work-culture will be totally damaged.

Go-Slow was not recognized as a lawful weapon in the hands of workers like other types of strikes. Go-slow had been made misconduct under the model standing Orders appended to the Industrial Employment (Standing Orders) Act, 1948.[72]

---

[69] Piprach Sugar Mills Ltd. v. Their Workmen AIR 1960 SC.1258.
[70] Sasa Musa Sugar Works (private) Ltd. v. Shobrati Khan and others, AIR 1959 SC 923.
[71] *Encyclopedia Americana*, Vol.25, Ed.1980, p.795.
[72].Industrial Employment (Standing Orders) Central Rules, 1946 Schedule-I. (Model standing orders in respect of Industrial Establishment not being Industrial Establishments in Coal Mines) Rule 14.Disciplinary action for misconduct Rule 14(3)(k) Striking work or inciting

f). **En-mass casual leave**

Some times workers may go on en-mass casual leave to indicate their protest. The workers instead of applying leave and getting sanctioned from the superiority authority, they simply apply leave all of a sudden.[73]

g). **Token Strike**:-

It may be either for single day or even for few hours work stoppage by the employees when they want to indicate their protest. Even if it is for a little period it is a strike under the Sec. 2 (q) of the Industrial Disputes Act.

Token strike is also a kind of general strike. Its main intention is to draw the attention of the employer by demonstrating the solidarity and co-operation of the employees.

h). **Work-to rule**

Under a work-to-rule situation, the employees are not formally on strike which is similar to the slow down strike. The employees declare that they will discharge their duties strictly according to law prescribed. The work-to-rule is generally a slow down strike. In the strict sense it is not a strike because workers are following their rules strictly in accordance with their service conditions. Hence it is not a strike under Sec. 2 (q) of the Industrial Disputes Act, 1947.

i). **ECONOMIC STRIKE** (Belgium)

Defined strictly in English as a "trade dispute", an economic strike is any form of strike, which is motivated by purely employment-related or socio-economic factors. Its characteristic feature is that it is directed against the employer as such and

---

others to strike work or in contravention of the provisions of any law or rules having the force of law.

[73]. African Encyclopaedia, Ed. 1974, p.480.

relates to pay and terms and conditions of employment, the purpose being to improve them (pay and terms of conditions of employment) or maintain them.

j).Gherao

A new form of labour discontent witnessed of late in many parts of the country, particularly eastern, what is particularly known as "GHERAO."[74] In Bengali dictionary compiled by J.M.Das the word 'Gherao' is to be a derivative form. The word 'Gherao' means 'encircle or cover.' In the Sanskrit-English dictionary of Wiliams the word 'Gherao' means to cover. In William's Glossary of legal terms 'Gher' or Gherao' means, "to confine" or "not free." This word in its ordinary connotation the word 'Gherao' does not indicate any sinister meaning but in the field of industrial relations it has acquired 'enviable majority'.

Gherao invariably involves the commission of offences under sections 339 (Wrongful restraint, 340 (Wrongful confinement), 141 (Unlawful Assembly), 351 (assault), S.440 (Mischief), S.441 (Criminal trespass) and S.120-A (Criminal Conspiracy) of the Indian Penal Code.

According to the notification issued by Ministry of Home Affairs, (O.M) No. 25/ (s)/11/67-Ests. (A) dated the 14th April, 1967, declares 'Gherao' as misconduct and the employees participated in it will be held responsible for contravention of Rules 3 and 4.

Gherao is not justified both legally and morally. It is for the hypothetical reason that 'if employees are entitled to encircle the employer who is unwilling

---

[74]. The National Commissioner on Labour, 1969, at page 3328, look at its form another point of view and 'deprecated the use of Gherao as an instrument of version it observed as: "Gherao.....invariably tend to inflict physical duress on the person(s) affected but also creates problems of law and order. If such means are to be adopted by labour for realization of its claim, trade unions may come into disrepute. It is the duty of all union leaders therefore, to condemn this form of labour protest as harmful to the interests of he working class itself. Gherao cannot be treated as a form of industrial pressure. In the long run, they may affect national interest."

to accept their demands, at the time of strike also the employer may encircle the employees or their residences to bring pressure upon them' which the employees under no circumstances will accept.[75]

k). **Bandh**

Closing down the institution or institutions in a particular area or areas or in a State or country with regard to a particular demand made by a political or other organization is called as 'Bandh.'[76] Even though it cannot be called as a 'strike' in all the cases, since it fulfils all the characteristics of a strike, the 'Bandh' called for by the employees with regard to their demand can be treated as a 'strike.'

Even though, the other undertakings and general public has nothing to do with the demands of the persons declaring Bandh, they are forced to follow it because of compulsion, fear of ransacking and loot. But slowly some social activists are raising their voices to exempt some (essential) services from the purview of 'Bandh.' Principals made a general appeal to the political Organisations to keep educational institutions outside the purview of 'Bandh', which adversely affects the progress of the students.[77] Parents in some areas are taking away their children from schools to somewhere else, as the strikes/bandhs are more in that area. Bandhs not only paralyses the civil life but also creates reasonable threat to the life and property of the general public.

l). **Over production**

---

[75] George C. Leef, *The So-Called Right to Strike* (June 1998). http://www.fff.org/freedom/0698e.asp#top

[76] 'Bundh' is a Hindi word meaning 'closed' or 'locked.' The expression therefore conveys an idea that everything is to be locked or closed.(Bharat Kumar k. Pelicha and others v. State of Kerala and another, AIR 1977 Ker 291 (FB).

[77] *The Statesman*, (Siliguri Edn), March 9th 2004.

This form of strike is prevalent in Japan. The workers during their strike period works almost 24 hours a day and produce more goods which in turn troubles the employer in keeping the outputs in go down which may be spoiled. Ultimately the raw material will be exhausted and the machinery will be spoiled. As a result of over production, demand for the goods will fall down. All these factors force the employer to come to the terms o the workers.

m). **Spring offensive**[78]

Most Japanese strikes are short ones of schedule duration (Jigensuto), *First*, example is the "*spring offensive*" (Shunto) which lasts for 1 or 2 days only, according to a schedule agreed upon by the major labour organizations before collective bargaining begins. Strikes do not usually involve the entire enterprise work force, often only one group of workers engage in a so called partial strike (Bubun Suto) or a designated workers' strike (Shimei suto). *Second*, the dispute activity takes place at the enterprise facilities and an attempt is often made to interfere with employee's control over the facilities and the means of production. The extreme from this tactic, production control (Seisankanri) was prevalent for a number of years after WORLD WAR-II, but was eventually suppressed by the occupation authorities. Similar tactics currently in use include the occupation or job sites, the seizure of vehicles at taxi and company buses, the pasting of leaflets throughout the enterprise, demonstration on the grounds of a factory or business, and organized picketing. *Third*, a partial rather than a complete work stoppage if often employed, while continuing to work employees will engage in slow-down, refusal to answer phones, or to go on business trips, ribbon arm bands, head bands are also worn as a sign of protest.

n). **JUMPO TOSO** (work to rule struggle)[79]

---

[78] *Encyclopaedia of Japan*, 1983, Kodansha Ltd, Tokyo.(at page 250).
[79] . ibid.

A similar disruptive tactic is the JUMPO TOSO (work to rule struggle); in these cases workers will exercise their contractual rights in an intentionally disruptive manner.

o). Picketing

Picketing is the marching back and forth of one or more persons carrying placards, or signs of some sort, which announce a dispute between a union and management.[80] The picketing is supposed to discourage anyone from crossing the line of march. One of the most common purposes is to support a strike. Naturally, under such circumstances the emotions run high. It is under these circumstances that American labour disputes have produced the considerable bloodshed that has appeared over last hundred or so years; and violence erupts when non-strikers try to cross picket lines.

Picketing (Piquetage in Belgium)

Picketing is attendance by strikers or supporters at the entrance to an enterprise in order to persuade employees who wish to work not to enter the enterprise but to join in the strike.

It is a manifestation of freedom of opinion. The burgomaster, who is responsible for public order and safety, can prohibit it. Picketing must be confined to peaceful persuasion. Action going beyond this, such as physically preventing entry, occurs frequently but is in principle contrary to the freedom of labour.

Selective strike (Greve Partiele)(Belgium)

---

[80]. Arthur D. Butlere, *Labour economics and institutions*, 1961, Amerind publishing, New Delhi, p.195.

In this form of strikes (mainly in the context of automation) in which only a certain proportion of employees stop work but which may force the other employees to become idle, although (at least in principle) they are willing to work.

Spontaneous Strike (Greve Spontanee)(Belgium): (Lighting Strike)

A form of strike in which the agreed procedure relating to the **peace obligation** has not been observed, or has been observed only in part. Not unlawful *per se* in Belgium. In such cases it is usually the workers who take the initiative, although the union may subsequently give its approval to the action. This type of strike is called as lighting strike in India. This type of strike is declared without any prior notice and may some times even without approval of the trade union on the issues of unforeseen events like attack on he union leaders or its members or on any worker etc.

p). Political Strike (Greve Politique)(Belgium)

A political strike is directed against the government in its capacity as a government, for ends unconnected with any employment-related matter. In Belgium, the distinction between economic and political strikes is of little legal significance from aspects such as the consequences regarding the individual **contract of employment**. A political strike has, for example, been ruled by the Supreme Court to be equivalent in law to a strike directed against the employer. In any case, these various distinctions are not always easy to make in practice, particularly in view of the fact that the state in its capacity as a welfare state intervenes more and more directly in private social and economic interests. Political strikes though not connected with the issues of the workers like wages, being the citizens of the country they will be pulled into it.

q). Boycott

A Boycott is an attempt to bring pressure on one employer by acting against other. Boycott is of two types.

i). The typical strike is primary boycott; the employer who is to be influenced is the direct recipient of the union action.

ii). The secondary boycott is frequently used for approaching a plant when the employees do not join through a normal organizing campaign. In secondary boycott the employees force the main customer of the company from purchasing the goods. Taft-Hartley Act (in USA) declared the secondary boycott as unfair labour practice. The secondary boycott is again of two types. Viz.

a). the union may threaten to with hold labour from a neutral employer.

b). the union may encourage its friends to cease patronizing the neutral employer's products.

r). Wild Cat (Unofficial) Strike (Greve Sauvage)(Belgium)

In the case of a wildcat strike, the rules applying to constitutional strikes (observance of the peace obligation, giving notice of the intention to strike, exhausting the established conciliation procedures) are totally disregarded. Such action is taken without the approval of a representative union. This type of strike is equivalent to lightning strikes in India.

2 . 7 (b) Secondary Strikes

Secondary strikes are those, which were being done by the workmen to show their sympathy or cooperation for the workers, those who are already going on strike. In this type employer has nothing to do with the problems of

the workers going on strike. But these strikes will be conducted with an express view to show solidarity and implied hope of bringing pressure upon the other employer by their employer. Strikes against the customers, suppliers or other employers that are not directly involved in the underlying dispute are secondary strikes (in USA).

Sympathetic Strikes

A sympathy strike occurs when a union stops work to support the strike of another union. (Trade Union; Trade Unions in the United States).[81] Sympathetic strikes are those, which were undertaken by workmen, or association not for their own cause or benefit or it is directly involves in the dispute between their employer and themselves, but it will be done to show their sympathy or co-operation towards the other workmen of some other undertaking. When the workers in concert absent themselves out of sympathy to some cause wholly unrelated to their employment or even in regard to condition of employment of other workmen in service under other management, such absence could not be held to be strike as the essential element of the intention to use it against the management is absent.[82] The management may take disciplinary action against the workmen for their absence on the ground of breach of condition of service.[83]

sympathy striker

A worker who honours a picket line is known as a sympathy striker because the worker is refusing to work in sympathy with other workers who are engaged in a labour dispute which includes:

Apart from the above strikes can be classified on the basis of their nature and initiation.

---

[81] Strikes, Encyclopaedia Article, (www.encarta.msn.co)
[82] Kambalingam v. Indian Metallurgical Corporation, Madras (1964) 1 LLJ 81
[83] ibid.

Authorised strikes

An authorised strike is one, which is called only after the union has given its consent. It is also called as official strike where trade unions approves and controls the proceedings of the strike.[84] A strike, which was supported or ratified by a registered trade union, is called as authorised or official strike.[85]

Unauthorised strikes

An "Unauthorised" strike commonly known as "Wild Cat" strikes is one, which is called without the approval of the union. It is also otherwise called as "unofficial" strike. Unofficial strikes may be those strikes called by trade union branches of districts without the support of the union as a whole in accordance with its rule.[86] These strikes are sometimes also called as "spontaneous strikes."[87] In rare circumstances it is difficult to find out the passive support given by the unions to the strike. Unions may provide both financial and material support but unofficially to the strike and if strike results in success they will take the credit and if failed they will take the advantage in mediation process..

General Strikes

General strikes occur in a broad industrial or geographical area such as against all industries in a State irrespective of their products.[88] The most general strikes occurred in Britain in 1926 when all organized workers struck to support striking coal miners, in 1917-18 in USSR but such strikes are rare in United States.[89]

---

[84]. Encyclopaedia Britannica, Vol. 21 Ed. 1966, p.470.
[85]. Hilde Benrend, Problems of Labour and Inflation, Ed. 1984, p.38.
[86]. Ibid note-3.
[87]. Ibid note-2.
[88]. Encyclopaedia Americana, Vol. 25, Ed. 1980, p. 796.
[89]. Encyclopaedia Britannica, Vol. 5, Ed. 1976, p.470.

Strikes (in USA) are classified as either economic or unfair labour practice strikes, depending on the cause of the walkout.

Economic strike

Strikes caused by disputes over wages or working conditions are considered as economic strikes. According to the National Labor Relations Board, when a strike is carried out for the purpose of obtaining better conditions for employees, it is considered an economic strike. In an economic strike, the employer may seek to hire replacements and promise them permanent employment. An economic strike is one over issues such as pay, working conditions, benefits etc. An unfair labour practice, strike is one over some alleged illegal act of the employer such as discriminating against union workers or refusing to bargain with certified exclusive bargaining agent. An economic strike can be turned into an ULP strike if the employer commits ULPs during the strike. Strikes are classified as either economic or unfair labour practice strikes, depending on the cause of the walkout. If a strike is caused by or prolonged by the serious unfair labour practices of the employer, it is considered as an unfair labour practice strike. Strikes caused by disputes over wages or working conditions are considered economic. An economic strike can be turned into an Unfair Labour Practice strike if the employer commits Unfair Labour Practices during the strike.

Strikes may be unlawful if the objectives of the strike or the strike tactics are unprotected. In addition, the right to strike may be waived by the collective bargaining agreement which limits the right.

In an economic strike (in USA), the strikers are still employees (they may not be fired), but the employer doesn't have to reinstate them immediately following a settlement. They have first claim on any job that a replacement worker later vacates. In an unfair labour practice strike, striking workers must,

upon settlement of the strike, be given the opportunity to take over jobs held by the replacement workers.

Hostile takeover

The workers some times occupy the plant to keep the owners out. They occupy the plant, post their own armed guards, and blocked a highway running to their place where the plant is situated."[90]

Unfair labour practice strike

An unfair labour practice strike is one in which an employer has engaged in an unfair labour practice prohibited by the National Labor Relations Act. The employer need not rehire those workers who have been replaced. In an unfair labour practice strike, however, the employer loses the right of replacement and is obliged to rehire those workers who were discharged during the strike and to discharge any replacements who were hired after the beginning of the strike.

Safety dispute strikes

Concerted refusals to work because of the presence of abnormally dangerous conditions of work are considered safety dispute strikes under Section 502 of Taft-Hartley, which extends limited protection to this form of concerted activity.

1. **Picketing and Hand billing Issues**:
   a. While strikes and pickets are usually closely associated, they are distinct tactics subject to different levels of regulation. As with strikes, picketing

[90] Roland Sheppard, Workers occupy privatized paper mill in Russia, Socialist action, November 1999 (www.socialistaction.org) ("The plant, the Vyborg Paper and Cellulose Mill situated in Russian town Sovietsky, went bankrupt in 1997 and was bought by foreign investors. But the plant's 2100 workers, fearing massive layoffs and saying they were owed more than $8 million in back wages, have for 18 months fought to keep the new owners out. They occupied the plant, posted their own armed guards, and blocked a highway running from Helsinki to St. Petersburg (in Russia) to attract attention to their plight.")

may be unlawful if either the objective or the tactics of the picketing is unprotected. Major categories of picketing activity include:

i. A very broad category of picketing is common situs picketing, in which one union seeks to picket a work location at which two or more employers are engaged in business. Because of the secondary effects of such picketing, it is tightly regulated by Section 8(b)(4) of Taft-Hartley.

ii. A picket is occasionally used to apply pressure on an employer to recognize a union. This form of organizational or recognition picketing is regulated by Section 8(b)(7).

iii. It is generally legal for a union to use a picket to inform the public that an employer does not pay wages or provide conditions which meet standards for the industry and area. This form of activity is known as "**area standards**" picketing.

b. Hand billing is a form of concerted activity, which enjoys broad protection because it approaches the level of constitutionally, protected free speech.

2. Consumer Appeals and Boycotts

a. Appeals to consumers and other customers of the employer's product to refrain from purchasing the product may be effective methods of pressuring the employer to resolve a labour dispute. However, there are very specific restrictions on the use of boycotts as a source of economic pressure.

i. Direct appeals to consumers asking them not to buy the product of a boycotted employer are broadly protected as long as picketing to enforce the boycott is not used.

ii. A product boycott is one in which the appeal to consumers is to refrain from purchasing the struck product.

iii. A total boycott is one in which consumers are asked not to patronize businesses which sell the struck product.

iv. A merged product boycott is an appeal to consumers asking that they not purchase a product in which the struck product is a component.

b. Section 8(e) adds very specific limitations on a form of boycott known as hot cargo disputes. Hot cargo agreements are arrangements under which the workers of one company refuse to handle the work of another. They are boycotts by workers rather than by consumers. With limited exceptions, hot cargo arrangements are unlawful.

Concerted refusals to work because of the presence of abnormally dangerous conditions of work are considered safety dispute strikes under Section 502 of Taft-Hartley, which extends limited protection to this form of concerted activity.

Apart from the above forms of protest by way of strikes, the employees are also using the many other types of the following techniques for settlement of their grievances.

2 . 8 Non-violent Tactics

The Methods of Non-violent Protest and Persuasion

Formal statement

1. Public speeches [e.g. 1934 speech by non-Nazi vice-chancellor in Germany expressing alarm and calling for restoration of freedoms]
2. Letters of opposition or support
3. Declarations by organisations and institutions [priests in Vichy France against deportation of Jews]
4. Signed public statements
5. Declarations of indictment and intention
6. Group or mass petitions

Communications with a Wider Audience

7. Slogans, caricatures, and symbols [Baum Jewish group in Berlin, 1941-2]

8. Banners, posters and displayed communications
9. Leaflets, pamphlets, and books
10. Newspapers and journals
11. Records, radio, and television [Czechoslovakia in 1968 most advanced use of radio for non-violent resistance within a country]
12. Skywriting and earth writing

Group representations

13. Deputations
14. Mock awards [Dawn magazine's 'Adolf' awards named after 20th century dictator!*]
15. Group lobbying
16. Picketing
17. Mock elections

Symbolic Public Acts

18. Displays of flags and symbolic colours [Hungarian flags 1865 to Austrian emperor]
19. Wearing of symbols [Jewish yellow star in WW2 adopted voluntarily]
20. Prayer and worship
21. Delivering symbolic objects [rats, rubbish etc]
22. Protest disrobings [women protesting at men-only Forty Foot bathing place, Dublin*]
23. Destruction of own property [tea in colonial North America]
24. Symbolic lights [candles etc]
25. Displays of portraits
26. Paint as protest
27. New signs and names [Poland in 1942, Northern Ireland ongoing*]
28. Symbolic sounds
29. Symbolic reclamations [e.g. planting seeds to reclaim land]

30. Rude gestures

Pressure on Individuals

31. "Haunting" officials [following them around etc.]
32. Taunting officials
33. Fraternisation [e.g. winning people over by being friendly as deliberate strategy]
34. Vigils

Drama and Music

35. Humorous skits and pranks [1956 East German skits on communist propaganda]
36. Performances of plays and music
37. Singing

Processions

38. Marches
39. Parades [marching in an organised manner as protest]
40. Religious processions
41. Pilgrimages [e.g. Gandhi, 1947, to persuade Muslims and Hindus to live together peacefully]
42. Motorcades

Honouring the Dead

43. Political mourning
44. Mock funerals [e.g. 'Liberty']
45. Demonstrative funerals [half a million attended Jan Palach's funeral, Prague, 1969]
46. Homage at burial places

Public Assemblies

47. Assemblies of protest or support
48. Protest meetings
49. Camouflaged meetings of protest [e.g. political 'banquets' in Russia, 1904-5] [when protests were banned in Marcos-era Philippines, protest jogs took place!*]
50. Teach-ins

Withdrawal and Renunciation

51. Walk-outs
52. Silence
53. Renouncing honours [during Ronald Reagan's Irish visit, some people handed back honorary degrees when he was awarded one*]
54. Turning one's back.

The Methods of Social Non-cooperation

Ostracism of Persons

55. Social boycott
56. Selective social boycott
57. Lysistratic non-action [where women refuse to sleep with their warring men folk, named after Lysistrata in play of same name by Aristophanes]
58. Excommunication [religious]
59. Interdict [i.e. general excommunication of an area or district]

Non-cooperation with Social Events, Customs and Institutions

60. Suspension of social and sports activities [e.g. Norway in World War 11]
61. Boycott of social affairs
62. Student strike

63. Social disobedience [e.g. fraternising with untouchables, India]
64. Withdrawal from social institutions

Withdrawal from the Social System

65. Stay-at-home
66. Total personal non-cooperation
67. "Flight" of workers
68. Sanctuary [giving refuge with religious connotations]
69. Collective disappearance
70. Protest emigration (hijrat)

The Methods of Economic Non-cooperation: Economic Boycotts

Action by Consumers

71. Consumers' boycott
72. Non-consumption of boycotted goods [even where you've already bought them]
73. Policy of austerity
74. Rent withholding [e.g. withholding 'unjust' rents, Land League, Ireland, 1879]
75. Refusal to rent
76. National consumers' boycott
77. International consumers' boycott

Action by Workers and Producers

78. Workmen's boycott
79. Producers' boycott [refusal to sell or deliver products]

Action by Middlemen

80. Suppliers' and handlers' boycott

Action by Owners and management

81. Traders' boycott
82. Refusal to let or sell property
83. Lockout [all examples given by Sharp are politically reactionary]
84. Refusal of industrial assistance [by other firms]
85. Merchants' "general strike"

Action by Holders of Financial Resources

86. Withdrawal of bank deposits [e.g. people protesting about apartheid era S Africa]
87. Refusal to pay fees, dues and assessments
88. Refusal to pay debts or interest
89. Severance of funds and credit
90. Revenue refusal
91. Refusal of a government's money [e.g. paper money]

Action by Governments

92. Domestic embargo
93. Blacklisting of traders
94. International sellers' embargo [refusal to sell to another country]
95. International buyers' embargo [prohibition of goods from specific country]
96. International trade embargo

The Methods of Economic Non-cooperation: The Strike

Symbolic strikes

97. Protest strike
98. Quickie walkout (lightning strike)

Agricultural Strikes

99. Peasant strike

100. Farm workers' strike

Strikes by Special Groups

101. Refusal of impressed labour

102. Prisoners' strike [e.g. USA 1943 against racial segregation at meals]

103. Craft strike [i.e. a single craft, e.g. dressmakers]

104. Professional strike [salaried or self-employed]

Ordinary Industrial Strike

105. Establishment strike [at a single unit under one management]

106. Industry strike

107. Sympathetic strike [outlawed in UK under Thatcher regime*]

Restricted Strikes

108. Detailed strike [leave or stop one by one]

109. Bumper strike [taking on one firm at a time]

110. Slowdown strike

111. Working-to-rule strike

112. Reporting "sick" (sick-in) [e.g. *Garda Siochana* 'blue flu' in the Republic over pay!*]

113. Strike by resignation

114. Limited strike [e.g. refusal to do marginal work or work more than 8 hours]

115. Selective strike

Multi-Industry Strikes

116. Generalised strike [less than a majority of industry]

117. General strike

Combination of Strikes and Economic Closures

118. Hartal [India; suspension of economic life to make a political point]

119. Economic shutdown [everyone]

The Methods of Political Non-cooperation

Rejection of Authority

120. Withholding or withdrawal of allegiance [Hungary, America, Ruhr 1923, Ireland]

121. Refusal of public support

122. Literature and speeches advocating resistance

Citizens' Non-cooperation with Government

123. Boycott of legislative bodies [e.g. Ireland 1919]

124. Boycott of elections [Northern Ireland, various*]

125. Boycott of government employment and positions

126. Boycott of government departments, agencies and other bodies [e.g. by unionists and loyalists in Northern Ireland, post Anglo-Irish Agreement of 1985*]

127. Withdrawal from government educational institutions

128. Boycott of government-supported organizations

129. Refusal of assistance to enforcement agents [Ireland 1881; cattle moved before bailiffs arrive]

130. Removal of own signs and place marks

131. Refusal to accept appointed officials

132. Refusal to dissolve existing institutions

Citizens' Alternatives to Obedience

133. Reluctant and slow compliance [e.g. to paying taxes]
134. Non-obedience in absence of direct supervision
135. Popular non-obedience
136. Disguised disobedience [e.g. banned newspaper changes its name]
137. Refusal of an assemblage or meeting to disperse [e.g. France, 1789]
138. Sit down
139. Non-cooperation with conscription and deportation
140. Hiding, escape, and false identities
141. Civil disobedience of "illegitimate" laws [e.g. salt tax in British-occupied India]

Action by Government Personnel

142. Selective refusal of assistance by government aides
143. Blocking of lines of command and information
144. Stalling and obstruction [scientists engaged in atomic research, Nazi Germany]
145. General administrative non-cooperation
146. Judicial non-cooperation
147. Deliberate inefficiency and selective non-cooperation by enforcement agents
148. Mutiny [military refuse orders]

Domestic Governmental Action

149. Quasi-legal evasions and delays
150. Non-cooperation by constituent governmental units

International Governmental Action

151. Changes in diplomatic and other representations
152. Delay and cancellation of diplomatic events
153. Withholding of diplomatic recognition
154. Severance of diplomatic relations
155. Withdrawal from international organizations
156. Refusal of membership in international bodies
157. Expulsion from international organizations [USSR expelled from league of Nations over attack on Finland, 1939]

The Methods of Non-violent Intervention

Psychological Intervention

158. Self-exposure to the elements
159. The fast: Fast of moral pressure [e.g. St Patrick to get King Trian to treat slaves well], Hunger strike [could be to death], Satyagrahic fast [Gandhian, intention to convert people but coercive elements]
160. Reverse trial [defendants hold prosecutors and authorities to account]
161. Non-violent harassment [psychological harassment by various means]

Physical Intervention

162. Sit-in
163. Stand-in
164. Ride-in [on public transport]
165. Wade-in [e.g. on beaches]
166. Mill-in [staying mobile]
167. Pray-in
168. Non-violent raids
169. Non-violent air raids [e.g. leaflets]
170. Non-violent invasion [e.g. Goa 1955]

171. Non-violent interjection [placing body in between]
172. Non-violent obstruction [body used as physical barrier]
173. Non-violent occupation

Social Intervention

174. Establishing new social patterns [social mixing across barriers]
175. Overloading of facilities
176. Stall-in [conducting legitimate business as slowly as possible]
177. Speak-in
178. Guerrilla theatre
179. Alternative social institutions
180. Alternative communication system [*'samizdat'* publishing in USSR]

Economic intervention

181. Reverse strike [work in]
182. Stay-in strike [strike but stay in work place]
183. Non-violent land seizure
184. Defiance of blockades [e.g. Berlin in Cold war]
185. Politically motivated counterfeiting
186. Preclusive purchasing [buying resources so others can't get them]
187. Seizure of assets
188. Dumping [deliberately selling at low price]
189. Selective patronage
190. Alternative markets
191. Alternative transport systems
192. Alternative economic institutions

Political Intervention

193. Overloading of administrative systems [e.g. excessive compliance as protest against USA involvement in Vietnam]
194. Disclosing identities of secret agents
195. Seeking imprisonment
196. Civil disobedience of "neutral" laws
197. Work-on without collaboration
198. Dual sovereignty and parallel government [e.g. Ireland, 1919][91]

3. Crossover worker:-

   A crossover worker is a striker who crosses a picket line to return to work before a strike is settled. Prior to Flight Attendants, strikers maintained their seniority privileges after a strike. A crossover worker who was doing the job previously done by a more senior striker would have to give up the job to the returning worker. Now a striker may permanently lose a job assignment to a less senior crossover.[92]

4. Sick to work: -[93]

   Earlier this month (February, 2003), workers at prisons across the state called in sick to work, participating in a strike-like job action. This drew immediate reprimand from the Department of Employment Relations, who called the action a strike and notified the WSEU that their members were in violation of state law. The WSEU ordered all workers participating in the job action to desist.

5. 'General meeting strike', (Korea)
6. **Holding hostages**:

   Striking Nigerian oil workers have been holding 270 fellow workers, including 17 Americans, as hostages on oil rigs off the coast of the

[91] http://www.innatenonviolence.org/workshops/work1b.htm
[92] Charles W Baird, On the right to strike, The freeman: October 1990 (http://www.innatenonviolence.org/workshops/work1b.htm)
[93] John Buchel, Pocan wants workers to have right to strike, February, 26, 2003. (www.badgerherald.com)

country, officials said. The striking workers are unarmed, said a spokesman at Transocean Inc., a Houston-based offshore drilling company that runs the rigs. The occupation of the oil rigs began two weeks ago over labour issues.[94]

7. **Locking-out:**[95]

   United Food and Commercial Workers, union representing 70,000 striking or locked-out Southern California supermarket workers, is waging increasingly confrontational drive to fend off cuts in members' health care benefits; hundred union supporters shut down Safeway, Santa Cruz, recently; others disrupted golf tournament, shouting slogans at supermarket board members about to tee off; labour leaders are threatening to harass supermarket executives wherever they vacation; are bringing pressure against affected supermarket chains, Safeway, Albertsons and Kroger, outside region as well; AFL-CIO official Ron Judd see national war to defend health care for workers; dispute, which began in Oct, is exacting deep pain from both sides; union and management warn dispute could last several months more

8. Taking other employees as hostages.

[94] Somani Sengupta, Africa:Nigeria:Oil Wokers are held hostage, New York Times, (April 30, 2003, Wednsday) (www.nytimes.com)

[95] Steven Greenhouse, Labour raises pressure on California supermarkets, New York Times, (February 10, 2004) (www.nytimes.com)

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 static[1]. 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 strike[2]. 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 claims 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 Court[3] 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 unaggresive".

Their explosions in to violence could be explained in two days. Either we do or have some modest nee 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 loosing 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 capital[4].

All strikes conducted by the workers are not related to service conditions[5]. 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. 1. 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 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 fellows[6]. 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 society[7]. 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 satisfactorily[8].

[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 States[9]. 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.oit.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 womwn'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 society[12]. 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 case[15] 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 Judges[16]. 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 Menmne rof M.P snatched the papers relating to women's bill[18]. when he refused to consider the motion on the issue of illegal migrants[19]. 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 Benerjee 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 he 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 lost 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 employees[20]. In epilogue, without the right to strike Government employees' right to associate is but a 'legalistic, ungenerous and vapid' right[21].

---

[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. Right[22] 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 right[23]. 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 ass 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 democracy[25] 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 insure[26].

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 England[27] 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 Spinoza[29],

> "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 unshaked; 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 ha 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 Court[34] 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 public[36]

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 public[37].

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 immaterial[40].

In 1954 the Labour Appellate Tribunal, 1960 the Hon'ble Supreme Court[41] 1988 the Hon'ble Calcutta High Court and in 1997 the Hon'ble Kerala High Court[42] held that, 'Strike is a weapon in the hands of the employees.' In 1960 the Hon'ble Supreme Court[43] and in 1965 the Hon'ble Punjab High Court[44] held that "strike is a last weapon." In 1963[45], 1989 the Hon'ble Supreme Court[46],

---

[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 Kairbetta 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 1962[47] and 1963[48] 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 Karnataka[49] and in 2003[50] 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 Aiyyangar. 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, etc[52].

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 partnership[53]. 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 undertaking[54] as 'essential service,' senior political leaders stating that they had committed mistake by supporting the militant trade unions[55], 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, 1926[57]. 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 Rajastan,[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 litigations[60]. 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 law[61]. 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 disaster[62]. The most important human right[63] 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 wee 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'.

CHAPTER – IV

HISTORICAL PERSPECTIVES OF STRIKES

Get rid of jealousy from your heart
And eschew violence

.....Sama Veda. 27.4.

Through rigorous discipline and strict austerity,
Burn thy passionate desires.

.....Sama Veda. 24.

This chapter examines the development of industrial relations in UK, USA, India and other countries from the inception to till date. Study of the development of right to strike in UK and USA, the world's most leading economies with the aim of highlighting some of the main areas of difference and similarity. It looks at a number of important structures and processes and the way in which several key issues - such as pay, working time etc. Finally, the how the activity of strike changed from time to time is also discussed till date.

In the industrially developed countries strikes are inevitable. For the development of the country, establishment of industries is necessary, whereas, for the development of workers' living conditions their wages should be high. For earning more profits employers and for getting more economic benefits employees tries to over power the other. In the struggle for profits and benefits strikes becomes inevitable. Maintenance of industrial peace is necessary for the smooth

development of the industries. Harmonious relation between employer and employee is necessary for industrial peace. Relation between employer and employee cannot be harmonious unless the inter-personal relations between workers, supervisors and management are improved.

4. 1 DEVELOPMENT OF RIGHT TO STRIKE IN UNITED KINGDOM

Industrialization first started in Britain, Hence the history and development of right to strike in United Kingdom reveals the facts that lead workers to fight for their right to strike. Trade Unions in Britain did not exist in Middle ages, nor in the time of the Tudors and the Stuarts, although we come across some craft guilds of the workers during the period which were the associations of skilled the workmen engaged in the production of the same type of goods. It was not, however, until the industrial changes of the eighteenth century that the need for workmen's combination became pronounced in England. The early trade unions or combinations, as they were called, formed by workers themselves spontaneously because of their need to combine for their need to combine for their own protection in rapidly developing world of industry[1].

British Kingdom which never saw sunset (once) probably the only kingdom in the history that developed to such a height. The tiny kingdom out of its best efforts rose from an agricultural country to a well developed industrial economy. Even prior to 1215 (Magna Carta) the act of protest (strike?) was tasted by the United Kingdom. Long before the advent of industrial revolution, Statute of labourers in England created a legal duty to work under long term contract of service for wages fixed by law. They have to decide whether, and what limits need to be placed upon the ability to exert pressure by way of industrial action.[2] Those

---

[1]. Dr. T.N. Bhagoliwal, *Economics of Labour and Industrial Relations*, p.219.
[2]. Bryn Perrins, *Trade Union Law* 1985, p.260.

workers who violated this duty faced criminal and civil penalty. The statute of Artificers imposed fine and prison terms on striking workmen, however, were averse to convicting workers for conspiring to strike for better wages. In consequence, action for damages under the doctrine of civil conspiracy and for inducing breach of contract was preferred. The theme of "collective responsibility was not known to British administration till 1782[3].

With the beginning of industrial revolution employers found this state of affairs to be unsatisfactory. The French Revolution had created danger in England also and, therefore, it was feared that trade union, if developed, would become revolutionary in character. The parliament at that time was hostile and passed General combination Acts of 1799-1800 which forbade the establishment of unions in any trade, workers who joined the unions were to be severely punished. Accordingly, between 1799 and 1824 Combination Act prohibited combination and declared strike a crime. The rigors of these Acts were considerably relaxed on their repeal by the Combination Law Repeal Act, 1824 which made it legal for workers to combine to improve their wages, working hours and other working conditions, provided that, such strike or other concerted activity was not affected by the vice of violence, threat or intimidation. Several attempts were made to bring workers of all industries in to a single national organization instead of combining them in separate unions for particular craft industries. Immediately thereafter (what ever might be the reason) there was a flood of strikes in England and the parliament, in panic, repealed the 1824 Act. The 1825 Combination Laws Repeal (Amendment) Act further added molestation and obstruction to the list of workers concerted activities, which were illegal. In 1834 the Grand National Consolidated Trade Union was formed under the influence of Robert Owen and

[3] In 1742 Sir Robert Walpole, the first Lord of the Treasury and Chancellor of the Exchequer and who was in fact the first Prime Minister of Great Britain lost support of majority in the Commons. It was in 1782 as a result of the hostility of the Commons that the practice of "collective responsibility" began.

his followers comprising nearly a million workers of both sexes, which collapsed later. The Amalgamated Society of Engineers was formed in1850 as a result of the 'slow but sure' policy of the labour leaders indicated above. Molestation of Workmen Act, 1859 again favoured the workmen by declaring that mere to endeavour peacefully, to persuade others, without threat, or intimidation, to cease work, to obtain the rates of wages or hours of labour, being sought does not amount to 'molestation' or 'obstruction'. In pursuance of the report of Royal Commission on Labour, 1869 on trade unions, the parliament enacted Trade Union Act, 1871 and the Criminal Law (Amendment) Act, 1871 repealing the Acts 1825 and 1859, restoring the position under 1824 Act.

In R vs. Bunn, Brett.J, held that despite Trade Union Act 1871, which abolished Criminal liability in restraint of trade, still a criminal offence at common law to interfere, with improper intent, with the employer's to conduct his business. The Act of 1871 was followed by a great expansion of trade unionism but the industrial depression of 1874 brought about a number of unsuccessful strikes and consequently a large number of small unions disappeared. This led to the appointment of the second Royal Commissioner in 1874 and on its report The conspiracy and the Protection of Property Act, 1875[4] and The employers and workmen Act, 1875 were passed and Master and Servant Act, 1867 and the Criminal Law (Amendment) Act, 1871 were repealed.

Queen vs., Lethem the last of the famous 'Triology of the house of Lords, proved disastrous for the labour for the reasons that, (i) it "was an unwholesome and rather disgraceful exhibition by the law Lords of what might accurately be called both class prejudice and skulduggery, (ii) it affirmed that the Protection of

[4]. The conspiracy and Protection of Property Act, 1875, declared that an agreement or combination by two or more persons to do, or procure to be done any act in contemplation, or furtherance of a trade dispute shall not indictable as a conspiracy if such act, committed by one person, would not be punishable as a crime.

property Act, 1875 gave to those acting "in contemplation or furtherance of a trade dispute" against prosecution for criminal conspiracy, did not extend to action for civil conspiracy, (iii) it also decided that those using industrial sanction as a result of an agreement, that is by way of collective action could not be liable to tort in circumstances in which an individual acting along with would not be liable.

A serious menace to the legality of trade unionism appeared in1900 with the judgment pronounced in the case of Taff Vale Railway Company[5]. The public resentment over this state of affairs resulted in appointment of Royal Commission on Trade dispute and Trade Combination in June 1903, which submitted its report in January 1906. The Trade Disputes Act, 1906[6] was enacted.

None of these statutes defined "strike". However, the aforesaid legislative history shows that 'strike,' as a legally protected concerted activity incorporated at least three elements viz. (i). Concerted stoppage of work, (ii). in furtherance of a traded dispute (iii). Absence of violence or other criminal activity (other than those which might arise by the breach of contract and restraint of trade and conspiracy).

British labour leaders after discussing with the Welshman had agreed not to go on strike during the period of World War-I.[7] During World War I the AFL (Associated Federation of Labour), USA pledged to avoid strikes[8]. In lieu of such

---

[5]. The members and officials of the Amalgamated Society of Railway servants took steps in support of railway men during a strike. The company brought an action against for damages against the ASRS. The Law Lords decided that a trade union could be sued for damages alleged to have been caused by the action of its officers.

[6]. Act 1906 freed economic collective action from all penalties whether criminal or civil. It specifically provided that an act done in pursuance of an agreement by two or more persons and in contemplation or furtherance of a trade dispute should not be actionable.

[7]. James Connolly, The right to strike, (1915, Updated on 14.8.2003), The workers' Republicc, 3-7-1915.(www.marxists.org)

[8] Joshua B. Freeman, *Strikes in United States*, 1881-1974 (1981); The Us department of Labor Bicentennial History of the American Worker (1976),

agreement law was passed prohibiting strikes.[9] Every worker under the war regulations is bound to labour when and where he is told, and if he does not like the conditions he is graciously allowed to grumble, but grumble he as much as he chooses he must keep on working under the conditions against which he is

---

(http://college.hmco.com/history/readerscomp/rcah/htm/ah_9521200_labor.htm). (visited on 24.03.2004)

[9] We would advise all interested in the peaceful development of the Labour Movement to watch carefully the progress of events in connection with the activities of the Minister for Munitions. It will be noted that in his negotiations with the British Labour leaders this wily Welshman has already succeeded in inducing a very large section of these gentlemen to surrender the 'right to strike', on behalf of the workers they represent. This means that in the industries in which their members are interested the workers have surrendered the only weapon they possess of immediate effective value in compelling a hearing for their demands. We have not yet heard of any corresponding surrender on the part of the employers – have not heard of the capitalist class giving up any of the power they possess over the lives of their employees. It is only the workers who are asked to surrender civic rights – rights hard won by generations of fighters. It will of course be argued that this is for the war only. Even if that be so it cannot be cited as a justification for the surrender; it may be used as an argument against the war. For if the war can only be pursued by virtue of robbing from the civil population all the privileges hitherto enjoyed by them, then no friend of freedom and orderly progress can fail to be opposed to the war. But upon what guarantee is the statement based that this denial of the right to strike will not persist after the war? Do we not all know that the world after the war will be mightily changed, that many institutions are being introduced as war measures that will be carried over into times of peace? He would indeed be foolish who did not realise that each innovation which we see being introduced into the industrial world will, if it proves effective for its present progress, become an established fact too difficult to dislodge when war is over. [1]

It was said that the denial of the right to strike is only a war measure would do well to study out the processes by which it can be justified on that ground. They will find that every argument that can be used to justify that denial now, can easily be stretched to justify similar restrictions in time of peace. For instance, what is the argument that made it necessary in war-time? The answer is that such restriction is necessary in the interests of national self-preservation. Well, what is to prevent the ruling class saying hereafter that any strike in a basic industry, such as the transport, the railway, the mines, the engineering, is a menace to the well-being of the nation, and that therefore it ought to be prohibited in the interests of national self-preservation? There is nothing to prevent them doing so, but much self-interest impelling them to such action. And any tyro in politics knows that precedent governs Great Britain above all countries in the world. If it can be proven in a British Court of Law that any particular decision was once given before and accepted as Law, then the judge of that Court will give his decision exactly on similar lines, though it may involve the most manifest absurdity and heinous injustice. Hence this denial of the right to strike is full of dangers for the future, and the British Labour leaders in accepting it have grossly betrayed the class to which they belong, or did belong.

Thus another liberty is disappearing. Already we have seen trial by jury destroyed in Ireland as in the case of Sean Milroy and Sheeny Skeffington. (James Connolly, The right to strike, (1915, Updated on 14.8.2003), The workers' Republic, 3-7-1915.(www.marxists.org)

grumbling. This is freedom, as it is understood by the war party in England and Ireland[10].

They had surrendered the 'right to strike' on behalf of the workers they represent. The justification claimed by the representatives of the government as well as employers was it is a war measure only and for a short period. However, the labour leaders' failed to incorporate a provision of time limit (for war period only) in the agreement for surrendering the 'right to strike'. But the employers well anticipated in advance, it will continue forever, at least for some generations. After world War-I, it was proved that the surrender of this right hard won by generations of fighters was a blunder. The labour leaders who surrender the right to strike failed to negotiate successfully with the representatives of the government and employers to restore the right. The government that succeeded in restricting the employees from showing their protest (particularly from going on strike) failed to restrict the employer producers from increasing the prices of the commodities and getting profits multi fold. The political leaders of Great Britain thought that the right to strike is full of dangers for the future, hence they succeeded in inducing the labour leaders in surrendering the right to strike on the pretext of World War-I. After World War-I, the government failed to pay much attention to restore the right to strike. At the same time the labour leaders also failed to bring pressure upon the government to revive the right to strike.

World War-I presented England with an entirely different kind of problems. Even while recognising that concerted stoppage of work in furtherance of an industrial dispute was permissible economic activity, it was appreciated that in the

[10] 1. Connolly's suspicions were justified. Restrictions of the right to strike lingered on under the name of the Trades Disputes Act.
2. When Sir John Anderson threatened (July, 1940) to suppress the **Daily Worker** he was asked to specify the subject matter to which he objected. The following reply was received: "The Secretary of State ... cannot attempt, by reference to particular items, to give you guidance..." (James Connolly, The right to strike, (1915, Updated on 14.8.2003), The workers' Republic, 3-7-1915. (www.,marxists.org)

emergency situation of war this permissible economic activity needed to be regulated, not on the basis of conspiracy, restraint of trade, breach of contract and employer's property rights, but in the interest of the community at large and the realm. This compelled the legislature to define what it considered to be legal '*strike*' and then proceed to regulate that activity. The Shop stewards' Movement originated on the Clyde with the engineers' strike in 1915 and it developed in England as a response to certain factors outlined[11]. Although practices may vary considerably, the average is roughly one shop steward for every fifty union members[12]. The parliament, for the first time, defined the expression '*strike*' in The Munitions of War Act, 1915.[13] The conservative government ushered in to power in the wake of unprecedented general strike 1926, passed The (English) Trade Disputes and Trade Unions Act, 1927, which deliberately curtailed the workmen's right to strike[14]. In 1946, the Act of 1927 was repealed and the position prior to 1927 was restored.

During World War-II labour fully cooperated with the government. They agreed to abide by the wartime regulations, which made strikes illegal, and

---

[11] Firstly, during the war, the official trade unions first pledged themselves voluntarily against strike action and later were made subject to the prohibition of strikes under the Munitions of War Act, 1915. Thus in case of serious grievances provoking strike action, the workers had to act under unofficial leadership provided by Shop Stewards. Secondly, due to war the pressing need for more munitions caused drastic changes in workshop practices and consequently the importance of Shop Stewards was considerably enhanced. Lastly, a greatly rising demand for more skilled workers for the Army led to continual friction and in consequence opposition to the war increased specially after the Russian Revolution of March, 1919. The Shop Stewards provided leadership for such opposition.

[12] Clegg, Killick and Adams, *Trade Union Officers* (Black Well, 1961).

[13] "The cessation of work by body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for the employer in consequence of a dispute done as a means of compelling their employer or any person or body of persons employed, or to aid other workman in compelling their employer or any person or body of persons employed, to accept or not to accept perms or conditions or accepting employment."

[14] The Act 1927 redrafted the definition of strike as "a cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under common understanding of any number of persons who are, or have been so employed to continue to work or to accept employment."

disputes should be settled through new National Arbitration Tribunal. In the World War-II, Britain lost 0.6 percent of its population and the United States about 0.3 percent. But Soviet Union lost 14 percent of its population.[15] But even after the war same regulations were continued, strikes ceased to be illegal in 1951 but the 'Minister of Labour could still refer certain issues to compulsory arbitration before the renamed "industrial Disputes Tribunal". This power was abolished in 1958 forcing a non-federal employer to observe any minimum standards for terms of employment established by collective bargaining, which was incorporated in terms and conditions of employment Act[16].

The change in attitude came about as a result of an obiter dictum of Donovan LJ. in Rookers vs. Barnard[17]. The fallacy in the argument is to equate 'the job' with the 'contract'. But, that is not to say that don't want to give up their contracts. On the contrary that is the very thing they do want. Their notice indicates that they are not prepared to continue working on the existing terms. Nevertheless, Donovan LJ's theme was taken up by Lord Dalvin in Rooks vs. Bernard. It was also taken up by Lord Denning MR. in Stratford vs. Lindley, but he later resiled and repudiated the proposition that a strike after due notice is a breach of contract, for, said he if it were correct, "it would do away the right to strike in this country".

---

[15] *Tele-Crusedar*, (Monthly journal of BSNL employees union) Vol-IX, June, 2005,nO.6, p.6.

[16]. Bryn Perrins, Trade Union Law, 1985, p.43.

[17] (1963) 1 QB. 623 = (1962) 2 All.E R. 579, CA. "There can be few strikes which do not involve a breach of contract by the strikers. Until a proper notice is given to terminate their contract of service and that notice has expired, they remain liable under its terms to perform their bargain. It would, however, be an affection not to recognize that I the majority of cases no such notice is either given or accepted the strikers do not want to give up their job; they simply want to be paid more for it or to secure some other advantage in connection with it".

In Morgan vs. Fry, three judges of Court of Appeal took different view[18]. Trade Unions and Labour Relations Act, 1974 gives a defence against all those torts when committed in contemplation or furtherance of a trade dispute, but the defence is removed in various circumstances by the Employment Act of 1980, 1982 and Trade Union Act of 1984.The strike, once regarded as a central feature of British industrial relations, now become so peripheral. There are several possible explanations, not mutually exclusive.

What made the UK distinctive a few decades ago was the frequency of small, short, usually unofficial strikes. These reflected a highly decentralised system of collective bargaining and often chaotic payment systems in some manufacturing industries. Institutional reforms brought some reduction in strike numbers in the 1970s, though those that did occur were often larger and more protracted than before.

The much sharper decline in strike numbers in the 1980s and 1990s can be attributed, *first*, to the altered structure of UK employment. When strike activity was at its height, it tended to be concentrated in particular sectors (such as coal-mining, engineering, docks and public transport) and often in particular companies or workplaces. To a large degree, these are the areas of employment, which have declined most sharply in recent decades; whereas employment has grown in sectors without a tradition of collective militancy.

Second, there has been a shift in the balance of power. Unemployment has risen and trade union membership has fallen sharply, trends, which in most

---

[18]. Russel LJ. Said, "a strike was a breach of contract unless express notice to terminate notice was duly given". Devies LJ. Reasserted the traditional view that "due notice of strike should be interpreted as implied notice of termination (plus an offence to work on new terms)". Lord Dennings MR. produced a novel doctrine that "at Common Law a strike suspends the contract of employment".

countries are reflected in fewer strikes. Changes in the law in the 1980s are also important. In UK there has never existed a "right to strike" as this is understood in most of Europe, strikers are in breach of their contracts of employment and are liable to dismissal (though in the past, few employers would have contemplated such action). Traditionally, however, trade unions were protected against liability for calling a strike; this immunity has now been removed, and the circumstances in which they can legitimately organise a strike are now tightly circumscribed. In addition, some employers have shown a new willingness to dismiss strikers, or to threaten to do so.

Third, the withering of the strike might be seen as evidence of the end of adversarial industrial relations and the growth of a partnership approach: the TUC interpretation. Certainly there are many employers whose handling of labour relations has become more sophisticated, and whose preference is to achieve change through agreement; reciprocally, more trade union representatives than in the past see strikes as a last resort. The priority of survival in an ever more competitive world reinforces the pursuit of peaceful solutions. Whether this has stimulated a fundamental shift in orientations in UK industrial relations remains to be seen.

A final point to note is the significance of the change of government in 1997. Some Conservatives argued at the time that a Labour victory would encourage union militancy (UK9707144F); but the reverse has occurred. This is particularly noteworthy because since the 1970s, as in many other countries, the focus of the most serious disputes has moved from private manufacturing to public services. Although the Labour government has maintained the tight spending limits of its predecessor, unions in the public sector have remained largely quiescent.

The climate of industrial relations in the UK is far removed from the strikes, stoppages and general work-place strife associated with the 1970s and early 1980s. The annual survey of industrial action by the Office of National Statistics reveals the extent to which relative harmony has become the norm in workplaces across the UK. The number of days lost because of industrial disputes is now running at less than half the average for the 1990s (660,000). There were no stoppages involving the loss of 100,000 working days or more. In total there were only 205 stoppages recorded—the second lowest since records were started in 1891. The average number in the 1980s was 1,129 and 273 in the 1990s.

Britain's industrial relations climate is now one of the best in the world. Both the scale and duration of strike action within the economy is a small fraction of that seen in the late 1970s, the 1980s and into the early 1990s. The improvement in industrial relations is an important factor behind the UK's favoured status as a venue for inward foreign direct investment.

In each of the three years (from 1999 to 2001), the number of working days lost through industrial stoppages has been comfortably within 300,000. Between 1979-1990 the figure never fell below 1.9 million—and in 1979 with the Winter of Discontent and in 1984 with the yearlong National Miner's Strike, the figures soared to over 25 million working days lost.

Much of the credit for the improved figures goes to the long-term impact of trade union legislation brought in by the previous Conservative Government. However new style unionism and a much more benign macroeconomic climate have helped to defuse many of the traditional causes of strike action—notably concerns about real pay levels and fears of widespread job losses.[19] The strike ban led to annual protests by the TUC which saw it in the same light as the Thatcher

[19]

government's prohibition on trade union membership at GCHQ, the government's electronic eavesdropping centre.

The controversial ban on industrial action by prison officers was imposed in 1994 by Michael Howard, the then Conservative home secretary. It is to be scrapped in return for an overhaul of working practices and a three-year pay deal. (But restoration of full Trade Union rights is enough to secure modernization deal)[20]

An analysis of labour disputes in 1998, published by the Office for National Statistics in the June 1999 issue of *Labour Market Trends*, showed that strike activity remains at its lowest level since records began in 1891. In the period June 1998 to May 1999, only 464 ballots on strikes and other forms of action had been held, compared with 702 in the year 2002; and that only a minority of those ballots yielding a "yes" vote were followed by strike action.[21]

Industrial disputes in the UK, 1965-98

Year	No. of strikes	Workers involved (000)	Days lost (000)
1965-9 (ave)	2,397	1,215	3,929
1970-4 (ave)	2,917	1,573	14,077
1975-9 (ave)	2,345	1,658	11,663
1980-4 (ave)	1,363	1,298	10,486
1985-9 (ave)	895	783	3,939
1990-9 (ave)	274	223	824

[20] Alan Travis, home affairs editor, Prison officers get right to strike, *The Guardian*, May 21, 2003 Wednsday)

[21] European industrial observatory online, Strikes in the UK: withering away? (www.eiro.eurofound.eu.int/)

Industrial disputes in the UK, 1965-98

Year	No. of strikes	Workers involved (000)	Days lost (000)
1995	235	174	415
1996	244	364	1,303
1997	216	130	235
1998	166	93	282

Source: Labour Market Trends, Office for National Statistics, June 1999.

Publication of these figures has provoked little reaction, doubtless because they confirm what is by now a well-established trend. However, in a comment on the new statistics, Trades Union Congress (TUC) general secretary John Monks hailed them as evidence that "the partnership approach to industrial relations is now the dominant mode". He also referred to the TUC's own annual survey of affiliated unions, also published in June (*Focus on balloting and industrial action: trade union trends survey 99/3*). This showed that in the period June 1998-May 1999, only 464 ballots on strikes and other forms of action had been held, compared with 702 in the year 2002; and that only a minority of those ballots yielding a "yes" vote were followed by strike action. This, he argued, showed that unions were establishing increasingly effective bargaining relationships and rarely needed to apply the strike weapon. The survey (to which affiliates representing three-quarters of the TUC membership responded) showed that the Transport and General Workers' Union was responsible for roughly half of all ballots. While pay was the most frequent strike issue, its importance had declined since the year 2002, while redundancy had become an issue in a third of all disputes.

4. 2 DEVELOPMENT OF RIGHT TO STRIKE IN UNITED STATES OF AMERICA

Evolution of strikes in United States one of the world's most leading economies was the most violent, and blood stained. The employers and the government always suppressed the striking workers or slaves with tremendous force[22]. Trade unionism in early stages confined only to the skilled and white workers only. Carroll D. Weight, the first commissioner of labour of the United States, discovered records of only 1491 strikes and lock-outs in USA before 1881, more than half of which occurred in 1880. The two most important events in early history of United States took place in the year 1676, at a time when United States of America did not exist, but there was a series of British colonies. *First* of its events were a rebellion of the white workers and African slaves against the planters class of Virginia, for the reason that white workers and black slaves had roughly similar working conditions. It is important to note that, there was no race discrimination at that time. To overcome this problem the planters crushed the rebellion by creating class difference of white and black. From that time white workers started thinking themselves first as white and secondly as workers. The *second* event of 1676 was a war in the North East New England States that was known as the King Philip's war. In this the Puritans, who were radical Protestants from England killed about 30,000 Indians and established total military control of the New England North-East part of America. The early history of the United States created dynamic base on a mixture of a radical of Protestantism of the African slaves and the Indian. These two events together created a basic ideological dynamic change in America. On one hand, they promoted racial oppression inside the society and expanded the West outside.

The first actual working class political party union was formed in the late 1820s in United States. The early unions were completely contained with the ideology of White supremacy and were not at all interested in the problems of the

[22] http://www.reapinc.org/Home.html

slave population. However, labour historian Philip Foner sets the birth of American labour movement at 1827. In 1827, the Mechanic union of Trade Association of Philadelphia was formed. The first Textile Strike occurred in 1828. These moments achieved their first political expression in the Democratic Party, which became the party of the White working men 1820s and 18230s. Democratic party though had the support of the working class was never been an anti-capitalist party, ruled America politics from 1828 until the outbreak of the civil war in 1860. Often various local unions united in to "Trade Unions" to provide common support during strikes and frequently maintained common strike funds. In 1834 the first effort to form a trade union group reaching beyond a single area was made[23].

By 1836, there were 13 similar bodies in other cities. By 1850, national unions viz. Upholsterers, Hat Finishers, Plumbers, Building Trades, Railroad Engineers, Stone Cutters, Lithographers, Cigar Makers, Silver Planters, Mule Skinners, Machinists, Blacksmiths, Painters and Cordwiners were founded: But it is very interesting to observe, that in 1848 at the time of the first worker uprisings in above all France, in which Communism appeared as a serious working class current, the workers movement in the United States was completely caught up with the question of slavery. In 1848 the Democratic Party split over the question of slavery. In early 1860s the United States had a Civil Way that lasted for five years, which was the real creation of American States. The Civil War (1861-65) and its aftermath gave a fillip to the revival of trade union activity. By 1865, there were 300 unions representing more than 200,000 workers in 61 trades, by 1870 there were about 32 craft nationals, on the basis of these trade assembly a National Labour Union was organised in1866 which eventually collapsed in 1872 when the leadership tried to transform it into a political party. The dissatisfaction with National Labour Union led to organisation to militant but secretive labour

[23] City central bodies from seven cities met in New York to form a national trade union body which could not survive the panic of 1837 and the ensuing years of business dislocations.

unions[24]. The Knights of Labour were the first national organisation in America (formed in 1880s) was active for a period of more than a year and extended its influence over the unskilled workmen as a consequence, a standing committed was appointed by the House of Representatives in 1883 and a National Bureau of Labour was established to collect expert information on labour conditions in 1884.

After the civil war, industrialisation proceeded at a rapid pace; as a result the frequency of strikes was increased. The establishment of Knights of Labour (1869) gave great imputes and assistance to the strikes conducted in 1877 by Coal miners and railroad workers. Formations of American Federation of Labour (AFL) further lead to increase in number of strikes.

Formation of doctrine of **"Employment –at-Will" in 1877** by Horape C. Wood in Treatise 'Master and Servant' which was shared by most of his legal contemporaries[25] change the entire scenario of employer, employee relationship. The concept of employment brought revolutionary change in the concept of "Right to employment" and "Right to strike". Any employer under this system can terminate the service of his employee for any reason, which includes even for "no reason". The history of "May Day" begins in the United States on May 1, 1886[26].

---

[24] The Noble Order of the Knights of Labour is the truly first national organisation of labour, founded in 1869 at Philadelphia, represented the first significant attempt in this country to form one big general union.

[25] Ronald B. Standler, *History of At-Will Employment Law in the USA*, (2000) (www.rbs2.com/atwill) William L. Mauk, Wrongful Discharge: The Erosion of 100 Years of Employer Privilege, 21 Idaho L. Rev. 201, 202 (1985).

[26] The history of May Day begins right here in the USA. On May 1, 1886 the Federation of Organized Trades and Labor Unions declared a national strike to demand an eight-hour work day and 350,000 workers across the US responded. The country was paralyzed and that paralysis was most severe in Chicago and in Chicago two days later police fired on strikers - killing four and wounding many more. On May 4 at a peaceful rally in Haymarket Square that the police attempted to disperse, a bomb went off. In the aftermath the Chicago police arrested 8 labor leaders, 7 of whom weren't even there, and they were all tried on the basis of their radical syndicalism or unionism beliefs and all 8 were sentenced to death. Four were hanged and one died a mysterious death in prison. News of these trials and executions electrified labor groups around the world and in 1889 the Socialist International declared May 1, a day of demonstrations, and since 1890 rallies have been held all over the world. In many countries on all continents, May 1 is a national holiday. In 1947 over 500,000 workers marched in New York City demonstrating labor's power in post WW II America. It is no accident that in 1947, the Veterans of Foreign Wars began their drive to have May Day declared to be Loyalty Day.

In 1877 was the first real outbreak of mass-class struggle in Railway strikes all across the country. The Industrial Workers of the World (IWW), a militant organisation formed which organised all of the immigrant group as well as Black workers along with White working class. Before World War-I the Industrial Workers of the World actually organised some dangerous strikes among others. The American capitalist class used tremendous violence to suppress the IWW movement. Unfortunately, IWW was destroyed by repression as well as mechanisation after World War-I.

In 1881, six Craft Unions under the leadership of Samuel Gompers and Adolph Strasser established the Federation of Organised Traders, and Labour Unions (FOTLU). In 1886, when the Knights of Labour refused to agree to respect jurisdiction of the large craft unions several of the later formed the American Federation of Labour (AFL)[27]. "Citizens' Alliances" along with Employers' Association successfully encountered the strikes by AFL by influencing the public opinion through press. IWW rejected the collective bargaining, as it believes in direct action against employers. It conducted several successful strikes. As IWW leaders took anti-war positions (during World War-I) they were sentenced to twenty years and ordered for closure of its offices under The Espionage Act. Several leaders of IWW joined newly formed American communist Party after the war.

During war there was close co-operation between organized labour and employers. The government also accepted in principle of labour representation of official committees connected with war. The National war Labour Board was established which was able to bring about amicable settlement of workers' grievances wherever they exist. The employers were willing to concede the demands of the labour if they co-operate in uninterrupted and steady production.

In 1958 the act was passed by Congress and President Eisenhower signed it into law (Peter Onley, May Day Speech (May 1, 2004) (www.zmag.org)

[27] FOTLU was merged in AFL.

But after the war the government withdrew from active intervention in industrial relations there were many bitter industrial disputes. Open shop Organisations were established practically and number of unions was crushed under the combined onslaught of anti-union drives, the wage cuts and the breaking of agreements signed during the war by the employers. The anti-union terror activities resulted in decline of union membership to 3.5 millions in 1924 from 5 millions in 1920. At the same time, company membership rose to 1.5 million in 1928 compared to less than 7 lakh in 1922.

Among the most bitterly contested strikes of the late 19th and early 20th centuries were those conducted by steel workers in 1892; by bituminous-coal miners in 1894 and 1897 and anthracite-coal miners in 1900 and 1902; and by employees of the Pullman Palace Car Company in 1894. Many of these strikes were marked by major outbreaks of violence; in the Pullman strike, for example, President Grover Cleveland sent United States Army troops to the scene to quell the rioting. The struggles of the workers in the clothing industry for union organization and improvement of working conditions were also characterized by many strikes. (The leading union in this field, the International Ladies' Garment Workers' Union, one of the largest affiliates of the AFL, led the first strike in this industry, that of the shirtwaist workers of New York City in 1909-1910.)

In 1919 Seattle was shaken by general strikes. The earliest strike conducted by Government Employees in the United States was that of the Boston Police. In 1919 the strike was caused by the refusal of the Boston police commissioner to permit the police to affiliate with the AFL. For a brief period, the city of Boston was the scene of widespread rioting, which began after a majority of the police had left their posts. Calvin Coolidge ultimately broke the strike, the then governor of Massachusetts, who brought the state militia into the city, took charge of the police force, and ended the strike agitation. The Great Depression (1929-33),

which caused considerable fall in the level of economic activity, employment that in turn, affected the income of the wage earners. In order to revive the American economy, the Government intervened and the result was the famous "New Deal". The first legislation where in the workers were given advisory status in preparation of industrial codes was the "National Industrial Recovery Act, 1933". This in turn resulted in increase of union activities and the membership of AFL increased by 40% in 1935 for the first time since 1922 it's paid up membership exceeded 3 millions[28]. The National Labour Relations Act, 1935 that gave private sector union reorganisation for the purpose of collective bargaining, did not address the public sector unions.

During World-War-II unions agreed to 'no-strike' pledge in order to liberate Europe and defeat the Japanese military[29]. During this [period both the Associated Federation of Labour and the CIO agreed to a "no-strike" policy, for furthering the national war effort by maintaining production at a high level. Although this pledge was not kept inviolate and some strikes did occur during the war, their number and duration were negligible. At the end of World War-II there were 4600 reported strikes, many of which were in the public sector. In 1841, 23 million days were 'lost' in strikes, whereas in 1946 the figure was 116 million; even in 1949 the figure was still high, at 50.5 million. This increase was not primarily due to an increase in the number of strikes *per se* (4,288 in 1941, 4,985 in 1946), but in the number of strikers (236,000 in 1941, 4,600,000 in 1946), and in the duration of the strikes that took place, clearly showing a growth in working class confidence. In 1947 United States Congress had passed the notorious Taft-Hartley Act,[30] which required union officials to sign a non-communist oath.

---

[28] In 1935 the number of strikes conducted was 2,014.

[29] Editorial, Labour research association, New York, Workers' right to strike should not be condemned, October, 9, 2001. http://WWW.labour reaearch.org/

[30] Section 13 of Taft-Hartley 1947, states that, "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Another provision prohibited strike by public workers. Despite this nominal recognition of the right to strike, the Taft-Hartley Act contains extensive limitations on the right to strike and on the rights of strikers.[31]

Condon-Walden Act provided for dismissal of a striking employee including three years ban on employment among other penalties. A striker if reinstated, he was barred from pay increase for three years and will be placed on probation for three years. Most unions, however, emerged from 1940s and grew between 1950s and 1970s. The Railway Labour Act, 1950s covers only employees of American Railways, and allows direct State intervention in possible strikes and also allows the State to impose contracts upon the workers[32]. At this stage the thought of fundamental right to strike is inopportune, ill timed or a bad idea. During 1947-48 at the political level the post-war wave of strikes had been contained by growing bureaucracy and repressed by the state. The Taft-Hartley Act, 1947, legitimised the State repression. In order to counter the post Second World War strikes, the United States' ruling class viciously attacked the labour movement. The concert of strikes, which was developed, passed through the different phases of both positive and negative, started decline through a series of trouble that began in mid-1950s. Wild-Cat strikes were started in the industries in

---

[31] As it has developed, Taft-Hartley applies an ends/means test for determining whether a strike is illegal or unprotected. As a general rule, strikes are illegal if the union seeks to achieve improper goals or if improper tactics are used. Strikes to obtain illegal or permissible subjects of bargaining would be examples of strikes that are prohibited because the goal is illegal. Strikes lose legal protection if unlawful tact is used. For example, sit-down strikes are unlawful. In addition to restrictions imposed by Taft-Hartley, the Anti-Injunction Acts (Norris-LaGuardia and similar state legislation) are important for determining the ability of the union to maintain a strike without court intervention.
A major limitation on the right to strike is the interpretation of the Section 7 concept of protected activity. An employer retains the right to discipline workers who engage in activity, which is unprotected. Thus, workers who are engaged in wildcat strikes, strike or picket misconduct, or other tactics which exceed the standards of permissible conduct under Section 7 may be disciplined.

[32] Public sector workers face more dramatic restrictions on the right to strike. Most states and the federal government restrict or prohibit public sector strikes. The federal government, for example, has the right to terminate strikers and revoke the bargaining rights of a union involved in a strike.

1955. The Black movement, which began in the mid 1950s and achieved greatest success in the second of 1960s; all these occurred in a context of the Vietnam War. Direct attack on the working class started by the employees in 1980s. Air traffic Controllers who were Government employees went on strike in 1981, who were simply fired by Ronald Regan and replaced by military personnel. At this stage, it is interesting to note that the American Government loved unions and workers strikes as they were happening in the Soviet sphere of influence, but they were destroying them in their own sphere of influence. It led to whole series of working class defeat. In 1983, the strike by Greyhound bus drivers was completely smashed. In 1986, the 18 months old strike in the state of Minnesota by meat packing workers was completely defeated. In 1986, ten or eleven large factories were closed in the area of Los Angels with the loss of 40,000 jobs of mainly black workers. Ten years later in 1992 in the Los Angeles riots approximately 60 blacks and Latinos were killed. All these incidents forced the American capitalists to think for a change in an ideological direction and that was what brought Bill Clinton to power in 1996. The year 1999 witnessed a record low number (17) of strikes, where as in the year 2000 the number of strikes were doubled (39) involving an estimated 3,94,000 workers on picket line.

On September 11, 2000, two planes by the Al-Quaida terrorists attacked World Trade Centre. At the same time Globalisation and anti-globalisation movement caused tremendous effect on the trade union movement. After the WTO incident (September 11, 2000), some newspapers started canvassing that some strikes are jihad by the transport workers union against the city. At the same time when the workers were about to go on strike the Employer the Government of New York threatened the workers with unbelievable fines and prison sentences if

they struck. The Government officials openly declared that any one goes on strike would be declared as an act in favour and support of terrorist activities[33].

4. 3 DEVELOPEMENT OF RIGHT TO SRIKE IN RUSSIA

In Russia, trade unions first arose in 1905-7, growing out of strike committees, Soviets of Representatives, factory deputies, factory committees and other organization set up by the workers in the course of their revolutionary struggle. Organized by the party of Bolsheviks (communists), the trade unions took an active part in the first Russian Revolution under the direction of the party. After the revolution was defeated, they were persecuted by the Tsarist authorities. However, the largest trade unions like the unions of metal-workers, miners, oil workers and textile workers continued illegally to rally, the proletariat to fight against Tsarism and were among the Organisations on which the Bolshevik (communist) party relied in its work among the people. The workers, however, began to join trade unions openly after the victory of the October revolution of 1917. In 1957, when the trade unions in the U.S.S.R. celebrated their fiftieth anniversary, out of some 50 million wages and salaried workers in the country, more than 47 were members of trade unions.[34]

Originally, the functions of the trade unions as workers' Organisations for the purpose of improving the conditions of workers were undisputed despite the fact that the factories had been taken over by the State. At the beginning the policy of the Russian trade unions was absolute duty to safeguard interests of the workers to assist in every way possible the improvement of the material conditions and constantly to rectify the faults and exaggerations of economic bodies in so far as

---

[33] After September 11 the climate was created, in which almost all opposition can be immediately accused of either terrorism or sympathy with terrorism.

[34] Tsyganov , V., Soviet Unions p.9.

they proceeded from bureaucratic pervasions of the machinery of the State.[35] In 1928, trade unionism was brought into line with the policy of socialism and trade unions ceased to be only workers' representatives for the improvement of their working conditions. The trade unions in Russia have later become auxiliary institutions to the Government for the enforcement of labour discipline and for the drive for increased production. But, "although they form part of the state machinery, still their function is to conduct collective bargaining with the state boss. It is by means of collective bargaining between trade unions and management that rates of wages and other conditions of work are determined in Soviet Russia."[36]

The collective bargaining (in Russia) is different from what takes place in a capitalistic country.[37] The Russian Trade unions are organized on the basis of industry. At the base is the factory committee or local committee elected by secret ballot by all members of productive or administrative unit. Each primary committee elects delegates to the higher district (trade union) soviet, from which delegates are sent to the provincial soviet and from them to the trade union soviet of the constituent republic. The highest body is the Supreme Common Assembly of the All-Union Council of the Trade Unions, which acts for all the workers in the country. The labour movement in Russia is attached to the World federation of Trade Unions.

The communist model of trade unionism, however, came into prominence only after World War I. It stands midway between a voluntary institution and State institution. Membership is theoretically voluntary. Its function, allotted to it practically by the State,

---

[35] Ram, V.S., *State in Relations to Labour in India*, 1938, p.57.

[36] Webb, Sidney and Beatrice, Soviet Communism, A New Civilization, Vol.I, 1941, p.138.

[37]. Ibid., p, 184. " The note in these discussions is not of conflict and struggle between two hostile parties, each endeavoring to deprive the other of something to which it clings for its own benefit, but rather one of objective examination of the statistical facts and the consideration of public policy to which both parties agree to differ".

is to protect the interest of workers and to prepare them for the inauguration of the proletarian dictatorship, strictly on the model of the economic and political system of Soviet Russia.

4. 4 DEVELOPMENT OF RIGHT TO STRIKE IN INDIA

Ancient history of 'Association'

"Protest" might be as old as the origin of life on the earth. All living beings for the purpose protecting their territory probably for protecting the food, which was necessary for their survival, prevented the other animals from entering in to that region. Man who evolved from the animal an evolutionary form of the animal also started to follow the same principle initially for safeguarding the food available in his valley/area. As the human skill developed he shifted from the system of nomadism to sedimentary life on the banks of river and developed the system of cultivation. This transformed man's habit from eating raw meat to cultivation and cooking has drastically changed his lifestyle. In the process of protecting his environment (for preserving food?) he was forced to come together along with his fellow human beings, like other animals, which, later converted into the system of "groups". These groups later developed into the system of "society". In the process of settlement he was forced to divide labour among the members, which later lead to invention of words like "Property"[38] and "Dhana". These groups later lead to the formation of Guilds[39] which preventing one class from being exploited from another and also for economic activities. The guilds played an important role in the promotion of trade, crafts and industries in ancient India.

The terms *gana, puga, vrata and sangha* in Panini's *Asthadhyayi* show the rise of guilds coincided with the growth of industry. The *Ramayana* used the term

---

[38] Invention of system of "property" in India further changed the life style of the human being. It is not easy to determine the origin of property. According to R.S. Sharma, the term *Pana*, which later came to mean coin, and *dhana*, 9in the vedic period) which later came to mean wealth.

[39] According to Gautama some people following different professions grouped themselves into organised bodies for the promotion of their individual as well as collective interests and these were called the "guilds." (H.V. Sreenivasa Murthy, *History of India*, P. 150, 1993, EBC, Lucknow.)

'nigama' in the sense of a society of traders and craftsmen and *Mahabharata* to mean a guild of merchants[40].

India (Bharat) of 600 B.C. met most of the requirements of urbanization. In creating their social structure, Hindus took in to account two factors, *guna* (innate character) and *shrma* (striving). Every man by birth endowed with certain qualities, traits and attitudes. Like any system of other countries, India also has its law on the basis of morality in the forms of religious dictates in the form of "Sruti[41] and Smrity". The most remarkable form of Hinduism is that it has always permitted religious innovations, and thus time and again new dimensions are added to Hindu religion. All sorts of innovations whether of scientific or social nature were dictated and accepted in the form of religious sanctions.

The gist of Hinduism[42] (the gist of all Vedas) was condensed to be a capsule form called "Bhagwat Geeta". According to Geeta every one must do

---

[40] The head of the guild was called as *Sresti*, who was assisted by an advisory council consisting of senior members. The composition of advisory council varied from one to five members. According to Yagnavalkya the head of the guild must be an honest person, well acquainted with the Vedas and the duty, able, self-controlled, sprang from noble family and skilled in every business. The guild had a body of executive officers who were elected by the members of the guild. The executive officers were to be well versed in Vedas, pure in monetary dealings and of good behaviour. They supervise all the transaction of the guild. The number of executive officers varied from five to ten members.

The Kautilya's Arthasastra mentions guilds as great military powers. It further stresses that the acquisition of the help of corporations was better than the acquisition of the army, a friend or profit. Even king also cannot interfere with the administration of the guilds.

Democratic features:

Brihaspati speaks of a house or assembly where the members of the guild met together at regular intervals. Narada prescribes rules for attendance of members. Kautilya says "He who suppresses what is right, who does not give scope to speak or who says something improper is to be punished." Mitramisra mentions how the general assembly of the guilds determined the recruitment of its new members and the exclusion of the old one. Thus the democratic character of the guilds was established beyond doubt or dispute.

[41] Hindus consider their law as of divine origin. Sruti (heard) means the direct revelation of God to the great rishis). It is treated as a permanent law and cannot be questioned.

[42] India, has a rich cultural heritage and social system which in the form of "Hinduism" of about five thousand years,. The remarkable feature of India in the form of Hindu Religion has been that it has been able to absorb all thoughts, ideas, dissentions, practices and professions in its fold and retained its basic unity.

'swadharma'[43] (one's own duty). Change in time proved that the Vedas not sufficient to meet the needs of the society. In order to meet the demands of the society Upanishads, Dharma Shastras and Dharma sutras were drafted by the eminent saints/rishis.

The Hindu *shastrakaras* have laid great emphasis on dharma (duty).[44] In Balwant singh v. Ram Kishan[45] the Privy Council held that "all these old text books and commentaries are apt to mingle religious and moral consideration, not being positive laws, with rules intended for positive law". Rapid growth of trade, finance and industry gave a great fillip to urban development during the Gupta period.

Another striking example of Kautilya's Arthasastra is its references to confederacies of oligarchy or republican states (11th adhikarana about sanghas). He states that (XI 1. 1-3)' securing an oligarchy on one's side is better than securing an army or an ally; for sanghas well-being knit become unassailable by enemies.[46]

Trade Unions during the British period

Employer employee relations are essentially backbone of industrial relations. Trade unions have formed for representing collectively for the coercive action taken by the employer against individual employee. Strikes in India are as old as trade unions. Strike by itself is not an industrial dispute, but is an evidence of industrial dispute and the purpose of all modern industrial relations are to

---

[43] (Bhagawat Gita, III, 7)

[44] According to Manu, dharma is "what is followed by those learned in Vedas and what is approved by the conscience of the virtuous who are exempt from hatred and inordinate affection" (Manu Smriti. II, 1).

Medhatithi, one of the early commentators of Manu, says that the term dharma stands for duty. (may be religious, moral, social and legal duties).[45] (1898) 25 IA 54

[46] ibid P.250

replace the sanction of strike as a mode of resolution of industrial disputes by that of role of law in industry.[47]

Where as the modern factory system in India, began with the establishment of first cotton mill in Bombay (1854) and first jute mill in Bengal (1855). The early trade unions or combinations in England, as they were called, formed by workers themselves spontaneously because of their need to combine for their own protection in rapidly developing world of industry[48]. Long before the advent of industrial revolution, Statute of labourers in England created a legal duty to work under long term contract of service for wages fixed by law. They have to decide whether, and what limits need to be placed upon the ability to exert pressure by way of industrial action.[49] Those workers who violated this duty faced criminal and civil penalty. The statute of Artificers imposed fine and prison terms on striking workmen, however, were averse to convicting workers for conspiring to strike for better wages. In consequence, action for damages under the doctrine of civil conspiracy and for inducing breach of contract was preferred.

With the beginning of industrial revolution employers found this state of affairs to be unsatisfactory. The French Revolution had created danger in England also and, therefore, it was feared that trade union, if developed, would become revolutionary in character. The parliament at that time was hostile and passed General combination Acts of 1799-1800 which forbade the establishment of unions in any trade, workers who joined the unions were to be severely punished. Accordingly, between 1799 and 1824 Combination Act prohibited combination and declared strike a crime. The rigors of these Acts were considerably relaxed on their repeal by the Combination Law Repeal Act, 1824 which made it legal for

---

[47] Vitrhal Bhai B. Patel, *Law of Industrial Disputes,* Vol.I, Ed.III (1984)P.344
[48]. Dr. T.N. Bhagoliwal, *Economics of Labour and Industrial Relations*, p.219.
[49] . Bryn Perrins, *Trade Union Law* 1985, p.260.

workers to combine to improve their wages, working hours and other working conditions, provided that, such strike or other concerted activity was not affected by the vice of violence, threat or intimidation.

The beginning of the industrial working class in India can be traced back to the last decade of the 19th century. Strikes in the form of protest (in India) were first initiated by the social reformers. As far back as 1840, Lord Macaulay had condemned the labour system in India as 'partial slavery'. In England, Molestation of Workmen Act, 1859 again favoured the workmen by declaring that mere to endeavour peacefully, to persuade others, without threat, or intimidation, to cease work, to obtain the rates of wages or hours of labour, being sought does not amount to 'molestation' or 'obstruction', during this period in India, The workmen's Breach of Contract Act of 1859 and the Assam Plantation Act of 1863 provided summary remedies of penal character against deserting labourers. The labour movement in India may be traced from 1860s. The earlier sign if labour agitation in India was a movement in Bengal in 1860 led by Dinabandhu Mitra, a dramatist and a social reformer of Bengal followed by some of journalists to protest the hardship of the cultivators of Indigo plantation workers caused considerable embarrassment to the British Government, which led to appointment of an Indigo Commission. The Report of the Indigo Commission of 1860 had led to the enactment of Transport of Native labours Act, 1870.[50]

In pursuance of the report of Royal Commission on Labour, 1869 on trade unions (in United Kingdom), the parliament enacted Trade Union Act, 1871 and the Criminal Law (Amendment) Act, 1871 repealing the Acts 1825 and 1859, restoring the position under 1824 Act.

---

[50] *Report of the National Commission on Labour* 2002, p.104.

In R vs. Bunn, Brett.J. held that The Trade Union Act 1871, abolished Criminal liability in restraint of trade. He further held that, interfering with the employer's right to conduct his business with improper intention is still an offence under common law. The Act of 1871 was followed by a great expansion of trade unionism but the industrial depression of 1874 brought about a number of unsuccessful strikes and consequently a large number of small unions disappeared. This led to the appointment of the second Royal Commissioner in 1874 and on its report The conspiracy and the Protection of Property Act, 1875[51] and The employers and workmen Act, 1875 were passed and Master and Servant Act, 1867 and the Criminal Law (Amendment) Act, 1871 were repealed.

In 1875 Sarobji Shapuri in Bombay made a protest against poor working conditions of workers at that time[52] and in the same year, a few social reformers and philanthropists, under the guidance and leadership of Mr. S.S. Bengalee started an agitation to protest against the appalling conditions of workers in factories especially those of women and children and made an appeal to the authorities (Secretary for State of India) to introduce legislation for the amelioration of their working conditions. The first Factory commission was appointed in 1875 and fist *Factory Act* was passed in 1881[532]. This Act proved highly inadequate and its provisions were highly disappointing. In 1886 it self the first important strike was conducted in Japan[54].

---

[51]. The conspiracy and Protection of Property Act, 1875, declared that an agreement or combination by two or more persons to do, or procure to be done any act in contemplation, or furtherance of a trade dispute shall not indictable as a conspiracy if such act, committed by one person, would not be punishable as a crime.

[52] V.V.Giri, *Labour Problems in Indian Industry*, Bombay, Asian Publishing House, 1951, P.1.

[53] Dr. T.N. Bhagoliwal. Economics of Labour and Industrial Relations, P.230

[54] Women silk-mill labourers in Yamanashi Prefecture carry out Japan's first strike (from 14 to 16, 1886) by factory workers to demand better working conditions. [Eric Prideaux, A timeline of protest in Japanese history, www.japantimes.co.jp, visited on 27.10.04]

The founder of organized labour movement in India may be said to be Mr. N.M.Lokhande who was a factory worker himself and who organised the first labour association called *Bombay Mill Hands Association*[55] and Lokhande as its president organized an agitation and called for a conference of workers in Bombay to make representation to another factory commission appointed in 1884. In 1890 he convened mass meeting of about 10,000 workers in Bombay on April 24, 1890 and drew a memorandum for limitation of working hours, weekly rest days, mid-day recess and compensation for injuries and placed before the Factory Labour Commission 1890. In response the mill owners of Bombay granted a weekly holiday. A total of 25 strikes were recorded between 1882 to 1890 in the presidency of Bombay and Madras. After1890, a large number of labour associations were started in India. A new Factories Act was passed in 1891. Two strikes occurred in Bombay in 1894. The first big strike of mill operatives of Ahmedabad occurred in the first week of February 1895. There were also strikes in jute mill industries in Calcutta in 1896.[56] In 1897, after plague epidemic, the mill workers in Bombay went on strike for payment of daily wages instead of monthly payment of wages.[57] In 1903, the employees of Press and Machine section of Madras Government went on strike, which went on for six weeks, against the practice of overtime work without payment. In 1905 the workers of the Government of India press Calcutta, launched a strike. [58] The Amalgamated Society *of Railway servants of India* (regarded as a quasi-labour Union by the Bombay Labour Gazette was stated in 1897), the *Printer's union, Calcutta in 1905, the Bombay Postal union in 1907*, the Kamgar Hitvardhak Sabha and Social

---

[55].The Bombay Mill Hands Association, however, cannot be called as genuine trade union. The workers did not have any effective organization of their own. The Bombay Mill Hands Association has no existence as an organized body, having no roll of membership, no funds and no rules.

[56] G.Ramanujam, *Story of Indian Labour.*

[57] Gopal Ghosh, *Indian Trade Union Movement.*

[58]. Over the issues of (i) non-payment for Sundays and gazette holidays; (ii). Imposition of irregular fees; (iii). Low rate of overtime pay; and (iv). The refusal of authorities to grant leave on medical certificate.

Service League in 1910 were formed. In December, 1907, the *Workers of Eastern Railway Workshop at Samastipur* went on strike for six days on the issue of increment of wages. In the same year, the *Bombay postal Union and Indian Telegraph Association* called on a strike. In the year, 1910 the workers of Bombay went on strike demanding reduction in working hours. However, such labour associations organized during this period were only labour welfare organizations and as such cannot be equated with modern trade unions. These organizations wanted to mitigate the evils of modern factory system. There was no class-consciousness among labourers and there was incomplete and ineffective realization of the evils of modern factory system. The few attempts that were made at this period were simple manifestations of some local grievances that were felt strongly and once they were solved or decided, the unions or labour associations became extinct or non-entries. At this period strikes were absent as means of grievance redressal. Mr. Lokhande's efforts during the period were commendable was "more philanthropic of labour legislation and workers' welfare than a pioneer of labour organization or labour struggle."[59] This period has been characterized as the *social welfare period of our early trade union movement.* By the date of World War-I (1914-18) two specific streams of thought and action that influenced the working class and those who were committed to the struggle for social justice. One was the influence of the Trade Union movement and the leaders of the Labour Party in the U.K. and the thoughts of Marx and Lenin. The other was the thought and struggles of Mahatma Gandhi.

The period from 1918 to 1924

Though, there is a trace of the workers in he Allahabad Cotton mills forming a union in 1917 under the leadership of Shrimati Anasuyaben, the credit of forming the first industrial union on systematic basis goes to Mr. B.P. Wadia,

[59].Dutt, Palme, *India Today*, p. 375.

an associate of theosophist Mrs. Annie Besant who founded the *Madras Labour Union in 1918.*Mahatma Gandhi on his return to India from South Africa in 1918 after the World War-I (1914-18), commence his work in India with a struggle in Champaran to liberate Indian peasants and workers from the regime of exploitation and near enslavement from the British indigo planters. This was followed by the great strike of textile workers that Gandhi led in Ahmedabad. He described this strike was a "Dharmayudh or righteous struggle."[60] Between 1919 and 1923, however, scores of unions came into existence in the country. At Ahmedabad under the inspiration of Mahatma Gandhi, spinners union and weavers union federated in to *Textile Labour Association, Ahmedabad.* Russian Revolution had its own favourable impact on labour moment in India at this stage. The setting up of International Labour Organisation and All India Trade Union Congress, on 30th October 1920 gave Philip to the unionism in India. But in the beginning the unions had very little continuity. The Industrial Disputes Committee, Bombay (1921) commented on the lack of stability of these unions; 'in most cases the unions are little more than strike committees consisting of a few officers and perhaps few paying members around them; the rest rally in time of trouble.' Shri. N.M.Johi spearheaded the demand for legislation on the registration and protection of the trade union in the legislative Assembly in 1921making recommendations to the Governor General-in-Council that he should take steps to introduce at an early date in the Indian legislature as may be necessary for the registration of trade unions and for the protection of trade unions officials from civil and criminal liability for the bona fide trade union activities. It led to the passing of the Trade Union Act, 1926.

---

[60] *Report of the National Commission on Labour*, vol-I (part-I) 2002, P. 107 and 108

The period from 1924 to 1935:-

In India unlike America right to strike is not expressly recognized by the law. It was in 1925 a Trade Union bill was introduced and passed in 1926, which came into force from June 1927. The trade union Act, 1926 for the first time provided limited right to strike by legalizing certain activities of a registered trade union in furtherance of a trade dispute which otherwise breach of common economic law. Now a day a right to strike is recognized only to a limited extent permissible under the limits laid down by the law itself, as a legitimate weapon of Trade Unions.[61]

The right to strike in the Indian constitutional set up is not an absolute right but it flow from the fundamental right to form union[62]. As every other fundamental right is subject to reasonable restrictions, the same is also the case to form trade unions to give a call to the workers to go on strike and the state can impose reasonable restrictions. The third phase of Indian labour movement is called as *Left Wing Trade Unionism.* During this period, communists captured the labour movement, split[63] the Trade Union Congress twice and conducted some of the *most violent strikes* in India. The main reason for growth of this extremist feeling was economic hardship of the workers. The years 1928 and 1929 were also the periods of large-scale strikes in Bombay[64], Kanpur, Sholapur and Jamshedpur and in the East Indian and South Indian Railways. The *Royal Commission on*

---

[61] Ss.17, 18 and 18 of The Trade Union Act 1926.

[62] Article 19.

[63]. In 1928, at the Jharia session, the conflict developed between the two groups and at the Nagpur Session in 1929 a split took place under the leadership of Messers N.M.Joshi, V.V.Giri, B.Bhaskar Rao, R.R.Bakale and Diwan Chaman Lal seceded from the congress and set up a separate organisation under the name of National Trade Unions Federation for co-coordinating the activities of non-communist trade unions.

[64]. The Bombay Textile Worker's strike in Bombay lasted from April to October; 1928.The strike committee which conducted strike transformed itself into the Mumbai Girni Kamgar Union, the Bombay Textile Workers' Union.

Labour[65] was appointed in July 1929 who submitted its report on March 14, 1931. In 1929 Trade Disputes Act of 1929 was passed imposing responsibility of settlement of industrial disputes. The influence of the communists, however, started declining after 1930 as the failure of the general strike sponsored by them during 1929-30 had its demoralizing effect. The prosecution of Communists involvement in the Meerut Conspiracy case and failure of the Bombay Textile Strike of 1929 brought a lull in trade union activity. In January 1934, a conference of All-India Textile Workers was held to protest against wage cuts, retrenchment, etc. and a resolution was passed to launch a countrywide general strike of all textile workers. In consequence strike was declared in Bombay, Nagpur and Sholapur. During this period one significant development was the passing of Indian Trade Union Act of 1926, which provided for voluntary registration and conferred certain rights and privileges upon registered unions in return for certain obligations.

The period from 1935 to 1939

In 1935 *Red Union Congress* merged itself with the AITUC. The deteriorating economic conditions of the workers forced the workers conscious of their need to organize for securing relief. At this time the Hindustan Mazdoor Sevak sangh which was the offspring was the labour sub-committee set up by *Gandhi Seva Sangh* in 1937 to organize labour throughout the country on Gandhian principles, was acting as an advisory body and not as a federation of unions. In 1937 there were 379 strikes in which 647,801 workers were participated. The year 1938 witnessed a general strike of jute mill workers' in Calcutta involving 200,000 workers. In 1938 NTUC affiliated itself with AITUC.

---

[65]. It was required to enquire into and report on the 4xisting conditions of labour in industrial undertakings and plantations in British India, on the health, efficiency and standard of living of the workers, and on the relations between employers and employed, and to make recommendations.

The year 1939, witnessed famous *Digboy Oil Field strike.* Thus, one healthy development during this period was the attainment of unity amongst different trade unions that led to revival of trade union activity.

The period from 1939 to 1946

The increased number of employment due to Second World War and the growing disparity in living and the earnings of the workers led to stabilization of labour movement. Change of attitude was seen not only in employers but also the government as well. Number of unions dissociated themselves with AITUC.[66] During the emergency the Defence of India Rules, 1942 remained in force. Rule 81 A of the Rules empowered the government, (i) to require the employer to observe such terms and conditions of employment in their establishment as may be specified, (ii). To refer any dispute to conciliation or adjudication; (iii) to enforce the decision of the adjudicators; and (iv) to make general or special order to prohibit strikes and lock-outs in connection with any trade dispute unless reasonable notice had been given. In 1946 there was a tussle between AITUC and IFL with regard to representative character. After inquiry by the Chief Labour Commissioner of the central Government representative character of the AITUC was established. In the same year Industrial employment (Standing Orders) Act, 1946 was passed with a view to bring uniformity in the conditions of employment of workmen in industrial establishment and thereby to minimize industrial conflicts.[67] Another important enactment of state level was the Bombay Industrial Relations Act, 1946, which made elaborate provisions for the recognition of trade unions and rights thereof.

---

[66]. In 1940the National *Trade Union Federation* dissociated with AITUC, Dr. Aftab Ali, President of *Seamen's Association*, Calcutta disaffiliated his union with AITUC. Mr. M.N.Roy leader of *Royists* seceded from the organization and formed a new body known as Indian Federation of Labour in 1941.

[67]. S.S.Roy vs. Workers Union, AIR 1969 SC 513.

After 1946

Indian National Trade Union Congress was formed in 1947[68]. *Hindu Mazdoor Sabha* another labour organization was started in 1948. The *Indian Federation of Labour* formed by the Royalist group in 1941 merged in to this body. Some splinter groups from HMS and AITUC set up a separate organization viz., the *United Trade Union Congress* (UTUC) in 1949. *Bharatiya Mazdoor Sangh* (BMS) in 1955 and Hind Mazdoor Sangh (HMS) in 1962 was formed. The organization Congress decided in 1972 to affiliate all trade unions under the leadership with '*National Labour Organisation*' (NLO).

Efforts to forge unity in the labour movement have been made since 1952. A joint conference of AITUC and UTC was convened in 1953 Various Organisations showed interest in unity in 1956. There has been growing trend in terms of workers involved and man days lost in industrial disputes. Against the loss of 38 lakh mandays in 1951, the loss was of the order of about 70 lakh in 1956. It jumped to 138 lakh in 1966, 206 in 1970, and 402 lakh in 1974. With the declaration of emergency in 1975, the fear of Maintenance of Internal Security Act (MISA) and Defence of India Rules (DIR) were responsible for reduction in disputes. With the lifting of emergency this number again started increasing. Highest number of strikes were recoded in 1977 was 2,691. A total of 58% man days lost during 1982 because of strikes. From 1977 there is decline in number of strikes from 2,691 to 221 in 2001.

Table showing Workers involved and man-days lost in strikes in India[69]

---

[68]. The Central Board of the Hindustan *Mazdoor Sevak Sangh* called upon various member unions to affiliate them to AITUC. This attempt was failed.

[69].Ruddar Bhatt and K.P.M. Sundharam, *Indian Economy*, s.chand, 2002, p.691. and Economic Survey 2001-2002, Government of India Press, New Delhi,p.183.

Year	Strikes	No. of. Workers involved (in 000's)	No. of Man-days lost(in lakhs)
1951	1,010	n.a.	28
1961	1,240	432	30
1971	2,478	1476	118
1976	1,241	550	28
1977	2,691	1912	134
1981	2,345	1261	212
1982	2029	1191	521*
1983	1993	1167	249*
1988	1304	937	125
1989	1397	1158	107
1993	914	672	56
1994	808	626	67
1995	732	683	57
1996	763	609	78
1997	793	637	63
1998	665	801	94
1999*	540	1099	106
2000*	350	385	34
2001**	221	--	25

*These include 414 and 134 lakh man days lost due to Bombay Textile Strike during 1982 and 1983.

**Provisional.

At an aggregate level there was a decline of strikes in public sector undertakings in State sphere in 2000 (426) compared to 1999 (540). The State of West Bengal, Tamil Nadu, Gujrat and Andhra Pradesh experienced maximum number of strikes in2000. The industries facing highest number of strikes and lock-outs were textile,

engineering and Coal mining.[70] Wage, discipline, violence and personnel issues were the primary causes for strikes and lock-outs.

[70] *Economic Survey* 2001-2002 p.183-184.

CHAPTER – V

CAUSES OF STRIKES

Work for the glory of your country and
countrymen speaking different dialects.
Give due respect to the faiths and
aspirations of the people.
Countless are the resources of Mother
Earth, from whom flow the rivers of
Wealth in hundreds of streams,
Worship Motherland as you worship God.
From time eternal, the mother Earth's is giving life to her children-you owe
Debt to her. .....Atharva Veda. 12.1.45

5. 0. Motives or Causes for launching strikes

There may be number of reasons for out break of strikes. It may be at the end of the employer, employee or the government. Once dispute is either apprehended or raised it is the duty of the State to settle it not only in the interest of the employer, employee but also the general public. For settlement of a dispute it is necessary to know the cause of it. In this chapter various causes for out break of strikes are discussed. The methods adopted by the employers and employees (including trade unions) in India and other countries are also discussed. Industrial Truce Resolutions are the principles that have to be affirmed from time to time to prevent the ill-effects of work stoppages. In India, immediately after armed

conflict between India and China in October1962, a tripartite conference of government, labour and employer representatives promulgated the Industrial Truce Resolution whereby labour and management pledge that:

(i) Under no circumstances shall there be any interruption in or showing down of production of goods and services.

(ii) In respect of their economic interests both workers and employers will exercise voluntary restraint and accept the utmost sacrifice, in an equitable manner, in the interest of the Nation and its defence efforts.[1]

In India motives or causes for launching strikes can be conveniently divided into the following: -

i) The main causes or motives for the strikes in India are the demands of the workers for securing improvements in their conditions of service in matters like pay scale, dearness allowance, bonus etc. Demands for securing improvement in their conditions of service in matters, are responsible for declaration of strikes. Till 1970s whenever the price of the essential commodities and other goods were increased the opposition parties use to show their protest against the act of the government and the prices were slashed to some extent. After 1970s the Government pay deaf ear to the comments of the opposition, as a result even the opposition (minority) parties also stop agitating against the price increase. As a result the increase in the price of the commodities became a regular phenomenon.

Every year at the end of the financial year the workers use to give a charter of demands, which generally includes claim for bonus. The employers for avoiding payment of Bonus to their employees adopt several tactics by taking the advantage

[1] *Indian National Trade Union Congress Report,* June 1962 to April 1963, Appendix B, p. xv.

of the loopholes in the Payment of Bonus Act. Likewise, in the matters of payment of extra monitory benefits to the employees, the employers adopt delay tactics which sometimes including the active co-operation of the Government. If the government take procedure for implementing welfare measures strictly and timely, the dispute of these types /nature can be avoided.

5. 1 Multi Unionism

The strength of the trade union is its members. All the unions must share workers of the undertaking. Hence, more the number of trade unions, lesser its strength will be. In every country capitalists or workers' organisations (trade unions) exist and play a vital role in wage regulations. Sometimes the motive for the strike is the inter-union rivalry. When there is a change in the political scene, different unions affiliated to different political parties make all sorts of attempts, to establish themselves as supreme and representative of the labour force and in this process they instigate the workers to go on strike just to draw the attention of the authorities and gain recognition/importance. Further it is not un-common that when there are two unions there is bound to be an intense rivalry and on some occasions strikes took place not on account of any act of the employer but due to the establishment of a rival union. In India there is no law that restricts the number of trade unions. The Trade Union Act, 1926 simply provides that any seven or more persons may apply for registration of the trade union[2]. The politicians for catering their selfish means promoted multi trade unionism. Number of instances can be seen when a new political party came to power new trade unions came to existence with the active support of the ruling party and they may disappear after that party looses power in the state or centre. The employers also for diluting the power of a trade union by giving financial assistance promote pet unions, so that production process can be continued even when strike declared by one union. In

[2] Section 4 of The Trade Union Act 1926

this case since the pet union having the support of the employer will be liked and may become popular in a short time and the other unions slowly may be collapsed.

5. 2 Role of Trade Unions

(i) acts as a countervailing power to the monopoly power of capitalists;

(ii)mutual insurance-creation of a fund by common subscription to ensure against unforeseen circumstances; and

(iii) Collective bargaining- a continuous process i.e. improving the efficiency of the people bargaining for more wages and amenities, monitoring agreements, adjusting to changed circumstances due to technological innovations.

Activities of Trade Unions: Three Categories.

(1) **Militant or intramural activities**: Trade Unions ensure higher wages, better working conditions, better treatment and reasonable share in the profits of the firm. But to achieve these goals, militant methods are used e.g. strikes, go-slow tactics, work-to-rule, etc.

(2) **Fraternal Extramural activities**: Basic aim is to help workers in time of need, increasing efficiency for training, coaching, etc., to increase productive capacity of the workers.

(3) **Political activities**: As an appendage to political parties trade unions often sever party's interest which many a time become their main aim.

Most countries have passed labour legislation relating to trade unions and labour keeping in view the following:

(a) Social justice;

(b) Social equality;

(c) International uniformity; and

(d) National economy.

Trade Unions can help in increasing marginal productivity of labour itself by adopting the following methods:

(a) by fostering thrift, honesty and co-operation among their members and by improving their productivity and efficiency;
(b) by forcing the employer to increase the skills of the workers by ongoing training programmes for the purpose;
(c) by linking wages and bonus with production-more the workers produce, the more wages they will get. This will not result in price rise and keep the economy in equilibrium.

Trade Unions can help in increasing marginal productivity of labour itself by adopting the following methods:

(d) by fostering thrift, honesty and co-operation among their members and by improving their productivity and efficiency;
(e) by forcing the employer to increase the skills of the workers by ongoing training programmes for the purpose;

By linking wages and bonus with production-more the workers produce, the more wages they will get. This will not result in price rise and keep the economy in equilibrium.

The success of the trade union lies on its bargaining capacity and finally upon its success in achieving the demands. The efficient and intellectual union leaders of union who can lead it to success can effectively do bargaining.

Trade Union Bureaucracy

Trade union organisation generates a distinctive social layer, the union bureaucracy. Union officials are necessary for effective on-going union organisation, but they have interests distinct from those of ordinary workers.

Distinct interest of trade union leaders

- Jobs that involve mediation between capital and labour and involve maintaining the credibility of both sides
- Mobility: access to members in different workplaces. They can balances between militant and backward members, portraying their position as the golden mean.
- Their expertise and access to information
- Privileges: better wages and conditions than most of their members.

These factors lead union officials to see their organisations as ends in themselves and to avoid situations, which could risk the organisations or their control over them. The circumstances of union officials also encourages a commitment to compromise, the pursuit of harmony in industrial relations, where possible, and attempts to use the state as an instrument for achieving these and a 'fair deal' for unionists.

Essential qualities of s Union leaders

A trade union leader must be the humblest person and he cannot think of anything except the welfare of the members of the trade union. He should strive for achieving the object for which the trade union was formed. Happiness, fear, anger, affection, shame, disgust, surprise, lust, sadness, elation, love are some factors (emotions) that influence the day-to-day life of the human being. The success of the employer or employee at the work place depends upon the level of his/her intelligence or intelligent quotient (IQ). Another quality that trade union

leader should have is "emotional intelligence" which mean 'knowing what feels good, what feels bad, and how to get from bad to good'.

Leaders are provincial in their outlook, and seldom think beyond their union and members. Leaders, who are particular about their honour, and hopes for only for their betterment and unconcerned with the welfare of the others, may not succeed in long run. Recognising and identifying feelings through emotional self-reflexive awareness is a prerequisite for development emotional intelligence. It is a known fact that 'thinking may certainly interfere with feelings; but feelings do not interfere with thinking'. Intellect alone cannot help the union leaders to navigate the dynamic political, administrative and psychological situations of an office full of people, each withy a set of different set of needs and desires. It takes empathy for the union leader to guess what members want and how far they are justified. It is also necessary for him to have regard to the wants and wishes of the employer who wants to see a subordinate's tension but not to over load him/her with work in spite of protestation.

Skills of a trade union leader

As per M.K.Gandhi the father of the nation "Humility is a key to quick success." Humility often gains more than pride "corn with developed ears bends. Even so the man of nature understanding rests in humility." A soft answer turneth away wrath, but grievous words stir up anger. Self-awareness is one of the basic emotional skills involves being able to recognise different feelings. Equally important is the ability to control the relationship between thoughts, feelings and actions. A trade union leader should possess the above qualities apart fro others. Retrospection, inward looking, self-examination and self-correction are the dire demand of the trade union. Exalted and explicit example is more effective than excoriating and inimical exhortations. Trade Union leaders are expected to have

the following qualities apart from others, failing which the management of the trade union may not be smooth and may result in .....

Managing emotions

Belies have a fundamental effect on the ability to act and on how the things are done. Finding ways to deal with anger, fear, anxiety and sadness is also an essential quality of a union leader. For example, learning how to control oneself when upset is one such asset; another is understanding what happens when emotions get the upper hand and be able to gain time to judge if what is about to be said or done in the heat of the movement is really the best thing to do. Being able to channelise emotions to a positive end is another key skill to raise the skill.

Empathy

Getting the measure of a situation and being able to act appropriately requires understanding the feelings of others. It is important to be able to listen to them without being carried away be personal emotions. It is necessary to be able to distinguish between what others do or say, and one's own personal reactions and judgements.

Communication

Developing quality relationships has a very positive effect all around. What are the feelings being communicated to others? Enthusiasm and optimism are contagious; but so are pessimism and negativity. Being able to express personal concerns without anger or passivity is a key asset.

Co-operation

Knowing how and when to take the lead and when to follow are both essential for effective co-operation. Effective leadership is not built on domination but on the art of helping people working together to achieve common goals. Recognising the value of the contribution of others and encouraging their participation can often do more good than just giving orders or complaining. At the same time, there is a need to take responsibility and recognise the consequences of one's decisions and actions and follow through on commitments.

Resolving-conflicts

In resolving conflicts there is need to understand the conflict at work. People in conflict are generally locked into a self-perpetuating emotional spiral in which the genesis of the conflict is usually not clear.

Respect for interpersonal relations

The leaders shall have due regard to inter personal relations apart from giving values for rules, regulations, instructions, laws, Acts, reports etc. Trade union leader should as far as possible must keep him away from taking decisions in a monopolised way.

To educate the members

To make your children capable of honesty is the beginning of education[3]. It is the duty of the trade union leaders to educate the members in a systematic way. It enables the members to be self-reliant in many a ways. If every member is

---

[3] John Ruskin

dependent upon the leaders, they (leaders) will be over burdened and he may not divert his attention towards the welfare of the members.

Empowerment

Empowerment is exercising control over one's lives. This has two aspects. The first is control over resources (financial, physical and human). The second is a control over ideology (beliefs, values and attitudes). Empowerment starts with changes in consciousness and in self-perception. Psychologically, it is creative, energy-releasing transformation, one from which there is no looking back. Empowerment taps reservoirs of hope and enthusiasm among people used to viewing themselves negatively.

Planning

Traditionally planning and implementation have been conceived as separate activities and have been entrusted to different administrative units with vague and weak linkage. With out properly implemented projects, development plans become only empty objectives remaining forever elusive[4].

Decision taking

The decision taking process in the Government is often criticised for being too slow and cumbersome leading to citizens' discontentment. Though it is not with trade unions, speedy decision taken by some office bearers of the trade union proved to be disastrous. The factors to be taken into consideration in decision making are lack of supervision, resources, fair play, interest, politics, will etc. In order to avoid criticism and make

[4] Abhilash Likhi, *Issues in urban planning and administration,* The Administrator, December, 2001, Lal Bahadur Shastri National Academy of Administration, Mussoorie (Uttaranchal), p.90.

administration of the union members friendly, effective and responsive it has become imperative to carryout some systematic reforms. The process of decision-making must follow the procedure of democracy. Any violation of the principles and procedure leads to discontent upon the executive.

Abuse of Trade unions

Unions are representatives of sectional interests. They may be ok, so long as they are treated as just another voluntary association and are subject to the same constraints as individuals are. Unfortunately they have been privileged in countries like Australia and Britain and this has given them monopoly power, which damages non-unionists (especially by increasing unemployment by raising wages) and the economy. Some employees may not be interested in union activities but when the union is fighting for the causes like salary, benefits, seniority and pensions etc. all the employees participate fully and whole heartedly. Such employees are prohibited from participating in internal union affairs. Generally such affairs including on decisions to strike or ratify a contract, or running for union office etc. some times though the employees are not members of the union they will be the members for collective bargaining. Employees who are not members of the union remain "members of the bargaining unit," fully covered by the collective bargaining agreement and all of its provisions regarding salary, benefits, seniority and pensions etc. Moreover, the union continues to owe these "members of the bargaining unit" a duty of fair representation. While such employees can be prohibited from participating in internal union affairs (such as voting in union elections, voting on decisions to strike or ratify a contract, or running for union office), they are immune from internal union discipline and fines.[5]

YOUNG LEADERS

[5] Rossie D. Alston, Jr. and Glenn M. Taubman, *Union Discipline and employee Rights,* (www.file:///G:/cases.html#N_1_) (visited on 26.10.2004)

The monopoly of precise people needs to end. The youth the salt of the nation need to imbibe the illustrative ingredients of the dead heroes of independence. Non-violent, the virtuous struggle can alone reverse this process of self-aggrandizement. A good man that creates history is not born. Young leaders must be self-discipline, self-moulding, self-development and hard working. He must be capable of converting latent dynamism patient and directs it for development. Enthusiasm, the essential element is kept alive for all achievements. Generation and conservation of energy is the key factor for success. Distinction and individuality are derived by a concerted effort with a tenacity of purpose. Mind and magnificent friends, has to be tuned and turned for constructive purposes. The seniors in the way that they must be capable of running or managing the trade union in future efficiently must train young leaders.

In practice young leaders are trying to establish their position at the earliest. In the lust for consolidating their position in the trade union they are trying to be an inevitable source in between the workers and the management as an alternative for the top cadre leaders. In this run several young leaders are even going to the extent of misleading the members. They want that the members of the trade union should deal with the officers or management only through them, so that they can raise their level to that of office bearers. Lack of experience and desire to become popular among the members hanging them in between reality and illusion. Support given by the top cadre union leaders to the young leaders who are either related or otherwise connected to them directly or indirectly, resulting in causing frustration to the other efficient and skilled young leaders. This practice is also resulting in bringing young inefficient and inexperienced leaders to lime light directly from sidelines. In order to overcome this hurdle they are adopting corrupt modes. Any member who directly deals with officers with regard to leave etc. will be sidelined

and in case of exigencies union leaders are not coming to their rescue for the reason that such activities may considerably cause hurdle to their growth.

Frustration in younger generation leaders is a fatal blow to the union activities. Senior leaders must give proper training to the younger generation regarding methods to be adopted in dealing with the members during normal and agitation periods. Skill cannot be developed all of a sudden. Hence, for inevitable future, it is necessary to provide training to the younger generation regarding maintenance of the trade union, skills of discussion with management etc.

IMPOSED LEADERS

Imposed leaders are those who for the reasons are forced to accept by the other members or imposed on others. Generally, the relatives of powerful leaders (Office executives) like son, son in law etc. are brought in to union with a view to train and make them leader as a substitute for them after their retirement. Though, the other members are unwilling for his appointment, they could not do so for the reason that their father or father in law is a reputed leader and in case of exigencies he may have to have assist from them. These imposed leaders due to lack of experience and influence of the high cadre leaders can neither be good nor bad for the union at large. Lack of experience and ego on the part of imposed leaders some times is resulting in division of inions.

Whole hearted members are the soul of the union. The above discussion makes it clear that the trade union leaders with 'in and out' experience are only capable of leading the union to a success. Young or imposed leaders without experience but with pride and greed for power may lead the union but not for a long time like experienced one. Inexperienced leaders like a temporary employee who always looks to the door or window of the other for an alternative who never

do whole hearted efforts for the welfare of the union. A genuine union leader is an asset to the union and his services though may not show immediate results, still reap fruits in long run and an inevitable source of success.

Abuse by leaders

A trade union leader of upper strata, who cannot be with in the reach of the normal member, wants that, the contribution to the trade union should be made by deduction from salary of the employees directly. In this process the chances of developing rapport by other small leaders with the members will be restricted. Whereas middle class leaders wants that the contribution shall be collected directly from the members (hand to hand) so that they will come to know the problems of the members. (The members at the time of payment of contribution express their grievances to the leaders). Lower class leaders always feel that the members should always depend on them for every issue whether big or small. In other words, they want that the workers shall deal with employer or any other officer of the trade union only through them (including petty matters like casual leave, permission for short time etc.). Any educated worker who wants to exercise his own skill bypassing the leader will be side lined or kept in margin and whenever he face any problem, the unions will pay deaf ear to him. This practice impliedly forces the other employees to depend upon the union leaders for each and every issue whether big or small.

The high cadre union leaders some times try to bring their Progenies (son, daughter etc.) in the executive of the trade union. Though they are not experienced to those leading posts (like secretary, treasurer etc.), for the purpose of elevating him or her to a higher post the leaders force the other office bearers and members to elect or appoint him/her to the respective post. If he succeeded in the attempt he will be dumping an inexperienced, junior person to a responsible post, such person

later may proved to be fatal blow to the survival of the union. It creates a lot of dissatisfaction among the other experienced members and leaders. If the leader fails in his attempt he may shift to the other union which promises a honourable post to him and a reasonable post in the executive to his representative (Son, daughter etc.). Such activities later proved disastrous to the unions. Such levied leaders while dealing with union matters show or treat themselves as superior officers of the trade unions and an inevitable link between the worker and the management. These persons are not allowing the workers to have direct communication with the management.

ii) Sometimes the workers (unions) have no grievances against their employers and still they go on general strike in order draw the attention of the government against the rising crisis or when the government fails to control the rising prices. Though, all the workers are participating in the strike that was sponsored by the union, number of workers have no intention to participate in it wilfully. It is generally said that only 10% of the union members are in favour of strike and 10% are strongly against it. The remaining 80% members are the followers having no say of their own. Out of this 80% majority, does not have any grievances against their employers. Still they go on strike in order to avoid any possible confrontation with the union leaders or other member. Generally, the persons those who are in favour of strike are active supporters of such person, who occasional or habitually get undue advantage from the unions. These persons are solely responsible for sidetracking the unions from acting for the objects of a trade union for which it was formed. These employees in order to have active support from the union leaders stand in the forefront during agitation; which in turn forces the union leaders to support all their cases irrespective of right or wrong.

iii) Sometimes the motive for the strike is the delaying tactics of the management. When the workers raise demands, the employer either ignores them or its' consideration may be prolonged for an unduly long period.

iv) Another cause for today's conflict is the indecisive policies of the employers. When the employer does not take prompt action in settling the differences, a crisis develops and the workers indulge in violence and there is no hope of peace returning in the near future.

v) Yet another equally important cause for the unrest amongst the workers is the lack of close watch of the employers on the day-to-day union activities of the workers or the lack of proper attention at the proper time or the non-co-operative attitude of the employer without keeping in view the possible consequences of a strike or gherao.

vi) Sometimes the tendency on the part of the management to resort to dilatory and evasive tactics place havoc in industrial relations scene.

vii) Some times, the propensity on the part of the personnel department or the organisation to take help of law and order on the slightest provocation makes the worker resort to strike or to indulge in violent activities. So, what is needed is the prompt and proper action by the employer at the proper line.

viii) Sometimes, the motive for the strike is the policy of the management to exploit inter-union–rivalry existing among trade unions. In such a situation, the management takes advantage of the inter union-rivalry by pitting one-union against another for its own benefit without keeping in

view the fact that in the long run such kind of strategy shall not pay and on the contrary shall produce deleterious effect.

ix) Another important factor with which one is often confronted is the reluctance on the part of the employer to communicate freely and openly with workmen. Many actions of the employer are shrouded with secrecy, which often tend to arouse workers suspicion of the motives and intentions of the employer among them. The reason is that the entire atmosphere in an organisation is full of mistrust for no reason or rhyme and often generates grate wine, which unnecessarily maligns the relationship.

x) Some employers maintain distance between themselves and the workers. Such attitude of maintaining distance often creates more problems than what can be imagined. It also needs to lack of understanding of workers' abilities, competence and their expectations, which are often ignored by the employer. The unfair treatment of workers, their victimisation, favouritism and indiscreet use of their own power can immensely impair the industrial relations.

xi) Sometimes motive for the strike is the role-played by the Government machinery. The primary role of the Government is to design and enact various laws, which could cover the entire gamut of activities constituting industrial relations. It is not enough to merely legislate and to forget about it. The responsibility lies in ensuring that the legislative machinery is working efficiently and satisfactorily in all fairness. At present, there is no time-bound adjudication. In order to over come this problem and eliminate the over-crowding of claims what is immediately and urgently needed is to increase the number of industrial adjudication

including the strength of the inspectorate so that a prescribed time-limit for adjudication is observed. If the claims of the workers are settled with in a reasonable period then they would feel satisfied and contended and this would repose confidence in industrial adjudication and the workers would not resort to violent activities or strikes.

xii) Sometimes the unions go on raising the hopes of the workers to the skies by putting up demands on the employer without considering his capacity to pay or to bear the additional burden and in case the employer does not accede to their demands on account of his incapacity to bear the additional financial burden then the unions instigate the workers to resort to strike or gherao. Instead of this if the unions start educating and advising the workers to raise their output and it is only after considering the capacity of the employer to pay the enhanced wages that such demands are put up before the employer then the possibility of the worker to resort to strike can, to some extent, be avoided.

xiii) The real motive for the strike is the discontentment amongst the workers due to insecurity of service and inadequate wages.

xiv) Labour unrest is partly a consequence of political realignments. Bonus remains a bone of contention. Strikes, which used to be the ultimate and last recourse available to the workers, have now a day become their first choice. This is due to lack of education of the workers. The cause for the strikes is also lack of education. The workers should be educated that the weapon of strike should be used, as a lost resort when all other avenues have proved futile.

xv) The variety of conditions under which a strike may break out is such that there can be few generalisations as to its conduct. The economic condition, the degree of organisation on both sides, the immediate issue and the general political positions, all are, or may be important. At any movement one of the factors may change and produce a situation in which all previous decisions must be scraped.

xvi) Generally, it is the attitude of the employers, which becomes the cause of industrial unrest. There are employers who are still not reconciled to the existence of trade unionism. Some employers yield too easily to coercion and threats while others do not pay any heed to the legitimate and genuine grievances of the workers.

xvii) Sometimes, the communication channels, when allowed to be clogged, cause sparks of labour discontent to develop into minor fires and later into configurations. The main connection between the employer and the employees is the immediate supervisor. He will act as a mediator or shock absorber between the employee and the employer. It is his duty to inform the employer and workmen, the information that is required in the interest of the undertaking. If he fails in discharging this duty it may result in communication deficiency and may lead to industrial disputes.

5. 3 Non-payment of wages

Several factors forces the employer in not payment of wages for months together, which may include financial incapacity, negligence towards the demands of the employees etc. non-payment of wages is not the factor that is prevalent not only in developing countries like India, but also in developed countries like China and USA etc. In December 1999, 1,000 silk mill workers blocked a highway in

south-western China for two days to protest the fact that they hadn't been paid in a year. The workers fought with the more than 200 police sent in, throwing stones and bottles. Some of the workers' banners read, "We want to eat. Our children want to go to school."[6]

5. 4 Privatisation

It is not the duty of the Government to do business. This does not mean leaving the task to them alone. The state had an active role in supporting the private sector. Mechanisation led to fast exploitation of the resources of several countries. For resources, most advanced countries were forced to depend upon other countries. This fact led to colonisation. Three fourth of the world once was the colony of United Kingdom. The capitalists of British Kingdom exploited both persons and natural resources of colonial countries during the period its colonial rule. Scientific investigations and computerisation added fuel to the fire. Public revolt and independence movement forced British kingdom to declare independence to the majority of its colonial countries.

The starting of new industries for doing business, calls for entrepreneurship and adventure is the duty of the private entrepreneurs. Countries immediately after independence was found financially crippled. Immediately after independence the citizens of those countries are not capable of investing in huge industries for the reason of lacking of sufficient funds or doubt as to continuation of the business profitably or not etc. hence, the government was forced to invest in huge industries created by a specified Statutes.

---

[6] Angry Winds in China, *Protests, Strikes and Revolts by workers and Peasants,* Revolutionary Worker, 24.9.2000 (visited on 31.3.2004).

The government during those times started new industries on a pilot basis with a view to hand them over to the private hands when found successful. Total withdrawal of the government would mean that setting up necessary industries such as steel plants and oil refineries would be left entirely to the whims of the private sector. The Public Sector Enterprises were established with the dual objective of leading industrialisation of the economy and providing relief to the poorest worker. They achieved the former objective well.

It is a well-known fact that private businessmen in Russia in 1917 and India 1947 did not have the capacity to put up steel mills, oil refineries and factories to make nuclear reactors and steam turbines. The risk in these newly emerging areas was high and requirement of capital large. PSEs took the lead in the industrialisation of these countries.

The position is same in almost all the countries. But in some countries like USA and UK such huge industries were constructed by the government and privatised as early as possible. But in the communist and socialist countries like USSR and Indian they were continued under the ownership of the Government.

The appointment to the higher post in those undertakings was made by the politicians as such the employees were faithful to them in all respects and started dancing to their tune. The situation in India was also similar. Ministers got a large number of their cronies recruited by PSEs. They have suites in five-star hotels booked for their luxury and comfort. High wages, inefficiency and such profligacy led most of the PSEs into the red except in sectors such as oil, banking and communities where the state monopolies could charge exorbitant prices for their produce. In all 102 out of 237 PSEs were running in loss in 1992. The government was providing budgetary support to loss-making PSEs. Tax was being

imposed on the ordinary people of the country to keep the PSEs alive. However, the governments failed to prevent growing corruption by taking action against the corrupt employees forced the Government to privatise these undertakings.

In USSR also, the government jobs in PSUs were proved to be a boon to the employees without any responsibility. As a result all the public sector undertakings ran in losses and the economy of such a big power collapsed and the union was divided in to several independent countries. Even in the Communist country of China, Government is being hit with peasant revolts in the countryside, there is also growing discontent and unrest in the cities—and increasing numbers of strikes and protests among workers. One of the main things sparking these protests is the huge number of workers being laid-off mainly due to the downsizing or closing of state-owned companies that are now being privatised.[7] Privatisation may be done in different stages. It may be sold directly to the private enterprises or in the first stage it may be converted to joint venture and later may be totally privatised. The Meite plant (in China) was transformed from a state-owned company making pipes to a beverage-packing firm jointly owned by the Chinese and an American corporation—and then, to a factory wholly owned by the Ball Corporation, a US company. In UK since the 1980s the traditional state post offices and telephone services have been broken up and privatised. This development goes hand in hand with massive attacks on postal workers around the world.

In a narrow sense, 'privatisation' implies the induction of private ownership in public owned enterprises, but in a broader sense, it connotes besides private ownership (or even without change of ownership), the induction of private management and control in the public sector enterprises (PSU). Barbara Lee and

---

[7] Internationalist Bulletin - No 2, Publication of the Liaison Committee of Militants for a Revolutionary Communist International, Spring 1997 (Internet).

John Nellis define the concept as, "privatisation is the general process of involving the private sector in the ownership or operation of a state owned enterprise." Thus privatisation covers three sets of measures;

1. Ownership measures,
2. Organisational measures, and
3. Operational measures.

In India for four decades (from the date of independence) public sector was expected to be the engine of growth. By the beginning of 1970s the role played by the PSU were found to be unsatisfactory and every body started thinking of wiseness in investing heavy amounts with PSU. The performance of the PSUs by middle 1970s, disenchantment with the public sector had started, but the voices of protest were feeble and were sporadic and inarticulate. The need for change was thought of by the government and finally Rajiv Gandhi prime minister (the then) in 1984 clearly pronounced for change in the public sector undertakings. The collapse of socialist economies gave boost for disinvestment policies in India. The worsening balance of payments situation in India leading to increasing dependence on the IMF and World Bank for grant of loan of the order of $5.7 billion to bail out India further added fuel to the fire. During 1969-70 to 1973-74 Public Sector enterprises earned 12% per annum. But by 1981-82 the return fall to 7 to 8 percent. Later it returned to 12 to 13 percent after 1981-82 in 1995-96 it was 16.1%. But compared to the investment the return was very low. Net profit in private sector in 1994-95 was 15%, whereas it was only 7.4% in public sector. It further declined to 5.0% in public sector compared to 7.4% in private sector.

The majority problems faced by the Public Sector enterprises are:

1. Working under a command system of management, little initiate left with the Public Sector enterprises,

2. Social and political constraints compel Public Sector enterprises to charge uneconomic prices resulting in loss,
3. Public Sector enterprises could not take hard economic decisions as they can afford soft budget option because their losses can be met out of the general budget revenues,
4. The managers of Public Sector enterprises tend to procedure oriented rather than out-come oriented and thus start playing safe and send even ordinary decisions for approval of top bosses in the ministries so that in the event of loss, they may not be held responsible. This practice led to rampant corruption, lack of responsibility and accountability among the workers and bossism of politicians,
5. Employment of unskilled and excess employees to over come unemployment problem lead to economic burden on the Public Sector enterprises,
6. Employees once recruited in Public Sector enterprises since does pay any attention towards his job it further deteriorated the situation as the management could not do any thing because of occasional political interferences,
7. Payment of benefits to employees in Public Sector enterprises are more compared to the private enterprises and accountability and responsibility are less.

The third National Commission on Labour also hailed the role of the government in respect of Public Sector Undertakings by saying that, "The Government of India did not put forward any proposal to public undertakings free them from bureaucratic control, and professionalize them to improve performance and profitability. No more was assigned to them in economic restructuring of the activity".

Position in other countries

According to a Democratic Party's document 1995, the market economy is being transformed into a dominant force in Albania. The budget deficit from 44% of GDP in 1992 was planned to be only 7% in 1995. More than 55% of the GDP comes from the private sector. Inflation has decreased 25 times as compared to 1991. For two successive years Albania has the greatest economic growth in Eastern Europe, 11% for 1993 and 8% for 1994. Export and import comparing 1992 - 1994 increased 3.2 times and 2.7 times respectively. In 1994 foreign investment was three times higher than in 1993. 65% of the national property is privatised.[8]

5. 5 Downsizing Employment

Employers run business for making profits, not for providing employment to some persons. Whenever he feels that the services of the employees are no more required or when he is not in a position to provide work he will remove them as it amounts to bearing economic burden, which may throw him to the well of losses. The employer may not require the service of the employees for a short time or forever. Some times the employer may reduce its staff strength temporarily. In seasonal business the service of the employees is required only for a short time and once the season is over their services can be terminated. Skeletal staff only will be retained in order to look after the premises and plant.

Downsizing the employment may result for the following reasons:

1. change in government decisions or policies,
2. completion of the scheduled task (construction of bridges etc),
3. shortage of power,

---

[8] Internationalist Bulletin - No 2, Publication of the Liaison Committee of Militants for a Revolutionary Communist International, Spring 1997 (Internet).

4. natural calamities,
5. adoption of labour saving techniques,
6. shifting of industry to other places, etc

In the interest of the country it is necessary to open and run certain undertakings like postal, transport, etc, by the government in the beginning. Once its purpose is completed or several private persons start doing the same business the government slowly start withdrawing it from the market. It may take place in different ways; viz. dividing the industry into different departments and giving some departments on lease basis to some private persons, selling some departments to private persons, converting into joint venture, selling the undertaking to the private persons etc. Generally, the employment in PSU is more compared to private undertakings. Once the undertaking was either converted to joint venture or private the employer who feels the employees are excess in number immediately will adopt the process of downsizing employment in order to get rid of economic burden (in the form of retrenchment). Apart from this the companies may shift the plants to other special economic zones declared by the governments (where incentives are provided to the industrialists), and they get advantages like tax reduction etc. as a result the persons working at the old premises may be terminated or the employees may not prefer to go to new place. The result in any case is reduction in employment because of the act of the employer. Some times the employer who is not in a position to face the agitating workers may shift the plant to new place as a result the employees may be unemployed (who refuse to go to new place to work) and in the new plant the employer will adopt labour saving techniques in order to avoid excess employment and thereby get rid of the labour problems to some extent either temporarily or forever.

The situation is almost similar in different countries. In China by the end of 1996, more than half the state-run industries had been unable to sell their products or pay wages and pensions. In the worst-off industrial cities, up to 80% of the workforce has been laid off. In Shenyang, the capital of Liaoning province, 350,000 workers were laid off, many without pay. In Tianjin, which had attracted a lot of foreign investment, state-run industries had been laying off workers all year. Companies like the Flying Pigeon Bicycle Factory had halted production for a part of each month—and 7,000 of the 20,000 workers were dismissed. Unemployment among Tianjin's industrial workforce had reached 40%. At the beginning of 2000, official statistics revealed that China's state-owned enterprises (SOEs) had laid off 11 million workers in 1999. Less than 5 million had been able to re-enter the workforce. With an additional 6 million unemployed workers — according to the government statistics—this brought the total number of officially counted unemployed to over 12 million. But even this number hugely underestimates the real number of people out of work in the cities.[9]

5. 6 Sub-contracting

This is the method invented in late 1990s for overcoming the economic burden of excess employment and avoiding the statutory payment of wages or benefits to the workers. In Singareni Colliries (Coal Mines), Kotha Gudem, Andhra Pradesh, sweepers who were appointed to sweep/clean only one office room per head. Later the job of sweep or cleaning the office was given on contract where in the contractor appointed each sweeper who are required to sweep or clean at least 3 (three) offices per day. Like wise in Andhra Pradesh State Road Transport Corporation, a transport undertaking in Andhra Pradesh in order to over come economic burden of the staff contract is given to the private persons who will supply the busses and driver to it and the corporation will provide oil at

[9] *Angry winds in China,* Revolutionary worker in China#1071, Sep. 24, 2000.

particular mileage and pay to the contractors on kilometre basis (conductor will be that of the corporation who collects them passengers after issuing proper tickets. In case of accidents the responsibility of payment of compensation lies upon the owner of the bus but not on the corporation). It this practice the corporation is relieved from the burden of appointing and maintaining the staff and buses. In this system the revenue though not affecting the corporation, the workers are complaining that such system in future will lead to privatisation. Another defect with system is in long run busses the corporation changes the drivers for every four or five hours depending upon the distance where as the private owner depute only one driver for the whole distance. After reaching the destination the corporation driver will take rest in the rest houses of the corporation whereas the non-corporation driver has to take rest in the bus itself. Under these circumstances possibility of accidents are high in case of contracted buses compared to corporation busses.

5. 7 Work Culture

No legacy is as rich as honesty[10]. It is through work that one acquires personality, not by the negation of work. Survival of the industry depends upon the work culture of its employees particularly in public sector undertakings. It is lack of work culture on the part of the workers that broke former USSR in to pieces and the same work culture lead Japan to a leading economy. Employment/appointment of supervisors in the industries is common in almost all the countries. No body feels bad of it. But in Japan if any supervisor is appointed, the subordinate staff feel bad of it and they will try to clarify about any fault on their part with regard to their performance. In former USSR Leonid Brezhnev gave the call that workers must work on the weekly holiday, thousands of party cadres came forward and build a strong nation by developing the nation's

[10] William Shake sphere.

economy. But, the system altogether different in developing countries including India. In the context of reality, there is thus no model readily available from anywhere in the world to copy because of altogether different social and political reasons. The citizens of India shall have to develop their own tentative policy. The workers who do the manual jobs of filling and pushing the tubs (in Coal mines) in either piece rated are supervisors for themselves. They will also try to maximise the production, not in the interest of the undertaking but of their own. Some times they are also encouraged to undermine the safety provisions. In turn the management will save money and reduces production cost and time. The persons working on piece rated are from the down-trodden sections of the society and majority are dalits and adivasis, while the rest are from the backward castes including those of muslims[11]. In the system of piece rated work, (which is in practice in all the countries, both developed and developing), in a lust for getting more work by the employers and to get more money in a short time by the employees, undermining the possible threats and dangers of the work. Some times the workers may have to loose their life or limb also (particularly in mines).

It is necessary to establish man-environment balance in this country. The basic five issues of public policy are (1) man-environment balance, Profit, (ii) man-machine relationship, (iii) machine production relationship, (iv) sophisticated machine-control system and (v) man-machine-product (with regard to wage issue). Five issues of public policy with regard to comprehensive Industrial relations Act are *firstly*, trade union shall be controlled and allowed to act democratically; otherwise there will be a threat for work culture. *Second*, the issue of who can bargain as an agent and under what conditions a composite of bargaining agents can be allowed be decided, third, the role and limitation of third parties be decided, fourth, the words "workman" and Industry must be specifically defined without leaving scope for ambiguity, lastly, the public policy should also state

[11] DN, *Strikes as lock-outs*, Economic and Political weekly, April 2-9, 1988.

something about the national norms, norms about remuneration linked or de-linked with performances.

In developed countries like India holidays are high in number[12] and workers are always concentrate in getting holidays on one or the other pretext or en-cashing leave. According to the Report submitted by the Third National Commission on Labour the creation and maintenance of a conducive work culture depends on:

a). the individual worker, and his attitude to work,
b). the condition that relate to work.
c). the management and its attitude to worker, and
d). the norms that a society sets before itself, its commitment to excellence and consciousness, and its sense of fair play and justice to its constituents.

In Japan a worker does not like to take holidays. Recently, when the economy was in recession, Japanese markets were over flooded and there were few buyers, the Government introduced a five-day week, and workers were encouraged to take holidays. The government carried on propaganda about the benefits of taking holidays and spending time with families. But it is said that workers resisted, not knowing what to do with the extra holiday.[13] By taking the

---

[12] Holidays in a year.

Brazil, UK, Sweden, Italy, Holland	-08
France, Philippine, Australia	-10
Finland	-11
Belgium, New Zealand	-12
India	-17
Some state Governments	-30

(source- *REPORT OF THE NATIONAL COMISSION OF LABOUR-2002.* Page-300 (Vol-I) (part-I) 2002 Government of India.

[13] *REPORT OF THE NATIONAL COMISSION OF LABOUR-2002.* Page-228 (Vol-I) (part-I) 2002 Government of India.

holidays in our country with a view to promote work culture the Third National Commission on Labour suggested that:

"We recommend that:

a). The Central Government and all State Governments should have a uniform policy on Holidays,

b). only 3 (three) national Holidays be gazetted –viz. Independence Day, Republic Day and Gandhi Jayanthi (October, 2),

c). Two more holidays may be added to be determined by each State according to its own tradition. Apart from these each person may be allowed to avail 10 restricted holidays in a year which he/she may be free to choose on the basis of custom, religious observance and so forth.

d). Government holidays should be delinked from holidays under the Negotiable Instruments Act.

e). In case of option of a 5 day week, if a holiday falls during the week, Saturday should be a working day.

f). the movement of quality circle, which encourages workers to improve quality and productivity in each enterprise, should be encouraged. It has already paid good dividends. This will enable worker to take interest in the work, they perform and contribute to the improvement in the over all work culture in the organisation".[14] In the ultimate analysis, the level of work culture in any undertaking will depend on the level of awareness or realisation of identity, or community of interest, or in the least, the sense of belonging, and the sense of interdependence.

---

[14] Ibid at p. 301.

5. 8 JOB REDESIGN

It means first, for every job a level of variety will have to be provided. It means for example a sweeper must be provided with some other job so that he experiences less monotony on account of more variety provided. Second, job must provide for continuous learning i.e. some challenges will have to be provided in terms of task and targets. Third, the value of autonomy we have to provide to the new worker. The new worker today doesn't want that his supervisor should breathe down his neck. Hence every job must be designed in such a way that can promote devotion to duty in worker.

Mutual help and support is necessary for building work culture. Unless the worker sees the linkage of his effort to the product and unless he comes to know what he produces also goes to contribute to the social wheal, his commitment to work will be less. The desirable future should be built into the job. The whole policy of promotion should be, not on the basis of seniority or the trained wisdom put in to the job, but on the basis of a job fitting itself in to the next higher job.

Implementing a massive program of ideological education with disciplinary effort will emphasize the priority over other systems. Priority must be given to the basic needs of the people. Discipline, mixed with ideology and massive programme of minimum needs, could lay the foundation for socio-economic progress.

There is a need to develop a reward structure. What simultaneously, and equally important is to develop a performance measurement structure. Performance here not only means only performance measured against the target and the task. Performance should also mean the spirit of collaboration across the line. Traditional methods of duties supported by stereo type promotions made the

workers rights oriented instead of duty, which lead to irresponsibility and unaccountability. Hence it is necessary to take necessary steps for redesigning the jobs towards duty oriented than right oriented.

5. 9 Involvement of workers

In order to over come the psychology of centralist decision-making, it is necessary that a manager should see that his subordinates get developed as multirole performers. Collective bargaining can be constructive only when we are able to establish in our work place – norms of understanding, norms of performance, norms of behaviour and equality throughout the work system. Like British Organisations there may be tension and conflict while the collective bargaining was on in full swing and then a cooperative culture when the productivity agreement was being implemented. We have to develop responsive norms at all levels of employees along with the collective bargaining culture. Redesign of jobs to humanise the work culture is necessary in neglected areas. This is where attention is required. The mode of implementation is bad as the real objective is different from stated objective. Hence it is necessary to involve the workers in the process of production.

5. 10 Job security

The system of "Job Security" has always been a controversial issue in industrial relations throughout the world. Without job security, no workman will devote totally himself towards the development and welfare of the industry. Employer feels if total job security is given the worker may not discharge his duties as per his wishes, whereas, the employee who is not sure of his job, will start thinking about his uncertain future. "In reality people build much of their lives around their job. Their incomes and prospects for future are inevitably

founded in the expectation of their job continuation. For many workers dismissal is a disaster. For some workers it may make inevitable breaking up of a community and uprooting of homes and families. Others, and particularly older workers, may be faced with the greatest difficulties in getting work at all"[15]. In India in the pre-Independence era payment of wages were uncertain apart from the amount of wages. In certain undertakings it was not sure whether the workman is going to get work in the industry on the next day leave about the getting of wages. This situation even now prevails in unorganised sector. Where the workers were not guaranteed if they would get their deserved daily wages, the question of job security does not arise.

The effect of job security on collective bargaining and strike depends upon how effectively the workers can restrain the management from recruiting and appointing alternative staff for continuing their production process during the period of strike. But, the psychological effect on the employer and employees will considerably more where job security was statutorily provided when compared to the workers with out job security, i.e. where persons are working with job security the employer cannot recruit new persons easily as he has to follow the statutory procedure for retrenchment etc., apart from paying salary to the employees for the strike period. But, the employer in the case of workers raising dispute are without job security, he can recruit the new hands as he does not owe any responsibility towards the staff as per the statute.

Job security, not only gives the employee a satisfactory peaceful state of mind, but also the employer a standard form of routine work. Job security not only gives certainty of the job but also freedom to think for the development of the worker employed which in turn results in the development of the industry and ultimately the nation.

---

[15] *Royal Commission on Trade Unions and Employers' Associations (UK), 1965-68*, p. 142-43.

The Supreme Court judgment in 1985 armed the executive with powers to dismiss "government servants who are inefficient, dishonest or corrupt or have become security risk" without holding prior inquiry or giving the concerned employees an opportunity to be heard. It was argued by the trade unions that it was not only a fatal blow to the job security to the government servants but also to the over all democratic culture of the nation in general and trade union movement of the government employees in particular. On the other hand some legal and constitutional experts supported the view of the judgment stating that **"before a government servant is denied his right to be heard, the seriousness of the offence must be determined and when it has been found that his conduct merits dismissal or demotion, the authority concerned may (really must) dispense with the inquiry".**

In India, the government is the largest employer accounting for, more than two thirds of the total employment in the organised sector. The employees removal in this case was not on the ground of 'inefficiency, dishonesty, corruption or even for security risk', but for participation in all India railway strike.[16] Such activities will be not only a fatal blow to the faith in the judiciary, but also for utilization of Constitutional provisions. Though, the trade unions made hue and cry for some time immediately after the incident, remained silent afterwards. It shows that the majority of the trade unions and general public did not support the claim of the trade unions to go on strike undermining the security of the State.

Negative aspects of job security

On the negative side, the employees because of the security provided to them may become lazy, as the employer cannot remove them easily as the statutory protection to the job is available apart from the effective bargaining power from the side of the trade unions. The employer's position will be

[16] *Blow to workers' Rights*, Economic and Political weekly, 1286 (3.8.1985).

considerably lower as job security enables the employees to bargain effectively and may claim for more benefits irrespective of the financial position of the industry. For this reason only the interest for securing Government job is rampant (at present) in the job seekers compared to the position during pre-independence period. In public sector undertaking union leadership is said to be boon though not a curse in private sector. Union leadership in public sector undertakings is almost without any work and responsibility. If they are forced to do any work, they in turn will start creating troubles to the officials through their union activities in one way or the other. Some employees are totally without any work and the others are over burdened with work indicates the effect of the unions upon the performance of the workers.

5. 11 Technology

Knowledge without integrity is dangerous and dreadful[17]. It is the technology that provided the facilities to the human beings. Mechanization during the 14th century started the revolution, which travelled a long distance and gave birth to computerization, which added fuel to fire. Today dockworkers look with trepidation at the beginning of another era. Decades from now, the waterfront will be largely automated. Workers in front of computer screens, often hundreds of miles away from the docks, will control the movement of cargo on and off ships. Ports like Singapore and Rotterdam already have this new technology, and the world's shipping companies want to introduce the same system on the Pacific coast. The Bush administration seems poised to take action, which would affect unions as profoundly as President Ronald Reagan did when he broke the air traffic controllers union in 1982.[18] The introduction of container cranes revolutionized

[17] Samuel Johnson.

[18] David Bacon, *Bush Threatens Dockers' Right To Strike*, Znet, August, 10, 2002.(www. zmag.org) (visited on 18.5.2004)

shipping, and reduced the number of west coast longshore jobs (in USA) from over 100,000 to its present 10,500.

5. 12 Expectations from the employer/supervisor

Benjamin Franklin said that "to be humble to supervisors is duty to equals courtesy, to inferiors nobleness." The psychological factors affecting inter personal relationships between the first line supervisors and the rank and file workers and even between employees of comparable status play a dominant role in the development of good or bad industrial relations. The supervisor in the plant is the key person in nearly all human relations. He shall know the importance of the individual group relations in formal pattern of society and the informal relations of the workers. The supervisor represents the management to the worker and interprets employees' needs to the management. The workers' attitude towards the management is largely influenced by their relationship (treatment they are getting) with the first line supervisor. Hence it is necessary for the supervisor to meet the expectations of the workers. In general workers expect that the supervisors should possess certain minimum characteristics.

Nearly 98% of the workers like to solve their problems through their immediate supervisor. They neither want to go to the Mangers/Department Head nor to the Trade Union leaders. More than half of the petty disputes can be solved if supervisor is tactful in dealing with the problems of the workers. The supervisor must be a leader and guide to his employees. The majority of the workers would normally be either financially or otherwise week in one or the other aspect. The supervisor shall not try to take advantage of these weaknesses of his subordinate.

5. 12 Expectation by the employer

1. The way the employee expects how his supervisor should be, the employer/supervisor also expects that his employee should have certain characteristics.

Employer or employee when he fails to meet his expectations from the other, looses his balance which ultimately results in the form of resentment at the first instance and if undermined it further deepens and the result will be out break of disputes (like strikes, lock-outs, etc). Failure on the part of the employer or employee to meet these expectations resulting in frustration and leads to minor or major disputes which ultimately leads to strike so rock-outs. Escalating demands and unreasonable expectations by the employees, is contributing 29% to the industrial unrest.[19] Likewise all employers may not be alike. Some employers may be unique and he may not be ever good to any body. Such persons are contributing 27% to the industrial unrest. They neither hear any one nor think properly by themselves. They may ask the workers to work for long hours and slowly habituate them for such environment. But they fail to understand that working long hours will create lot of mental stress and may some times lead to collapse of the work-culture.[20]

5. 14 Colleagues

A person is first a human being and then only a workman. Since the man is a social animal he likes to live in the company of others and also likes to share his views with others. Sudden change of work culture introduced by the multi-nationals changed the entire scenario of the work-culture. They have started

---

[19] Frank Kenna III, *Job stress is the emotional toothache of the work place*, The Telegraph, (Jobs), 29.6.2004.
[20] *ibid*

employing the persons of different nations having different habits and nature rose as another reason of workers unrest. It was found that 21% of the job stress is due to "cranky or unreasonable colleagues.[21]

5. 15 Delay in Judicial proceedings

Judicial proceedings must be concluded in reasonable time in order to have its taste. It was rightly said 'delayed justice is denied justice'. This fact was recognised even in 1215[22]. Generally in India judicial proceedings will take a minimum of three years period from filing of application till final disposal. According to some judges non-appointment of required number of judges is the root cause of accumulation of cases in the courts. If the matters of quick attentions like 'strike by doctors or Electricity employees, Water works, etc," if referred to court for consideration, by the time the final decision given [by the court(s)], the general public would have been thoroughly troubled. Though Labour Courts, Tribunal are constituted to deal the labour and service matters quickly and efficiently, the second purpose was served to certain extent the first purpose is still a distant dream. The new chapter of "Fast Track Courts" if pressed into service may serve the purpose of fast disposal of the workers problems.

---

[21] *Ibid.*

[22] ***Article: 40.*** To no one will we sell, to no one will we refuse or delay, right or justice. (Magna Carta)

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

---

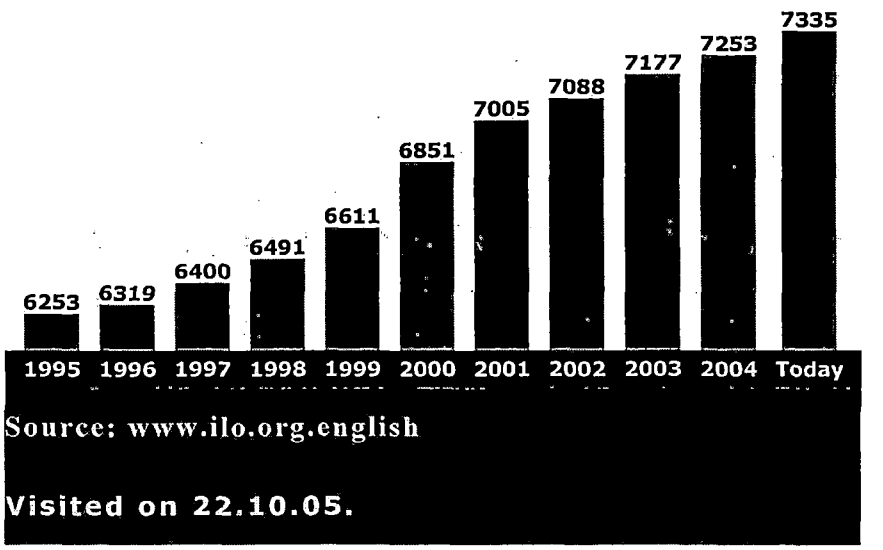
[4] M.C. Jain Kagzi, *Kagzi's The Constitution of India*, Vol. 2, Ed. 6, 2001, p. 1201.
[5]. Article 19(1)(c) /(4).
[6]. Damayanti Narang vs. Union of India, AIR 1971 SC 966;Assam Rastrabhasha Prachar Samithi vs. State of Assam, AIR1989 SC 2126; D.A.V. College vs. State of Punjab, AIR 1971 SC 1737; Damayanti 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

---

[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

---

[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

---

[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.

20

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

---

[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

---

[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

---

[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:

---

[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

---

[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.

---

[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]

---

[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

---

[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

---

[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:

---

[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]

---

[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

---

[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

---

[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

---

[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.

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 strike 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.

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;

---

[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]

---

[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.

---

[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.

CHAPTER – VII

Strikes – Statutory Provisions

Let not the wings of thy soul take thee so high that
Thou losest sight of thy earthly duties

.....Yajur Veda. 5.43

It is the Statute that either creates or takes away the right(s) of the persons. Rights may be express or implied. Any right if expressly given by a statute can be exercised without any fear, But any right if not granted expressly but restrictions are imposed may be difficult to exercise. The Industrial Disputes Act, 1947 was passed with an object of preventing and settlement of disputes in the industrial undertaking. Industrial undertakings include both public sector and private sector. In this chapter various statutory provisions are discussed which are related to strike. The earliest legislation in our country was Bengal Regulation VII of 1819. Breach of law under this law was made a criminal offence. Thereafter Merchant Shipping Act, 1859; The workmen Breach of contract Act 1959; and the Employers' and Workmen's (Disputes) Act, 1860 were enacted. The Indian Trade Union Act, 1926 guaranteed the workers the right to organise and gave them a legal status and immunized them from civil and criminal liability. The Act had been changed several times to suit the changing circumstances.

The Trade Disputes Act, 1929 was codified for five years as an experimental measure with main object of making provisions for establishment of Courts of Inquiry and Boards of conciliation with a view to investigate and settle trade disputes. The Act prohibits strike or lock-out without notice in public utility services. It also further made any strike or lock-out illegal which had any object other than the furtherance of a trade dispute with in a trade or industry in which the strikers or the employers locking out were engaged, and was designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby compel Government to take or abstain from taking any particular course of action. The Act was amended in 1932 and was made permanent by the Trade Disputes (Extending) Act, 1934.

The World War-II brought rapid change in both economic structure and industrial relations. The necessity of keeping the production at high level without interruption and the claim of the workers for proportionate share in abnormal war profits, forced the Government to pass Defence of India Rules, 1942. The Rules for the first time laid foundation of "*Compulsory adjudication*" in India. The Government was empowered under The Defence of India Rules to make general or, special orders to suit the situation, to prohibit strikes or lock-outs and to refer any dispute for Conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decision of adjudication.

A notification was issued in May 1842, vesting much the same powers in the Provincial Governments, and in August Essential Services Maintenance Ordinance, promulgated prohibiting strikes or lock-outs without 14 days previous notice. Strikes and lock-outs were also prohibited when a trade dispute wad referred to a statutory enquiry or for conciliation or adjudication during the entire period of the proceedings and for two months thereafter. Rule 81-A of the Defence

of India Rules 1942 was due to expire on 1st October 1946 was kept in operation by passing Emergency Provisions (Continuance) Ordinance, 1946. In the period of post World War industrial adjustment the Government felt deep importance of the Rule 81-A on the basis of its experience during the war. The government felt necessity of permanent industrial law to check the industrial unrest.

The Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October, 1946. After the select committee's Report on 3rd February, 12947, with some amendments, it was passed in March 1947 and became law from 1st April, 1947 repealing the Trade Disputes Act 1929.[1] The main object of the Act was to provide compulsory reference to the Board of conciliation or to a Court of Enquiry, and its awards are binding upon the parties which was lacking in Trade Disputes Act, 1929 (which is the essential principle of Rule 81-A of Defence of India Rules).

7. 1 The Industrial disputes Act, 1947

The Industrial Disputes Act 1947 is a legislation calculated to ensure social justice to both employer and employees and advance the progress of the industry by bringing about the existence of harmony and cordial relationship between the parties. The object of the Act is not only to make provisions for investigation and settlement of industrial disputes, but also to secure industrial peace, so that it may result in more production and improve national economy. Co-operation between capital and labour is essential for maintenance of increased production and industrial peace[2].

---

[1] G.M. Kothari, *A study of Industrial law*, p. 116
[2] 1977 Lab.I.C. 483 (485)

The sense and effect of the ID Act is to promote industrial peace, legitimate trade union activities and discouragement of unfair employer practices or victimisation of workers[3].

In dealing with industrial disputes, courts have always emphasised doctrine of social justice, which is founded on basic idea of socio-economic equality and have given it predominant consideration[4].

6. 1(a) STRIKES IN PUBLIC SECTOR UNDERTAKINGS (SECTION-22)

It is the duty of the State to recognise new forms of action due to labour disputes and must encompass them in the relevant national statutes which shall confirm to national and international standards. Such statutes must be capable of improving the living standards of the workers and improve production of the nation by taking in to account the specific national needs and circumstances. The Governments should periodically prepare periodical assessment of the impact of the provisions and its possible impact in future upon the nation in comparison to international scenario. It is also is the duty of the State (Country) to identify the alternative components that may substitute the existing provisions periodically to meet the needs of the society.

A labour dispute is a state of disagreement over a particular issue or group of issues over which there is conflict between workers and employers, or about which grievance is expressed by workers or employers, or about which workers or employers support other workers or employers for their demands or grievances[5]. In India after taking all the internal conventions and the then prevailed

---

[3] AIR 1962 Mad 231; (1962-63) 23 FJR 527 (Punj).
[4] AIR 1968 Orissa 129 (131).
[5] Article 1 of Resolution concerning statistics of strikes, lockouts and other action due to labour disputes, 1993, adopted on 28th January 1993 in the fifteenth International labour conference of Labour Statisticians.

circumstances into consideration the legislature enacted Section 2(q) of the Industrial Disputes Act, 1947 defines the term strike, it says, "strike" means a cassation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or accept employment".[6]

It is to be noted that the provisions of sections 22 and 23 of the Act, 1947 do not prohibit the workmen from going on strike but require them to fulfil the condition before going on strike. The intention of section 22 is to provide sufficient safeguards in matters of public utility services as otherwise great inconvenience to the society and the general public would result.[7] If the conditions mentioned in Section 22 are fulfilled by the workmen before going on strike it will be a legal strike. Though the strike was recognised as a weapon in the hands of the workmen its exercise without caring for the inconvenience of the rest of the society may result in lawlessness and chaos. The right to strike (?), however, is to be exercised after complying with certain conditions regarding service of notice etc. also after exhausting the intermediate and salutary remedy of conciliation proceedings[8]. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike. The prohibition of strike in the circumstances mentioned in sections 22 and 23 of the Act is based on public policy. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise there strike becomes illegal.

---

[6] Detailed discussion is made in Chapter-2.
[7] AIR 1958 Pat. 51 (56).
[8] 1979 Lab.I.C. 1079 (1084) DB. (Punj).

Section 22(1) of the Industrial Dispute Act, 1947 lays down certain prohibitions on the right to strike. It provides that "no person employed in public utility service shall go on strike, in breach of contract:

a). without giving to employer notice of strike, as herein after provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

6. 1(a)(i) Reasons for enacting the section

The provisions of section 22 do not prohibit the workmen from going on strike but require them to fulfil the condition before going on strike. The intention of section 22 is to provide sufficient safeguards in matters of public utility services as otherwise great inconvenience to the society and the general public would result.[9] If the conditions mentioned in Section 22 are fulfilled by the workmen before going on strike it will be a legal strike. Though the strike was recognised as a weapon in the hands of the workmen its exercise without caring for the inconvenience of the rest of the society may result in lawlessness and chaos. The right to strike, however, is to be exercised after complying with certain conditions regarding service of notice etc. also after exhausting the intermediate and salutary remedy of conciliation proceedings[10]. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention

---

[9] AIR 1958 Pat. 51 (56).
[10] 1979 Lab.I.C. 1079 (1084) DB. (Punj).

as to who goes on strike. The prohibition of strike in the circumstances mentioned in sections 22 and 23 of the Act is based on public policy. In the line of section 22 number of statutory provisions were made in the different statutes[11].

---

[11] Some such provisions are as follows:

Rule (5) of All India Services (Conduct) Rules, 1968.

(1) No member of the service shall be a member of, or be otherwise associated with, any political party or any organisation, which takes part in politics, nor shall he take part in, or subscribe in aid of, or assist in any other manner, any political movement or political activity.

(2) It shall be the duty of every member of the Service to endeavor to prevent any member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any movement or, activity which is, or tends directly or indirectly to be, subversive of the government as by law established, and where a member of the Service is unable to prevent member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

Central Civil Services (Conduct) Rules, 1964.

Rule-6

No Government Servant shall join, or continue to be a member, of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.

Vide O.M. No. 25/17/71-Ests, (A), dated the 26th August, 1971, the government Servants are made responsible for affixing notices, posters, of the associations or unions in irresponsible manner causing damage to the office building.

Rule-7.

No Government servant shall-

(i) engages himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government service.

Holding of meetings demonstrations by Government servants within office premises is violative of Rule 7(i).

It has been noticed the demonstrations are sometimes held by Government servants in contravention of Rule-7 (i). The Government of India hereby wants to make it clear that holding of meetings/ demonstrations by the Government servant(s) without prior permission in writing his/their offices premises is strictly prohibited and any violation of these instructions will be taken serious note of those concerned will be dealt with suitably under the disciplinary Rules by which they are governed. (366 dated 10-6-1969).

The Railway Services (Conduct) Rules, 1966

Rule-6

No railway servant shall join, or continue to be a member of, an association or union s the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.

Notice of strike

Irrespective of the issue, the worker before going on strike shall serve notice under section 22. Notice to strike within six weeks before striking is not necessary where there is already lockout in existence. In *Mineral Miner Union vs. Kudremukh Iron Ore Co. Ltd.*,[12] it was held that the provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. If meanwhile the date of strike specified in the notice of strike expires, workmen have to give fresh notice. It may be noted that if a lock out is already in existence and employees want to resort to strike, it is not necessary to give notice as is otherwise required. In *Sadual textile Mills v. Their workmen* certain workmen struck work as a protest against the lay-off and the transfer of some workmen from one shift to another without giving four days notice as required by standing order 23. On these grounds a question arose whether the strike was justified. The industrial tribunal answered in affirmative. Against this a writ petition was preferred in the High Court of Rajasthan. Reversing the decision of the Tribunal ***Justice Wanchoo*** observed:

Note:- It is not permissible for gazetted railway servant to join any association of non-gazetted Railway Employees Union. When a non-gazetted railway servant who is a member of a railway employees union is promoted to gazetted rank, either in an officiating or permanent capacity he shall resign his membership of such union. If, however, the officer concerned satisfies the General Manager of the Railway concerned that by such resignation he will lose financially or otherwise under any beneficent scheme organised by such union such as death, or accident insurance, he may be permitted to continue as an ordinary member but not as an office bearer or representative of that union. The responsibility of satisfying the General Manager in this respect, rest with the officer concerned.

Rule-7

No Railway servant shall engage himself or participate in any demonstration which is prejudicial to 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 which involves contempt of court, defamation or incitement or an offence.

[12] (1989) I LLJ 277 (Karn).

" ....We are of opinion that what is generally known as a lightning strike like this take place without notice..... And each worker striking..... (is) guilty of misconduct under the standing orders .....and liable to be summarily dismissed.....(as)..... the strike cannot be justified at all." In Life Insurance Corporation of India and others v. Amlendu Gupta and others,[13] where the permanent Class III, Class IV employees of LIC went on strike after serving notice as per ID Act. The corporation did not pay bonus in spite of the orders issued by the Supreme Court. The corporation issued circular to deduct wages and allowances for the period of strike. It was held that under Industrial Disputes Act employees are entitled to go on strike in case of refusal or denial by the employer to give to its workmen benefits and emoluments to which they are entitled under the law of contract of service. But before going on strike certain formalities as prescribed by section 22 of the Act, have to be observed. If the strike is in accordance with the provisions of the Act, the strike must be legal.

The provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. Some times a situation may arise for several reasons the employees may not go on strike on the date the workmen proposed to go on strike. For any reason if the date specified in the notice expires, workmen have to give a fresh notice and all other statutory consequences following out of the said notice would follow. It is not correct that the provisions of section 20(1) and 12(1) of the Act are not applicable to second notice. Whenever a notice under section 22 is issued, even though such a notice necessitated by the failure of conciliation proceedings, provisions such as section 20(1) and 12(1) read with section 22 in its entirety will be attracted. It was further held that deduction of wages for days of illegal strike would be justified.[14] Notice

---

[13] (1988) II LLJ 495 (Calcutta)

[14] Mineral Miner's Union v. Kudremukh Iron Ore Co. Ltd, (1989) I LLJ 277 (Karn)

required to be given under sub-section (1) and (2) must be given in the manner prescribed under the rules, and must mention the date of the proposed strike otherwise it is ineffective[15].

If on any day an employer receives from any person employed by him any such notice of strike as are referred in Section 22(1), he shall within five days of receiving such notice, report to the appropriate government or to such authority as that government may prescribe, the number of such notice received or given on that day.[16]

Whether the workmen were provoked to go on strike does not absolve the employers from the duty to follow the conditions required under section 22 before going on strike where the management was prepared to pay bonus as per Bonus Act. They were taking active steps for introduction of production bonus scheme. They were taking active steps in conciliation proceedings. They made certain proposals to the workmen and give a reply to the management. But the next day the workmen were incited to go on strike. The telegraphic request of the management to postpone the strike by one day was also not complied with by the workmen. Under these circumstances the demand of the workmen for *exgratia* bonus could not be considered to be of urgent and serious in nature. Strike was unjustified.

The provisions of section 22 read with those of Section 26 are of penal nature and have to be construed strictly. The proof will depend upon the facts and circumstances arising in a particular case. At the same time, it may be remembered that the expression 'breach of contract'[17] does not mean breach of conditions of

---

[15] Employees of Dewan Bahadur Ramgopal Mills Ltd. v. D.B.R Mills Ltd. 1958 II LLJ 115.
[16] Industrial Disputes Act, 1947 Section 22(6).
[17] The expression 'breach of contract' means 'breach of contract of service of employment' and not a special contract not to go on strike. (Ram Naresh Kumar v. State AIR 1958 Cal. 445).

service, and it is not incumbent on the prosecution to produce and prove the standing rules in order to establish that the employees were guilty of breaking the contract.[18] Even if there is a contract between an employer and employee or employees, it is not legal and binding upon the employees.

Who should give it?

From the form prescribed, it is evident that the union of the workmen or the representative of the workmen elected at a meeting held for the purpose where no trade union exists may give the notice. However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work. The words 'no person' appearing in section 22 (1) refers to workmen because no one other than a workman is likely to go on strike in an industry. It must further be proved that the workmen were employed in an industry was a public utility service within the meaning of section 2 (n).[19] Different states have made different provisions as to the persons who are entitled to give such notice. Copies of the notice are to be addressed to the various authorities mentioned at the foot of the form prescribed by the respective government in the Rules.

Period of Notice-importance

The first condition mentioned in section 22 is that "*a notice of strike must be given to the employer 6 weeks before striking*",[20] and the second condition is that "*there should not be declared strike before fourteen days of giving such notice*[21]. It is the duty of the government to safe guard the society from the

---

[18] State of Bihar v. Deodar Jha, AIR 1958 Pat. 51.
[19] Swadeshi Mills Ltd. v. Its workmen. (1960) II LLJ 78 (SC).
[20] Industrial Disputes Act, 1947, Section 22(1)(a)
[21] Industrial Disputes Act, 1947, Section 22(1)(b).

possible inconvenience that may be going to be caused due to clash between two groups struggling to safeguard their own interest. With this intention the legislature for proving enough safe guard in matters of public utility services, these provisions were enacted by the legislature. Otherwise, it would result in great inconvenience to the society and the general public. This section does not prohibit workers in public utility services from going on strikes, but it requires them to fulfil the conditions mentioned in it. It enables the government to take necessary steps for prevention and settlement of the disputes with in the time of two weeks. In other words for a legal strikes it is necessary that all the conditions mentioned in Section 22 regarding strikes in Public Utility Services must be complied with. The requirement of notice must be fulfilled and strike must not be declared during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Where, the workers through their union secretary gave a notice to the management under section 22(1) of the Act that they proposed to call on a one day strike on the expiry of 6th November, 1949 for the fulfilment of their demands. The strike notice was received by the Regional Labour Commissioner (Central), Dhanbad on 5th October 1949. He conducted the conciliation proceedings on 22nd October 1949 but the workmen refused to participate in it alleging that they were convinced that nothing will come out and so no settlement could be arrived at. But the Regional Commissioner forwarded the report to the Chief Labour Commissioner, New Delhi on 22nd October 1949. The report was received by the Chief Labour Commissioner, New Delhi on 25th October 1949. The Chief Labour Commissioner actually sent a copy of the report to the Ministry of Labour, which was received by the ministry only on 17th November 1949.[22] The Supreme Court observed that as the strike notice was received by the Regional Labour Commissioner who was the Conciliation Regional Labour Commissioner 15th

[22] Workers of Industry Colliery, Dhanbad v. Management of the Industry Colliery 1953 SC 88

October, 1949, the conciliation proceedings commenced on that date under section 20(1) of the Act. The report was to be submitted within 40 days from that date. The report was received by the Central Government on 17th November 1949, and it is only on such receipt that the conciliation proceedings are deemed to have concluded according to the provisions of section 20(2)(b). *Prima facie*, therefore, the strike, which took place on 7th November 1949, was during the pendency of the conciliation proceedings. So the strike must be held to be illegal as it was in violation of section 22(1)(d) of the Industrial Disputes Act. The notice of strike referred in section 22 shall be given by such number of persons to such person or persons in such manner as may be prescribed.[23]

Notice when not necessary

However, notice of strike is not necessary where there is in existence a lock-out. In such circumstances the employer has to send intimation of such strike to such authority as may be specified on this behalf by the appropriate Government on the day on which it was declared.

Breach of contract

The word 'contract' means contract of service. Such contract may be express or implied[24]. The expression breach of contract in section 22 and 23 of the Act means breach of contract of service of employment and not a special contract not to go on strike. That in the contract of employment of every workman there is an implied term that he will work according to the rules of the concern. The

---

[23] Industrial Disputes Act, 1947 Section 22(4) and (5).
[24] Ram Naresh Kumar v. State of West Benagl 1958 I LLJ 567; 1958 Cal. 445.

expression 'breach of contract' does not mean a 'breach of a condition of service'.[25]

Entering in to agreements is not enough for any party (viz. Government, employer or employee). Bona fide efforts should be made to implement the intention of the agreement otherwise it is mere an effort to wash the tears of the weeping child without giving food to him, which is of no use. The main goal of the agreement and ambition of the parties in entering into such agreements will be frustrated if genuine efforts are not made in time. After October, 1962 (Indo-China war) in tripartite meeting it was resolved not interrupt or slow down the production of goods and services and to exercise voluntary restraint and accept the utmost sacrifice, in an equitable manner, in the interest of the Nation and its defence efforts, immediately the sections in the Industrial Disputes Act, 1947 would have been amended by making necessary changes in the relevant sections. The government in consultation with the employers and employees would have made suitable amendments to made conciliation and compulsory arbitration mandate before declaring strike in 1960s itself. It is only in cases where the employer rejects arbitration and the government refuses to intervene and adjudicate the dispute that the union is justified in striking strikes that are called must be planned, efficiently conducted and speedily concluded. The relevant sections of the Industrial disputes Act, 1947 should have been amended to prevent long-drawn-out conflicts between labour and management. Specific provisions should have been incorporated prohibiting violence, threat and other forms of coercion against the employer and employee or by any one either directly or indirectly.

---

[25] State of Bihar v. Deodar Jha, 1958 Pat. 51 @ 57 approved in Chemicals and Fibers of India Ltd. v. D.G. Bhoir, (1975) Supp. SCR 415; (1975) 4 SCC 332; 1975 II LLJ 168.

6. 1(b)(a) General prohibition of strike (Section 23)

The provisions of section 23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in the both public as well as non- public utility services in the following circumstances mainly: -

(a) During the pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings;

(b) During the pendency of proceedings before a Labour court, Tribunal or National Tribunal and two month's after the conclusion of such proceedings;

(c) During the pendency of arbitration proceedings before an arbitrator and 2 months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A; or

(d) During any period in which a settlement or award is in operation, in respect of any of the matter covered by the settlement or award.

The principal object of this section seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes irrespective of the subject matter of the dispute pending before the authorities. It is noteworthy that a conciliation proceedings before a conciliation officer is no bar to strike under section 23.

The intention behind passing of these provisions by the legislature is to avoid strikes as far as possible not only by bringing the parties together but also by referring of points of disputes between them, either voluntarily or otherwise, for decision by labour court, the tribunal and National Tribunals. Strikes are not

banned even in non-public utility services. The ban on strikes is subject to certain limitations. There is no doubt that the Act recognises strikes as legitimate weapon in the matter of industrial relations. Section 23 should be interpreted in the context whether the section was intended to apply to the disputes between the employer and the general body of employees or to individual workmen.

In the *Ballarpur Collieries Co. v. H. Merchant,*[26] it was held that where in a pending reference neither the employer nor the workmen were taking any part, it was held that section 23 has no application to the strike declared during the pendency of such reference.

It is in the case of an industrial dispute between an employer and an individual workman the whole elaborate machinery earlier set forth on the Industrial Dispute Act may not be necessary lest it would be like using a sledge hammer to kill a flea. There is a justification for preventing a strike when a dispute between the employer and the general body of workmen is pending adjudication or resolution, it would be too much to expect that the legislature intended that a lid should be put on all strikes just because the case of a single workman was pending. That the general body of labour should be prevented from resorting to strike where they had chosen to espouse the cause of a single workman is understandable and reasonable. It has been held that the employer and workman are parties to a reference the decision therein bind them even though they may have said they were not interested in it.[27]

But if strikes are to be prohibited merely because the case of an individual workman was pending, whose case was not sponsored by the general body of the workmen, there can never be any strike even for justifiable grounds. A strike is necessary safety valve in industrial relations when properly resorted to. To accede

---

[26] (1967) II LLJ 201 (Pat).
[27] Ballapur Colliries v. Presiding Officer, AIR 1972, SC 1216.

to the contention of the employer in this case could be in effect acceding to a contention that there should never be a strike. While we realise the importance of the maintenance of industrial peace, it can not be secured by putting lid on the legitimate grievances of the general body of labour because the dispute relation to an individual workman under section 2-A is pending. That might mean the boiling Cauldron might burst. In that case the general body of workmen would be legitimately aggrieved that they are prevented from striking because an individual's case was pending with which they were not concerned. It is not enough in this situation to say that it is always open to the Government to make reference under Section 10 it may or may not happen.

In Chemicals and Fibres of India Ltd. v. D.G. Bhoir and others,[28] the attention was drawn to the contract between Clauses (c) and (b) of Section 23 and it was observed by the Supreme Court that it is not possible to give an extended meaning that under Clause (c) there is a limitation in respect of matters in relation to which there cannot be a strike, there is no such limitation under Clause (b), therefore Clause (b) provides a blanket ban on possible if proceedings are pending. As it has been pointed out that even in respect of Clause (b) some limitation should be read confining it to the parties to the proceedings either actually or constructively, as in the case of a union sponsoring the cause of an individual employee. No body, for instance, can argue that because the proceedings are pending in relation to one industrial establishment owned by an employer there can be no strike in another industrial establishment owned by that employer because there are no words of limitation in Clause (b).[29] The Supreme Court held that the word 'any person' cannot be given their ordinary meaning[30]. The Supreme Court after considering the decision in the Dimakuchi Tea Estate case[31]observed

[28] AIR 1975 SC 1660.
[29] Ibid.
[30] Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate, AIR 1958 Sc 353.
[31] ibid

that proper point of view from which to look at the problem is to give limited application to the fact of the introduction of Section 2-A in the Industrial Disputes Act and to hold that the pendency between an individual workman as such and the employer does not attract the provisions of Section 23[32].

Workmen generally raise several demands and some may be accepted and the rest may not accepted by the management. In such case the workers will go on strike for the demands which were not accepted by the employer. This situation may arise either before going on strike or after issuance of notice or even during strike period. But, if the notice of strike was given for certain demands and the management called for discussion wherein certain demands were accepted and the rest were refused among which the workers raised the issues which were not mentioned in the notice for strike. Under these circumstances workers going on strike regarding the issue which was not mentioned in the notice is in contravention of section 23 (c) and as such whole strike is illegal[33].

Where a pen-down strike was commenced in contravention of section 23 (b) and mere participation in such illegal strike can not necessarily involve rejection of claim for reinstatement.[34]

Mere breach of standing orders could not render the strike illegal under section 23 and 24[35].

Section 24 of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act does not prevail over s.23 and 24 of The Industrial Disputes Act 19497[36].

---

[32] Chemicals and Fibres of India Ltd. v. D.G. Bhoir and others, AIR 1975 SC 1660.
[33] AIR 1960 Pat. 542 (545).
[34] AIR 1960 SC 178.
[35] AIR 1972 SC 1216.
[36] 1989 Lab.I.C. (92).

7. 3 Section-24

An act of strike by the workmen will have its consequences. In order to decide whether a 'strike' is legal or illegal the legislature had formulated the rules in section 24 of the Industrial Disputes Act, 1947. under section the conditions under which the strike becomes illegal are specified.

Illegal Strikes

Section 24 provides that a strike in contravention of section 22 and 23is illegal. This section is reproduced below:

(1) A strike or a lockout shall be illegal if,
(i) It is commenced or declared in contravention of section 22 or section 23; or
(ii) It is continued on contravention of an order made under sub section (3) of section 10 or sub section (4A) of section 10A.

(2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all the time of the reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal;, provided that such strike or lockout was not at its commencement in contravention of the provision of this Act or the continuance thereof was not prohibited under sub section (3) of section 10 or sub section (4A) of 10A.

(3) A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

Strikes in contravention of sections 22 or 23 of the Industrial Disputes Act 1947 are declared illegal by section 24 of the Act. A strike which has commenced

and is not illegal under section 22 or 23 of the Act can be continued, unless an order under section 10(3) of the Act has been passed prohibiting the continuance of an existing strike. "Sub-section (2) of this section makes it clear that continuance of a lock-out or strike is deemed to be illegal only if an order prohibiting it is passed under section 10(3)[37].

7. 4 Consequence of illegal Strike

Every act shall have its consequences. "Strike" is not an exception to it. Strike declared and undergone as per the statutory provisions of the Industrial Disputes Act, 1947 can be protected and the employees will be entitled to the benefits as per the provisions of law. However, if the employees declare and undergo strike without following the statutory norms shall have to face the consequences like non- payment of wage for the period of strike, disciplinary proceedings for misconduct (for participating in an illegal strike) etc.

Dismissal of workmen

In *M/S Burn & Co. Ltd. V, Their Workmen*, it was laid down that mere participation in the strike would not justify suspension or dismissal of workmen. Where the strike was illegal the Supreme Court held that in case of illegal strike the only question of practical importance would be the quantum or kind of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

In ***Punjab National Bank v. Their Employees***, it was held that in the case of strike, the employer might bar the entry of the strikers within the premises by

[37] State of Bombay v. K.P. Krishnan (1961) 1 SCR 227: 1960 II LLJ 592.

adopting effective and legitimate method in that behalf. He may call upon employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper inquires according to the standing order and pass proper orders against them subject to the relevant provisions of the Act.

Wages

In ***Cropton Greaves Ltd. v. Workmen***, it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.

The constitutional bench in *Syndicate Bank v. K. Umesh Nayak* decided the matter, the Supreme Court held that a strike may be illegal if it contravenes the provision of section 22, 23 or 24 of the Act or of any other law or the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve the dispute, resort to strike or lock-out as a direct is prima facie unjustified. This is, particularly so when the provisions of the law or the contract or the service rules in that behalf are breached. For then, the action is also illegal.

Right of employer to compensation for loss caused by illegal strike- In *Rothas Industries v. Its Union*, the Supreme Court held that the remedy for illegal strike has to be sought exclusively in section 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act.

The right to strike is not fundamental and absolute right in India in any special and common law, whether any undertaking is industry or not. This is a conditional right only available after certain pre-condition are fulfilled. If the constitution maker had intended to confer on the citizen as a fundamental right the right to go on strike, they should have expressly said so, on the basis of the assumption that the right to go on strike has not expressly been conferred under the Article 19(1) (c) of the Constitution. Further his Lordship also referred to the observation in Corpus Juris Secundum that the right to strike is a relative right which can be exercised with due regard to the rights of others. Neither the common law nor the fourteenth Amendment to the federal constitution confers an absolute right to strike. It was held in the case that the strike as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. Every dispute between an employer and employee has to take into consideration the third dimension, viz. the interest of the society as whole.

Thus the sections 22 and 23 of the Industrial Disputes Act, 1947 must be amended incorporating the necessary provisions of exhausting legal remedies (including compulsory arbitration) before going on strike[38].

6.2 The Trade Union Act, 1926

Two third of legislation in India may be allotted to the industrial law. we have different statutes dealing with branches of labour and industrial laws. Industry plays a major role in building the economic structure of a country. Industry cannot be isolated from the society. Technological inventions may increase the number of industries and industrial outputs. On the other side technological advancement may also widen the social imbalance. For peaceful running of the industry, the harmonious relationship between labour and management is necessary. Proper legislation is necessary to regulate the relationship between the capital and labour. Every citizen or person of a country is one way or the other, are directly or indirectly is a consumer of a product. It is the duty of the State to safeguard the interest of the consumers by making uninterrupted supply of goods to hem. In a lust for more profits the capital and for more benefits the labour creates a new situation where the government in the interest of the society has to regulate the relationship between labour and management. The employer who is economically sound and socially strong likes to over power the labour who weak from all corners. Unity is the strength of the one and all. The week employees having identified or recognised this fact from nature started forming into groups for the purpose of their welfare. In the beginning the groups were formed not for their welfare but to protect them from external aggression. Once their security is assured, these associations started diverting their attention towards their welfare and development.

[38] Some other suggestions are given in Chapter -9.

After industrialisation the mutual conflict between the employer and employee over the question of adequacy of their respective of share in social produce, constituted, the crux of the labour problem, of which collective bargaining and industrial conflict are the two most important aspects. When the state fails to safeguard the interest of its subject they must force the state to take appropriate steps in this regard. A weak worker individually cannot make efforts to fight with both employer and state. The poverty had broken the backbone of the workers. Hence, in the beginning workers use to form association or unions as a temporary measure to achieve a particular demand from the employer. Once the purpose is over the association or union also ceases exist. Slowly importance of unions of permanent in nature was started taking its shape. The germs of trade unionism in India can be traced back to the year 1890 when for the first time an association of mill workers was formed in the name and style of "Bombay mill hands association". This association is not strictly a trade union in the present sense. First World War and Second World War added their share to the trade union moment in India. Though less number of cases can be seen in India where in injunctions were granted restraining the unions from going on strike. Filing of civil and criminal cases against unions and its leaders was also not uncommon. Hence to provide legal status and immunities from civil and criminal liabilities to the members and office bearers of trade union, the trade union Act 1926 was passed.

Section, 4 of the Trade Union Act lays down the mode of registration of a trade union. It lays down that "any seven or more members of a trade union may apply for registration of the trade union, section 5 (3) provides that:

> "A general statement of the assets and liabilities of the Trade Union prepared in the prescribed form and containing such particulars as may be required should be sent with the

application to the Registrar where a Trade Union has been in existence for more than one year before the making of an application for its registration".

The combined reading of section 4 and section 5 (3) make its clear that a trade union can also survive even without registration the only difference is an unregistered trade union cannot claim for advantages and immunities as laid down in the trade union Act 1926. Section 17 of the Trade Union Act confers immunity from liability in case of criminal conspiracy under section 120-Bof the Indian Penal Code committed by an office bearer a member of a registered trade union.

Section 18 of the Trade Union Act, 1926 provides the union leaders and members of a registered trade union, immunity from civil proceedings.
Section 19 of the Trade Union Act, 1926 provides that "an agreement, between the members of a registered Trade Union in restraint of trade shall not void or voidable". It protects the agreements entered in to between registered trade union and its members not to accept employment unless certain conditions as to pay, bonus, hours of work etc., are fulfilled.

7. 6 The Essential Services Maintenance Act, 1981

The Essential Service Maintenance Act, 1981(ESMA) empowers the Government to declare certain categories of industries/services to be essential services, based on the public utility of the industries/services in the State. For a vast country like India, essential industries/services are determined by agro-economic factors and natural resources available in each of the States in the country. The disputes/demands of workmen engaged in such industries/services are first taken up to be resolved by the negotiation mechanism under the Industrial Disputes Act, 1947 and even after that process, if they go on strike, only as the last option, they

resort to invoking the ESMA in order to prevent a loss in production and maintain the barest minimum public utility services for ordinary citizens and civil society. It must be noted that the ESMA does not take away the legal mechanism to negotiate and resolve disputes through the process of collective bargaining. Only trade unions functioning in industries that are included as Public Utility Services under the Industrial Disputes Act, 1947, are required to give 14 days' notice to the employer and the appropriate authorities of the Government before they resort to strike. The Ss. 3, 4 and 5 of Essential Services Maintenance Ordinance No.1 of 1960 were held not violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the constitution. The court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the ordinance provided was with respect to any illegal strike.[39]

It has become necessary to strengthen the hands of the heads of the institutions and to arm them with sufficient powers, so that those who art keen to study and improve their career should not be made the victims of a handful of persons who are found to spoil the academic sphere by indulging in anti-social activities.[40] The mere fact that the impugned law incidentally, remotely or collaterally has the effect of abridging or abrogating those rights, will not satisfy the test. If the answer to the queries be in the affirmative, the impugned law in order to be valid must pass the test of reasonableness under Article 19. but if the impact of the law on any of the rights under clause (1) of Article 19 is merely incidental, indirect, remote or collateral and is dependent upon factors which may or may not come into play, the anvil of Article 19b will not be available for

[39] Radhey shyam Sharma vs. post Master General, Central Circle, Nagpur AIR 1965 SC 311
[40] Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

finding its validity.[41] Article 19 (1)(g) and (6)- Reasonable restrictions-Test to determine- Trade must be directly affected by restriction.[42]

During emergency situation even refusal by a single workman may hamper the work of the others. For example during the period of power cut, if the generator operator refuses to work, the work of the others will be suffered. Under these circumstances the act of a single workman amounts to "strike".

Hence, there is a need to amend the definition of "strike" including the "refusal of work by even a single workman amounts to strike". Under the Industrial Disputes Act, 1947, all workers can avail of the right to resort to strikes. Even in Public Utility Services, where withdrawal of labour inevitably disrupts normal life, workers enjoy that right. This is not to say that the right is limitless – it is qualifies, and the Essential Services Maintenance Act (ESMA) of the Central and State demarcates the bounds of such right. The application of ESMA is supposed to be after careful study of the public and community requirements, where after the Government may immediately after any strike in the concerned services as illegal and authorise arrests of striking workers. Now it became an accepted practice for Government to impose ESMA as a threat to coerce workers into submission. Identifying employees on the touch stone of the essentiality of the services rendered in a given scenario would not only appease employee unions, it would also relieve the State of the burden of imposing a blanket ban that is increasingly becoming difficult to enforce in the face of violent responses by trade unions. Though in the beginning the ESMA proved success, later the employees refused to obey the directions given by the Government (in Public Utility Services). The employees of PSUs start defying the orders issued under the

---

[41] Bachan Singh v. State of Punjab,(1980) 2 SCC 684.

[42] Bishamber Dayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39, 62 see also (1986) 3 SCC 20. Viklad coal merchant v. Union of India. (1984) 1 SCC 619, 641, 642.

provisions of ESMA. The Government cannot do anything except to settle the matter with the employees unions.

7. 7 The Right to Information Act, 2005 (N0. 22 of 2005)

This Act was passed for revealing information in actual practice is likely to conflict wit other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information.[43]

Section 6 (2) of the Act, 2005 lays down that the person requesting the information need not furnish any reason or any other personal details for it. **Section 8** (1)(a) of the Act lays down exemption from disclosure of information. It lays down that "information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence". Section 8(1)(d) of the Act lays down that "information including commercial confidence, trade secrets of intellectual property, the disclosure of would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

These provisions of the Act creates reasonable doubt as to the disclosure of information to the employee (by the employer) with regard to the economic position of the employer which is essential for the fixation or payment of benefits to his employees like revised wages, bonus etc. The documents reveal the economic position (like ledger books etc) can be covered by the term "commercial confidence". The employer may avoid disclosure of information which is required

[43] The Gazette of India (Extraordinary), Part-II, Section 1 January 15, 2005.

by the employees for claiming financial benefits like bonus on the ground that the information may reveal his commercial secrets and may cause severe hardship in future business. Unless the judiciary clarifies that some transactions or documents like 'ledger books' etc, are not covered by "commercial secrets" the possibility of getting information with regard to the financial status of the employer is negligible.

The above information makes it clear that existing legislation is sufficient to protect the rights of the workmen, but, it is submitted that, lack of whole hearted belongingness on the part of both the Government and trade unions and lack of work-culture on the part of the employees is pushing the workers' community to the gallows.

Chapter - VIII

Indian Judiciary on Right to Strike

Awake, divine people, awake!
He who keeps awake is blessed by the Lord of Soma
He alone is befriended by the divine
forces who keeps vigilant. In all his noble deeds God assures him success.
God helps only those who work hard with vigour and courage.
Worthy of the Lord's association are not those who are lethargic and sleepy.
None ever comes to the aid of one who is morbid and fatalistic

.....Rig Veda 5.44.14

A person by birth is entitled to certain rights which he inherits from the nature. These rights are called natural rights. Majority are of the view that the natural rights are Fundamental Rights. Whether it is Magna Carta of United Kingdom (1215) or Civil Rights of USA (framed in 1787 and brought into force in 1789) and in France (1768) clearly provides certain rights which are even not subject to jurisdiction of the King. However, same rights are subject to the public interest and security of the nation. A man for living like human being needs certain circumstances and facilities to live in. A man for his survival is bound to depend upon the rest of the society. "A person" according to Aristotle "who does not need the assistance of another person, either God or a super human being". All persons are not born equally as such they are not equally intelligent. The man (Homo Sapiens) who inherited the character of overpowering the other from his ancestors (animals) tries to command the others in one or the other way. Urbanization

brought huge difference in standard of living and attitude of the person. Mechanization further added fuel to the fire. The process of mechanization further led to industrialisation, which consumed the natural resources in a very short time. This fact forced the industries to rely upon the resources of the other countries. The industries that approached the other countries/Kingdoms for resources in a short time grabbed the power by en-cashing the innocence of those people, which resulted in colonization.

Industrialisation in colonial countries and industrialists' craze for earning profits as early as possible was reason to undermine the interest of the human beings. There was no humanitarian affection of nationality between master and servant because industrialists and the workers didn't belong to the same nation and the industrialists knew well that their stay in colonial countries was only for a short time i.e. till the independence is declared. Consequently, slogans made by the workers, in a fight for claiming more benefits impeached the employers further.

After the end of era colonisation, the strained relationship between the employer and the employee continued without any change. The workers right to get a reasonable share from the profit of industry forced them to raise their voice against their employers. Though, it started in the form of 'prayer' later it took shape of 'claim'. The journey from 'prayer' to 'claim' was not free from bloodstain. The political parties added their share to this feud. Whether it was democratic polity or any other form of polity, the number of votes became important for all political parties and therefore, in order to keep employees happy, immediately after independence the legislation were made in favour of the workers with the only alleged object i.e. to uplift their living standards. At that time no one worried about the other consequences of such legislations. The workers also understood their political value and accordingly by taking the advantage of such legislation formed trade unions and started agitations in the form of strikes,

demonstrations, picketing etc., which were being used against the employer concede to their demands this evolution further led 'claim' to 'right'. The working class by fight through the generation of workers against the community of capitalists indisputably earned several rights for themselves, which include 'strike', which was termed as a 'right' or' weapon' of the worker and also was impliedly recognised by different statutes. Once it attained the status of 'right' the fight between the employer and employee further strengthened which undermined the interest of the society by and large. Here the State was forced to interfere by way of imposing limitations and restrictions before, during and after settlement of the dispute between the employer and employee. State through its legislative wing passed the law restricting the rights of the employees and imposed limitations to strikes etc., because right to strike like other legal rights is not considered as an absolute one.

Division of powers, which separated judiciary as a wing entrusted with the duty of interpretation of laws, in absence of statutory recognition of strike, was under duty to interpret strike as a matter of right like the 'right' or 'wrong' of any other act or an individual or State or the validity of a legislation. The judiciary by the way of interpretation has to settle the dispute. The decisions given by different Labour Appellate Tribunals, High Courts and Supreme Court shows the changing dimension of the act of the worker i.e. "strike" from time to time.

Indian judiciary from time to time recognised the weapon of strike as the right of the workmen. The Hon'ble Supreme Court almost in all the cases till the year 2000 through its judgements stated that the activity pf strike is the right of the workmen (of both public and private sector) On the basis of the decisions given by the Indian judiciary it can be divided in to several phases which are as follows:

8. 1 Phase - I (1950 – 1962)

During this period workmen's right was recognised to be a legal right by the Courts. Liberty is a right of doing whatever the law permits and if a citizen could do what they forbid he would no longer be possesses of liberty because all his fellow citizens would enjoy the same power. Even during Constitutional debates the necessity of imposing clear restrictions by the legislature was discussed and many members suggested for imposing reasonable restrictions by the legislature. But, there were instances where the legislature imposed certain restriction in the law passed by it and went even to the extent of taking away the citizens' right to challenge the impugned legislation before the Court. Though imposing restrictions are permitted, it was further held that they should be reasonable and should not be left to the discretion of the government.

The decade of 1950 started with the decisions that the Government servants shall be prohibited from becoming members of, or otherwise being associated with any political party or a like organisation[1]. In 1950, Chatterjee. J, of the Hon'ble High Court of Calcutta held that "prohibiting strikes during the presence of a reference made with regard to a single employee will result in great hardship or absurdity or injustice."[2] In 1950

---

[1] Surya Pal Singh v. State of UP, AIR 1951 All 674; V.G. Row v. State of Madras AIR 1951; Cf. Tikaramji v. State of UP 1955 Pat. 51

[2] Para.33. I would have acceded to the contention of Mr. Gupta if the opening words of s.23 are to be construed in a general sense so as to cover all disputes between workmen and employers in respect of any branch of the Lloyd's bank. It would lead certainly to hardship and inconvenience and in some cases to gross injustice, if we are driven to construe the Act in such a way as to holds that all workmen employed in the different branches of this Bank in the different parts of India are debarred from resorting to any strike, because the workmen involved in a particular establishment in Calcutta are involved in an adjudication pending before a Tribunal. Suppose there is a big corporation which has 500 branches all over the country and there is a tiny place where there is a local dispute between the manager and the employees; assume that in such a case there is a reference under section 10 of the particular dispute to an industrial Tribunal. If the Act is to be construed in such a manner as to say that all the workmen who are working in the other branch organizations throughout the country are debarred

itself the Hon'ble Supreme Court held that "Freedom of speech & expression includes freedom of patronage of ideas[3].

"In 1952 the Hon'ble Labour Appellate Tribunal held that, the strike does not by itself put an end to the employer-employee relationship, nor can an employer discharge a workman for mere participation in a strike which is not legal, or in an illegal strike where there was no appropriate provision in the Standing order[4]. This decision makes it clear that participation in strike doesn't sever the employer and employee relationship.

In Workers of Bihar Fire Bricks and Potteries Ltd. v. Management[5], it was observed that strike is a weapon of expressing protest and if the deductions are allowed to be made, it would amount to denying the workmen their right which they have achieved after great deal of struggle and sacrifice. In the same case it was also held that, justification of strike cannot be judged from the result of adjudication of demands. A strike cannot be unjustified unless the reasons for it are absolutely perverse and unsustainable. As early as 1954 necessity of imposing restraints on freedoms guaranteed under Article 19 was emphasised by the Hon'ble Supreme Court.[6] In A.K.Gopalans's case patanjali shastri, J held that "Man is a

---

from resorting to any strike for ventilating their just grievances or for the redressal of their disabilities, then surely the language of the statute would lead to great hardship and injustice. In my opinion that is not what the Act contemplates. It only puts embargo on a strike in respect of the workmen employed in the particular industrial establishment, that is, the particular factory or workshop or branch, which is involved, in the pending proceedings before a Tribunal. In that view there is really no scope for the argument that the statute leads to great hardship or absurdity or injustice. (Provat Kumar v. T.C. Parker 1950 Cal.120).

[3] Ramesh Thaper v. State of Madras, AIR 1950 SC 124.

[4] Punjab Natioanl Bank Ltd v. Its workmen, (1952) II LLJ 648 (LAT)

[5] 1953 LAC 81

[6] Patanjali Shastri J while speaking for the Supreme Court held that "freedoms guaranteed under article 19 are great and basic rights which are recognised and guaranteed as the natural rights, inherited in the status of a citizen of a free country. Yet, there cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraints, the rights and freedom may tend to become the synonyms of anarchy and disorder. The founding fathers of the Constitution, therefore, conditioned the enumerated the rights and freedoms reasonably and such reasonable restrictions are found to be enumerated in clauses (2) to (6) of Article 19 excepting for sub-clauses (i) and (ii) of clause (6), the laws falling within which

rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals."

The Hon'ble Supreme Court held[7] that the restrictions imposed by section 16(2)(b) of the Madras Act 1950 were unreasonable. The test under it was subjective satisfaction of the Government under the factual existence of the grounds was not a justifiable issue. Therefore vesting of power in the Government to impose restriction on this right, without allowing the grounds tested in a judicial enquiry, was a strong element to be taken into consideration in judging the reasonableness of the restrictions on the right to form association or union. The existence of an advisory board could not be a substitute for judicial inquiry. The power vest with the government is that it can restrict the government employees from participating in a strike but it cannot dictate terms and conditions for becoming a member of the association. At the same time the judiciary decided the reasonability of restrictions imposed by the legislature. Government order requiring municipal teacher not to join union other than those officially approved was held to impose prior restraint on the right to form association and union, which was in the nature of administrative censorship, and hence invalid.[8] In the same year the Hon'ble Labour Apellate Tribunal in Colliery Mazdoor Congress v. Beerbhum Coal Co[9], held that the plea that the strike was provoked by the employer does not absolve the employees from its consequences. In 1954 the Labour Appellate Tribunal held that applying *en-bloc* casual leave does not amount to strike.[10] The verdict of the Labour

---

descriptions are immune from attack on the exercise of legislative power within their ambit." [State of West Bengal v. Subodh Gopal Bose & others AIR 1954 SC 92; 1954 SCR 587. (See also H.C. Narayanappa & ors v. State of Mysore & Ors., (1960) SCR 742)]

[7] State of Madras v. V.G.Rao AIR 1952 SC 196.

[8] Ramkrishna v. President, District Board, Nellore, AIR 1952 Mad. 253.

[9] 1952 LAC 29 (LAT)

[10] where the company's failure to declare "May Day" as a holiday the workers en bloc applied for leave when the workers of a company wanted to celebrate 'May Day" and

Appellate Tribunal in this case clearly shows that, the sympathetic attitude of the judiciary towards the causes of the workers.

The Labour Appellate Tribunal in 1954 held that "Mere illegality of strike does not end the matter. It means if the strike is illegal and the same time unjustified, the workers have no claim to wages and must also be punished, if it is justified, they have a right to claim wages."[11] In Rama Krishna Iron Foundry case few reasons for not justifying a strike was explained which are as follows:

(a). demands may be unreasonably high,
(b). demands may be made with the extraneous motives,
(c). Steps taken by employer to redress the alleged grievances through negotiation or conciliation.

The Government employee is not only a citizen but he has to be under certain terms and discipline of employment. Hence, a restriction requiring a teacher to take prior permission to engage in political activities was held to be a reasonable restriction.[12] I submit that by this decision the judiciary given indications to its intention /opinion of recognition of imposing restrictions upon the Government employees to engage themselves in political activities etc. A person may be having the right to participate in political activities but he does not have any right to continue in the employment. The allegation of the person that termination of the services of the employee on the ground that he was a cadre of he Communist Party of India, was held not violative of fundamental right guaranteed under Article 19(1)(c) because the order did not prevent the appellant from continuing to

---

they were also ready to compensate the loss of work by working on Sunday, was no "cassation of work" or "concerted and refusal to work" and the action of the employee to apply for casual leave en bloc did not amount to strike. (Standard Vacuum Oil Co. Madras. v. Gunaseelan. M.G. (1954) II LLJ 1956 (LAT).

[11] Rama Krishna Iron Foundry, Howrah v. Their Workmen, (1954) II LLJ (LAT)

[12] Haji Mohammad v. District Board, Malda, AIR 1958 Cal 401

be in communist party or trade union[13].While emphasizing the need to fulfil the conditions laid down in the statutes the Hon'ble High Court of Patna held that "The expression "in breach of contract" means breach of contract of service of employment whether the contract is express or implied. There can be no contract not to go on strike, and even if such a contract exists it cannot form part of the valid contract of service. Contract of employment implies to work according to the rules of the contract in which the workmen is employed. Breach of contract does not mean breach of conditions of service.

Neither the employee is restrained from going on strike nor the employer restrained from locking out the industry but some minimum conditions before striking or locking out the industry are required to be fulfilled, other wise the stoppage of work in a public concern may result in inconvenience to the society. Therefore these safeguards were felt necessary to be provided by the legislature. The object of these provisions seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceedings to go on smoothly. This section because of its general nature of prohibition covers all strikes and lock-outs irrespective of the subject matters of dispute pending before the authorities"[14]. In this case it was also held that, "there can be no contract not to go on strike, and even if such a contract exists it cannot form part of the valid contract of service." Where two workmen refused to work in the place of three in spite of request by them, the management refused to employ another workman, was held to be strike[15].

In 1960 the Hon'ble Supreme Court held that "It is difficult to understand how a strike in respect of a public utility service, which is clearly 'illegal, could at the same time be justified'. These two conclusions cannot

---

[13] Balakotaiah v. Union of India AIR 1958 SC 232.
[14] State of Bihar v. Deodar Jha AIR 1958 Pat 51.
[15] Model Mills v. Dharam Das, AIR 1958 SC 311 (314) (Jafer Imam. J)

in law co-exist; the law has not made any distinction between an illegal strike which may be said to be justified and one which is not justified."[16] In the same case it was further held that, it is further observed by the Supreme Court that in case of an illegal strike the only question of practical importance would be the quantum of punishment. To decide quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

1. Violent strikers are those who obstruct the loyal workmen from carrying on the work or take part in violent demonstrations and act in defiance of law and order; and
2. Peaceful strikers are those workmen who are silent participators in the strike.

The first category of strikers is to be dealt with more severely and the punishment of dismissal, discharge or termination has to be imposed upon them. It would be neither in the interest of the industry nor the workmen to effect wholesale dismissal of all striking workmen.

The position prior to this decision was different. Labour Appellate Tribunal in 1954 held that "Mere illegality of strike does not end the matter. It means if the strike is illegal and the same time justified, the workers have no claim to wages and must also be punished, if it is justified, they have a right to claim wages."[17] Perhaps the judiciary might have taken in to consideration of the delay in judicial proceedings and the strains undergone by the workmen in contesting the case against the management which is a Herculean task.

The period from 1960 - 1962 was crucial as the judiciary passed several judgments by adopting different approaches. In 1960 the Allahabad

[16] India General Navigation and Railway Company Ltd. and another v. Their workmen AIR 1960 SC 219.
[17] Rama Krishna Iron Foundry, Howrah v. Their Workmen, (1954) II LLJ (LAT)

High Court upheld the provision which lays that "provision that restricts a federation of trade union would not be able to carry out its work of representing the workers of its constituent units in conciliation proceedings unless two years had passed after its recognition and unless it had been approved by the labour commissioner".[18] In 1960, in this case wherein certain employees who held key position in the mill resorted to hunger strike at the residence of the Managing Director, with the result that even those workmen who reported to their duties could not be given work, it was held by the Supreme Court that the concerted action of the workmen who went on hunger strike amounted to strike within the meaning of this sub-section".[19] The Hon'ble Supreme Court while explaining the importance of the weapon 'strike' once again in 1960 held that "Just as a strike is a weapon in the hands of the employees for enforcing their industrial demands, a lock out is a weapon available to the employer to persuade by a coercive process the employees to see his point of views and to accept his demands. The use of both the weapon by the respective parties is, however, subject to the relevant provisions of the Act (The Industrial Disputes Act, 1947).

In the struggle between capital and labour the weapon of strike is available to labour and often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to relevant provisions of the Act. Chapter-V which deals with strikes and lock-outs clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised"[20]. In 1960 while affirming it s earlier opinion that 'strike is the last weapon' it was held that "Where the demands are of such urgent nature that it cannot be reasonably expected from the workmen to wait till after asking the Govt. to make a reference.-

---

[18] U.P Shramik Maha Sabha v. State of U.P. AIR 1960 All 45

[19] Piprach Sugar Mills Ltd v. Their Workmen, AIR 1960 SC 1258.

[20] Management of Kairbetta Tea Estate, Kotagiri v. Rajamanickam AIR 1960 SC 893 (Gajendra gadkar. J)

justified"[21]. In 1960 Supreme Court while declaring that certain demands like Wages, dearness allowance, bonus, contributory provident fund etc, were primarily objects of the trade union and declaring and undergoing strike for achieving those objects was declared to be justified[22].

Judiciary not only protected the rights of the workmen but at the same time the approach was adopted to impose restrictions upon the workmen who tried to take advantage of this position and consequently, being provoked by the verdicts of the judiciary with regard to 'strike' some workmen who were holding key positions went to the extent of conducting hunger strikes even at the residences of the managing director. Such acts not only created fear to life and property of the executive but also to the family members of the officers, which amounts to violation to the constitutional right as to 'life and liberty' guaranteed under Article 21 of the Constitution of India. Further, in 1961, the Allahabad High Court clarified and held that picketing, which does not restrain others from doing what they please, would be saved under Article 19 (1)(a) of the Constitution of India.[23]

Thus I submit that in the first phase, the Indian Judiciary adopted the approach to the extent of clarifying the several provisions of Labour Laws and their validity in the light of constitutional provisions, sometime in the favour and sometime against the workmen. However the "Strike" was recognised to be right of workmen. During this period the courts also declared that the strike is a weapon in the hands of the workers and accordingly immediately after independence since the citizens of India were just liberated from the colonialism of the British imperialism, though not expressly stated, the judiciary through its judgements gave certain advantages to provide some time for adjusting themselves to the new environment. The mixed response of the judiciary shows that though it was

---

[21] Chandramalai Tea Estate, Ernakulam v. Its Workmen (1960) II LLJ 343
[22] Swadeshi Mills Ltd. V. Their workmen, (1960) II LLJ 78 (SC).
[23] Raj Narain v. State of U.P. AIR 1961 All. 531

in favour of giving a chance to the employees to rectify the activities of illegal strikes, it also gave benefit to the workers who declared and conducted strike as per the provisions of law. Hence, the period from 1950 to 1961 can be said to be the 'period of clarification' with regarding the 'right to strike'.

Thus the year 1960 witnessed much fluctuation, particularly the Hon'ble Supreme Court and High Court of Allahabad gave decisions extending the scope of Article 19 (1)(a) by declaring the "picketing which does not restrain others from doing what they please, would be saved under Article 19 (1)(a) of the Constitution of India gave a fillip to the morals of the workmen who involve in the activity of picketing.

8. 2 Phase – II (1962-65)

This period was very crucial with respect to right to strike because being exited by the approach adopted by the different courts during the period of first phase (1950-1961) the workmen started claiming their right of strike to be their fundamental right within the meaning of Article 19 (1) (c) of the Constitution of India. During this period the question came before the Courts as to whether the activity of 'strike' which has been recognised to be right of the workmen, is an ordinary right or a fundamental right?

The Hon'ble Supreme Court in 1962 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". While dealing with the issue the court held that "A rule can't be struck down as it prohibits strikes, as there is no fundamental right to resort to strike. It has been held that demonstrations or picketing are visible manifestation of one's ideas and in effect a form of speech and expression. However, in order to be protected under Article 19(1)(a), the demonstrations or picketing must not be violent and disorderly.

We find ourselves unable to accept the argument that the constitution excludes Government servants as a class from the protection of several rights guaranteed by the several articles in Articles in Part-III save in those cases where such persons were specifically named.

In our opinion, this argument even if otherwise possible has to be repelled in view of the terms of Article 33 that article selects two of the services under the states- members of the armed forces and forces charged with the maintenance of public order and saves the Rules prescribing the conditions of service in regard to them- from validity on the ground of violation of the Fundamental Rights guaranteed by Part-III and also determines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the services members of which might be deprived of the benefit of the Fundamental Right guaranteed to or persons and citizens and also having prescribed the limits within which such restrictions or absorption might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part-III by reason merely of their being Government servants and the nature and incident of the duties which they have being Government servants and the nature and incidents of the duties which they have to discharges in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Article 19(1)(e) and (g). That the Rule, in so far as it prohibits, a strike cannot be struck down since there is no Fundamental Right to resort to Strike"[24]

[24] Kameswar v. State of Bihar, AIR 1962 SC 1166 (P.B. Gajendragadkar, A.K.Sarkar, K.N.Wanckoo, K.C Das and Raja Gopal Aiyyangar. JJ)

During this period number of strikes had taken place with the contention that the trade union was undergoing strikes for promoting or to achieve the object for which it was formed. But the Hon'ble Supreme Court categorically stated that "A right to form union is guaranteed by Article 19(1)(c) 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 leads 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".[25] In this case it was also further held that "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)". During this period it was also held that picketing and demonstrations are visible manifestation of one's own ideas and in effect a form of speech and expression. However in order to be protected under Article 19 (1) (a), "the demonstrations or picketing must not be disorderly". The Hon'ble Supreme Court further held that 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.

[25] All India Bank Employees Association vs. National Industrial Tribunal, AIR 1962 SC 171.

In Kameswar Prasad's case wherein it was held that the workers have a right but not a fundamental right to go on strike.[26] In 1963 again the Hon'ble Supreme Court reiterated that the right to strike is not a 'fundamental right' and held that, "picketing and demonstrations are visible manifestation of one's own ideas and in effect a form of speech and expression".[27] In the case O.K. Ghosh it was also held that Rule-4-A of the Central Civil Services (Conduct) Rules, 1955 in the form in which it now stands prohibiting any form of demonstration is violative of government servant's right under Article 19(1)(c) and (b) and should, therefore, be struck down. But in so far as the said rule prohibits a strike, it cannot be struck down for the reason that there is no fundamental right to resort to strike. The right to go on strike has not been held to be included within the scope and ambit of the freedom of speech and expression under Article 19(1)(c). It has been held that demonstrations or picketing are visible manifestation of one's ideas and in effect a form of speech and expression. However, in order to be protected under Article 19(1)(a), the demonstrations or picketing must not be violent and disorderly.

It appears that, by 1962 the judiciary was in imbroglio to declare or not the 'right to strike as a 'Fundamental Right'. In 1964 it was held that sympathetic strike is not a strike as the element to use it against the management absent[28]. It is submitted that though the element of using the concerted action against the management is absent the other conditions are fulfilled. The workmen acted in concert and refused to work also, hence it would have been declared strike. It is submitted it is a clear act of favouring the employees on humanitarian grounds. However, in 1963 it was specifically stated that "that there is no fundamental right to resort to strike."[29] Accordingly, it is submitted that during this phase right to strike

---

[26] Kameswar Prasad v. State of Bihar, AIR 1962 SC 1166.
[27] O.K. Ghosh v. Ex Joseph, AIR 1963 SC 812.
[28] Kambalingam v. Indian Metallurgical Corporation, Madras, (1964) I LLJ 81.
[29] *Supra* 16

was restricted only to a 'legal right' and reaffirmed that picketing and demonstrations are visible manifestation of one's own ideas and in effect a form of speech and expression, however in order to be protected under Article 19 (1) (a) of the Constitution of India, "the demonstrations or picketing must not be disorderly".

8. 3 Phase – III (1965-79)

During this period, though the principle[30] laid down in 1963[31] was affirmed,[32] and it was held that 'strike' is a 'right' of the workmen. In 1965 it was reaffirmed that strike is a right but the workmen were burdened with its consequences in the cases of strikes which otherwise could be avoided. During this phase Courts added some riders which diluted the power of the "weapon" in the hands of workmen. In the earlier case of this third phase i.e from 1965 to 1979, some provisions of the Essential Services Maintenance Ordinance were challenged as the Government started taking steps prohibiting strikes by using the weapon of this Ordinance. The Hon'ble Supreme Court held that "Ss. 3, 4 and 5 of Essential Services Maintenance Ordinance No.1 of 1960 were held not violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the constitution". The court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the ordinance provided was with respect to any illegal strike[33]. In the year of 1970 the court held that the workmen are not entitled to wages for the period of strike that would have been avoided.[34] In 1970 the High Court of Andhra Pradesh held that "Right

---

[30] "There is no fundamental right to resort to strike".
[31] O.K.Ghosh v. E.X. Joseph, AIR 1963 SC 812.
[32] Radhey Shyam v. Post Master General, AIR 1965 SC 311.
[33] *ibid*
[34] The management was prepared to pay bonus as per Bonus Act. They were taking active steps for introduction of production bonus scheme. They were taking active steps in conciliation proceedings. They made certain proposals to the workmen and give a reply to the management. But the next day the workmen were incited to go on strike. The telegraphic request of the management to postpone the strike by one day was also not

to strike is inherent right of workers and the same could not be abridged or taken away except in conformity with salutary provisions".[35] In 1971 the Hon'ble Apex Court while reaffirming the right of the citizens' to form associations or unions as guaranteed under Article 19(1)(c) it added a rider to it stating that "after an association has been formed and the right under Article 19 (1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire"[36]. The complexity of the legislation and the problems being faced by the executive was experienced and the Hon'ble Supreme Court in Tata Iron Steel Co. V. workmen[37] held that,

> "Now, the increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing our socio- economic policy pursuant to the establishment of a welfare state as contemplated by our constitution, have rendered it convenient and practical, may, necessary, for the legislatures to have frequent resort to the practice of delegating subsidiary or ancillary power to the delegates of their choice. The parliamentary procedure and discussion in getting through a legislative measure in the legislatures is usually time consuming. Again such measures cannot provide for all possible contingencies because one cannot visualize various permutations and combinations of human conduct and

---

complied with by the workmen under these circumstances the demand of the workmen for *exgratia* bonus could not be considered to be of urgent and serious in nature. Strike was unjustified and therefore, the workmen were not entitled to wages for the period of strike. (Management of the Fertiliser Corporation of India Ltd. v. Workmen, AIR 1970 SC 867).

[35] 1970 Lab. I.C. 1225 (1226) A.P.

[36] Smt. Damayanti Narang and another v. Union of India and others AIR 1971 SC 968; 1971(3) SCR 840; See alo Asom Rashtrabhasha Prachar Samiti, Hedayatput, Guwahati and another v. State of ASSam and others AIR 1989 SC 2126; 1989 (Supp) SCR 160.

[37] AIR 1972 SC. 1917 (C.A. Vaidialingum and I.D Dua,JJ)

behaviour. This explains the necessity for delegated or conditional legislation. Due to the challenge of the complex socio- economic problems requiring speedy solution the power of delegation has by now as per necessity become a constituent element of legislative power as a whole. The legal position as regards the limitation of this power is, however, no longer in doubt. The delegation of legislative power is permissible only when the legislative policy and principle are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the legislature. The legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the constitution".

In 1975 the Hon'ble Supreme Court held that 'strike is a legitimate weapon in the hands of the workmen' and strike is a necessary safety valve' in industrial relations.'[38] In Chemical and Fibres case the language used by the Hon'ble Apex court makes it clear that there should be strike in the industries for the purpose of safeguarding the interest of the workmen. It may be exercised whenever it is required[39]. In 1976 while dealing with the right of the civil employees of the defence establishments the Hon'ble

[38] Chemicals and Fibres v. D.G. Bhoir, AIR 1975 SC 1660

[39] But if the strikes are to be prohibited merely because the case of an individual workman is pending which was not espoused by the general body of the employees, in such a case there can never be strikes. A strike is a necessary safety valve in industrial relations when properly resorted to. To accede to the contention of the employer in this case could be in effect acceding to a contention that there should never be a strike. While we realize the importance of the maintenance of the industrial peace, it cannot be secured by putting a lid on the legitimate grievances of the general body of the labour because the dispute relating to an individual workman under section 2A is pending. That might mean that the boiling cauldron might burst. In that case the general body of the workmen would be legitimately aggrieved that they are prevented from striking because an individual's case was pending with which they were not concerned. It is not enough in this situation to say that it is always open to the Government to make a reference under section 10.

Supreme Court held that they are members of the Armed Forces as such they are not entitled to form association or union[40]. The same principle was reaffirmed in 1987[41]. In 1978 the Hon'ble Apex Court while restring the unwarranted activities of the employees/unions during the period of strike held that "the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitle them to wages for the strike period"[42]. In 1978 the most sensational judgement was delivered by the Hon'ble Supreme Court in Bangalore water supply case. Though this doesn't deal with 'strike' it had its impact on strikes as 18000 out o 34000 employees working in Government undertakings are 'workmen' working in industries (within the definition of Section 2 (j) of the Industrial Disputes Act, 1947).[43] After this decision an amendment was made to the section 2 (j) of the Industrial Disputes Act, 1947 nullifying the confusion created with regard to 'what is industry and what is not?', however, the date of effect of the same is still awaited. In 1979 it was held that, 'strike is a mode of redress of the legitimate grievances of the workers and the employees, and is expressly recognized under the ID Act, 1947.[44]

After analysis of the cases decided between 1965 and 1979 in respect of 'right to strike', I may submit that while accepting the strike as a weapon in the hands of the workmen as accepted in the first phase, the courts went

---

[40] 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). [O.K.A. Nair v. Union of India, AIR 1976 SC 1179]

[41] Security forces/police organisation neither can apply nor can seek for registration under Trade Union Act 1926. 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. (Delhi Police Non-Gazetted Karamchari Sangh v. Union of India AIR 1987 SC 379)

[42] Crompton Greaves v. The workmen, AIR 1978, SC 1489.

[43] Bangalore Water Supply & Sewerage Board v. Rajappa AIR 1978 SC 548(It is primarily concerned with the definition "industry")

[44] 1979 Lab.I.C. 1079 (1084).

on adding riders like 'last weapon', 'inherent weapon', 'legitimate weapon, 'ban on strike is subject to reasonable restrictions', 'a necessary valve' 'scheme of Industrial Disputes Act, 1947, implies a right to strike in industries' etc. by different judicial authorities discussed above and indicated mixed response. Punjab High Court holding the strike as a 'last weapon' was the starting point where a High Court for the first time took steps for restricting the right to strike by the employees, which later was affirmed to be correct, particularly after the year 2000.

8. 4 Phase – IV (1980-90)

. From 1980 the Court started adopting all together different approaches and started total shift from its earlier verdicts with regard to the 'right to strike'. In 1980 the Hon'ble Supreme Court held that, 'strike is an integral part of Collective Bargaining"[45]. In 1982 the Apex court held that "When the workers were given a concession, dictated by the then prevailing circumstances, it should not be considered as inviolable right". It also further suggested that "It was the Constitutional obligation of the State to take necessary steps for the purpose of interdicting such violations and ensuring observations of the fundamental rights by the private individual who was transgressing the same"[46]. In the same tune the Hon'ble High Court of Madras in 1984 held that "trade Unionism is recognized all over the world but that does not mean that an office bearer can do union work during office hours"[47]. While indicating the importance of restricting the right of the paramilitary personnel to form association or union the Hon'ble Supreme Court held that "Recognition once granted can be withdrawn in the interest of general public"[48]. In the year 1988 the Hon'ble Calcutta High Court held that, the employees can go on strike if the employer fails or refused to

[45] Gujrat Steel Tubes, AIT 1980 SC 1896 (per Bhagawati. J).
[46] Peoples' Union for Democratic Rights v. Union of India AIR 1982 SC 1473
[47] Tamilnadu Electricity Board Accounts Subordinate Union v. Tamilnadu Electricity Board (1984) 2 Lab.I.C. 478 (Mad)
[48] Delhi Police Non- Gazetted Karamchari Sangh vs. Union of India, (1987) 1 SCC 115.

provide legitimate benefits to the workmen. The Hon'ble Calcutta High Court in the year 1988 held that, 'though strike is a weapon in the hands of the workmen they must fulfil the statutory norms laid down under section 22 of the Industrial Disputes Act, 1947.[49] In 1988 once again the Hon'ble Delhi High Court held that the employees having a right to go on strike. S.N. Sapra, J while speaking for the court held that "There is no dispute that the employees can go on peaceful strikes and there can be no interference except on sufficient grounds". It is important to note that in the same case jurisdiction of the civil court was clarified. It was held the "Section 18 of Trade Union Act does not bar the jurisdiction of civil courts either to entertain in the suit in regard to the trade disputes or pass an interim injunction order"[50]. In 1989 the Hon'ble Supreme Court held that, strike is a form of demonstration and also held that strike is not an absolute right,[51] (Same principle was held previously in the year 1963[52]) which was affirmed in 1990[53]. In the same year it was also held that strike is not an absolute right[54]. In B.R Singh case Ahmadi, J opined that "the trade unions with sufficient membership strength are able to bargain more effectively with the management than individual workman. The bargaining strength would be considerably reduced if it is not permitted to demonstrate by adopting agitational methods such as 'work-to-rule', 'go-slow', absenteeism', sit-down' strike', and strike. This has been recognised by all democratic countries"[55].

Thus the approaches adopted by different Courts during this phase as discussed above and thereby declaring strike as a form of demonstration and strike is not an absolute right created confusion among the legal luminaries.

---

[49] Life Insurance Corporation of India v. Amalendu Gupta and others, 1988

[50] Indian Express News Papers (Bombay) Pvt. Ltd. v. T.N. Nagarajan and others. 1988 Lab.I.C. 1067 (Del) (S.N.Sapra.J) (DOJ. 04.12.87)

[51] B.R. Singh v. Union of India, (1989) II LLJ 591 (SC). (In this case it was held that "Though, right to Strike or demonstration is not a fundamental right it is recognised as a mode of redress for resolving the grievances of workers."

[52] O.K. Ghosh v. E.X. Joseph, AIR 1963 SC 812.

[53] Bank of India v. T.S. Kelewala, 1990 (4) SCC 744.

[54] AIR 1990 SC 1 (8).

[55] *Ibid* 49

8. 5 Phase – V (1997- 99)

In 1997 the Hon'ble Supreme Court held that, citizen's right to know Government's decision is a right derived from freedom of speech and expression which is subject to public security and secrecy.[56] In the same year, judicial activism was witnessed with regard to right to strike. While restraining the activities of preventing the employees who want to attend duty during the period of strike the Hon'ble Kerala High Court held that 'right to strike includes right not to strike also. It was further held that "strike is a powerful weapon in the hands of workmen to bring management to an amicable settlement to the dispute, when there are several unions each of them will take its own decision. If certain workers have got a right to strike, it has equally to be accepted that others workers will have the right not to strike. The right of those striking workers as well as of the non-striking workers have to be honoured- The right to strike available to the workers will not extend to the right to obstruct those workers who exercised the right not to strike"[57]. The Hon'ble Kerala High Court condemned the activity of the politicians alluring the students,[58] which was upheld by the Hon'ble Supreme Court in 1997[59] and 1998.[60] The Hon'ble Kerala High Court held that

---

[56] Dinesh Trivedi v. Union of India, (1997) 4 SCC 306.

[57] T.C.M. Ltd v. District Collector, 1997 I LLJ 1061 (Ker).

[58] Bharat Kumar Pelicha v. State of Kerala, AIR 1997 Ker. 291.

[59] Harpal Singh v. Devender Singh AIR SC 2914 (In this case the apex court highlighted the bane of campus politics which resulted in the death of a student studying in the final year M.A. Economics. While dealing with the case, the Apex Court held as follows:
"Before parting with the case, we feel strongly to add few more words which are of contextual and topical importance. It is a malady of our country that political parties allure young students through their students' wing. They do so because it is an easy method for establishing support and participation in their political programmes. Students particularly in the adolescent age are easily swayable by political parties without much efforts or cost as young and tender minds are susceptible to easy persuasiveness by party leaders. But the disturbing aspect is that most of the political leaders do not mind their student supporters developing hostility towards their fellow students belonging to rival political wings....(emphasis supplied).

".....There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental rights of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

"Nothing stands in the way of political parties calling for a general strike or hartal unaccompanied by express or implied threat of violence to enforce it. The call for Bundh implies a threat to the citizen that any failure on his part to honour the call, would result in either injury to person or property and involves preventing a citizen by installing into him the psychological fear that if he defies the call for Bundh, he will be dealt by those who are allegedly supporter of Bundh. When a citizen is coerced into not acceding to his work or prevented from going out for his work or from practising his profession or carrying on his

---

28. While at the top layer leaders belonging to different political parties dine together and socialize with each other without any personal acrimony as between themselves, it is pity that they do not encourage that healthy attitude to percolate down to the grass root level. Tender minds get galvanized on minor issues, frenzy flares up even on trivialities. Young children and adolescents unaware of the disastrous consequences befalling their own future indulge in vandalism, mayhem and killing spree against their own fellow students."
29. We think that the time is now ripe for legislative interference to salvage the campus free of political activities. We leave it to the members of legislatures and leaders of the country to ponder over this with the seriousness it deserves and to bring forth necessary measures to plug it")

[60] Communist Party of India (M) v. Bharat Kumar. AIR 1998 SC 184.

business, there is involved a violation of his fundamental right at the instance of another."

"We cannot also ignore the destruction of public peace and private property when a Bundh is enforced by the political parties and other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizens for the loss suffered by them for such destruction. The State cannot shrink its responsibility of taking steps to recouping the loss from the sponsors and organisers of such Bundh."

The relevant paragraph 17 of Kerala High Court judgment reads as under:-

"17. No political party organization can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its view-points, from exercising fundamental rights or from performing their duties for their own benefits or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

In the matter of Bharat Kumar Pelicha the Hon'ble Supreme Court while concurring with the verdict of the Kerala High Court held that "We are satisfied that the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to

the effect of a "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court[61], particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a "Bandh" on the one hand and a call for general strike or "Hartal" on the other".

Generally the defence of the State for not taking preventive steps before or during strike or bandh is lack of adequate machinery. In M.C. Mehta case the Hon'ble court issued some guidelines to be followed by thee administration in case of staff constraint which are as follows;

> "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.
>
> It is also to be noted that to overcome the situation when the strength of the police force is not adequate in a given area and the utilisation of more men is required for strict enforcement of these salutary provisions, the law confers power of delegation of the authority to other persons. We are conscious of the fact that the inadequacy of personnel

[61] Bharat Kumar Pelicha v. State of Kerala, AIR 1977 Ker 291.

and other infrastructure may be a constraint which has impeded strict enforcement of these provisions so far. We have no doubt that after this clarification made by us in this order, the concerned authorities would mobilize the needed support by delegation of these powers to other authorities/officers and if need be even to responsible members of the public so that the resource crunch or inadequacy of infrastructure is not an impediment in enforcement of the law and the directions given today to obtain the desired results. No doubt, it is for the Government to make a realistic assessment of the strength of police force and Transport Department force to meet the felt need in this behalf but we consider it expedient to add that to overcome that deficiency/inaction, this order is to be construed as empowering the existing authorities to delegate their authority, wherever permissible under the law, to responsible persons in the manner they deem fit in the circumstances. In view of the urgency of implementation of these measures, we also make it clear that for the purpose of such delegation to responsible persons chosen even from the public, these authorities would not suffer from any constraint and this order is sufficient empowerment to them in this behalf notwithstanding any administrative orders imposing any impediment or constraint on them, if any.

14. It is needless for us to add that the entire scope of this matter and particularly this aspect to which this order relates, namely, the control and regulation of traffic in NCR and NCT, Delhi, is a matter of paramount public safety and, therefore, is evidently within the ambit of Article 21 of the Constitution. That being so, the making of this order has become necessary and can no longer be delayed because of

the obligation of this Court under Article 32 of the Constitution which is invoked with the aid of Article 142 to give the necessary directions given today separately".

In 1999 The Allhabad High Court held that strike cannot be treated as absence and contract between employer and employee will not come to an end otherwise the most effective mode of collective bargaining would perish.[62]

In this period the Supreme Court and High Courts of Kerala, and Punjab, though partially restricted the right of strike of the workmen, the High Courts of Allahabad and continued its own trend of holding 'strike as a weapon of the workmen. The Hon'ble Kerala High Court went a step ahead and vehemently criticised the activities of the politicians in campus politics and suggested the steps need be taken in order to save the students from the hands of the selfish politicians. The Hon'ble Supreme Court also suggested the steps to be taken by the Government during the period of 'strikes' or 'bandhs' in order to overcome the deficiency of staff.

8. 6 Phase – VI (2000-05)

The year 2000 witnessed a new dimension in the field of strike. The Hon'ble Supreme Court suggested the workmen to work more instead of going on strike it also suggested both workmen and management not take the issue as a status and go on strike.[63] In the BPL case[64] the Hon'ble Court while emphasising the importance of the general public suggested that "Since the justification or otherwise of strike by the workers in one of the points of disputes referred, it has to be determined by the Industrial Tribunals and the same need not be considered in these writ petitions. While

---

[62] U.P. Rajya Setu Nigam Sanyukt Karmachari Sangh vs. U.P. State Bridge Corporation, Lucknow and another 1999 II LLJ 1219 (1232) (All)

[63] BPL Group of companies Karmika Sangha v. State of Karnataka and another, 2000 II LLJ 641 (Kant)

[64] *ibid*

considering the question of payment of wages for the strike (which was held illegal) period the Honble Supreme Court held that "Award of the Labour Court upheld by the high court needs to be modified to this extent; the appellants shall pay to the second respondent sixty percent of the back wages...." (emphasis supplied)[65].In the interest of the workers, industry and general public, it would be better for the workers to call of the strike and to resume work....Both sides must act responsibly and to co-operate with each other and maintain industrial peace and harmony in the interest of both the parties and in the larger interest of general public. They shall not stand on prestige and make the relationship worse". In 2001 the Bombay High Court held that, in the matters of strikes the civil courts will not entertain the matters to restrain strike whether it is legal or illegal.[66] A Hon'ble Bombay High Court in 2001[67] had held that "....a civil suit to restrain the employees from going on a strike, irrespective of whether the proposed strike is legal or illegal under a special statutes, can not be brought in a civil court". It also emphasised the effect of (while justifying the slow judicial process?) held that "The wheels of Gods grind exceedingly slow; but they grind exceedingly fine"

In 2002, Government passing G.O, providing double wages to those who attend the duties during the period of strike was held legal.[68] In 2003 the Hon'ble Supreme Court held that, the lawyers have no right to go on strike or give a call for boycott and even that cannot go on a token strike. The court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it

---

[65] Management, Loka Shikashana trust No.2, Bangalore vs. Presiding Officer, Labour Court and another. 2000 II LLJ 531 (532) (SC) (MR. S,P. Bharucha, A. P. Mishra & Ms. Ruma Pal JJ)

[66] Bharat Petroleum Corporation Limited vs. Petroleum Employees union and another 2001 II LLJ 81 (93) (Bom)

[67] Bharat Petroleum Corporation Limited v. Petroleum employees Union and another 2001 II LLJ 81 (Mr B.N. Srikrishna & Ms. Ranjana Desai. JJ)

[68] Dangs Zila Panchayat Karamchari Mandal, Class III, Dangs v. State of Gujarat and another 2002, Lab.I.C. 2568 (Guj). (D.H.Waghela.J) (DOJ. 18.3.02)

can be easily realized that the weapon does more harm than any justice. Sufferer is the society-public at large.[69] Even in the year 2000[70] V.G. Gowda. J while speaking for the Karnataka High Court held that "In the interest of the workers, industry and general public, it would be better for the workers to call off the strike and to resume work....Both sides must act responsibly and to co-operate with each other and maintain industrial peace and harmony in the interest of both the parties and in the larger interest of general public. They shall not stand on prestige and make the relationship worse". In the early cases reported the Hon'ble Supreme Court held that, "The action of the workmen in deliberately slowing down the production contrary to the terms of the scheme which was binding on them, the scheme being part of the settlement which had been extended in to bilaterally did amount to breach of the requirements of section 23 of the Act more particularly, sub-Clause (c)"[71]. The Hon'ble Madras High Court held that, "service interrupted on account of strike not due to fault of employee, treated as continuous"[72]. In Herdilla Chemicals case it was held that "Though strike was illegal, for the purpose of MRTP Act 1971 it was declared not illegal. (Moreover, the settlement between the parties fully protected the union)".[73] In 2003 in T.N. Rangarajan vs. Government of Tamil Nadu and others[74] it was held that the Government employees do not have any sort of right to strike. The Hon'ble court 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

---

[69] Ex-Capt. Harish Uppal vs. Union of India and AIR 2003 739.

[70] BPL Group of Companies Karmika Sangh v. State of Karnataka & another 2000 II LLJ. 641 (Kant) (V.G. Gowda. J) (D.O.J. 12/4/1999)

[71] Management of India Radiators Ltd. and another v. Presiding officer and another 2003 (2) LLN 83. (R. Jayasimha Babu. J) (DOJ 3.1.03)

[72] Kaleswar Mills "Á" Unit v. Asst. Labour Commissioner and others 2003 I LLJ 231 (Mad)

[73] Herdilla Chemicals Employees Union and others v. Herdilla Chemicals Ltd., and another. 2003 (1) LLN 1007 (R.J. Kochar.J) (DOJ 30.8.02)

[74] AIR 2003 SC 3032

prohibition to go on strike under R.22 of Tamil Nadu Government servants Conduct Rules, 1973. Apart from statutory rights, government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which result in chaos and total mal-administration. Strikes affect the society as a whole in a society where there is large scale unemployment and number of qualified persons are eagerly waiting for employment in government departments or public sector undertakings. Strikes cannot be justified on any equitable grounds. 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" (emphasis supplied). Once again the Hon'ble Kerala High Court while dealing with politics of the colleges and universities held that, ""...If the students indulge in the same activities which are prohibited so far as teachers and non-teaching staff are concerned, the purpose sought to be achieved, by those restrictions would be defeated. Students also therefore could be prohibited from indulging in political activities within college campus and from indulging in political activities within college campus and

from organizing or attending meetings other than official ones within college campus. This is a reasonable restriction which does not in any way was violative of Article 19(1)(a) or 19(1)(c) of the constitution"[75]. Once again in 2004 the Hon'ble Supreme Court held that;

> "Right to form association or unions guaranteed by Article 19(1) (c) does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfilment of the objects, should be declared unconstitutional and void. A right guaranteed under Article 19 (1)(c) on a literal reading therefore can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. the rights not included in the literal meaning of Article 19 (1)(c) but which are sought to be included therein as flowing there from i.e. every right which is necessary in order that the association, brought in to existence, fulfils every object for which it was formed, the qualifications there from would not merely be those in clause (4)of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens would also become relevant. (Para 28 at page-1306)
>
> Para-35
> The scheme of Article 19 shows that a group of rights are listed as clauses (a) to (g) and are recognised as fundamental rights conferred on citizens. All the rights do not stand on a

[75] Sojan Framcis vs. Mahatma Gandhi University, Kottayam and others. AIR 2003 Kerala 290.

common pedestal but have varying dimensions and underlying philosophies. This is clear from the drafting of clauses (2) to (6) of Article 19. the framers of the constitution could have made a common draft of restrictions which were permissible to be imposed on the operation of the fundamental rights listed in Clause (1), but that has not been done. The common thread that runs throughout sub-clause (2) to (6) is that the operation of any existing law or the enactment by the State of any law which imposes reasonable restrictions to achieved certain objects, is saved; however, the quality and content of such law would be different by reference to each of the sub-clauses (a) to (g) of clause (1) of Article 19 as can be tabulated hereunder;

Clause (1) Nature of Right	Clause (2) to (6) Permissible Restrictions By existing law or by law made by State imposing reasonable restrictions, in the interest of
(a0 Freedom of Speech and expression	(i) The sovereignty and integrity of India (ii) The security of the State (iii) Friendly relation with foreign states (iv) Public order, decency or morality (v) In relation to contempt of court, defamation or incitement to an offence
(b) right to assemble peacefully and without arms	(i) the sovereignty and integrity of India

	public order
(c) right to form associations or unions	(i) the Sovereignty and integrity of India (ii) Public order or morality
(d) & (e) right to move freely and/or to reside and settle throughout the territory of India	(i) the general public (ii) the protection of the interests of Scheduled Tribes
(g) right to practice any profession, or to carry on any occupation, trade or business	The general public and in particular any law relating to (i) the professional or technical qualifications necessary for practising of any profession or carrying on any occupation, trade or business (ii) 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 citizens or otherwise.

Para- 36 page 1310

A statutory right as distinguished from a fundamental right-occurred on persons or citizens is capable of being deprived of or taken away by legislation. The fundamental rights cannot be taken away by any legislation; legislation can only impose reasonable restrictions on the extent of right. Out

of several rights enumerated in clause (1) of Article 19, the right at sub-clause (a) is not merely a right of speech an expression but a right to freedom of speech and expression.

Para 37 page 1310

The confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-clause out of sub-clauses (a) to (g) of Clause (1). If the right canvassed falls within the sweep and expanse of any of the sub-Clauses of Clause (1) then the next question to be asked would be, whether the impugned law impose a reasonable restriction falling within the scope of Clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct of expansion or incidence of the right, then the validity thereof is not to be tested by reference to Clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness or if it comes into conflict with any other provisions of the Constitution.

Para 24 Page-1305

From the reading of the two decisions Smt. Maneka Gandhi's Case (Seven Judges Bench) and All India Bank employees' Association case (five judges bench)the following principles emerged; (i) a right o form association or unions does not include within its ken as a fundamental right a right to form association or unions for achieving a particular object or running a particular institution, the same being a concomitant or concomitant to a concomitant of a fundamental right, but not a fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that it must also able to achieve the purpose for which it has come into

existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality; (ii) A right to form associations guaranteed under Article 19(1)(c) does not imply the fulfilment of every object of an association as it would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by part III and particularly by the scheme of the guarantees conferred by sub-clauses (a) to (g) of clause (1) of Article 19; (iii) while right to form an association is to be tested by reference to Article 19 (1)(c) and validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation shall have to be judged by reference to Article 19(1)(g) read with 19(6). A restriction on the activities of he association is not a restriction on the activities of the individual citizens forming membership of the association; and (iv) a perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can la claim to the fundamental rights guaranteed by Article 19 solely on the basis there being an aggregation citizens i.e. the rights of the citizens composing the body. As the stream can rise no higher than the source, associations f citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject.

Par-49 page- 1313

In spite of there being a general presumption in favour of the constitutionality of the legislation, in a challenge laid to the validity of any legislation allegedly violating any right or freedom guaranteed by clause (1) of Article 19 of the constitution, on a prima facie case of such violation having been made out, the onus would shift upon the respondent-State to show that the legislation comes within the permissible limits of the most relevant out of Clauses (2) to (6) of Article 19 of the Constitution, and the restriction is reasonable. On State succeeded in bringing the restriction

within the scope of any of the permissible restrictions, such as, the sovereignty and integrity of India or public order, decency or morality etc., the onus of showing the restriction is unreasonable would shift back to the petitioner. Where he restriction on its face appears to be unreasonable, nothing more would be required to substantiate the plea of unreasonability. Thus the onus of proof in such like cases is an on-going shifting process to be consciously observed by the Court called upon to decide the constitutional validity of the legislation by reference to Article 19 of the Constitution. The questions; (i) Whether the right claimed is a fundamental right, (ii) whether the restriction is one contemplated by the Clauses (2) to (6) of Article 19, and (iii) whether the restriction is reasonable or unreasonable, are all questions which shall have to be decided by keeping in view the substance of the legislation and not being begulled by mere appearance of the legislation"[76].

After the decision in T.N. Rangarajan case lot of criticism came against the judiciary both directly and indirectly. When the trade union and political parties (like CPI and CPM) criticised the verdict stating that the judiciary is encroaching into the democratic and constitutional rights of the employees. When the courts are slowly started restricting the activities of strike by the employees and other political parties (which is common in the State of West Bengal), the veteran politicians like Buddhadeva Bhattacharya, the Hon'ble Chief Minister of State of West Bengal said that "judiciary is overstepping its jurisdiction at times and intruding in to the executive and legislative domains". (The reason behind passing such comments seems to be that the courts earlier fired the state government on the issues like holding rallies in the week days, auto emission, paging out old cars, pandals blocking traffic, bad condition of the roads etc.)[77] after

---

[76] Dharam Dutt and others v. Union of India and others. AIR 2004 SC 1295 (R.C,Lahoti and Brijesh Kumar JJ.) (R.C.Lahoti passed the judgement).

[77] The Statesman, (Siliguri edition) 12.10.04, p.1. (Opening a symposium on the relationship between legislature and the judiciary, the chief minister sought for

experiencing the failure on the part of the executive in controlling the activities of strikes and bandhs the judiciary took hard steps since 2004 and start imposing fine on the political parties who call or support or conduct strikes or bandhs. The Hon'ble High Court of Bombay imposed a fine of Rs. 20 lakhs each on the political parties of Siva Sena and BJP for causing inconvenience to the public by conducting bandh in the year 2004. when the matter was taken in appeal the Hon'ble Supreme Court directed the political parties to deposit the amount before the court prior to the date of hearing. It indicates that the Indian judiciary made-up its mind to restrict the activities of strikes or bandhs without any discrimination and irrespective of status. The political parties criticised the verdict of the Bombay High Court imposing fine on BJP and Siva Sena. Just after one year the senior political leaders of the same parties (i.e, CPI and CPM) started criticising the militant activities of the trade unions. Some political leaders went a step ahead and said that "I will be happy to go jail for calling bandh".[78] The Hon'ble High Court of Bombay while speaking for the court by way of issuing guideline for future held that "Any political party calling for a bandh will be issued notice under Section 149 of the Cr. P. C. The parties will be warned that they would have to pay compensation in case of losses as a result of the bandh." The parties will be warned that they would have to pay compensation in case of losses as a result of bandh. The court also issued directions to the government, steps to be taken in case of call given for bandh. Though they have criticised the verdict of the Hon'ble High Court of Bomaby later themselves criticised the activity of strike and planning how to impose ban of strikes and searching for the ways and means to overcome the influence of the trade unions or association those who are affiliated to the Political parties. The Bombay High Court also on 12th August 2003 issued restraint orders against the ONGC employees from ceasing work from

---

formation of a Judicial Commission, headed by the Chief Justice of India, to look into "accountability of the Supreme Court and High Court Judges").

[78] Ms. Mamata Banerjee the leader of Trinamool Congress while speaking in favour of bandh called by her (declared and proposed to be conducted on 17. November, 2004) said that "I will be happy to go jail for calling bandh".

13.8.03 and also directed the management to conduct inquiry in to the MI-17(2) helicopter crash and directed to pay compensation to the victim's kins.[79] Pratap kumar Roy and Jyotirmoy Bhattacharya. JJ, of the Calcutta High Court held that, "we will not hesitate to direct the authorities concerned to derecognise the party by cancelling its registration". On December 04, 2004 Miss Mamata Banerjee, president of Trinamool Congress while claiming the 12 hours bandh called by her as success and said that "The Trinamool Congress got endorsement of its bandh in the 'people's court'".[80] From 2004 the courts in India are very much particular in preventing the strike which is a welcoming judicial activism. Whether it is stay order issued by the Hon'ble High Court of Andhra Pradesh or High Court of Mumbai court issuing prohibitory orders against the employees of the Oil and Natural gas Commission of Mumbai the approach being adopted by the courts in India will help in keeping the activities of strikes by the workmen under control.

The above material makes it clear that though the Indian judiciary immediately after independence was in four of condoning the mistakes committed by the trade unions, later started controlling the unwarranted activities of the unions. It vehemently criticised the role of the politicians in 'campus politics' in universities which severely effecting the bright future of the innocent students. Whenever required both the Hon'ble High Courts and Supreme Court gave directions and suggestion to the Government(s) for maintenance of law and order in the society. The decision in T.N. Rangarajan case was though criticised in the beginning by all the political parties, later same was found to be correct. The political parties particularly CPI and CPM who criticised the decision, later took several steps in the line of curbing the activities of "strikes" or "bandhs" (particularly in the IT sector), which indicates that the decision of the Hon'ble Supreme Court will

---

[79] The Statesman (Siliguri edition) 13.8.03.

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

remain as a mile stone in the history of "right to strike". Thought the union members are not interested in favour of strikes the outsiders' involvement forcing them to participate in it under these circumstances the members have no alternative except to follow the directions (Using the word "hooligans" indicates the nature of persons controlling the political and union activities)[81]. Hence it may be concluded that non-political interference, prevention of outsiders' involvement in union activities, and clean and pure union leadership will allow the workers to enjoy their "right to strike" in the times to come.

---

[81] *CM declares war on hooligans, faces a home truth*, The Telegraph, (Siliguri edition), p, 1.

CHAPTER – IX

EFFECTS OF STRIKES

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

.....Rig Veda 10.191.2

7. 1 Effect on employees

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

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

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

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

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

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

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

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

Leaders were usually satisfied with workers' attitude and their participation in union activities. The union leaders who are democratic in their functioning, and not involved politics are hardly regarded by the political parties or its leaders. During the period of strikes or lock-outs etc., management also doesn't pay any heeds to them. Hence all the trade unions seek political affiliations to have support in times of need[2]. Likewise the union leaders also for safeguarding their interest support the pet members and

---

[1] Details are given in the Chapter of Collective bargaining.

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

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

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

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

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

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

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

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

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

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

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

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

Another reason for out break of strike is unaccountability of the corrupt Government officials. In August 1947, when India became independent, the country's bureaucracy was, by and large, regarded as efficient, discipline and devoted to its own responsibilities. But by 1998, the Indian bureaucracy was adjudged as one of the worst in Asia, let alone in the world. This is indeed a very depressing state of affairs for a country once proud of the quality of administration and dedication of its senior bureaucrats[5]. Corrupt bureaucracy placed India in ninth position (with eight points) among the 12 Asian countries where as Singapore was rated the best at 2.53 points. By May 2004 "out of 186 cases pending against IAS and IPS officers the overwhelming majority related to corruption charges". In the absence of responsible bureaucracy total administration will collapse. It is the duty of the bureaucrats who are endowed with the duties of looking after and implementing the welfare provisions are made silent, the labour unrest is bound to increase. The head of the anti-corruption units in the States also acts as a hatchet men of government.[6] Not taking any action against the employer or employees who undergone illegal or unjustified strike indicates the state of inactive bureaucracy. Once the bureaucracy failed all its supporting branches also bound to cave in. It is futile to hope speedy relief in labour issues in the presence of corrupt bureaucracy and delayed judicial proceedings and veritable union leaders. The employee who does not have any faith in the administration which is crowed with corrupt bureaucrats had no alternatives but to declare strike for achieving his demand(s). Long pending litigations

---

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

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

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

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

It is well known fact that 'Skill will not develop all of a sudden'. After opening the doors for foreign investments in India, number of foreign companies came to India and started their business with a view to earn profits. The working conditions in developed countries are far different from that of India. The companies of the developed countries pay very high salaries but will employ only highly skilled persons. They won't follow policies like reservations and concentrate only on production and profits. But quick change introduced by these multinationals crippled the peace of the employees as they have to devote their total intelligence towards the work. It caused severe stress upon the employees. Like wise lack of job security is another concern to the employees. In a survey conducted by the multi-nationals it was revealed that "Job stress, a problem long ignored in the Indian work place has arrived on centre-stage because it is so clearly a part and parcel of life in business process outsourcing (BPO) companies. The odd hours, the lack of a social life and the monotonous nature of the job have all contributed to create a major crisis".[7] There is definitely a partnership, kinship and affinity interwoven and the rare judicial vision of our Apex Court would delineate the thin divide. However, in the changed context lacklustre performance by Government servants or employees of industrial establishments has no place in economy whose caravan shall push on traversing all these terrain of employment styles[8].

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

---

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

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

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

7. 2 Effect of strikes on employer

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

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

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

On the other hand there are some employers those who are taking advantage of the union leaders. They are continuing their business with daily wagers for decades, by taking the union leaders into confidence. Some times management is sponsoring some trade unions, which are working to the will of the management. Sometimes they sponsor the activities of the trade unions in order to counter the activities of the other trade unions. Mahatma Gandhi, when for the first time introduced it in 1918 in Ahmadabad Textile Mills in wage dispute[9] to put the employers under pressure, workers pledged not to return to work until the demands were fulfilled. Any how employers were successful in breaking the strike. Finally, Mahatma Gandhi himself went on fast who is not a worker but a union leader. From times immemorial managements or employers are breaking strikes with the techniques like hiring strike breakers, etc. In an effort to break the strike they take the assistance of either government or its officials directly or indirectly. Some times government directly support the attitude of the management to break strikes.

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

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

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

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

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

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

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

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

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

---

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

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

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

Employer won't hesitate to take the advantage of the union's weaknesses for their selfish needs. Unemployment problem is rampant throughout the world now-a-days. A survey conducted (in 2000) by Economic policy institute in USA found that American families work 247 hours more in the year 2000 , than they did in they did in 1989.[13] This categorically shows that the Americans are over burdened with work. Delay in judicial proceedings might be a universal practice which breaking the backbone of the workers.

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

---

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

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

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

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

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

The strike hits the profits of the employer.[17] The effects of strikes may vary on the employer of the Public Sector Undertakings (government) and private employers. Public sector undertakings are like no man's land. Even the top executives of the undertakings (like MD, CMD, CGM etc) won't feel responsibility or take liability towards financial implications of the undertaking, as they are responsible to the concerned ministry. They also feel that they are also employees of the undertaking working for salary like others. The politicians or ministers are also not interested in the well being of the PSUs as they want to en-cash the position as early as possible because of uncertainty of future[18]. Whenever any notice of strike or otherwise comes from the union of PSU immediately the pressure will be on top executive (the government may change them if they fail to settle the dispute as early as possible without effecting the political interest of the government) and on the politicians (ministers) as the pressure comes from the Chief Minister (in case of State) or Prime Minister (in case of Central Government) to settle the dispute as early as possible so that it may not effect the reputation of the

---

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

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

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

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

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

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

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

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

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

---

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

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

[22] Thirty miners of ECL's Nabakajora colliery on 3.9.02 began an indefinite strike to protest the "arbitrary transfer" of 310 miners to a neighboring mine. (*ECL miners on hunger strike*, September 03, 2002 (Thestaesman.net) visited on28.1.05.

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

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

7. 3 Effect on State/Government

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

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

---

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

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

Power corrupts few while weakness corrupts the many[24]. It is the duty of the state to treat all its' subjects equally without any fear or favour. From the inception, man used to associate with his fellow beings in the name of association or alike. Even before the Vedic period, king use to rely upon different forms of associations for finance which is necessary for administration and also for armed persons for protection of the kingdom. Slowly this system led to increase of ego in the minds of leaders of the associations. Slowly some associations start acting in an anarchy which led to lawlessness in the society. This situation forced the king to control the activity

[24] Eric Hoffer

of association in the interest of security of kingdom. Narada Smriti[25] lays down that the king shall take all necessary steps in the interest of the State. The provisions of Narada Smriti are very significant; wherein the right to form an association or an assembly of persons was recognised and the king was required to give all encouragement and respect to them, his power to prevent wearing of arms unlawfully as also the powers to prevent acts which are opposed to the interest of the State and of morality was recognised.

Unless the activities of associations are controlled the monopolic activities of the associations or unions may lead to civil disobedience and ultimately the prevailing system may collapse. In former USSR in the name of communism trade unions were promoted but without controlling their activities from time to time. When the defence production in Russia comes to a halt, whole cities are liable to loose their source of income, as the land of the "city-forming enterprise", of the giant industrial complex on which almost everyone in a large provincial centre depends, directly or indirectly, for their livelihood.[26]The membership or leadership of an association or union does not absolve the member from his duty which he was expected to do. Union activities are the duties to be discharged by the worker in addition to his normal duties. If the unions are allowed to grow as per their wishes it may ultimately lead to revolution[27]. In China also situation is not different. In China also labour disputes raised dramatically for the reasons of low wages,

---

[25] (1). The king shall prevent them (associations) from undertaking acts which are injurious to the interest of the King (State).
(2). He shall also prevent them from wearing arms unlawfully and also from making mutual attacks.
(3). He shall also take appropriate action against associations indulging in criminal acts opposed to the dictates of morality. (Narada Smriti p.154. 4-5 (Dharmakosa p. 871)
Renfrey Clarke, *Russian defense workers strike as production search collapse*, (www.greenleft.org)

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

corrupt management, mass lay-offs, dangerous working conditions and respective working practices in factories. Many protests were met with excessive use of force by police, resulting in casualties. Protesters were detained and harassed, and some were sentenced to long term imprisonment[28].

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

---

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

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

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

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

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

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

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

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

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

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

---

[31] (1) In 1982 President Ronald Reagan fired 20,000 striking air traffic controllers and destroys the PATCO Union. [Selected Historical dates in the US Trade Union Movement, (http://www.reainc.org/)] visited on 31.3.2004.
(2) In China reforms to the trade union law introduced in October 2001 brought some improvements as well as further restrictions to labour rights. The revised law still restricts workers' rights to freedom of association and expression. (*Amnesty International Report on China, 2003).*

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

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

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

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

---

viii) The government should concentrate on prevention of problems rather than cure, and learn to anticipate problems.

ix) The government should decentralise its operations and get its work done through participative management and team work rather than through orders.

x) The government should utilise incentives and markets rather than controls and regulations to bring about desired change.

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

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

the labour. Number of times general strikes are aimed at removing existing governments.[33] General strikes will serve both economic and political purposes. General strikes may paralyse the total economy of the country. These strikes may be declared to render support to the strike launched by other workers. The British Trade union Congress called one of the greatest general strikes in 1926, in support of British Coal miners on May 1, of that year. During this period which last for 9 days paralysed the British economy. In all these cases the workers were grossly misused by the politicians. The result was number of workers lost their lives and the politicians/political parties were the ultimate real beneficiaries. In these cases it may be right to say that it is the case of strike by general public for their cause which was the part of revolution but not the cause of workers strike. Non-implementation of wage revision etc. is occasionally paralysing the administration, particularly in finance sector like banks[34]. Even after few experiences also if the Government take steps to prevent such activities it would have prevented number of strikes. But once the issue is solved the Government instead of taking permanent measures forgets it, which is allowing the disease to continue instead of permanently curing it.

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

---

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

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

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

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

[35] The Telegraph, (Siliguri edition) 08.09.04.

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

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

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

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

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

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

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

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

Having experienced the failure of the government in controlling the activity of strike, bandh etc, the judiciary took active steps to curb them. The Hon'ble High Court of Bombay imposed a fine of Rs. 20 lakhs each on the political parties of Siva Sena and BJP for causing inconvenience to the public by conducting bandh in the year 2004. This act of judiciary was severely criticised by the political parties like Congress[40] and CPM[41]. The left parties termed the decision as "an effort to throttle the democracy". It was further stated that "in recent times, the judiciary is curbing the right to strike....This would have serious implications on democracy".[42] On appeal to the Supreme Court by BJP and Shiva sena the Hon'ble court directed to deposit the fined amount before the date of hearing. It shows that the judiciary is committed to curb the activity of 'bandh' that causes severe inconvenience to the public at large. Ms. Mamata Banerjee the leader of Trinamool Congress while speaking in favour of bandh called by her (declared and proposed to be conducted on 17. November, 2004) said that "I will be happy to go jail for calling bandh". The Hon'ble High Court of Bombay while speaking for the court by way of issuing guideline for future held that "Any political party calling for a bandh

---

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

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

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

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

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

The congress party that criticized the bandh[45] called by the political parties, (Siva Sena and BJP) itself called for bandh in West Bengal to express their protest against the discrimination shown by the government of West Bengal against the congress ruled all 123 municipalities.[46]. Though the rival political parties fight among themselves in different matters, when dealing with the matters like strikes or bandh they either mutually support each other

---

[43] Role of the government: The government has to bring out a resolution directing the executive arms to prepare to pre-empt bandhs. It has to ensure visible police presence and take preventive actions. There should mobile patrolling outside railway station, bus depots, main roads, junctions, hospitals and educational institutions.
Evidence: The state has to record proceedings during the bandh so that the video footage can later be used as evidence while identifying culprits for criminal prosecution.
Police: Police have to be alert, more efficient. (The Telegraph, Sunday, 25-7-2004, Siliguri edition, p.1.)

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

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

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

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

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

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

---

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

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

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

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

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

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

---

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

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

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

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

The above incidents show that the activities of strike or bandh effects severely even the official like Chief Minister of the State and he could not do anything except to request his own party activists to conduct the strike or bandh with some leniency because the organisation that called and observing bandh is affiliated to his parent political party. The government on the one hand gives call for promotion of work culture and on the other side keeps a blind eye on the activities of the trade union when they take steps that cause hurdle to the normal working of the office even against the wishes of the members[54]. At this stage it is worth noting that in January 2005 Jyoti Basu in a party meeting said that "time came to an end to the Trade unions that adopt militant activities". He also said that "gheraoes" can never be the substitutes for exploitation of labour. Budhadeb Bhattacharya the Chief Minister of West Bengal commented that trade union stand in the way of industrial development which was supported by Jyoti Basu also. In the party meeting he said that during his chief minister ship between 1980 and 1990 he committed mistake by supporting such unions. He said that he is not against foreign

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

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

---

[55] *Eenadu*, Hyderabad edition, 8.1.05

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

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

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

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

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

[59] The CITU (West Bengal) is going ahead with tomorrow's half-an-hour chakka bandh irrespective of the orders issued by Calcutta High Court on30.11.04 (*Citu to go ahead with chakka jam*, thestatesman.net. Visited on 23.1.05)

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

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

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

i.e. after passing the judgement in T.N. Rangarajan v. State of Tamil Nadu. It is the duty of the elected Government to safe guard the interest of the judiciary. The State Government shall not play to the emotion of the people. It is also the duty of the Government to take steps to ensure the implementation of the orders passed by the courts for which it shall direct its officers to take proper steps as per the direction or opinion of the court. Number of instances can be seen where the legislature passed the Act and the executive took no steps to implement it. Judges for protecting their rights going to the court is also not uncommon in India. When they feel that they are aggrieved by the decision of the executive they are challenging (protesting) it in the courts of law, wherein active assistance of the Bar(s) was also was taken. While dealing with the cases of transfer of judges case Chandrachud J. has mentioned that a judge who is to enter into an unequal contest with government will not be without assistance of able lawyers. Perhaps the Supreme Court judges were not aware of that the cost of such litigation – even the out-of-pocket cost can be prohibitive[60]

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

---

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

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

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

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

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

---

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

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

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

[62] The Statesman (Siliguri edition) 13.8.03.

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

On the proposed day all-India strike was conducted which the political parties like CPM claim to be successful and the media says that it was partially successful as about 30 million workers were said to have participated which include 1.5. million Government employees and officials of the finance sector[64]. The government on 17.12.03 said in Rajya Sabha that the right to strike by workers had not been taken away by the recent Supreme Court judgement on striking Tamil Nadu government employees. While clarifying doubts in the minds of agitated opposition members who were alleging that the fundamental right to strike had been taken away from employees by the Supreme Court, (the then) Labour Minister Sahib Singh Verma said that as long as it did not involve essential services, workers had the right to strike.[65]. The statement given by the Labour minister in Rajya Sabha though not in direct confrontation of the Supreme Court's verdict still it dilutes the ambition of the court to restrict the workers' right to strike in the interest of the public at large for the grounds mentioned in the judgment. Had the intention or opinion of the judiciary in the case of T.N. Rangarajan taken in to

---

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

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

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

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

Major shift was seen from the year 2003 where from the trade union leaders and politicians who openly started criticizing the judiciary in the name of fair criticism and the judiciary encroaching into the democratic rights guaranteed to them by the Constitution. Unfortunately the political leaders went to the extent of defying the orders of the court and conducting the strikes or bandhs by saying that they are answerable to "Peoples' court" (public) but not to the judiciary. For the first time in 27 years' Left rule, the government of West Bengal formally asked the vast body of its employees to face deductions of salaries in the event of absence from work without intimation and sanctioned leave on bandh day i.e. 17.11.2004. Police have been instructed to immediately arrest those who set up roadblocks[66]. The CPI led government in West Bengal proved that bandhs cannot succeed if the full might of the administration is arrayed against it in the absence of a ground swell of popular support on 17.11.04. Pratap kumar Roy and Jyotirmoy Bhattacharya. JJ, of the Calcutta High Court held that, "we will not hesitate to direct the authorities concerned to derecognise the party by cancelling its registration". Although this is the first time such a threat has been voiced, in two earlier cases, the Supreme Court has said if political parties or organisations call bandhs, they can be penalised. Inspite of all these efforts the statements being given by the politicians shows that they (the orders of the

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

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

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

---

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

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

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

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

---

[69] Ex-Capt. Harish Uppal vs. Union of India and others AIR 2003 SC 739
[70] *The Telegraph* (Siliguri edition) 9.10.05, p.6.
[71] Ranjit Bhushan, *Outlook*, August 3, 1998.

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

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

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

---

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

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

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

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

7. 5 Effect on general public

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

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

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

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

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

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

9. 5 Opinion of the employees and union leaders.

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

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

---

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

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

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

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

Opinion of the Union leaders

The union leaders are of the opinion that;

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

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

- The union leaders say only 2 to 5% of the employees are only responsible for the total work disturbance in the undertaking[77]. Generally these persons are habituated to vices and active participants in militant activities of the trade union. In a transport undertaking even of a single workman like driver or conductor if goes on leave (or absents) all of a sudden, for accommodating his pace lot of exercise has to be done by the officers. Another person will be forced to work for more time in the place of absented workman on leave. This factor may again result in granting special leave to the workmen who did double duty or overtime. This may also result in accidents. In order to break this circle (which is almost impossible) it will take at least a week for the supervisory staff.
- Generally, highly educated technical staff hesitates the directions of the leaders (who is illiterate leader or under educated) of a union. In order to bring him (educated member) to his terms the leaders try to trap him in any false case and pretend their support later.
- The practice followed by the leaders generally is to take unanimous decision in case of strikes etc. As per rules the trade union has to conduct ballot to know the opinion of the members, but in practice that the trade unions unanimously take the decision by either undermining or suppressing the opinion of others[78].
- The workmen want that his problems should be solved with in 2 or 3 days without hearing others. Management is taking decision undermining the difficulties of the workers.

---

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

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

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

Opinions of the member(s) (workers)

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

---

[79] The reason given by them are:

(i) If them employees deal with the management directly what is their importance?

(ii) For minor issues if they go to officers directly, how they can help them in serious matters?

(iii) If they are allowed or trained to deal with their own matters personally their importance will be reduced slowly.

- The member of the trade unions are not believing the leaders whole heartedly. (when reason was asked for this one union leader in APSRTC Guntur Depot (in a bit of anger) replied that "he who do does not believe his union leader can't believe his own wife).
- The high cadre leaders also cannot do any thing with regard to high-handedness of the other leaders.
- Instead of resorting to strikes, the disputes may be referred to forums like labour - adalats (instead of courts) where the matters can be settled speedily (preferably with in six months).
- Some employees for their own reason are not accepting promotions (because of fear of transfer etc.), which is blocking the promotional avenues of the other employees.
- In case of unfair labour practice committed by the officers, neither the union nor top officers are taking any steps to resolve it.
- The unilateral decision taken by the management without consulting the workmen is the main cause for misunderstanding between the labour and management[80].
- In case of problem with work, the management must consult the workmen instead of the union. Periodical discussions with the workmen will considerably decrease the tension between the labour and management.
- Both management and workmen must divert their attention toward the quality but not the quantity of the work.

---

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

- Employees highly qualified (than required to the respective post) persons is creating problem (directly and indirectly) because of (i) egoism (ii) they try to pass on time so that they can go for other posts either by appointment or promotion or otherwise[81].
- The workman who got the job on compassionate appointment is proved to be more corrupt than others, because they got appointment without any competition. Sympathy of the other staff towards them also adding its' share to it. Separate check must be mad upon them.
- Moral values must be developed in order to increase the workcultures.
- Use of language (abusive?) is another concern in mechanical area workmen. Now-a-days where the both highly educated and moderately educated persons are going to the same post use of same language by supervisory staff is creating unrest.
- Neither the unions nor the management are taking steps to educate the employees to meet the challenges of the new technology and development. (in some undertakings though some steps were taken to educate the employees they are not adequate). In some cases the management and unions are causing hurdles to the employees who want to update his knowledge out of his own effort and expenditure. A union educating the members through its educated members is yielding good results.
- Mental tension of the workmen is increasing day-by-day. Number of employees are unable to adjust themselves to the post as it not of their choice. Likewise employees not getting their dues (like increments, promotions etc.) in time is also causing dissatisfaction towards the post. If they adopt themselves to the prevailing circumstances he will

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

get job satisfaction and can discharge the duties efficiently[82]. This in turn will reduce the tensions between the labour and management. In stead of using official position, if the officers maintain friendly relations it will reduce the tensions between the both.

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

---

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

Criteria for good adjustment:

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

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

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

- Time bound settlement of disputes will increase the efficiency of the staff. A matter if settled within six months, discipline and accountability will be increased.
- Unions must divert its attention towards the corrupt activities of the management or managerial staff. This may reduce the loss to the undertaking and its result will be beneficial to all.
- The decisions given by the courts cause fear in the minds of the workmen. Now they are afraid of going on strike.
- During the period of strike (in Coal mines of Andhra Pradesh) managements are giving extra benefits and even gifts also. This practice is causing guilty conscious in other workmen.
- Payment of incentives and gifts to the hard working employees is increasing work-culture. In APSRTC fixed percentage will be given after prescribed amount) to both drivers and conductors on the income every day. (For getting this amount the drivers and conductors are working like private employees).
- Lack of proper planning on the part of both employer and unions is the main cause of unrest.
- During the period of proposed strike certain percentage (%) of the demands of the workmen or union should be deposed in the bank account and the matter must be referred for arbitration. If the employees win the arbitration proceedings the difference amount of the salary must be paid to the employees otherwise the amount deposited in the bank must allowed to be withdrawn by the employer[83].

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

[83] 1977 (N) SEN 35-6.

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

CHAPTER – X

Conclusion and suggestions

Work for the glory of your country and countrymen speaking different dialects.
Give due respect to the faiths and aspirations of the people.
Countless are the resources of Mother Earth, from whom flow the rivers of wealth in hundreds of streams,
Worship mother land as you worship God.
From time eternal, the Mother Earth is giving life to her children-you owe debt to Her.

.....Atharva Veda. 12.1.45.

Ginsburg defines society as "an association of a group of social beings related to one another by the fact that they posses or have instituted in common an organization with a view to securing a specific end or ends". Society comes into existence for the general wellbeing of the individuals. The duty of individual towards society was for the first time explained in Vedas. Interest of the individual is next to the interest of the society (i.e. general public) only. Formation of association or union can be seen even before the Vedic period. "Dharmo Rakshati Rakshitaha" the famous Hindu mythological concept still holds good. It means "protect Darma, it will Protect you". It is both religious

and legal sanction as well. In ancient times whether it is law or science was explained in the form of religious sanctions. 'Dharma' which denotes a 'religious duty' or sanction is primarily intended to impose or explain an obligation upon an individual. During Vedic period the society was 'duty oriented' rather than rights. The State (king of head of the panchayat etc.) can take action against any one who fails in discharging his duties. Hence, if a person discharges his duties (Dharma) properly, the duty (Dharma) will protect him (which is equivalent to providing 'statutory protection to the persons who bona-fidely discharge their duties). Hence every body was 'duty oriented either because of fear from the God, or the King rather than rights. The ultimate result was development of the society. The same principle was barrowed by the other kingdoms. Even during medieval period also same principles were followed in India. Hence, the society is older than association. Society is natural, whereas association is artificial. In India much importance was given to the welfare of the public throughout. During British rule in India though the foreign companies exploited both natural and human resources, British Crown pass several laws protecting the interest of the public at large. By taking all these factors into consideration the framers of the Constitution of India gave priority to the interest of the society compared to the interest of a particular class or group.

The industry whether agriculture or otherwise always dominated the economy of the society. Whether it is King or Government in a Constitutional set up, gave priority to the then prevailing industries. From fourteenth Century AD mechanisation started and totally changed the scenario of the world economy. It not only exhausted the natural resources but also changed the family setup. The persons started concentrating (where every one is stranger to the other) in and around areas where factories are established. Under these circumstances the concept of 'social security' changed its face. In colonial countries position of the 'ruled class' is much worse than the 'ruling class'. In industries disputes are bound to rose between the employer and employee for

profits and benefits. The employee who is weak in all the ways started uniting together for fighting collectively against the employer who is strong from all the corners. It is not known exactly when for the first time the strike was declared. The activity of protest (strike) can be seen even during the Vedic period (3000-1000 BC). Even during the period of construction of Cheops Pyramid the slaves refused to take meal without garlic. Ultimately their demands were considered by the King and the food with garlic was supplied to them. This incident clearly shows that even the genuine 'protest' of the slave was considered. After industrial revolution the protest of the workers was called in the name of "strike". It took different shapes from time to time depending upon the needs and circumstances.

The word "Strike" has been defined by different authors and judges from time to time including United Nation Organisation and International Labour Organisation. The definition of Strike given in different Statutes is also explained including the definition under section 2(q) of the Industrial Disputes Act, 1947. The essentials of "Strikes" as per the definition given in section 2(q) are explained with comments at relevant places. The act of 'strike' which is a concerted withdrawal of workmen from the place of work in order to pressurise, the employer to accept their (employees') demands. Later on like democracy the concept of strike also lost its' original shape and the employees and politicians and political parties started adopting countless methods of activities which they call as 'strike'. Though in the beginning strikes were intended to pressurise the employer, later the employees also started using the same activity for creating economic pressure upon the Government as well. For this purpose the employees started organising together in big groups. The workers also started identifying the need and importance of organisations and unions and stared claiming their legitimate rights. The activity of strike was not only used by the employees against the employer to bring pressure upon them, it was also thoroughly used by some employers to remove the economic burden

of payment of salary to their employees during the period of un-season in case of seasonal undertakings.

Not only the employees and trade union leaders but also the employers and political leaders are taking advantage of the defects of the outdated definition of strike as mentioned under section 2(q) of the Industrial Disputes Act, 1947. They are neither allowing the dispute to die nor allowing it to live. The Chief Minister of West Bengal saying that "they (IT employees) can call a strike by giving the management a formal notice" indicates the importance of the "notice" not only in the minds of the trade unions but also the Government [The Telegraph, (Siliguri edition) p,1]. In order to overcome this problem the following suggestions may be taken into consideration.

- Section 2 (q) of the Industrial Disputes Act, 1947 must be amended by adding the following provisions:

  (i) The workers must have done any act or omission in the form of 'protest',
  (ii) Withdrawal of work by even by a single workman also amounts to strike.
  (iii) Cessation of work is immaterial,
  (iv) Persons ceasing to work may not be acting in combination',
  (v) Circumstantial evidence is sufficient to establish concerted refusal or refusal under common understanding',
  (vi) Period of cessation or protest is immaterial.

Though definition of the term "Industry" was amended in 1982 date of effect is still awaited. If this amendment is brought in to effect essential services like 'hospitals, educational institutions, any activity of the Government relatable to sovereign functions of the Government will automatically come out of the purview of the definition "Industry" and the activity of 'strike will be automatically restricted at least in essential services. Date of effect must be

given to the 1982 amendment made to the definition of "Industry" at the earliest (at least for the purpose of the 'strike).

Under unavoidable circumstances strikes may be allowed subject to the following conditions:

(i) A maximum of 50% of the staff may be allowed to go on strike.

(ii) Staff having special skill or knowledge shall not be allowed to go on strike.

(iii) Employees who are going to strike (names and other details), along with dates on which they will attend the duties must be submitted to the Government.

(iv) Name(s) of the employees who will discharge duties during the period of strike must be submitted to the Government.

Judgments of the courts must be implemented both in letter and spirit. During the period of "strike" or "bandhs" strict action should be taken against all persons who violate the 'statutory norms' and/or 'directions of the court' irrespective of political affiliation. The courts must either order for punishment against the erring officials who are responsible for declaration or conducting or supporting (directly or indirectly) strike(s) or bandh(s) or direct the government to take appropriate action. Follow up action must be taken by the Government after every settlement. Permanent steps must be taken to settle the disputes between the labour and management. Recognition of the Political Parties who declare, participate, conduct or support strike or bandh must be cancelled by the Election Commission. The cadres (including the persons against whom charge sheet has been prepared) of the political parties must not be allowed to contest any elections (at least for next 5 years from the date of commission of the act) who declare, participate or conduct strike or bandh or who violated the court directions with regard to strike or bandh. Union leaders shall not be given any exemption from regular work. In "Collective Bargaining" the method of proportional representation must be implemented. Periodical declaration of

"Assets and liabilities of the union leaders and his family members" must be made compulsory for restricting corruption in trade unionbureaucracy. Routine matters like increments and time - bound promotions must be given in time without involvement of the employee. Proper protection must be given by the government to the workmen who want to attend duty on the day(s) of strike. Proper planning of the administration should be made in consultation with the employees and unions. Any person who is either MLA or MP or holding any Political Post or affiliated to political party shall not be allowed to contest the trade union elections or appointed for any post of the trade union. Matters of importance may be (which require quick disposal) may be referred to "Fast Track Courts".

Employers and the Government in order to protest their interests (economic), from the beginning are using strike breaking techniques and are trying to break the unity of workmen. The employers also started using Unfair Labour Practices as a mean to break the unity of the workmen and to restrict the activity of strike. The Government who is the largest employer for protecting the interest of its subject enacted several laws imposing restrictions upon its employees from participating in strikes.

The activity of strike which was primarily intended for ventilating the grievances of the workmen travelled unimaginable distance and lost its way somewhere behind. Trade unionism now became a profession by itself and has become a boon to the politicians and their off-springs. It is a common phenomenon that every person wants to give his profession or trade to his/her son/daughter which is easy and convenient for him. Leadership which this scholar feels to be an in-born character may be rarely an inherent character. The trade union leaders who tasted the union bureaucracy started dumping their legal representatives into the trade union by force with a clear intention to make them the future office bearers of the trade union and if possible they (legal representatives) may rise to state or country level politics. Types of trade

union leaders and their dealing with unions and members made it clear that young and imposed leaders are causing more harm than good, because of lack of experience and proper guidance from the senior leaders. They want to control the union and its members in each and every matter. Types of trade union leaders are explained along with their way of thinking and its impact upon the members and unions.

Work-culture on the part of the employee is the only alternative throughout the ages that kept the out-put (both in quality and quantity) at its height. This in turn improves the economy of the country so that it can compete in the global market. The importance and effect of work culture can be experienced from the economic growth of Japan which is a symbol of work-culture. The reasons for out-break of strike also proves the nature and cause for out break of strikes. It also made it clear that how small disputes relating to petty matters are leading to major disputes and ultimately for out break of strikes. Failure on the part of both employer and Government to take permanent measures with regard to the disputes is allowing the dispute to live long with out any heal.

Study of development of right to strikes in different countries gives a comparative position of United Kingdom, United States of America and Russia, the well developed economies. Though the foreign rulers came to India for the reason of occupying kingdom(s), the latent reason was for exploiting its wealth. The East India Company which is purely a business concern came to India to have business with Indian business organisations. By taking the advantage of innocence of the Indian kings, they have started occupying the small kingdoms one after the other by applying the principle of "divide and rule". Ultimately the administration went in to the hands of the company and in turn to the British Crown, and the sub-continent of independent India became a colony of British Kingdom. The position of the Indian workers in the factories owned by the British employers is 'secondary citizens' which was no less than

slaves. In order to elevate their position, social workers in the beginning and the political leaders later took the cause and started protesting the attitude of the employers and the Government (The Crown). There arose the activity of strike in the present form in India. Though the concept of strike (in the present form) started in India some time in and around 1800s, it got its roots in England near about 1600s. Though, the trade union movement in United States of America cannot be equated with that of United Kingdom, still it is earlier to Indian Trade Union movement. History and Development of trade union movement in United Kingdom, United States of America and India is self explanatory with regard to the evolution of the right to strike. The main reason for, USA being the most developed economy in the world can be found from the history of the trade union movement also and the steps taken by the employer and the Government in preventing, restricting or controlling the activity of strike. The fact of observing "May Day" which falls on 1st May of every year, sometime in September of that year indicates the importance given by the employers, Government and workmen to the work-culture and their disregard for holidays. From time to time both employers and Government took several steps to find out the ways and means to control the activity of strike by the workmen. These means includes introduction of 'Contract employment, employment-at-will' etc.

The trade union movement in Russia (former USSR) though not much older, it was developed primarily as a bi-product of revolution. Later on the historical development shows that Marxism overpowered the trade unionism and uncontrolled activities by the unions gave much freedom to the workers community. History and development of trade unions in Russia gave an image for the development and collapse of the Russian economy.

Likewise, different steps taken by the employer and Government of Great Britain also made it clear that they have vehemently and ruthlessly controlled the activity of strike in the interest of their Country. The trade unions

of the workmen of United Kingdom, which is one of the well organised and well developed trade unions in the world, from the beginning was claiming the strike as their legal and fundamental right. Though some times both Government and courts of Great Britain accepted it as a legal right, but they refused to accept it as a 'fundamental right' of the workers. The history and development of right to strike in United Kingdom makes it clear that how the strike took its origin and how it developed. The study categorically proved that the strike is a legal right of the workmen, but it is not a fundamental or constitutional right. In India also, though the employees were treating Indian workers as secondary citizens (during British India regime), the crown appointed several commissions to inquire and recommend the steps to be taken for the improvement of living conditions of labour. After receiving the reports from the commissions, the sovereign implemented some of its recommendations. After independence Indian legislature passed several welfare Acts in the interest of the working community. Courts took very lenient view with regard to strike by the workmen in the beginning (after independence) by taking the economic position of the employees into consideration. However, Indian judiciary doesn't hesitate to restrict the activity of strike whenever it is required. Though, sometimes it is lenient with regard to the activity of strike by the workmen, the task performed by the judiciary in India is appreciable particularly in a developing country like India (It is submitted that India is a developing country when compared to the developed countries and developed among the developing nations) where they have pass judgements after taking into consideration of the employees those who are living below poverty line to those receiving luxury wages together.

Constitution is Grundnorm. It is a basic document which highlights the aims and objectives of the citizens who adopted it. Constitution of India is the largest of the world constitutions that was drafted and adopted by the independent citizens of the country. The framers of our constitution took all precautionary steps to safeguard the interest of the public at large from the

arbitrary acts of an individual or a class. At the same time the framers also gave priority for safeguarding the basic human rights of the citizens and named them as fundamental rights and imposed the duty upon the government to safeguard them. Freedom of association or union which is a basic human needs and rights is declared as a fundamental right under Article 19(1)(c). Immediately after independence both government(s) (State and Central) and court(s) took a lenient view upon the activity (strike) of the workmen. But this attitude of the Government and Court was miserably misused by the workmen and trade unions (particularly trade unions of Public Sector Undertakings). The political leaders for their vested interests supported the activity of the workmen (strike) from time to time irrespective of its legality or justifiability. The political parties, who supported the cause of the workmen when not in power, started criticising the same when they came to power. However, the courts from time to time by interpreting the statutory provisions relating to strike in the light of the provisions of Article 19 of the Constitution of India and held that it is a 'right' of the workmen like lock-out which is the right of the employer. The decisions given by the Hon'ble Labour Appellate Tribunals, High Courts and Supreme Court of India made it clear that the activity of strike is a 'legal right' but not a 'fundamental right'. It is submitted that in some cases though strike was totally covered by illegalities, the courts granted the benefit of payment of wages to the workmen who went on strike on one or the other pretext (which it is submitted is purely a sympathetic action). The sympathy shown by the Government, Court and some political parties did more harm than good not only to the trade unions but also to the Society at large.

Law is the will of the general public. The will of the workmen to express their protest when the employer or the Government fails or refuses to accept their demands, if not controlled may result in lawlessness in the society. The statutory provisions which are related to the strike indicates the intention of the legislature that it is an implied right that can be exercised under certain circumstances after following certain statutory condition, failing which the

workmen may be penalised. By respecting the will of the employees the legislature incorporated some provisions in the Industrial Disputes Act, 1947 and some other statutes. Sections 22, 23 and 24 of the Industrial Disputes Act, 1947 deals with the conditions to be fulfilled by the workmen before going on strike and the consequences for its failure. Though, notice need be given by the workmen before going on strike, several decisions of the courts indicate that it may be dispensed with under some unavoidable circumstances (non-payment of benefits in spite of direction by the Hon'ble Supreme Court etc). In Public Sector Undertakings generally trade unions are declaring strike some time before elections, either for local bodies or for Assembly or Parliament. This practice proved to be very successful. The political parties running the Government for protecting their political interests accepted some of the demands of the unions immediately. This practice proved beneficial for the unions to achieve their demands with less effort. In order to avoid this complicated situation necessary amendment should be made to sections 22 and 23. Strikes shall not be allowed to declare at least within six months (one Year in case of Public Sector Undertakings) before the due date of elections for either legislative assembly or Parliament or local bodies. Though there is a provision for constitution of "works committee" (under section 3 of The Industrial Disputes Act, 1947) in the industrial establishments for "promoting measures for securing and preserving amity and good relations between the employer and workmen, and to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matter" it was not implemented by any establishment. Trade unions did not allow for formation of 'works committees' for the fear that if established they (Works Committees) may reduce their importance. If these committees are formed and allowed to work properly, majority disputes of small in nature will be solved. Hence, constitution of 'works committees must be made compulsory with a bounden duty to implement its recommendations. The Trade union Act, 1926 is the only Act which provided immunity to the trade unions. Thought the Act does not require

the union to be registered compulsorily, it extends immunities only to the trade union registered under this Act. The provisions of the Trade Union Act which are related to strike indicates that the immunity provided can be availed by the registered trade union, its office bearers and its members. The provisions of the Trade Union Act and relevant rules must be amended for providing periodical discussions/meetings between workmen and employees compulsory, with regard to the 'service conditions' of the workmen. Individual 'face to face' consultation (regular formal interviews between a worker and his/her immediate supervisor/manager) will enhance the effects of functional flexibility, and also has a stronger positive impact on employment levels than other forms of consultation. Growth is more likely to be associated with highly innovative workplaces which consult with their employees (rather than delegate responsibilities), have a fair amount of contract flexibility and practice numerical flexibility to a moderate extent. In case of Unfair Labour Practice by the management or managerial staff, strict action should be taken within six months. Efficient and cultured workmen must be 'encouraged' by providing financial and other benefits to them (like increments, out of turn promotions and gifts).

Value education must be imparted to the workmen from time to time. The activities of the young and imposed leaders must be checked and if necessary they should be sacked. Minimum educational qualifications must be fixed for contesting the union executive. Persons like Chief Minister saying that "educating the citizens as a mean to curb the innocent following of the hooligans" indicates the importance of education in the industrial establishments. Union members shall not be allowed to contest for executive posts unless years have elapsed. Instead of rigid working conditions method of flexible working conditions should be introduced. In Public Sector Undertakings strike shall not be allowed to continue for more than a week. By making necessary amendment to the Trade Union Act, 1926 the number of unions per undertaking should be restricted to two. To reduce the involvement

of politicians, political affiliation of the trade unions must be abolished. Political leaders shall not be appointed as office bearers of the Trade Unions. In technical matters Union leaders who don't possess technical knowledge must not be allowed to participate. "Responsibility and accountability" of the union leaders must be fixed. Hair split technology must not be allowed to be used by either employer or employee in labour disputes. Any political leader if supports or assures any trade union or workers organisation directly or indirectly (with a view to have political favour) be given a chance to fulfil it within a prescribed period. If he fails in fulfilling the assurances, he shall not be allowed to contest in any election for next 5 years. Any employer who is involved in any Unfair Labour Practice(s) shall not be allowed to do business for next two years. At least 40% of the workers working in that undertaking must be members of the trade union in order to allow the union to contest in election. Name and all details of the staff who wants to go on strike shall be submitted to the Government.

Evil effect of the activity strike on the general public is beyond imagination. Non-implementation of the provisions of the statutes in order to achieve the Constitutional goals is resulting in loosing faith in both legislative and executive. Another reason is unimaginable gap between legislation and implementation. This gap should be reduced by taking necessary steps. Involvement of politicians in executive matters must be prohibited in letter and spirit. Statutory provisions must be implemented without any fear or favour.

"To every action there is an equal and opposite reaction" (Newton's third law of motion.). The activity of strike is not an exception to it. The incidents and the case law clearly explained the evil effects of strike on different persons (Employer, employee, Government, and general public). The strike declared by the workmen not only effects the employer, Government, but also the general public. The study of effect of strikes on employer, employee, Government, and general public evidenced the adverse effects of strikes. It is

employees who occasionally declare and conduct strikes can only understand its adverse effects upon them. During the period of strikes the employees generally will be undergoing mental tension as they are much worried about the result. The strike more continues much towards the next pay day the tension of the employees and their family members will be increasing further. The employees if not paid the salary by next pay day, the employees has to borrow loans on heavy interest which may some times go upto 10% per month. For discharging the debts incurred during the strike period it may take some months to years for the employees. During the period of strike workers/leaders who actively participate in strike are also loosing their life or limb. If timely action is taken against the misconducted employees, and the dispute is settled within with in six months, the effect of strikes on the employees may be reduced to a considerable extent. Judgement of the courts must be implemented without any delay. The employees shall not be allowed to participate in the strikes or bandhs called on by the political parties which is politically motivated. Employees or trade union leaders must not allowed to have political links. Workers must be educated by employers, trade unions and Government. They should conduct periodical class to equip them with latest knowledge and or technology. Once workmen become excess either due to technology or otherwise, they should be trained to meet the new situation instead of retaining them till retirement (as an economic dead weight) or giving "Golden Handshake". Responsibility and accountability of the employees must be fixed without any exemption. Unions are formed for protecting the common interests of the members. Hence, unions should not protect/defend the members in case of intentional illegal acts committed by its members.

The effect of strike primarily is on the employer, as the production will be disrupted as a consequence. Now the employers are no less than the employees. They won't hesitate to break the strike by any means. Engaging strike breakers by the employees is not confined only to the developed countries like United States of America or United Kingdom. It can be seen

even in countries like India also. They are also adopting unfair labour practices. Its effects can be seen till final settlement of the dispute either by the employees or in courts. The employers for the protecting their business interest has continuously adopting the strike breaking techniques from times immemorial. The activity of strike not only benefited the employees but also the employers. Corrupt union leaders turned to be a boon for the employers particularly for employers doing seasonal business. Near the end of the season the employer through the union leaders are succeeding in declaring strike. When the strike is declared immediately they declare lock-out and will continue it till next season. By one or the other reason the strike will be brought to an end when the season is started. If employer is the government, the activity of the trade union is comparatively high. Lack of accountability and responsibility of the employees and government in public sector undertakings forced to privatise them in different phases. The effect of strikes on Public Sector Undertakings clearly explains how the strike is a cause for their privatisation.

General strikes changed the Governments also in the form of revolution. The strikes or bandhs will be sponsored by political leaders who are (directly or indirectly) connected with or against the Government. The clinging situation of the Government in between the employees (voters) and the employers (tax payers) is something definitely in a state of imbroglio. The Government has to act in a way which shall satisfy both, who declare strike and the persons effected by it. In some states like West Bengal where the rate of activity of strikes and bandhs are very high the Government will be definitely has to take extensive care for safeguarding the person and property of public and employer. But the financial constraints do not allow it to do so. The Hon'ble High Courts and Supreme Court suggested taking the assistance of the elderly (responsible) persons of the locality to overcome the problem of shortage of manpower. Having failed in its entire attempt to overcome the problem of strikes and bandhs instead of controlling their own party cadres started

criticising the verdicts of the courts. The political leaders who declare strike started saying that they are answerable to the people only. The propitiatory orders issued by the court are violated on flimsy grounds. When questioned by the media or others they (e.g. Ms. Mamata Banerjee, Persident, Trinamool Congress) started replying that "I will be happy to go to jail for calling bandh". The political parties who criticise the strike or bandh called by one party are declaring and observing or supporting the same in other states or in the same state. The Congress (I) that criticised the bandh called by BJP and Siva Sena in Bombay called the bandh in West Bengal called bandh in 123 municipalities of West Bengal against the discriminatory attitude of the Government. The Hon'ble Chief Minister of West Bengal Sri Buddhadeb Bhattacharjee saying that "outsiders will not be allowed to force strikes in IT sector" indicates the role being played by the outsiders in trade union activities. The political parties went to the extent of waging war (indirectly) against the judiciary. Having failed in the entire attempt to control its own cadres and affiliated unions, the political parties went to the extent of threatening the judges with constitution of Judicial Vigilance Commission for checking the corruption in the judiciary.

The employer or public any one who is aggrieved by the activity of strike may go to court seeking prohibitory orders. The courts in the interest of public have delivered several judgements which went against the interest of the concerned Government. The judiciary not only pass strictures against the officials who fail to take proper steps during the period of strikes, but also against the political parties and the governments. Having aggrieved by the verdicts the executive openly criticised the judiciary. After passing the judgment in T.N. Rangarajan case all political parties particularly CPI and CPI (M) called for nationwide bandh against the verdict of the court which was partially successful. Failure on the part of the Government to take necessary steps for preventing the bandh was severely criticised by the public. Same political parties who criticised the verdict of the court in T.N. Rangarajan case, after few years openly criticising the activity of strike and initiated steps to ban

strike in some areas like Special Economic Zone, which specifically shows that the verdict of the Supreme Court is perfectly correct in the interest of the general public. Heads of the educational institutions requesting the political parties to keep educational institutions outside the purview of strikes and bandhs and some port employees requesting the government to categorise them as essential service indicates that even major sections of the society are also against the activities of strikes and bandhs.

The ultimate effected one is general public. Because of strikes in Public Sector Undertakings the prices of certain commodities will be increased, increasing the economic burden upon the general public. During the period of strikes and bandhs the prices of the commodities will be increased due to short supply of goods (may be artificial shortage). Necessary steps must be taken by the Government to establish "Labour Adalats" for speedy disposal of service matters of utmost urgency. Time limit must be provided for settlement of labour disputes. Persons once elected to the Constitutional posts like minister, Chief Minister, Speaker etc, must not have political affiliation of any kind. They should not participate in any political meetings either of their own party or others. During period of 'strikes' or 'bandhs' strict action must be taken against all irrespective of position in political party or the Government. The courts must either order for punishment against the erring officials who are responsible for declaration or conducting strike(s) or bandh(s) or direct the government to take appropriate action. The cadres of the political parties must not be allowed to contest any elections who declare, participate or conduct strike or bandh or who violated the court directions with regard to strike or bandh. Union leaders shall not be given any exemption from regular work. Any person who "criticises or makes any statement which may go against the verdict of any court or tribunal (directly or indirectly), either for serving the political needs or otherwise must be removed immediately from the post which he was holding as on the date of making such comment, irrespective of his post or position. In "Collective Bargaining" the method of proportional

representation must be implemented for increasing the involvement of all the unions. This practice may not only remove the dissatisfaction of the small unions but also increases the morals of all the workmen. Growth is more likely to be associated with highly innovative workplaces which consult with their employees (rather than delegate responsibilities), have a fair amount of contract flexibility and practice numerical flexibility to a moderate extent.

The opinions expressed by the employees of the Andhra Pradesh State road Transport Corporation (a nationalised public transport undertaking), and Sigareni Collieries (Coal mines), Kotha Gudem, Andhra Pradesh reveals that the employees who are mainly responsible for the origin of disputes are only 2% to 5%, but nether the trade unions nor managerial staff or the employer are in a position to control them as they are closer to the union leaders (they active participants in militant activities). The opinions also reveal that the employees are not in favour frequent strikes and also for each and every small issue. They also want that, the disputes shall be settled by compulsory mediation and in a time bound manner.

On the basis of the above material the question of "right to strike" is discussed. The other factors like social needs, technology, status etc, are also taken in to consideration for deciding the hot burn problem of strike. It is submitted that on the basis of the available material it can be said that the activity of 'strike' is a legal right and it will continue in future also in one or the other form. After deciding the strike as a legal right, the work is proceeded to decide the question whether it is a fundamental right or not? The 'fundamental rights are not determined but which determine other rights'. On the basis of this principle it can be decided that the 'right to strike' is not a "fundamental right" it is only a "legal right". The right to strike does not determine any other right(s). The right to strike itself is determined by the fundamental right to form associations or unions guaranteed under Article 19(1)(c). Therefore the 'right to strike' is not a 'fundamental right' but it is

only a 'legal right' which is a "natural human right". Both employer and Government shall take necessary steps for cultivating the work-culture among the employees and time bound settlement of disputes are only alternatives for the strike. The workers once adopts the work-culture, automatically their attention will be diverted towards their duties from rights. Once the subjects (workmen) convert themselves to duty oriented from rights, the society will be developed in no time and the sub-continent of India will regain its' ancient glory once again.

TABLE OF CASES

A

- A.K.Gopalan v. State of Madras, AIR 1950 SC 27
- Achudan v. Union of India, (1976) I SCWR 80.
- All India Bank Employees Association vs. National Industrial Tribunal, AIR 1962 SC 171.
- ANZ Grindlays Bank v. S.N. Khatri and others (1955) 2 LLJ 877 (Bom).
- APSRTC employees Union v. APSRTC, Hyderabad 1970 LIC 1225 (A.P).
- Arun Motiram and 2 others v. Mafatlal Fine Spinning and Weaving Co. Ltd., and others, 1956 (2) LLJ 396.

B

- B.R.Singh v. Union of India (1989) II LLJ 591 (SC).
- Bachan Singh v. State of Punjab,(1980) 2 SCC 684.
- Balakotaiah v. Union of India AIR 1958 Sc 232.
- Ballapur Colliries Co. v. Salim M. Merchant (1967) II LLJ 201 (Pat).
- Ballu Govind v. Appollo Mills Ltd., and others 1957 (2) LLJ 55.
- Balmer Lawrie Workers' Union vs. Balmer Lawrie & Co. Ltd. AIR 1985 SC 311
- Bangalore Water Supply & Sewerage Board v. Rajappa, AIR 1978 SC 548.
- Bank of India v. Kelewala, (1990) 4 SCC 744
- Basheshar Nath v. Income Tax Commissioner, AIR 1959 SC 149.
- Bata Shoe company (private) Limited. V. D.N. Ganguly and others. (1961) I LLJ. 303 (SC).
- Bharart Petroleum Corporation Ltd. V. Petroleum employees Union and another 2002 Lab.I.C. 853 (Bom).
- Bharat Barreel and Drum Mfg., Co. Ltd. v. Their workmen 1952 (2) LLJ 532 at 536.
- Bharat Kumar K. Palicha vs. State of Kerala, AIR 1997 Ker. 291
- Bharat Petroleum Corporation Limited vs. Petroleum Employees union and another 2001 II LLJ 81 (93) (Bom)
- Bhupendra Singh v. Air India (1996) 1 CPJ 344
- Bidhu v. State of West Bengal AIR 1952 Cal 901.
- Bishamber Dayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39, 62 see also (1986) 3 SCC 20.
- Bombay v. Haskiel & others, (1983) II LLJ 504 (SC).
- BPL Group of companies Karmika Sangha v. State of Karnataka and another, 2000 II LLJ 641 (Kant)

- Buckingham and Carnatic Mills Ltd. v. workmen, AIR 1953 SC 47.

C

- Canfield Holland, (1953) I LLJ 458 (Bom).
- Chandramalai Estate, Ernakulam v. Its workmen, (1960) II LLJ 243
- Chandrasekhar. T. v. Chairman, Indian Airlines (1995) III CPJ 95
- Chemicals & Fibres India v. D.G. Bhoir, AIR 1975 SC 1660.
- Colliery Mazdoor Congress v. Beerbhum Coal Co. 1952 LAC 29 (LAT)
- Common Cause v. Union of India (1996) II CPJ 33 (NC)
- Communist Party of India (M) vs. Bharat kumar and others AIR 1998 SC 184.
- Conway v. Wade 1909 AC 506
- Crompton Greaves v. The workmen, AIR 1978, SC 1489

D

- Damayanti Narang vs. Union of India, AIR 1971 SC 966.
- Dangs Zila Panchayat Karamchari Mandal, Class III, Dangs v. State of Gujara and another 2002, Lab.I.C. 2568 (Guj). (D.H.Waghela.J) (DOJ. 18.3.02)
- Dasappa v. Dy. Additional Commissioner, AIR 1960 Mys 57.
- Delhi Police Non- Gazzeted Karamchari Sangh vs. Union of India, (1987) 1 SCC 115.
- Delhi Police Non-Gazetted Karamchari Sangh v. Union of India AIR 1987 Sc 379;
- Dhirubha Devi singh Gohil v. State of Bombay, AIR 1955 SC 47,per Jagannath. J)
- Dinesh Trivedi v. Union of India, (1997) 4SCC 306
- Dinesh Trivedi v. Union of India, (1997) 4SCC 306
- Dorchy vs. Kansas (1826) 272 US, 306; 71 Law Ed. 248

E

- Employees of Dewan Bahadur Ramgopal Mills Ltd. v. D.B.R Mills Ltd. 1958 II LLJ 115.
- Ex-Capt. Harish Uppal vs. Union of India and AIR 2003 739.
- Express news Papers vs. Union of India, AIR 1958 SC 578.

F

Farrer Vs. Close (1889)L.R.

G

- G.K.Ghosh vs. E.X. Joseph AIR 1963 SC 812.
- Girja Shankar Kashiram v.Gujrat Spinning & Weaving Mills Ltd. (1962) 3 Suppl. SCR 890.
- Goodlass Wall Ltd. v. Ameer Ahmed Bakuram & 8 others, 1954 (2) LLJ 573.
- Gopal Upadhyay v. Union of India, AIR 1987 SC 413 = 1986 Supp. SCC 501.
- Gujrat Steel Tubes, AIT 1980 SC 1896 (per Bhagawati. J).

H

- H. Puttappa vs. StaTe of Karnataka, AIR 1978 Raj. 148
- Haji Mohammad v. District Board, Malda, AIR 1958 Cal 401
- Harpal Singh vs. Devinder Singh AIR 1997 Sc 2914; 1997 (6) SCC 660.
- Howrah Foundry Works Ltd. Vs. Their workmen 1955 (2) L.L.J. 97

I

- In Visakha v. State of Rajastan, (1997) 6 SCC 241 at 249
- India General Navigation and Railway company Ltd. and another v. Their workmen, AIR 1960 SC 219
- Indian Express News Papers v. Union of India. (1985) 1 SCC 641.

J

J.K.Cotton Spnning and weaving Mills co. Ltd. (Textile Mills, Kanpur) v. Their workmen, 1956 (2) LLJ 278 (IT)

K

- K.L. Chaturvedi v. State of Madhya Pradesh, AIR 1960 Madh. Pra, 369.
- Kambalingam v. Indian Metallurgical Corporation, Madras (1964) I LLJ 81
- Kameswar Prasad vs. State of Bihar, AIR 1962 SC 1166.
- Kameswar Prasad vs. State of Bihar, AIR 1962 SC 1166.(C)
- Kameswar v. State of Bihar, 1962 SCR 369.
- Kohli v. Union of India, AIR 1975 SC 612.

L

- Labour Court, Allahabad, AIR 1969 SC 235
- Lakshmi Devi sugar mills Ltd. v. Pt. Ram Sarup, AIR 1957 SC 82.
- Life Insurance Corporation of India and others v. Amlendu Gupta and others, (1988) II LLJ 495 (Calcutta)

- Liversidge v. Anderson, (1942) AC 206

M

- M.C.Mehta vs. Union of India and others AIR 1998 SC 186
- M.H.Devendrappa vs. Karnataka State Small Industries Development Corporation AIR 1998 SC 1064.
- M/S Burn & Co. Ltd. V, Their Workmen
- Madras Coats Ltd. V. Inspector of Factories, I Circle, Madurai, AIR 1981, SC 340; 1980 Lab.I.C. 1380; 1981. LLJ 255(SC)
- Madras.v. Gunaseelan. M.G. (1954) II LLJ 1956 (LAT).
- Madura Coats Ltd. V. Inspector of Factories, Madurai, (1981) I LLJ 255 (SC)
- Management of Churakulam Tea Estate (P) Ltd. v. The workmen and another (1969) 2 LLJ 407 (SC)
- Management of Kairbetta Estate, Kotagiri v. Rajamanickam AIR 1960 SC 893
- Management of Kairbetta Estate, Kotagiri v. Rajamanickam AIR 1960 SC 893
- Management of M/S Baldev Soap Factory v. Delhi Administration and others, (1995) 2 LLJ 376(Del).
- Management of the Fertiliser Corporation of India Ltd. v. Workmen, AIR 1970 SC 867.
- Maneka Gandhi vs. Union of India, AIR 1978 SC 597.
- Mangaram (Workers of Patiala Cement Works) and others v. Labour Appellate Tribunal, 1958 (1) LLJ 539 at 541.
- Mangaram v. Labour Appellate Tribunal, 1957 (1) LLJ 603 (614-615) All (DB) Per KIdwai J
- Mineral Miner's Union v. Kudremukh Iron Ore Co. Ltd, (1989) I LLJ 277 (Karn)
- Model Mills v. Dharam Das. AIR 1958 SC 311
- Morgan v. Fry 1968 (3) WLR 506
- Mysore Machinery Manufacture v. state, AIR. 1966 Mys. 51

N

- N.B. Khare v. State of Delhi, 1950 SC 211.
- National Association for the advancement of Colored People vs. Alabama; 2 Law Ed. Second, 1488 and Bates vs. Little Rock 4 law Ed. Second, 480.
- National Labour Relations vs., Fantsseal Corporation 306 US 31.
- National textile workers Union v. Sree Meenakshi Mills Ltd., 1951 (2) LLJ 516.

O

- O.K.A. Nair vs. Union of India AIR 1976 SC 1179
- O.K.Gosh v. E.X. Joseph AIR 1963 Sc 812
- Ous Kuttingal Achudan Nair v. Union of India, AIR 1976 Sc 1179.

P

- Patiala Cement Co. Ltd. v. Certain workers. (1955) II LLJ 57 (LAT)
- Peoples' Union for Democratic Rights v. Union of India, AIR 1982 SC 1473
- Piprach Sugar Mills Ltd. v. Their workmen. AIR 1960 SC 1258
- Probhat Kumar Kar v. William Trevelyan Curtis Paker AIR 1950 Cal. 116
- Probhat kumar v, William Trevelyan Curtis Oaker AIR 1950 Cal 116.
- Punjab National Bank Ltd v. Its workmen, (1952) II LLJ 648 (LAT).
- Punjab National Bank Ltd. v. Bank employees federation 1960 (1) SCR 806

R

- Radhey shyam Sharma vs. post Master General, Central Circle, Nagpur AIR 1965 SC 311
- adhey Shyam v. Post Master General, Central Circle, Nagpur AIR 1965 SC 311
- Raghubar Dayal vs. Union of India AIR 1962 SC 263 = 1962 (3) SCR 547.
- Raghubir Singh v. Court of Wards, Ajmere, 1953 SC 373.
- Raj Narain v. State of U.P. AIR 1961 All. 531
- Raja Bahadur Motilal, Poona mills v. Tukaram Piraji Masale, 1956 SCR 939.
- Raja Kulkarni v. state of Bombay AIR 1954 SC 73.
- Ram Nagar Cane and Sugar Co. Ltd. V. Jain Chakravarthy and others. (1961) I LLJ. 244 (SC).
- Ram Nagar Cane and Sugar Co. Ltd. V. Jain Chakravarthy and others. (1961) I LLJ. 244 (SC).
- Ram Naresh Kumar v. State of West Bengal 1958 (1) LLJ 567 (C); Piprach Sugar Mills Ltd. Its workmen, 10 FJR 413 (LAT).
- Ramesh Thappar Vs. The State of Madras, AIR 1950 SC 124.
- Ramkrishna Iron Foundry, Howrah v. Their workers, (1954) II LLJ 372 (LAT)
- Ramkrishna v. President, District Board, Nellore, AIR 1952 Mad. 253.
- Rohtas Industries v. Its Union, AIR 1969 SC 235

S

- S.M. Kala vs. University of Rajasthan, AIR 1987 SC 700
- Sadual textile Mills v. Their workmen

- Santaram Khudai v. Kimatrcei Printers & Processors Pvt. Ltd. AIR 1978 SC 202;
- Santaram Khudai vs. Kimatrcei Printers & Processor Pvt. Ltd AIR 1978 SC 202
- Sardharam v. Haji Abdul Majid AIR 1966 Punj. 196
- Sasa Musa Sugar Works (private) Ltd. v. Shobrati Khan and others, AIR 1959 SC 923.
- Satyavan vs. State of Kerala AIR 1997 Kerala 133; (1997) 1 Ker LT 130.
- Shamnagar jute Company Ltd. v. Their workmen, 1950 LLJ 235 at 238.
- Shiv Shankar and another v. Union of India. (1985) I LLJ 437
- Sirka Colliery Ltd. v. S.K.C. Mines workers Union, 1951 (2) LLJ 52.
- Sitapur Sugar Works. V. State of Bihar 1958 Pat. 120.
- Sitharachary vs. Deputy Inspector of Schools, AIR 1958 AP 78.
- Sojan Framcis vs. Mahatma Gandhi Univrersdity, Kottayam and others. AIR 2003 Kerala 290.
- Spencer and Co. Ltd. v. Their workmen, (1966) I LLJ 714 (LAT)
- State of Bihar v. Deodar Jha, AIR 1958 Pat. 51
- State of Bihar v. Deodar Jha, AIR 1958 Pat. 51
- State of Bombay v. K.P. Krishna (1961) 1 SCR 227: 1960 II LLJ 592
- State of Madhya Pradesh v. Thakur Bharat Singh, AIR 1967 SC 1170.
- State of Madras v. V.G.row, AIR 1952 SC 196, PER Patahjali Sastri, J.
- Suresh, 1997 (1)SCC 319=AIR 1997 SC 1889.
- Swadeshi Industries Ltd. V. Their workmen, (1960) II LLJ 78 (SC).
- Swadeshi Mills Ltd v. Its workmen. (1960) II LLJ 78 (SC).
- Swadeshi Mills Ltd v. Its workmen. (1960) II LLJ 78 (SC).
- Syndicate Bank v. K. Umesh Naik (1994) 2 LLJ 836 (SC)

T

- T.C.M. Ltd v. District Collector, 1997 I LLJ 1061 (Ker).
- T.M.A.Pai Foundation vs. State of Karnataka AIR 2003 SC 355 (2002 (8)SCC 481
- T.N.Rangarajan vs. Government of Tamil Nadu and others. AIR 2003 SC 3032.
- Tata Iron and Steel Co. v. workmen AIR 1972 SC 1917.
- Tramp Sipping Corporation Vs. Green Which Marine Inc. 1975(2)All.E.R.989.

U

- U.P Shramik Maha Sabha v. State of U.P. AIR 1960 All 45

- U.P. Rajya Setu Nigam Sanyukt Karmachari Sangh vs. U.P. State Bridge Corporation, Lucknow and another 1999 II LLJ 1219 (1232) (All)
- Uden Vs. Scaffer, 110 Wash, 391
- Union of India v. Association for Democratic reforms (2002) 5 SCC 294.
- Upper India Copper Mills Ltd. v. Workmen 1954 (2) LLJ 347 (LAT).
- USA in Bryant vs. Zimmerman 278 US 63.
- Utter Pradeshik Shramik Mahasangh, Lucknow v. State of U.P, AIR 1960 All, 45.

V

- Viklad coal merchant v. Union of India. (1984) 1 SCC 619, 641, 642
- Visaka v. State of Rajastan, (1997) SCC 241 at 249

W

- Workers of Bihar Fire Bricks and Potteries Ltd. v. Management, 1953 LAC 81
- Worker's Congress v. Beerbhum Coal Co. 1952 LAC 29 (LAT) Workers of Industry Colliery, Dhanbad v. Management of the Industry Colliery 1953 SC 88
- Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate, AIR 1958 Sc 353.
- Workmen of Motor Industries Co. Ltd. V. Management of Motor Industries Co. Ltd. AIR 1969 SC 1280.

Z

- Zorastrian Cooperative Housing Society, vs. District Registrars, Cooperative Society, AIR 1997 Guj. 136

Bibliography

- Agarwal S.L., Labour relations In India, 1978 The Macmillian Co. of India Ltd, Delhi.
- American Jurisprudence, 2nd Ed., Col-73, 1974, Lawyer's Co-Operative Publishing Company, Rochester, New York-14603.
- Armstrong & Knight, Trade unions and International Relations, 1979,.
- Arthur D. Butlere, Labour economics and institutions, 1961, Amerind publishing, New Delhi.
- Basu, D.D. Shorter Constitution of India, 2001 , Wadhwa,.
- Bipartiate settlement between the bank and their workers 1997, M/S H.P.J Kapoor, Pratap Street,Subash Marg, New Delhi-110 002
- Bradley A.W. & K.D.Ewing, Constitution and Administrative Law, 1997, Ed-XII, Longman
- Bryn Perrins, Trade Union Law 1985,C.J.Armstrong (ed),
- Staying legal, 1999, Library Association publishing, London.
- Charles Barrow and John Duddington Brief cases of Employment, 2000, 2nd Ed. Cavandish publishing Ltd, London.
- Charles F. Andrain and David E. Apter, Political protest and social change, 1995, Macmillian Press Ltd, London.
- Chaturvedi R.G, Law of Fundamental Rights, 1985, Ed III, EBC, P. 3.
- Constance Bakel Motley, Equal Justice under Law, An autobiography, 1998, Dougls & Mc lntyre. Ltd; Canada.
- Cyrus Bina *(et all)*, Beyond Survival wage labour in the late twentieth century; 1996, M.E. Sharpe, Armonk, New York.
- Donald H. wollet and Benjamin Aaron, Labour relations and the Law, 1960, Little Brown & Co.
- John G. Cross, The economics of bargaing, 1969, Basic Books Inc. Publishers, New York.
- Dr. Chaturvedi R.G. Law of Fundamental Rights, 1985, 3rd ed. Eastern Book Company
- Dr. Harish Chandar, Contract of employment and Management prerogatives, 1993, Vijay Publications, Noida, India.
- Dr. Pandey J.N, Constitutional law of India, 1994, ed. 26, Central Law agency
- Edward I. Skyer, The employer, The employee and the Law, 1960, The Law Book Company of Australia Pty Ltd. Sydney.
- Eril Hobsbawn, Industry and Umpire, 1999, Penguin group, London.Capital and development, Edited by Le Slie Sklair, 1994, Routledge, London.

- George Friedman, Industrial Society, 1964, The Free Press of Glencoe, New York
- Giri V.V, Labour Problems in Indian Industry, Bombay, 1951 Asian Publishing House,
- Graham Hollonshead, Peter Nicholls, Employee relations, 2003, 2nd Ed., Stephanie TailbyPrentice Hall (Financial Times) China.
- Gramme Gill, The dynamic of democracy, Elites, civil society and the transactions process, 2000, Macmillan press Ltd, London.
- Hand book of Labour statistics, 1947 p.14 (American Bureau of Labour)
- Hickling M.A, Citrine's Trade Union Law, 1967. Steven & sons Ltd.
- Jain Kagzi M.C, Kagzi's The Constitution of India, , 2001, Vol. 2, Ed. 6
- John Hughes and Harold Pollins, Trade Unions in Grate Britain, David & Charles (Holdings) Ltd, Abbot Devon.
- John R. Commons, Trade Unionism and labor problems, 1967, August M. Kelley publishers, New York.
- John R. Commons, Trade Unionism and Labour problems, 1967, Sentry Press, New York.
- Jphn Burnel, Managing people in charities, 2nd Ed., 2001, ICSA Publishing Ltd, London.Selling Socil change (without selling), Andy Robinson, Charles press series, 2001, Jossey Bass, Sanfarnsisco, CA 94103-1741.
- KermitL. Hall, The Oxford Companion to American Law, 2002 Oxford University press, New York.
- Kothari G.M., A study of Industrial Law, 1987, The Law book Co. Sydney.
- Lenin, V. I, Collected Works, vol. IV (1960), pp. 315-17.
- Lenin. V.I.. Collected Works, Vol, IV (1960), pp. 315-17.
- Leon H. Weaver, Industrial personal security, 1964, Charles C.Thomas Publishers, Illinois, USA.
- Lingegowda. D. Humanism, Bangalore, June, 2005
- Ludwig teller, Labour disputes & Collective bargaining, 1940, Baker Voorhis & Co. Inc.
- Melanie Hunt, Employment Law, 2002, 5th EdLaw pack publishing Ltd, London.
- Melvyn Dubofsky, The State and Labour in Modern America; 1994, The University of North California Press, London.
- Michael Doherty, Jurisprudence; the philosophy of law 2nd Ed. 1997, Old Bailey press, London.
- Momgia J.N, Readings in Indian labour and social welfare, 1980, Atma Ram & Sons, Delhi.
- Neil W. Chamberlian, Source book on Labour, 1958, Mc Graaw-Hill Book Co. New York
- Pai G.B, Law of Employment, 1990 Balaji Law House, Madras.

- Pandit Satyakam Vidyalankar, The Holy Vedas, p.211, Clarion Books, Delhi.
- Paul Edward (*ed*), Industrial relations theory & practice in Britain, 1995, Black well publishers Ltd, Oxford.
- Paul, Davies & Mark Freedland, Labour and the Law, 1983, Stevens & sons Ltd, London.
- Peter Sharkey, The essentials of community care- 2000, Macmillan press Ltd, London.
- Peter Sharkey, The essentials of community care; guide for practitioners, 2000, Macmillian Press Ltd- Hound hills Basingstoke, Hampshire RG216xs and London.
- Rama Jois M, Legal and Constitutional History of India, 1984, Vol I, (National Book Trust).
- Ramanujam, G, The Indian Labour movement, 1986 Sterling Publishers Pvt Ltd, New Delhi.
- Ravid khan, Bombay Textile strikes 1919, 1971 (Mar)IESHE 1-29
- Richard Kidner, Trade Union Law, 1979. Steven & Sons Ltd, London.
- Robert E. Goodin, Reflective democracy, 2003, Oxford Press Oxford.
- Ruddar Bhatt and K.P.M. Sundharam, Indian Economy, 2002 S.chand, New Delhi.
- Saharay H.K., Labour & Social Laws in India, 1988, Eastern Law House, Calcutta.
- Seervai H.M, Constitutional Law of India, 1984, Ed.III, Vol-II, Tripathi.
- Simonhoney ball and John Bowers, Text book on Labour Law, 2000, 7th Ed., Oxford press, oxford.The insecure work force, Edited by Edmund Heery and john Salmon, Routeledge, New York.
- Sloane, Witney, Labour Relations, 1972, Prentice Hall Inc, Englewood cliffs, New Gersey.
- Sorrel, G.H, Law in labour relations; An Australian Essay, 1979, The Law book Co. Ltd, Sydney
- Sreenivasa Murthy H.V., History of India, 1993, EBC, Lucknow
- Sterling H. Schoen and Paymon D.L., Hilgert, Cases in Collective Bargaining and Industrial relations, 1989, Richard D. Irwin Inc., Homewood, Illionois, Ontario.
- T.J.Byres,(*et all*), Rural Labour in India; 1999, Francass, London.
- Thomas A. Kochan, (ed), Challenges and Choices facing American Labour, 1986, The MIT Press, Cambridge, London.
- Thomas Risse (*et all)*The power of human rights, International norms and domestic changes, 1999, Cambridge University press, Cambridge
- Tonyevans, Human rights fifty years on, 1998, Manchester University press, Manchester.
- Violence, Peace & Conflict 1999, Vol-1, Academic Press, California, USA.

- Vithal Bhai B.Patel, Law of Industrial Disputes, Vol.I, 1984, Ed.III, p.344.

Webb(*et all)*, Soviet Communism, A New Civilization, Vol.I, 1941

Winfield, Text Book of Tort (Ch. 17 (p. 524) Street. Ch. 18 Section 2

Articles

- Application on social security legislation- Supreme Court's approach 10 Ban.LJ 199-220
- Ashok Kr.Pandey, and .Prakash, Employees need structure and their satisfaction, 1986 (Jan); 21 IJIR 348-55.
- Asian labour leaders at the ICFTU Oslo congress 1983 (s-o); A.L. 19-25
- Blasd F. Ople, Changing role of Trade unions in developing economics, 1976 (Jan) 24 AL 12-9 14, 17
- British Trade Unions today, involvement in National Economic Studies 1976 (Mys); 24 AL 13-5.
- Concept of strike-whether a fundamental right, 1985 (AP) 18 Lab I C 1-3
- Dr. Hydervali, The jurisprudence of Human Rights,, IBR, Vol. XXX (4) 2003, p. 577
- Labour adjudication in India, 2002 I.L.I.
- Missing relevance of social security in industrial sector under the liberalization2002 (Jan-Mar) 48 IJPA 104-112
- Conditions for work culture, 1974(AP) IJIR 587-98
- Eployees expectations from supervisors, 1983 (O); 44 IJSW 307-10
- Poorva Kurup, Perspectives on Collective Bargaining in India: should Government employees have the right to strike? 2005 LLJ Articles, p. 21
- Rao. V.V.N.A, Alternative disputes resolution system and strikes-A study, 2003, Lab.I.C, Journal, 377.
- Social Justice, Romance and reality, 1991 (Jan-mar) 127 CMIS 7-20.
- Tele-Crusedar, (Monthly journal of BSNL employees union) Vol-IX, June, 2005,No.6
- The Administrator, December, 2001, Lal Bahadur Shastri National Academy of Administration, Mussoorie (Uttaranchal)
- Vandana Mishra, Job satisfaction in peaceful and disturbed textile industries, 1982 (AP) IJIR 619-28.

Reports and Journals

- About Japan series 1993.
- All India Reporter
- Amnesty International Report on China, 2003.
- Amnesty International Report, 2001

- Amnesty International Report, 2002
- Amnesty International Report, 2003
- Amnesty International Report, 2002
- Annual survey of Indian Law, 1980, ILI, New Delhi.
- Asian Law
- Calcutta Weekly notes
- Centralman, May 2000
- Economic and Political Weekly
- Economic Survey 2001-2002
- ILO Report Compiled in 2002
- ILO Report Compiled in 2003
- ILO Report Compiled in 2004
- ILO Report Compiled in 2005
- Indian Bar Review
- Indian Journal of International Law
- Indian National Trade Union Congress, Report: June 1962 to April 1963
- Labour and Industrial Cases
- Labour in Japan.
- Labour Law Journal
- Mainstream, Vol. XXIV, No. 28, dated 25.3.86
- Report of the National Commission on Labour 2002, vol-I (Part-I), P. 334.
- Royal Commission on Trade Unions and Employers' Associations (UK), 1965-68
- Supreme Court Cases
- The Administrator, December, 2001
- Trade Union in word and deed, 2001(Oct) 37(2) IJIR 280-4
- Trade Unionism, Managers and leaders, 2002 (Jan) 38(2) IJIR 177-98

Others

- African Encyclopaedia, Ed. 1974
- Black's Dictionary Ed.IV.
- Encyclopaedia Americana, Vol.25, Ed. 1980
- Encyclopaedia Britannica, 2005
- Encyclopaedia Britannica, Vol. 21 Ed. 1966
- Encyclopaedia Britannica, Vol. 5, Ed. 1976
- Encyclopaedia Britannica; Vol. 21, Ed. 1966
- Encyclopaedia of Japan, 1983, Kodansha Ltd, Tokyo
- Encyclopaedia of Social Sciences, Vol.18, Ed. 1968.
- Halsbury's Laws of England, Vol.4, Ed. 1983
- The Columbia Encyclopaedia
- The Columbia Encyclopaedia, 6th Ed. Gele group, Edited by Paul Lagase.

- The Graw Hill, Dictionary of modern Economics, 1971, p.563.
- The National Commissioner on Labour, 1969
- The New Columbia Encyclopaedia, Ed.1975, p.2631.

News Papers

- Eenadu, (Telugu) Hyderabad edition, 23.1.2004 p. 9.
- India Today, 2002
- Outlook, August 3, 1998.
- The Hindu, (Vijayawada edition), 25.10.2002,
- The Statesman, (Siliguri Edition) 12.10.04
- The Statesman, (Siliguri Edn), March 9th 2004.
- The Statesman, (Siliguri Edn), March 9th 2004.
- The Telegraph (Siliguri edition), 5.8.05
- The Telegraph, (Jobs), (Siliguri edition) 29.6.2004.
- Times of India, (Editorial) 6th July, 1977(New Delhi)

Web Sites

- 1www.socialistaction.org
- Deccanherald.com
- http://college.hmco.com/history/readerscomp/rcah/htm/ah_9521200_labor.htm
- http://reuters.com
- http://www.bl.uk/collections/treasures/magna.html
- http://www.eiro.eurofound.eu.int
- http://www.eurofound.eu.int.htm
- http://www.fff.org/freedom/0698e.asp#top
- http://www.fpcj.jp/
- http://www.kclabor.org/index.html
- http://www.laborstart.org/
- http://WWW.labour reaearch.org/
- http://www.nttls.cojp/fpc
- http://www.nytimes.com
- http://www.oit.org/public/english/bureau/integration/decent/index.htm
- http://www.reainc.org/
- http://www.reapinc.org/Home.html
- http://www.ukwhitegoods.co.uk

- http://www.ustdrc.gov/research/bronfenbrenner.pdf
- Japan news letter (http://home.kyodo.co.jp.)
- Look Japan (www.lookjapan.com)
- Manfred Davidmann, The Right to Strike, 1996
- Tutor2u Limited. tutor2u™
- uno-search
- www. BBC News on line
- www. Revolutionary worker.com
- www. Revolutionarycommunistinternational.co.in
- www. zmag.org
- www.amnesty.org
- www.anc.org
- www.badgerherald.com
- www.eiro.eurofound.eu.int/
- www.encarta.msn.com
- www.encarta.msn.cowww.fee.org/vnews.php?sec=iol&year=1980&month=10
- www.fee.org/vnews.php?sec=iol&year=1980&month=10
- www.file:///G:/cases.html#N_1_
- www.ilo.org.english
- www.japantimes.co.jp,
- www.kclabor.org/know_your_rights1.htm
- www.kclabor.org/know_your_rights1.htm
- www.laborresearch.org/
- www.labourstart.org
- www.labourstart.org
- WWW.mahalibrary.com
- www.marxists.org
- www.Nowa@prodigy.net
- www.peoplesvoice.org.
- www.rbs2.com/atwill
- www.revolutionaryworkerin China#107
- www.thestatesman.net
- www.zmag.org/laborwatch.htm

CDs

- Encyclopaedia Britannica
- Msn Encarta