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

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[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

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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

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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

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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

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[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.-

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[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

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[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

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[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

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[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

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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

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[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.

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[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

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[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

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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

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[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

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[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

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[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)
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> 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

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[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

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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

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[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.

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[81] *CM declares war on hooligans, faces a home truth*, The Telegraph, (Siliguri edition), p, 1.