NATIONAL LAW SCHOOL
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Bangalore

THE RIGHT TO STRIKE

A CRATOLOGICAL PERSPECTIVE

DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF LL.M. (HUMAN RIGHTS)

UNDER THE GUIDANCE OF PROF. T. DEVIDAS

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DECLARATION

I, the undersigned, hereby declare that the work titled **"The Right To Strike: A Cratological Perspective"** is the product of research carried out by me under the guidance and supervision of Prof. T. Devidas at National Law School of India University, Bangalore.

I further declare that this work is original, except for such assistance, taken from such sources, as have been referred to or mentioned at the respective places, and for which necessary acknowledgements have been made.

I also declare that this work has not been submitted either in part or in whole for any degree or diploma at any other university.

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CERTIFICATE

This is to certify that this dissertation, " The Right to Strike: A Cratological Perspective" submitted by Ms. Suman Dash Bhattamishra (ID No. 394) in partial fulfillment of the requirements for the degree of Masters of Laws of National Law School of India University, Bangalore is the product of bona-fide research, carried out under my guidance and supervision.

Date: 09.06.2011
Place: Bangalore

Prof. T. Devidas
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S. D. Bhattamishra

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Introduction

Introduction

The first recorded use of the word was in the year 1768, during the Industrial Revolution.[1] Later, the term started being used to denote any form of collective stoppage of work among any class or section of the society and came to be used in the context of farmers' strikes, writers' strikes, students' strikes, so on and so forth.[2] It evolved as a weapon of resistance to challenge the authority of the ruling few. It was also seen as a revolt against the laissez faire economy and was even criminalized at a point of time as conspiracy. While a definition of the term has been attempted on several occasions, a fairly comprehensive definition has been given in *Uden Vs. Schaeffer, 110 Wash. 391* in the following words:

> **A strike is the act of quitting work by a body of workmen, for the purpose of coercing their employer to accede 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, when they quitted without intention to return to work, whatever may be the reason that moves them so to do.**

Strike is essentially a collective stoppage of work by employees in the sector of their employment.[3] Although legally, the method has been known only in relation to workers in the industrial sector, currently, it is also resorted to by associations of

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[1] K.G.J.C. KNOWLES, STRIKES- A STUDY IN INDUSTRIAL CONFLICT, BASIL BLACKWELL, OXFORD, p.2 (1954)

[2] *Id.*

[3] Charles W., Staudenmayer, *The Right to Strike and Public Interest*, 45 Chi.-Kent L. Rev. at p. 191, (1968-1969)

professionals for the purpose of making their demands heard. The collective stoppage of work is by mutual consent of the participants. It is in reality an expression of protest against what is perceived as unjust or unfair treatment by the employer through denial of legitimate expectations and marks a conflict of interest between the two and is a weapon directed by the former against the latter.

Historically, strikes are the consequences of industrialisation and they have been experienced in every industrialized society. This phenomenon exists in some form or the other as a socio-economic reality. Since productivity of an employer's activity is based upon the inputs of labour, the threatened or actual, partial or complete withdrawal of work can cause a serious economic blow to the employer because a withdrawal of labour would make the latter economically vulnerable and disadvantaged in areas where competition from other players is present.[4]

The strategy of resorting to strikes for the purpose of making demands heard has been resorted to over a long period of time. In the sphere of industrial relations, 'strike' has become a weapon for coercing employers to yield to the demands of employees. Strikes have been resorted to with high frequency in several countries across the world as they are apparently the quickest means of bringing the employers to the negotiation table. It is a direct application of physical power negatively and so has a political flavour to it.

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[4] TONIA NOVITZ, INTERNATIONAL AND EUROPEAN PROTECTION OF THE RIGHT TO STRIKE, OXFORD UNIVERSITY PRESS, NEW YORK, at p.75 (2003)

Although the manner of resorting to strikes has been different at different points of time, it is to be noted that in all societies and in all phases of history, they have had a deleterious impact on the entire social structure. 'Strike' as a method of protest has caused severe harm to the life of the common man by depriving him of his elemental right to a peaceful social life. Apart from the inconvenience which every strike causes through the staging of connected demonstrations and disruption of regular means of public services, strikes have caused particularly serious harm when they happen in the public utility services.

In the Indian context, strikes have become a major issue deserving serious attention due to the high frequency of their occurrence, the violence associated with them and the large -scale losses inflicted on the national economy because of them. Due to the element of violence and political motivation which are often seen to be associated with strikes in India, they result in physical and verbal abuse, disruption of social tranquility and destruction of public as well as private property. Strikes also result in serious loss of man-day affecting industries adversely in terms of production or output.

Owing to the huge losses to national economy and disruption of social life inflicted through the weapon of strike, particularly in Indian industrial relations, the phenomenon has been taken up for a critical examination with a view to trace the exact legal dimensions of the right to strike, the modality through which it operates and the manner in which strike as a form of expression of protest should operate within the larger design of a constitutional framework. The study is attempted from a cratological perspective with a view to understanding the dynamics of power involved in the

exercise of this particular form of expression of protest. As 'civil' society represents a manifestation of structured power relations, the disturbances of the equations of power affecting the relationship among the three primary entities involved, i.e., the government, the employers and the employees, have been taken for an examination in a historical sequence. The factors responsible for the evolution of trade unions, the genesis of the concept of labour welfare, the international recognition of the freedom of association in industrial organizations have been taken for analysis and through this an attempt is made to examine 'strike' as a weapon of protest. Different models of industrial relations present in other countries have been looked into in a bid to evaluate the current method of resorting to strikes in India.

The study is principally resting on the understanding of Law as power.[5] The research effort is to trace the flaws, if any, in the present manner of resorting to the weapon of strike, to find out whether it is appropriate in the context of structured power relations and to determine what needs to be done in the larger interest of common good and welfare.

[5] Cratology is the Science of power. See KARL LOEWENSTEIN, POLITICAL POWER AND THE GOVERNMENTAL PROCESS, THE UNIVERSITY OF CHICAGO PRESS, CHICAGO AND LONDON, p. 5 (2nd Ed.1965)

Research Methodology

Research Methodology

OBJECTIVES OF THE STUDY

The purpose of this research is to examine the right to strike from a cratological perspective. The object is to trace and analyse the dynamics of power-relationships involved in the process and method of strikes by understanding the nature of employer-employee relationships since the ancient period till date.

SCOPE AND LIMITATIONS

The scope of this research paper is confined to a study of the factor of power involved in the idea of industrial disputes with a specific reference to the right to strike. The same has been attempted by making a historical inquiry into the life and conditions of the working class in difference points of time. The impact of strike has been analysed by an insight into the affected interests, the ethical aspects of the right to strike, the factor of coercion involved in it and the relevance of the method in point of time.

METHOD

The method of research adopted for the study is essentially doctrinal and factual data are used to strengthen the study.

SOURCE OF DATA

To accomplish the aforesaid objective I have relied heavily on the secondary data collection obtained from various books on the subject of Industrial Law. I also went through numerous articles touching on the topic of my project. I covered extensively statistical data and literature available in the area to highlight the impact of strikes on the Indian societal structure.

HYPOTHESES:

The following hypotheses have been taken:

1. Strike is a form of expression of protest
2. The right to strike is subject to law.

RESEARCH QUESTIONS

The research questions adopted for the inquiry are as follows:

1. Is there recognized in Indian Law a right to strike?
2. When did 'strike' as a form of protest originate and in what context?
3. Does the initial justification continue to subsist now in the context of guaranteed human rights and freedoms?
4. Should the legal system recognise a right to strike?
5. If it should, what should be the parameters for its exercise?

CHAPTERISATION

The Introduction intends to give an understanding of the meaning of strike and the equations of power involved in the concept of industrial disputes. The first chapter studies the historical factors responsible for the evolution of the right to strike as a method of protest against the employers. This chapter is divided into three subchapters. The first segment gives an overview of the principles of labour welfare followed in ancient India, as reflected mainly in Kautilya's Arthashastra. The second segment offers an insight into the life and conditions of the Indian working class in the Medieval era culminating in 1858. The third segment gives a detailed account of the colonial policies of the British up to 1950 and the resulting chaos among the workers which ultimately led to the passing of three important legislations to regulate industrial relations in the country.

The second chapter provides an account of the evolution of ILO and its contribution to the concept of labour welfare. The object of this chapter is to give an insight into the efforts of ILO for granting international recognition to the collective bargaining rights of the workers. A study of important ILO Conventions and the tripartite structure of the organization furthering the cause of workers' participation has been analysed in this chapter. The third chapter gives a detailed account of the laws in place for governing the industrial relations in India, the flaws in the legislations and the Indian experience with strikes from the commencement of the Indian Constitution till date. A study of some important strikes till date has been made in this chapter.

The fourth chapter deals with the response of the Indian Judiciary to the idea of strike. The fifth chapter deals with several models of industrial relations as followed in different parts of the world. A comparison has been attempted among the several models currently in existence. UK, USA, Japan, Germany and Ireland are the countries whose industrial relations models have been examined in detail in this chapter. The sixth chapter is the analytical part of the research paper and it details a cratological critique of the right to strike. Finally, the Conclusion sums up the stand taken by the researcher in all the above chapters.

MODE OF CITATION

A uniform mode of citation has been followed throughout the paper. The Harvard Bluebook style of citation has been used by the researcher.

CHAPTER-1

The Right to Strike: A Historical Overview

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The Right to Strike: A Historical Overview

1.1 Ancient Indian Philosophy and the Working Class

The life and economic conditions of the working class in ancient India present a picture of liberalism and respect for the rights of labourers in the societal structure. Kautilya's *magnum opus* Arthashastra contains extremely relevant provisions for ensuring that the dignity of labour was recognized at all times and at the same time the elemental rights of labourers were protected from exploitation. His concept of labour economics was based on the twin principles of justice and fairness and the idea that wages should be commensurate with the volume of work done.[6] Much prior to Adam Smith's Labour theory of Value, Kautilya had come up with the idea that just wages should be paid to the labourer for the quality and quantity of work done by him.[7]

The evaluation of work done by the worker was determined with reference to the amount of time spent on the work, the volume of work done and the skills with which

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[6] Charles Waldauer, William J. Zahka and Surendra Pal, *Kautilya's Arthashastra: A Neglected Precursor to Classical Economics,* 31:1 Indian Economic Review, pp. 101-108, (1996)

[7] Article 39 (d) of the Indian Constitution seems to capture this principle as fundamental in the governance of the country. It reads as follows: The state shall, in particular, direct its policy towards securing-

..... (d)*that there is equal pay for equal work for both men and women.*

the work was accomplished.[8] These, for Kautilya, were the three indicators to determine the value of labour and for the wages to be fair, these should be taken into account. Kautilya was of the view that fixation of wages is not just a quantitative affair but also qualitative.[9] Chapter 13 of the Arthashastra contains an exhaustive list of rights and duties which the employer and employees during all transactions.

Kautilya's ideas for fixation of fair wages were apparently balancing the power-relations and equations between the employer and his employees in such a manner that neither of them suffered any disadvantage. Preventing a conflict of interests was apparently the objective and it was sought to be reached in the first place by the State protecting the interests of the working class, the weaker of the parties through the concept of just wages arrived at on the skills of the workman and the final output of worker as mentioned before.[10]

Chapter 13 concerning the treatment of workmen provided that workers should receive wages as agreed upon, in conformity with the work and time and in case of absence of agreement to that effect, the wages for a cultivator, cowherd and a trader should be one- tenth[11] of the total produce of crops or of butter and the goods dealt with by them. However, if the wage is agreed upon, it shall be as per the agreement. In case of non-payment of wage, the fine has been stated to be one-tenth or six *panas*. In case of

[8] Charles Waldauer, *Supra* Note 6

[9] *Id.*

[10] Charles Waldauer, *Supra* Note 6

[11] The principle of 10% of economic gain (Panya dasha bhagam) finds application even in relation to the taxing power. *Id.*, at p. 106

denial for payment of wages, the fine was fixed at twelve *panas*. The added protection was through the Rajadharma[12] duty of the King, the chief executive power-holder, to ensure compliance with the law, in which case, he was assisted by the wandering spies.[13] The disparity in power relations was corrected through affirmative action by the state exercising its executive power to ensure compliance with the applicable law.[14]

In Chapter 14 of his Arthashastra, Kautilya mentions that a labourer who does not do his work after receiving the wages became liable to a fine of twelve panas.[15] He also allows for detention of the worker until the work is done.[16] Compulsion to perform the work agreed upon was the method indicated for enforcing contractual obligations. Likewise, when the employer and the employee have agreed that the employer shall get the work done by the employee only and that the latter should work only for the former, the breach of such agreement would make the party causing the breach liable for 12 panas.[17] The concept of freedom to choose work was subject to the restraint

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[12] According to the principle of Rajadharma, the King is punished ten times more severely for not discharging the duties assigned to him. See R.M. Jois, Seeds of Modern Public Law in Ancient Jurisprudence and Human Rights-Bharatiya Values, Eastern Book Company, Lucknow, p. 49 (1990)

[13] The Indian principle of Rajaano Chaara Chakshusha (The King has spies for eyes). The modern day equivalent will be the intelligence apparatus of the State.

[14] Entry 8 of List I of Schedule VII of the Indian Constitution places "Central Bureau of Intelligence and Investigations" as an exclusive Union subject of competence where the State has no power to legislate and consequently , by virtue of Articles 245 and 254(1), provides the required executive power to assist the Union for purposes of discharging the obligations imposed by articles 256 and 355 of the Constitution. Affirmative action by the executive power-holders can be said to be the requirement even now in the Constitution.

[15] R.P. KANGLE, THE KAUTILYA ARTHASHASTRA PART 2, MOTILAL BANARSIDASS, DELHI, at p.238 (1972)

[16] *Id.* at p. 239

[17] *Id.*

voluntarily accepted by the parties and would seem to require carefully considered decisions leading up to the agreement.

It is Kautilya's position that if a labourer has received his wages from a person other than the employer after having completed his work, he may not be compelled to do additional work against his will.[18] It is significant to note that Kautilya relates wages with the work done and not for something that is not done although Kautilya's contemporaries are of the opinion that in case the labourer has arrived and the employer doesn't give work, the work shall be considered to have been done, However, Kautilya concedes to the point that if after allowing even a little work to be done, the employer doesn't allow the remaining work to progress any further, the work shall be considered to be done. The alternate view, however, has the merit of preventing the employer from arbitrarily denying the opportunity to earn wages after the wage-earner has demonstrated willingness to work. Kautilyas position has applicability in normal circumstances and would not conflict with the alternate view which will find applicability only when a willing worker is denied to opportunity to work and earn wages. Kautilya's position that if, after allowing even a portion of the work to be done, the employer did not allow the remaining work to progress any further, the work shall be deemed to have been done and the wage- earner will be entitled to full wages, would seem to reflect a marriage of the two positions earlier noticed, affirming the surmise that the two are not antagonistic points of view.

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[18] R.P. Kangle, *Supra* Note 15

In protection of the interests of the working class, apparently, Kautilya required the employer to pay for the work done by the employee if it was more than what was agreed.[19] This would seem to reflect the principle that benefits and burdens go together and unjust enrichment was not encouraged. The higher economic power of the employer was thus controlled through the equitable principle. His view that if labourers formed a union, the members of the union were to divide the wages as mutually agreed upon or, absent the agreement, in equal portions, would seem to indicate a position where a group could take up a work in their group identity, apparently acknowledging a right to form associations and unions.[20]

1.2 Conditions of the Working Class During the Medieval Period: An Account up to 1858 A.D.

Foreign intrusions into the Indian territory have had a massive impact on the socio-economic fabric of the nation. An evaluation of the economic conditions of the people during the medieval period is essential to understand the dynamics of power-relationships governing the employers and the workers historically. This period reflects varying shades in the contours of employer-employee relationships because of the changes in political regimes, the ascendancy to power of different monarchies in

[19] R.P. Kangle, *Supra* Note 15, at p. 239

[20] *Id.* at p.240

different phases and also the different policies adopted by each of them towards the Indian working class.

The very first prominent foreign invasion of India during this period was by the Arabs in 715 A.D. and they continued to rule Sindh for over 300 years. However, since the ambit of their influence was confined to the Sindh territory and therefore, it failed to have any major impact in the rest of the Indian territory. The very next invasion was by the Turks in 991 A.D. who established their hold in several parts of the country including Ajmer, Gwalior, Banaras, Kannauj and Badaun.[21] With the Turkish invasion, the Slave Dynasty began establishing its political supremacy and over time, India started losing its sovereignty to subsequent Muslim invaders, i.e., the Khiljis, the Tughlaqs, the Lodhis and the Mughals. Each of these dynasties ruled India for some centuries and in the process, had a deep impact on the social and economic life of the people.

Of all the aforementioned periods in the history of pre-colonial foreign invasions, the Indian economy was at its best during the Mughal period. As per available historical records, India was the second largest economy in the world from 1526-1858 A.D.[22] However, the conditions of the working class during the period denote the lack

[21] http://www.gatewayforindia.com/history/muslim_history.htm#Early%20Muslim%20Invasions, Accessed on 13.04.2011

[22] An estimate of India's pre-colonial economy puts the annual revenue of Emperor Akbar's treasury in 1600 at £17.5 million (in contrast to the entire treasury of Great Britain two hundred years later in 1800, which totalled £16 million). The gross domestic product of Mughal India in 1600 was estimated at about 22.6% the world economy, the largest in the world.By this time the Mughal Empire had expanded to include almost 90 per cent of

of adequate focus on the State's part to work towards their upliftment and welfare.[23] This is evident from the accounts of several European travellers who came to India at the time of the Mughal rule.[24]

The ordinary people ate their main meal in the evening and survived on a very simple diet. Barter system was still in vogue in several corners and village artisans were generally paid with commodities in exchange of their services.[25] Landless peasants and labourers suffered from extreme poverty and were treated as untouchables or *kamin* and they were the ones who suffered the most during the famines which hit India quite frequently in that era. As per reports, the wages paid to a huge chunk of the Indian workers was less than two rupees a month. In those days, it is said that a family could be fed on two rupees a month.[26]

Further, revenue administration of the Mughals was exploitative and amounted to further deterioration in the living standards of the people. In sharp contrast to the Kautilyan principle requiring one-tenth of the total produce to be paid as tax to the State, the Mughals introduced the principle that one-third of the total produce was to be

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South Asia, and enforced a uniform customs and tax-administration system. In 1700 the exchequer of the Emperor Aurangzeb reported an annual revenue of more than £100 million. See Angus Maddison, *The World Economy: A Millennial Perspective*, OECD Publishing House, Paris, 2001 at p. 79.

[23] For example, Ralph Flitch who visited Banaras during the sixteenth century was of the opinion that in India people go about naked and on similar lines, De Laet wrote that the labourers in India always had insufficient clothing to keep themselves warm and cozy in the winter.[23] The labourers stayed in mud huts generally with little or no furniture and very few earthen utensils.[23] See Satish Chandra's *History of Medieval India* as cited below.

[24] SATISH CHANDRA, HISTORY OF MEDIEVAL INDIA (800-1700), ORIENT LONGMAN, NORTH DELHI, pp. 297-98 (2008)

[25] *Id.*

[26] *Id.*

paid to the State in the form of tax.[27] The principle was relaxed to a great extent by Akbar, however Jahangir revived the policy after ascending the throne and even added the religious tax of Jizya to the regular taxes.[28]

The exploitation of the working class continued for several centuries and finally with the rise of the Marathas, there was hope of better conditions of life and social security. Although India regained her position of being the wealthiest economy in the world under the Marathas, the victory was short-lived.[29] That is because the long years of war between the Mughals and the Marathas had drained the finances of the country. In several pockets, peasants had given up farming, regular business and trade were paralysed because of continuous warfare and the system of tax administration had proved to be highly ineffective.[30] Although during the tenure of Chhatrapati Shivaji, certain efforts were made to relieve poor workers from the burden of taxes and entitle them to certain benefits, it proved to be a vague attempt as the mechanism for revenue administration was obsolete and could not ensure that the benefits actually reached the people.[31]

The long history of warfare had a deleterious impact on the life of the Indian working-class which had already gone through several phases of exploitation under the foreign invaders. Finally, after a long series of significant war-fares starting with the

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[27] http://www.indianetzone.com/47/revenue_system_mughal_dynasty.htm, Accessed on 02.06.2011

[28] *Id.*

[29] http://www.indianetzone.com/23/causes_defeat_marathas_anglo-maratha_wars.htm, Accessed on 02.06.2011

[30] *Id.*

[31] *Id.*

Battle of Plassey in 1757 and culminating in the Sepoy Mutiny of 1857, the position of the British East India Company was consolidated in India.[32] By the Government of India Act of 1858, the powers of the East India Company were transferred to the United Kingdom and India became a colony of the British empire by the provisions of the Act.[33]

1.3 The Indian Working Class Movement: An account up to 1950

The arrival of the British in India ushered in a plethora of colonial policies aimed as a result of which the working class in India suffered from several problems and difficulties. To begin with, the conditions of living of Indian workers were pathetic. A survey of available literature reveals that during this period, most of the industrial workers were ill-paid and were recruited on such low wage standards that any high level of efficiency could not be expected from them because of the mounting pressures of family living and expenditure.[34]

A report of the Royal Commission aimed at studying the impact of the British policies on the economic condition of the working-class reveals that the workers were treated with so much neglect and apathy that even adequate statistics were not

[32] STANLEY WOLPERT, A NEW HISTORY OF INDIA, OXFORD UNIVERSITY PRESS, pp. 239–40 (1989)

[33] *Id.*

[34] RADHAKAMAL MUKERJEE, THE INDIAN WORKING CLASS, HIND KITABS LTD., BOMBAY, at p.259 (1951)

available on government records in relation to the workers' standard of living and their problems during this period[35]. The Report of the Royal Commission also states that among the several maladies associated with labour conditions, the most important was the poor conditions of health of the workers as a result of which they frequently absented themselves from work.[36] Not only that, it also led to reduced efficiency which had a far-reaching impact on the industrial output as such.

Accounts and records on the conditions of workers in Indian factories also present a somber picture. Destitution, disease and ignorance were the common traits of the employees and they were not only under-fed and under-clothed but were also surviving in poor housing conditions.[37] Poverty was widespread and deep-rooted and the life of the Indian worker was a continuous struggle against this cancerous phenomenon. The worst working conditions during the pre-independence era were to be found in the mushrooming industrial areas of Bombay and Calcutta.[38]

The Royal Commission report also puts on record the fact that the workers in these areas were characterized by extremely poor conditions of health, suffered from inadequate nutrition and were noticeably under-weight in comparison to workers of the other parts of India.[39] One of the reasons for this could be the direct and graver impact of the British administration, laws and atrocities in these areas because of their

[35] Radhakamal Mukerjee, *Supra* Note 34, at p. 260

[36] *Report of the Royal Commission on Labour in India*, Agricole Publishing Academy, Calcutta, 1983, at p. 250

[37] AHMAD MUKHTAR, FACTORY LABOUR IN INDIA, MADRAS METHODIST PUBLISHING HOUSE, MADRAS, p.5 (1930)

[38] *Id.*, at p.6

[39] *Report of the Royal Commission on Labour in India*, *Supra* Note 36, at p. 246

commercial and political significance. In most cases, the workers were housed in a single room, which were neither adequately lighted nor ventilated and were overcrowded with workers of both sexes. [40] The poor conditions of life of the workers led to raging alcoholism and the insanitary conditions were the cause of the spread of several diseases which took a heavy toll on the life of the labourers.[41]

To add to the poverty and sickness- stricken living conditions of the Indian worker, several other unfair practices were in vogue in the industries and factories that made life miserable for the Indian worker. In 1872-73, Major Moore, Inspector-in- Chief of the Cotton Department highlighted the bad condition of labourers in the cotton weaving and spinning mills of Bombay.[42] Among other things, he pointed out that the plight of the weavers and spinners was augmented due to unduly long working hours and exploitation of women and children who were made to work without the regular weekly day rest.[43]

The rise of spinning and weaving mills in Bengal had a deleterious impact on the health of the working class and in response to the excessive work which they were made to do in the factories, Mr. J.A. Ballard[44] suggested that the promulgation of a Factories Act became imminent in the light of the inhuman conditions of the workers,

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[40] R.P. Kangle, *Supra* Note 15, at p. 239

[41] *Id.*

[42] Major Moore, *Administration Report of the Cotton Department*, Bombay, for the year 1872-73, at p.6

[43] *Id.*

[44] Mr. Ballard was appointed as the Mint Master of Bombay in 1872-73 and in his report in the "Bulletins of Indian Industries and Labour, No. 37 (1926) at p.2, he has made the above-mentioned statements.

with special emphasis on the protection of the interests of women and children[45]. On similar lines, Mr Alexander Redgrave[46], in a report submitted by him in 1874, pointed out that employment of child labour which was at its peak in the cotton industry as well as long hours of work stretching up to 14 hours in a day without rest or leisure were a menace for the Indian Working Class.[47]

1.4 Rise of Labour Unrest: Initial Stages

The sorry state of affairs in the Indian factories and industries and the general apathy of the people, the government and the employers towards the genuine and far-reaching problems of the workers resulted in unrest among the masses. A largely capitalistic economy with the chains of control in the hands of the entrepreneurs led to discontent among the poor, working majority, who while their masters dined in luxury, were toiling hard for a day's meal.[48]

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[45] Ahmad Mukhtar, *Supra* Note 37, at p.12.

[46] Mr Alexander Redgrave was appointed as the Inspector of Factories in 1874.

[47] Satish Chandra, *Supra* Note 24.

[48] Radhakamal Mukerjee, *Supra* Note 34, at p.372

measures were introduced as a result of which till 1928, the number of strikes became fewer.[53]

1.5 Some major Strikes in the Indian Industries in the Pre-independence Era

A major strike of 1921 which was immensely significant in terms of its amplitude and impact was the Assam Tea Garden strike which resulted in a large scale of migration of garden coolies from certain areas of Assam. At the Chandpur railway station, the peaceful and destitute coolies who had withdrawn from work were attacked by Gurkhas and this ignited several raging sympathy strikes on the Assam Bengal Railway station and on river steamers. Consequently, there was complete dislocation of the railways for over three months.[54]

The next major strike happened in Bombay and involved a massive support of over 1, 60,000 workers. It was designed as a protest against the withholding of bonus which the textile operatives were obtaining for five years and which they considered to be a part of their wages.[55] The strike had a sequel to it in the year 1925, which was even wider in terms of its magnitude. It led to a loss of 11 million working days and proved

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[53] *Report of the Royal Commission on Labour in India*, *Supra* Note 36, at p.333

[54] Radhakamal Mukerjee, *Supra* Note 34, at p.375

[55] *Id.*

to be an enormous success as the workers obtained restoration for the loss of their bonus and wages.[56] Huge general strikes occurred again in 1928 and 1929 in Bombay involving thousands of people every time.[57]

However, the most significant strike of 1919 originated in the Bengal Jute Mills and it affected over 2,72,000 jute mills in Hooghly. The strike was a protest against the proposal of the employer to raise the working hours of the employees by 55-60 hours per week. It went on for a period of 11 weeks and was finally settled by negotiation after most of the demands of the workers were conceded to. In 1938, there was another major strike in the Bengal jute mills involving around 2,91,000 workers. The workers suffered a loss of 35 ½ lakhs of wages.

That year, the workers of Kanpur Jute Mills also went on strike and over 50,000 of them stopped working. A very significant aspect of the strike was that the employers denied to accept any kind of intervention from the Government and stated that they would participate in the mediation and conciliation proceedings only when the workers approached them individually and not through the labour union. Likewise, in Jamshedpur, over 26,000 workers went on strike in opposition of a direction of retrenchment. This strike lasted for a period of 105 days and led to a loss of around 25 lakhs of wages of employees. On the employer's side, losses were calculated to touch 22 lakhs.[58]

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[56] Radhakamal Mukerjee, *Supra* Note 34, at p.375

[57] *Id.*

[58] Stanley Wolpert, *Supra* Note 32, at pp. 239–40

These were some of the major precursors to the current industrial strikes. It is important to note that these strikes arose out of elemental economic necessities and inabilities of the workers to cater to the most fundamental human needs. The formation of labour unions to agitate for the rights of workmen was intended to counter the high-handedness of the employer. The indifference of the then society to importance of labour and the awakening of the Indian working class to its dues in terms of minimum labour standards, led to the development of strike as a weapon to put forth claims before the employer and to compel the latter to concede to their demands.

1.6 Pre-Constitutional Laws Enacted to Deal with the Crisis

As a result of constant conflict in the form of violent strikes and lock-outs in the industrial sector resulting in large-scale loss of man-days and output, the requirement to devise a legal framework for regulating industrial relations was felt by the British Government. With an objective of furthering its colonial interest, the then government passed three important enactments based on the British Trade Unions Act and the Trade Disputes Act.

The Regulatory Framework for managing employer employee relations in India was principally in three enactments, viz., the Trade Unions Act, 1926, the Industrial

Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947, all adopted during the British colonial regime.

The Trade Unions Act, 1926:[59]

The primary purpose of the Trade Unions Act was to make provisions for the registration of trade unions "on compliance with certain stated conditions designed to ensure that the Union is a *bona fide* Trade Union, and that adequate safeguards are provided for the rights of its members" and to promote their interests.

Under Section 2 (h) of the Act, "Trade Union" means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions:

"Provided that this Act shall not affect...

(ii) any agreement between an employer and those employed by him as to such employment;"

This exclusion of the Act from applicability to any agreement as stated in section 2 Proviso (ii) above would seem to place the entire employer-employee relationship to

[59] The Trade Unions Act received the assent of the Governor-General of India on 25th.March, 1926 and came into force as the Indian Trade Unions Act 1926 from 1st.June,1927.

the contract of employment and the role of the Trade Union will be only in setting the terms of the agreement between the employer and the employee.

The definition in Section 2 (g) of a "trade dispute" as meaning "any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises;" further strengthens this supposition in relation to the role of a Trade Union.

Section 15 sought to protect the legal, political, economic and other interests of trade unions and their members. In the process, it also made certain provisions for granting immunity to members of the trade union for certain actions done in pursuance of any trade dispute. Section 17 of the Act provides for immunity from the offence of *criminal conspiracy* for any act done in furtherance of the objects of trade unions as specified in section 15.[60] The only object of the Trade Union to

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[60] The Trade Unions Act, 1926 [16 of 1926], Section 15: "The general funds of a registered Trade Union shall not be spent on any other objects than the following.-namely:--

(a) the payment of salaries, allowances and expenses to [office-bearers] of the Trade Union;

(b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employ;

which this provision will stand applicable is what is stated against (d) "the conduct of trade disputes on behalf of the Trade Union or any member thereof" and the definition of "Trade Dispute" will determine the scope of the immunity. All other items only go to indicate matters on which the general funds of the Trade Union can be spent and none of them will amount to an object of the Trade Union. The only case in which the immunity will not be available to members of the trade union is when it is an agreement to commit an offence.[61] Any illegal act attracted section 120 A of IPC under which any illegal act amounted to the offence of

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(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or (under) policies insuring members against sickness, accident or unemployment;

(h) the provision of education, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the [appropriate Government] in the Official Gazette.

[61] The Trade Unions Act, 1926 [16 of 1926], Section 17: No (office-bearer] or member of a Registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence."

criminal conspiracy. But, section 120 B gave a limited immunity from the charge of criminal conspiracy for conduct which involved illegality but did not attract a penalty of imprisonment in excess of two years.[62] Section 18 of the Trade Unions Act provided that no civil suit or legal proceeding can be maintained in any Civil Court against any registered trade union or any office-bearer or any member thereof in respect of any act done in *contemplation or furtherance* of a trade dispute to which a member is a party.[63] The definition of a trade dispute by section 2 of the Act and the proviso that the Act shall not affect any agreement between an

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[62] Indian Penal Code, 1860,[4S of 1860], Section 120A: "When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object." *Indian Penal Code, 1860, [45 of 1860], Section 120B*: (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

[63] The Trade Unions Act, 1926 [16 of 1926], Section 18: "(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any [office-bearer] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Unions."

employer and those employed by him as to such employment would seem to limit the scope of this immunity to the exercises involved in settling the terms of employment or the conditions of labour for the contract of employment, and after the commencement of The Industrial Employment (Standing Orders) Act of 1946 to the exercises under that Act for finalizing the contents of the standing orders. The exercise is essentially a consultation of affected interests and is political in its essential character in that it refers to a position anterior to structuring of power equations for the purposes of the law and should be immune from legal consequences if to be effective. Even so, only a qualified immunity has been extended.

Under section 16 of the Trade Unions Act, provisions have been made for the constitution of a separate fund for political purposes[64] to facilitate participation of trade

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[64] The Trade Unions Act, 1926 [16 of 1926], Section 16[1]: "A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2)" which are:

the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under [the Constitution] or of any local authority, before, during, or after the election in connection with his candidature or election; or

(a) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(b) the maintenance of any person who is a member of any legislative body constituted under [the Constitution] or of any local authority; or

(c) the registration of electors or the election of a candidate for any legislative body constituted under [the Constitution] or for any local authority; or

(d) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind."

union members in the primary political power processes of the state. Section 22 of the Trade Unions Act requires that at least one-half of the officers of a Trade Union should be persons actually engaged or employed in an industry with which the trade union is connected.[65] It would imply that the other half of members of the office bearers of a trade union need not be connected with the industry in any manner but this latitude is conferred by the definition of the trade union itself. However the word "primarily" in the definition would seem to be unnecessary if regard be had to the purpose of regulating industrial relations and can be amended out to confine the objects of the trade union to regulating industrial relations only. Section 21 of the Act places the rules of the trade union superior to the law in making the right conferred by it "subject to the rules of the trade union to the contrary" and would be impermissible as amounting to a power to modify law by a contract in a matter of an extended privilege.

Under section 21, the Act allows membership of minors who have attained the age of 15 years in trade unions.[66] Section 9-A provides that the minimum membership

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[65]The Trade Unions Act, 1926 [16 of 1926], Section 22[1]: "(1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected: Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order." The proviso would aspect matters of policy and cannot be delegated to the executive especially after the constitution has come into force with the duty on the executive to ensure compliance with every applicable law. See Article 14 and 256 read with Article s 53(1) and 154(1).

[66]The Trade Unions Act, 1926 [16 of 1926], Section 21: "Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules."

of trade unions is limited to seven.[67] The Act also doesn't specify an upper limit for the number of trade unions in an industry.

The Industrial Employment (Standing Orders) Act of 1946:

The Act was passed with the objective of protecting employees from the high-handedness of their employers who would not define the terms and conditions of service of the industry. With rising labour unrest and unceasing conflict between the employers and employees, the need for standing orders was felt by the legislators in pre-independent India. The incentive behind this enactment of this legislation was gathered from the experience that standing orders play a very vital role in minimizing industrial conflict and encouraging a harmonious labour-management relationship by defining the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc.[68]

The Act is based on the underlying premise that workers have a right to know the conditions under which they are required to work when employed in the industry

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[67]The Trade Unions Act, 1926 [16 of 1926], Section 9-A: "A registered Trade Union of workmen shall at all times continue to have not less than ten per cent. or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members."

[68] The Industrial Employment (Standing Orders) Act 1946 [20 of 1946], Object of the Act: "The object of the Act is to have uniform Standing Orders providing for the matters enumerated in the Schedule to the Act, that it was not intended that there should be different conditions of service for those who are employed before and those employed after the Standing Orders came into force and finally, once the Standing Orders come into the force, they bind all those presently in the employment of the concerned establishment as well as those who are appointed thereafter." Available at Gaz., of India, 1946, Pt. V, pp. 179 & 180

and therefore, it is the duty of the employer to reveal with sufficient precision the conditions of employment in his industrial establishment.[69] The standing orders need to be certified by the Certifying authority after forwarding a copy of the draft standing orders to the trade union or workmen concerned and giving them the opportunity to be heard while putting forth their opinion in connection with the standing orders.[70] Originally, the Act did not grant the Certifying Officer any right to decide upon the reasonableness or fairness of the standing orders before certifying them although he had the right to make some alterations or modifications in the standing orders.[71] This

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[69]The Industrial Employment (Standing Orders) Act 1946 [20 of 1946], Long Title: "An Act to require employers in industrial establishments formally to define conditions of employment under them."

[70]The Industrial Employment (Standing Orders) Act 1946 [20 of 1946], Section 5: .-"(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice. (2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly. (3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

[71] The Industrial Employment (Standing Orders) Act, 1946 [20 of 1946], Section 4: Conditions for certification of standing orders.--Standing orders shall be certifiable under this Act if--

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act ;

pattern of certification continued even after 1950 but finally, in 1956, the Act was suitably amended to the effect that the Certifying Officer is under an obligation to decide whether or not the standing orders laid down by the employer are reasonable, just and fair.[72] Under section 13, the Act prescribes punishment for an employer who fails to submit draft standing orders within the prescribed time-limit as provided under section 3[73] or modifies them in contravention of section 10 or fails to act in accordance with the prescribed standing orders.

Although most of the provisions in the Act seem to have been designed keeping in mind the requirements of the working-class, it is essential to note that a major flaw in

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and it [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. Subs. by Act No. 36 of 1956, S. 32, for 'shall not be the function". (w.e.f. 17-9-1956)

[72]The Industrial Employment (Standing Orders) Act 1946 [20 of 1946],Section 4: "Standing orders shall be certifiable under this Act if-- (a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and (b) the standing orders are otherwise in conformity with the provisions of this Act; and it 1*[shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

[73]The Industrial Employment (Standing Orders) Act 1946 [20 of 1946],Section3: (1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment. (2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. (3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong. (4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section.

the legislation lies in section 14. Under this provision, the "appropriate government"[74] may by notification exempt an industrial establishment or any class of industrial establishments from all or any of the provisions of this Act, conditionally or unconditionally. This section negates the impact of the Act to a great extent and violates the fundamental right of the workers to make an informed choice before agreeing with the employer to deliver their services in his industrial establishment. The words "conditionally or unconditionally" used in the section grant an unqualified domain of discretion to the Central or State Government to exempt industrial establishments from conforming to the standards prescribed under the Act. This has a potential to endanger effective bargaining between the employers and employees and in the process, defeat the very purpose for which the Act was passed.

The Industrial Disputes Act of 1947:

The objective of the Act, as the name suggests, was to provide for resolution of disputes between employers and workmen by formally acknowledging the right of the latter to represent themselves adequately through persons of their

[74]The Industrial Employment (Standing Orders) Act 1946 [20 of 1946], Section 2[b]: " 'appropriate Government' means in respect of industrial establishments under the control of the Central Government or a [Railway administration] or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government: [Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]"

choice.[75] The Act was one of the major initial contributors to the protection of the interests of workers against their employers.

Prior to 1947, industrial disputes were settled under the provisions of the Trade Disputes Act. However, the working of the Trade Disputes Act was unsatisfactory and it was felt that there was an urgent need to replace it.[76] One of the most glaring defects in the Trade Disputes Act was that although restrictions were imposed on the rights to strike and lockouts, there was no provision laying down an institutional arrangement under the Act for the settlement of industrial disputes.[77] To overcome the short-coming of this Act, the Industrial Disputes Bill was introduced in the Legislature and one of the most important contributions of this Bill was to provide for the creation of institutions whose primary objective was to settle disputes between the employer and employees effectively. Provisions for voluntary settlement of industrial disputes, conciliation, arbitration and reference were also made in the Bill.[78]

Thus, the evolution of a mechanism for settlement of disputes and redressal of grievances was initiated for the first time in the aforementioned Bill which became an Act in 1947. Among other things, the Act is significant as it deals explicitly with strikes, lock-outs and retrenchment. An examination of the provisions related to strikes would

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[75] VAN DUSEN KENNEDY, UNIONS EMPLOYERS AND GOVERNMENT, PC MANTAKALA AND SONS PVT LTD., BOMBAY, p. 39 (1966)

[76] The Industrial Disputes Act, 1947 [14 of 1947], Statement of Object and Reason: "An Act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes."

[77] See Gazette of India, 1946, Part V at pages 239 and 240.

[78] *Supra* Note 76

be relevant to the purpose of this paper. Section 23 of the Act prohibits strikes and lock-outs during the pendency of conciliation or arbitration proceedings.[79] A strike or lock-out contravening the provisions of this section shall be illegal under section 24 of the Act.[80] The Act does not prohibit strikes even in public utility services. Under section 22, it is laid down that due notice has to be given by employees of a public utility service before they resort to strike.[81]

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[79] The Industrial Disputes Act, 1947 [14 of 1947], Section 23: "No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings; (b) during the pendency of proceedings before [Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings; (bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

[80]The Industrial Disputes Act, 1947 [14 of 1947], Section 24[i]: "A strike or a lock-out shall be illegal if it is commenced or declared in contravention of section 22 or section 23"

[81]The Industrial Disputes Act, 1947 [14 of 1947], Section 22: "(1) No person employed in a public utility service shall go on strike in breach of contract-- (a) without giving to the 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. (2) No employer carrying on any public utility service shall lock-out any of his workmen-- (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or(b) within fourteen days of giving such notice; or (c) before the expiry of the date of lock-out 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. (3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services. (4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in

CHAPTER- 2

International Labour Organization: History and Origin

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Industrialisation followed by sickening of several European societies led the realization among members of the world community that for any nation to be strong socially, politically and economically, the interests of the working class have to be taken care of. Although deliberations to standardize the rights of labourers by promulgating international treaties had begun as early as 1838,[82] the most direct, real and substantial recognition of rights of the working-class was made with the establishment of the International Labour Organisation which was the outcome of several consistent efforts originating in the post-World-War I era.[83]

Its history can be traced back to the Peace Conference of 1919 which set up a Commission on International Labour legislation dominated by representatives from industrialized States.[84] The story of the genesis of ILO is unique in two respects: 1) To begin with, it was for the first time in history that a Peace Conference[85] created a

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such manner as may be prescribed. (5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed. (6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

[82]PROF. N. VALTICOS, INTERNATIONAL LABOUR LAW, KLUWER PUBLICATIONS, THE NETHERLANDS, pp. 34-40 (1979)

[83]*Id.*

[84]The representatives were from Great Britain, France, Belgium and Italy. See *Id.*

[85]In the domain of labour welfare, the evolution of ILO was a significant event as it marked the institutional recognition of the right of labourers to a fair and equitable standard of life and livelihood at an international level. It marked the culmination of the consensus of several members of the world community for the creation of an organized mechanism to protect and safeguard the rights of workers world-wide.

taught a tough lesson to the international community that force begets only force in return.

2.1 Structure and Composition of the International Labour Organisation (ILO)

The ILO comprises of three main organs: The International Labour Conference (ILC), the Governing Body and the International Labour Office.

The International Labour Conference consists of the delegations of all Member States of the Organisation. It is the principal organ of the ILO which frames and adopts Conventions and Recommendations and is responsible for follow-up procedures with a view to ensuring their compliance. The principle of tripartism contained in Article

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and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization..."

of the ILO, each national delegation is required to have four members: two delegates to represent the Government, and one each to represent the employers and the workers nominated in agreement with the organizations which are most representative of employers and work-people in their respective countries, if such organizations exist. It works as the legislative or policy making body of the ILO.

The Governing Body of the ILO is also constituted on a tripartite basis. It has a total of 56 members; out of which 28 represent the governments and 14 each from both the employers and the employees. It has the responsibility of co-ordinating all the activities of the Organisation, of convening various meetings and of deciding their agenda and dates. The agenda of the Conference is also fixed by it and the members of various other Committees are appointed by the Governing Body. The Director- General of the ILO is also appointed by the Governing Body. It is the executive organ of the ILO.

The International Labour Office serves as the permanent Secretariat of the Organisation and is entrusted with the task of preparing documents, collection of data and dissemination of information for various meetings of the Governing Body and the various other subsidiary bodies and committees. [93] It is the third vital plank in the tripartite structure of the ILO and consists of members from across 110 nations of the world.[94]

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[93] http://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-International-Labour-Organization-ILO-STRUCTURE.html, Accessed on 27.04.2011

[94] *Id.*

2.2 Tripartite Standard- Setting and the ILO:

An examination of the historical context in which the ILO evolved as well as the current structure and working of its constitutional arrangement reveals that the ILO is composed of government representatives and representatives of employers' and workers' organizations in a tripartite configuration. This is generally referred to as the principle of Tripartism and the principle is followed in the composition of its various deliberative bodies.[95] This principle also influences, in many respects, the characteristics as well as the content of the instruments which are adopted by the Organisation.[96] The underlying principles on which the edifice of Tripartism stands are Representation, Participation and Deliberation. The significance however lies in that the interest affected and influence factors reckon the governmental, entrepreneurial and work force concerns.

The rule of tripartism ensures equal participation, with an equal weight of the say, of the representatives of employers and workers in the decisions which would affect them. These two parties which are often opposed to each other because of conflict of interests are brought together by this principle to ensure that a more democratic

[95] The different committees elected by the International Labour Conference to deal with particular matters are also tripartite with representatives of the employers, employees as well as the government in similar proportion. The working and functioning of the organs of the ILO as well as the different committees suggests that there is a tripartite engagement at each stage of the standard-setting process.

[96] Prof. N. Valticos, *Supra* Note 82

method of decision-making is adopted so as to secure the interests of both the parties without undue weightage for any one of them. As a result of increased participation between and among representatives of all the three players concerned with the welfare of labour, the decisions taken acquire increased authority as they are concluded in consultation with all the parties involved and through consensus. The method has been found satisfactory considering the large number of Conventions and Recommendations adopted by the ILO. While concluding these Conventions and Recommendations, the tripartite framework allows for an equally weighted but effective representation of the interests of the workers as well as of the employers. International standard-setting through the aforementioned tripartite procedure results in creation of legal obligations which bind the states that ratify the Conventions and also by creation of soft laws in the form of Recommendations which are intended to provide guidance for governments in their national legislations or administrative practices. The weighted representation for governments is apparently to ensure that the governmental interests have preponderance as also to prevent the Conference from becoming a warring forum for the two traditionally opposing interest groups. Greater representation of the governmental interest in the entire process would also give the decisions the official approval and authority which they are to have for their better enforceability because, ultimately, it is the government which is entrusted with the task of enforcing labour standards at the national level in compliance with the international standards agreed upon.

On the question of the manner of selection of representatives of either party, it is significant to note that the ILO Constitution does not stipulate a particular manner in which the government's or worker's delegates have to be selected. However, the general practice in the matter of appointing government delegates is the policy followed by states of appointing ministers, diplomats or officials subject to government instructions.[97] The head of the delegation sticks to the instructions received from concerned authorities and for any opinion on issues being discussed by the Conference, he is supposed to consult his government through immediate means of communication.[98] Under the Constitution, employers' and workers' delegates are to be nominated by the governments of their countries "in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or work-people, as the case may be, in their respective countries."[99] It is to be noted that the task of appointing the workers' delegates has not been found to be accurate as in most countries, it is extremely difficult to trace an organization which is singularly the most representative of workers' organizations.[100] While the trend is of nominating a central organization, the problem is further aggravated in a situation where there are organizations with larger membership but are not affiliated to the central organization and are therefore, prevented from being nominated as workers' delegates.[101] This is a

[97] G.A. Johnston, *Supra* Note 86, at pp.29-30

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] Id.

major criticism frequently leveled against the credentials of the workers' delegates and it is often argued that they are not the true representatives of the workers of their concerned countries.[102] However, the practice still continues to remain the same and as of now, no change has been seen in the manner of appointing delegates nor has any change been suggested to the Constitution of ILO to make the process of appointment definite and precise.

2.3 Recognition of the Freedom of Association as a Vital Component of Workers' Rights

The recognition of a right to freedom of association has been one of the most significant measures of the ILO since its inception in 1919. It is the foundation for the principle of Tripartism on which the entire structure of ILO stands and the effective protection of this freedom for both the employers' and the workers' organizations have been considered to be instrumental in the successful setting of ILO standards.[103] The first step was taken by an amendment of the constitution of ILO by the Declaration of

[102] G.A. Johnston, *Supra* Note 86, at pp.29-30

[103] Bernard Geringon, Alberto Odero, and Horacio Guido, *ILO Principles Concerning the Right to Strike,* 137:4 International Labour Review, pp. 441-443 (1998)

Philadelphia in 1944.[104] Following this amendment, the ILC reaffirmed that the freedoms of expression and of association are extremely essential for sustained progress and therefore, the ILO was under a solemn obligation to promote a spirit of co-operation among masses for effective recognition of the right to collective bargaining and for making positive efforts to encourage collaboration among employers and employees.[105]

Although initially, the freedom to associate was sought to be linked intricately to the right to strike, it is significant to note that in course of time, the two were delinked. The right to strike has not been explicitly recognized by the ILO in any of its Conventions or Recommendations. The right to associate freely has received an overtly positive response over the years. The two core Conventions which are directly connected with the protection of this freedom are Convention no. 87 concerning Freedom of Association and Protection of the Right to Organise 1948, and Convention no. 98 concerning the Application of the Principles of the Right to Organise and Bargain Collectively.[106] The right of employers and workers to establish organizations and to join them according to their free choice without having to seek any previous

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[104] A.J. Pouyat, *The ILO's Freedom of Association Standards and Machinery: A Summing Up*, 121 Int'l Lab. Rev., pp. 287 (1982)

[105] *Id.*

[106] *Id.*

authorization has been recognized by the Convention.[107]It amounted to acknowledging the right as inherent and independent of any grant or permission.[108]The term "organization" has been defined as any organization of employers or workers for furthering and defending the interests of workers or of employers.[109] Further, the Convention also recognizes the rights of such organizations to establish and join federations, confederations and the right to affiliate with international organizations of workers and employers.[110]On similar lines, Convention No. 98 protects the rights of workers against anti-union discrimination in respect of their employment.[111] The Convention also specifically states that organizations shall enjoy protection against the acts of interference from each other or each other's agents or members while trying to

[107] Article 2 of Convention No. 87 of the ILO reads as follows: "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation."

[108] The language of Article 19 (1) (c) of the Indian Constitution refers analogously."Art.19(1) (c): "All citizens shall have the right to form associations or unions;"

[109]ILO Convention No. 87, Article 10: In this Convention the term ***organisation*** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

[110] ILO Convention No. 87, Article 5: Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

[111] ILO Convention No. 98, Article 1:

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

promote the establishment and administration of such organizations.[112] This ensured that the right of workers and employers to organize themselves into different associations got recognized at all levels of its tripartite structure.

Originally, the ILO Constitution was designed to complement the overall peace settlement and the formation of a League of Nations. However, over time, it has evolved into a distinct and independent mechanism in itself to work towards the cause of labour welfare. It is significant to note that the institution which has emerged as a champion of the cause of the working-class owed its genesis to a small group of industrialized European nations seeking to promote their self interest.

[112] ILO Convention No. 98, Article 2:

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

CHAPTER- 3

The Indian Experience in the Constitutional Era

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The Indian Experience in the Constitutional Era

On becoming independent, India chose to adopt a normative human rights friendly Constitution considerably influenced by the provisions in the Universal Declaration of Human Rights, 1948 (UDHR). The rights were organized in two Parts,[113] Part III entitled Fundamental Rights which were judicially enforceable and Part IV entitled Directive Principles of State Policy which contained socio-economic rights declared fundamental in the governance of the country but were judicially non-enforceable perhaps for the reason that they were requiring legislative concretizations before they could become judicially enforceable.

The Constitution has in it several provisions to protect and promote the interests of the working class. Workers could invoke provisions of Article 19[114] as a fundamental right for protection of their rights especially the freedom to form associations or unions,

[113] This scheme finds a subsequent parallel in the two United Nations Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ECOSOC) both of which were opened for signature in 1966 and entered force in 1976.]

[114] Constitution of India, Article 19 (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; (e) to reside and settle in any part of the territory of India; and (g) to practise any profession, or to carry on any occupation, trade or business."

as well as the reflex rights arising from the fundamental duties[115] imposed on the State by the Directive Principles of State Policy contained in Part IV through their constitutionally declared fundamentality in the governance of the country and the duty imposed on the state to apply them in the making of laws. Some principles of state policy have a direct impact on labour welfare. Article 38(1), imposes the duty to *strive* to secure and promote as effectively as it may, "a social order in which justice, social, economic and political, shall inform all institutions of the national life."[116] Clause 2 of the article requires that the State shall *endeavour* to minimize inequalities in income and *make positive efforts* to eliminate inequalities in status, facilities and opportunities not only among individuals but also among groups of people residing in different areas or pursuing different vocations. The State is under an obligation to *secure:*

i. *adequate means of livelihood*[117]*equally for men and women;*
ii. distribution of the ownership and control of material resources of the community so as to best *subserve the common good;*[118]

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[115] Duties and Rights are Jural Correlatives; duties imposed by law create reflex rights in the intended beneficiaries. See SALMOND, SALMOND ON JURISPRUDENCE, UNIVERSAL LAW PUBLISHING CO. PVT. LTD. NEW DELHI, p. 224 (12th edn. 2004)

[116] Refer to Annexure D for complete text.

[117] Constitution of India, A. 39 [a]:"The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood"

[118]Constitution of India, A. 39 [b]:"The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good"

iii. prevention of *concentration of wealth* and means of production to the common detriment.[119]

iv. *equal pay for equal work*[120] under all circumstances,

v. that the *health and strength of workers* and the tender age of children are not abused and that citizens are not compelled to enter into avocations that are unsuited to their age and strength[121] and

vi. *freedom and dignity of childhood* against abuse.

The State is obliged to make effective provisions for securing the *right to work, education and public assistance* in cases of unemployment, sickness, old age or any other disablement,[122]to secure *just and humane conditions of work* and to make adequate provisions for *maternity relief*, to make positive efforts for securing work, a living wage, conditions of work ensuring a *decent standard of life*, full enjoyment of leisure and social and cultural opportunities, [123]and *participation of workers* in the management of

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[119]Constitution of India, A. 39 [c]:"The State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment"

[120]Constitution of India, A. 39 [d]:"The State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women"

[121]Constitution of India, A. 39 [e]:"The State shall, in particular, direct its policy towards securingthat the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength"

[122]Constitution of India, 1950, A. 41: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

[123]Constitution of India, 1950, A. 43: "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage,

industries.[124]The fundamental object of the State saw a shift from the colonial model of exploitation to one of welfare and protection and the requirement was promotion of the interests of the citizens through affirmative action imposed by the Constitution. Although the Directive Principles of State Policy have been made judicially non-enforceable, their declared fundamentality in the governance of the country made them part of the duties imposed on the President and Governors by their respective oaths of office as prescribed by Articles 60 and 159 respectively.[125]These principles have a crucial role in the formulation of policies which bear on the interests of the working class.

The Constitution has sought to bring about a fundamental change in the dynamics of power relationships amongst the three major players in the sphere of industrial relations- the State, the employer and the worker. The guarantees of fundamental rights curtail the power of State in a manner calculated to ensure that the dignity of the human being and the quality of life is never endangered. Complementarily, the Directive Principles impose positive obligations on the State to ensure affirmative action by it to make the quality of life of workers richer and

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conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

[124]Constitution of India, 1950, A. 43A: "The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

[125]See Constitution of India, 1950, A. 37: "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

meaningful. The State is required to adopt a maternalistic[126] attitude of care and concern towards its citizens. Thus, it would become the constitutional mandate to ensure that the employer respects the guarantees of human rights contained in the fundamental law of the land while dealing with a worker and the worker, in turn, is assured of a standard of life for which he is given legitimate expectations by the Directives. The State is thus, duty bound to come up with appropriate industrial policies harmonizing the interests of both employers and employees for the common good, which is to be reached through its three wings: the Legislature, in policy-making, the Executive in policy implementation and the Judiciary in policy control.[127]

If regard be had of the fact Article 372 (2)[128] of the Constitution of India required that provisions of pre-constitutionally existing law in terms of Article 366(10) be

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[126] WILLIAM JETHRO BROWN, THE UNDERLYING PRINCIPLES OF MODERN LEGISLATION, E.P. DUTTON AND COMPANY, pp 200-205 (1920)

[127] However, it has been the experience that notwithstanding the Constitution, for over six decades now, there have been repeated clashes between labour and management reflected in strikes, lock-outs and closures. Consequently, it would appear that the conflict model for adjustment of opposing interests has become a syndrome in the Indian industrial scene and almost an inseparable part of it producing as fallouts irreparable damages to the national economy, human rights concerns, peaceful development and a just balancing of the opposable interests.

[128] Constitution of India, Article 372 (2): "For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

3.1 The Indian Experience with Strikes since 1950:

Despite the highly meaningful and human rights friendly provisions adopted in the Constitution for the welfare of the working-class as noticed above, it has continuously experienced the forced necessity of resorting to strikes for securing their welfare palpably because of the failure of the State to implement the Directives. In India, strike is the most common and widely prevalent mode of protest through which workers vent their grievances against their employers in an industrial establishment. The Industrial Disputes Act defines strike as a "cessation 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 to accept employment".[132] The object of every strike is to coerce the management through economic harm to yield to the demands of the working class. According to available statistics, the frequency of industrial disputes in India is very high compared to other countries.[133] Records reveal that from 2000 to 2006 alone, there were a total of 1965 strikes in the country leading to a loss of several millions of workdays.[134]

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[132] The Industrial Disputes Act, 1947 [14 of 1947], Section 2 (q)

[133] Bibhas Saha and Indranil Pan, *Industrial Disputes in India: An Empirical Analysis,* 29:18 Economic and Political Weekly, pp. 1081-1082, (Apr. 30, 1994). For instance, between 1980-1982, Indian industrial workers were engaged in 2055 strikes per year whereas the corresponding figures in France were only 494.

[134] *Id.*

The most frequent outbreak of strikes was witnessed from 1977-1984.[135] India witnessed the maximum number of strikes during 1982 and 1983.[136] From 1976 to 1984, the average loss of man-days in a year figured at 10,000 except 1982 and 1984 which reflect large-scale losses of man-days owing to extremely prolonged periods of strikes in the cotton and jute textile industries.[137] Statistical data from the Labour Bureau of the Government of India reveals that the highest number of strikes was witnessed in the year 2002 when the number of strikes figured at 295.[138] The total number of man-days lost during that year amounted to 9,664,537.[139] Although the number of strikes saw a decline in 2005, they involved larger number of workers and the number of man-days lost was also far greater as it went up to 10,800,686.[140] This indicates that the strikes in 2005 were of longer duration involving larger number of workers. Apart from causing severe losses to the national economy, strikes in India also bring with them a breach of societal peace and harmony because of the resort to violence by the persons involved.

The modes of violence employed in strikes can be broadly categorized as *physical* and *verbal*.[141] The most frequently used forms of physical violence are pelting stones, kidnapping, assassination, beating up management personnel and causing damage to

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[135] Bibhas Saha *Supra* Note 133

[136] *Id.*

[137] *Id.*

[138] http://labourbureau.nic.in/idtab.htm, Accessed on 13.05.2011

[139] Refer Annexure R and Annexure S

[140] Supra Note 138

[141] Subbiah Kannappan and D. Saran, *Political Strikes and Violence in Labour Disputes,* 3:2 Indian Journal of Industrial Relations, pp. 123-137, (Oct., 1967)

property and machinery.[142] On the other hand, verbal violence is generally directed towards employers, fellow-workers, the public, government officials and the police in the form of language amounting to slander and libel.[143] Acts of violence are also resorted to by employers and government officials.[144] Verbal abuse by employers, lathi-charges, fake encounters, arbitrary arrests and detention are also resorted to by the police acting under the direction of the management or political leadership are common experience.[145] Although a large number of strikes have wrecked the country since the commencement of the Constitution, few of the most prominent ones have been discussed in the following pages to give an idea of the serious impact that strikes have had on our social and economic life.

The Kanpur strike of 1955 involved eleven textile mills in the city of Kanpur and went on for a period of three months, resulting in the loss of over 1.5 million mandays, 50 million yards of cloth and 5.5 million rupees as wages.[146] The strike was called by Suti Mill Mazdoor Sabha and involved 46,000 workers. Frequent outbursts of violence were reported during the period of strike and records reveal several instances of acid-throwing, manhandling and assaults on non-striking workers who reported for duty.[147]In 1958, similar instances of violence were reported in the Bombay Automobile

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[142] Subbiah Kannappan, *Supra* Note 141

[143] *Id.*

[144] Id.

[145] *Id.*

[146] S.D. Tripathy, *Extra -legal responses of a Union- A Case-study,* Indian Journal of Industrial Relations, 2:2, 251-273,(1966)

[147] *Id.*

strike which was called by Premier Automobiles Ltd. Physical intimidation and police reprisals were reported frequently.[148] The acts of major violence and rioting numbered 30, there were numerous occasions on which undignified and provocative language was used and on three occasions, the demonstrations led to an outbreak of violence.[149] In the same year, another major strike involving several acts of violence occurred in the Tata Iron and Steel Company in Jamshedpur.[150] The strike was triggered by the suspension of 50 workmen and was perpetuated on issues of wages, bonus and fringe-benefits.[151] Several instances of rioting and intimidation were reported, property was destroyed and the normal life in the city was completely paralyzed because of the strike. On the whole, the strike led to the death of four workmen, left 114 injured, 400 discharged, and resulted in a loss of 3,35,000 man-days and 45,000 tonnes of steel production.[152]

One of the most significant strikes of recent times happened in 2005 at Gurgaon when employees of Honda Motorcycle and Scooter India resorted to strike in protest against the sacking of 57 employees on the ground of indiscipline for showing solidarity towards a fellow workman who was assaulted by a member of the management.[153] The strike continued for over one month and during this time, the police has been accused

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[148]Subbiah Kannappan, *The Tata Steel Strike: Some Dilemmas of Industrial Relations in a Developing Economy*, The Journal of Indian Political Economy, pp 196-223,(October, 1959)

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152]http://libcom.org/history/strike-police-brutality-honda-motorcycle-scooter-india-2005 Accessed on 2.5.2011.

[153] *Id.*

of serious acts of violence. Video-clippings recorded by the media have shown police personnel attacking the crowd with tear gas, bamboo batons and rubber bullets without prior notice. As per reports, one worker died on the street, around 300-800 were injured and several demonstrators have suffered serious head injuries and broken limbs.[154] Media reports claim that around 60-80 workers were kept in custodial detention till August, 2005 and around 28 workers have been reported as missing.[155] This strike attracted nation-wide attention because of large-scale violence involved and sympathy for workers. The management had to yield to most of the demands of the workers and as per estimates, a loss of Rs 1.2 billion was incurred by the company as a consequence of the strike.[156] While disruption of peace and public order is widely associated with strikes, another issue of vital concern is the amount of economic loss resulting from strikes. Production losses have often led to the closure of flourishing industries. An outstanding example of it is the Mumbai Textile strike of 1982 which involved 2, 50,000 workers from 50 textile mills across Mumbai. The strike was called for hikes in wages and bonus. However, the strike led to nothing but economic loss and finally, some of the most important textile units were sold out in 2005 for paltry amounts. [157]

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[154] *Supra* Note 152

[155] *Id.*

[156] *Id.*

[157] http://specials.rediff.com/news/2007/jan/18sld2.htm Accessed on 5.5.2011

The latest strike on record which attracted national attention for the gravity of its impact was the strike by pilots of Air India which commenced on the 27th of April and continued over a period of two weeks involving 800 pilots.[158]

The strike was called on the ground of a raise in salaries of pilots by International Commercial Pilots Association for increase in salaries of pilots.[159] The management responded by derecognizing the Association shortly after the commencement of the strike.[160] The basic demand of around 800 pilots, mostly those who were originally with Indian Airlines, was parity of pay with their counterparts who had been with Air India prior to the merger.[161] The merger took place in 2007. The basic demand of the pilots was not new; they have been seeking pay parity ever since the merger process began in 2007.[162] The ICPA had earlier served notice of a strike on the same grounds in February 2011. They had cited the failure of the management to comply with the memorandum of settlement signed in 2009 on implementing the Sixth Pay Commission recommendations.[163]

The strike, which continued till May 6, has resulted in immense losses to national economy due to interference with regular business. As per a statement released by Air

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[158] http://www.ndtv.com/article/india/air-india-deadline-ends-pilots-refuse-to-end-strike-102332 accessed on 22.05.2011

[159] *Id.*

[160] *Id.*

[161] http://www.hindu.com/2011/05/09/stories/2011050963711200.htm, Accessed on 04.06.2011

[162] *Id.*

[163] http://www.inewsone.com/2011/03/08/talks-still-on-to-preveent-air-india-pilots-strike/34066, Accessed on 04.06.2011

India, within two days of the strike period, the management incurred a loss of Rs. 36.5 crores. By the eighth day of the strike, as many as 1100 Air India flights had been cancelled and the losses estimated around Rs. 85 crores.[164] In total, the losses are estimated around Rs. 150 crore to Rs. 200 crore.[165] With the airlines net losses for the last two years being approximately Rs. 12740 crore,[166] the financial impact of the strike has further crippled the capacity of the airlines to recover towards a profitable balance.

As a result of the strike, regular flights were disrupted and on the very first day, Air India was able to operate only 50 of its 320 scheduled flights. Obviously, this led to a lot of inconvenience on the part of passengers as many of them had to cancel urgent travel-plans.[167] Overall, the airline had had to cancel more than 90 per cent of its flights. The maximum disruption was on the domestic sector.[168] Air India had to cancel ticket bookings on its entire national network till May 4 and it started re-booking tickets on 5th May for select routes till May 8 only.[169]

To add to the troubles of passengers, the cost of flight-tickets in other private airlines increased manifold. On the very first day of the strike, the fares were up by almost 50% in some sectors.[170] Private airlines were alleged to have hiked their fares to cash in on the strike. Thousands of passengers, stranded after their Air India flights

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[164] http://www.inewsone.com/2011/05/04/air-india-strike-grounds-1100-flights-loss-mounts-to-rs-85-crore/48191, Accessed on 04.06.201

[165] *Supra* Note 161

[166] *Id.*

[167] *Supra* note 163

[168] http://www.thehindubusinessline.com/industry-and-economy/logistics/article1996978.ece, Accessed on 05.062011

[169] *Supra* Note 162

[170] http://www.thehindubusinessline.com/industry-and-economy/logistics/article1772788.ece, Accessed on 04.06.2011

were cancelled, were forced to shell out between 50 percent and 75 percent more for bookings.[171] Passengers complained that the base fare on a Delhi-Mumbai flight, which goes up to Rs.2,400-Rs.3,000 for last-minute bookings, had gone up to as much as Rs.7,500 on some airlines -- resulting in a total one-way cost of Rs.11,500, including various levies.[172] The wide-spreading and severe allegations have led the Competition Commission of India to meet representatives of private airlines seeking an explanation for the sudden hike in fares during the 10-day strike.[173] Earlier Aviation regulator Directorate General of Civil Aviation (DGCA) had directed private airlines not to take advantage of the Air India pilots' strike by hiking air fares.[174] Meanwhile, consumer rights protection groups have welcomed the move and said that hiking of prices by private airlines was a common practice which needed to be rectified.[175]

The Air India strike also caused disruption of essential medical and health services in the country. Due to the cancellation of flights, several consignments of radio isotopes, which are drugs used in the treatment and cure of cancer failed to reach their destinations. Since the drugs have a very short life-span, most of them were exhausted due to the delay in departure.[176] As a result, patients did not get the benefit of the drugs and also, they were rendered useless. As per reports, over 600 cancer patients in Kerala alone were struggling with death every day, waiting for the drugs to be administered

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[171] http://www.prokerala.com/news/articles/a221425.html, Accessed on 04.06.2011
[172] *Id.*
[173] *Id.*
[174] http://www.prokerala.com/news/articles/a218991.html, Accessed on 04.06.2011
[175] http://www.prokerala.com/news/articles/a221425.html, Accessed on 04.06.2011
[176] http://www.ndtv.com/article/india/air-india-strike-continues-cancer-patients-wait-for-medicines-102550 accessed on 05.05.2011

on them.[177] The strike by Air India ultimately led to the violation of elemental human rights to which every citizen of India is entitled under the Constitution. Thus the strike not only caused immense losses to the public but also led to the violation of fundamental rights of citizens by causing unnecessary interference with their normal course of life.

After several rounds of talks, the pilots returned to work on May 6 after the third round of talks with the Civil Aviation Ministry where the government agreed to reinstate the terminated pilots and revoke the de-recognition of Indian Commercial Pilots Association (ICPA), the union of the pilots, which were done in response to their strike. Under the interim settlement, the Ministry has given some further concrete assurances and all the other demands of the pilots will be addressed in a "time-bound" manner. The key issue of pay parity will be dealt with by the Dharmadhikari committee, which has just begun to look into the staff-related issues arising from the merger of the two airlines, and it has been required to give the report by November 2011.[178] All categories of employees have been asked to approach the committee with their demands. Even after resuming operations on May 7, it took Air India around 10 days more to clear the backlog and normalize operations.[179]

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[177] *Supra* Note 176

[178] *Supra* Note 163

[179] http://www.newkerala.com/news/world/fullnews-207005.html, Accessed on 04.06.2011

CHAPTER- 4

Judicial Response to Strikes

CHAPTER- 4

Judicial Response to Strikes

In the Indian constitutional mechanism, the Judiciary is assigned the task of interpreting the law against the provisions of the Constitution and declaring it. The law declared is binding throughout the country by reason of Article 141.[180] An analysis of the stand taken by the Supreme Court in the matter of strikes is essential to understand whether it has succeeded in declaring the exact constitutional status of this phenomenon, considering the potential it has to affect the power dynamics between the power-holders and the power-addresses in a significant manner.

The fundamental question which arises in the context of strikes is their constitutionality. In *All India Bank Employees Association v. National Industrial Tribunal,* the Supreme Court while making a tangential reference to the constitutionality of the right to strike took a position that Article 19(1) (c) protected no more than the right to form associations and this right was exhausted with the formation of associations[181]and it could not even be extended to the achievement of lawful purposes of the association. Further, the Court also stated that even this right to form associations could be restricted in the interests of sovereignty and integrity of India, public order or morality

[180]Constitution of India, Article 141: "The law declared by the Supreme Court shall be binding on all courts within the territory of India."
[181](1962) 3 SCR U 269

which was the express provision in Clause 4 of article 19. The right to form association, according to the Court, could not be extended to the post-formative stages of an association.[182] This posture was in effect reducing the guaranteed right to freedom to a meaningless exercise because the interests invoked for placing reasonable restrictions on the exercise of the freedom were speaking to activities by the association.

When the same question of constitutionality was raised in the *Bihar Civil Servants case*[183] more directly, the Supreme Court remarked that although the right to demonstrate fell within the scope of the freedom of speech and expression it could be extended to the right to strike. The Court relied upon the definition of demonstration in an American lexicon as meaning "a public exhibition by party, sect or society...as by a parade or mass meeting." The Court went on to say that strikes were analogous to public demonstrations as they were also public statements in protest and therefore, the protection under article 19 (1) (a) was extended to them. As can be seen, the court came up with two contrary points of view dealing with the same question of constitutionality,

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[182]"Merely by way of illustration we might point out that learned Counsel admitted that though the freedom guaranteed to workmen to form labour unions carried with it the concomitant right to collective bargaining together with the right to strike, still the provision in the Industrial Disputes Act forbidding strikes in the protected industries as well as in the event of a reference of the dispute to adjudication under s.10 of the Industrial Disputes Act was conceded to be a reasonable restriction on the right guaranteed by sub-cl. (c) of cl. (1) of Art. 19.We have reached the conclusion that even a very liberal interpretation of sub-cl.(c) of cl.(1) of Art.19 cannot 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 the right to declare a lock out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in cl.(4) of Art. 19 but by totally different considerations."

[183]Kameshwar Prasad v. State of Bihar (1962) Supp. 3 SCR 369

in the very same year and as a result the court can be said to have not declared the law for the purposes of Article 141.

In 1963, the Supreme Court was confronted with another question whether an unjustified strike amounted to a termination of the employment nexus between the employer and his employees.[184] The Court's response was that even if a strike was unjustified it would not be the termination of relations between the employer and his employees. The Supreme Court went to the extent of saying that participation of employees in an illegal strike does not amount to a break in the continuity of their services.[185][The question which arose in most of the post-1950 cases was regarding the real implication of the terms "illegal" and "unjustified" and not of the meaning of "strike" itself in a constitutional context.

In the case of *India General Navigation Railway Co. Ltd.*, the Supreme Court was of the view that a strike cannot be illegal yet justified at the same time as the two conditions being contrary to each other, cannot co-exist.[186] However, around three

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[184] Express Newspapers v. Miachael Mark AIR 1963 SC 1141

[185] Express Newspapers v. Miachael Mark AIR 1963 SC 1141

[186]See India General Navigation Railway Co. Ltd. v. Workmen, AIR 1960 SC 219: "In the first place, *it is a little difficult to understand how a strike in respect of a public utility service, which is clearly, illegal, could at the same time be characterized as "perfectly justified"*. These two conclusions *cannot* in law *co-exist.* The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the department being questioned before an Industrial Tribunal, but it is not permissible to characterize an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be

decades later, the Supreme Court took a stand which was entirely different from the one taken in the previous case. Its observation on the aforementioned issue was that the question of legality is completely different from the question of justifiability. While legality of a strike is to be determined by examining whether the provisions of the Industrial Disputes Act have been violated, the question of justifiability is to be answered by examining the legitimacy of the factors responsible for the outbreak of strike.[187]The court also observed that employees will be entitled to wages only when the strike is both legal and justified, a view reiterated by the Court in *Bank of India v. T.S. Kelawala*[188] holding that the twin conditions of justifiability and legality have to be fulfilled for entitlement for wages. This view of the Court was a continuation of the

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the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence." The court did not declare the law on the point.

[187]Syndicate Bank v. K. Umesh Nayak AIR 1995 SC 319: The observation of the Court was as follows: It has to be remembered in this connection that *a strike may be illegal if it contravenes the provisions of Sections 22, 23 or 24 of the Act or of any other law or of 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 which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. The Court apparently failed to take judicial notice of the provisions of the Trade Unions Act, although mandated by section 57(1) of the Indian Evidence Act, and failed Article 14.

[188](1990) 4 SCC 744

position very categorically established in the case of *Life Insurance Corporation of India v. Amalendu Samal* [(1988) IILLJ 495 Cal]. This case involved the situation of a section of Class III and Class IV employees who had been on a strike after communicating due notice of the same under the ID Act. The Court stressed that while the legality of a strike is to be determined by the requirements of the Industrial Disputes Act; its justifiability is a question of fact. Holding the strike to be both legal and justified in the present case, the court upheld the claims of the employees and held that they are entitled to wages for the period of the strike. Speaking for himself and Justice D S Tewatia, Justice B L Jain emphasized that a strike, if justified, could not be considered an activity subversive of industrial peace or opposed to the lawful objects of Trade Unions. A right to strike is labour's ultimate weapon and in the course of a hundred years it has emerged as the inherent right of every worker. It is an element which is of the very essence of the principle of collective bargaining. He held that "Industry, represented by intransigent managements, may well be made to reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or get a reference made."

In all these cases, the court did not consider the fundamentality of Article 39 (d) which allowed equal pay for only equal work and failed to declare the law for the purpose of Article 141. Any contract opposed to law was void under the Indian Contract Act and there was apparently no difficulty for a ruling that 'no work' meant 'no pay' in consequence. It would not have amounted to enforcement of any Directive which is prohibited by Article 37 but only taken judicial cognizance of the provision

which is mandated by section 57(1) of the Indian Evidence Act especially when Article 37 forbade only enforceability unlike in the Irish Constitution which in Article 45 barred judicial cognisability of the Directives.

In *T.K Rangarajan v. State of Tamil Nadu,* the Supreme Court stated that there is no moral or equitable justification to go on strike and that it was not a fundamental right guaranteed under the Indian Constitution.[189]

Mr. Justice Shah speaking for the Court stated that;

> Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike and held that no right to strike - whether fundamental, statutory or equitable/moral Right exists with the government employees. He elaborated:

[189] T.K Rangarajan v. State of Tamil Nadu (2003) 6 SCC 581:*"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 results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse, the entire administration comes to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill: business is adversely affected and a number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike'."*The Court went into over-drive against providing all but the most limited protection to the right to strike amounting to nothing at all.

"**(A)** There is no fundamental right to go on strike and, for that position, relied on *Kameshwar Prasad v. State of Bihar* [(1962) Suppl. 3 SCR 369] (C.B.)."

But, Rule 4A which was in reference there was made during an emergency proclaimed in 1962 under Article 352 and answering Article 358, died a natural death under Article 358 when the Proclamation of emergency was revoked in January 1968 and the decision will not reflect any legal position relevant for non-emergency periods and should not have been relied on. *Radhey Shyam Sharma v. The Post Master General Central Circle, Nagpur* [(1964) 7 SCR 403], where the Supreme court found that the Essential Services Maintenance Ordinance No. 1 of 1960 did not violate the fundamental rights enshrined in Article 19(1)(a) and (b) of the Constitution but chose to add that "a perusal of Article 19(1) (a) shows that there is no fundamental right to strike" was a conclusion without reasoning relatable to the power ordering contemplated by Article 19 and would not provide any thing as to what a "strike" would mean for the purposes of Article 19. Finding its decision in *All India Bank Employees' Association v. National Industrial Tribunal* [(1962) 3 SCR 269], wherein the Court (CB) specifically held that even very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise, as persuasive authority was not correct because there was no reasoning to support that the Trade Unions Act was not applicable or that the relevant provision in the Trade Unions Act, 1926 viz., section 2 defining Trade Union as any combination formed primarily for the

purpose of ... "imposing restrictive conditions on the conduct of any trade or business" was voided by Article 13(1) for reasons of inconsistency with the provisions of Part III Fundamental Rights. It needed a more elaborate reasoning to the position that Section 34-A of the Banking Companies Act, 1949, introduced in 1960, was not abridging the right impliedly conferred on a Trade Union by Section 2 of the Trade Unions Act 1926, which was applicable to the All-India Bank Employees Association. Relying on the decision in *Communist Party of India (M) v. Bharat Kumar* [(1998) 1 SCC 201] for the position that "there cannot be any doubt that 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" was supportive of the position finally taken that nobody can violate the rights of another. The court, in agreeing with the Kerala High Court that; [N]o political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire state or nation and it is entitled to prevent the citizen not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit 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 can be said to have stated a principle that the right for collective bargaining will have to be so exercised that it did not violate the rights of anyone else and it can bear on how the Trade Union will have to act in terms of the Trade Unions Act 1926 in conformity with the constitutional prescriptions.

"**(B)** There is no legal/statutory right to go on strike"

There is no statutory provision empowering the employees to go on strike was a bald statement made without going into the implications of the opening words in Article 19 (1) which reads: "All citizens shall have the right—"speaking to an affirmation of natural human rights subject to reasonable restrictions on grounds specified in clauses 2 to 6 which are subject to judicial review against unreasonableness.

Rule 22 and Rule 22 A of the Tamil Nadu Conduct Rules, 1973 ("the Conduct Rules") relied upon for the position is unhelpful for reason of their constitutional death in 1968 under the provisions in Article 358.

"**(C)** There is no moral or equitable justification to go 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.

The case in the context of a massive repression by the State of Tamil Nadu in dealing with civil servants who went on strike for better salaries and pensions after due notice. The Tamil Nadu Essential Services Act 2002 and the Ordinance of 2003[190] was invoked to criminalize those who struck work. The Supreme Court also took a lenient

[190] The Tamil Nadu Essential Services Act 2002 (repealed in 2006) and the Ordinance of 2003 were legislative measures passed when no proclamation as required for the purposes of Articles 358 and 359 was in operation.

view[191] on the incarceration and dismissals - giving detailed directions on what was to be done so that the employees were given a hearing in each individual case. But, Justice Shah (speaking for himself and Justice Lakshmanan) was no less unequivocal in dealing with the right to strike. Without too much discussion, the Court upheld the Tamil Nadu Government Servants Conduct Rules 1973[192] which prohibited participation in "strikes... or in 'similar activities' (Rule 22) or in any processions and meetings without permission" (Rule 22A).The latter prohibition related to the right to demonstration which had, in fact been constitutionally protected by these the earlier decisions of 1962-64.

Although 'strike' developed as a coercive devise for exerting pressure on the dominant power-holder and was originally finding applicability in the industrial sector,

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[191] In all, 2211 persons ("mainly clerks and subordinate staff'), including 74 women were arrested and detained. Of these, only 172 persons (165 men and 7 women) were released on bail under circumstances which caused the High Court to describe the situation as 'pathetic'. The State of Tamil Nadu was totally unfazed about what it had done and would not have stopped at putting its entire subordinate civil service behind bars and dismissing all the errant employees. The High Court which was closer to understanding the nature of this high handedness ordered the release of all persons. The Court did not indicate the legal basis for its order. If the action by the government was not supportable under a valid law it would have amounted to an offence under section 166 IPC. If Article 19 had to be disregarded, it was possible only in terms of Article 358 which required a proclamation of emergency under Article 352 on the two grounds of war or external aggression for a legislature to have the required legislative competence and the law would have died a natural death on revocation of the emergency as spoken to by Article 358. The Court did not indicate the law applicable.

[192] The court did not examine the validity of the Rules in terms of Article 358. The 1973 Rules were framed when an emergency proclaimed under Article 352 was in operation and Article 19 was then not a hindrance for law making or executive action. But, under Article 358,any law made during the period of temporarily expanded legislative power automatically ceases to have effect to the extent of repugnancy indicated by Article 13(2) the moment the emergency ceases to operate.

it has been resorted to by professionals for registering their protest. One such strike was the Lawyers' strike of 2003 in response to which the Supreme Court stated that such a course of conduct on the part of lawyers was impermissible as it infringed the fundamental rights of litigants to seek justice and this cannot be accommodated within the constitutional framework.[193]In this case the court took a stand that strike was a form of expression within the scope of Article 19)1) (a) but that the right did not avail when it violated the fundamental right of another because such a limitation was inherent in the exercise of the right under Article 19(1)(a). The court missed out on an opportunity to declare the law indicating that strike was a form of expression within the reach of Article 19(1)(a) subject to reasonable restrictions by law and in the manner and on the counts specified in Article 19(2).

The Court instead chose to sermonize lawyers that they should adopt other means of protest to register their opinion but cannot resort to strike.[194] If it a right

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[193]H.S. Uppal v. Union of India (2003) 2 SCC 45

[194]*"Strike by lawyers will infringe the abovementioned fundamental right of the litigants and such infringement cannot be permitted. Assuming that the lawyers are trying to convey their feelings or sentiments and ideas through the strike in exercise of their fundamental right to freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, we are of the view that the exercise of the right under Article 19(1)(a) will come to an end when such exercise threatens to infringe the fundamental right to another. Such a limitation is inherent in the exercise of the right under Article 19(1)(a).Hence the lawyers cannot go on strike infringing the fundamental right of the litigants of speedy trial. The right to practice any profession or to carry on any occupation guaranteed by Article 19(1)(g) may include the right to discontinue such profession or occupation but it will not include any right to abstain from appearing in court while holding a vakalat in the case. Similarly, the exercise of the right to protest by the lawyers cannot be allowed to infract the litigant's fundamental right for speedy trial or to interfere with the administration of justice. The lawyer has a duty and obligation to cooperate with the Court in the orderly and pure administration of justice. Members of the legal profession have certain social obligations also and the practice of*

within Article 19(1) (a) as the Court found it to be, it was beyond the powers of the Court to make it non-available to lawyers without clearly laying down the law under which they could not exercise the right for being officers of the Court. If a section of public servants cannot exercise the fundamental right under Article 19(1)(a)for the reason that the exercise cannot impair the fundamental right of another, it was clearly possible for the Court to take judicial notice of Article 14 and hand out a ruling that under the Constitution strike can be possible only without violating any legal right of any other because Article 14 capture every legal right for protection under it. This would have served societal interests admirably under the constitutional ordering as adopted.

Although the right to strike has not been declared as recognized as a fundamental right under Article 19(1) (a), the Supreme Court's reference to the Article would indicate such a position as tenable.

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law has a public utility flavour. According to the Bar Council of India Rules, 1975 'an advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his non professional capacity, may still be improper for an advocate'. It is below the dignity, honour and status of the members of the noble profession of law to organize and participate in strike. It is unprofessional and unethical to do so. In view of the nobility and tradition of the legal profession, the status of the lawyer as an officer of the court and the fiduciary character of the relationship between a lawyer and his client and since strike interferes with the administration of justice and infringes the fundamental right of litigants for speedy trail of their cases, strike by lawyers cannot be approved as an acceptable mode of protest, irrespective of the gravity of the provocation and the genuineness of the cause. Lawyers should adopt other modes of protest which will not interrupt or disrupt court proceedings or adversely affect the interest of the litigant. Thereby lawyers can also set an example to other sections of the society in the matter of protest and agitations."

CHAPTER- 5

A Comparative Study of Different Models of Industrial Relations with Specific Focus on the Right to Strike

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A Comparative Study of Different Models of Industrial Relations with Specific Focus on the Right to Strike

The pattern of industrial relations in some selected countries from across the world is examined to comparatively evaluate different methods of dealing with industrial disputes. A study of the nature and composition of trade unions, dynamics of labour-management relations and the methods adopted in each of these countries to work out settlement of disputes and address the concerns of the working class is considered to be beneficial for devising a better industrial policy conducive to the growth of a healthy economy with a minimum of conflict and friction between the employers and employees.

The countries selected for the ongoing discussion are Japan, Canada, USA, Germany, Ireland and UK. The countries have been selected on the basis of their achievements in preserving harmonious industrial relation through effective labour policies resulting in infrequent industrial disputes.

4.1 The United Kingdom

Historically, English workmen did not have the right to collectively bargain with their employers on any matter related to their employment. The onset of the Industrial Revolution in England brought about significant changes in the societal and economic structure of Great Britain. Entrepreneurs were given a totally free hand at hiring and firing workmen and fixing wages. With the growth of several industries and factories, employment of labour in large numbers became necessary. Large scale unemployment became the order of the day and slavery of youth, women and small children became inevitable.[195] The growth of slums was a major off-shoot of the entire process. While large number of workers including small children were employed in mines, quarries and factories, the payment made was not sufficient to carve out a decent pattern of living. The wages paid to such workers, therefore, came to be termed as "non-living wages".

The number of underpaid people was much more than the number of unemployed people.[196] As a result of poor living and working conditions, the English societal structure degenerated into a state of sickness and the only way to pull it out of

[195] William Jethro Brown *Supra* Note 126

[196] *Id.*

the dangers of a dwindling economy was to secure a machinery to regulate the wages and working conditions of the labourers.[197]

A report submitted by Mr Rowntree exposed the complete absence of dignity of labour in the English society resulting in sub-human existence of labourers in London.[198] According to the report submitted by him, the wages paid for unskilled labour was insufficient to meet the daily requirements of food, clothing and shelter. The smallest of comforts like travelling by railway or omnibus or even sending a letter by post could not be afforded by the English worker. Under such conditions, extra-ordinary physical efficiency was expected from them. Coupled with these, were the poor conditions of life of children as well as the prevalence of child labour which was making the English society hollow at the base and extremely corrupt at the very roots.[199]

In the immediate context of the industrial revolution in 18th century England, the absence of minimum standard of living and the poor and inhuman conditions in which the English workmen had to subsist for over thirty years led to discontent among the masses. As a result, they revolted against their employers and demanded adequate standards of life and economic subsistence. It is in this context that the workers decided to "strike" work. Over time, against the experience of its coercive force, it evolved as a weapon of mass resistance aimed at securing the rights of the unprivileged or under-

[197] William Jethro Brown *Supra* Note 126, at p. 297 (rel.on)

[198] *Id.*

[199] *Id.* at p. 303

privileged sections of the society. Any such attempt was considered to be a criminal conspiracy and invited punishment in common law. However, after the Taff Vale decision[200], the Trade Disputes Act was passed in 1906, which recognized the right of workers to organize themselves in associations and also granted them immunities from civil and criminal liabilities for anything done in pursuance of a trade dispute.

Although the development of the law relating to trade unions, disputes and industrial relations has its historical origin in England, it is noteworthy that currently, the English labour policies are characterized by severe lacunae in their structure and working as a result of which, industrial disputes have been quite frequent over the past few years.[201] A study of these figures reveals that although strikes that although there has been some decline in strike activities in the past few years, the numbers are still high in comparison to other European countries which have a harmonious ambience of

[200] William Jethro Brown *Supra* Note 126, at p. 303

[201] 'The latest available official statistics show that, in a 12-month period to October 2008, some 147 work stoppages were recorded, in which 677,000 workers took part and 837,700 working days were lost. This marked a decline from the figures for the 12 months until October 2007, where 210 stoppages were recorded, involving 878,000 workers and resulting in 989,000 lost working days. These figures are also historically very low. In 1988, for example, there were 781 stoppages recorded, in which 790,000 workers were involved and 3,702,000 working days were lost. The figures for this year also represent a typical year for this period. The general decline in labour disputes in the UK is likely to be attributable to falling trade union density rates, and to the anti-union laws of the 1980s and 1990s. In 2008, large industrial actions occurred in the UK public sector over the government's policy on public sector pay restraint. More complete statistics are available for 2007 regarding the sectors involved in strikes. In 2007, of the 142 stoppages recorded, 55 occurred in the transport, storage and communication sector, while 21 took place in the education sector, and 20 were recorded in public administration, defence and the compulsory social security sector, making these the three sectors most affected by strikes during the year. These sectors were also the most adversely affected in terms of working days lost and workers involved (Office for National Statistics, 2008).'Accessed from http://www.eurofound.europa.eu/eiro/country/united.kingdom_3.htm on 3.6.2011.

industrial relations. The worst-hit sectors are those involved in the discharge of essential services like defence, public administration and the compulsory social security sector, where at least 20 such strikes were recorded officially in the year 2007.[202]

A major flaw in UK's pattern of industrial relations flows from its disorganized nature of collective bargaining systems, which has been identified as the most disorganized in the European community.[203] Collective bargaining agreements in England are characterized by lack of legal backing which makes them legally dormant. However, sometimes, the terms of collective bargaining agreements are made part of individual contracts of employment and on such occasions, they become legally binding on the parties.[204] Another major flaw in the English system of collective bargaining is that the agreements deal only with wages and hours of work.[205] Owing to these systemic defects in the structure of collective bargaining, industrial relations have undergone a major setback in the recent years. Traditionally, the system of industrial relations in UK has been characterized by a spirit of voluntarism between social partners, as a result of which, there has always been minimum intervention by the state in cases relating to industrial disputes. This is also the reason behind the absence of

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[202] *Supra* Note 201

[203] http://www.eurofound.europa.eu/eiro/country/united.kingdom.htm Industrial Profile of UK, European Industrial Relations Observatory (EIRO)

[204] *Id.*

[205] *Id.*

formal mechanisms for dispute resolution.[206] As a result, resolution of disputes has become a matter of serious concern in UK and the matter has come to light particularly after the 2008 financial crisis in which UK was the worst-hit country in Europe.[207]

A comparison of the different models of industrial relations would suggest that harmony of industrial relations flows from a spirit of mutual co-operation between and among the employers and their employees. This, coupled with an effectively designed legal structure suitable to the requirements of the country where the mechanisms are adopted has contributed to the maintenance of industrial peace. A progressive labour policy is the one which comes with a degree of certainty and involves participation on all three stakeholders, i.e., the government, the employer and the employees.

4.2 United States of America:

In the USA, although employees in the public sector as well as the private sector enjoy collective bargaining rights, the former do not enjoy the right to strike.[208] The

[206] Although a National Economic Development Council existed in UK in 1962, it was abolished in 1992. During the 70s, a trend towards tripartite dispute resolution was growing but the Thatcher government suppressed it with an iron hand.

[207] Suzanne C. Lacampagne, *The Public Sector Right to Strike in Canada and the United States: A Comparative Analysis*, 6 Boston College International and Comparative Law Review, p. 509, (1983)

Civil Services Act has been suitably amended in 1975 making it obligatory on the part of employees in the public sector to abstain from the right to strike under all circumstances and at all times.[209] Any violation of this mandatory requirement amounts to immediate dismissal of the erring employees from service.[210] In twenty-four states of the United States, public employees are statutorily prohibited from indulging in strikes, in any manner whatsoever and only eight states permit employees to resort to strikes in very limited circumstances.[211] Courts have consistently upheld the statutory prohibition of the right to strike by public servants on the ground that they render essential services to the community at large which cannot be jeopardized at any cost for howsoever short a period of time.

Recently, in the state of Wisconsin, the Governor, Scott Walker signed into law specific measures to further limit collective bargaining rights of employees belonging to

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[208] Suzanne C. Lacampagne, *Supra* Note 207

[209] 5 U.S.C. 7311 (1975) This statute applies to all employees. This statute states: An individual may not accept or hold a position in the Government of United States...if he -...(3) participates in a strike, or asserts, the right to strike against the Government of the United States...; or (4) is a member of an organization of employees of the Government of the United States.....that he knows asserts the right to strike against the Government of the United States....The Statute does not require automatic dismissal rather, it gives the Government the right to fire the striking employee.

[210] The twenty-four American states which statutorily prohibit public employees strikes are: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Virginia, Washington and Wisconsin.

[211] http://en.mercopress.com/2011/03/12/wisconsin-limits-collective-bargaining-rights-for-public-sector-workers. Accessed on 01.06.2011

the public sector.[212] The policy pursued in US is backed by the logic that there is a fundamental difference in the nature and operation of public and private interest groups.[213] First and foremost, the benefits and privileges enjoyed by public employees are not the same as those enjoyed by employees belonging to the private sector. In terms of salaries, immunities, security of job, conditions of service and emoluments, they have an edge over employees in the private sector.[214]

Due to the aforementioned reasons, their associations are any day stronger than groups of private sector employees. Further, by merely organizing themselves into unions, they have the ability to wield immense political power at the time of elections and can even go to the extent of voting their employers out of power.[215] Under such circumstances, adding the right of collective bargaining to the plethora of power they already enjoy would upset the very purpose of public welfare for which they are appointed. By participating in strikes for getting further benefits, they would actually end up disrupting public peace and welfare and in the process; they would stand as adversaries of the public, which is against the very objective of their service.[216] On these grounds, the USA disentitles public employees from the right to strike and the policy definitely aids in the promotion of social welfare by ensuring that individual interest does not get superimposed on public interest at any time.

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[212] *Supra* Note 211

[213] *Id.*

[214] *Id.*

[215] *Id.*

[216] Suzanne C. Lacampagne, *Supra* Note 207

4.3 Canada:

In Canada, the Public Service Staff Relations Act (PSSRA) does not explicitly grant the right to strike to public employees. However, Canadian Courts have upheld the right of public employees to resort to strike.[217] But it is essential to note that all federal employees do not enjoy the right to strike. The Act specifically lays down that certain "designated employees"[218] are forbidden to strike under any circumstance. The Public Service Staff Relations Board[219] constituted under this Act is under the obligation to determine which employees in the bargaining unit shall be termed as "designated employees". The determination is to be made on the nature of services rendered by them. Employees whose duties are wholly or partially connected with the safety of the public and are in the interest of its security are under an obligation to refrain from strike at all times.[220] It is important to note that generally ninety percent of the members of a bargaining unit in Canada are prohibited from resorting to strikes as they are listed as "designated employees". As a result, the number of strikes is limited as only few bargaining units who are strong enough to bear the costs of a strike resort to it while others prefer to follow more peaceful methods of settlement.[221]

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[217] Suzanne C. Lacampagne, *Supra* Note 207

[218] *Id.*

[219] *Id.*

[220] *Id.*

[221] *Id.*

Further, the Act also imposes restrictions on the right to strike when a collective bargaining agreement is in force. Employees are prohibited from resorting to strikes even when the dispute is undergoing a process of conciliation. Only when conciliatory methods fail to resolve a dispute and there is no collective bargaining agreement in force between the employer and the employees, can the latter resort to strike. Thus, although the right to strike is granted in specific circumstances, it is so designed that the number of employees who can exert this right are very limited. Further, by imposing conditions on non-designated employees, their chances of resorting to strike are reduced to a minimum. These provisions suggest that the Canadian labour policy is oriented in such a manner that strikes become a measure of last resort only.

4.4 Japan

The Japanese economy has been performing spectacularly and with remarkable consistency over a period of time since the past few decades.[222] According to available statistics, Japan stands out as the country with the most harmonious system of industrial relations and the ethics of its work culture has been identified as the chief reason behind its flourishing economy. The incidence of conflict between employer and

[222] John Zechariah, *Comparative Industrial Relations in Japan and India*, 26:4 Indian Journal of Industrial Relations, pp. 352-366, (Apr., 1991)

employees is the minimum and reports reveal that it is the country with the minimum number of man-days lost on account of strikes and lock-outs.[223]

Article 28 of the Japanese constitution guarantees to its citizens the rights to organize, to bargain collectively and to act collectively for all workers.[224] Article 27 requires the fixing of labour standards by law and thereby, it lays down the foundations for protecting the interests of the working-class.[225] The most prominent features of the Japanese industrial relations are: Life time employment, Enterprise Unionism and Seniority Wage System.[226]

The conception of 'wage' is significantly different in Japanese industrial relations both in terms of the philosophy backing it as well as the practice of employers associated with it. While the wages of employees are mostly controlled by external constraints associated with industries like the paying capacity of the management, their competitive position as well as the ability of employers to manage and retain a workforce, in Japan the philosophy of wage is backed by sincere attempts of the industry to retain a workforce and establish long-term relations between the labour and management.[227] In the Japanese scheme of industrial relations, profits are secondary while interests of the workers are primary and this is evident from the policy they

[223] Refer Annexure Q for further details

[224] Constitution of Japan, Article 28: The right of workers to organize and to bargain and act collectively is guaranteed.

[225] Constitution of Japan, Article 27: All people shall have the right and the obligation to work. 2) Standards for wages, hours, rest and other working conditions shall be fixed by law. 3) Children shall not be exploited.

[226] John Zechariah, *Supra* note 222

[227] *Id.*

follow even during periods of recession and low industrial turn-over.[228] Japanese companies follow a policy of no lay-off which has paid off well in strengthening harmonious worker-employer relations as the assurance of jobs makes workers more loyal and provides them the incentive to be more efficient. Security of wages is ensured to the Japanese worker even during periods of insolvency by the Security of Wage Payment Act of 1975, which ensures that the monetary interest of workers is not put at stake and that such claims are given more priority against other claims.[229]

The other important aspect of the system of industrial relations in Japan is an awakened and distinct pattern of unionism. In Japan, there is no difference between blue-collar and white-collar jobs and employees belonging to both the categories organize themselves under "enterprise unions" rather than industrial or trade unions.[230] These unions are distinct from the general trade unions as they are friendly, co-operative and are extremely organized and because of amicable inter-personal relations, the management mostly resorts to informal methods for resolving disputes and addressing the concerns of the employees.

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[228] Japanese industries would rather reduce and even halt dividends during periods of economic 'lows'. They even go to the extent of cutting management salaries so that the work-force can be retained. Recessions are countered by adjustments in the margin of profit and dividends but the job security of workers is guaranteed. This goes a long way in ensuring loyalty of workers towards the management and their commitment to the industry. See John Zechariah, *Supra* note 222.

[229] *Id.*

[230] *Id.*

The Japanese enterprise unions work constructively by reinforcing the belief that the interests of workers are intricately connected with and dependent on the company. Their objective unions is not to coerce the management to yield to all demands of the workers but to foster a spirit of respect, generate motivation and work towards the enhancement of overall efficiency so as to ensure that there is increase in profit and turn-over, which in turn, ensures labour welfare.

Although Japanese unions have been criticized as weak, co-operative and friendly with the management, the employees still stick to this structure as they have found the current approach protects their interest in the best possible manner.[231] It is significant to note that the Japanese industrial society does not feel the need or relevance of shifting to the Western model of trade unions on the ground that the system of "enterprise unions" is more suitable to the economic pattern of Japan, the needs of which are different from the needs of European industrial societies.[232]

The aforementioned features make the Japanese model an epitome of a dispute-prevention mechanism which is certainly better than the best dispute resolution or settlement mechanism as it focuses on preventing the occurrence of the dispute in the first place. The efficiency and benefits of the preventive model is reflected in the negligible number of strikes and lock-outs in Japan and by the fact that it still stands out as one of the most technologically advanced and industrialized nations of the world.

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[231] Adhikari, Dev Raj, *National Factors and Employment Relations in Japan*, pp. 1-24, (Jan 1 2011) *www.jil.go.jp/profile/documents/Adhikari.pdf*

[232] This shows a degree of originality and confidence in the spirit of Japanese people. Instead of copying an idea they have actually given a thought to their own societal needs and responsibilities.

4.5 Germany

In spite of a long history of suffering and misery inflicted by war, Germany stands out as one of the most industrialized and technologically advanced countries of Europe.[233] According to a BBC report of 2009[234], Germany's economic success is "to a large extent built on its potent export industries, fiscal discipline and *consensus-driven industrial relations and welfare policies.*"[235] Germany has been rated as the greatest survivor of the 2008-2009 financial crises which disturbed the world economy in a significant manner. However, Germany rebounded with a speed and strength that stunned the European Union and all nations across the world[236].

The secret of Germany's achievements lies in its industrial policies and the success of these policies is supported by the fact that it stands out as the country with the lowest number of strikes, lock-outs and other forms of industrial disputes.[237] The industrial relations system is based on a "social partnership model"[238] which is characterized by strong co-operation and consensus between the employer and the employees.

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[233] http://news.bbc.co.uk/2/hi/europe/country_profiles/1047864.stm Accessed on 02.04.2011

[234] *Id.*

[235] *Id.*

[236] *Id.*

[237] http://www.eurofound.europa.eu/eiro/country/germany_4.htm. Accessed on 02.04.2011

[238] *Supra* Note 233

The system of collective bargaining agreements between the employer and employees is also practised and these agreements generally determine wages, conditions of service and other such matters associated with the nature of employment. Records reveal that this system of collective bargaining has gone a long way in preserving and protecting a harmonious ambience in industrial relations by detaching competitiveness from wages.[239] As a result, the focus of employees is on innovation and production of better commodities from which the Germans have benefitted progressively over the years.[240]

The benefits of the consensus model of industrial relations as practised in Germany lies in the fact that trade unions generally do not resort to strikes and even if they do, such occasions are very rare and are taken as a measure of last resort. Like Germany, Austria and Netherlands have also benefitted immensely from the consensus-model of industrial relations.[241]

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[239] *Supra* Note 233

[240] "Germany's economic success since World War II is to a large extent built on its potent export industries, fiscal discipline and consensus-driven industrial relations and welfare policies. It is particularly famed for its high-quality and high-tech goods." - http://news.bbc.co.uk/2/hi/europe/country_profiles/1047864.stm Accessed on 2.5.2011.

[241] *Id.*

4.6 Ireland

The Irish economy has been expanding at high rates since the mid-nineties and the industrial relations model adopted by Ireland is also based on social partnership of the German model.[242] Since the Irish economy is heavily dependent on international trade and foreign direct investment[243], it goes without saying that its economic growth is intricately connected with a sound system of industrial relations. In terms of frequency of industrial disputes, particularly strikes, Ireland has maintained a very clean record as strikes are reportedly very rare in Ireland.[244]

The system of social partnership has evolved positively over a period of time and it works on the ILO model of tripartism involving the government, trade unions and employers.[245] The concern of these bodies is primarily to address issues relating to welfare of employees and they aim at resolving problems of poverty, wages, housing and social exclusion. Wages and salaries are the central issue discussed and settled by the bodies and their efficiency is reflected in the harmonious structure of industrial relations. The collective bargaining agreements entered into by employees have also been quite beneficial in preventing disputes and as per available data, they have

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[242] http://www.eurofound.europa.eu/eiro/country/ireland.pdf accessed on 01.04.2011

[243] *Id.*

[244] *Id.*

[245] *Id.*

effectively addressed the issues of retirement benefits, gender equality at workplace and vocational training.[246]

[246] *Supra* Note 240

CHAPTER- 6

Strike: A Cratological Critique

CHAPTER- 6

Strike: A Cratological Critique

In its essence, strike is a modality of expressing protest against the employers by the employees precipitated by a conflict of interest between the two parties. Historically, the notion of strike has been linked with discontent of the working class on issues concerning conditions of their life and inadequacy of means of livelihood. It has served as an instrument of coercion in the hands of the disadvantaged working class by which they can compel the management to concede to their demands. In the beginning, strikes arose in a socio-economic context of insufferable means of life and living precipitated by the high-handedness of the management which chose to disregard needs of the working-class.[247] The disparity in the equations of power governing the employer-employee relationships were aggravated by the state taking an unconcerned attitude initially. When, as a consequence, English society was sick in a short thirty years, the state was compelled to come with the Trade Disputes Act of 1909 which conferred power to collectively bargain supported with immunity against a charge of conspiracy for that activity.

As the employees in their individual capacities were in an economically weaker position in comparison to the employer, who because of his dominant position was

[247] William Jethro Brown, *Supra* Note 126

capable of exerting coercive influence over the rights of the workman, it was felt that the employees acting in their collectivity It was this realization which stirred the conscience of the international community to start thinking about the recognition of bargaining rights of the employees. In recognition of this principle, the International Labour Organisation (ILO) recognized the rights of workers to organize and bargain collectively. The awakening of the international community to the rights of the working class had its beginning at this time. Although the right to strike has not been explicitly recognized by the ILO, it has been construed by the supervisory bodies as a part of the right of the workers to assemble freely.[248] It is to be noted that the right was never intended to be an absolute right by the international community. This is evident from articles 3 and 10 of the ILO Convention no. 87 which contain provisions to the effect that restrictions on the right to strike can be justified only in the event of an unlawful exercise of power that comes with the right.[249]

The qualification attached to the right to strike is intricately connected with the idea that it should be backed by legitimate objectives. In this context, article 10 of the ILO Convention no. 87 becomes relevant as it states that the purpose of a worker's organization is to further and defend the interests of the workers[250] Legitimacy of the objective and interest of workers has been described by the ILO through the judgments of its supervisory bodies as only "occupational", "professional" and "economic".[251] At

[248] Tonia Novitz, *Supra* Note 4, at pp. 192-197

[249] *Id.*

[250] *Id.*

[251] *Id.*

the same time, the ILO Governing Body Committee for Freedom of Association (CFA) has also emphasized on that strikes which are backed by political motivation are highly illegitimate and cannot be considered to be within the purview of the principle of collective bargaining.[252] Further, the ILO has also prohibited or restricted the right to strike by employees in the public sector as they are engaged in rendering essential services to the public which cannot be compromised with at any cost. The stand of the ILO on the right to strike has reaffirmed and consolidated the position that strike is a socio-economic weapon and the power inherent in it can only be directed for the purpose of securing genuine concerns of the workers having a bearing on their social and economic conditions.

In India, under the Constitution adopted in 1950, the dynamics of power governing the relationship between and among the government, employer and employees has undergone a fundamental change. The inclusion of DPSPs in Part IV has necessitated a positive course of action to be taken by the State to ensure that principles of labour welfare are acted upon and promoted unceasingly. Likewise, the recognition of the freedom of association guaranteed to the citizens by article 19(1) (c) has created space for adoption of collective bargaining by the workers.[253] Further, the adaptation of the existing labour legislations to the provisions of the Constitution has also been

[252] Tonia Novitz, *Supra* Note 4, at pp. 192-197

[253] Constitution of India, Article 19 (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; (e) to reside and settle in any part of the territory of India; and (g) to practise any profession, or to carry on any occupation, trade or business."

emphasized upon.[254] However, the frequent outbreak of strikes and the consequent losses to life and property, suggest that there are inherent flaws in the working of the laws in terms of their legislation, implementation and interpretation.

The Trade Unions Act, 1926 reveals that it is replete with provisions which are responsible for unrestrained growth of industrial disputes in the country. By providing for immunities from civil and criminal liabilities for "any" action connected with the objective of furthering an objective of the trade union, uninhibited freedom is given to the members to resort to unconstitutional means while redressing their grievances against the employers. Secondly, the Act not only supports but also nurtures the involvement of politics in industrial matters in a manner that has the potential to wreck the country's economic growth by encouraging disputes guided by political motives, having little or no connection with the objective of labour welfare.

Thirdly, the involvement of children in trade unions is a highly sensitive issue with disastrous consequences. It is not in consonance with the State's obligation to protect the dignity of childhood. Involvement of children in trade unions makes them vulnerable to the impact of violence that trade unions often resort to and in the process,

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[254] Constitution of India, Article 372 (2): "For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

there is a probability that they end up as the worst victims of labour unrest and industrial violence. Apart from the above factors, a major short-coming of the law is that it provides for uninhibited growth of trade unions in the industries. Mushrooming of trade unions with conflicting ideologies and motives is not conducive to an ambience of healthy industrial relations as the chance of conflict increases and there is a probability of perpetual conflict between the employers and employees as well as among the employees themselves.

Likewise, the Industrial Disputes Act, which is also a piece of colonial legislation, needs to be revised. It defines industrial dispute in a manner which is almost identical with the definition of trade dispute. The Act only prescribes certain procedural requirements to be followed before resorting to a strike. The legislation needs to take into notice the fact that the constitutional right to associate freely is subject to reasonable restrictions[255] and the exercise of this right cannot be maintained at the cost of jeopardizing the fundamental rights of the public. Further, like several European countries, strikes in public utility services need to be explicitly banned in the Industrial Disputes Act. The ILO's stand on the restriction and prohibition of strikes in the public sector can be an additional persuasive factor because India is one of the original members of ILO.

[255] Constitution of India, Article 19 (4): Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

The Industrial Disputes Act makes no stipulation as to the manner in which workers are required to put forth their demands. Likewise, particular modalities of strikes have not been laid down to regulate the manner in which strikes are conducted. This shows that the Industrial Disputes Act has not been adapted to answer the provisions of the Constitution and will therefore, have to be revised to meet the emerging human rights dimensions which stand already incorporated in the provisions of Part III and Part IV of the Constitution. The Act has no provision for a preventive strategy of dispute resolution and the confrontational mode provided for in the Act is not in tune with the constitutional mandate under article 14 which makes the state duty bound to grant equal protection of the laws within the territory of India.

Although institutional mechanisms in the form of conciliation and arbitration bodies have been devised to resolve disputes amicably, their failure in improving labour-management relations is evident from the conflict-ridden industrial scene in India. The frequency, magnitude and impact of strikes right from the inception of the Constitution till date suggest that the Act has been an utter failure in resolving industrial disputes.

The current manner of working of the labour legislations has stifled the development of harmonious industrial relations in the country. This is suggested by the frequent outbreak of violent strikes which India has been witnessing since the commencement of the Constitution. In the current framework of power-relations, there is no space for uninhibited exercise of the right to strike, which happens to be the

general trend in recent times. A new model of industrial relations needs to be devised for India, keeping in mind the guarantees of the Constitution. In this context, inspiration can be drawn from much more effective and innovative patterns followed in countries across the world.

India can learn a lot from the Japanese model of industrial relations, which has proved to be the most efficient over a period of time and has successfully balanced the growth of industrialisation with the welfare of labour. The informal method of settlement of disputes, a consistent effort on the part of the management to implement a policy of just wages to incentivize the employees, an employment mechanism guaranteeing security of jobs, have gone a long way in strengthening harmonious employer-employee relationships. The elaborate provisions for retirement benefits and the orientation of Japanese employers to retain long-term relationships with their employees have proved to be particularly beneficial.

The greatest lesson which India has to learn from India is with respect to the organized structure and function of trade unions.[256] The organized nature of Japanese enterprise unions and the absence of disparity between blue-collared and white-collared jobs can be imported into the Indian system of trade unions. Further, the amicable attitude of such unions towards the management and the spirit of partnership which pervades their power-relations should serve as a guiding light our trade unions.

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[256] See pages 90-91.

The model of 'social partnership' which forms the fulcrum of German industrial relations[257] which is based on the method is based on consensus and mutual co-operation between the two parties suggests another efficient method of fostering harmonious relations between the labour and management. An essential feature of the social partnership model is the existence of collective bargaining agreements which go a long way in preventing the rise of strikes and industrial conflicts through a method of pre-determination of wages, terms and conditions of service and other matters related to employment.[258] This prevents employees from demanding more than what they have already agreed to and shifts their focus to increase productivity as better performance in the field of employment carries with it the incentive of quick promotions, which ultimately means a better pay-package.

A close look at the provisions of the Trade Unions Act, 1926 in the proviso (ii) to section 2 would indicate that the Act shall not affect any agreement between the employer and employee as to such employment.[259] Therefore, a trade dispute can properly arise only in relation to settling the terms of employment or non-employment or the conditions of labour and the role of a Trade Union would be confined to this. The definition of "industrial dispute" under the Industrial Disputes Act, 1947 stands *pari materia* with the definition of "trade dispute" under the Trade Unions Act. After the

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[257] See page 92.

[258] Id.

[259] Indian Trade Unions (Amendment) Act,1964 (38 of 1964), Section 2 Proviso [ii]: "Provided that this Act shall not affect any agreement between an employer and those employed by him as to such employment;"

commencement of the Constitution an industrial dispute also can only be allowed in relation to the conditions of labour while settling the terms of employment and not after such terms have been agreed upon. The Trade Union can only assist its members under the provisions of section 15 of the Act for realizing their legal rights, if denied. Moreover, only anything done in pursuance of a "trade dispute" has been given a qualified immunity contemplated in sections 17 and 18 of the Trade Unions Act. By reason of the proviso (ii) to section 2, any breach of contract of employment will not be within the definitional reach of a trade dispute in that section and so will not attract any immunity. After the commencement of the Constitution, the Supreme Court has not laid down the law to govern strikes despite having had opportunities for doing so.

Conclusion

Conclusion

The strike as a phenomenon has been developed by members of society to assert their claims for better conditions of work and living. In the earliest period of time taken for consultation, the State was fully concerned with the conditions of work and wages for the working class and had full regulation through law and effective and pro-active state action to actualize the promises of the law. Consequently there was not precipitate necessity for the working class to resort to strikes and ancient Indian literature does not reflect any such instance. The early period in India was characterized by the executive power holder, the King, following the principles of Rajadharma under which he was duty-bound to deliver the promises of the law through affirmative state action failing which he was liable for punishment a thousand times more severely[260]This system of duty coupled with punishment for failure to perform duty went to ensure that the executive power of the State would be employed to assist the power-holder to protect the interests of the injured party.

This system of duty-driven governance suffered a serious setback initially under the Mughals and subsequently under the British. The emphasis was shifted to power and the power-addressee was without affirmative action support from the state except for a brief period in the reigns of Humayun and Akbar.[261] The power-holder was left

[260] See page 14
[261] See page 19

free to exercise power as was convenient for him and the power-addressee had no assistance of the law because they had no rights under the law against the State. The imbalance in power-equations has been continued since.

The British experience of this imbalance was disastrous in that English society was sick in thirty years compelling the state to come in with the law to assist the working class in the matter of protection of their interest.[262] However, the English approach was pitting the workman against the employer in a manner where the working-class could assert their power of refusing to work in a collective concerted manner to combat the economic power of the employer, who have in his pursuit of self-interest, almost reduced the working class into total helplessness. This confrontation model was reflected in the law in the form of strikes and had also attracted retaliatory measures from employers in the form of lock-outs. The English law only attempted arbitration and conciliation but did not reach far enough to address the underlying causes.

Experiences of this confrontation of the economically weak and strong classes of society had produced revolutionary experiences in several industrially advanced countries of the world which was also one of the causes of the First World War.[263] Consequently the treaty of Versailles chose to create the International Labour Organisation in a bid to fundamentally address the underlying factors that had led to

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[262] See pages 80-83
[263] See pages 41-42

devastations for the people of the world.[264] This institution has successfully developed a principle of tripartism which recognized the concerns of the state, the employer and the employees by requiring them to concertedly reach principles which were acceptable to all three, of course to a legitimate weightage to the state as the keeper and protector of the people's interest.[265] The ILO's Conventions which bind states which ratify them and its Recommendations which are only recommendatory are both reached through the tripartite meetings and consensus. This procedure has served to set standards which have received readier acceptance for the reason that they are consensual solutions and not confrontational. The opposition of interests which are necessarily involved is at a stage prior to the reaching of the conclusions be they in the form of Conventions or Recommendations. The ILO method has therefore, much to commend as against the British confrontational method of addressing the conflicts of interest.

The world over, the consensus model is tending to be preferred although in the details the models differ from country to country. In the US, the collective bargaining agreement, once reached, is respected for the duration of the agreement.[266] This principle finds reflection in the German and Irish models. The Canadian model is authoritarian in that it bans strikes in designated employments.[267] This model weights the political process more than the legal. It can have both positive and negative consequences depending on the political climate. Japan stands out with a more ethical

[264] See pages 44-46
[265] See page 46
[266] See pages 84-86
[267] See pages 92-93

and perhaps forward-looking industrial policy which is pronouncedly human-rights friendly with care and concern for the quality of life of the working class and other members of the society are reflected. Life-time employment stands opposed to the hire and fire principle in the other countries where only the rigor of the principle is partly mollified. Consensus is the principle that drives the formulation of industrial policy which approximates very closely to the ILO model. Japan also stands out as the country which has a record for the least number of strikes and perhaps the best conditions of service for the working class where they have no distinction between what are known as white- collar and blue-collar jobs. The policy-making is for an industry as a whole and conduces better to a harmonious employer-employee relationship where the dignity and worth of the workforce personnel is acknowledged and respected. Strikes therefore, in that context, stand uncommon and in the Japanese society milder forms of protest expression are also sufficient to communicate dissatisfaction. This method admirably answers the principle which the Indian Supreme Court seems to have endorsed not in bold terms as a law under article 141 but through a perceivable attitudinal consensus that strike is a form of expression of protest or dissatisfaction within the reach of the constitutional affirmation of right to freedom of speech and expression in article 19(1) (a) associated with the right to form associations and unions under article 19(1) (c). The Supreme Court's position that exercise of a right to strike is not available in law will not stand reconcilable with this view that strike is a form of protest expression within the reach of article 19(1) (a) and it is necessary for the court to authoritatively state the law indicating that strike is a form of protest expression

available as guaranteed for the citizens of India and as inherent in the right to life for others.[268] The Court's view that resort to strike cannot be done in any manner interfering with the exercise of rights by other members of the society would stand reconcilable with the reach of article 19(2) as well as 19(4) under which the law can place reasonable restrictions on the exercise of the right in the manner and on the grounds specified in those clauses.[269] A problem that can be arising here is that restrictions can be made only by law which normally is done in the legislature which will not be capable of reflecting the ILO tripartism in that balance and therefore, a meaningful consensus as contemplated in the ILO mechanism may not be reachable. To overcome this difficulty, it is desirable to consider the possibility of constituting under authority of Parliament a standing consultative committee on industrial relations comprising representatives of the state, industry and the working class in the proportion reflected in the ILO model and charged with the responsibility of recommending through a consensus reached by that consultative committee for changes in the law relating to industrial relations. This would not amount to anything more than the Legislature resorting to a meaningful consultation of affected interests directly in preference to the indirect consultation through their elected political representatives and cannot therefore by faulted.

With the Supreme Court reaching an opinion that resort to strikes will not justify violation of another's rights would touch the immunity clauses of section 17 and 18 of

[268] See pages 67-73
[269] See page 98

the Trade Unions Act which would be standing as irreconcilable with this position of the court which is more human rights friendly. Considering that the Indian Constitution is a human rights friendly document and has incorporated the contents of ICCPR and the ECOSOC covenants it would be necessary to modify the contents of section 17 and 18 of the Trade Unions Act, either by legislative effect which would be preferable or a judicial pronouncement striking down the immunity as inconsistent with the equality of status and opportunity guarantee of the Basic Structure.

The Supreme Court should declare as law for the purpose of article 141 that strike is a form of protest expression which is within Article 19(1) (a) for citizens and article 21 for others and subject to reasonable restrictions on the grounds mentioned in article 19(2) and (4) besides the equal protection guarantee of article 14. This will ensure that the law will stand answering Articles 14, 19 and 21 for validity. The present uncertainty in the law resulting from the Supreme Court's errors and imprecisions as noticed in the cases selectively traversed needs to be immediately corrected to provide the predictability, uniformity and enforcement of the law on strikes.

The research hypotheses stand affirmed and the research questions are answered.

Annexures

Annexure A

The Constitution of India, 1950

Article 38 [1]:

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

Article 38 [2]:

"The State shall, in particular, strive to minimize the inequalities in income, and endeavor 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."

Article 39 [a]:

"The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood"

Article 39 [b]:

"The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good"

Article 39 [c]:

"The State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment"

Article 39 [d]:

"The State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women"

Article 39 [e]:

"The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength"

Article 39 [f]:

"The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment"

Article 41:

"The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

Article 42:

"The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 43:

"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

Article 43A:

"The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry."

Article 37:

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

Annexure B

Charter of Fundamental Rights of the European Union, 2000

Official Journal of the European Communities, 18 December 2000 (2000/C 364/01)

Article 12:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 28:

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 51:

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52:

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Annexure C

The European Convention on Human Rights, 1950

European Treaty Series 5

Article 11:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Annexure D

European Social Charter [Revised], 1996

European Treaty Series-163

Article 5:

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Article 6:

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1 to promote joint consultation between workers and employers;

2 to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

3 to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Article 31:

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1 to promote access to housing of an adequate standard;

2 to prevent and reduce homelessness with a view to its gradual elimination;

3 to make the price of housing accessible to those without adequate resources.

Appendix to the Revised European Social Charter

Scope of the Revised European Social Charter in terms of persons protected

1 Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.

2 Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.

3 Each Party will grant to stateless persons as defined in the Convention on the Status of Stateless Persons done in New York on 28 September 1954 and lawfully staying in its territory, treatment as favourable as possible and in any case not less favourable than under the obligations accepted by the Party under the said instrument and under any other existing international instruments applicable to those stateless persons.

Part I, paragraph 18, and Part II, Article 18, paragraph 1

It is understood that these provisions are not concerned with the question of entry into the territories of the Parties and do not prejudice the provisions of the European Convention on Establishment, signed in Paris on 13 December 1955.

Part II

Article 1, paragraph 2

This provision shall not be interpreted as prohibiting or authorising any union security clause or practice.

Article 2, paragraph 6

Parties may provide that this provision shall not apply:

a to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;

b where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Article 3, paragraph 4

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 4, paragraph 4

This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Article 4, paragraph 5

It is understood that a Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exceptions being those persons not so covered.

Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Article 7, paragraph 2

This provision does not prevent Parties from providing in their legislation that young persons not having reached the minimum age laid down may perform work in so far as it is absolutely necessary for their vocational training where such work is carried out in accordance with conditions prescribed by the competent authority and measures are taken to protect the health and safety of these young persons.

Article 7, paragraph 8

It is understood that a Party may give the undertaking required in this paragraph if it fulfils the spirit of the undertaking by providing by law that the great

majority of persons under eighteen years of age shall not be employed in night work.

Article 8, paragraph 2

This provision shall not be interpreted as laying down an absolute prohibition. Exceptions could be made, for instance, in the following cases:

a if an employed woman has been guilty of misconduct which justifies breaking off the employment relationship;

b if the undertaking concerned ceases to operate;

c if the period prescribed in the employment contract has expired.

Article 12, paragraph 4

The words "and subject to the conditions laid down in such agreements" in the introduction to this paragraph are taken to imply *inter alia* that with regard to benefits which are available independently of any insurance contribution, a Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other Parties.

Article 13, paragraph 4

Governments not Parties to the European Convention on Social and Medical Assistance may ratify the Charter in respect of this paragraph provided that they grant to nationals of other Parties a treatment which is in conformity with the provisions of the said convention.

Article 16

It is understood that the protection afforded in this provision covers single-parent families.

Article 17

It is understood that this provision covers all persons below the age of 18 years, unless under the law applicable to the child majority is attained earlier, without prejudice to the other specific provisions provided by the Charter, particularly Article 7.

This does not imply an obligation to provide compulsory education up to the above-mentioned age.

Article 19, paragraph 6

For the purpose of applying this provision, the term "family of a foreign worker" is understood to mean at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker.

Article 20

1 It is understood that social security matters, as well as other provisions relating to unemployment benefit, old age benefit and survivor's benefit, may be excluded from the scope of this article.

2 Provisions concerning the protection of women, particularly as regards pregnancy, confinement and the post-natal period, shall not be deemed to be discrimination as referred to in this article.

3 This article shall not prevent the adoption of specific measures aimed at removing *de facto* inequalities.

4 Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this article or some of its provisions. This provision is not to be interpreted as requiring the Parties to embody in laws or regulations a list of occupations which, by reason of their nature or the context in which they are carried out, may be reserved to persons of a particular sex.

Articles 21 and 22

1 For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

2 The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.

3 For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.

4 It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.

5 It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.

6 The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Article 22

1 This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.

2 The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

Article 23, paragraph 1

For the purpose of the application of this paragraph, the term "for as long as possible" refers to the elderly person's physical, psychological and intellectual capacities.

Article 24

1 It is understood that for the purposes of this article the terms "termination of employment" and "terminated" mean termination of employment at the initiative of the employer.

2 It is understood that this article covers all workers but that a Party may exclude from some or all of its protection the following categories of employed persons:

a workers engaged under a contract of employment for a specified period of time or a specified task;

b workers undergoing a period of probation or a qualifying period of employment, provided that this is determined in advance and is of a reasonable duration;

c workers engaged on a casual basis for a short period.

3 For the purpose of this article the following, in particular, shall not constitute valid reasons for termination of employment:

a trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours;

b seeking office as, acting or having acted in the capacity of a workers' representative;

c the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

d race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

e maternity or parental leave;

f temporary absence from work due to illness or injury.

4 It is understood that compensation or other appropriate relief in case of termination of employment without valid reasons shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 25

1 It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.

2 It is understood that the definition of the term "insolvency" must be determined by national law and practice.

3 The workers' claims covered by this provision shall include at least:

a the workers' claims for wages relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;

b the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;

c the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.

4 National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

Article 26

It is understood that this article does not require that legislation be enacted by the Parties.

It is understood that paragraph 2 does not cover sexual harassment.

Article 27

It is understood that this article applies to men and women workers with family responsibilities in relation to their dependent children as well as in relation to other members of their immediate family who clearly need their care or support where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity. The terms "dependent children" and "other members of their immediate family who clearly need their care and support" mean persons defined as such by the national legislation of the Party concerned.

Articles 28 and 29

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

Part III

It is understood that the Charter contains legal obligations of an international character, the application of which is submitted solely to the supervision provided for in Part IV thereof.

Article A, paragraph 1

It is understood that the numbered paragraphs may include articles consisting of only one paragraph.

Article B, paragraph 2

For the purpose of paragraph 2 of Article B, the provisions of the revised Charter correspond to the provisions of the Charter with the same article or paragraph number with the exception of:

a Article 3, paragraph 2, of the revised Charter which corresponds to Article 3, paragraphs 1 and 3, of the Charter;

b Article 3, paragraph 3, of the revised Charter which corresponds to Article 3, paragraphs 2 and 3, of the Charter;

c Article 10, paragraph 5, of the revised Charter which corresponds to Article 10, paragraph 4, of the Charter;

d Article 17, paragraph 1, of the revised Charter which corresponds to Article 17 of the Charter.

Part V

Article E

A differential treatment based on an objective and reasonable justification shall not be deemed discriminatory.

Article F

The terms "in time of war or other public emergency" shall be so understood as to cover also the *threat* of war.

Article I

It is understood that workers excluded in accordance with the appendix to Articles 21 and 22 are not taken into account in establishing the number of workers concerned.

Article J

The term "amendment" shall be extended so as to cover also the addition of new articles to the Charter.

Annexure E

Community Charter of the Fundamental Social Rights of Workers, 1989

European File No. 6/90

Article 11:

Employers and workers of the European Community shall have the right of association in order to constitute professional organisations or trade unions of their choice for the defence of their economic and social interests.

Every employer and every worker shall have the freedom to join or not to join such organisations without any personal or occupational damage being thereby suffered by him.

Article 12:

Employers or employers' organisations, on the one hand, and workers' organisations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.

The dialogue between the two sides of industry at European level which must be developed may, if the parties deem it desirable, result in contractual relations, in particular at inter-occupational and sectoral level.

Article 13:

The right to resort to collective action in the event of a conflict of interests shall include the right to strike, subject to the obligations arising under national regulations and collective agreements.

In order to facilitate the settlement of industrial disputes the establishment and utilisation at the appropriate levels of conciliation, mediation and arbitration procedures should be encouraged in accordance with national practice.

Article 14:

The internal legal order of the Member States shall determine under which conditions and to what extent the rights provided for in Articles 11 to 13 apply to the armed forces, the police and the civil service.

Annexure F

International Covenant on Civil and Political Rights

A/RES/21/2200 of 16 December 1966, U.N. Doc. A/6316 (1966)

Article 22:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Annexure G

International Covenant on Economic, Social and Cultural Rights

A/RES/21/2200 of 16 December 1966

Article 8:

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Annexure H

Constitution of the International Labour Organisation (ILO), 1 April 1919

Preamble:

Whereas universal and lasting peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization:

Article 1:

1. A permanent organization is hereby established for the promotion of the objects set forth in the Preamble to this Constitution and in the Declaration concerning the aims and purposes of the International Labour Organization adopted at Philadelphia on 10 May 1944 the text of which is annexed to this Constitution.
2. The Members of the International Labour Organization shall be the States which were Members of the Organization on 1 November 1945 and such other States as may become Members in pursuance of the provisions of paragraphs 3 and 4 of this article.
3. Any original member of the United Nations and any State admitted to membership of the united nations by a decision of the general assembly in accordance with the provisions of the charter may become a member of the International Labour Organization by communicating to the director-general of the international labour office its formal acceptance of the obligations of the constitution of the International Labour Organization.
4. The General Conference of the International Labour Organization may also admit Members to the Organization by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director-General of the International Labour Office by the government of the new Member of its formal acceptance of the obligations of the Constitution of the Organization.
5. No Member of the International Labour Organization may withdraw from the Organization without giving notice of its intention so to do to the Director-General of the International Labour Office. Such notice shall take effect two years after the date of its reception by the Director-General, subject to the Member having at that time fulfilled all financial obligations arising out of its membership. When a Member has ratified any international labour Convention,

such withdrawal shall not affect the continued validity for the period provided for in the Convention of all obligations arising there under or relating thereto.

6. In the event of any State having ceased to be a Member of the Organization, its readmission to membership shall be governed by the provisions of paragraph 3 or paragraph 4 of this article as the case may be.

Article 2:

The permanent organization shall consist of:

(a) a General Conference of representatives of the Members;

(b) a Governing Body composed as described in article 7; and

(c) an International Labour Office controlled by the Governing Body.

Article 5:

The meetings of the Conference shall, subject to any decisions which may have been taken by the Conference itself at a previous meeting be held at such place as may be decided by the Governing Body.

Article 10:

1. The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body.

2. Subject to such directions as the Governing Body may give, the

(a) prepare the documents on the various items of the agenda for the meetings of the Conference;

(b) accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the

basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection;

c) carry out the duties required of it by the provisions of this Constitution in connection with the effective observance of Conventions;

3. Generally, it shall have such other powers and duties as may be assigned to it by the Conference or by the Governing Body.

Annexure I

ILO Convention No. 98 Concerning

Application of the Principles of the Right to Organise and to Bargain Collectively

Adopted at the 32nd Session of the

International Labour Conference

Geneva – July 1, 1949

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and

Having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

Adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to--

a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

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.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 10

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 11

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 12

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 13

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 14

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 15

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides,

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 11 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 16

The English and French versions of the text of this Convention are equally authoritative.

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

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.

Article 10

In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1.In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding

paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

Annexure K

The Industrial Disputes Act, 1947 [14 of 1947]

Section 23:

"No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

(a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) during the pendency of proceedings before [Labour Court, Tribunal or National Tribunal] and two months after the conclusion of such proceedings;

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

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

Section 24 [1] [i]:

"A strike or a lock-out shall be illegal if it is commenced or declared in contravention of section 22 or section 23"

Section 22:

"(1) No person employed in a public utility service shall go on strike in breach of contract—

(a) without giving to the 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.

(2) No employer carrying on any public utility service shall lock-out any of his workmen –

(a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or

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

(c) before the expiry of the date of lock-out 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.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any persons employed by him any such notices as are referred to in sub-section (1) or gives to any persons employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe the number of such notices received or given on that day.

Section 2 [q]:

Strike means cessation 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 to accept employment.

Annexure L

The Industrial Employment (Standing Orders) Act 1946 [20 of 1946]

Section 5:

"(1) On receipt of the draft under section 3, the Certifying Officer shall forward a copy thereof to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring objections, if any, which the workmen may desire to make to the draft standing orders to be submitted to him within fifteen days from the receipt of the notice.

(2) After giving the employer and the trade union or such other representatives of the workmen as may be prescribed an opportunity of being heard, the Certifying Officer shall decide whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft standing orders certifiable under this Act, and shall make an order in writing accordingly.

(3) The Certifying Officer shall thereupon certify the draft standing orders, after making any modifications therein which his order under sub-section (2) may require, and shall within seven days thereafter send copies of the certified standing orders authenticated in the prescribed manner and of his order under sub-section (2) to the employer and to the trade union or other prescribed representatives of the workmen."

Section 4:

"Standing orders shall be certifiable under this Act if—

(a) provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and

(b) the standing orders are otherwise in conformity with the provisions of this Act; and it [shall be the function] of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders."

Section3:

"(1) Within six months from the date on which this Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the draft standing orders proposed by him for adoption in his industrial establishment.

(2) Provision shall be made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model.

(3) The draft standing orders submitted under this section shall be accompanied by a statement giving prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

(4) Subject to such conditions as may be prescribed, a group of employers in similar industrial establishments may submit a joint draft of standing orders under this section."

Section 2[b]:

" 'appropriate Government' means in respect of industrial establishments under the control of the Central Government or a [Railway administration] or in a major port, mine or oil-field, the Central Government, and in all other cases, the State Government: [Provided that where any question arises as to whether any industrial establishment is under the control of the Central Government, that Government may, either on a reference made to it by the employer or the workman or a trade union or other representative body of the workmen, or on its own motion and after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties;]"

Annexure M

The Trade Unions Act, 1926 [16 of 1926]

Section 16[1]:

"A registered Trade Union may constitute a separate fund, from contributions separately levied for or made to that fund, from which payments may be made, for the promotion of the civic and political interests of its members, in furtherance of any of the objects specified in sub-section (2)."

Section 16[2]:

"The objects referred to in sub-section (1) are:-

(a) the payment of any expenses incurred, either directly or indirectly, by a candidate or prospective candidate for election as a member of any legislative body constituted under [the Constitution] or of any local authority, before, during, or after the election in connection with his candidature or election; or

(b) the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or

(c) the maintenance of any person who is a member of any legislative body constituted under [the Constitution] or of any local authority; or

(d) the registration of electors or the election of a candidate for any legislative body constituted under [the Constitution] or for any local authority; or

(e) the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind."

Section 15:

"The general funds of a registered Trade Union shall not be spent on any other objects than the following.-namely:--

(a) the payment of salaries, allowances and expenses to [office-bearers] of the Trade Union;

(b) the payment of expenses for the administration of the Trade Union, including audit of the accounts of the general funds of the Trade Union;

(c) the prosecution or defence of any legal proceeding to which the Trade Union or any member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any rights of the Trade Union as such or any rights arising out of the relations of any member with his employer or with a person whom the member employ;

(d) the conduct of trade disputes on behalf of the Trade Union or any member thereof;

(e) the compensation of members for loss arising out of trade disputes;

(f) allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of such members;

(g) the issue of, or the undertaking of liability under, policies of assurance on the lives of members, or (under) policies insuring members against sickness, accident or unemployment;

(h) the provision of education, social or religious benefits for members (including the payment of the expenses of funeral or religious ceremonies for deceased members) or for the dependants of members;

(i) the upkeep of a periodical published mainly for the purpose of discussing questions affecting employers or workmen as such;

(j) the payment, in furtherance of any of the objects on which the general funds of the Trade Union may be spent, of contributions to any cause intended to benefit workmen in general provided that the expenditure in respect of such contributions in any financial year shall not at any time during that year be in excess of one-fourth of the combined total of the gross income which has up to that time accrued to the general funds of the Trade Union during that year and of the balance at the credit of those funds at the commencement of that year; and

(k) subject to any conditions contained in the notification, any other object notified by the [appropriate Government] in the Official Gazette.

Section 17:

"No (office-bearer] or member of a Registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, 1860 (45 of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence."

Section 18:

"(1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any [office-bearer] or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Unions."

Section 22[1]:

"(1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganized sector shall be persons actually engaged or employed in an industry with which the Trade Union is connected: Provided that the appropriate

Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order."

Section 21:

"Any person who has attained the age of fifteen years may be a member of a registered Trade Union subject to any rules of the Trade Union to the contrary, and may, subject as aforesaid, enjoy all the rights of a member and execute all instruments and give all acquittances necessary to be executed or given under the rules."

Section 9-A:

"A registered Trade Union of workmen shall at all times continue to have not less than ten per cent. or one hundred of the workmen, whichever is less, subject to a minimum of seven, engaged or employed in an establishment or industry with which it is connected, as its members."

Annexure N

The Universal Declaration of Human Rights

A/Res/217A (III), U.N. Doc A/810 at 71 (1948)

Article 23:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24:

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25[1]:

(1) 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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Annexure O

Indian Penal Code, 1860,[45 of 1860]

Section 120A:

"When two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120B:

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

Annexure P

LIST OF ILO CONVENTIONS RATIFIED BY INDIA

(Status as of 01.01.2005)

Conventions	Date of Ratification
C1 Hours of Work (Industry) Convention, 1919	14.07.21
C2 Unemployment Convention, 1919*	14.07.21
C4 Night Work (Women) Convention, 1919	14.07.21
C5 Minimum Age (Industry) Convention, 1919	09.09.55
C6 Night Work of Young Persons (Industry) Convention, 1919	14.07.21
C11 Right of Association (Agriculture) Convention, 1921	11.05.23
C14 Weekly Rest (Industry) Convention, 1921	11.05.23
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	20.11.22
C16 Medical examination of Young Persons (Sea) Convention, 1921	20.11.22
C18 Workmen's Compensation (Occupational Diseases) Convention, 1925	30.09.27

C19 Equality of Treatment (Accident Compensation) Convention, 1925	30.09.27
C21 Inspection of Emigrants Convention, 1926	14.01.28
C22 Seamen's Articles of Agreement Convention, 1926	31.10.32
C26 Minimum Wage-Fixing Machinery Convention, 1928	10.01.55
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	07.09.31
C29 Forced Labour Convention, 1930	30.11.54
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	10.02.47
C41 Night Work (Women) Convention (Revised), 1934**	22.11.35
C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934	13.01.64
C45 Underground Work (Women) Convention, 1935	25.03.38
C80 Final Articles Revision Convention, 1946	17.11.47
C81 Labour Inspection Convention, 1947	07.04.49
C88 Employment Service Convention, 1948	24.06.59
C89 Night Work (Women)	27.02.50

Convention (Revised), 1948	
C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	27.02.50
C100 Equal Remuneration Convention, 1951	25.09.58
C105 Abolition of Forced Labour Convention, 1957	18.05.2000
C107 Indigenous and Tribal Populations Convention, 1957	29.09.58
C111 Discrimination (Employment and Occupation) Convention, 1958	03.06.60
C115 Radiation Protection Convention, 1960	17.11.75
C116 Final Articles Revision Convention, 1961	21.06.62
C118 Equality of Treatment (Social Security) Convention, 1962	19.08.64
C122 Employment Policy Convention, 1964	17.11.98
C123 Minimum Age (Underground Work) Convention, 1965	20.03.75
C136 Benzene Convention, 1971	11.06.91
C141 Rural Workers' Organisations Convention, 1975	18.08.77
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	27.02.78

C147 Merchant Shipping (Minimum Standards) Convention, 1976	26.09.96
C160 Labour Statistics Convention, 1985	01.04.92
P89 Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948	21.11.2003

* Denounced on 16.04.1938

** Denounced on 27.02.1950

Source: http://www.ilo.org/ilolex/english/newcountryframeE.htm

Annexure Q

Country Wise Statistics on Impact of Strikes

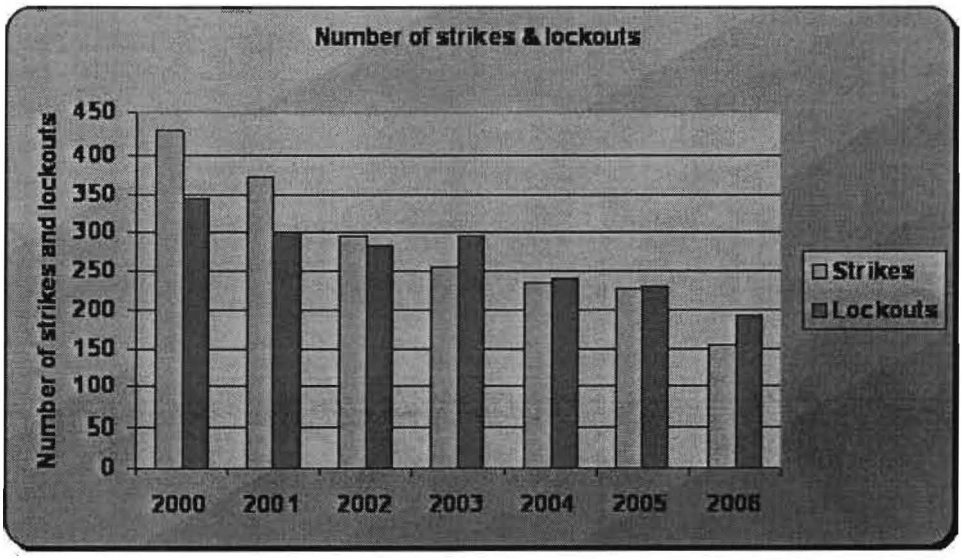
Country	Days lost	Country	Days lost
Spain	344	Norway	90
Greece	329	Sweden	53
Canada	227	USA	43
Turkey	217	U.K.	32
Finland	185	Netherlands	23
Denmark	184	Germany	13
Italy	166	Austria	4
South Korea	146	Japan	2

Source: Frankfurter Allgemeine Zeitung, 17th of May 2000

Annexure R

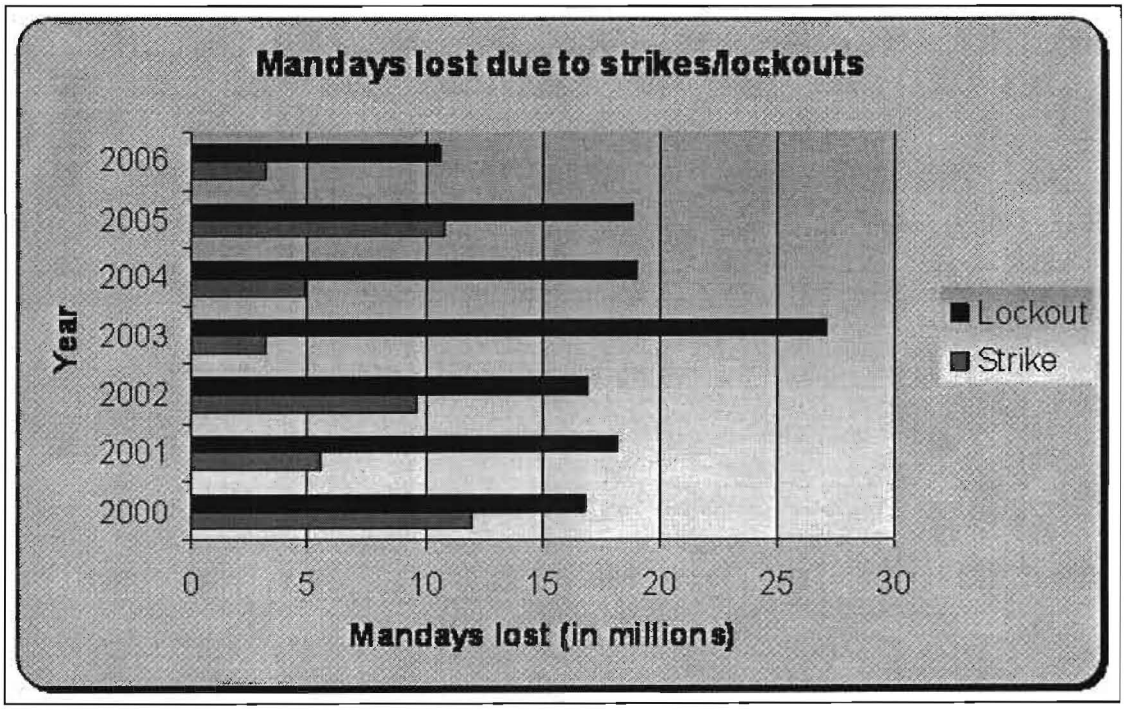
Number of Strikes and Lockouts in India

	STRIKES		LOCKOUTS		TOTAL	
	Number	Mandays lost*	Number	Mandays lost*	Number	Mandays lost*
2000	426	11.96	345	16.8	771	28.76
2001	372	5.56	302	18.2	674	23.76
2002	295	9.66	284	16.92	579	26.58
2003	255	3.21	297	27.05	552	30.26
2004	236	4.83	241	19.04	477	23.87
2005	227	10.81	229	18.86	456	29.67
2006	154	3.16	192	10.6	346	13.76



Annexure S

Mandays Lost In India Due to Strikes and Lockouts



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