CHAPTER – II

HISTORICAL PROSPECTIVES ON STRIKE

Though the use of the terms “strike” to describe workmen’s instrument of economic coercion in labour management relation is relatively of recipient origin the strategy of withholding labour as instrument of coercion has been know for several countries. Indeed prohibition, direct or indirect or withholding labour as an instrument of economic coercion is not unknown.¹

Since the time the realisation dawned upon the workmen that strength lies in unity and combinations, the weapon of strike has been in use as a measure of coercion in their hands to force employers to yield to their demands.

Strikes are normally resorted to with the sole intention of bringing to the notice of the employer the grievances and claims of the workmen. However, in modern times strike has ceased to be a contest only between an employer and his worker, particularly if it is an industry wide general strike or a strike of worker employed in public utility services in work of strategic-significance. Its repercussions spread far and wide and affect

adversely many sections of the community. In a society where democracy is not always accompanied by fair play the Strike weapon is also a means of enabling the working class to express its point of view or its opinion on a given issue. Since the strike is a mode of expression, it will not be used only to express an opinion or press a claim with the state or the public authorities. The Strike is perhaps the most potent weapon possessed by labour to force its demands upon an employer. No doubt, this weapon is not that effective as it was 20 years ago. The recent trend adumbrate that the strike is losing its importance as a major weapon of collective bargaining and economic justice and this trend appears almost certain to continue.

2.1 CONCEPT OF STRIKE

A strike in its ordinary meaning refers to a concerted refusal to work on the part of person who are accustomed to work in a particular vocational area – in Industrial Disputes 1947 define word. Section 2(q) Chapter – V deals with the strike and lockout.

The word 'strike' owes its origin to old English Word 'Strican-to go' away, since in this form of industrial protest workers go away from their work it is called 'Strike'. The term strike is almost two hundred years old.

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3 Annual Register May, 9th, 1968 p. 107
According to Chambers 20\textsuperscript{th} Century Dictionary, 'strike' is a 'cessation of work as a means of putting pressure upon employers', whereas the Industrial Relations Glossary of the University of Minnesota includes the words 'concerted action by an organized group of employees' in its meaning of strike. Encyclopedia Britannica says, 'A strike in the labour sense is a stoppage of work by common agreement on the part of a body of work people for the purpose of obtaining or resisting a change in the conditions of employment'. Encyclopedia of Social Sciences defines strike as 'concerted suspension of work by a body of employees, usually for the purpose of adjusting an existing dispute over the terms of the labour contract'. Oxford dictionary defines the 'Strike' as a concerted cessation of work on the part of a body of workers for the purpose of obtaining some concessions from the employer or employers'. The above mentioned dictionary definitions of the word 'Strike' put stress on three important elements, namely 1) combination, meaning thereby agreement or concert, 2) Stoppage of work employees and 3) To put pressure on employers to concede certain demands.

2.2 MEANING OF STRIKE :

The definition of strike in Sec.2 of the Industrial Disputes Act, 1947 is the same as it was in Section 2 (I) of the repealed Trade Disputes Act, 1929.

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\textsuperscript{6} I.U.J. 2005 February p.12.
It has since not undergone any amendment and reads as follows:

'Strike' means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue work or to accept employment.\(^7\)

In United Kingdom 'Strike' was defined in the repealed Trade disputes and Trade Unions Act, 1927 and was almost similar to our Section 2 (q) of the Industrial Disputes Act, 1947 except the prefix 'trade' before industry. Sec.8 (2) (a) of the repealed Trade Disputes and Trade Unions Act, 1927 defines strike as 'a cessation of work by a body of persons employed in any trade or industry acting in combination or concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to accept employment'. However an entirely new definition was given to strike in the Industrial Relations Act. 1971 in Section 167 (I). It defines strike as a "concerted stoppage of work by a group of workers in contemplation or furtherance of an industrial dispute, whether they are parties to the dispute or not, whether (in the case of all or any of those workers) the stoppage is or is not in breach of their terms and conditions of employment, and whether it is carried out during, or on the termination of, their employment". It is not worthy that in Trade Union and

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Labour Relations Act, '1974, which has repealed the 1971 Act, the term strike is not defined.

In United States the term 'Strike' as used in Labour Management Relations Act, 1947, (popularly known as TaftHartley Act) as amended in 1959 in Sec 501(2), includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective bargaining agreement) and, any concerted slow-down or other concerted interruption of operations by employees.

Ludwing Teller described five characteristics of strike which are as follows:

i) An established relationship between the strikers and the person or persons against whom the strike is called.

ii) The constituting of that relationship as one of employer or employees,

iii) The existence of a dispute between the parties and the utilization by labour of the weapon of concerted refusal to continue to work on the method of persuading or coercing compliance with the workmen's demand, and

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iv) The contention advanced by workers that although work ceases, the employment relation is deemed to continue, albeit in a state of belligerent suspension.

v) Continuous of relationship of employment despite hostilities.

2.3 INGREDIENTS OF STRIKE:

Under section 2(q) of the Industrial Disputes Act, 1947 following three elements are emphasized by the definition of 'Strike'.

1. Any Industry

2. i) Cessation of work by a body of persons employed acting in combination.

   ii) Concerted refusal or refusal under common understanding on the part of the body of persons employed to continue to work or to accept employment.


I. INDUSTRY: The definition of strike in Sec 2(q) of the Act uses the expression 'employed in any industry' which means that there should be an "industry" within the meaning of Section 2(J) of the Industrial
Disputes Act, 1947. It means that unless the establishment in which the striking persons are employed is an 'industry' within the meaning, of 2.(J), even if other ingredients of the definition are satisfied, it would not be a 'strike' within the meaning of section 2(q) of the Act.

2. i) Cessation of work by a body of persons acting in combination.

ii) Concerted refusal or refusal under a common understanding on the part of a body of persons to continue to work or to accept employment.

The element of combination should be sufficiently and satisfactorily established before stoppage or work by a body of employed persons can be characterized as strike and brought as such within the provisions of Sec. 2(q) of Industrial Disputes Act, 1947. Mere cessation of work does not come within the preview of strike, unless it can be shown that such cessation of work was a concerted action for the enforcement of an industrial demand. In the same way mere absence from work is not enough but there must be a concerted refusal to work to constitute a strike. Where there is a cessation of work by a body of persons employed in a factory acting in combination on their refusal to go back was concerted, the stoppage of work will amount

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10 Ram Swarup & another v. Rex, AIR 1949 ALL. 218.
to a strike within the meaning of Sec 2(q) of the Act\textsuperscript{11}. In other words the notion of quitting, cessation or discontinuance of work in combination is an essential requirement of the definition of strike.

A mere apprehension or threat of strike is however not a strike because it falls short of actual cessation of work required under Section 2(q) of the Act.

As mentioned above a cessation of work or refusal to work is an essential element of strike. There can be no strike if there is no cessation of work. However, the duration of cessation of work is immaterial. Cessation of work even for half an hour amounts to strike\textsuperscript{12}. What is required, therefore, is actual cessation of work for howsoever short period it may be and the significance and importance is not the duration of time but the cessation of work or refusal to go back to work and combination. When the workmen refuse to do additional work which the employer has no right in law to ask them to do, it would not amount to strike even if such refusal is concerted under a common understanding\textsuperscript{13}.

The motive behind the cessation of work is of little significance. It was contented in J.K. Spinning & Weaving Mills Co. Ltd. v. Their

\textsuperscript{11} Buckingham & Carnatic Co. Ltd. v. Their Workmen,(1953) ILLJ (SC) 181
\textsuperscript{12} Patiala Cement Co.Ltd. v. The Workers, (1955) II LLJ.57.
\textsuperscript{13} North Brook Jute Co. Ltd. & another v. Their Workmen, AIR (1960) SC 879.
workmen\textsuperscript{14}, that there was no motive whatsoever on the part of the absenting workmen and that the workmen never intended to bring pressure on their employer by remaining absent from work. It was held that the workmen's absenteeism amounted to a strike within the meaning of Sec.2 (q) since the workman's action in absenting from work was resorted to in pursuance to a concert or combination and the presence of motive, or the absence thereof, had no relevance in the matter.

It is implicit in the definition of the expression strike that the cessation of work or concerted refusal to work must be in defiance of the authority of the employer and an action of the employees to apply for casual leave enbloc would not amount to strike within the meaning of section 2 (q) of the Act\textsuperscript{15}.

As per the Bombay Industrial Relations Act, 1946, there is an express provision that stoppage of work should be in consequence of an industrial dispute whereas the Industrial Disputes Act, 1947 does not provide for any such qualifying condition. Moreover partial cessation of work by the employees will amount to strike under the Bombay Industrial Relations Act, whereas it will not amount to strike under the Industrial Disputes Act, 1947.

\textsuperscript{14} (1956) II LL.J. 278.
\textsuperscript{15} Standard Vacuum Oil Co. Madras v. Gunaseelam (M.G), (1954). 2 LLJ 656
EMPLOYMENT RELATIONSHIP:

The words 'persons employed' in the definition assert that there should be a relationship of contract of employment between the striking employees and the employer. Unless there is a contract of employment between the striking persons and the industry, there can be no strike under Sec.2(q) of the Act.

In the United Kingdom various judicial definitions have been attempted by Courts. The most accepted and precise definition is as expounded by Hannen, J in Farrer v. Close\textsuperscript{16} which defines strike as "a simultaneous cessation of work on the part of workmen".

In U.S., a fairly comprehensive definition has been given in Uden v. Schacffer\textsuperscript{17} 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 was 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 to do so."

\textsuperscript{16} [1869] LR QB 602[612] per Hannen.J
\textsuperscript{17} 110 Wash 391
2.4 ORIGIN OF STRIKE

The first recorded use of the phrase "to strike work" appeared in 1768, at the beginning of the Industrial Revolution in U.K.\textsuperscript{18} The Report of the 1367 Royal Commission on Trade Union referred to workers having been fined for going to work in a shop that had been struck\textsuperscript{19}, but it was some time before the more sensational connotations of the word "Strike" began to cloud the clarity of its metaphorical origins. In 1891 the phrase "Strikes a firm" appeared by 1910 the word "Strike" was suggesting to a writer the black smith's hammer, the woodman's axe. The patriot's sword\textsuperscript{20}, and the word maintained its violent associations throughout syndicalist era of great strikes which ended in 1926. 1926 did indeed mark the end of an era, an era which ended "not with a bang, but a whimper. The very term strike has been dissolving in a solution of official euphemism ever since, a spade is a mere Garden Implement, starvation is Malnutrition, and a strike is an unofficial stoppage\textsuperscript{21}.

The word 'strike' was originally used of both forms of industrial dispute which involve a collective stoppage of work. Strike of the on masters of Mersey works, Liverpool, Commonly Termed as lockout, against their workmen that are united in the bonds of union. Although the expression "turn

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\item \textsuperscript{18} Third Report (1867), at 27.
\item \textsuperscript{19} Crosey, ‘Strikes’ When to strike – How to strike (1910).
\item \textsuperscript{20} Op. cit. note 1.
\item \textsuperscript{21} J.B.S. Haklane’s phrase, in Titmuss’s words, The parents’ Revolt.
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"off" is found early, lockout, strangely enough, is not recorded by the Oxford English Dictionary as having been used before 1860. The word strike has, however been used metaphorically to describe the willful stoppage of many kinds of activity we talk of hunger strikes, rent strikes, rates strikes, debt strikes, strikes of Capital, buyers strikes, farmers strikes, students strikes and even mother's\textsuperscript{22} and sex strikes\textsuperscript{23}. Government 'Strikes are of course not unknown, George Lansbury's Labour Weekly alleged that in 1926 Messrs, Churchill, Jyonson-Hicks, Cunline Lister, cave etc, threatened to resign from the Government if Mr. Boldwin declined to call the "trade Unions" bluff.

Properly speaking, however, the strike must involve a group of employed workers That is, there must be definite employer employee relationship between the parties involved in the dispute\textsuperscript{24}. Moreover, official definitions usually exclude political strikes and are restricted to disputes concerning the terms or conditions of employment.

\textbf{2.5 DEVELOPMENT OF STRIKE:}

Until the beginning of the nineteenth century, the relations between the managements and workers were governed by what is known as the doctrine of

\textsuperscript{22} Times of India, New Delhi, June 3, 1974 at 7.  
\textsuperscript{23} Florence Peterson, Strikes in the United State, 1880-1936, at 5.  
\textsuperscript{24} Rustamji R.F. Law of Industrial Disputes in India (Ch. Historial Development in India, pexclv.) Dr. Bauchanan, a pioneer author of a well-known treatise called ' Capitalise Enterprise in India mentions the strike which took place in 1877.
"laissez faire" which gave the managements unbinding power over their workmen whom they could exploited on the strength of so call 'Sanctity of Contract' because of the reason that the labour was unorganised and commanded no bargaining power to fight for letter terms from their managements. Even the very innocent and legitimate grievances of the working class were suppressed by the managements. In this connection an eye opener incident known as the "massacre of poterloo" which took place in the city of "Manchester" on 16th August 1819 ig quoted below from the book entitled, "the rise of the labour" by Francis Williams William.

"An eyewitness account says that a huge procession of nearly 80,000 workers headed by a hundred or two hundred young women including the wife of the eye witness was taken out in the city to attract the attention of the authorities to the need for reform in the working conditions of the workers. After the workers led by their leaders gathered for a meeting at St. Peter's Field, an enclosure by the side of the church in the city, Orator Hunt a great reformist leader mounted the stage to address the huge gatherings of the workers arid the people of the city, just then, a noise and the murmur arose from the side of church and the people thought that other were coming to join them. But they were sadly mistaken. The people waved towards them in a spirit of good will but the mounted cavalry waved their naked sabres in return. Then the cavalry charged and dashed into the unarmed people cutting them
left and right. The sabres were plied to have a way through naked held up hands and defenceless heads, and then chopped limbs and wounded gaping skills were seen."

It would thus be seem from the passage quoted above as to how ruthlessly the working classes were shown the peril of raising their voice for improvement in their working, condition. However, the struggle went and the working classes suffered untold hardships but they continued their efforts to grow united and organized. It was this unity spirit of organization and consciousness of common sufferings which placed into the hands of working classes what is known as working classes so, what the working class could not claim and in law, they tried to get it in feet by organizing and controlling the supply of labour to the employers, The doctrine of laissez fair received a rude shock and gradually became in operative in the face of organised labour. In our country also, the legal right to organize themselves for trade unions for collective bargaining was recognized when the Trade Unions Act, 1926 was passed and brought into force i.e. from 01-06-1927. To make this weapon really effective for its use, the legislature subsequently provided a sharp edge to it by giving the industrial workers the right to strike, subject to certain limitations. This process was further strengthened by the passing of Industrial Dispute Act 1947. Thus after a great efforts and struggle the strike was recognised as a legitimate weapon in the armoury of workers for the purpose of
ventilating their grievances. Now, the strongest weapon with which the law has armed workmen in any industrial establishment, for collective bargaining, is the power to go on strike and it often accelerate settlement by the employers and employees. It tests the economic bargaining power of each side and forces each to face squarely the need it has for the others contribution. As a strike progresses, the workers savings disappears, the union treasury' dwindles and the management faces mounting losses. However, how a days, the weapon of strikes which used to be the last recourse of the labour, has become the first choice of the workers

In the first part of nineteenth century, strikes as a blind revolt against Laissez faire were considered conspiracies against the law of God as well as of man.

Industrial Revolution brought economic prosperity in U.K. and the establishment of stronger Trade Unions, was reflected in the policy of "New Model Unionism and modified the Great Depression and the Growth of socialist propaganda bodies, developed a greater degree of self consciousness in strikes and aroused considerable public sympathy on their behalf while the political implications of workers militancy were largely unrecognised. But from the end of the first decade of the 20th century, when Events had forced the Trade Unions decisively into parliamentary policies, syndicalist agitation gave the strike movement a
political colour. The worker is beginning now to strike for unprecedented ends against the system, against the fundamental conditions of labour, to strike for no defined ends at all, perplexingly and disconcertingly. The old fashioned strike was a method of bargaining clumsy & violent perhaps, but bargaining still the new fashioned strike is for less of a baggie, for more of a display of temper.

Strikes today are very different from what they were fifty years ago. Yesterday they were battles, today few of them are more than protest demonstrations. The concept of social justice in a dynamic society, seen justice as a matter of right and obligations considered together as a whole. Therefore, in order to achieve social justice, contractual Procedure should be arranged in such a way that conditions are fair for the workers and that at the same time the stability and evolutions of society is guaranteed.

2.6 THE VARIOUS FORMS OF STRIKE

2.6.1 STAY-AWAY STRIKES:

In this type of strike, the workmen simply do not come to the work place during the prescribed working hours. They rather organize rallies, demonstrations etc., and the purpose is to draw the attention of the employer to the demands of the workmen.
2.6.2 STAY-IN STRIKE:

In these forms of strike, workmen not only cease or refuse to work but in addition thereto enter the place of employment, remain in possession but do not wield their pens or tools. These forms of strike are also called the French strike for it was first resorted to in France. In these types of strike the employer is thus prevented from employing other labour to carry on his business. Whereas dismissed workmen were staying on premises and refused to leave them it was held that it does not amount to stay in strike but an offence of criminal trespass\(^{25}\). The presence of excited labour in the factory is a great threat and danger to the life and also to the property of the plant. The Supreme Court has held that refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands that would no doubt be a strike under Section 2(q)\(^{26}\). In the Fansteel Case\(^{27}\). The Supreme Court of India had held that the Fan steel case can be applied only to cases where the workmen indulge in violence and that a peaceful stay-in strike would not place the strikers in any worse position than they would be in the case of an ordinary strike. Where the striking workmen after having entered the factory premises, remained there after working hours, not used to receive the order or interim injunction

\(^{26}\) Pubjab National Blank Ltd., v. Their Workmen, (1959) 2 LL.J SC. 66
\(^{27}\) NLRB v. Fansteel Metallurgical Corp, (1939) 306 US 240.
sought to be served on them, threatened their co-workers and prevented them from carrying out their duties by obstructing them and also prevented female employees from leaving the factory, it was held that it is unlawful and will fall within section 441 of Indian Penal Code. In United Kingdom, sitdown strikes are considered to be breaches of employment as per Trade Union and Labour Relations Act, 1974. Prof. Freund Otto Kahn calls sit-in strike always unlawful and is always wrongful for that reason.

The employees remain at their place of work without attending to work. This kind of strike is also known as 'sit-down strike' pen-down-strike or tool-down-strike. In Punjab National Bank Ltd, V. Their workmen, the employees resorted to pen-down strike by occupying their seats till police intervened and arrested them. The Supreme Court held that a stay-in-strike, per se would not be unjustified or illegal, the court observed

‘On a plain and grammatical construction of this definition it would be difficult to exclude the strike definition it would be difficult to exclude the strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work, refusal under common understanding to continue to work is a strike and if in pursuance of such

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30 (1959) LLJ 666.
common understanding the employees entered the premises of the Bank and refused to take their tools, that would no doubt be a strike under section 2(q).

In dealing with disputes like the present we must, therefore, primarily consider the relevant statutory provision and the material Indian decisions. The conclusion is inevitable that pen-down-strike is a strike within section 2(q) and so per se it cannot be treated as illegal".

2.6.3 SIT-DOWN-STRIKE

Sit-down-strike may take an ugly turn when strikers begin to destroy the property of the owner and use violence it does not encroach on the personal liberty of the owner or the officers of the company. There is no physical blockade of persons in a sit-down strike. It is entry to a particular place, which is, restricted not the movement of the opponents.

2.6.4 PEN-DOWN-STRIKE:

Like “tool-down-strike” the “pen-down-strike” is resorted to by the clerical staff of an industrial establishment or a factory. Under the Industrial Dispute Act.1947, the clerical staff also falls within the ambit of the definition of “workmen” as given in section 2(8) of the Act, and the pen-down-strike is like a tool-down-strike which is resorted to by the factory
workers. During the “pen-down-strike”, the strikers remain on the job without working.

2.6.5 TOOL-DOWN STRIKE:

The ‘tool-down strike’ is resorted to by the factory workers, in such a type of strike, the strikers lay down their tools and refrain from doing work though they remain on the jobs in the work-place.

2.6.6. GO-SLOW

In this, the workers present themselves for work at the workplace, but deliberately give a lower out turn. There is controversy whether “go-slow” strikes falls under the definition of a strike. In Sasa Mussa Sugar Workers Pvt. Ltd, V. Subarti Khan,\(^{31}\) it was held that the workmen taking part in the go-slow tactics are guilty of serious misconduct and management was entitled for permission under Section 33 of Industrial Disputes Act, 1947 dismiss them though the workmen were well advised by the labour officer to desist from tactics pending finalization of the conciliation proceedings which were going between the Management and its workmen.

\(^{31}\) AIR 1959 SC 923.
In Bharat Sugar Mills Us., v. Jai Singh and Others,\textsuperscript{32} the Supreme Court observed:

"Go-slow which is picture description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most permissions that discontented or disgruntled workmen sometimes resort to. It would not be far wrong to call tins dishonest For while delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this, also 'go-slow' is likely to be much harmful than total cessation of work by strike. For while during a strike, much of the machinery can be fully turned off during the 'go-slow' the machinery parts, for all these reasons go-slow has always been considered a serious type of misconduct" In this connection the commission on labour observed,\textsuperscript{33}

Under the Industrial disputes Act 1947, a distinction is made between a strike (Lock-out) in public utilities and in other employment Industries such as Railways posts and Telegraphs, those which supply power, light or water and any system of public conservancy or sanitation are defined as public utility services under the Act, and in respect of certain others enumerated in the First Schedule to the Industrial Disputes Act, the appropriate Government is given the discretion to declare than on public

utility services. The Industrial Disputes, 1947, makes a striking or (Lock-out) in the public utility service illegal if it takes places (i) without giving to the employer a notice of strike within six weeks before striking ii) within fourteen days of giving such notice, (iii) before the expiry of the date of strike specified in any strike notice and (iv) during pending of conciliation proceedings and seven days after die conclusion of such proceedings. The Industries in general, a strike or lockout is prohibited during the tendency of conciliation arbitration or adjudication proceedings. Besides, the appropriate government is empowered to issue an order probating the continuance of any strike or lockout in respect of any dispute when a reference made to a court/board/tribunal.

Labour has also devised new forms of agitation such as go-slow, work-to-rule etc. Which fall beyond the purview of statutory provisions relating to strikes. A suggestion has been made to us to circumscribe all such forms of agitation by suitably widening the definition, widening the definition of strikes we do not consider that legal restrictions along will be of any help in reducing strikes or containing the new forms of labour protest under the government is prepared to take effective action against illegal will only bring the law into disrepute, in, on the other hand, Government is to enforce penalties for an illegal strike lockout it is necessary to make the definition as simple as possible. New forms of labour protests should be
treated as misconduct, punishable under the service rules or under the Standing orders.

2.6.7 HUNGER STRIKE

This takes the form of fasting by one worker or group of workers either at the residence of the employer or near the place of work with the object of coercing the employer to concerned to their demands. This sort of strike if resorted to a neither wrong nor punishable under the law.\(^{34}\) It becomes an offence if undertaken till death However, often it takes violent shape though it is non-violent at the beginning. In Pipraich Sugar Mills Ltd, v. Their workmen,\(^ {35}\) where the hunger strike was preceded by a demands notice by workers threatening management that if their demands were not accepted by a fixed date hunger strike shall be resorted to or often expiry of the time the three was actually put into effect, it was held that hunger strike was a strike.

2.6.8 TOKEN STRIKE

A token strike is staged for a short period to convey protest. It is an indication of a warning to strike and the course of things that take place.

2.6.9 LIGHTENING STRIKE

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\(^{34}\) Shree Commercial Colliery V. Suraj Naraian Singh, (1955) LAC 729.

\(^{35}\) (1956) 10 FJR 413.
These strikes are resorted to without any prior notice. The workers will strike first and after words bargain. Such strikes are legal except in public utility services where 14 days notice is required. In Workmen, Motor Industries Company Ltd, v. Their Motor Industries Company,\textsuperscript{36} The supreme Court observed

"The strike was a lightening one, was resorted to without notice and was therefore in breach of settlement. The settlement arrived at by the association must be regarded as one made by it in its representative character and it would not be said that strike by workmen without any call from association would not required any such notice.".

2.6.10 SYMPATHETIC STRIKE

When one trade union supports another during an industrial controversy and strikes, such movement is designation as sympathetic strike. In another words, group of employees who have no grievance and resort to strike. In the case of Kumbalingam v Indian Metal & Metallurgical Corporation, Madras,\textsuperscript{37} it was held that when the workers in concert absent themselves out to support the cause of other workers though, they have no grievance of their own, and the strike by others is not related to their own employment or even in regard to the conditions of employment of their

\textsuperscript{36} AIR (1969) SC 1280.

\textsuperscript{37} (1964) I-LLJ.81.
workers in service under other management, such absence could not be held to be a strike as the essential element of the Intention to use it against the management is absent.

2.6.11 GHERAO

Gherao literally means ‘encircle’ or 'surround'. A Gherao occurs when the workmen, in order to force an employer to accept their demands, surround, his office or residence or that of his executive.

They block ingress or egress. They sometimes cut off electricity, telephones, even food water. A Gherao is usually short, but may be long. One lasted for five days. During 1967 in three months there were 161 Gherao in West Bengal.”38 It was slowly spread to other States also. The movement which started in the private sector undertakings soon struck the public sector also. Now it costs its shadow over schools, Universities and Hospitals. Even Ministers have been Gherao.

The stormy words revealed sharp and irreconcilable differences between the employers, Mr. Tasfca, Mr. Chinai and Mr. Modicodenmned Gherao without qualifications. They felt that the workers were substituting coercive bargaining for collective bargaining and the movement as a red plan for resolution.

Tins representatives of workmen like Mr. Donge (AITUQ, Mr. Nair) (UTUQ and Mr. Kotwal) (HMS) expressed diametrically opposite views. Some claimed that the Gherao, like peaceful satyagraha, was a legitimate weapon. They asserted that employers also used Gherao, with police assistance to scuttle the trade union movement. They charged, inducting Mr. Mukharjee (INTUC) that Gheraos were reactions against employer's refusal to implement, awards and their reckless indulgence in closures, dismissals, lay-off and retrenchment. The ill-paid and shabbily treated workers were frustrated and discontented. Techniques like the Gherao enemated from the prevailing social economic conditions. The Government should go to and remove the root causes of these frustrations and discontent.

Some employers admitted some failures to obey words but said that closure of some establishment or the like were compelled by the losses being suffered (According to the Bengal chamber of commerce only 16 of the 72 Gheraos between February 27 and May 5, 1967 were reactions against measures taken by employers)\(^39\).

Because of differences, the committee could adopt only the following compromise resolution. "This session of the Standing Committee disproves coercive and intimidating tactics including Qieraos (wrongful confinement) resolving Industrial Disputes. The All India Trade Union Congress

\(^39\) Labour Law & Labour Relations 1968 P 260
representatives did not agree and withdraw from the meeting. The United Trade Union Congress representative objected to the word Gherao, but not to the use of words wrongful confinement.

However, the All India Trade Union Congress leaders did not accept the committees resolution and said that Gheraos would continue. They also hoped that Gherao would be accepted as legitimate methods of agitation.

The executive (Who merely carryout orders of the employers) are moving the main victims of Gheraos. They are often locked in their without food or water. They suggested that Factories Act ought to be amended to provide for kitchen and toilets next to their rooms and to declare that management is a hazardous occupation.

The West Bengal Government has viewed the Gherao movement as a labour problem and has ordered the police not to intervene. But when the Gheraos struck the public sector, the Government was alarmed. The West Bengal Minister of Industry and Commerce expressed grave concern over growing incidents of Gherao, in public sector undertakings and said that if they were not checked there would be a serious dislocation in the working of the state owned projects.
The Union Government has viewed the gherao movement not as a labour problem but as a law and order problem. The Union Minister for Steel & Metal observed that Gheraos invitations to lawlessness, did not come within the frame work of trade union legislation. The union Home Minister has remarked mat even peaceful Gheraos involve more than one cognisable offence and so the police should intervene to stop them.

Often 'gherao' one also resorted to by Trade unions a weapon to coerce the management to accept their demands. In the recent times, this menace has considerably increased even cabinet ministers are not spared It is controversial question whether Gherao can also be treated as a form of industrial protest. The National Commission on labour observed.\textsuperscript{40}

"We would like to refer here to a form of industrial unrest, namely 'Gherao' which came to be increasing by resorted to in one part of the country in recent years. Our study groups on Industrial Relations (Eastern Region) which examined this problem came to a majority conclusion, one member dissenting, but Gherao apart from their adverse effects on industry and economy of the country, strike at the very root of trade unionism We endorse this view and. Deprecate resort to gheraos which invariably tend to inflict physical duress on the person affected and endanger not only industrial harmony but also create problems to law and older, if such means

\textsuperscript{40} Ibid
are to be adopted by labour for realisation of its claims. Trade Unions may come into dispute, it is the duty of all union leaders therefore, to condemn this form of labour protest as harmful to the interests of the working class himself. Gheraos cannot be treated as a form of industrial protest since they involve physical coercion rather than economic pressure. In the long run, they may affect national interest.

2.7 LEGAL HISTORY OF STRIKES IN INDIA:

The labour law in ancient society existed on the basis of status and not on the basis of contract. The employer was in a dominating position and he freely exercised his authority and he dictated wages and other conditions of services. Long hours of work, low wages, insecurity of employment, in sanitary working and living conditions etc brought untold misery to the working class. This so happened until the eighteenth century during which the factory system was introduced by industrial revolution. The history of strikes in India begins with the ushering in of capitalism in the second half of the nineteenth century. The first cotton textile mill was set up in 1854 at Calcutta. The development of the railways led to the growth of mining, particularly coal mining in Bihar. Railways and Cotton Textiles, in fact all industries, however, promised the worker nothing but most brutal exploitation. It was therefore no wonder that with the emergence of industry and plantations, industrial labour unrest inevitably followed.
In spite of low wages, long hours and deplorable conditions of work and epidemics that broke out from time to time, workers rushed to the new industrial centers of Bombay, Calcutta, Madras, Ahmedabad, Kanpur and Nagpur. Since there were no organized trade unions, it was difficult for these impoverished workmen to express their disgust by way of strikes.\textsuperscript{41} K.N. Subramaniyam pithily describes the situation then prevailing in the following words labor's reaction to the unbearable working conditions did not take the form of strikes in the early days workers simply abandoned their work in factories and went back to their villages.

This type of situation prevailed for quite some time as there was a surplus of labor. It was not until September 1884, when Shri N.H. Lokhande called a meeting of mill workers in Bombay, where a memorandum was drawn for amending the Factories Act that workers really began to organize. The memorandum demanded the limitation of working hours, a weekly rest day, mid-day short recess and regulation of child and women labour. In October 1889, workers in the spinning and weaving mills in Bombay submitted a similar petition to the Governor General. In 1880, on April 24, a mass meeting attended by over 10,000 workers was held in Bombay reiterating the above demands and the Bombay Mill Hands Association was formed with Lokhande as the President. The period 1881-1901 was marked

\textsuperscript{41} V.B.Cutinno, strike in industrial conflicts A article and comparative study, Published 1st Edition Vidyanidhi Prkasan Gadag. 1992 P:No:40
by some working class protests. During 1905-1910, there was a notable advance. A strike took place in the Bombay mills against extension of working hours. The greatest event of the period was the six-day political mass strike in Bombay against the sentence of six years imprisonment of Bal Gangadhar Tilak.

Realizing the need for trade union to act as an agent of bargaining with the employer, Shri B.P. Wadia, started the Madras Labor Union in 1918. He was also a leader in the national freedom struggle. The Union activities led to a strike being declared in 1920. The employer filed a civil suit against Wadia and other leaders of the Union claiming damages for inciting the workers to commit a breach of their contract of service. They also pleaded for an injunction. There was no legislation pertaining to trade union law. Relying on English common law, the High Court of Madras granted the injunction on the basis that a trade union was an illegal conspiracy in restraint of trade. The suit was however withdrawn on the basis of a compromise arrived at between the Union and the employer.\textsuperscript{42} This judgment reflects upon the attitude of the administration and the courts in the early part of the twentieth century in India.

**Strikes and Legislations**

\textsuperscript{42} Ibid P:42
(i) Pre-1947 Position

The legal control of strikes in India had its genesis in the Trade Disputes Act, 1929. This Act was passed to control the industrial unrest, which was sweeping the country. The major cause for the industrial unrest was the economic depression, retrenchment of staff,

Reduction of wages and attempts by employers to check falling profits by introducing improved methods of production.

The Trade Disputes Act, 1929, which was patterned on the British Trade Disputes and Unions Act, 1927, defined strike as the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are, or have been so employed, to continue to work or to accept employment.

The Act also provided for certain special provisions pertaining to persons employed in public utility services, by which no person employed in such services could go on strike in breach of contract without having given to his employer, within one month before so striking not less than fourteen days previous notice in-writing of his intention to go on strike, or whoever having given such notice goes on strike before the expiry there of would be punished
with imprisonment that may extend to one month, or with fine which may extend to fifty rupees or both.

In 1942, there was an acute shortage of essential commodities leading to price rise and so the workmen were compelled to go on strikes. To control this strike occurrence, the British Government amended the Defence of India Rules and added Rule 81-A. Under this rule, detailed orders were issued on 21-4-1942 for prohibiting strikes. According to the same, no person employed in any undertaking could go on strike in connection with any trade dispute, without having given to his employer, within one month before striking, not less than fourteen days notice in writing of their intentions. Under the same, when a trade dispute was referred to a Court of Inquiry or a Board of Conciliation under the Trade Disputes Act, 1929, or conciliation and adjudication under an order made under the Defence of India Rules, no person employed in any industry concerned in dispute could go or remain on strike and no employer concerned in dispute could lock-out his employees during the pendency of proceedings and two months thereafter.

(ii) Post-1947 Position

The definition of strike remained the same and the Industrial Disputes Act, 1947, repeated the good old definition as found in the Trade Disputes
The Act, 1929. The Act also laid down the criteria for declaring a strike illegal and punishment for illegal strikes.

The Industrial Disputes Act is designed to provide machinery for a just and equitable settlement of disputes by adjudication, by negotiation, by conciliation, etc. instead of settlement of disputes by trial of strength, i.e., by resorting to strikes and lockouts. Section 10(1) of the Act enables the appropriate Government, whenever an industrial dispute exists or is apprehended, to refer the dispute to a Board, Court of Inquiry, Labour Court or a Tribunal for adjudication. Sections 22, 23 and 24 of the Act bring out the elaborate nature of proceedings relating to conciliation, arbitration, settlement, inquiry and award, the intention being the conduct of these proceedings in a peaceful atmosphere undisturbed by the continuance of strike or lock-out. The Act recognizes strike as a legitimate activity of a trade union in the matter of industrial relations.

A deeper look into the scheme of the Industrial Disputes Act will convince anyone that the parties are not free to resort either to strikes or lockouts, without exhausting the procedure as laid down in various provisions of the Act for resolving a dispute through the agencies set up by the

\[\text{\textsuperscript{43}}\text{ K.P.Chkravarthi, Law of Industrial disputes, Eastern law House Calcutta 1\textsuperscript{st} 1987, P:313}\]
Government. Looked at from this angle, it would be quite clear that the restrictions imposed on the employer or the employees under the provisions of chapter V of the Act (titled Strikes and lock-outs) are in no way unreasonable nor do they impinge on the freedom of collective bargaining. It will not be right for the labour to think that for any kind of demand, a strike can be commenced with impunity without exhausting reasonable avenues for the peaceful achievement of their objects. Where, therefore, the workmen might well have awaited some time after the conciliation efforts failed before starting a strike and in the meantime asked the Government to make a reference and they did not wait at all, the strike was held to be unjustified.

It is a fact that the main object of the trade union movement is to strengthen the process of collective bargaining, which has also been recognized by the Industrial Disputes Act. There is no doubt that a strike becomes at times unavoidable in the process of collective bargaining, particularly in cases where demands have been put forward but there is no response from the employer or where the employer or the management has refused to bargain collectively in good faith with the recognized union, but at the same time proposes to declare a lock-out as a measure of reprisal. Both these steps, taken by the employer or the management now come within the

44 Ibid P:315

45 Chandramalai Estate Ernakulam v. Its Workman, AIR 1960 SC 902
ambit of "unfair labour practices" as per items 14 and 15 of the Fifth Schedule to the Industrial Disputes Act. Section 22 of the Act protects the public utility services from the depredations of strikes and lock-outs, whether declared on justified grounds or not. Industries that are declared to be public utility services are included in the First Schedule to the Act, as amended from time to time. Where, therefore, the workmen employed in any of such services go on strike after giving a proper notice and after the expiry of the statutory period as laid down in Sec. 22 (l) (b) of the Act, it must be deemed to be legal.

Section 23 titled "General Prohibition of Strikes and Lock-outs", applies to all industrial establishments, either carrying utility or non-utility services. This is a general provision imposing a general restriction on declaring strikes "in breach of contract" and lockouts in both public utility as well as non-public utility establishments, in the circumstances mentioned below:

a. during the pendency and till the expiry of seven days after the conclusion of the conciliation proceedings before a Board;

b. during the pendency and two months after the conclusion of the proceedings pending before a Labour Court, Tribunal or National Tribunal;
c. during the pendency and two months after the conclusion of arbitration proceedings before an arbitrator; and

d. during the period of operation of a settlement or award in respect of matters covered by such settlement or award.

Sub-Sections (2) and (3) of Section 24 lay down circumstances when a strike or lock-out shall not be illegal. The same are as follows:

Section 24 (2): Where a strike or lock-out in pursuance of an industrial dispute has already commenced and is in existence at the time of the reference of the dispute to a Board, an arbitrator, Labour Court, Tribunal, National Tribunal, the continuation of such a strike or lock-out shall not be deemed to be illegal, provided that such strike or lock-out was not at its commencement in contravention of the provisions of this Act or the continuation thereof was not prohibited under Sub Section 3 of Section 10 or Sub-Section (4A) of Section 10 A.

Section 24 (3): A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out shall not be deemed to be illegal.
Last but not the least, Section 25\textsuperscript{46} of the Act lays down a blanket prohibition on the financial aid to illegal strikes and lock-outs. The Act, however, takes note only of the right of workmen as defined in this Act to strike work. But it does not recognise the right of non-workmen to strike. It is only the workmen who can raise an industrial dispute in connection with which they can strike.\textsuperscript{47} Since the right of raising an industrial dispute is the right of the workmen, the right to go on strike, a priori, belongs to workmen alone. Non-workmen do not, therefore, have the right to strike.\textsuperscript{48}

Strike economic problem, which is at present most urgent and of pressing importance. The country seems to be in the grip of strike fever. Strike in Hill Plant has hardly subsided when the strike in the State Bank of India paralysed the economic life of the country and now the clouds of strikes are thundering over the Textile Industry. It is high time to take stock of the situation and seriously ponder over the proposition whether India (an under-developed country) can afford the luxury of an unfettered right of workmen to strike.

No doubt the strike is a legitimate weapon in the armory of workmen. But it must be resorted to only for proper reasons and on proper occasions,

\textsuperscript{46} Section:25 prohibition of financial and to illegal strike and lock out no person shall personally expanded or apply an money in instrument furtherance or support of any illegal strike -lockout
\textsuperscript{47} O.P.Malhotra the Law of Industrial disputes universal publishing company limited New Delhi, 5th 1998 p:1503
\textsuperscript{48} BR Singh v Union Of India 1989 (4) SCC , p:710
and cannot be lightly adopted merely because the workmen are not satisfied with any particular action of the company. It should used as a last resort when other avenues of settlement of industrial dispute have proved futile. It would be worthwhile to quote the strong deprecation by the labor appellate Tribunal of the strike weapon in the hands of the workmen, "it is well recognized that the use of the weapon of strike, which is now regarded as a legitimate weapon in the armory of labour, is likely to lead to serious consequences which may adversely affect not only the particular industry concerned, including labor) but also the interests of the country, and in this respect, it makes no difference to the danger involved, whether the strike resorted to is technically rendered, illegal by law or otherwise. The use of the weapon of strike, has, therefore been generally depreciated, except when such use is forced, on labor when they have a bonafide grievance and have no other effective method open to them to have their grievances remedied.\(^49\)

Men are entitled to pursue their own (lawful) advantage even though the natural and inevitable result is the ruin of others\(^50\)

This rule inspires any person or any group to struggle for their rights. Hence it is not an exception to the Industrial world where the working class,

\(^{49}\) *Bombay Fine Worsted Mfrs v. Vithan Nana and Castle mills 1956 I LL.J 407*

\(^{50}\) *Moghul Cases 1892 AC 25-quoted from Supreme Court Journal 1987(3).31-34*
which depends upon the employer for everything, has to pursue its own advantage. If an employer denies or refuses to give his workmen some benefits to which they are entitled, the law gives the concerned employees a weapon to force the employer to accede their demands. The weapon is the stoppage of work, which is popularly known as strike. It is inherent right of workmen as otherwise they would be obliged to work for terms they find unacceptable. Unions' right to strike and employers' right to say "no" to unions' demands are central to collective bargaining process. It may be mentioned that the economic strength of the employer is superior to that of workers even though the latter are organised into trade unions, and the recognition on the part of the state of the right to strike confirms the need for balance between the two sides as means of effective social justice. The Right to strike is sacred and inviolable. It is one of the most valued rights of the workers, conceptually the right to strike is recognized in all democratic countries and is closely associated with democratic concepts of freedom. However reasonable restrictions on the use of this right are also recognized. The degree of freedom granted for its exercise varies according to social, economic and political variants in the system, in our current context it has to be viewed against the requirements of a planned Economy. That strikes anti right to strike have legal basis Is a fact of life in almost all democratic countries. Historically speaking, this represents a major change

\footnote{51 Report of National Commission on Labour (1969) at p. 328.}
from the legal inhibitions placed on workers collective action by most countries prior to 1900. The right to strike and the exercise of the right to strike have always been a subject of abrasive controversy in labour-management relations. While labour clings to this tenaciously and exercises this right sporadically, employers and the state 'Machinery' strain ever/ nerve to curb the right of labour to strike through the use of positive and negative instruments. The stand taken in relation to the right to strike, whether implicit or explicit and the concomitant exercise of this right depends very much on the theoretical perspective of labour-management relations as well as on the character of the socio-economic formation within which labour-management relations are enacted. Workers had resorted to strikes for the redress of their grievances in a few isolated cases, but strike as a method of pressing their demands and of improving their lot was generally known to labour before first world war. This was largely due to illiteracy, a passive outlook on life and the lack of organization and leadership.

During and after first World War, the spread of democratic ideas, the realization of the importance of the principles of equality, fraternity and liberty, the development of industries, fraternity and liberty, the development of industries, the rise in the cost of living and the establishment of I.L.O., all contributed to the general awakening of the works and to an era
of trial of strength between workers and employers.\textsuperscript{52} Indian Labour organization. Has passed two conventions The Freedom of Association and Protection of the Right to Organize Convention which provides that the workers and employers shall have the right to establish and join organizations of their own choosing without previous authorization and the right to organize and collective Bargaining Convention (No.93) 1949 which gives the choice to the workers to join or not to join a union with full freedom without fear of being dismissed from service. Freedom to strike has been \textit{an offshoot} of the above said two conventions. Apart from them the right to strike is explicitly recognised in Article 8 para 1(d) of the United Nations International Covenant on Economic, Social and Cultural rights. The right to strike has also been specifically recognised in the constitutions of many countries, which have accepted collective bargaining as a method of saving industrial conflicts. Not only is the exercise of the right to strike a legitimate step in a labour dispute, it is more often than not the essential weapon for workers and their organisations to promote and protect their economic, occupational and social interests in the broad sense of the term. To-think that one can organise a union and one can achieve collective bargaining without the commitment in the air without considering the reality.

The right to strike need not be restricted solely to industrial disputes likely to be solved through the signing of collective agreements. Whether it is private capital or state capital, interests representing the owning class adopt the strategy of mobilising various constituents of the ruling classes in order to devise various socio-economic and political-legal instruments to curb not only the right of labour to strike but also in the process to curtail the rights labour wishes to defend through the exercise of right to strike.

**Strike under the Industrial Disputes Act**

Though, the right to strike is not a fundamental right as such, it is open to a citizen to go on strike or withhold his labour.

The right to strike has been recognised under the Industrial Disputes Act, 1947 by defining the circumstances under which a strike is to be regarded as illegal.\(^53\) Thus the Labour Appellate Tribunal in *Ram Krishna Iron Foundry v. Their Workers*\(^54\) The right to strike has been recognised by necessary implication in the industrial legislation in India and express statutory provisions have been made for the purpose of regulating it. It is thus a recognised weapon of the workmen to be resorted to by them for asserting their bargaining power and backing up their collective demands on


\(^54\) Ram Krishna Iron Foundary v Their workers, (1952) 2 LLJ 372 (LAT).
an unwilling employer\textsuperscript{55}. Again in \textit{G.R.S.M. (W) Co. Ltd. v. District Collector}\textsuperscript{56} the Kerala High Court summarised the legal position of the workers' right to strike in the following words. Though under the Constitution of India, the right to strike is not a fundamental right as such, it \textit{is} open to a citizen to go on strike or withhold his labour. Every strike is not illegal and the workers in any democratic State have the right to resort to strike whenever they are so pleased in order to express their grievances or to make certain demands. A strike in the circumstances is a necessary safety valve in industrial relations when properly resorted to. It is a legitimate weapon in the matter of industrial relations. In common law also right to strike\textsuperscript{57} cannot be taken away even if there is a Standing Orders abrogating their rights. To hold otherwise would be to interfere with fundamental right of employees to resort to strike as a means to enforce their demands which falls within the subject of an industrial dispute.\textsuperscript{58} The Supreme Court in \textit{B.R. Singh v. Union of India}\textsuperscript{59} has observed that the right to strike "though not raised to the high pedestal of a fundamental right it is recognised as a mode of redressal for resolving the grievances of workers. But, the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in Sections 10 (3), 10A (4A), 22 and 23

\textsuperscript{55} Ibid. at 373
\textsuperscript{56} 1982 Lab.IC 367. See also Combatore P.D.M. Sangam v. Sivakumar Transport, Madras(1986) Lab.IC 1012
\textsuperscript{57} "There is nothing inherently unlawful or illegal in a strike common law permitted an employee to work if he so desired". See Raja Bhandur Motilal Poona Mills v. Mills Mazdoor Sabha, (1954) ILLJ 124
\textsuperscript{58} Ibid. at 71.
\textsuperscript{59} 1990 Lab.IC (SC) 389
of the Industrial Disputes Act, 1947.” The Court added: “The right to form association or unions is a fundamental right under Article 19(l)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring rights on trade unions the necessity to form Unions is obviously for voicing the demands and grievances of labour. The Trade Unions act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations e.g., go slow, sit-in, work-to-rule, absentism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the highest pedestal of a fundamental right it is recognised as a mode of redress for resolving the grievances of workers”.

The aforesaid right is available only to industrial and not to government servant.
It was in the year 1877, the first considerable strike took place in a Textile Mill in Bombay and it was on the question of wages. After that about 25 more strikes occurred in the Bombay and Madras presidencies between 1882 and 1890. By this time, the workmen in India gradually had some realization of the strength which lies in unity and trade unionism took its root. Economic misery was aggravated due to first World War. The concept of employer - employee relations assumed new dimensions. The Indian workers became conscious of their rights. The first epidemic of strikes occurred from 1919 to 1921 and sought to secure a ten-hour working day and better wages. It was in the year 1920, Court injunctions restraining the Union Officials from influencing the workers came to be applied in India. The Trade Unions Act of 1926 immunized the unions from being sued for criminal conspiracy to strike and in most cases from being subjected to civil damages. About 100 strikes took place between 1921 and 1926 involving two millions workers and resulting in a loss of 37 millions working days and this led to the enactment of Trade Disputes Act 1929 which restricted the scope of strikes and made those strikes illegal that brought about hardships to the community and Sec. 16(1) of the Act made a reference to it. After the First World War the approach of the Government was to treat strikes as a challenge of law and order rather than labour issues and prohibitory orders under Sec. 144 of the Indian Criminal Procedure Code were used to curb them. Upon the outbreak of the Second World War the Indian Government
through the Defense of India Rules, prohibited strikes and lock-outs, save under very restricted conditions. This emergency provision remained in force until the passage of Industrial Disputes act 1947 which came into force from 1st April, 1947.\textsuperscript{60}

2.8 STRIKE IN UNITED KINGDOM:

In 1548, the Bill of conspiracy of craftsmen outlawed any combination of working-men either for strike or for exerting common force. According to statute Artificers 1563, it was a Criminal offence for a workmen to strike if he thereby broke his contract with the employer. The Combination Acts of 1799 and 1800 were enacted to eliminate both trade unions and strikes to meet the threat from French Revolution. However these measures could not stop the emergence of trade unions and the incidence of strikes which were inevitable off spring of factory system. The workers main objective was to obtain statutory recognition of their right to combine and carry on collective bargaining without fear of molestation. The recognition of the rights of the workers led ultimately to the passage of the combination Act of 1824. This was a great victory for workers since it legalized strikes for a narrow range of purposes, provided they involved nothing that the courts regarded as violence or intimidation.

\textsuperscript{60}DR. Avtar Singh  Industrial Disputes Act 1947, the publishers Editional Board 2002
However after the passage of the combination Act of 1824, workers called strikes with questionable provocation and they were followed by much disorder and destruction of property which ultimately led to the passage of the Act of 1825, which nullified the concessions given under the Act of 1825. The combination of Act of 1825 was given amended in 1859 by which the element of concerted action which is the essence of strike became the gist of the crime.

In the year 1871 criminal Law amendment Act 1871 was passed which tried to reform the law but the year after Mr. Justice Brett Reldin R v. Bunn\(^1\) held that the common law doctrine of conspiracy had survived the statute and two men who had participated in the strike were convicted and sentenced to conspiracy.

In the year 1875 an Act was passed which removed to a large degree the sting of criminal conspiracy by providing that an agreement or combination by two or more persons to do or procure to be done in contemplation or furtherance of a trade dispute between employers and workmen should not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

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\(^1\) 1872 12 COX 316.
However in a series of cases between 1890 & 1905, namely Temperton v. Russell\textsuperscript{62}, Taff Vale Rly v. Amalgamated Society of Railway Servants\textsuperscript{63}, Quinn v. Leatham\textsuperscript{64}, South Wales miner's federation v. Glamorgan Coal Co\textsuperscript{65} workers involved in certain types of strike action were held liable for civil conspiracy, or for inducing others, especially fellow workers to break their contracts.

The House of Lords put an end to this in 1897 in the case of Allen v. Flood\textsuperscript{66}. The Passage of the Trade Disputes Act 1906 has reiterated the legality of labour unions. This also provided for peaceful picketing and barred civil actions against unions for damages alleged to have resulted from acts committed by or on behalf of a trade union. The Trade Disputes Act of 1906 did for the law of civil conspiracy what the Act of 1875 had done for the law of criminal conspiracy.

In the year 1964, the House of Lords held in Rookes v. Barnard\textsuperscript{67} that the 1906 Act did not cover the tort of intimidation by threatening a breach of contract. To remove this gap, the parliament passed Trade Disputes Act, 1965.

\textsuperscript{62} 1893 I.O.B. 715 (C.A)
\textsuperscript{63} 1901 AC 246.
\textsuperscript{64} 1901 AC 495.
\textsuperscript{65} 1905 AC 239.
\textsuperscript{66} 1892 AC I.
\textsuperscript{67} 1964 AC 1129.
The Industrial Relations Act of 1971 repealed both the Trade disputes Acts of 1906 and 1965. This development had set its seal that strike is an essential element in the principle of collective bargaining. The 1974 Act has repealed 1971 Act but this position stands unchanged even after the passage of Trade Unions and Labour relations Act. 1974. 68

2.9 STRIKE IN UNITED STATES OF AMERICA:

With the attainment of independence in 1776, the labour movement became more extensive and effective and gradually the application of the British common law doctrine of criminal conspiracy to labour cases in United Sates became visible. The English doctrines of conspiracy and illegal restraint of trade were used quite effectively in retarding the development of American labour Unions during the later part of the eighteenth century and throughout most of the nineteenth century. The first recorded case in the United States is the Philadelphia cordwainers case of 1806.

In this case a group of cordwainers were indicted and charged with criminal conspiracy. They were found guilty and fined. This legal position remained in force as a precedent until the case of Common Wealth v. Hunt was decided in 1842. In this case Chief Justice Shak's decision partially removed the taint of crime from activities of the workers for the

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improvement of their working conditions. This case became the first authority to support the right of workers to combine into associations, now called trade unions to engage in peaceful strikes and to press for the closed shop.

This cumbersome and uncertain conspiracy doctrine was replaced after the civil war by the effective device of injunction and it proved to be extremely damaging to the labour movement. The Railway strike of 1877 involved for the first time the use of the injunction as a legal weapon to curb labour activity. Injunctions were frequently used to the detriment of workers. About 3,40,000 workers went on strike on 1st May, 1886 in response to a call by the National Trade Union Federation (which became the American Federation of Labour in 1886) to secure the eight hour day. In 1890 the carpenters struck throughout the nation and were generally successful in achieving the eight hour day. The American workers received further rough handling with the passage of Sherman Anti-Trust Act of 1890. This Act supposedly aimed at eliminating the evils of trust and monopolies dealt another blow to labour. It was utilized against the rail road strikers of 1890. In United States v. Debs case, the Illinois circuit court held the pullman strike as a conspiracy in restraint of trade and therefore in violation of the Sherman Act. Again in Loewe v. Lawlor case (also known as Danbury

69 Encyclopaedia Britannica Vol. 21 at p. 312.
70 158 US 564 (1895).
Case), the Supreme Court held labour combinations to be accountable to the Sherman Act and declared that secondary boycotts affecting inter-state committee were illegal and that individual union members were liable for damages. The damage Judgement for 2,52,000 dollars came as a rude shock to the labour movement and sparked a national campaign to amend or end the Act, which resulted into the passage of Clayton Anti-Trust Act of 1917.

It was only in the year 1921 that American labour had a real break when in the case of American Steel Foundaries v. City Central Trade Council\(^\text{71}\), the Supreme Court recognized labour's right to strike. In 1932, Norris-La Guard Anti-Injunction Act was passed and the birth of the New Deal saw further favorable labour legislation. So it was after a century of struggle that the workers were able to cast away the yoke of conspiracy doctrine and injunction device. In 1933, the National Industrial Recovery Act was passed and gave labour the right to bargain collectively through representatives of its own choosing without interference from employers. Senator Wagne, sponsored in the Congress a new National Labour Relations Act 1935 (also known as Wagner Act) which guaranteed the workers a right to organize labour unions and to bargain collectively with employers. After the end of Second World War, a necessity was felt to enact a new legislation to meet the strikes effecting general health, welfare and national security

\(^{71}\text{254 US 443 (1921).}\)
which resulted into the passage of the Labour-Management Relations Act.
1947 (also known as Taft-Hartley Act). This Act tried to resolve the new
situations without taking away the basic right to strike of workers. It still
affirms. There is nothing in the Act, except as specifically provided for
therein, which shall be construed so as either to interfere or impede or
diminish in any way the right to strike or to affect the limitations
or qualifications on that right.72

2.10 STRIKE IN INDIA:

Our law now recognises the right of workmen to combine and
organise themselves into a Union to achieve their objectives. The right to
form associations and the right to strike were acquired by the workers after
great struggle and sacrifice. The right to strike is labour's ultimate weapon,
and in the course of hundred years, it has emerged as the inherent right of
every workers.73 Use of Strike action may be regarded as an essential
element in the bargaining process74. As is generally observed, it is the
collective decision of the workmen to declare strike during a particular
Industrial dispute with the employer to gain advantages for themselves. The
right to strike has also not been expressly recognized by law in this country.
The Indian Constitution does not specifically mention the right to strike

73 APSRT Corporation Employees Union v Andhra Pradesh State Road Transport Corporation 1970 Lab IC
1226 1225
74 Strikes & Lock-Outs (Law & Practice) VP Arya (1972) p. 43
among fundamental rights. Before 1926 there was no statutory law in India concerning industrial strikes for reasons that such strikes were not common in this country. As the frequency of industrial strikes increased after the First World War, the Indian Trade Union Act of 1926 for the first time indirectly recognized the right to strike by legalizing, certain activities of the registered trade unions in furtherance of Trade disputes. The Indian Trade Unions Act therefore confers the right to strike which otherwise would have been a disputes Act, 1947 contains provisions, which the parties have to comply with in the event of their resorting to strike. Therefore it is obvious that the right to strike is not an absolute right free from statutory restrictions. Today while the right to strike is recognised as a legitimate weapon of trade unions, its exercise is so circumscribed as to give to the government freedom to determine its legality or illegality. It is thus a recognized weapon of the workmen to be resorted to by them for asserting their bargaining power and for backing their collective demands upon an unwilling employer. To prevent its misuse, the Industrial Disputes Act imposes appropriate disabilities. The makers of our Constitution were indifferent to recognise right to strike has a fundamental right. Right to strike is not a fundamental right under the Constitution of India. Though there is a fundamental right to form trade unions, there is no fundamental right to go on strike. The Constitution makers were aware of the fact that the rights of

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75 Sec. 22 & 23 of the Industrial Disputes Act, 1947
workers in industry to go on strike subject, however, to certain limitations was recognised in various parts of the world. The fact that they did not do stomached it as a fundamental right indicates that the right to go on strike is not included in the right conferred on the citizens by Article 19 (1) (c) of our constitution to form Associations or Unions is interpreted to include the right to form trade unions. But even a very liberal interpretation cannot lead to the conclusion that trade unions have a guaranteed right to strike.

The Supreme Court observed.

"On the construction of the article, we have reached the conclusion that even a liberal (interpretation of sub-clause (c) of clause (1) of Article 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".

If the right to strike were by implication a right guaranteed by sub-clause (c) of clause (1) of Art. 19, then the restriction on that right in the interest of general public viz. of national economy, while perfectly legitimate, if tested by criteria in clause (1) (c) of Art. 19 might not be capable of being sustained as a reasonable restriction imposed by reasons of morality or public order. In the case of Kameshwar prasad Vs. State of

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76 Vasudevan (s) & others v. Mital (SD) and Others, (1963) IIIJ 264
77 The All India Bank Employees Association v. National Tribunal, AIR (1962) SC 171
78 Ibid at P. 181.
Bihar, the Supreme Court had held that there was, no such a thing as a fundamental right to strike. The validity of legislation controlling right to strike or the right to declare a lock-out would have to be tested not with reference to the criteria laid down in clause (4) of Article 19. It has been held in 1954 that employees have a common law right to strike. C.J. Haggle held, there is nothing inherently unlawful or illegal in a strike common law permitted an employee to stop work if he so desired.

The Industrial Disputes Act, 1947 prohibited Strikes under certain circumstances which led a Tribunal to declare the general right to resort strike has also been recognised by defining the circumstances under which a strike is to be regarded as illegal.

This right to strike, however is not unqualified. It has been held that it should be used only 'as a last resort when all other avenues have proved futile and as long as it is used in a restrained, peaceful manner for good justifiable reasons, it cannot be punished. It has also been held that no standing order may take away this right from workers.

Sections 22 and 23 of the Industrial Disputes Act forbid strikes in public utility or kosher under taking as well as in the event of a reference of...
the dispute to adjudication under section 1 of the Act, or arbitration proceedings under sub Sec. 3A of Sce.10-A. Such restrictions have been conceded as reasonable one\(^83\) on the right guaranteed by sub-clause(c) of clause (l) of Article 19 the right to strike is a relative right which can be exercised with due regard to the rights of others. All strikes are per-se legal but become illegal only if they are in contravention of sections 22,23 and 24 of the Act,. The right to strike is therefore subjected to procedural requirements of notice in public utility services or tendency of conciliation or adjudication proceedings or period covered by settlement, award or voluntary arbitration. Therefore the right to strike has been recognised by necessary implication in the industrial legislation in India and express statutory provisions have been made for the purpose of regulating it. It is thus a recognised weapon of the workmen to be resorted to by them for ascertaining their bargaining power and for backing up their collective demands upon an unwilling employer. National Commission on Labour relying on Donovan Report Opines that the right to strike is a democratic right which cannot be taken away from the working class in constitutional set up like ours. Taking away the right of the workers to strike, may only force the discontent to go underground and lead to other forms of protest, which may equally be injurious to labour-management relations\(^84\). The

\(^83\) Meenakshi Mills Vs. State of Madras, AIR (1951) Mad. 974.

Government has the powders to prohibit strikes and this power to be exercised by the government those within its discretion. The aim underlying this lower in government to prohibit strikes and this lower to be exercised by the government to prohibit continuance of a strike is that the chances of a settlement or speedy determination of the dispute may not be jeopardized. It is within this prohibition that we come across the idea of compulsory adjudication prevalent within the frame work of industrial law, restricting thereby the workers' right to go on strike as also putting economic pressure upon the employer or management to concede to their demands. Another statutory restriction is that during the period of operation of the settlements and award strike action is prohibited in respect of the matters covered by such settlements or awards.  

Restrictions should only be placed on the right to strike where there are adequate safeguards and alternatives for the expeditious and effective settlement of disputes. Public policy must recognise this part of the situation. The need is felt all the more in public sector where state is the employer. State must be a pace-setter in as much as if the private sector is called upon to maintain healthy industrial relations, then it is all the more necessary that the state must arrive at negotiated settlements and avoid industrial conflicts.

85 Section 18 & 19 of the Industrial Disputes Act, 1947
Actually, the Industrial Disputes Act, 1947 doesn't purport to take away the right to strike. In fact, this right has been recognized by the Act. However, with the view to achieve the purpose of the Act viz., peaceful investigation and settlement of the Industrial disputes and for obviating the Industrial strikes and achieving harmonious relations between the industrial employer and their employees, the right to strike has been restricted. It may be stated in general terms that workers have been granted the right to strike which they are expected to use in a responsible and not in a light-hearted manner. The Essential Service Maintenance Act of 1981 empowers the Central government by an order to declare organizations as essential services for a period of six months and also to ban strikes in such organizations. According to the Act, mere participation in an illegal strike would make a worker liable for dismissal.

Strike has always been regarded as the birth right of the working class. This truth becomes a reality if it is made a fundamental right, it also completes the ratification of seventh convention of I.L.O. dealing with workers' right to organize and collective bargaining, which is not so far done. We need not fear that the workers will misuse this right to strike, if it is made as a fundamental right. The industrial Jurisprudence of India will

enter a new era if the constitutional protection is afforded to workers right to strike as a fundamental right. It will become more effective bargaining process if, the right to strike is recognised as a fundamental right it will become more effective bargaining process if the right to strike is recognised as a fundamental right. The economic strength of the employer is superior to that of workers, even though he latter is organized into trade unions. The recognition on the part of the state of the right to strike, under certain conditions, confirms the need for balance between the two sides, as a means of effective social justice. The evolution of industrial relations in modern society has increased the need for responsibility in the exercise of the right to strike, but does not limit this right. Normally however, it is kept within the compass of collective bargaining. There are no conclusive reasons for this conflict to be manifested outside institutionalized channels. These channels are none other than the strike and it is not foreseeable that other channels could exist. The right to strike is a guarantee that the contradictions of industrial society, which are self-correcting, find a harmonious and balanced way of readjustment. The development of a greater acceptance of responsibility by the negotiating parties will automatically cause the exercise of the right to strike too limit itself. The state should mediate but its intervention should be regarded to the relative strength of trade unions and employers, also taking into account the phase of economic development of a
socialist society. There is no tendency for industrial conflict to disappear, in that it is a fundamental aspect of the dynamics of a progressive society.

It is worthwhile to examine what consequences will follow if the right to strike is made as fundamental right under our Constitution. Firstly it permits the worker to go on strike whenever, they like as a matter of legal right. It does not mean that they can enjoy as an absolute right to go on strike. The fundamental rights can be regulated and controlled. Secondly the available remedy for enforcement is more significant than the right itself. Thirdly the constant vigil of our constitution prevents the encroachment of various enactments on the workers rights to strike. Fourthly it paves she way to have a uniform rule relating to strikes in India. Lastly the courts in India can act like watchdogs to protect the rights of the working class from the exploitation of employer because of their weak bargaining power. There will be more effective bargaining process, if the right to strike is recognised as a fundamental right.

There are remarkable similarities in the right to strike in India, the United States and the United Kingdom In India the right to strike is recognised by case law, for instance it is recognised as a mode of redress for resolving the grievances of workers. Under our Industrial Jurisprudence the

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87 B.R. Singh, V. Union Of India (1989) I LlJ.S (SC) 91
right to strike is not absolute in view of the restrictions placed on it under sections 10 (3), 10 A (4A), 22 & 23 of the Industrial Disputes Act. In the United States it is recognised by statutory law whereas in United Kingdom the right to strike is considered as a regard right so long as there is no branch of contract, or tort or crime but Act of 1971 regulates the right to strike. The British concept or regulation is borrowed from the United States. A strike is allowed so long as it does not constitute an unfair labour practice.

The right to strike is a democratic right, which cannot be taken away from the working class in a constitutional set up like The 'Means and end' criterion is almost necessarily inherent in any comparison between permitted and prohibited industrial action, but the techniques of prohibited industrial action, but the techniques of prohibition vary to some extent. In these three countries, the problem of special emergencies has attracted the attention of the legislatures and courts, and hence the prohibitions on the right to strike. The working class has indisputably earned the right to strike as an industrial action after a long struggle, so much so that the relevant industrial legislation recognizes it as their implied right. However the legislation also circumscribes this right by prescribing conditions under which alone its exercise may become legal.
2.11 STRIKE - A LEGITIMATE WEAPON OF WORKERS:

Since the time the realization dawned upon the workmen that strength lies in unity and combinations, the weapon of strike has been in use as a measure of coercion in their hands to force employers to yield to their demands. Threats of their use, even more than their actual use, influence the course of the contest. The threat is often explicit, much more often it is tacit but not for that reason the less affective.\(^{88}\)

It as collective bargaining is a technique by which disputes as to condition of employment is reduced amicable rather than coercion the disputes is settled peacefully and voluntarily although reluctantly between labour and management.\(^{89}\) Strike is one of the oldest and most effective weapons of labour in its struggle with capital for securing economic justice. The basis strength of a strike lies in the labourers privilege to quit work and thus bring a forced readjustment of conditions of employment. The strikes are normally resorted to with the sole intention of bringing to the notice of the management the grievances and claims of workmen. However in modern times a strike has ceased to be a contest only between on employer and his workers particularly if it is an industry wide general strike or a strike or workers employed in public utility services or in works of strategic significance. Its repercussions spread far wide and affected adversely many

\(^{88}\) Labour Law & Labour Relations (1968) LLG p. 255.
sections of the community. The strike is perhaps the most patent weapon possessed by labour to force its demands upon an employer. This weapon, threatened or actual, may help one party to force the other to accept its demands or at least to concede something to them. ' Strikes' said Mahatma Gandhi, "should be the last weapon, after all legitimate means are exhausted". The strike has been a classic feature of industrial relations, since the early days of labour movement. Like other institutions, however the strike is going through evolutionary changes and assuming new forms. Today the economy is far more capital intensive then in the past and so the strike is becoming a costlier weapon. The recent trends indicate that the strike is losing its importance as a major weapon of collective bargaining and economic justice and this trend appears almost certain to continue. With the diminution in the use of strategic strikes there has been a growth in the number of small protest strikes and stoppages of short duration, sometimes of a repetitive nature, which cripple and paralyze the industry at the least cause economic loss to the workers. No doubt this weapon is not that effective which it was 20 years ago. The strikes are a vital safety value. There can be no question of banning them. The trade union movement will never agree for a moratorium on strikes. Such a step would be regarded as intolerable both from the point of view of taking away a liberty and because strikes cannot be prevented merely by suppression. Taking away this weapon

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may only force the discontent to go underground and lead to other forms of 
protests which may be more injurious to the country. Workers will always 
keep this weapon in their hands. As a matter of fact, stronger the trade union 
movement, the less does it resort to the weapon of strike. For over two 
hundred years this weapon of strike has been a constant feature of the 
industrial science. Throughout this long period, the trade unions have found 
no more effective weapon in disputes with employers than the concerted 
withdrawal of their labour. It seems that strikes are inevitable in an industrial 
society and that when official strikes are reduced in number by the 
introduction of complicated agreements and negotiating procedures, this 
process in itself induces numerous unofficial strikes when long delays are 
incurred by these very procedures in settling urgent grievances.

2.12 RELATION BETWEEN FREEDOM OF ASSOCIATION, 
COLLECTIVE BARGAINING AND RIGHT TO STRIKE:

The democratic countries of the world had realised the importance of 
trade unions in the process of achieving industrial peace through collective 
bargaining. By recognizing that freedom of association is an essential 
freedom and collective bargaining as a legitimate method of settling disputes 
they have recognized strikes which play a very constructive role. In order to 
achieve the objective of recognition of human rights and workmen to be 
active participants in the establishment of internal democracy the I.L.O.
passed two conventions, namely the Freedom of Association and protection of the Right to organize and collective Bargaining\footnote{(No.93)(1949)}. 

The Freedom of Association and the protection of the Right to organize convention of 1948 provide that the workers and employers shall have the right to establish and join organization of their own choosing without previous authorization. The public authorities are required to refrain from any interference which would restrict the right to form organization or impede its lawful exercise.

The Right to organize and Collective Bargaining convention 1949 gives the choice to the workers to join or not to join a union with full freedom without fear of being dismissed from service. It also calls upon the member states to create conditions and institutions for promoting and ensuring the right to organise and negotiations between employers and workers organisations with a view to the regulation of terms of employment and conditions of employment by means of collective agreements.

Freedom to strike must have been a natural offshoot of the above conventions. To think that one can organize a union and one can achieve collective bargaining without a concomitant right to strike is only a dream and far from reality. The Freedom of Association Committee of the
Governing Body of the International Labour Organization, a quasi judicial institution has ruled many times that the recourse to strike is a legitimate weapon available to the workers and their organizations for promotion and protection of their economic and social interests.

In a case coming from India the Governing Body committee on Freedom of Association pointed out that in most countries strikes are recognised as a legitimate weapon of the trade unions in furtherance of their members interests so long as they are exercised peacefully and with the regard to temporary restrictions placed on them.\(^92\) In another case from India, the Committee laid down that the right to strike is generally admitted as an integral part of the general right of workers and their organizations to defend their economic interests\(^93\). The above decisions go to prove one important thing that is the freedom to strike forms a part and parcel of the right to organize or the right to form an association. It simply mans that one cannot think of these two rights without involving within them the right to strike, which again without these rights losses all meaning and content. It means, the freedom to strike is a concomitant right of the freedom of association and the freedom to organize. Apart from the contribution of the Committee on Freedom of Association, in International Law, the right to strike is explicit

\(^{92}\) Case No. 5 (India) 4th report para27.

\(^{93}\) Case No.47 (India) 6th report para 724,(36&37) both quoted from strikes in Industrial Relation Comparative study by D.V. B. Coutinho 1992 Edn. P.90).
recognized in Article 8 para 1 (d) of the United Nations International Covenant on Economic, Social and Cultural rights.

The right to strike has also been specifically recognized by the Constitutions of many countries which have accepted collective bargaining as a method of solving industrial conflict. Important countries among these are France, Federal Republic of Germany, Italy and Japan. The strike action stands protected only if the associations are working to improve working economic conditions of their workers and the freedom to strike becomes acceptable and permissible when and only when it is used as a weapon of collective bargaining.

The British model of collective bargaining recognizes strike as an essential element in internal rule making and rule interpretation process. The freedom to strike is a necessary sanction for the enforcement of agreed rules which seems to find the legal basis for strike in the process of collective bargaining. The case of Morgan v. Fry\textsuperscript{94} throws light and supports the proposition that strike is a legitimate weapon of collective bargaining.

In the cases of Management of Kair Betta Estate v. Rajamanickam\textsuperscript{95}, Bangalore Water Supply and Sewage Board v. A. Rajapappa\textsuperscript{96} and Gujarat

\textsuperscript{95} AIR (1960) SC p. 983.
\textsuperscript{96} (1978) Lab.IC SC p. 467.
Steel Tubes Limited v. GST Mazdoor Sabha, the Supreme Court of India in its various pronouncements has treated strikes as weapons of collective bargaining. As far as the pattern industrial relations in Britain are concerned it had entered the autonomous phase and India unfortunately continues to be in the thick of the equilibrium phase. Acceptance of the autonomy model as prevailing in Great Britain would have helped the Indian industrial relations system achieve a sense of maturity. United Kingdom was the first member to ratify the Conventions of Freedom of Association and Protection of the Right to Organize and Collective Bargaining in 1949 and 1950 respectively. It seems to be quite disappointing to note that India has not ratified the two conventions and is slowly getting isolated on a very important issue of putting industrial relations on a more keen level. Given the due and correct place to freedom to strike, there could have been a sea change in the system of industrial relations and the ushering in of the collective bargaining may find solutions to long desired goal of achieving industrial democracy in India. The Supreme Court of India not to have considered the freedom to strike as a right concommittant to the right to form associations or unions was, it is submitted, a step not in the right direction. The National Commission on Labour which was constituted in 1967 in its report has opined that collective bargaining cannot exist without the right to strike or

97 All India bank Employees Association v. National Industrial Tribunal, AIR (1962) SC 171
lock-out and the place which strike lock-out should have in the overall scheme of industrial relations needs to be redefined.

By the evolution of strike law in Great Britain, one can say that the strike action has been given the legal aura and made acceptable only if it was in contemplation or furtherance of a trade dispute and in its more modern manifestations, strike action has been looked upon as an essential part of the collective bargaining process; as an instrument to achieve collective benefits for the workmen and nothing else. The European Social Charter of 1961 to which Great Britain has become a signatory lays emphasis on 'Strike' as a legitimate weapon of collective Bargaining.

In India, however with multiplicity of trade unions in all industries, the union that succeeds to get a dispute referred for adjudication gains popularity. The race today seems not for gaining a majority status for collective bargaining but to ensure quick reference of disputes for adjudication, not mindful of the negative consequences this step will have on the freedom to strike and the freedom of trade unions to bargain. The need for evolving proper norms for collective bargaining and creation of proper procedures to democratise the trade union movement were hardly the areas of priority as normally they ought to have been at this point of time. The workers must ensure that there are no further curbs on their right to strike and learn to get their demands by sitting with employer across the table. That
alone will bring them honour and glory as the trade unions in Britain have been able to achieve. The workers must regroup, understand their basic commitment and unite in the best interest of the working class. One may still see the down, when the Sun of collective bargaining will rise again.

Article 23 of the University Declaration of Human Rights Identifies the ability to organize Trade Union as a fundamental human right. Sec-2(a) of the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work defines the “Freedom of association and the effective recognition of the right to collective bargaining” as an essential right of workers.

A right to form unions guaranteed by Article 19(1) C of the constitutional law does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed. Even a very liberal interpretations of Article 19 (1) C cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining. Therefore although the workers have a right to strike and management can resort to lock-out under the circumstances and in the manner provided for in the Act, such rights are not fundamental rights. It has been held in a plethora

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99 International Labour Organisation
101 All India Bank Employees’ Association, Appellant v. The National Industrial Tribunal (Bank Disputes), Bombay, and others, Respondents, AIR (1962 SC 171.
of cases that there is no fundamental right conferred on the workers to strike\textsuperscript{102}.

\textsuperscript{102} Radhey Shyam Sharma v. Post Master General Central Circle, AIR 965 SC 311.
Type of Strikes

Strikes

(1) Primary Strike

Stay-away Strikes

Sit-down Stay-in; Tool-down or Pen-down strikes

(2) Secondary Strikes

Go-slow

Work to Rule

Token or protest Strikes

Lightning or Cat-Call Strikes

Picketing & Boycott

Gherao

(3) Other

Sympathy Strikes

1. General
2. Particular
3. Political
4. Bandhs