CHAPTER: VIII

ILLEGALITY OF STRIKES:
LEGAL HURDLES OBSTRUCTING
THE MOVEMENT TO 'AUTONOMY'
MODEL OF STRIKE RECOGNITION
IN INDIA.
If strike is to be accepted as a weapon or instrument of enforcing a collective bargaining agreement as in the 'autonomy' model\(^1\) then, it should be capable of being used without external legal controls and other pressures. The very existence of innumerable legal hurdles will only help suppress this freedom, leading ultimately for collective bargaining to be the casualty. We have seen how the control of strikes in Great Britain has moved from a position of severest controls during the world war period to a position of minimum controls during the period of peace that followed and so is the position there up today.\(^2\) We have also seen that the control position has remained the same in India both during the war period and the period that followed independence and freedom from colonial rule.\(^3\) Hence, it would be quite appropriate to look into the actual working of these controls and determine to what extent these have acted to stifle strikes in India. The various provisions of the Industrial Disputes Act, 1947,\(^4\) in the process of their interpretation and application have built a tangled web around the concept of strike, stifling its scope and application in India. The analysis and discussion that follows only helps to support this conclusion.
HOW STRIKES CAME TO BE DECLARED AS ILLEGAL IN INDIA - A BRIEF RESUME:

As has already been seen in detail, strikes came to be legally controlled in India, largely to enable Government to directly intervene to help solve labour disputes. This was a systematic approach which attempted to downgrade collective bargaining and give undue importance to third party intervention for purpose of settling labour problems. The first such attempt at controlling strikes legally was made in 1929, with the passing of the Trade Disputes Act. The justification for passing such a legislative measure was to control the industrial unrest which was sweeping the Country at that time. It appears, the main reasons for the industrial unrest were the depression, retrenchment of staff, reduction of wages and attempt by the employers to check falling profits by introducing improved methods of production.

The Trade Disputes Act, 1929, provided for certain special provisions pertaining to persons employed in Public Utility Services, by which no persons 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 having given
such notice, goes on strike before the expiry thereof, and would be punishable with imprisonment which may extend to one month or with fine which may extend to fifty rupees or with both.

The second and substantial effort at controlling strikes in India was made in 1942, with the promulgation of Rule 81-A of the Defence of India Rules. The justification for amending the Defence of India Rules was the maintenance of supplies essential to meet the war effort. Also, there was an acute shortage of essential commodities in the open market and the consequent price rise had led the workmen to protest and go on strike. The amendment brought in, tried to achieve two results, one to help the war effort and the other to silence the trade unions, so that the Government's objectives could be achieved.

As per the law framed under Rule 81-A, '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 previous notice in writing of his intention to go on strike. Again, 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 Rule 81-A of 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 proceeding and two months thereafter. The punishment for violation of any Order made by the Government under Rule 81-A of the Defence of India Rules was substantial being subject to a maximum of three years rigorous imprisonment or fine or both.

All that the Industrial Disputes Act, 1947, did was to incorporate Rule 81-A into it as Chapter V and made permanent what was meant to be only a war effort. The provisions contained in the said Chapter which declares strikes illegal are given here below:

2. ILLEGAL STRIKES - THE STATUTORY PROVISIONS:

Chapter V of the Industrial Disputes Act, 1947, deals with strikes and lock-outs and the provisions which come thereunder applicable to strikes are reproduced here below:

SECTION 22- PROHIBITION OF STRIKES AND LOCK-OUTS.

(1) No person employed in a Public Utility Service shall go on strike in breach of Contract-

(a) Without giving to the employer notice of
strike as hereinafter provided within six weeks before striking, or

(b) within fourteen days of giving such notice or

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

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

(2) ...

(3) The notice of strike under this Section shall not be necessary where there is already in existence a strike, in the Public Utility Service, but the employer shall send intimation of such strike on the day on which it was declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of Public Utility Services

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

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

**SECTION 23: GENERAL PROHIBITION OF STRIKES AND LOCKOUTS:**

No workmen who is employed in any industrial establishment shall go on strike in breach of Contract

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

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

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

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

SECTION 24: ILLEGAL STRIKES AND LOCK-OUTS:

(1) A strike or a lockout shall be illegal if -

   (i) it is commenced or declared in contravention of Section 22 or Section 23, or

   (ii) it is continued in contravention of an order made under sub-section(3) of Section 10 or sub-section(4A) of Section 10-A

(2) Where a strike 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, a Labour Court, Tribunal or National Tribunal, the continuance of such strike shall not be deemed to be illegal, provided that such strike was not at its commencement in contravention of the provisions of this Act or the continuance thereof was not prohibited under Sub-section(3) of Section 10 or Sub-section(4A) of Section 10-A

(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
SECTION 25: PROHIBITION OF FINANCIAL AID TO
ILLEGAL STRIKES AND LOCK-OUTS:

No person shall knowingly expend or apply any money in direct furtherance or support of any illegal strike or lock-out.

Now, let us see what consequences the application of the above provisions have been brought about and the pointers these show for the success of collective bargaining in India. We may consider the various aspects under the following heads:

(a) PROHIBITION OF STRIKES IN PUBLIC UTILITY SERVICES:

As can be seen from a plain reading of Section 22, that strikes in Public Utility Services are controlled by making it compulsory for any person employed therein to issue the requisite notice before a strike commences. These aspects can be examined under the following

(1) SIGNIFICANCE OF USE OF THE TERM 'PERSON EMPLOYED':

Significantly, Section 22 of the
Industrial Disputes Act, 1947, is applicable to 'person' employed in a Public Utility Service and does not limit to a 'workmen' as defined in Section 2(s) of the Act. The term 'person' is certainly broader than the term 'workman' as not all persons employed in an industry are workmen. The Act specifically defines the term workman, hence the use of the term 'person' inspite of this, clearly indicates that the Section brings all the persons employed in the industry within its purview. Now, it is not all persons employed in an industry that are expected to participate in collective bargaining. It is only the workmen, contractually bound with the employer, who can fight for themselves and bargain for better conditions of service, as we have already discussed this aspect. Thus, a strike can be justified only when it is used as a weapon of collective bargaining. But the use of the term 'person' employed in a Public Utility Service seems to achieve the objective of preventing all persons from going on strike without notice. This was done historically and as already discussed earlier to ensure that the essential services vital to the smooth functioning of society were maintained and dis-location of life in society was prevented.

Apart from the above, the use of the term 'person' has also created quite a lot of confusion when interpretation of
the Section 22 has come up. The typical example is the, *Swadeshi Industries Limited v Its Workmen*, decided by the Supreme Court of India in 1960. In this case, a company had terminated the services of 230 workmen on the ground that they had resorted to an illegal strike. The First Tribunal held that the strike was illegal in as much as these workmen struck work when employed in a Public Utility Service. The Appellate Tribunal, however, held to the contrary on the ground that there was no evidence to show that the workmen had been employed in a Public Utility Service and consequently the strike was not illegal.

Here, the question was whether these 230 workmen were employed in the Cotton Textile section of the Company. Admittedly, Cotton Textile Industry had, before the date of the strike, been declared as a Public Utility Service. It was also admitted that a notice of strike as provided for in Section 22(1) of the Industrial Disputes Act, 1947, had been given. If the appellant Company was solely engaged in Cotton Textile manufacturing, it would have necessarily followed that as persons employed by that Company, all of them would come within the purview of the Public Utility Service. But, this Company was also running a silk Textile manufacturing unit. The Company, in its arguments stated that the Cotton Weaving Mill and the Silk Weaving Mill formed one unit and not two and that every person employed...
in this composite unit must be held to be an employee of the Cotton Textile Industry and thus would come under the purview of the definition of Public Utility Service. However, none of the three witnesses, examined on behalf of the Company, said anything in support of the theory that the persons employed in the silk weaving unit were also the persons employed in the cotton weaving mill. The burden was on the Company to show that the persons employed in the silk section, that is, the 230 workmen involved in the dispute, were required to work, whenever required to do so, in the cotton section also and that about the material time, they were so working. Since, no evidence was forthcoming with regard to this matter, the Supreme Court held that the Appellate Tribunal was not wrong in coming to the conclusion that the 230 workmen or any of them were not actually employed in the cotton section or even worked on the cotton looms before the strike commenced. Hence, it was held that none of these workmen was a person employed in a Public Utility Service and hence the strike was not an illegal one. It was, only by this process that the workmen in question could get out of the net of illegality which the management was trying to create around them. The Company had actually terminated the service of the workmen because they had resorted to an illegal strike, which ultimately was not proved to be illegal. At what cost, in terms of money
and time, the Company was made to realise that it had wrongly applied Section 22 of the Industrial Disputes Act, 1947. May be, there are myriad cases when the same Section is wrongly applied by companies and thus consequently making the workers loose their employment when they cannot keep fighting up to the Supreme Court to get the wrong redressed. This presents a rather sorry state of affairs in a Country which vows by socialism and protection of the individual rights.

The Supreme Court of India, also had the opportunity to distinguish 'person' appearing in Section 22 of the Industrial Disputes Act, 1947 from the term 'any person' appearing in the definition of 'industrial dispute' as found in Section 2(j) of the Industrial Disputes Act, 1947. This was done in the Workmen of Dimakuchi Tea Estate v. Dimakuchi Tea Estate. Though the majority judgment went to state that the term 'any person' found in the definition of 'industrial dispute' meant any person in whom the workmen were substantially interested the lone dissenting Judge felt that 'any person' as found in the definition 'industrial dispute' could not be confined or limited to a workman. While 'person' used in Section 22 of the Industrial Disputes Act, had to be confined in its scope for application to only workmen as none else could be expected to go on a strike and
specially keeping in view the scheme of the Act to declare certain strikes as illegal

In coming to this conclusion, the honourable dissenting Judge seems not to have been aware of the historical setting in which the Trade Disputes Act of 1929 was passed. The term 'person' seems to have been deliberately used to ensure that no person went on strike in breach of a contract and if he did go on strike without the requisite notice, it would be an illegal strike. As we have already seen, the purpose of this Act was to declare strikes illegal and the use of the term 'person' only made sure that everybody working in that industry was brought within the purview of these provisions. It is unfortunate that a comparison was made between the term 'person' as found in Section 22 of the Industrial Disputes Act with Section 2(j) of the same Act, which defines 'industrial dispute.' The term used in this definition is 'any person,' who need not be a workman but in whose employment, non-employment, terms of employment, the workmen, are substantially interested. Hence, we can conclude that the term 'person' appearing in Section 22 is used not to restrict the application of the Section to 'workman' alone.

It is significant to note that Section 23 of the Industrial Disputes Act, employs the term 'workman' and not...
'person' since, an industrial dispute could be raised under the Act, only by a workman or an employer. Hence, the term 'person' must have a wider connotation and cannot be restricted in scope to the concept of 'workman' as defined under the Act. This subtle distinction, if attempted to be, has in it the scope for creating quite a lot of confusion and this is apparent from the discussion we have attempted above. This confusion has a direct bearing on the illegality of a strike and if it remains unexplained, it would continue to create many more problems in the correct understanding of the illegality of strikes.

(11) THE SCOPE OF THE TERM PUBLIC UTILITY SERVICE:

Section 2(n) of the Industrial Disputes Act, 1947, defines a Public Utility Service thus:

"Public Utility Service" means-

(i) any railway service or any transport service for the carriage of passengers or goods by air,

(ii) any service in, or in connection with the working of, any major port or dock,

(iii) any section of an industrial establishment, on the working of which
the safety of the establishment or the workmen employed therein depends,

(v) any postal, telegraph or telephone service;

(v) any industry which supplies power, light or water to the public,

(vi) any system of public conservancy or sanitation;

(vii) any industry specified in the First schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a Public Utility Service for the purposes of this Act, for such period as may be specified in the notification; Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension.

The industries specified in First Schedule are,

(1) Transport (other than railways) for the carriage of passengers or
goods by land or water;

(2) Banking,

(3) Cement,

(4) Coal,

(5) Cotton textiles,

(6) Food stuffs,

(7) Iron and Steel;

(8) Defence Establishments,

(9) Service in hospitals and dispensaries,

(10) Fire Brigade Service,

   Added by notifications by the Central Government,

(11) India Government Mints,

(12) India Security Press;

(13) Copper Mining,

(14) Lead Mining,

(15) Zinc Mining;

(16) Iron Ore Mining,

(17) Service in any Oil Field,

(18) Omitted by Act 45 of 1971,

(19) Service in the Uranium industry,

(20) Pyrites Mining,

(21) Security paper Mill, Hoshangabad,
(22) Services in the Bank
Notes Press, Dewas;
(23) Phosphorite Mining,
(24) Magnesite Mining;
(25) Currency Note Press

The State Governments have further added to the above list, making it really impossible for any item to miss the Government's eye.

It is not the procedure regarding the notice that is objectionable. What makes control by Government unwarranted is the chain reaction these controls set about. When a notice is given, the Conciliation Officer steps in and on the basis of his Report the issue is referred for adjudication and that goes on, only 'Strike' being the casualty. The appropriate Government uses this trick of 'Public Utility Service' to procrastinate and await for the day the dispute is diffused. It really does not carry collective bargaining anywhere. In view of this, it is rather surprising that the National Commission on Labour recommended that compulsory issue of prior notice of strike be extended to all industries/services. In the absence of a time frame within which a dispute has to be decided, the issuance of a notice and subsequent invoking of the settlement machinery could hardly help.
In the name of progress and development and also in the name of maintaining industrial peace and harmony, the exercise of adding to the list of essential services and Public Utility Services has gone on unhindered and many times in a manner, the arbitrariness of which can hardly be hidden or camouflaged. But the Government seems to hardly care.

(b) ILLEGALITY OF STRIKE DURING PENDENCY OF CONCILIATION PROCEEDINGS:

The moment the workers in a Public Utility Service serve the notice of strike, the employer is bound to inform the appropriate Government of this fact, within five days of receipt of such notice. This is only to alert the Government machinery regarding an impending strike in a Public Utility Service. Now, a conciliation proceeding is deemed to have commenced on the date on which a notice of strike or lock-out is received under Section 22 by the Conciliation Officer. It may be mentioned that, it is only in the case of a Public Utility Service that a Conciliation Officer is required to compulsorily conduct the conciliation proceedings. The commencement of conciliation proceeding is a signal for freezing the Freedom to Strike and it remains frozen until the said proceedings are over and at least seven days have elapsed since the conclusion of
such proceedings. Any strike during this period becomes illegal.

Now, the above proposition would be workable in a very ideal situation where there is one union in an industry. But, if there were many unions and each union goes its own way, the question of declaring a strike illegal becomes quite complicated exposing again the law to uncertainty and leading to confusion. This happened in the case of Ramnagar Cane and Sugar Co Ltd v Jatin Chakravarty. In this case, the Appellant Company was declared a Public Utility Service by a Government Notification dated 8th October, 1953. In this Company, there were two unions fighting for similar benefits. One Union was named the Employees Union which agreed to join the conciliation proceedings and ultimately signed a settlement on 25-2-1954. On the other hand, the Workers Union did not respond to the conciliation proceedings and the Conciliation Officer submitted a failure report in so far as this Union was concerned. Then, the workers of the Workers Union went on strike from 13th February, 1954. The question before the Court was whether the strike commenced by the Workers Union from 13th February, 1954, was illegal, as the conciliation proceedings were still going on with the other union. The Court held
"In our view the pendency of the conciliation proceedings between the appellant and the Employees' Union attracts the provisions of Section 22 (1)(d) to the strike in question and makes the said strike illegal under Section 24(1)(c) of the Act."

From the above decision one can conclude that, when a conciliation proceeding is pending between one union group of employer and the employer and the matter under dispute was something which would have an effect on all the workmen working in that industry, then the pendency of such a proceeding would bar all the employees from going on strike. But, if the conciliation proceeding in question is confined only to a specific demand and limited to a specific class of workmen, then, the other workmen, who are not concerned or interested in the dispute raised, would not be bound by the conciliation proceeding with regard to the same. This appears to be a rather peculiar consequence that flows from the legal prohibition of strikes during the pendency of a conciliation proceedings. If there is disunity among the workmen and two or more unions are working at cross purposes, then, there is the possibility of one section of the workmen being punished for going on an illegal strike while the others remain untouched. In a situation like this, where there are multiple unions, it would have been better if a procedure was provided for eliciting the views
of all the interested parties and not go by mere majority. Such a method, of going by the consensus opinion, was followed and approved by the Permanent Court of International Justice in 1922. In this Case, the question was whether the workers delegate for the Netherlands at the Third Session of the International Labour Conference was nominated in accordance with the provisions of paragraph 3 of Article 389 of the Treaty of Versailles. The Secretary General of the League of Nations had requested the Permanent Court of International Justice, to give an advisory opinion in this regard. In fact, the Netherlands Government had nominated a common representative of three trade union organisation. It was the contention of one trade union, i.e., the Netherlands Confederation of Trade Unions, that it had the largest number of members and was on this count, the most representative organisation within the meaning of Article 389 of the Treaty of Versailles.

In order to come to its conclusion, the Court gave the following illustration, which is apt and to the point.

That, if in a given Country there are six organisations of workers, one with 110,000 members and others with 100,000 each, according to the view of the objections to the nominations made in the present case, the candidate proposed by the five last organisations jointly would have to be
discarded in favour of the candidate of the first. Thus, one hundred and ten thousand workers would dictate to five hundred thousand.  

Thus, the Permanent Court of International Justice upheld the procedure adopted by the Government of Netherlands for selecting the workers delegate in agreement with the organisations which, taken together, included a majority of the organised labour of the Country. This seems to have been the best solution to be found in the given circumstances.

If, similar procedure was available to the Conciliation Officer, then, there was every chance for justice not only to be done but also seemed to have been done. In the absence of detailed guidelines, a Conciliation Officer may not be able to achieve any results except an unfortunate situation developing as in Ramnagar Cane and Sugar Co. Ltd v Jatin Chakravarty as shown earlier.

Now, on completion of the conciliation proceedings, the Conciliation Officer is required to submit his report to the appropriate Government. If he succeeds in his efforts, the result is a settlement signed by the parties. The Conciliation Officer must then send a report of the same to the appropriate Government or an officer authorised in this
behalf by the Government together with a memorandum of the settlement signed by the parties to the dispute. If no settlement is arrived at, the Conciliation Officer must close the investigation and send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with, a full statement of such facts and circumstances, and the reasons on account of which in his opinion, a settlement could not be arrived at. The Conciliation Officer must submit his report within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. However, if the Conciliation Officer approves, the time for the submission of the report may be extended by such period as may be agreed upon in writing by all the parties to the dispute.

With regard to the conclusion of conciliation proceedings, the legal position is again vague giving scope for multiple interpretation and hence unnecessary scope for litigation.

Under the Industrial Disputes Act, 1947, the conciliation proceedings are concluded.
(a) Where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute

(b) Where no settlement is arrived at, when the report of Conciliation Officer is received by the appropriate Government

There seems to be no problem in so far as (a) is concerned. But, the words appearing in (b), 'received by the appropriate Government', are too general and vague. These words seem to have given scope for confusion because, nowhere it is mentioned, which Officer in the Government will represent the appropriate Government. A Conciliation Officer may send his report to the appropriate Government and knowing this, and waiting for a reasonable time, the workmen concerned in the dispute may go on strike. It may so happen that the report may never reach the Government and in such a situation the question will be whether the strike of the workmen is illegal or not. Such a situation did arise in a case which went up to the Supreme Court of India. In this Case, on October 13, 1949, the appellants through the Secretary of the Union gave a notice to the respondents under Section 22(1) of the Industrial Disputes Act, 1947, that they proposed to call a one-day strike on the expiry of the notice on November 6, 1949, in pursuance of demands totalling around sixteen in number. The strike notice was in accordance with Rule 85 of the Rules framed
under the Industrial Disputes Act, 1947, and copies were sent to the concerned officials as required under the Rules. The Regional Labour Commissioner (Central) Dhanbad, on receipt of the notice, started conciliation proceedings. The workers declined to participate stating that they were convinced that nothing would come out of the proceedings and that the proceedings should be considered 'to be ceased.' The Officer reported failure of conciliation proceedings to his superior, the Chief Labour Commissioner, New Delhi, on October 25, 1949. On 7th November 1949, the workmen, numbering around 700 went on a one day strike as per their strike notice. The management of the Colliery contended that the strike was illegal and made an application, under Section 8(2) of the Coal Mines Act, Provident Fund Act and the Bonus Scheme Act, 1948, for decision whether the strike was legal or illegal. It was held that the strike was illegal and this decision was upheld by the Central Government Industrial Tribunal at Dhanbad. In Appeal to the Supreme Court of India, it was argued that the conciliation proceedings should have been held to have terminated when the Regional Labour Commissioner (Central) sent his report within 14 days of the commencement of the conciliation proceedings. The Court refused to accept this argument and went into the question of clarifying the distinction between the words 'send' as appearing in Section...
12(4) \( \text{sup} \) submitted as appearing in Section 12(6) \( \text{sup} \) and 'received' as appearing in Section 20(2)(b) \( \text{sup} \) The Court explained that the use of the word 'received' obviously implied the actual receipt of the report. Such an interpretation went rather against the interest of the workmen, as the workers in Dhanbad, Bihar State, could never know when the Central Government would actually 'receive' the report sent by the Conciliation Officer. It is submitted that an exercise like this would put strike activity in such a legal straight jacket that the role of strike in achieving collective bargaining would be minimised and even destroyed. If strike by workmen in circumstances mentioned above can be termed as 'illegal', then, the whole purpose of recognising Freedom to Strike would lose its validity. Now, if the appropriate Government had through a notification identified which Government Official would act, on behalf of the Government for purpose of 'receiving' the Report, things would have been simple and workers could know where they stood, vis-a-vis their Freedom to Strikes was concerned. Giving scope for such narrow and highly technical interpretation, has only helped in declaring legitimate strike activity illegal, thus creating a very negative perception for the concept 'Strike' in India.
Instead of the above exercise, it would have been most appropriate and in the best interest of collective bargaining if the Conciliation Officer brought the parties together and helped achieve a settlement by acting as a mediator. But the question here is, are the Conciliation Officers trained to achieve this type of result? If an Officer belonging to the Indian Administrative Service, whatever post he occupies, or even a Judicial Officer, is asked to undertake conciliation proceedings, without the necessary interest and dynamism and the knowledge of Labour Laws and the intricacies and techniques of negotiations, it may well be that the whole exercise may become futile. If the appropriate Government, has a cadre of persons well up in matters pertaining to industrial problems, then conciliation may achieve its goal of arriving at a settlement. But, if the whole exercise is only to prepare the ground for a failure report and then reference of the dispute for adjudication, then conciliation would have served no purpose and only end up as an exercise in futility.

Another way of looking at the question would be, not to make any distinction between a Public Utility Service and a non-Public Utility Service. Every industry employing 500 and more workmen, could be declared as an important industry.
for the purpose of compulsory conciliation proceedings because, this would reduce the extent of arbitrariness in declaring certain industries as Public Utility Services and others not. It may be noted that the Bombay Industrial Relations Act does not provide for a 'Public Utility Service'. It gives the same importance to all the industries and conciliation is required to be carefully resorted to when an 'industrial dispute' referring to an 'industrial matter' is raised and notice has been served on the concerned Officials. Emulation of the experience of the Bombay Industrial Relations Act would help in putting the conciliation proceedings on a totally different footing. As, has already been shown earlier, the provisions of the Industrial Disputes Act, 1947 have only succeeded in creating legal hurdles for the workers so that it becomes more and more difficult for them to go on a strike which ultimately is not declared as illegal.

(c) ILLEGALITY OF A STRIKE DUE TO PENDING OF PROCEEDINGS:

(1) THE MEANING OF PENDING-

On a plain reading of Sections 10 and 20 of the Industrial Disputes Act, 1947, one can find that, as soon as a reference is made by the appropriate
Government 'by an order in writing', the reference of dispute becomes complete. The day from which such a reference is made is the starting point for the commencement of the proceedings. The proceedings came to an end when, in the case of the Board of Conciliation, the report of the Board is published under Section 17 of the Industrial Disputes Act, 1947, and in the case of a Labour Court, Tribunal or National Tribunal, the date on which the Award becomes enforceable under Section 17-A of the Act. Thus, one can say that 'pendency of proceeding' is the period between the date of reference of a dispute to the Board of Conciliation or a Court, Tribunal and National Tribunal and the date on which the report is published or is brought into force.

(11) PENDENCY BEFORE APPROPRIATE AUTHORITY:

Where a dispute is pending before the Board of Conciliation, the workmen cannot go on strike during the period of pendency and seven days after the conclusion of such proceeding.

Where a dispute is pending before a Labour Court, Tribunal or National Tribunal, during the pendency and two months after the conclusion of such proceedings, Where the dispute is pending before an arbitrator, during the period of pendency and two months after the conclusion of such
proceedings, where a notification has been issued under Section 10-A(3-A) of the Act 57

The general prohibition of strikes in an industrial establishment, where a dispute is pending before a Board of Conciliation, Labour Court, Tribunal National Tribunal and the Arbitrator, looks to be quite drastic as one can discern from a reading of the Section 58 It can be seen that, no matter what is pending, however important or unimportant it may be, the workers hands are tied down, making it impossible for them to go on any strike Hypothetically speaking, if say, the employer can induce one section of the workmen to raise a dispute and it is referred to any of the authorities referred above, the workers rights to go on strike gets automatically paralysed It would be quite appropriate to quote Justice Krishna Iyer, who expressed a similar opinion in the Gujarat Steel Tubes Limited v Gujarat Steel Tubes Mazdoor Sabha59 thus

"It looks strange that the pendency of a reference on a tiny issue or obscure industrial dispute—and they often pend too long—should block strikes on totally unconnected yet substantial and righteous demands The constitutional implications and practical complications of such a veto of a valuable right to strike often leads not to industrial peace but to seething unrest and lawless strikes"
And that is exactly what is happening around the Country. Controlling strikes so as to prevent them from becoming instruments of achieving collective bargaining, is bound to bring in multiple other problems.

Another example can be cited with authority here to show how too much of controls and procedure, not only defeat the exercise of Freedom to Strikes, but also creates narrow technical hurdles for the workmen. In this Case, the question was regarding the interpretation of an award made by one shri Mazumdar on May 18, 1956. During the course of hearing, before the Chairman, Central Government Industrial Tribunal, Dhanbad, certain Colliery owners wanted their concerns to be excluded from the reference on the ground that though they were parties to the earlier award, they were not interested in the current reference as it related only to 'Traffic' and they had no staff belonging to this category in their concerns. The Tribunal did not record any express order either permitting the appellant to withdraw from the dispute or declining such permission. The appellant and its workmen did not participate in the proceedings. Now, during the pendency of the proceeding, the workers of the appellant's Colliery went on strike from October 4, 1960, the immediate cause for the strike being the dismissal of some six workmen. The question now was
whether, the strike took place during the pendency of the reference and consequently whether clause(b) of Section 23 would apply. The Supreme Court of India did hold that the strike took place during the pendency of reference and hence it was illegal.

In arriving at the above conclusion, the Supreme Court seems to have been influenced by the argument put forth that, the reference under Section 36-A of the Industrial Disputes Act, 1947 requiring consideration of any provision of an earlier award or settlement must relate back to the earlier reference culminating in the award or settlement and, therefore, if the appellant was a party to the original reference which resulted in the 'Majumdar Award', then the appellant must necessarily be considered to be a party to the reference under Section 36-A, notwithstanding its desire not to take part in those proceedings or even if there is an express application by it placed before the Tribunal for permission to withdraw.

Now to understand the implications of the above referred decision, it would be quite necessary to go through Section 36-A of the Industrial Disputes Act, 1947, which reads as follows.
SECTION 36-A: POWER TO REMOVE DIFFICULTIES.

(1) If in the opinion of the appropriate Government any difficulty or doubt arises as to the interpretation of any provision of an award or settlement, it may refer the question to such Labour Court, Tribunal or National Tribunal as it may think fit.

(2) The Labour Court, Tribunal or National Tribunal to which such question is referred—shall, after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties.

On going through the above Section one can conclude that the purpose of this Section is not to provide for reference of a dispute for adjudication, which task is performed by Section 10 of the Act, but in a very limited way and only in cases of difficulty of doubt, to provide for reference to an authority so that the doubt or difficulty created may be removed. Again, the resulting decision under Section 36-A is not an Award and so does not attract the provisions of Sections 15, 17 and 17-A of the Act. Hence, it is submitted, that, it is only the proceedings relating to an industrial dispute, referred under Section 10 of the Industrial Disputes Act, that would attract Section 23(b) and not any other.

Also, a question regarding the interpretation of an award or settlement, it is submitted, cannot by any stretch
of imagination be said to be an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. Therefore, the decision of the Supreme Court is required to be reconsidered at the earliest.

It is further interesting to note that the Supreme Court of India, had itself decided to the contrary in *Kirloskar Oil Engines Limited, Kirkee, Poona v Its Workmen*. Here, the Court while explaining the scope of Section 36-A of the Industrial Disputes Act, 1947, had said, "The said Section empowers the appropriate Government to refer any question to the tribunal if the said Government is satisfied that any difficulty or doubt arises as to the interpretation of any provision of an award made by the said Tribunal. It further provides that when such a question is referred to it, the Tribunal shall, after giving the parties an opportunity of being heard, decide such a question and its decision shall be final and binding on all the parties. It is thus crystal clear that the scope of the enquiry under Section 36-A is limited to the removal of doubts and difficulties arising as to the interpretation of any provision in the award. It is obvious that any question about the propriety, correctness or validity of any provision in the award would be out-side the purview of the enquiry contemplated by the section."
It is unfortunate that this decision was not cited while the Ballarpur Collieries Case was being argued. If that was done, the decision may have been quite different. It is bad enough that Section 23 bans all strikes when matters are pending before the authorities. Now, by tagging Section 36-A to Section 23, the situation is rendered rather worse. It is no wonder if the workers tend to take the law in their own hands, when their Freedom to Strike is stifled in such circumstances.

If the Courts in India do not take care to take a more pragmatic view to the technical arguments put forth by the employers, the workmen and their unions will hardly be able to organise to achieve economic benefits for themselves by using the process of collective bargaining. An instance, at hand, is the contention put forth by the management that, when an individual dispute is pending before an authority, and no other workman has sponsored such a dispute, the said pendency could act as a bar for other workmen from going on strike. This happened in Chemicals and Fibres of India Limited v D G Bhoir. However, the Court rightly decided that while there is justification for preventing a strike when a dispute between the employer and the general body of workmen is pending adjudication or resolution, it would be too much to expect that the legislature intended that a lid
should be put on all strikes, just because the Case of a single workman was pending. The Court further remarked that to accede to the contention of the employer in this Case would in effect be acceding to a contention that there should never be strike. That, while it realises the importance of maintenance of industrial peace, it cannot be secured by putting a lid on the legitimate grievances of the general body of labour because the dispute relating to an individual workman under Section 2-A was pending. If that was done, the boiling cauldron would burst and in that Case the general body of workmen would legitimately be aggrieved that they were prevented from striking because an individual's Case was pending with which they were not at all concerned.

The stand taken by the Court in this Case should be a pace-setter and a load star for the Courts in India to follow, and if that be the attitude of the judiciary, the workmen need not fight with their backs to the wall.

(d) **ILLEGALITY OF A STRIKE FOR BEING IN CONTRAVENITION OF A SETTLEMENT OR AWARD.**

A strike is illegal if the workmen resort to it during any period in which a settlement or award is in operation in respect of any of the matters.
A 'settlement' is defined as one arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the Conciliation Officer

An 'award' is defined as an interim or a final determination of any industrial dispute or of any question relating thereto by a Labour Court, Tribunal or National Tribunal and includes an arbitration award made under Section 10-A

The significant aspect with regard to an illegal strike in respect of contravention of a settlement or award is that, the illegality is limited only to the questions covered by the said settlement or award during the period of its operation. Hence, a strike declared in pursuance of demands not covered by the settlement or award, will not be illegal. Thus, fortunately, the existence of a settlement or award in operation does not automatically act as a bar to workers going on strike regarding matters not covered by it.
as in the Case of pendency of disputes.

We may, however, note the broad distinction between Section 23(b) and Section 23(c) of the Industrial Disputes Act, 1947. Section 23(b) prohibits all strikes in all matters so long as a matter is pending before a Tribunal. However, Section 23(c) is restricted in its application only to matters covered by a settlement or award. This difference is very important. But it was not properly recognised and applied when the Tribunal gave its decision in *Jeypore Sugar Company Limited v Their Employees.* In this Case, the workers had gone on a flash strike when the Secretary of the Union, who also happened to be an employee of the Company was assaulted by the Chief Engineer of the Company. The strike went on for eighteen days and when the workmen demanded payment of wages for the strike period, the Company refused to give in on the ground that the strike was illegal as it was declared in contravention of a settlement, which was in operation at the time the workmen went on strike. The Tribunal accepted the argument of the Company and denied wages to the workmen for the period they were on illegal strike. The Labour Appellate Tribunal, however, reversed the decision of the Tribunal. While doing this, it explained that Section 23(c) of the Act, prohibited a strike by the workmen only in respect of matter covered by
the settlement. The representative for the Company argued and tried to make out a case that the workmen's union had given an unconditional undertaking not to go on strike in respect of any matter. However, the Appellate Tribunal refused to accept this argument on the ground that a dispute over an assault of any employee by an official could never have been in the contemplation of the Union at the time the settlement was made. Moreover, any undertaking by the workmen not to go on strike could be understood only in the context of those matters connected with the settlement arrived at and as such the strike by workmen cannot be declared as illegal.

One may say without any hesitation, that, an approach, such as the one adopted by the Labour Appellate Tribunal, Calcutta, exhibits a very deep understanding of the nature of Freedom to Strike and its necessity to the workmen. It failed to disturb the freedom or limit the scope of its application, even in the face of the argument that the workmen had given an undertaking that they would never go on strike. An approach, such as this gives meaning and content to legal provisions and their application.

We may now consider a slightly different situation when, there is in existence a settlement between the workmen and the management and one of the clauses therein prohibits...
a strike without due notice and the minimum number of days of notice, required to be given, are also specified therein, and the workmen resort to a strike on an issue not covered in the settlement, without giving the requisite notice as agreed upon in the settlement, would such strike be illegal? and if it is so, under which provision of the law? It would be understandable that if a strike is declared in pursuance of certain demands and these very demands are already covered by the settlement, such a strike would be illegal as contravening Section 23 of the Industrial Disputes Act, 1947. However, if the demands made are totally different and unconnected with those in respect of which a settlement was arrived at, then, it cannot be said to be an illegal strike, but only a breach of settlement under Section 29 of the Industrial Disputes Act, 1947.

Section 29 provides for penalty for a breach of settlement or an award and reads thus:

"Any person who commits a breach of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and there the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender may direct that the whole or any part of the fine
realised from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach.

The plain question here is, if workmen do commit a breach of settlement and go on strike, can such a strike be declared as illegal under the Industrial Disputes Act, 1947? This question came up for being answered before the Supreme Court of India in Workmen of Motor Industries Company Limited v Management of Motor Industries Company Limited 90. In this case, it was contended on behalf of the management that the strike declared by the workmen was illegal, firstly, in respect of matters covered by the said settlement, namely, going on strike without notice while the settlement was in force and secondly, being in breach of that settlement, thereby being illegal, both under Section 24 and Section 29 of the Act.

It may be mentioned here that Clause 5 of the settlement provided that it was,

"in order to ensure continuation of smooth working"

that the company and the association agreed that in no case could either of them resort to direct action such as lockouts, strikes, go-slow and other coercive action without giving four days notice etc 91. Interpreting this...
clause, the Supreme Court of India held that the strike was not illegal under Section 24 read with Section 23(c) of the Industrial Disputes Act, 1947. But the Court did find that the strike was in contravention of Clause 5 of the settlement and the concerned workmen were punishable under Section 29 of the Act.

To come to the above conclusion, the Court followed with approval the ratio laid down in Tata Engineering and Locomotive Company Limited v C B Mitter, facts of which Case are similar to the one's in Motor Industries Company Limited Case. In both of the above mentioned Cases, the Supreme Court found that the strikes in question were illegal under Section 29 of the Act. It is submitted with due respect to the Court that the conclusions arrived at in these two Cases are not quite acceptable in law and in fact.

One can see that an illegal strike is one declared as such under Section 24 of the Industrial Disputes Act, 1947 and nothing more. By making a strike illegal under Section 29, one is not only inviting penalty under that Section but also an additional penalty which follows illegal strikes, such as, loss of wages, dismissal, etc. Section 29 is a very comprehensive Section providing for punishment prescribed therein. It stands as a self contained code by itself as it were. Moreover, the Section begins with the
term 'any person' and not 'any workmen'. Hence, the workmen and the employer must be treated on par and on equal terms as either or both could commit a breach of settlement or award, he would be punishable only under Section 29. But if the workmen commit a breach of settlement or award, they are punishable under the said Section and additionally under provisions dealing with punishment such as disciplinary action, dismissal, etc under the relevant Standing Orders.

The interpretation put by the Supreme Court of India in the above mentioned two Cases requires to be reviewed, otherwise, the workmen would be subject to double punishment and in addition, the very Freedom to Strike would be in jeopardy as, innumerable situations which create illegality will all but destroy the process of collective bargaining.

(e) ILLEGALITY ARISING OUT OF PROHIBITION BY GOVERNMENT.

Apart from the power which vests in the Government to declare certain industries as 'Public Utility Services' and which aspect is already discussed in this Chapter, it also has the power to prohibit strikes in certain circumstances. The first such prohibition is found
in Sub-Section 3 of Section 10 of the Industrial Disputes Act, 1947. This Sub-Section reads as follows:

Section 10 (3):

Where an industrial dispute has been referred to a Board, Labour Court, Tribunal or National Tribunal under this Section, the appropriate Government may by an order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.

These two above mentioned provisions exhibit a common motive and that is, the appropriate Government can ban strikes which are in existence at the time the dispute is referred for adjudication and arbitration. It appears, such a ban is contemplated to ensure that the parties may take up the dispute and grievances calmly and peacefully with the authority concerned and also that the said authority may come to its decision without undue pressure being exerted on it. If this is the only objective, then the ban on strikes in the circumstances indicated may well be accepted. On an application of these provisions it is, however, found that they could be so interpreted, or twisted, or turned to further put a lid on the Freedom to Strike and thus defeat the purpose of collective bargaining. These possibilities are discussed here below.
(1) IN THE MATTER OF ISSUES INVOLVED IN A STRIKE:

Now, when a strike is declared by the workmen and there are a number of issues raised and the appropriate Government chooses to refer only some of them either for adjudication or arbitration, the question is, would it be proper for the said Government to totally ban the strike? could it be that the Government could pick up just one demand and refer it for adjudication and ban the strike without touching the main or any other demands raised by the workmen? would such a negative approach bring better industrial peace? If the ban is imposed only to deny the workmen their Freedom to Strike and not to achieve a solution to the industrial dispute, then the workers concept of a strike is bound to differ from that of the Management and Government and if the approaches to this question probably differ, then there is bound to be suspicion leading to industrial unrest and dis-harmony. However, the decision of the High Court of Delhi raises an interesting question. In this Case, the Court took the view that, if out of the number of demands only some are referred for adjudication, the continuance of the strike can be prohibited only regarding the disputes which have been referred for adjudication and the prohibition of the
continuance of the strike can be enforced only regarding the disputes which have been referred for adjudication and the prohibition of the continuance of strike with respect to the matters which have not been referred to adjudication is not warranted by Sub-Section 3 of Section 10 of the Act.

However, the learned authors of *Law of Industrial Disputes* seem to take a contrary view and have criticised the decision as one not according to the correct interpretation of the Law. They maintain that the interpretation given is repugnant both to Section 10(3) and Section 23 of the Industrial Disputes Act, 1947 and also repugnant to the object of the Act itself. The learned authors further argue that the purpose of Sub-Section 3 of Section 10 could always be defeated by including in the Charter of Demands some frivolous or unreferrable demands which the Government will not refer and it would become impossible to prohibit the continuance of a strike with respect to the demands which have not been referred and the provision of Sub-Sections 3 of Section 10 will thus become otiose.

Such an argument, as put forth above, hardly solves the problem. It has already been shown earlier that, equally, the Government could permanently deprive the workers of their Freedom to Strike by referring only one of the many
demands and thus use this opportunity to ban a strike. Then, when the decision on that demand comes, refer the next demand and so on and so forth, thereby putting the workmen's right to go on strike and to collectively bargain totally in the deep freeze. Given this possibility, the recent decision of the Supreme Court comes as a great relief and which sets at rest the controversy regarding the scope of Section 10 (3) of the Industrial Disputes Act, 1947. In a very short judgment delivered, the Court approved the stand taken by the High Court of Delhi. In its considered judgment the Court said:

"If Government feels that it should prohibit a strike under Section 10 (3) it must give scope for the merits of such a dispute or demand being gone into by some other adjudicatory body by making a reference of all these demands under Section 10 (1) as disputes in regard to such disputes as are not referred under Section 10 (1), Section 10 (3) cannot operate. This stands to reason and justice and a demand which is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence."

The Supreme Court of India, by clearly spelling out the limitations of Section 10(3) in the above case, has only tried to give the direction that was long overdue. Even if there are limitations imposed on the conduct of strike, it
is the duty of a Court to ensure that these limitations are so interpreted as to ensure the basic rights of the workmen. It must be understood that the Freedom to Strike is the rule and limitations the exceptions and not the Vice Versa. Given this approach, it would make Labour Law as one to protect the interests of the workmen and not to deny them of what is theirs and acquired over a period of time. Using the provisions of the Industrial Disputes Act, 1947, only to declare strikes illegal or to rope in as many strikes as possible into the net of illegality would hardly create the required climate for industrial peace.

(11) BAN - FOR HOW LONG?

The next aspect that remains to be considered in respect of Government's power to ban strikes when disputes are referred for adjudication or arbitration is the total absence of mention of time period for which the said ban will remain in operation. It would have been in the fitness of things that, when the Freedom to Strike remains in suspension, there would be legitimate expectation that the dispute referred would be resolved and determined within a reasonable time. This in a way proves the thesis being established in this Chapter that the existence of controls and the effort of declaring strikes illegal, have only served a negative purpose.
Hence, it is submitted, that there is a very urgent need to include in both the above referred Sub-Sections a time clause, whereby it would provide that if the dispute referred remained unresolved or un-adjudicated upon, for two years and more from the date it was referred to any authority under the Act, then the ban on strikes imposed in connection with such reference, would automatically cease. The workers would then have the right to bargain with the assistance of the strike weapon. Having a definite time limit to dispose of labour disputes would also help put pressure on the employer to help solve the problems within two years or face unrest and disruption in work. It is common knowledge that employers would like to delay and procrastinate to gain advantage for themselves. Longer the period for which disputes are kept pending before various authorities, longer will be the period for which the Freedom to Strike will remain frozen. Now, by imposing a time limit the Freedom to Strike is defrozen, the employer is likely to have a totally different attitude towards the demands raised by the workmen.

3 PENALTY FOR GOING ON AN ILLEGAL STRIKE.

Sections 26, 27 and 28 of the Industrial Disputes Act, 1947, deal with the penal provisions which become applicable once a strike is declared as illegal. The
provisions are reproduced here below

SECTION 26: PENALTY FOR ILLEGAL STRIKE AND LOCK-OUTS:

(1) Any workmen who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both

(2) Any employer who commences, continues or otherwise acts in furtherance of a lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both

SECTION 27: PENALTY FOR INSTIGATION, etc.

Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, strike or lock-out which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

SECTION 28: PENALTY FOR GIVING FINANCIAL AID TO ILLEGAL STRIKES AND LOCK-OUTS:

Any person who knowingly expends or applies any money in direct furtherance or support of any illegal strike or lock-out shall be punishable with imprisonment for a term which may extend to six months, or with fine which may
A few significant points emerge as a result of these penal provisions. These points are discussed below:

(a) **Cognizance of Offence:**

Under Section 34 of the Industrial Disputes Act, 1947, no Court can take cognizance of any offence punishable under the Act or the abetment of any such offence, save as complaint made or under the authority of the appropriate Government. Hence, it is only on a complaint made by the appropriate Government that proceedings for prosecution of illegal strikes can commence. The adjudicatory authorities under the Act have no jurisdiction to punish workmen for going on an illegal strike. Saddled with this power and jurisdiction and acutely conscious of the public reaction, it is not surprising to note that the appropriate Governments in India have not made use of this power to prosecute workmen criminally. Thus, the existence of these criminal provisions have hardly served any purpose. There have been instances of strike leaders being arrested and jailed during the strike period, but this writer has not come across a single case of a workman being prosecuted for going on an
illegal strike. Enquiries at the office of the Labour Commissioner, Bangalore, have not produced any results. And what is happening in Karnataka must be happening in the whole country. Thus it would have been better if the penal provisions were not there at all for that would have created the necessary environment for responsible bargaining between the labour and the employer on a basis of equality.

(b) REMEDIES OTHER THAN PENAL AVAILABLE:

In Case a worker misbehaves or does anything illegal, he could be dismissed from service under the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. When this relief is there for the employer, what purpose will penal provisions have? No worker would care for anything more than his employment. Hence, the emphasis seems to have been grossly misplaced under the Industrial Disputes Act, 1947.

Again, Sections 27 and 28 of the Industrial Disputes Act, 1947, appear to be in the statute book only to serve as a decoration. To have evidence to show that one has instigated or expended money for a strike is as difficult to trace a needle in a haystack. There has not been a single recorded case, come to the notice of this writer about the existence of any prosecution on this ground. And, say, even
if there is evidence, whether the appropriate Government will ever proceed to prosecute is a million dollar question.

It may be interesting to note that, under Section 9 of the Payment of Wages Act, deductions can be made from the wages of a workman if he has not reported for work. The amount of such deduction is not to exceed his wages for eight days if ten or more employed persons acting in concert absent themselves without due notice. Acting in concert means acting in a unified manner and in the nature of a strike. But, if due notice is given and there is a reasonable cause for absence from duty then, the penalty of deduction of eight days wages can be dispensed with. It, however appears that, to get relief under this provision, the matter would have to go before an authority which alone can decide regarding question of the reasonability of the cause and the sufficiency of notice.

Thus, the creation of the penal Sections is, it is submitted, nothing less than a futile exercise. It must have served the British well during the days of Rule 81-A of the Defence of India Rules,113 but certainly they are archaic and out of place in a free and democratic India. The earlier these provisions are removed, the better will it be for the dignity and honour of the Country.
### TABLE III
LEVEL OF INDUSTRIAL CONFLICT - 1975 - 1980

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Source: 1) Review of Industrial Disputes in India 1976 (D.L.B)
2) Various Issues of Indian Labour Journal
4. THE INEFFECTIVENESS OF LEGAL REGULATIONS OF STRIKE:

We have just noticed that, the penal provisions in the Industrial Disputes Act have been of no consequence either to deter or regulate strikes since no action has been forthcoming to use these provisions against ailing workmen or employers. We have also concluded that the penal provisions have not been enforced by the various Governments. It appears, strikes will occur irrespective of the legal controls involved. A study of the data available for the period 1975 to 1980 shows that there are other factors which influence strike occurrences. Even the rigour of the internal emergency did not prevent strike occurrences. Rather, they increased during this period. The data shown in Tables I and II and the analysis thereof give us very interesting results.

TABLE-II shows the number of disputes, number of workers involved and man days lost for the category of industries as classified according to the National Industrial Classification of 1970. As can be seen from the TABLE, uniformly, for all the six years, manufacturing industries have contributed the maximum in terms of the disputes, workers involved and man days lost. The share of the manufacturing industry actually comes to 70.14 per cent in 1975, with a peak of 80.69 per cent in 1976. This shows
that the rigour of the emergency may not have had any influence on the strike occurrence in the manufacturing Section. What is most significant is that, disputes in this Section fell to 70.58 per cent in 1977 and since then have been on the decline with figures standing at 63.41 per cent for 1978, 56.68 per cent for 1979 and 54.79 per cent for 1980. Manufacturing industry sector has gradually ceased to occupy the prime position in the number of disputes and loss in man-days. On the other hand, the other sectors like mining and quarrying, wholesale and retail trade, transport, financing and business services, show a marked increase over the years. This is probably due to the organised trade union activity in the manufacturing sector and not so organised trade union activity in the other sectors which important trade unions have neglected. This shows that greater the trade union participation in dispute resolution, lesser will be the conflict situation and strikes.

TABLE -III shows the level of industrial conflict for the period 1975-1980. The level of industrial conflict is measured in terms of time loss in each industry per dispute. Hence, one can see that in the manufacturing sector, the loss in man-days per dispute leads to fall from 1975 to 1980 with the exception of 1979. Comparing the years 1975 and
1980, there is a fall in the man-days lost in the manufacturing sector. On the other hand sectors like Agriculture, Transport, etc. have shown a marked tendency to increase in man-days lost for the period per dispute.

Taking the results of TABLE-II and TABLE-III together, one can identify a Cycle of belligerency. The term Cycle of belligerency is not indicative of any periodicity or repetitiveness, rather, it is used more in the sense of a Cycle of heavy winters than a business cycle. This means given the data one can identify which industries are now becoming more active in terms of industrial disputes and man-days lost. It is already noticed that a traditional dispute area like the manufacturing sector is showing marked tendency to decrease in the number of disputes over the years as well as considerable decline in loss of man-days per dispute during the period under study. At the same time, there is a marked increase in the number of disputes and man-days lost per dispute in non-traditional dispute areas like Agriculture, etc. indicating that over emphasis on manufacturing sector has led to the neglect of other sectors thereby causing a cycle of belligerency. This means that more effort must be made in organising the labour in these sectors and if that is done, collective bargaining would help reduce the number of strikes and conflict.
The Labour Policy of the Government which rests on compulsory adjudication generates both a steadily increasing volume of litigation and an equally growing number of labour leaders to raise and sustain such litigation. As has already been pointed out, the sad situation in India has been, on the part of employers and workers, to get the dispute referred for adjudication and pretend that all is well with industrial relations system in the Country.

On the other hand, collective bargaining, being a highly democratic process, involves the real parties to the dispute and creates a mutual confidence that they are capable of handling and solving their own problems. It is unfortunate that the trade union leaders too have failed. They have not devoted sufficient time to economic questions facing their members. They have more time for politics which ultimately helps them to get their disputes referred to adjudication as again, Subramanian, says:

"One of the usual complaints against the trade unions in India is that they take more interest in politics than in economics and their approach to trade unions is coloured and even distorted by their political pre-dilections."

It would be appropriate to cite here the anxiety expressed by Justice Krishna Iyer regarding the state in
situations. Mere controls on strikes and providing machinery for settlement of disputes would hardly help reduce conflict situation. What is required is an organised trade union movement which alone can act as a bulwark of workmen's safety and security. These figures and data identify the many lessons that can be learnt. The earlier we do that, the better for sounder industrial relations in the Country.

5. LEGAL CONTROLS: FACTOR ENCOURAGING LITIGATION:

The above discussion has exposed that the legal control of strikes and the consequent problems arising from the illegality of strikes, have only helped in making the law pertaining to strikes, highly technical and ineffective. If one is going to believe that by mere reference of disputes for adjudication and simultaneously banning strikes, one is going to achieve miracles, then one is in for a lot of disappointment. It has been shown in this Chapter that if legal controls have achieved anything, it is only litigation, wasting time over trifles and have created a lot of distrust, which certainly has not helped achieve industrial peace in any way. As K.N. Subramanian points out, that the Labour Policy of the Government since the passing of the Industrial Disputes Act, 1947, has been one that inevitably, though unintentionally, encouraged
which Labour Law finds itself in India today. He said,

"Industrial Law in India has not fully lived up to the current challenges of industrial life both in the substantive norms or regulations binding the three parties—the State, Management and Labour and in the processual system which has baulked by dawdling dysfunction, early finality and prompt remedy in a sensitive area where quick solution is the very essence of real justice. The legislative and judicial processes have promises to keep if positive, industrial peace, in terms with distributive economic justice and continuity of active production were to be accomplished. The architects of these processes will, we hopefully expect, fabricate changes in the system normative and adjectival."

A special branch called Labour Law has been built up in the last fifty years or so, only to help expedite and solve labour problems and to ensure that industrial peace is secured and production of material goods continues unhindered. But the result has not been achieved. The voice of Justice Krishna Iyer is not a voice in the wilderness. It is a voice that expresses the real situation and coming from a person who has seen the functioning of Labour Law in its many forms both as a judge and as a person who had been an active participant in public life.

It is time, we bring collective bargaining back as the real method which could help bring about lasting solution to
industrial problems and restore it to its pristine position. Just as the trade unions and the employers went back to collective bargaining\textsuperscript{122} in Britain after the war regulations were withdrawn, let us also restore our faith in collective settlement of disputes by promoting the 'autonomy' model in the labour-management field, rather than sticking on to the dilapidated litigation oriented and the very uncommitted system of compulsory adjudication. The portents are very clear as seen from the analysis made in this Chapter. If we do not act now, it may be too late to do anything tomorrow.
FOOT NOTES:

1. Please refer to the discussion in Chapter VII of this work.

2. See Chapter III of this work.

3. See Chapter IV of this work.


5. See Chapter II of this work.

6. Act No VI of 1929.


8. Ibid.

9. Section 15 of Act No VI of 1929

10. Emphasis added

11. Act No XIV of 1947

12. Ibid.


15. Ibid.

16. See Chapter III of this work.

17. (1960) II LLJ 78

18. Ibid at p 80.

19. Ibid at pp 80, 81.

20. Act No XIV of 1947

21. Ibid.


23. Ibid at p 518.
24 Act XIV of 1947
25 Report of the National Commission on Labour at p. 328
26 Ibid.
27. Section 22(b) of Act No. XIV of 1947.
28 Section 20(1) of Act No XIV of 1947.
29 AIR, (1960) S C, p 1012
30 Ibid at pp. 1012 to 1015
31 Ibid at p. 1016.
32 Advisory Opinion No 1, First (Ordinary) Session, Permanent Court of International Justice.
33 Paragraph 3 of Article 389 reads thus:
   "The members undertake to nominate Non-Government delegates and advisers chosen in agreement with the industrial organisation, if such organisation exists, which are most representative of employers or work people, as the case may be, in their respective countries"
34 Advisory Opinion No 1, First (Ordinary) Session, Permanent Court of International Justice at p 7.
35 A I R, (1960) S C, p 1012
36 Section 12(3), Act No XIV of 1947
37 Ibid
38 Ibid, Section 12(4)
39 Ibid, Section 12(6)
40 Act No XIV of 1947
41 Section 20(2)(a)(b), Act No XIV of 1947
43 Ibid

44. Act No XIV of 1947.
46 Ibid

47 Bombay, Act No XI of 1947
48. Ibid, Section 3(17)
49 Ibid, Section 3(18)
50 Ibid, Section 42
51 Act No XIV of 1947
52 Ibid

53 Act No XIV of 1947, Section 20(b)
54 Ibid, Section 20(3)
55 Ibid, Section 23(a)
56 Ibid, Section 23(b)
57 Ibid, Section 23(bb)
58 Ibid, Section 23

59 (1980) I LL J, 137 at p 164
60 Ballarpur Collieries Company v The Presiding Officer, (C I T ) Dhanbad (1972) II LL J 90

61 Ibid
62 Ibid at p 92
63 Ibid
64 Ibid at p 93
65 Ibid

66 Act No XIV of 1947
67. See Foot Note 60, at p. 96

68. Ibid


70. Ibid

71. See Foot Note 60

72. This writer is in complete agreement with the views expressed in the Editor's Note appearing at the end of the Case reported at (1972) II LL J., 90 at pp 97-98

73. (1961) II LL J., 675

74. Act No XIV of 1947

75. See Foot Note 73 at p 677

76. See Foot Note 60

77. (1975) II LL J., 168

78. Ibid at pp 172 and 173

79. Ibid

80. See Foot Note 77

81. Section 23(c) of Act No XIV of 1947

82. Section 2(p) of Act No XIV of 1947

83. Section 2(b) of Act No XIV of 1947

84. Act No XIV of 1947

85. (1955) II LL J. 444(LAT)Cal

86. Ibid at pp 446 and 447

87. See Foot Note 85

88. Act No XIV of 1947

89. Ibid

90. AIR, (1969) S C 1280
91 Ibid at p 1284
92 Ibid at p 1285.
93. C. A. No. 633 of 1963, Dated 2-4-1964 (S C)
94 See Foot Note 90
95 One may note that Krishna Iyer J has treated Section 10 of the Industrial Disputes Act, 1947 as a self contained Code in (1978) Lab. I.C at p 706.
96 Framed under the Industrial Employment (Standing Orders) Act, 1946.
97 Act No XIV of 1947
98 Ibid.
99 I L R , (1969) Delhi, 767
100 Ibid.
101 Malhotra and Malhotra, Law of Industrial Disputes, at pp 633 to 637
102 Act No XIV of 1947
103. Act No.XIV of 1947
104 See Foot Note 99.
106 Act No.XIV of 1947
107. Ibid.
108 Ibid
109 Dayal, Ishwar, Anatomy of a Strike – A Systems Application to Understanding Events in an Organisation, p 45
110 Act No XX of 1946
111 Act No XIV of 1947
112. Ibid.

113. Explained in detail in Chapter IV of this work

114 Constitution of India, Article 352


116. Subramanian, K N., Labour-Management Relations in India, Chapter III

117 Ibid.

118 See Chapter IV of this work

119. See Foot Note 116

120 Rohtas Industries Limited v Rohtas Industries Staff Union, A I R., (1976), S C 425, at p 427

121 Ibid

122. See Chapter III of this work, where the matter is dealt with in detail.