CHAPTER: IX

STRIKE ACTION AND THE TRADE UNION LAW.
The preceding Chapter has exposed the legal hurdles and all this is because of looking at strikes as unwanted occurrences in society. Defining strikes only from the point of view of declaring them illegal, has, in a way, prevented the 'autonomous' model from striking its roots in the Indian soil. Though the world has changed and the concepts have been changing, the Indian Law has remained constant and that too for a period of more than sixty years. 1926 saw the enactment of the Indian Trade Unions Act and in 1929 was initiated the legal control of strikes in India. Since then, the Trade Union Law and Law relating to strike action has moved in different directions. At this point of time the question is whether, the Trade Union Law can be so changed so as to encourage the growth of a responsible trade union movement in our Country. By making the trade unions responsible and giving them a role perspective, would it be possible to usher in the 'autonomous' model of industrial relations? This is the very question which will be attempted to be answered in this Chapter.

1. THE BRITISH EXPERIENCE OF TRANSITION FROM THE LAISSEZ-FAIRE APPROACH TO RECOGNITION OF TRADE UNION FREEDOM:

In Chapter III of this work we have shown that it
took many years for Great Britain to realise that all work stoppages were not strikes. Steeped in the tradition of *laissez-faire* and the sanctity of contract, it was only grudgingly and haltingly that concessions were made to the trade unions to help organise strikes in pursuance of industrial demands. As the trade unions in Great Britain tried to achieve greater power for purpose of collective bargaining, the law had to be so changed time and again, so as to ensure that these trade unions could function without the impediment of legal hurdles. It would not be out of place to briefly mention how trade unions came to function legitimately in a very negative way of permitting industrial action as a concession to the prevailing law rather than recognition of industrial activity as a legitimate exercise in protecting the interests of the workmen. We may briefly recount the type of hurdles that came in the way of the trade unions declaring strikes and how the Trade Union Law augmented to ensure that no punishment was meted out for conducting such an activity.

(1) **THE DOCTRINE OF RESTRAINT OF TRADE**:

The Doctrine of Restraint of Trade was made applicable to all agreements relating to the exercise of any trade, business or profession including the disposition by a worker of his labour, as Lord Shand said in *Allen v Flood*,¹
"Competition in Labour... is in all essentials analogous to competition in trade."

It was also laid down in Mitchell v. Reynolds\(^2\) that, all agreements in Restraint of Trade were *prima facie* bad and unforceable.

The modern principle of Restraint of Trade was laid down in the case of Nordenfelt v. Maxim Nordenfelt,\(^3\) in the following terms:

"The public have an interest in every person's carrying on his trade freely; so has the individual. All interference with individual liberty of action in trading, and all restraints of trade themselves if there is nothing more, are contrary to public policy, and therefore void. That is the general rule. But there are exceptions: restraints of trade and interference may be justified by the special circumstances of a particular case... the only justification the restraint is reasonable in reference to the interests of the parties concerned and reasonable in reference to the interests of the public, so framed and so guarded as to afford adequate protection to the party in whose favour it is imposed, while at the same time it is no way injurious to the public."

Now the principle of the Doctrine of Restraint of Trade also applies to trade unions and their agreements.\(^4\) The restraints were legal if they were calculated to give fair protection to the interests of the Covantee, and do not
unduly interfere with the general interest of the public. Whether any particular restraint was reasonable was one for the Court to decide. The Courts would sit in judgment over the rules of the trade union and decide whether they were reasonable or not. Now, the application of the test of reasonableness to rules of trade unions produced some curious distinctions in the cases decided making it difficult to give a clear picture of the situation.

Rules which made provision for organising, directing, controlling and supporting lawful strikes, of a purely voluntary character were not in illegal Restraint of Trade. In Osborne's Case, the rules empowered the executive committee to sanction (as distinct from or during) a strike, and authorised them to obtain signatures to notice papers from the men. If two thirds of the men signed the papers the Committee could fix a day for giving notice of withdrawal of labour to the employers and were to use every lawful means to assist the men in their struggle. It was provided that no strike pay should be payable to any member striking without sanction, nor after returning to work. The Committee were given a general power to expel any member who attempted to injure the union. The Court of Appeal held unanimously that as the rules contained no provision compelling members to join a strike or preventing them from
returning to work at will, they were not in unlawful Restraint of Trade and the union was accordingly not unlawful at Common Law.  

The position regarding the status of a strike so far as this doctrine is concerned has been well explained by Hannen, J. in Farrer v Close, who said,

"A strike may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed, or any other lawful purpose. By the expression that a thing is 'contrary to public policy' I understand that it is meant that it is opposed to the welfare of the community at large. I can see that the maintenance of strikes may be against the interest of employers, because they may be thereby forced to yield, at their own expense, a larger share of profit or other advantage to the employed. But, I have no means of judicially determining that this is contrary to the interest of the whole community, and I think that in deciding that it is, and therefore, that any act done in its furtherance is illegal, we should be basing our judgment, not on recognised legal principles, but on the opinion of one of the contending schools of political economists."

Thus, the strike action came to be treated as not contrary to public policy and was taken away from the clutches of the Doctrine of Restraint of Trade. The
doctrine was not made applicable to rules which provide for calling strikes and where the workers voluntarily decided to take recourse to that action. This was a very welcome step taken by the judiciary in England for it involved the recognition of strike as a legitimate method of obtaining the fulfillment of workers demands.

(11) **DOCTRINE OF CIVIL CONSPIRACY:**

Any combination which brought about a breach in the contract of employment was considered punishable because it came in the way of somebody else conducting his business the way he wanted. Any such combination which resulted in loss to somebody else was made liable to pay the damages for the loss caused. The 'Triology of cases' laid down that any combination of two or more persons wilfully to injure a man in his trade, was unlawful and if it resulted in damage to him was actionable. But, if the real purpose of the combination is not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues.

The workers action however, could be protected only by determining the motive for the combination. The distinction between, a combination wilfully to injure and one...
purpose* of which is to promote the trade of those combining would require an enquiry into the motive of the concerned As Lord Simon said, in the Crofter Hand Woven Harris Tweed Company v. Veitch,11

"The test is not what is the natural result to the plaintiffs of such combined action, or what is the resulting damage which the defendants realise, or should realise, will follow, but what is in truth the object in the minds of the Combiners. It is not consequence that matters, but purpose."

This indicated that the burden was many times on the workmen to prove that whatever they did was in the interest of trade.

(111) DOCTRINE OF CRIMINAL CONSPIRACY:

According to Citrine,12 a Criminal Conspiracy can be divided in four heads, namely:

(1) agreements to commit a crime,
(2) agreements to commit certain torts;
(3) agreements to obstruct the course of justice; and
(4) agreements to do acts contrary to public morality or decency;

Keeping in view the subject matter under discussion, the aspects that required to be discussed were the
conspiracies that came under the first and the second class.

In the first class of conspiracy, the agreement was concerned with commission of a crime which was declared as such under an existing law. Now, if an act committed by one person was a crime, it would continue to be an offence if it was committed by many persons. When a statute itself has declared an act to be a crime, the commission of that act either by a trade union or by members would invite criminal action and punishment and the Courts would be helpless in doing what the law expects of them to do. They would have to punish those persons who have been guilty of committing an offence.

In the second class of cases, that is, agreements to commit certain torts, the Courts have been careful to see that the tort was not merely one which causes damage to another but also one which is malicious in nature like the one committed in Quinn v Leathem as distinct from the one committed in Allen v Flood. Even in such cases, the Courts have favoured civil action and not criminal one. It is to the credit of the judges in England that they have discouraged the bringing of prosecutions for Criminal Conspiracy rather than for the specific offences committed.
Here too an exception had to be made for meting out punishment under the Criminal Law so as to save strike action.

All these exceptions were made by way of concession to the workers freedom for strike action in pursuance of their demands. These were backed by legislative measures as Jethro Brown says,

"...It has become increasingly necessary that individuals should have a legal right to combine for lawful objects,"

and continues to add after reviewing the cases decided by the Courts,

"For present purposes the net result of the cases cited appears to admit summary in three propositions-

(1) the right of individuals to combine for a common purpose is an essential element in the liberty of the subject

(2) The right cannot be denied merely because other individuals may suffer.

(3) The right must not be exercised in such a way as to amount to coercion of others without just cause, and to their personal damage"

While admitting that strike is a prima facie means of improving the conditions of the worker, Jethro Brown, feels that the strikes must plead within limits a just cause as a
defence for the adoption of a coercive method. He states,

"I have referred to the tendency to limit 'just excuse' but what I have said must not be taken to indicate an opinion that the common law altogether precludes workers from trying to improve their conditions by means of a combination in the nature of a strike where no legal redress is open to them. But the coercive method adopted and the plea of just cause have to be considered together, since a lawful end, though it may justify some means, does not justify all means—a truism particularly relevant in the case of strikes."

In support of his 'Just Cause' theory he cites Cowan v Milbourne,18 where in Bramwell, B. said,19

"A thing may be unlawful and yet not punishable as a crime. The element of 'Just cause' in certain cases cannot be dis-entangled from the element of unlawful interference. In other cases it is distinct. Whether it exists in fact, is to be decided, as a rule, by reference to all the circumstances of the case."

This explains the whole background to immunities created under the British Trade Union Law like immunity from Civil Conspiracy, immunity from Criminal Conspiracy, immunity from the Doctrine of Restraint of Trade which were the saving grace for the British trade union movement in England. Without these immunities it appeared to be impossible for the British trade unions to call a strike and
survive its consequences. This gave a very negative feature to the whole of trade union approach to strikes. It smacked of mercantalism and which greatly ignored the legitimate interest of the workmen to strike work in pursuance of their demands. With the passing of the Trade Unions Act of 1926, in India, we unfortunately inherited this British approach to strikes. A glance at the Trade Unions Act will help us appreciate this aspect better.

2. EXTENT OF APPLICATION OF BRITISH TRADE UNION LAW TO INDIA:

The enactment of the Trade Unions Act, 1926, precluded the judiciary from theorising on the concepts like, Doctrine of Civil Conspiracy, Restraint of Trade and Criminal Conspiracy as the Act, created certain immunities for the trade unions which were registered. Under Section 18 of the Act, no suit or other legal proceeding can be maintained in any Civil Court against any registered trade union or any office bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which the member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with right of some other person to dispose
of his capital or of his labour as he wills

Section 17 of the Act, 22 states that no office bearer or member of a registered trade union shall be liable to punishment under Sub-section(2) of Section 120B of the Indian Penal Code (Act V of 1860) in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in Section 15, unless the agreement is to commit an offence.

And, Section 19, saves the trade union from the Restraint of Trade Doctrine by stating that an agreement between the members of registered trade union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in Restraint of Trade.

Putting all these Sections together, one can conclude that the Trade Unions Act, 1926, only tried to apply the British Law regarding protection of trade unions to India in that, none of the activities of the trade unions would be liable in Law if they were done in pursuance of achieving the objects of a trade union. A 'trade union' is defined under the Act as, 23

"any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations
between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions . . . "

However, the immunities granted under the Act are restricted only to the office bearers and members of a trade union registered under the Act. Would that mean, that the other trade unions which are not registered or if the strike is illegal, the workers would be open to prosecution for civil and criminal action and according to the principles evolved under the British Common Law. In view of the paucity of case law on the subject, it would be necessary to go into the details of the two decisions involving Rohtas Industries Cases, which are appropriate to the issue under discussion.

The first case where this question was discussed was the one in which the Patna High Court gave its decision in Rohtas Industries Staff Union and Others v State of Bihar and Others. The petitioner number 1 was a registered trade union called Rohtas Industries Mazdoor Sangh. Petitioners number 2, and 3 are employees of Respondent number 2, the Rohtas Industries Limited. For disputes regarding the non-payment of bonus and non-implementation of Shri Jee Jee Bhoi’s award, there was a strike notice served.
by petitioner number 1 on respondent number 2. The strike was started in the factories of the Rohtas Industries Limited, on the 3rd of September, 1957, and it was called off on the 3rd of October, 1957, on the basis of an agreement between the management and the workers dated 2nd October, 1957. By this agreement the parties agreed to refer certain matters in dispute to arbitration. According to Clause 7 of the agreement, the claim of the workers for wages and salaries for the period of the strike and the claim of the company for compensation for loss of production due to strike were to be submitted for arbitration of Sri J N. Mazumdar and Sri R C Mittar, former High Court Judges and former members of the Labour Appellate Tribunal of India, as joint arbitrators. On 20th April, 1959, the arbitrators gave an award and sent the same for publications to the Government of Bihar. In this award the arbitrators decided all the issues against the trade unions and held that compensation should be paid by the workers who had gone on strike, to the Rohtas Industries Limited to the extent of Rs 6,90,000/- and to the Ashoka Cement Works Limited to the extent of Rs 80,000/-. The petitioners challenged this award in the High Court and called upon the Court to issue a Writ of Certiorari to quash the award.
The Court set aside the award of the arbitrators in so far as payment of compensation was concerned to employers on the following grounds. 26

(a) That the workers had not committed the tort of civil conspiracy the Court held that conspiracy as a tort must arise from a combination of two or more persons to do an act. It would be actionable if the real purpose of the combination is the inflicting of damage on A, as distinguished from serving the bonafide and legitimate interests of those who so combine and there is resulting damage to A. . The test is not what is the natural result to the employers of such combined action or what is the resulting damage to the employers but what is in truth the object in the minds of the workmen when they acted as they did. It is well established that if there is more than one purpose actuating a combination, the liability must depend ascertaining what is the predominant purpose 27 That in the present case the arbitrators had failed to apply the principle in adjudicating the liability of the workers to pay compensation. Having admitted that the workers had commenced their strike for non-payment of bonus and non-implementation of the Jee Jee Bhoys award, it was not right on their part to say that the strike was resorted to by the unions 'for ulterior objects of their own', and without supporting this charge with evidence

(b) That the arbitrators had committed an error of law in holding that the workers were not protected by Section 18(1) of the Trade Unions Act, 1926. In para 27(c) of the award the arbitrators had said that in their opinion the provisions regarding the immunity under Section 18 were not attracted to the
facts and circumstances of the present case where the strike was found illegal and not in furtherance of a trade dispute. They further stated that an illegal strike cannot in any event be regarded as one 'in furtherance of trade dispute.' The Court held that the arbitrators had mis-directed themselves in law in holding that the workers could not claim immunity under Section 18 of the Trade Unions Act, 1926, because the strike was illegal under Section 24(1) of the Industrial Disputes Act, 1947 for the contravention of Section 23(b) and Section 23(c) of that Act. That, it was manifest that the question, whether the strike was legal or illegal under Section 24(1) of the Industrial Disputes Act, 1947, had no bearing on the question of immunity furnished by Section 18 of the Trade Unions Act, 1926. Hence, there was a fundamental mistake of law committed by the said arbitrators in coming to their conclusions.

In coming to the above conclusions, the Court made one very significant observation and that is, if there is breach of statutory duty on the part of the employees, the employer has no right of civil action against the defaulting employees apart from the statutory penalty provided under Section 26(1) of the Industrial Disputes Act, 1947, just as the employees have no right of civil action if the employers declare an illegal lock-out, as there is a breach of statutory obligation created by Section 24 of the Act. Meaning thereby, that, a workman cannot be punished for going on a strike which is illegal, except under the
provisions of the Act which declare the strike illegal, i.e., the Industrial Disputes Act, 1947. No action can lie under any other law. This implies that the Courts in India must confine their findings of illegality only within the four walls of the Industrial Disputes Act, 1947, and nothing beyond it for punishing workmen for going on a strike.

From the Patna High Court, the managements of the Rohtas Industries Limited appealed to the Supreme Court of India, to test the interpretation of the law put by the learned Chief Justice Ramaswami there. In disposing the Writ Petition, Justice Krishna Iyer of the Supreme Court of India, came down rather heavily on the management and the theory they were propounding. The Court said,

"They (arbitrators) have referred to the strike being illegal with specific reference to the provisions of the Act, but faulted themselves in law by necessarily basing on a rule of Common Law i.e., English Common Law."

Again,

"Whatever the merits of the norms, violative of which constituted 'conspiracy' in English Law, it is a problem for creative Indian Jurisprudence to consider, detached from anglophonic inclination, how for a mere combination of men working for furthering certain objectives can be prohibited as a tort, according to the Indian value system. Our Constitution guarantees the right to form association, not for gregarious
pleasure, but to effect effectively for
the redressal of grievances. Our
Constitution is sensitive to workers
rights. Our story of freedom and social
emancipation led by the Father of the
Nation has employed, from the highest of
notices, combined action to resist evil
and to fight wrong even if it meant loss
of business profits for the liquor
vendor, the brothel keeper and the
foreign cloth dealer. Without
expectation, on these seminal factors,
we may observe that English history,
Political theory and life-style being
different from Indian conditions replete
with organised boycotts and mass
satyagrahas, we cannot incorporate
English torts, without any adaptation
into Indian Law. A tort transplanted
into a social organism, is as complex
and careful operation as a heart
transplant into an individual organism,
law being live's instrumentality and
rejection of exotics being a natural
tendency. Here, judges are sociological
surgeons.

Then,

"The strike may be illegal, but if the
object is to bring the employer to terms
with the employees or to bully the rival
trade union into submission, there
cannot be an actionable combination in
tort. In the present case, it is
unfortunate that the arbitrators simply
did not investigate or pass upon the
object of the strike... There is thus
clear lapse in the law on the part of
the arbitrators manifest on the face of
the record."

Concluding its arguments against the stand taken by the
employers, the Court said,

"In this context, we are strengthened
in our conclusion by the provision of Section 33C which provides for speedy recovery of money due to a workman from an employer under a settlement or an award but not for the converse case of money due to an employer from workmen."

and dismissed the appeal

Thus, one can conclude that, no action can lie against a trade union in India, in the absence of a specific statute creating a liability for payment of damages or otherwise, if it goes on strike as part of the process of collective bargaining. An illegal strike is punishable under the provisions of the Industrial Disputes Act, 1947. An act of indiscipline is punishable under the Industrial Employment (Standing Orders) Act, 1946. There is no scope for the Courts in India to create any 'tort' or liability either civil or criminal on the basis of which the workers can be punished or the funds of the trade union can be attached, whether the trade union is registered or not thus rendering the provisions of the Trade Unions Act, 1926, ineffective and redundant, in the face of the Constitutional guarantee to Freedom of Association. This Constitutional transformation of the legal scene, in so far as the right of the workmen is concerned, requires to be deeply understood and its effervescence allowed to permeate the industrial relations scene in India.
3. STRIKE ACTION BY TRADE UNIONS AND JUDICIAL ATTITUDE IN INDIA:

Judiciary in India, had all the opportunity to give a clear direction and impetus to the system of collective bargaining in India. The interpretation given in the All India Bank Employees' Association v The National Industrial Tribunal (Bank Disputes), Bombay was an opportunity missed forever. It would be worth repeating how the Supreme Court, responded to the arguments of the Counsel who said,

"The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with the employers, which is the raison d'etre for the existence of labour organisations. Collective bargaining in order to be effective must be enforceable by labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike - a right which is thus a natural deduction from the right to form unions guaranteed by sub-clause(c) of Clause (1) of Article 19."

To this the Court replied,

"On the construction of the Article, therefore, apart from the authorities to which we shall refer presently, we have
reached the conclusion that even a very 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."

This was a very severe blow for the development and flowering of the concept of collective bargaining in free India. In contrast, we may quote Lord Denning who said so authoritatively while stating that a 'strike notice' issued by a trade union cannot be termed as intimidation thus:

"...For if that argument were correct it would do away with the right to strike in this country. It has been held for over sixty years that workmen have a right to strike (including therein a right to say that they will not work with non-unionists) provided that they give sufficient notice before hand..."

Thereby, emphasising that there is a Right to Strike which is quite fundamental to the British system and one cannot think of a system of industrial relations without such a Right. How concerned was the learned judge regarding the protection of this Right to Strike and to avoid giving any other interpretation that would take away this right? The approach of the Indian Judiciary to the Right to Collective Bargaining or the Freedom to Strike seems to be quite casual, not realising, how much damage this attitude
is causing for the development of proper and sounder employee-employer relationship in the Country.

The basic question one may ask is where do we find the Freedom to Strike? It certainly is not there in the Trade Unions Act, 1926. There, the Act as per the British pattern has only provided for registration of trade unions and granting of immunities to the office bearers of registered trade unions and their members in the conduct of trade disputes. The Industrial Disputes Act, 1947 defines a 'Strike' but never tells whether there is or not a positive Right to Strike. The Act only deals with illegal strikes. Now, if the Right to Strike cannot be found in the Trade Unions Act, 1926 or the Industrial Disputes Act, 1947, then it must be derived from the Indian Constitution. A very logical and reasonable argument was put forth in the All India Bank Employees' Association Case. In this Case the Counsel for the workmen had put forth the following arguments:

(a) the Constitution guarantees by Sub-clause(c) of Clause(1) of Article 19, to citizens in general and to workers in particular the right to form unions. In this context, it was pointed out that the expression 'Union' in addition to the work 'Association' found in Article refers to associations formed by workmen for 'trade union' purposes, the word 'Union' being specially chosen to designate labour or trade unions.
(b) The right to 'form a union' in the sense of forming a body carries with it as a concomitant right a guarantee that such unions shall achieve the object for which they were formed. If this concomitant right were not conceded, the right guaranteed to form a union would be an idle right, an empty shadow lacking all substance.

(c) The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers. The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the raison d'etre for the existence of labour organisations. Collective bargaining in order to be effective must be enforceable by labour withdrawing its co-operation from the employer and there is consequently a fundamental right to strike — a right which is thus a natural deduction from the right to form unions guaranteed by Sub-clause (c) of Clause 9(1) of Article 19.

In refusing to accept these arguments, the Supreme Court never pointed out where the Right to Strike lay. Let us say, that there is no fundamental Right to Strike, but then, where is the ordinary Right to Strike to be found? The Court says:

"The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation,"
but never says from where this right comes or is to be derived. Now, if the right to strike is not linked to trade unions and collective bargaining, then precious little can be achieved by the existence of such a right. A perusal of the judgments delivered by the Supreme Court of India and the various High Courts, create a very confused picture and unless this basic question regarding the Freedom to Strike is settled, it will be difficult for the Courts and Tribunals below to apply the law to achieve the desired results.

Time and again the Supreme Court of India has upheld the right of the workmen to collectively bargain, but has not succeeded in creating the necessary links between the Freedom to Strike, trade unions and collective bargaining as the English Courts have done. Speaking highly of the trade union role in collective bargaining, the Supreme Court said,

"as the social conscience of the general community becomes more alive and active, as the welfare policy of the state takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement, collective bargaining enters the field, wage structure ceases to be purely arithmetical problem."
In this statement is implied the strength of the union and its ability to collectively bargain to achieve its demands, could we say, without the Freedom to Strike? Never, because the Court implies in the term 'collective bargain' the Freedom to Strike, without which, the whole process would have no meaning.

The Supreme Court said in Workmen of Dimakuchi Tea Estate v Management of Dimakuchi Tea Estate, that,

"An examination of the salient provisions of the Act shows that the principal objects of the Industrial Disputes Act are;

(1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(2) investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of association of employers

(3) prevention of illegal strikes and lock-outs

(4) relief to workmen in the matter of lay off and retrenchment, and

(5) collective bargaining."
However, nowhere in the judgment it is explained as to what collective bargaining means or in what way the Act helps in achieving bargaining. If the Court really believed in collective demands and approach, it would have accepted the version of the workmen of the Tea Estate that they had a community of interest with the doctor employed on the Estate and were directly or substantially interested in his employment, non-employment or terms of employment. While upholding that the Industrial Disputes Act, 1947, was having as its object, collective bargaining, the Court gave a very narrow meaning to the term 'person' as found in the definition of 'industrial dispute' as found in Section 2(k) of the Act, thereby denying the workmen the privilege of raising a dispute, in whose welfare they were interested thus negating collective bargaining. While the lone dissenting judge, held that a dispute concerning a person who is not a workman may be an industrial dispute within the definition of Section 2(k) of the Act, on the ground that it is not a condition of an industrial dispute that workmen must be interested in it and no question of interest falls for decision by a Court if it can be called upon to decide whether a dispute is an industrial dispute or not. The question of interest could only be of practical value in that it helped the Government to decide whether a dispute
should be referred for adjudication or not. But, then the learned Judge erred in saying.  

"Suppose now that, the workmen then go on strike and industrial peace is disturbed and production hampered, the object of the Act would then have been defeated,"

implying thereby as if the object of the Act is to prevent strikes.

This argument also set at naught the assumption that collective bargaining could be achieved through the Industrial Disputes Act, 1947.

As compared to the above line of thought, we can cite another approach which when read, makes one happily believe that the Constitution of India has every remedy for every problem. The words of Justice Krishna Iyer, come clear and resounding when he says,

"Whatever the merits of the norms, violation of which constituted 'conspiracy' in English Law, it is a problem for creative Indian Jurisprudence to consider, detached from anglophonic inclination, how far a mere combination of men working for furthering certain objectives can be prohibited as a tort, according to the Indian value system. Our Constitution guarantees the right to form associations, not for gregarious pleasure, but to fight effectively for the redressal of grievances."
Constitution is sensitive to workers rights..."

In another Case decided by the Supreme Court, Justice Krishna Iyer says:

"In our society, capital shall be the brother and keeper of labour and cannot disown this obligation, especially because social justice and Articles 43 and 43A are Constitutional Mandates."

Then quoting Mahatma Gandhi he says:

"In my opinion, employers and employed are equal partners, even if employees are not considered superior. Turned to these values are the policy directives in Articles 39, 41, 42, 43 and 43A. They speak of the right to an adequate means of livelihood, the right to work in humane conditions of work, living wage ensuring a decent standard of life and enjoyment of leisure and participation of workers in management of industries. De hors these mandates, law will fail functionally. Such is the value vision of Indian Industrial Jurisprudence."

Then finally the learned judge says:

"Before we do this, a few words on the basis of the right to strike and progressive legal thinking led by Constitutional guidelines is necessitous. The right to union, the right to strike as part of collective bargaining and, subject to the legality and humanity of the situation, the right of the weaker group, viz. labour, to pressure the stronger party viz. capital, to negotiate and render justice..."
are processes recognised by Industrial Jurisprudence and supported by social justice. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikers are no more conspiracies than professions and political parties are, and, being far weaker, need succour. Part IV of the Constitution, read with Article 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgment sets the tone of economic equity in industry. Of course, adventurist, extremist, extraneously inspired and purile strikes, absurdly insane persistence and violent and scorched earth policies boomerang and are anathema for the law. Within the parameters to the right to strike is integral to collective bargaining.

Thoughts expressed as above, though true, it is respectfully submitted, have lacked consistency and direction in the Supreme Court. It was the duty of the Court to spell out its attitude to collective bargaining and the role of strike so that guiding principles could be evolved for the Courts and Tribunals below to follow with greater consistency. Mere dicta, expressed at random and rhetoric have only created the confusion that now pervades the industrial scene. However, the Supreme Court seems to have come quite near the point of tuning the Industrial Disputes Act, 1947, and the trade union law to collective bargaining when it decided that an individual dispute is not
an industrial dispute, but will become one when a group of workmen support the cause of the individual and convert it into an industrial dispute. Before the decision of the Supreme Court in *Central Provinces Transport Services Limited v Raghunath Gopal Patwardhan*, there was considerable conflict of judicial opinion both in the High Courts and in the Industrial Tribunals. The Court divided these opinions into three categories, viz.:

(i) A dispute between an employer and a single workman cannot be an industrial dispute.

(ii) It can be an industrial dispute, and

(iii) It cannot *per se* be an industrial dispute but may become one if it is taken up by a trade union or a number of workmen.

On consideration of the preponderance of judicial opinion, the Supreme Court in this Case, preferred the last of the three views, stating,

"Notwithstanding that the language of section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act, does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involves the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the
Act, when the same had not been taken up by the union or a number of workmen."

The above view was adopted and applied by the Supreme Court in *Newspaper Limited v. State Industrial Tribunal, U.P.* and in the *Bombay Union of Journalists v. The Hindu.* The rule that the Industrial Disputes Act is inapplicable to an individual dispute as distinguished from a dispute involving a group of workmen, unless the workmen as a body or a considerable section of them make common cause with the individual workman came to be crystallised in this case. One Sri Salivateeswaran, who claimed to be a full time employee of 'The Hindu', Bombay, addressed a letter on February 15, 1956, to the Managing Editor of 'The Hindu', a daily newspaper published at Madras, intimating that he was proceeding to Europe on March 1, 1956. On February 16, 1956, the Assistant Editor of the 'The Hindu' informed Salivateeswaran that even though the latter was not a full time employee of 'The Hindu', they could "not allow frequent breaks in the performance of" his duties and they would have to relieve him of his duties as Correspondent from March 1, 1956, if he proceeded to Europe as arranged by him. Because he persisted on his request, Salivateeswaran was informed by the Management that
he ceased to be a Correspondent of 'The Hindu' from his European tour, Salivateeswaran demanded reinstatement and called upon the Management of 'The Hindu' to treat the period of his absence out of India as leave. The Management having declined, he filed a claim for wages and other benefits. Now, Salivateeswaran was a member of the Bombay Union of Journalists, which is a Trade Union of all persons who depend for their livelihood on Journalism in Bombay. By its resolution dated August 16, 1956, the Bombay Union of Journalists supported the claim of Salivateeswaran in the application filed by him under Section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act of 1955. The Government of Bombay, referred this dispute to the Tribunal under Government Order dated 12th March, 1957.

'The Hindu', Bombay, challenged the competence of the State Government to refer this dispute on three grounds, the third being, that there was no dispute between the Working Journalists of 'The Hindu' Bombay, on the one hand and the dispute raised by Salivateeswaran was merely an individual dispute which was not supported by an appreciable number of employees of 'The Hindu', Bombay. The Tribunal upheld this ground and held that it was merely an individual dispute and that the Government had no jurisdiction to refer such a
Reiterating the view that an individual dispute is not an industrial dispute but could be converted as such if a number of workmen support it or sponsor it, the Court held that,

"In the present case members of the Union who were not workmen of the employer against whom the dispute was sought to be raised, seek by supporting the dispute to convert what is prima facie an individual dispute into an industrial dispute. The principle that the persons who seek to support the cause of a workman must themselves be directly and substantially interested in the dispute in our view applies to this case, also the mere support to this cause by the Bombay Union of Journalists cannot therefore assist the claim of Salivateeswaran so as to convert it into an industrial dispute."

and again,

"In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up as supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workmen or by an appreciable number of workmen."

What the Court had in mind in coming to the above conclusion was that, there must be a collectivity of action by workmen belonging to the same management, and the grievance of an individual should be accepted as a grievance.
of the group by a common resolution. This is made further clear by the Supreme Court in *Express Newspapers Case*. In this Case the question was whether two workmen, who were proof readers, was referred for adjudication and their cause was espoused by the Delhi Union of Journalists. The Tribunal held that it was not an industrial dispute and it had no jurisdiction to adjudicate the said reference. The Supreme Court, however, reversed this decision on the ground that, 31 working journalists of the respondent Company were members of the Delhi Union of Journalists and it would not be unreasonable to say that 25 per cent of the workmen would, by becoming the members of the Union, give a representative character to the Union and the Union can be said to have representative character *qua* the working journalists employed in the respondent Company. It is submitted, that to say, as the Supreme Court did in this Case, that:

"about 25 per cent of workmen would be sufficient,"

has introduced an element of arbitrariness. How, did the Supreme Court come to this percentage and on what basis? There seems to be no answer to this. It was enough if it had said that workmen of that undertaking showed interest in sponsoring the dispute without mentioning how many...
collectivity is the test then any number which is sizeable could be sufficient. Chief Justice P B. Gajendragadkar, seems to have hit the nail on the head when he said in *Workmen of Dharampal Premchand (Saughandhi) v. Dharampal Premchand*\(^6\) thus:

"As is well known, the Act has been passed for the investigation and settlement of industrial disputes, and its material provisions have been enacted, because it was thought expedient to make provision for such investigation and settlement of disputes, keeping in mind the importance of the development of trade union movement on proper lines in this Country. Having regard to this broad policy underlying the Act, this Court, and indeed a majority of Industrial Tribunals, are inclined to take the view that notwithstanding the width of the words used by the Act in defining an 'industrial dispute', it would be expedient to require that a dispute raised by a dismissed employee cannot become an industrial dispute, unless it is supported either by his union or, in the absence of a union, by a number of workmen. Unless such a limitation was introduced, claims for reference may be made frivolously and unreasonably by dismissed employees and that would be undesirable."\(^6\)

Again,\(^7\)

"Besides, in order to safeguard the interests of the working class in this Country, it was thought that the development of trade union movement on healthy trade union lines was essential and that requires that disputes between
employers and employees should be settled on a collective basis. A complaint against a wrongful dismissal should therefore be the subject-matter of reference, provided the workmen acting collectively take up the cause of the dismissed employees and contend that, dismissal is unjustified or wrongful.

With these remarks regarding the position of the law, the Court held that the dismissal of eighteen workmen, would themselves form a group of workmen which would be justified in supporting the cause of one another, and reversed the finding of the Tribunal that was not an industrial dispute.

This judgment came very near to answering the question, whether collective bargaining should be encouraged by the Courts in India. The Court rightly felt that everything should be done to encourage healthy trade unionism in the country and to that extent collective effort of the workmen must be encouraged. In view of this to say that a particular percentage of workmen should sponsor a dispute would introduce a negative element which would not help collectivism or trade unionism in the country. Hence, it is submitted with respect, that the decision of the Court in Express Newspapers Case is not in keeping with the philosophy evolved by the Court in respect of the basic for converting an individual dispute into a collected dispute.
Further, it would have been ideal if the Supreme Court of India had encouraged the trend it had set in promoting collectivism among workmen, by which collective bargaining itself would have been the beneficiary. With the Amendment of the Industrial Disputes Act, 1947 and the introduction of Section 2-A, this little contribution of the Supreme Court in attempting to promote collectivism and collective bargaining, also seems to have come to an end. The new Section converted all individual disputes as industrial disputes,

"not withstanding that no other workman is a party to the dispute,"

in matters connected with discharge, dismissal, retrenchment or termination of the services of an individual workman.

4. TRADE UNIONS AND UNJUSTIFIED STRIKES:

As has already been discussed, the Supreme Court of India has clearly laid down that the Freedom to Strike is a weapon of collective bargaining and to curtail such a freedom would do away with the right to collectively bargain and any breach of a Contract of Employment can be justified only on the basis that strike takes place in pursuance of collective bargaining.

There is however, an opposite trend developing in the
Supreme Court, which points in the direction of assuming for the Court power to declare even a non-illegal strike as unjustified and thus introducing an element of arbitrariness in the judicial process. This trend began in the decision of the Court in, Chandramalai Estate, Ernakulam v. Its Workmen. On August 9, 1956, the Union of the workmen of the Chandramalai Estate submitted to the manager of the Estate a memorandum containing fifteen demands. Though the management agreed to fulfil some of the demands, the principal demands remained unsatisfied. On August 29, 1955, the Labour Officer, Trichur, who had in the meantime been apprised of the position by both the management and the labour union advised mutual negotiations between the representatives of the management and the workers. Ultimately, the matter was recommended by the Labour Officer to the Conciliation Officer, Trichur, for Conciliation. The Conciliation Officer's efforts proved to be in vain. The last meeting for conciliation appears to have been held on November 20, 1955. On the following day, the Union gave a strike notice and the workmen went on strike on December 9, 1955. The strike ended on January 5, 1956. By its award dated October 17, 1957, the Tribunal granted the workmen's demands on all the issues. The management appealed against the award. The management refused to pay the workmen their wages for the strike period contending that the strike was
unjustified. On this issue the Tribunal had come to the conclusion that both the parties were to be blamed and hence had ordered fifty per cent wages to be paid to the workmen during the strike period. On this issue, the Supreme Court held that the strike was unjustified and set aside the award to the extent it permitted fifty per cent wages be paid to the workmen. In arriving at this decision, the Court said, 75

"It is clear that on November 30, 1955, the Union knew that the Conciliation attempts had failed. The next step would be a report by the Conciliation Officer, of such failure, to the Government and it would have been proper and reasonable for the union to address the Government, at the same time and request that a reference should be made to the industrial tribunal. The Union however, did not choose to wait and after giving of notice on December 1, 1955, to the management that it had decided to strike from December 9, 1955 and actually started the strike from that day. While on the one hand it has to be remembered that a strike is a legitimate and sometimes unavoidable weapon in the hands of labour, it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. 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 peaceful achievement of their demands. In our opinion the workmen might well have waited for some time after Conciliation efforts failed before starting a strike and in the meantime to
have asked the Government to make the reference. We are unable to see how the strike in such circumstances could be held to be justified."

The above quoted excerpt from the judgment, it is submitted with respect, is full of contradictions and abounds with a-legal propositions. Firstly, the Court admits that a strike is a legitimate weapon in the hands of labour, and at the same time says that the strike was unjustified because the step was taken in a hasty manner. Secondly, the Court insists that the labour union should have approached the Government for reference of the dispute for adjudication. This is the work of the Conciliation Officer, and there is no law which puts such a duty or responsibility on a trade union. Thirdly, the strike was not found by the Court to be illegal under the Industrial Disputes Act, 1947, but yet found unjustified to punish the workmen by denying them the wages, without any legal backing. In the absence of a provision of law declaring a strike unjustified, the Court was not within its powers to make a law which punishes a citizen. Thus, the highest Court of the land, set in motion a very unfortunate trend that has not yet been arrested bringing within its fold limitless litigation and uncertainty in the law of strikes. If the Court wanted the trade union to wait, how long could it wait and what about its inherent right to pressurise the
employer to submit to their demands? The Court seems to have missed the essentials involved in the concept of collective bargaining and tried to put the labour into the dock for what they had done, only to exercise their right to go on strike in pursuance of their demand. Above all to punish the workmen by denying them wages, without the backing of law, seems to have taken judicial process to a very unfortunate end. Such a step, if necessary, could have been taken only by the legislature. In this, one can draw a parallel from the interpretation of Statutes, regarding rules followed pertaining to Statutes imposing punishments and burdens.

Taking the first aspect, the accepted rules of interpretation regarding Statutes imposing punishments is that, punishments can be imposed only if the circumstances of the case fall clearly within the words of the enactment. Thus, disqualification from holding a driving licence could not be imposed under the Road Traffic Act, 1930, Section 6(1) on a person, convicted of stealing a car. This means, merely because a person is found guilty of one offence, he cannot be punished for something not related to the offence committed. Coming back to the Industrial Disputes Act, 1947, merely because, this Act declares certain Acts as illegal, the Judiciary cannot sit...
in judgment whether a strike is justified or unjustified. When the Act says nothing about this aspect, to do so, would be to go beyond the Act, just as would be to punish a person by depriving him of his driving licence if he is convicted of stealing a car.

Taking, the second aspect, Statutes imposing burdens, the rules of interpretation state that, Statutes which impose pecuniary burdens are subject to the same rule of strict construction. It is well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language. No man's contractual rights can be taken away on an ambiguity in a Statute. This is because, in some degree they operate as penalties, the subject is not to be taxed unless the language of the Statute clearly imposes the obligation, and language must not be strained in order to tax a transaction which, had the legislature thought of it, would have covered by appropriate words.

Maxwell cites a striking example to substantiate the above law. In this Case, on July 12, 1966, employers agreed a wage increase of £1 weekly as from April 1, 1966 and another £1 weekly as from April 1, 1967. The increase was to be paid as soon as was administratively possible. The Prime Minister called for a standstill on prices and incomes. Accordingly, the employers did not pay the
increase. On November 2, 1966, Section 29 of the Prices and Incomes Act, 1966, was applied by Order not to pay remuneration for work done under the contracts of employment that included terms of the agreement of July 12, as Section 29(4) forbade payment of remuneration,

"at the rate which exceeded the rate of remuneration paid,"

by the employer for the same kind of work before the relevant date viz July 20, 1966. In appeal for the recovery of remuneration due, the Court of Appeal held that the words,

"rate of remuneration paid"

in Section 29(4) and Section 28(2) of the Prices and Incomes Act, 1966, meant the rate contracted to be paid, or the rate payable or applicable in respect of the employees concerned, not the sum actually paid, or the rate payable or applicable in respect of the employees concerned, not the sum actually paid by way of remuneration immediately before the relevant date accordingly, the employee, was not precluded by Section 29(4) or by Section 28(2) from recovering the agreed wage increase and was entitled to judgment accordingly.
Lord Denning, M.R. made a pointed observation when he said,

"No man's contractual rights are to be taken away on an ambiguity in a statute, nor is an employer to be penalised on an ambiguity."

In coming to this conclusion, Lord Simmonds dictum, which expressed a rule of construction applicable to penal statutes, was quoted. Further, Lord Denning observed,

"Mr Allen was entitled by contract to an increase in his wages before the prescribed date, that is, before July 20. His rate of remuneration was determined by the increased rate contracted to be paid for work done before that date, and not by the sum actually paid. The employers must keep to their contract and pay the increased rates. The statute by clear words could have required them to break their contract but the words are not sufficiently clear for the purpose. I would allow the appeal."

From the above example one can deduce that even when there is a statute, nothing more can be done which is not covered by it, then, how much more difficult it should be to do something which has no legal connection at all? The Freedom to Strike and the Freedom to Collectively Bargain, as has been seen, are recognised rights with the workmen.
that be so, then, anything or any action that attempts to take away this right has to be covered by a Statute. The Courts, as Lord Denning said, cannot take away contractual right to recover wages from an employer, for the period one has gone on strike, on the ground that the strike is 'unjustified' when such a conception has not been conceived either statutorily or historically. When we are so fastidious about the interpretation of a Statute and scrupulously applying it to a given situation, it would be quite inappropriate for the Courts to make their own law to declare strikes 'unjustified' and thus deprive the workmen of their precious wages and specially when they have not committed an illegal act.

From the above we can conclude that, declaring a strike 'unjustified' has no legal sanction. The analysis attempted here below of the various judgements only go to show, how much confusion this exercise has led to and how much damage it has done to the functioning of trade unions in the Country.

The first such example one can quote is the decision of the Supreme Court in *India General Navigation and Railway Company Limited v Their Workmen*. Here, the question was what quantum of punishment can be imposed on workmen going on an illegal strike. The Court observed,
"A strike in respect of a public utility service, which is clearly illegal cannot at the same time be characterised as 'perfectly justified'. These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justified and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, especially in the case of employees in a public utility service."

Here, the Tribunal below had found the strike to be illegal, yet found it 'perfectly justified'. But, how could the Supreme Court state so categorically that the law made a distinction between a strike which is illegal and one which is not? The Industrial Disputes Act, 1947, deals only with illegal strikes and no other laws says what is or not a legal strike, hence the Court seems to have gone off the mark when it made to appear as if the Industrial Disputes Act, 1947, does make the distinction between illegal and legal strikes. It was, however, right in nipping in the bud the question of justifiability of an illegal strike.

The next Case in question is Crompton Greaves Limited v. Workmen. The issue in this case was whether the striking workmen were entitled to wages for a portion of the strike period viz January 11, 1968 to the end of
February, 1968  Upholding the decision of the Tribunal that wages be paid, the Court said.

"It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case."

Here, the Court introduced a number of subjective elements as, 'reasons should not be entirely perverse', 'unreasonable' etc. This means to decide the fate of every strike, either the workmen or the employer must resort to a judicial remedy. And since, the Court said that justifiability of a strike is a question of fact and circumstances of each case then no strike can be judged on its merits but only after litigation and going up to the highest Court in the land. Such a trend which brings in uncertainty in the law and encourages litigation must be discouraged otherwise, the consequence will be grim both for the labour and the employer.

The third Case is Gujarat Steel Tubes Limited v Gujarat Steel Tubes Mazdoor Sabha. In this Case, the
Supreme Court of India, after holding that the strike in question was both illegal and unjustified, refused to equate an illegal and unjustified strike with brazen misconduct by every workman without so much as identification of the charge against each. It held that passive participation in a strike which is both illegal and unjustified does not ipso facto invite dismissal or punitive discharge. In the absence of violence, sabotage or other reprehensible action, to discharge workmen is wrong. Hence, the Court held that the discharge orders though approved by the Arbitrator, were held to be invalid.

From the above one can see that the Court has not put all the emphasis on the fact that the strike was illegal and unjustified. It has sought for something more, that is, violence, sabotage, etc., in the absence of which the strike was not considered as serious to automatically get the workers face dismissal. These decisions, exhibit a high degree of inconsistency. Such a situation is hardly conducive for reducing litigation in the labour-management field nor would help build up industrial peace. The Court, by entering into the dangerous arena of subjectivity and arrogating to itself the final decision-making power regarding justifiability of strikes, has created an unfortunate situation which would only help render trade
unions bankrupt and the employer uncompromising, endangering thereby the right of the workmen to collectively bargain and even to go on strike in pursuance of their demands. This is rather a sad development which the Courts could have avoided by adopting a positive role, upholding the rights of the workmen but at the same time protecting the employer against violence, sabotage, etc. The Courts in India thus, it is submitted with respect, have failed to grasp the basis and fundamentals of sound labour-management relations.

5. LESSONS FROM THE BRITISH EXPERIENCE:

Though, by enacting the Trade Unions Act of 1926, the British approach to strikes and trade unions was adopted in India, we in India have failed to realise that the British approach to trade unionism and trade union law has undergone a considerable change. As we have already seen, Britain has become a signatory to the ILO Conventions pertaining to Freedom of Association and Freedom of Collective Bargaining, thus, recognising for their trade unions a new and dynamic role and forgetting the mercantile attitude it had adopted at the beginning and middle of this Century. But, strangely, just as in the dispute settlement law, the trade union law too has remained static and negative in outlook. The introduction of the Trade Unions and Industrial Relations Bill, 1988, holds some hope for
changing in the trade union law, much is still required to be done for giving a dynamic role for the trade unions could help achieve results in the process of collective bargaining. If the Freedom to Strike is going to be used effectively in the achievement of the 'autonomy' model then a strong trade union movement with a positive attitude of protecting the legitimate interest of the workmen is a sine qua non for the Industrial Relations system in India.

The Donovan Commission,92 clearly laid down the proposition that,

"Collective bargaining is the best method of conducting industrial relations. There is therefore, wide scope in Britain for extending both the subject matter of collective bargaining and the number of workers covered by collective agreements."

It is not understandable why the same proposition is not good enough for India and why our Courts cannot help the trade unions in achieving use of the judicial process. We have to wait patiently for that day to dawn.
FOOT NOTES:

1. (1898) A.C., p 164.
3. (1894) A.C., 535.
4. See Foot Note 2 at p 33.
5. Ibid.
6. *Osborne v Amalgamated Society of Railway Servants*, (1911) 1 Ch. at p. 553.
7. Facts as summarised by Citrine, See Foot Note 2 at p. 35.
8. (1869) L R, 4 Q B at pp 612 to 613.
10. This principle was formulated by Lord Cave in *Sorell v Smith* (1925) A.C. p. 712.
11. (1942) 1 All E R, 142.
13. (1901) A.C. 495.
14. (1898) A.C. 1.
19. See Foot Note 17 at pp 385-387.
20. Act No XVI of 1926.
21. Ibid.
22. Ibid
23 Ibid, Section 2(h)
27. Ibid at p.174.
28. Ibid.
29 Ibid at p.175
30 Rohtas Industries Limited and Another v. Rohtas Industries Staff Union and Others. A.I.R (1976) S.C, 425
31 See Foot Note 25
32. See Foot Note 30 at p. 432.
33 Ibid at p 433.
34. Ibid at p.434.
35. Ibid at p.436.
37. Act No XX of 1946
39 Ibid, at p 178.
40 Morgan v Fry (1968) 3 All E R (C A ) 452, at p 456
41 Act No XVI of 1926
42. Section 2(g) of Act No XVI of 1926
43 Act No XIV of 1947
44 Section 2(q) of Act No XIV of 1947
45 Sections 22, 23, 24 and 25 of Act No XIV of 1947.


47. Ibid at p 178

48. Ibid at p. 181

49 This is discussed in the earlier part of this Chapter.


52. See the Judgment delivered by Sarkar, J. at p 364.


56 Act No XIV of 1947.

57 Section 2(k) of Act No XIV of 1947

58. (1957) I LLJ., 27.

59 Ibid.


62. Ibid at pp. 319, 320

63 Ibid at p 320

64. Ibid at pp 321, 322


66 Ibid at p 738
Ibid at p. 740.

(1965) I LL J., 668

Ibid at p 671.

Ibid

Ibid at p. 674

See Foot Note 65.

Act No XIV of 1947.

(1960) II LL J , S C , 243

Ibid at pp 245,246

Act No XIV of 1947

Maxwell on the Interpretation of Statutes, 12th Edition
by P St J. Langan.

Ibid at p 244

Ibid

Act No XIV of 1947


Ibid at p. 1142.

In L N E R v Berriman (1946) 1 All E.R., at p 270

See Foot Note 81 at p 1142

A.I R., (1960), S C 219

Ibid at p 227.

Act No XIV of 1947

(1978) II LL J , S C p 80

Ibid

(1980) I LL J , 137
91 Ibid at p 173

92 Report of the Royal Commission on Trade Unions and Employers' Associations, 1965-1968, p 50