CHAPTER: X

CONCLUSIONS AND SUGGESTIONS.
From a perusal of the foregone discussion on the different aspects of strikes in industrial conflict, one can see how the Freedom to Strike has got itself enmeshed into a number of confusing and contradictory positions. It will be worth summarising here below the general conclusions one can draw from this study:

1) That, conflict is a necessary consequence of industrial relations and strike is the most common manifestation of collective industrial conflict.

2) That, a total change in the attitude to strikes is the crying need of the day. We have to learn to reconcile to the fact that strikes are a natural outcome of the stresses and strains that a society experiences. One can hardly hope to resolve industrial conflict by banning strikes or declaring them illegal. Recognising appropriate role perspective for strikes and using legal controls to achieve this objective could be the only method by which a balanced and mature industrial relations framework could be achieved.

3) A comparative study of the legal regulation of strikes in Great Britain and India have shown strikingly distinct and contrasting processes of their evolution and development.
It has been observed that while in Great Britain the policy pertaining to legal regulation of strikes has moved from the negative concept of 'equilibrium' model to the positive concept of 'autonomy' model, in India there has been a consistent lack of policy direction and ultimately one is not too sure as to the exact reason behind the legal regulation of strikes. The attitude of the Government leads one to conclude that the 'equilibrium' model is being pursued while the Supreme Court of India in its various decisions has looked upon strikes as weapons of collective bargaining, thus creating a supposition that the 'autonomy' model is being followed in India. These differing attitudes have been the cause for the prevailing confusion which has resulted in making the whole concept of legal regulations of strike in India without purpose or direction.

4) For legal control of strikes to be justified, one would expect some policy initiative and direction. When workers strike in pursuance of industrial demands, for the law to intervene and prevent or regulate strike action, there must be some way of distinguishing mere work stoppages from strikes in pursuance of achieving collective bargaining. Treating all work stoppages as strikes, as is being done under the Indian Law, exposes the total absence of the recognition of role perspective of strikes. While in
Great Britain, there has been considerable development in the area of proper appreciation of the role perspective of strikes. The Indian Law seems to be moving quite aimlessly from the time the Second World War came to an end. By converting the wartime legislation into a basic framework for settlement of industrial disputes in India, strike law has come to be looked at only from its negative angle of declaring strikes illegal rather than the positive aspect of achieving sound industrial relations through the process of collective bargaining.

5) That, the developments the world over regarding the legal role of strikes indicate the movement in the direction of accepting the Right to Strike as a concomitant right to the recognised Rights of Freedom of Association and Protection of the Right to Organise and the Right to Organise and Collective Bargaining. In this context and in pursuing this objective, the legal control of strikes gains meaning and content. By categorically laying that strikes are weapons of collective bargaining, the Supreme Court of India seems to have recognised the developments taking place in the other democratic countries of the world. But, the law pertaining to the settlement of industrial disputes has continued to remain unchanged and consequently also the legal control of strikes. This situation has further
brought about a state of confusion regarding the role perspective of strikes in industrial conflict.

6) That, the legal control of strikes in India has also created interpretational and conceptual confusion. Apart from obstructing the movement from 'equilibrium' model to 'autonomy' model, the legal control has created a litigious approach creating a feeling in the minds of the parties to the dispute that unless the court has given its imprimatur, nothing can have any legal sanctity. Consequently, even the smallest and most trivial issues have been taken to the court. Such an attitude seems to have taken away the will to find settlement to pending issues and problems by the parties amongst themselves. Thus, the very purpose of creating a separate Labour Law for finding quick and amicable solution to labour problems seems to have been defeated.

7) That, declaring a strike implies an organised approach by the workmen to solving a given problem. Thus, if the Trade Union Law, which helps workmen to organise could also have a link with the Strike Law, it would be like one logical step following the other. The Indian Law of Strikes is found embedded in the Law of Industrial Disputes. Neither does the Trade Union Act of 1926 define a strike nor does it provide for procedures for strike action. Apart
from laying down that the conduct of Trade Disputes on behalf of the trade union or any member thereof could be one of the objects on which the General Funds of a trade union could be spent, the Act is silent regarding the role trade unions will have to play in the conduct of strikes. This indicates an attitude of total indifference to the developments taking place the world over regarding the Freedom of Association and the Right to Strike. This attitude has further affected the growth of collective bargaining in India. Hence, it has been suggested that time has come to build a bridge between the Trade Union Law and the Strike Law, so that in safeguarding both these important concepts, a meaningful dimension can be provided for achieving smooth Labour-Management relations in India.

8) That, it would be trite and appropriate to follow the trends in Great Britain. There the thrust seems to have been put on the strengthening of the rules that shape industrial relations and the 'autonomy' model. The prerequisite for attaining this would be a strong and democratically based trade union movement on the one hand and a disciplined labour force on the other, which would work with the resolve never to strike work unless it is in pursuance of an industrial demand. Legal control of strikes would thus help in giving Strike Law appropriate content and
meaning.

The above observations could be converted into appropriate legal provisions and embedded in the existing Labour Law or even appropriate legislation could be enacted to give effect to them. However, some immediate changes in the existing law are suggested here below so that some of the provisions of the Industrial Disputes Act, 1947 could be used to attain optimum results.

(i) **THE DEFINITION OF 'STRIKE':**

In the definition of 'Strike' as found in section 2(q) of the Act, the term 'person' may be replaced by the term 'workmen' and after the last word in the definition the full stop may be removed and the following words may be added,

"in pursuance of any industrial demand and in the process of achieving collective bargaining with the employer or a group of employers."

With these changes incorporated, the definition would read as follows:

"'Strike' means a cessation of work by a body of workmen employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of workmen - who are or have been so employed to continue to work or to
REASONS FOR THE CHANGE:

(a) The term 'person' appearing in the definition is a source of uncertainty creating avenues for litigation. We have seen that there is no uniform opinion regarding the scope and application of this concept in relation to strikes. This uncertainty has to be removed forthwith. Since the term 'workman' has been precisely defined in section 2(s) of the Act, the use of this term would be appropriate and highly meaningful.

(b) Since, there is a desire on the part of all concerned for achieving collective bargaining, let us recognise strike as a weapon of collective bargaining. Hence, stating this in the definition of strike itself would help remove the confusion that now prevails regarding the role of strikes.

(c) The new definition will remove the prevailing feeling that 'strike' has been so defined only for meeting the purpose of illegality of strikes. It is time we give a positive meaning and recognise the positive role which 'strike' has to play, which the new definition proposed will help in fulfilling.
(ii) **SECTION 28(2) (b):**

The following explanation shall be added after section 20 (2) (b):

"The appropriate Government shall, by notification in the official Gazette, identify the official, who when receives the report of the Conciliation Officer, will be deemed that the appropriate Government has received the same."

**REASONS FOR THE CHANGE:**

We have seen that, in the absence of identification of the concerned official, a lot of confusion has been created. A Trade union has a right to know as at what point of time the appropriate Government is deemed to have received the report. Keeping them in doubt would affect the workers' freedom to go on strike. In the absence of a clear indication in this behalf, the workmen will unjustly be pulled into the vortex of an illegal strike, which is not of their making. We have already seen how this has happened and may work for the removal of this anomaly from the Law.

(iii) **SECTION 22 (1) (d):**

The following explanation may be added to section 22(1)(d):

"Explanation 'During the pendency of any conciliation proceedings' means a
conciliation proceeding to which the majority of the workmen in that industrial undertaking are a party to the dispute."

REASONS FOR THE CHANGE:

We have seen that, even if the minority of the workmen respond to the conciliation process, the Conciliation Officer can recommend for the reference of the dispute for adjudication, thus inviting a ban on strikes against the will of the majority of workmen. Ensuring majority workmen participation in a conciliation proceeding will help achieve collective bargaining and even a strike could be avoided if a settlement is arrived at. Over-riding the majority will simply not create the necessary infrastructure for bringing the parties together.

(iv) SECTION 23:

In Section 23, after Clause (c) the following proviso may be added:

"Provided that, no ban on strike or lock-out due to pendency of proceedings shall be operative for a period exceeding two years from the date the dispute in question was referred to the Labour Court, Tribunal, National Tribunal or an Arbitrator for its decision."

REASONS FOR THE CHANGE:

In the absence of a set time frame-work, there is
a danger of the Freedom to Strike being kept in the cold storage for years together. Hence, if any dispute is referred for disposal by the above mentioned authorities, then two years is a reasonable time to keep the Freedom to Strike suspended in relation to the issues under pendency. If however, the dispute is not disposed off by then, the workmen may have the right to strike and seek justice from the employer. The absence of mention of a time limit for disposal of the disputes pending has only resulted in curbing the Freedom to Strike and denial of speedy justice to the workmen.

(v) NEW SECTION 24-A:

SECTION 24-A: UNJUSTIFIED STRIKES:

A strike shall be unjustified if -

(i) It is illegal;

(ii) It is proved that it was accompanied with violence, sabotage, or destruction of property belonging to the employer, against whom the strike was called,

(iii) It is accompanied with personal threat or intimidation directed against the employer or his representative and is unconnected with an industrial demand, or directed against any other workman working in that industrial undertaking.
In all other cases, not covered by the above, a strike shall be deemed to be justified.

REASONS FOR THE CHANGE:

In the absence of clarity and legal explanation as to what are unjustified strikes, it is necessary that this category of strikes should be properly defined and identified. Leaving this question entirely to the Courts would allow the present state of confusion to persist, again leading to denial of the Freedom to Strike of the workmen. A clear cut identification of situations wherein a strike is unjustified would put the workmen on guard, before resorting to strike. To declare a strike 'unjustified' ex-post-facto is unjust and hits at the very base of accepted cannons of interpretation and jurisprudence.

(vi) NEW SECTION 24-B:

SECTION 24-B:

"Every workman going on strike shall be eligible to claim wages for the strike period unless the strike in question has been proved to be unjustified for any of the reasons mentioned in section 24-A of the Act."

REASONS FOR THE CHANGE:

Once we accept that strike is a weapon of collective bargaining, going on strike would not automatically invite penalty by way of forfeiture of wages.
for the strike period. Every strike should be deemed to be legal until it is proved that it was unjustified or illegal. This approach would help the parties to know where they stand when the battle lines are drawn and it would hardly help, as we have seen, to drag the workmen to the court to declare a strike unjustified and deny them the wages when the conflict is resolved to the satisfaction of all.

To conclude, we may say that, what is essential today is the will and determination to adopt new, dynamic and democratic methods to resolve the conflict situation in a changing society. The purpose of undertaking this research study would have been fulfilled if the drawbacks in the existing legal framework concerning strikes in industrial conflict are identified and exposed for initiating necessary corrective measures so as to attain a sound Labour-Management relation system in India.