CHAPTER: I

INTRODUCTION.
A study of strikes in industrial conflict can be a fascinating experience and specially so when one delves into the aspects of the role played by law in conflict resolution. Strike occurrence is a much discussed subject, yet what is not sufficiently stressed and identified is the role perspective of strikes within certain legal parameters. Many times strikes are looked down upon as occurrences which disturb the peace and tranquility of the society and that which come in the way of the processes of development. As Johannes Schregle says,\(^1\)

"In dealing with labour disputes, it is imperative first to de-dramatise the issue. Strikes and lock-outs are often distorted and magnified by press and television, and are presented as serious, if not catastrophic, disturbances in the life of the community. Often, military terms are used such as industrial warfare, armed truce, attack and counter-attack, defence, reprisals and labour peace. I feel that this sort of terminology is entirely inappropriate for work stoppages. They are rather a socio-logical phenomenon which in itself is nothing extra-ordinary or surprising but a natural manifestation of a pluralistic society based on market economy principles, competition and collective bargaining."

Hence, to understand strikes, it is important that one looks patiently into the question as to what lies behind strikes and why they really do occur. The role law is
expected to play in tackling or dealing with strike situation would also require to be studied, given a particular system of industrial relations. If we join Schregle in his opinion that, strikes are a consequence of natural manifestation of a pluralistic society based on market economy principles, competition and collective bargaining, then the way is very clear and there is no scope for misunderstanding whatsoever. But, when strikes are conceptually and legally used to mean something else than what is indicated above, the role perspective of strikes would have to be determined. The lessons of history and the development regarding strike law since independence do not indicate any clear policy regarding strikes and the necessity for their legal control. Hence, this study has been undertaken to look into the philosophy behind the legal control of strikes, the consequences that flow from such legal controls and what exactly we are trying to achieve by this exercise. A comparative study of strike law in Great Britain and in India shows, how, though the two countries had common beginning in this aspect, today, the situation is quite different in both these countries. Both the countries are wedded to democracy and are committed to the democratic method of solving their basic problems. Great Britain has evolved a system of industrial relations where collective bargaining is looked upon as an effective method of solving
Consequently, strike has come to be accepted as a method of creating, modifying, extending or annulling a collective bargaining agreement. Such a role given to strikes indicates the existence of an autonomous relationship existing between the employer and the employees to have the freedom to create any contract between them and the employees can enforce this contract with the help of a strike weapon legally recognised for performing this function. On the other hand, the employer will have the right to lock-out as his weapon in case the situation goes out of hand. In arriving at this approach, the influence of ILO conventions on the Freedom of Association and Protection of the Right to Organise and the Right to Organise and Collective Bargaining is apparent. Also, the consolidation and strengthening of the Trade Union movement has immensely helped in arriving at this position.

In India, on the other hand, we have hardly moved away from the legal position regarding strikes, that prevailed sixty years back. The developments the world over and the changes in Great Britain have not made any dent on the strike law prevailing in India.

The story begins with the British era when law was so framed to prevent strikes so as to ensure that the wheels of industry were kept moving and the goods were supplied for
maintenance of the Empire and to help in the war efforts of the Majesty's Government. Any work stoppage or disruption in the normal industrial process was detested and a chain of rules were created to put up a facade of settlement machinery, to which when disputes were referred, it may take even years before an award was made or settlement was arrived at, thus ensuring that no actual disturbance did occur in the production system. Strikes were defined not as much out of love for this concept, but to identify an activity for meting out punishment, if the multiple and complicated procedural rules were not adhered to by the workmen.

On the other hand the British experience, however showed that though strikes were equated with work stoppages, gradually, a very significant realisation dawned on the parties to industrial conflict that, all work stoppages could not be deemed to be strikes. That strikes had a very constructive role to play in the process of achieving collective bargaining and the British law could not afford to run counter-current to the developments in Europe and the world over, and so new laws came to be framed for putting strike law in its proper groove so as to achieve optimum results. This resulted in the creation of an autonomous relationship between the management and labour and strike
became an instrument of enforcing these autonomous rules on behalf of the workmen.

In India, the rules framed by the British Government to prevent work stoppages during the war period came to be crystallised into the Industrial Disputes Act, 1947 and thus the negative role envisaged for strikes came to be accepted as the only answer for achieving industrial peace, harmony and progress. Borrowing from the British judicial material, our Courts began to call strikes as weapons of collective bargaining, without actually understanding the implications of what they were saying, as strikes in India were never legally expected to achieve that end. Thus, the legislative approach to declare strikes illegal on the one hand and the Courts' tendency to move in the direction of achieving collective bargaining on the other has landed strike law in a state of confusion.

The developments in the international field indicate that the Right to Strike has come to be accepted as a concomittant right of the Freedom of Association. Thus, the Right to Strike must find itself connected to Trade Union Law rather than law dealing with compulsory settlement of disputes. The practice prevailing in India appears to be running counter to the practice now evolved in Great Britain.
We may now ask, as to what exactly went wrong with our system?

Firstly, the policy initiative taken since 1947, goes in the direction of preventing and controlling strikes so as to help in the process of economic development and change. A feeling has grown that strikes and lock-outs are unwanted occurrences in society and so they must be curbed at any cost. We have not realised that strike is an expression of feeling and a form of protest at a prevailing injustice. Moreover, the end of strikes is not strikes and conflict but achievement of a compromise or understanding or collective bargain. With this positive objective missed, strikes in India have been looked upon as occurrences, which must be put down and made illegal or kept in abeyance until one goes through the machinery created for settlement of disputes, which never operates on any time frame.

Further, the rules framed for declaring strikes illegal, have in process of time, grown so much technical that the courts have rather looked to the form than to the substance, defeating the concept of strike as an instrument of achieving collective bargaining. The Courts have further added to the legal confusion created and instead of finding solution to conflict have added to the conflict situation in the form of interpretational and technical legal problems.
The illegality of a strike has only helped in multiplying litigation creating an aura of confusion, rather than achieving the autonomy model of strike acceptance thus defeating the very purpose for the existence of labour legislation. This situation requires to be studied, only to help achieve long term positive results.

One aspect to be further considered is whether the Trade Union Law requires to be attuned to the strike law. Trade unions should be the proper home for the freedom to strike. We have seen how unfruitful the task has been to link strike law to the machinery for settlement of disputes.

This considered, we have to determine what positive steps must be taken to ensure that strike law is given its due place and made to play a positive role, in the interest of liberty, democracy and freedom, the concepts to which our nation is wedded.

Hence, this study has been undertaken, to identify the many problems that arise specially in view of the distorted understanding or application of the strike law in India.

This study is spread over ten Chapters. The Chapter-wise synopsis is indicated here below.

Chapter II deals generally with strikes in industrial
conflict An attempt is made here to evaluate the role strikes play in industrial conflict. This aspect is approached in three ways. Firstly, the industrial revolution and the consequent birth of industrial conflict has been discussed. Secondly, the class struggle for unity and the birth of trade unions is brought out. Thirdly, what is highlighted is the role perspective of strikes as viewed from the point of view of the Government, the Judiciary and the Trade Unions.

Chapter III deals with strikes in industrial conflict, from the point of view of British experience. The aspects covered herein are, firstly, the Social and Psychological factors which compel the workers to engage in collective economic struggle, secondly, the steps involving the evolution of strike law in Great Britain and thirdly how the Courts in England responded to the changing economic conditions there.

Chapter IV on the other hand discusses the Indian experience of strikes in industrial conflict. This Chapter attempts to highlight the manner in which strike law came to be introduced and applied in India. The Chapter further brings out the urge of the workmen to unite against odds, the attempts made by the legislature and the Governments to control strikes and declare them illegal and ultimately it
analyses the manner in which the Government, the Employers and Trade Unions responded to these controls.

Chapter V attempts to look into the question of justification or otherwise for legal intervention for resolving industrial conflict. The question that is posed here is, whether legal intervention is justified at all? The various aspects covered in this Chapter deal with, firstly, an analysis of law as a regulator of social power, secondly, the identification of the role of law in industrial conflict and ultimately the role perspective of strikes in the legal context is also discussed. Chapter VI explores the development of strike law in the context of the universal Freedom of Association in India and abroad. The role played by International Labour Organisation and the lead given by some of the democratic countries in the Common Wealth is highlighted. The role played by the Supreme Court of India in trying to graft the above developments upon the industrial relations system is discussed.

Ultimately what one sees is a state of confusion prevailing in India due to the different postures adopted by the legislature on the one hand and the courts on the other regarding the role of strikes in industrial conflict.

Chapter VII goes into the policy framework laid down.
in India regarding Industrial Relations and the prevailing conceptual confusion regarding the strike law. The policy enunciated by the Planning Commission and various legislative attempts made only indicate a negative outlook towards strike occurrence. Further, the concept of strike has been used and mis-used indicating lack of consistency in its application. This aspect is looked into and inconsistencies flowing therefrom have been exposed.

Chapter VIII brings out the legal hurdles obstructing the movement from the 'equilibrium' model to 'autonomy' model of strike acceptance in India due to the illegality of strikes. After narrating the historical development of the concept of illegality of strike, the statutory provisions declaring strikes illegal are discussed and analysed. Further, the consequences flowing from declaring strikes illegal are high-lighted. Chapter IX discusses the position of strikes vis-a-vis the Trade Union Law. The British and Indian experience in this regard shows that the Trade Union Law has been an outcome of a negative attitude adopted towards industrial relations. However, recent trends in Great Britain have shown remarkable change in this attitude. But, the Indian attitude towards trade unions and their role in strike action has remained unchanged since 1926. The question that arises out of such a situation is,
whether it is not the time for India to take appropriate steps to give a new direction for trade unions and identify their role in achieving collective bargaining which would have a direct bearing on the development of strike law itself.

Chapter X deals with conclusions and suggestions that flow from the study made pertaining to strikes in industrial conflict.

The methodology adopted in this study is a combination of doctrinal and non-doctrinal legal research. From the doctrinal point of view, material from standard books, journals and reported cases has been referred to as and when necessary in support or otherwise of the propositions discussed. From the non-doctrinal point of view, secondary source material published as data in the various issues of the Indian Labour Journal has been made use of for analysis and drawing appropriate conclusions in Chapters VII and VIII of this work.
FOOT NOTES:

1 Schregle, Johannes, "Labour Relations in Western Europe Some Topical Issues", International Labour Review, vol 109, No 1, January 1974, pp 1 to 22

2 Ibid

3 Birk, R., "Industrial Conflict: The Law of Strikes and Lock-outs", in Comparative Labour Law and Industrial Relations, Ed Blanpain, Rogers, at p 414