CHAPTER: III.

STRIKES IN INDUSTRIAL CONFLICT: THE BRITISH EXPERIENCE.
The reason behind confusing strikes with mere work stoppages and not necessarily connecting strikes to achievement of collective bargaining is rooted in history. In order to understand the problem as it exists in India better, it would be necessary to study the history and development of work stoppages in England. The genesis for calling all work stoppages as strikes, as is being done in India today, has its roots in the British soil. By going through the historical perspective as it evolved in England, we can evaluate the Indian experience over the last fifty to hundred years and will thus help in throwing better light on understanding the role of strikes in industrial conflict.

This chapter however, specifically deals with the British experience.

The workers' struggle against the employer for achieving their demands has taken many twists and turns in British history. With the progress of industrial revolution and the spread of British empire, the emphasis was on prevention of work stoppages. Any work stoppage was looked down upon as an unwanted event since it acted as a hindrance for achieving optimum production.

Thus, strikes came to be condemned only because they were work stoppages hindering production. It became difficult to distinguish between a mere work stoppage on the
one hand and a work stoppage connected with strike for achieving economic betterment on the other. However, from a position of considering all strikes as work stoppages to that of recognition of strikes as instruments of collective bargaining, history has played a constructive role leading to the crystallisation and a meaningful understanding of strikes in industrial conflict in England.

A brief resume' of the historical developments in Britain recorded here below shows how the strike concept has changed over a period of time and from which experience India can draw useful lessons.

(a) THE FIRST STAGE:

In Great Britain and also in other industrial countries of Europe, the factors, both social and psychological, which compelled the workers to engage in collective economic struggle against the employer was the class instinct characteristic of the working class since the time of its origination. The methods followed by the industrial workers did not develop all of a sudden. They were evolved gradually and were largely inherited during the preceding artisan and manufactory periods. Adopting different methods of struggle used by its predecessors, the industrial proletariat further developed and enriched them with its own experience, working out its own methods and tactics of
struggle. It is reported that one of the most striking manifestations of the rebellious character of the first isolated outbreaks of labour unrest, their integration into the general plebeian movements were the disturbances caused by high prices and the lagging behind of wages against the price increase. The violent outbreaks of spontaneous indignation in such cases usually took the ancient form of hunger riots in which plebeian ruck joined the workers just as in earlier times. During such riots starvation mobs seized grain stores, carts and barges with flour, raided potato stalls on the markets, destroyed and set fire to flour mills. In England, the most varied categories and strata of proletariat took part in food riots in the late eighteenth century and mine workers and others and their wives were quite active in such movements. They raided the homes of factory owners, expressing thereby their indignation at the poverty and social inequity brought on by the event of capitalism.

It is also reported that England was the first scene of the development of the strike movement. The first use of strikes as a method of economic struggle, and fairly often for that matter, were workers of the textile branches, cottage industry workers, workmen of small artisan workshops and at a later time factory workers. In the sixties of the
eighteenth century the miners joined in the strike struggle. During some strikes, it is said, they burned stocks of coal or destroyed pithead machinery. In the late eighteenth and early nineteenth century English seamen and port workers constituted a sizeable contingent of workers. It is also reported that biggest strikes usually occurred in periods of a particularly sharp decline in the conditions of life of the masses. Such were, for example, the hand-loom weavers' strikes in Scotland in 1804-1805 and Lancashire in 1808.

The above state of affairs and the prevalence of distressing conditions, forced the labour to organise. These organisations or combinations of workmen came to be called as Trade Unions. The origin of the modern trade union is actually to be found in the small craft organisations which developed during the eighteenth century as a consequence of the decay of the medieval system of statutory wage fixing. These trade unions acted as forums for airing grievances such as demand of man-power, wage-rates, conflicts with employers, collection of donations etc. The workers were primarily interested in the problems of wages, the length of the working day and employment. The funds of societies were often used to give financial aid to workers on strike. Thus, it can be seen that the workers united themselves only to achieve economic demands.
Moreover, the daily activities of the trade unions consisted of, formulation and presentation to the employers the terms of hire of their members, conducting negotiations with the employers collectively as a united force, organisations of action for an improvement in the working conditions, for higher wages, shorter working hours, etc. Employers who violated this rule or any other terms agreed upon binding on all were threatened with a general boycott and strike.

One of the activity of the English trade unions was the presentation of petitions to Parliament and Courts of Law requesting compliance with the old laws which limited the number of apprentices under one master, established an obligatory seven-year term of apprenticeship, fixed wage rates laws incompatible with the development of industrial capitalism, and practically and later legally, losing their binding force more and more.

However, to combat these trade combinations the legislature adopted the practice of passing special Acts relating to particular trade concerned and performed the dual duty of removing the grievance as well as prohibiting the extra legal remedy.

These Acts met with only partial success. The upheavels brought about by the Industrial Revolution and the inability of individual workmen to bargain effectively with these employers led to increased industrial unrest.
unions, having all the elements of permanence, therefore, became established despite the existence of Combination Laws 16

The Combination Act of 1800 was the most draconian of all. It made combinations of workmen to regulate the conditions of their work, illegal. All contracts, covenants and agreements for obtaining an advance in wages, altering the hours of work or decreasing the quantity of work, preventing workmen hiring themselves or attempting to induce them to leave work, were declared illegal, so also was attending any meeting held for any of these purposes. Likewise, all contracts and agreements between employers or others for reducing wages or altering hours of work, or increasing the quantity of work were illegal 17

As a result of the efforts of Benthamite reformers, such as Joseph Hume, Francis Place and J R McCulloch, a Select Committee on Artisans and Machinery was created in 1824 which recommended that employers and workmen should be free to make such agreements as they thought fit, and that the restrictions imposed upon this freedom by statute should be removed and the law, making combination for such purposes criminal conspiracies, should be altered. The recommendations made by this Committee were implemented through the Combination Laws Repeal Act, 1824, which
repealed all the earlier Combination Acts including that of 1800. This Act expressly removed all criminal liability for conspiracy, whether under the Common or the Statute Law for combining to alter wages, hours or conditions of work, to regulate the mode of carrying on any manufacture, trade or business or to induce persons to leave, refuse or return to work. With the enactment of this law, trade union activity was formally allowed.

The Chartist Movements started in 1838 and the Socialist Movements in 1888 helped create the proper atmosphere for the functioning of trade unions and whether the demands related to those of match girls or gas workers the trade unions let the workers through strikes to success. Very soon the trade union leaders became, in the words of Webbs, "part of the social machinery of the State."

There were large amalgamated unions on the one hand and small unions which functioned in their own small way. When all the unions joined together they appeared as a tremendous combination. This could be witnessed when the General Strike took place in 1927. It was a grim battle between the workers on one hand and the management supported by the Government on the other. The issue in this strike arose out...
of the miners demand for increased wages. The other unions joined hands with those of miners. The General Council of the Trade Unions Congress, at its conference of the Trade Union Executives overwhelmingly voted in favour of a strike action in support of the miners. This mass action on the part of the workmen was never liked by the British Government and Baldwin wrote on 5th May, stating, 22

"The General Strike is a challenge to Parliament. It is the road to anarchy and ruin."

In spite of this, the workers showed a rare sense of unity and determination to fight for their betterment. The large scale arrests and convictions on ground of "intimidation", "obstruction", or breach of Regulation, made by the Government under the Emergency Powers Act, 1920, could hardly stop the workmen from achieving their goal. Though the strike was ultimately declared illegal and called off, it can be considered as an important milestone in putting industrial conflict on a rational track, that of achieving unity for the purpose of fighting for economic betterment and justice. It demonstrated the urge to unite against odds for their own survival. 23

(b) THE SECOND STAGE—THE EVOLUTION OF STRIKE LAW IN BRITAIN

In order to control and regulate the increasing strike
activity, the British Government gradually evolved a strike law. Though, the basic approach for creating such a law was to prevent or deter strikes or work stoppages there was a silver lining running through this effort as well.

The Combination Laws Repeal Amendment Act, 1825, recognised that the exercise of the right to combine for the purpose of raising wages or altering the hours of those combining involved the right to withhold labour or employment for that special purpose.

The Molestation of Workmen Act, 1859 clarified that no person was to be deemed guilty of 'molestation' or 'obstruction' under the 1825 Act or liable for criminal conspiracy by reason merely of his agreeing with others to fix wages or by endeavouring in a peaceable and reasonable manner, to persuade others to cease or abstain from work for that purpose.

The Trade Unions Amendment Act, 1876, went on to declare that all bodies having trade union objects were not necessarily in unlawful restraint of trade at Common Law.

The Conspiracy and Protection of Property Act, 1875, repealed a number of earlier statutes under which breaches of Contract of Employment were criminal offences. Terms such as 'threats', 'molestation' and 'obstruction' were
deleted and it laid down that an act done in combination would no longer be criminal unless the act itself, when done by one person, would be a crime.

The Trade Disputes Act, 1906, attempted to reinstate the Law as it had been understood to exist in 1875. For acts done in contemplation or furtherance of a trade dispute the risk of civil conspiracy was removed, if the act was not unlawful, a conspiracy would not make it so. The Act further conferred immunity from tortious liability for inducing a breach of Contract of Employment in contemplation or furtherance of a trade dispute, but the contractual liability of a person breaking his own contract was unaffected. The general immunity of trade union funds was restored, not only in respect of tortious acts during trade disputes, but also against liability for any tort. The term 'trade dispute' was redefined to enable statutory protection to 'sympathetic' action as well as to original disputes.

The Trade Disputes and Trade Unions Act, 1927, was passed as a result of the National Strike of 1926. For the first time an attempt was made to define 'Strike', probably to confine such activity to the legitimate pursuit of trade disputes. The Act defined a 'Strike' thus.
"The expression 'Strike' means the cessation of work by a body of persons employed in any trade or industry acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are, or have been so employed, to continue to work or to accept employment."

The above definition seems to have equated a 'Strike' with any 'work stoppage', because any stoppage of work could be brought within the definition of 'Strike' irrespective of whether the stoppage was in furtherance of a trade dispute. Also, the definition did not restrict its scope to 'workmen'. Cessation of work by a body of persons employed in the industry was brought within the ambit of the definition.

The Act, further laid down when a strike would become illegal. Under Section 1, a strike was illegal, if it

(i) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and

(ii) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community.
Those going on illegal strikes were liable on summary conviction to fine or imprisonment not exceeding 3 months. However, a person was deemed not to have committed an offence by reason only of his having ceased to work or accept employment.

Thus, if the object of a strike was in furtherance of a trade dispute, it would not be illegal nor punishable. That means, all strikes which were in furtherance of a trade dispute were accepted as manifestations of industrial conflict and accepted as legitimate occurrences in society. Reading the definition and the provisions dealing with illegality of strikes together, one can conclude that all work stoppages which are in furtherance of a trade dispute would be strikes that would be acceptable, while all work stoppages which do not have furtherance of a trade dispute as its goal, would be strikes that would be illegal and punishable.

The Act of declaring a strike illegal was bitterly resented to by the workmen and their unions. This was finally repealed in 1946, at the end of the Second World War.

Certain developments did take place during the war period. The workers understood the grim reality of the life...
and death struggle Great Britain was putting up and they rose up to the occasion by readily accepting restrictions and curbs on the freedom to strike in order to keep the wheels of production moving. Thus, when the National Arbitration Order was issued in 1940, there was hardly any resentment. The trade unions accepted the outlawing of strikes and lockouts during the war and introduction of compulsory arbitration order in trade disputes.

But, the moment the war was over, there was a total change in attitude in managements as well as the workers. Each understood the need for recognising the existence of the other and the need to base labour-management relationship on strong democratic principles. This implied, that 'strike' in its second stage of evolution could be understood only as a weapon of collective bargaining and nothing else.

Great Britain became a signatory to the European Social Charter of 1961, in 1962. This Charter recognised under article 6(4), the right of the workers and employees to collective action in cases of conflicts of interests, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. Subsequently, when the Contracts of Employment Act was passed in 1963, strike was defined as follows.
"Strike" means the cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment.

In the above definition, the influence of the European Social Charter 1961, seems obvious and clear. By this, the whole process of evolution from 'Strike' as a mere means of stoppage of work by workmen for any reason whatsoever to 'Strike' as a legitimate weapon of collective bargaining, came to be culminated, ending only in a democratic triumph for the workmen and the employers, a legitimate victory for both the parties.

What is clearly discernible is that, both the employers and workmen in Britain in their own way, tried to throw off the shackles of unilateral arbitration and go in for collective bargaining. By this, the controls and restrictions imposed on the Freedom to Strike during the war period came to be demolished and 'Strike' blossomed itself to its true colours as is clear from a reading of the
definition found in the Contract of Employment Act, 1962

(c) THE RESPONSE OF THE COURTS:

The Courts in England, for quite some time now, have been consistent in their view that a trade union action resulting in a 'Strike' must be supported by the fact that such action is in pursuit of the legitimate demands/interests of the Union and its members. To overcome the difficulty that may arise to distinguish between a combination 'wilfully to injure' and 'the real purpose' of which is to promote the trade of those combining, the courts advocated looking into the motive of the combiners as Lord Simon said in the Crofter Case:

"In some branches of the law, 'intention' may be understood to cover results which may reasonably flow from what is deliberately done, on the principle that the man is to be treated as intending the reasonable consequences of his acts. Nothing of the sort appears to be involved here. 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."

Thus, where there is a trade union and this trade union in pursuance of its demands, which are not tainted with
illegality, issues a threat to go on strike, then the action of the trade union will be protected, as the motive of the union is not to cause injury or damage to the employer but only to advance the legitimate demands/interests of the Union and its members. It is in this background that we can distinguish the contrasting decisions of the House of Lords in *Allen v Flood* 32 and *Quinn v Leathem* 33. In both these cases threats were issued to call the men out. In the first case, the threat was in pursuance of protecting the interests of iron workers on job and hence was declared as justified while in the second the threat appeared more to cause harm to Leathem than to advance the cause of workmen, hence was declared to be illegal and brought within the four corners of a conspiracy. From this, one can see that the courts were not averse to workers going on strike to attain their legitimate demands. What the courts did not wish to tolerate was that the banner of trade unions be used to cause only harm to somebody. Coming to more recent times, the House of Lords, re-fashioned the tort of intimidation when a union threatened to go on strike in breach of its own contract. The case is *Rookes v Barnard* 34. In this case, the defendants had told the employer that they would call the workers out on strike unless Rookes, who was not a member of the Union, was dismissed forthwith and this in spite of the fact that the
Union was bound by a 'no strike' clause in an agreement entered into between the Union and the Employer (BOAC). The question was, whether the ancient tort of intimidation could be revived to extend to cover a threat of a breach of contract. Lord Devlin, in coming to the conclusion that the action of the Union amounted to a tort of intimidation, relied on a passage from Salmond on the Law of Torts, which said,

"There are at least two cases in which such intimidation may constitute a cause of action

(1) When the intimidation consists in a threat to do or procure an illegal act,

(11) When the intimidation is the act, not of a single person, but of two or more persons acting together in pursuance of a common intention"

It was this second type which admitted to be an aspect of the tort of conspiracy. It is on the basis of this aspect that the House of Lords declared the action of the Union to be amounting to a Tort of Intimidation against the employee of BOAC, Mr Rookes and there was a threat of unlawful means.

From the above cases, one can see that the courts were all the time trying to determine the pre-dominant purpose of the dispute and whether the action resorted to by the Union
can be justified from the yardstick of the purpose of the dispute and what the union ultimately tried to attain. However, in all cases, for a trade union to justify its strike activity, it must have been carried out "in contemplation or furtherance" of a trade dispute. 37

This view has been further supported in the Report of the Royal Commission on Trade Unions and Employers Associations 1965-68, which said thus 38:

"In all circumstances we think that it would be right and proper to confine the immunity of trade unions so that it applies as regards torts committed in contemplation or furtherance of a trade dispute but not as regards any other tort, and we so recommend."

Hence, we can see that the legislature and the courts in Great Britain have moved in the same direction. Trade union action in declaring a strike has been found to be accepted legally, if and only if the strike is in furtherance or in contemplation of a trade dispute.

A D Hughes in his article 39 calls this the Golden Formula, that the act must have been done in contemplation or furtherance of a dispute between employers and workmen, or between workmen and workmen, which is connected with employment, non-employment or the terms of employment or
with the conditions of labour of any person \",
as laid down in the Trade Disputes Act, 1906.

To summarise the evolution of strike law in Great Britain, one can say that the strike action has been given the legal aura and made acceptable only if it was done in contemplation or furtherance of a trade dispute and in its more modern manifestations, strike action has been looked upon as an essential part of the collective bargaining process, as an instrument to achieve collective benefits for the workmen and nothing else. This development has given a crystal clear meaning, and content to the term 'Strike' in Great Britain. The question is what lesson this holds for us in India.

The following Chapter, which deals with the historical evolution of industrial conflict in India, shows how Strike Law has developed, exhibiting a rather contrasting feature from the British experience.
FOOT NOTES:

1 The International Working Class Movement - Problems of History and Theory - Series, vol I, "The Origins of the Proletariat and its Evolution as a Revolutionary Class", p 191

2 Ibid

3 Ibid

4 Ibid at p 192

5 Ibid

6 Ibid

7 Ibid at p 208

8 Ibid

9 Ibid

10 Citrine, Norman, Arthur, Trade Union Law at p 4

11 See Foot Note 1 at p 226

13 Ibid at p 227

14 Ibid

15 Citrine, Norman, Arthur, Trade Union Law at p 6

16 Ibid

17 Ibid

18 Ibid

19 See Foot Note 1 at p 236

20 Frow and Katanka, Strikes - A Documentary History (1971)

21 Ibid at p 12

22 Ibid, Quoted from British Gazette dated 5.5 1926

23 Allen, V L Trade Unions and the Government, p 138

25 Ibid at p 9

26 Ibid at p 14.

27 Ibid

28 Ibid at p 18

29 Section 8(2) of the Trade Disputes & Trade Unions Act, 1927

30 Robertson, N and Sams, K I, *British Trade Unionism - Select Documents*, p 138

31 (1942) All E R., p 142

32 (1898) A C 1

33 (1901) A C 495

34 (1964) A C 1129


37 Ibid at p 319

38 Royal Commission on Trade Unions and Employers' Associations 1965-68 In short, The Donovan Commission, at p 238