CHAPTER: V

STRIKES IN INDUSTRIAL CONFLICT: JUSTIFICATION OR OTHERWISE FOR LEGAL INTERVENTION.
In any society, the law relating to strikes is a matter of vital political concern, and a central topic of Labour Law. It is submitted that this should rightly be so as, the consequences of strikes are not limited to those striking and against whom it is called, but the society at large and ultimately the Government is called upon to answer them in no small measure. Presumably, it is to protect the societal interest that the law steps in to control strike occurrences. It is in this respect that the role of law in controlling strikes comes up for a close and careful scrutiny.

In understanding the role of law, certain other issues also become relevant like, how law looks upon strikes and whether the Governmental policy should encourage or discourage or totally eliminate strikes for reasons best known to the Government. However, it is submitted, that, whatever action the Government may initiate, one must have a clear idea of the role prospective of strikes and how they should be directed in a system wedded to democracy and freedom. For nearly a century now, India has been witnessing strike occurrence and the various Government have responded with laws to control strikes for various reasons. But, till today it is not clear as to how these Governments have viewed strikes. Have they considered strikes as
weapons of collective bargaining? Or, have they considered strikes as unfortunate occurrences which somehow must be tolerated? Or, have they looked upon strikes as occurrences which impede the development and progress of the Country and hence by some means or the other be banned and done away with? From a look at the Governmental policy, the application of the various enactments dealing with strikes and the judicial response, one fails to understand what exactly is the role of strikes legally, socially and economically. Hence, this study has been attempted to at least try to understand what the legal role of strikes should be and why this much confusion all these years to find a proper answer to this problem.

We may now see how law can be used to control strikes and examine whether, to what extent, law should play such a role in setting industrial conflict.

1) LAW AS A REGULATOR OF SOCIAL POWER.

Law has come to be accepted as a technique of regulation of social power, and specially so in the case of labour law. This social power is nothing but the capacity to effectively direct the behaviour of others and here, when we talk about the industrial relations scene, the parties that come in the forefront are the employers on the one hand.
and the employees on the other. Law plays the role in the even distribution of power among these contesting parties who represent the opposing forces and helps crystallise the rules which will govern the relationship between them. Hence, one can conclude, that the purpose of labour law would be to regulate, to support and to restrain the power of the management and the power of the organised labour.  

At the same time, when we talk about the regulation of this power, it would not be appropriate to talk of a single workman. This cannot represent a force. The concept of force comes into play when the workmen or employees act in unison and exhibit the strength of their unity which is the force that can make the management or the employer bend. This force can also be said to be the bargaining power, which will help the workmen to achieve their goal. On the other hand, we may notice, that, even an individual employer is a force because he represents an accumulation of material and human resources, socially making his whole enterprise a collective power. Such a division of collective power, between the employer on one hand and the employees on the other, postulates a conflict of interest and this conflict of interest is a fruitful source of confrontation for the sharing of economic wealth that has been generated through the joint efforts of these two parties. It is in this situation, when the contending parties set up their claims,
for the just distribution of the wealth that law is required to step in. Law's role would be to remove the injustice that has set in and help bring about an atmosphere where the parties can work without fear and suspicion of one another. The question however, remains as to how best law can achieve this goal.

2) LAW AND INDUSTRIAL CONFLICT:

In an ideal situation, an ideal employer would be one who would provide the best working conditions for his employees to work in and also provide them a handsome wage and a heart filling bonus once in a year. In the same way, an ideal group of employees would be those who would work with all their energy and sincerity and produce real quality goods, never go on strike and thus bring into existence a very peaceful and healthy industrial relations climate. However, this is not to be. One can never be sure what time the system of industrial relations would collapse even when things appear to be going very well. A small difference of opinion on a very minor issue, if not handled with care and concern would lead to a major conflagration between the contending parties shattering the so called peace that existed. Thus, in every industrial undertaking, there is a potential energy which may get ignited into a conflict.
situation, for reasons which may vary from, sharing of the economic wealth produced to insulting an employee by one in managerial position. However, one need not be perturbed by the existence of this conflict situation. Conflict indicates an awareness of one's rights and one just cannot think of achieving industrial peace by eliminating this conflict situation. Though peace and harmony are the necessary pre-requisites for healthy industrial development, peace cannot be achieved by putting a lid over the legitimate aspirations and demands of the workmen.

As Justice D.A Desai says,

"Peace does not mean peace of the graveyard or imposed peace by more powerful on the weaker section. Peace in the proper sense of the term is not a mere negative concept of avoidance of strife, but a positive idea of the fruitful co-operation of all for the fullest possible development of each."

He goes on to say that harmony and peace must be founded on a better understanding of the opposite point of view and accommodation of the same. If an avoidance of conflict is the maximum requirement of peace, this demand may be fully met by a police state whose armed forces are strong enough to keep law and order. But ours is a goal of Welfare State and such peace as maintained by the strong arm of the State does not suffice to fulfill the conditions under which a
full life and profound satisfaction can be obtained by every individual in complete harmony with millions of other lives. In order to achieve the goal of industrial peace and harmony so as to set up an ideal industrial democracy, one must obviate apparently fallacious understanding of democracy as a mere majority rule for the achievement of whatever end the majority may set up. The true aim of democracy is to make certain that,⁶

'no member of the community shall be denied the opportunity to live a full and free life'

In a country wedded to democracy and welfare state, it is inconceivable to think that we could achieve progress by steam-roller method. We have to accept the fact that conflict in industrial life, is as unavoidable as, profit and loss, availability of raw material, etc. The moment one talks about co-operation between the employer and the employees, we presume that there will be conflict situation existing in that industrial enterprise. As Hilde Behrend says,⁷

"Co-operation cannot proceed without some friction or conflict. And conflict is stressed by many writers as the basic problem of industrial relations, on which we should centre our attention. Concurrently, the achievement of industrial peace and harmony is often held out as a goal, as the ideal state
of affairs which we must strive to reach. This idealistic goal is attacked as unrealistic by some who consider that conflict is necessary for progress and that the best that can be accomplished in a complex society is to reduce friction to an 'area of tolerated conflict'. They argue that there will always be hostility side by side with mutuality, a kind of 'antagonistic cooperation'.

A situation as pictured above, has been tacitly recognised and accepted by the British Government, which proclaims in its policy for industrial peace, thus:

"There are necessarily conflicts of interests in industry. The objective of our industrial relations system should be to direct the forces producing conflict towards constructive ends."

The National Commission on Labour reiterates the above idea when it says,

"Industrial jurisprudence, likewise, seeks to evolve a rational synthesis between the conflicting claims of employers and employees. Industrial jurisprudence does and should always try to examine the merits of the rival contentions and seek to resolve the conflict by evolving solutions which do no injustice to the employers and fully meet the employees' legitimate claims. In the decision of major industrial disputes, three factors are thus involved. The interests of the employees which have received Constitutional guarantee under the Directive Principles, the interests of the employers which have received a
guarantee under Article 19 and other Articles of Part III, and the interests of the community at large which are so important in a Welfare State.

The above exposition, does not only admit of the conflict of interest situation but also propounds the role Law will have to play so that an acceptable solution could be found to the satisfaction of all concerned.

There is one more development we have to note and that is, the recognition that, the inherent conflict of interest situation has led to the institutionalization of industrial conflict. As Ralf Dahrendorf says,

"There is, however, one line of social development in industrial societies which has both originated and spread since about the time of Marx’s death and which is directly related to our problem. Geiger, who has described this change as the ‘institutionalisation of class conflict,’ the tension between the capital and labour is recognised as a principle of the structure of the labour market and has become a legal institution of society. The methods, weapons, and techniques of the class struggle are recognised - and are there by brought under control. The struggle evolves according to certain rules of the game. Thereby, the class struggle has lost its worst sting, it is converted into a legitimate tension between power factors which balance each other. Capital and labour struggle with each other, conclude compromises, negotiate solutions and thereby determine wage levels, hours of work, and other conditions of work."
The author further says that this has led to the recognition of the contending parties as legitimate interest groups and within the industry

'a secondary system of industrial relations citizenship'

enabling the workers and entrepreneurs to associate and defend their interests collectively. Further, he states that, in such an acceptance of reality, the industrial organisation pre-supposes the legitimacy of conflict groups, and it thereby removes the permanent and incalculable threat of guerilla warfare, at the same time making the regulation of conflict possible.

From the foregoing, one can conclude that, one will not only have to accept the fact of conflict of interests in every industry, big or small, but also, find ways and means to resolve this conflict by evolving rules, supported by the law of the land, keeping in view the values which society is trying to achieve. India, having set as its goal, a democratic and Welfare State, will necessarily have to evolve rules which are democratic, allowing the parties to participate fully in the conflict resolution process. The National Commission on Labour has already given us the hint when it said.
Since India is committed to create a new social order based on social equality and economic justice according to the rule of law in a democratic way, we have to face the question as to the relevance and validity of the right of the employees to go on strike and the right of the employers to lock-out the employees. One view is that collective bargaining without the intervention of a third agency will alone lead to a healthy development of the trade union movement and will in the end, be conducive to the growth of industrial harmony.

Thus, ways and means will have to be found as to how best to resolve the conflict by a process which is as democratic as possible and which will create as much satisfaction among the parties as possible so as to enthuse them to keep on working with necessary zeal and interest, legitimately proud of their enterprise that employs them.

One way of looking at industrial conflict is to understand it as a system of rules, which we have just discussed above. This is the traditional institutional approach. Proponents of this view are John T Dunlop and Allen Flanders. Supporting Dunlop's view, Flanders said, "A system of industrial relations is a system of rules."
Agreeing with Flanders that the formulation and application of rules is an important aspect of industrial relations, Margerison feels that this is by no means the central core. Further he states that, Flanders concept of industrial relations narrows the scope of regulation of industrial conflict. That limitation tends to ignore the essential element of all industrial relations, that of the nature and development of conflict itself. Industrial relations, as it is at present construed, is more concerned with the studying of the resolution of industrial conflict than with its generation. The emphasis tends, therefore to be put, on the consequences of industrial dispute than on its causes. Disagreeing with Flander's views that industrial relations problem do not arise until they come within the formal ambit of the rules of industrial relations, Margerison, suggests that conflicts is the basic concept that should form the basis of the study of industrial relations. Following the social system concept propounded by Durkheim in his study of Suicides and Katz and Kahn in their, Social Psychology of Organisations, Margerison theorises that,

"Every industrial organisation is a miniature social system and depends upon continued interaction at all levels to sustain it. A breakdown in interaction between the operators and the management is a major step on the entropic road"
toward anomie and the disintegration of that social system, both in the industrial firm and other industrial institutions, must be part of the study of industrial relations. 

Therefore according to him, it is important to be more precise in the use of the term industrial relations, and to consider its meaning in some depth.

We may distinguish the approach of Allen Flanders from that adopted by Margerison as one tending to look at a process legally and the other from a sociological angle. By saying that industrial conflict is to be studied as a system of rules, Allen Flanders, looks to conflict resolution rather than conflict creation. We are all interested in conflict resolution and law and rules come to play their part when such a conflict comes into being. It may be important to know, from Margerison's point of view how the conflict develops. But then, conflict creation and conflict resolution are two different aspects which necessarily may not be related. This means we will have to adopt a normative approach which is based on voluntarism for the settlement of disputes and such an approach will help in not only meeting the demands and such an approach will help in not only meeting to the demands of democracy but in also achieving the ultimate of finding an amicable solution to industrial disputes. An effort has also been made in this
work to show from the occurrence of strikes in new areas, not traditionally strike prone, how urgent the need is to create rules to find solution of problems in these areas. This is only a by the by conclusion and need not lead one to believe that rules in all cases must come into being after a study of conflict creating process is complete.

3) STRIKES AND THEIR ROLE PERSPECTIVE.

The British model of Collective Bargaining recognises strike as an essential element in the internal rule making and rule interpretation process.

The National Commission on Labour was quite candid when it said,22

"In the U.K. the industrial relations system has been marked by the primacy of free collective bargaining between the parties."

Apart from primacy being given to the process of collective bargaining, the British system has also recognised the freedom to strike and no effort has been made to curb this freedom in any form. The role of strikes in the British system has been explained at length by O Kahn-Freund and Bob Hepple23 in the following manner.
"Workers will go on strike whatever the law may have to say about it. Why then, should the law permit the use of the concerted stoppage of work as means of enforcing rights or their improvement? What is the justification, the rationale of the right or the freedom to strike?"

The answers according to the learned authors are based on four possible arguments,

(1) The equilibrium argument,

(11) The autonomy argument,

(111) The voluntary labour argument and

(111) The psychological argument

(1) The equilibrium argument states that the concentrated power of the accumulated capital can only be matched by the concentrated power of the workers acting in solidarity,

(11) The autonomy argument is linked with collective bargaining. The rules of employment have to be made outside the framework of law making in the technical sense, that is through collective bargaining. Those who have made the autonomous rules should also wield the
sanctions and not leave the enforcement to individuals who did not participate in the rule making. It is far more important that the substance of many of these norms defies the use of legal sanctions. This is one reason why the right of workmen to strike is an essential element in the principle of collective bargaining. It is, in other words, an essential element not only of the Unions' bargaining power, that is for the bargaining process itself, it is also a necessary sanction the strike or the threat to strike can be far more expeditious and stringent than any legal procedure, especially in response to a unilateral action taken by management.  

(111) The case for freedom to strike can be put in terms of social ethics. If people may not withdraw their labour, this may mean that the law compels them to work, and a legal compulsion to work is abhorrent to system of law imbued with a liberal tradition, and compatible
(iv) That strike is sometimes a necessary release of psychological tension, especially when men and women have to work under physical or psychological strain. The authors conclude by saying that a legal system which suppresses the freedom to strike puts the workers at the mercy of their employers. This—in all simplicity—is the essence of the matter regarding the role of strikes.

Now, the second aspect mentioned above, that the freedom to strike is a necessary sanction for the enforcement of agreed rules, seems to clinch the issue and takes us to the crux of the matter that is, finding the legal basis for strike in the process of collective bargaining. That also provides the necessary insight into understanding the basis for permitting strikes in a democratic system as prevailing in Great Britain and which system we have adopted in India. Unless the system of autonomy is given a fair trial in India and allowed to succeed, it would not be proper to say that governmental...
intervention alone can help solve industrial conflict. It is submitted that no chance has been given whatsoever to try out the British system of collective bargaining in India. With the retaining of Rule 81-A of Defence of India Rules and incorporating the same as the Industrial Disputes Act, 1947, we seemed you have missed the track of collective bargaining altogether and forever. The question is, why cannot we re-trace our steps and start afresh? This alone would place the freedom to strike in the position it has to fit in, the canvas of collective bargaining.

This does not mean, however, that we have to abandon the concept of state intervention in harmonising industrial relations. The State's anxiety about work stoppages arises because of two factors

(1) the impact on the community by way of inconvenience inflicted by interruption in supply of essential goods/services and

(11) the social cost to the parties themselves in the form of loss of wages/production.

It has therefore, a special interest in the methods
chosen by the parties for the regulation of their mutual relations. The State should intervene, but only to help bring the parties together and to ensure that what is agreed between the contending parties is legally enforced. This aspect also will be discussed so as to appreciate the role of strikes in achieving positive results especially in the context of British model and the minimum application of law to force results.

However, it may not be supposed that, the doctrine of autonomy explained by O Kahn-Freund, above, is his own creation. A series of decisions of the Courts in England have acted as the back-drop for the crystallisation of this rule. So also, a number of decisions in India are also an authority for the proposition that strikes are a weapon of collective bargaining, even though no autonomous rule making system has crystallised in India. This has only further added to the confusion regarding the proper understanding of strikes and their functions. It would be quite apt, if at this stage, we have a quick glance at these cases decided in England and in India, which strangely come to the same conclusion even though the starting points are different.

The earliest English authority which established that strike is a weapon in the hands of the workers was the
In a classic judgment Lord Loreburn, accepted the action of the Union as a legitimate exercise in pursuance of their demands. In this case, the plaintiff, Conway was in employment under the firm of Redhead and Sons. The defendant Wade, in order to compel the plaintiff to pay a fine due to the Trade Union and to punish him for not paying it, procured Messrs Redhead and Sons foreman to dismiss him by threats that unless they dismissed him (the plaintiff) the union men in their services would quit work. As a result, the plaintiff had to leave his employment in consequence and so suffered damages.

The jury found that there was no trade dispute either existing or contemplated by the men which has been properly taken to mean that the act complained of was not done in contemplation or furtherance of a trade dispute.

Explaning the position of the Law before 1906, the Court said,

"If the inducement was accompanied by violence or threats (always remember that a warning is one thing and threat another) there was a good ground of action. I next suppose, there was no violence and no threat and yet the inducement involved a breach of Contract. There also, it was established after a long controversy beginning with Lumley v Gye in 1853,
that an action could be maintained, unless at all events some sufficient justification could be made good. But suppose one person simply induced someone not to employ another or not to serve another, without violence or threat or breach of Contract, would an action lie, and in what circumstances, in such a case? I believe there has not been an exhaustive answer to that question.

The Court, explaining the position of the Law said

"It is always a source of danger when the Law is uncertain, and in as much as industrial warfare unhappily takes too often in the form of strikes and lockouts, and inducing other persons to cooperate in them uncertainty as to the 'Weapons' allowed by the Law is likely to cause more alarm than may be justified."

And then, went on to add,

"If there will be no threat or violence and no breach of Contract, and yet there is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills. There again there is perhaps a change. It is not to be actionable, provided it was done in contemplation or furtherance of a trade dispute."

The above case stands out as a vivid example of the equilibrium argument, with certain built in factors as

(a) Recognition that strikes and lock-outs are weapons
allowed by the Law in industrial warfare

(b) So long as what was done by a Trade Union was in contemplation or furtherance of a trade dispute, it does not become actionable in Law

(c) There can be no protection to any action which involves threat or violence or a breach of contract

All these points lead to one aspect and that is collective action of a trade union, in declaring a strike, gets protected under the Law and the question whether there is a breach of Contract of Employment or not becomes subsidiary in the face of the demands of the workmen. This leads one to think that ultimately the strike action, at the maximum, only interferes with the conduct of trade or business and never actually, in any way has any effect on the Contract of Employment

The following cases further go to support the above proposition

In the Smithies v National Association of Operatives, Plasterers and others, two workmen, members of a Trade Union, who had respectively entered into Contracts with an employer to serve him for a term of years, broke their Contracts before the passing of the Trade Disputes Act, 1906, by striking, together with others in the same employ,
and continuing on strike, during the currency of the periods for which they have respectively contracted to serve the Trade Union — had originally sanctioned the strike in ignorance of the existence of the before mentioned Contracts, but subsequently gave the workmen strike pay, after they became aware of these contracts, in order to keep the workmen out on strike.

The Court held that the Trade Union by procuring a continuing breach of contract by the workmen, had rendered themselves liable in damages to the employer. But the Court also held that the withdrawal of workmen did not necessarily imply the authorisation of the illegal cessation of work.

On the other hand, a threat to call the workers out on strike to cause harm to somebody, without using strike as a weapon of collective bargaining and against the rules created by the parties has invited severe condemnation from the Court and which went even to the extent of creating a new tort of intimidation as a counter to the negative Trade Union tactics. This can be seen from the decision of the House of Lords in Rookes v Barnard. In this case, the appellant was employed by B O A C as a skilled draughtsman at the London Airport and until November 1955, he was a member of the Association of Engineering and Ship Building Draughtsman (A E S D) a trade union between it and the
B 0 A C an arrangement for one hundred per cent union membership prevailed. In that month the appellant resigned his membership owing to a dis-agreement with the association. At all material times there was an agreement between B 0 A C and A E S T, that there would be no strike, in the event of a dispute, direct negotiations would take place and, if they failed, the matter would be referred to the Ministry of Labour. This agreement formed part of the Contract of Service of each member of A E S T with B 0 A C. Until the appellant's resignation the membership of the London Airport branch of A E S T was one hundred per cent. On January 10, 1956, at a meeting of the Airport branch of the Union a resolution was passed that B 0 A C should be informed that all members would withdraw their labour if the appellant was not removed from the design office by 4 p.m. on Friday, January 13th, 1960. The three respondents spoke in favour of the resolution, two of them being fellow employees of the appellant and the third being a divisional organiser of the Union but not an employee of B 0 A C. This resolution was presented to B 0 A C. As a consequence of this, the appellant first of all was suspended from his employment and later a notice terminating his employment was issued. There was no breach of his contract of employment by B 0 A C. It was common ground that up to the time of appellant's employment by B 0 A C, that he was not a member.
of the union, and that, all acts of the respondents were in furtherance of the trade dispute. In an action by the appellant against them for using unlawful means to induce B O A C to terminate his Contract of Service and for conspiracy to do so, the jury awarded the plaintiff damages to the tune of £7,500.

The Court held that the plaintiff was entitled to recover damages from the respondents for the tort of intimidation. That unlawful means adopted could not protect acts done in concert which would have been lawful if done by one individual and further, that Section 3 of the Trade Disputes Act, 1906, did not provide immunity where there were threats to break contracts 37.

It would be apt to quote Lord Reid from his speech in the House of Lords on the question of the protection of a trade union, when it threatens to break its contract with the employer. He said 38:

"There is no doubt that men are entitled to threaten to strike if that involves no breach of their contracts with their employer and they are not trying to induce their employer to break any contract with the plaintiff. The question in this case is whether it was unlawful for them to use a threat to break their contracts with their employer as a weapon to make him do something which he was legally entitled to do, but which they knew would cause loss to the appellant."
In coming to its conclusion the Court compared the facts of this case with that in *Lumley v Gye*. In that case the defendant had induced a singer to break her contract with the plaintiff knowing fully well that this would cause loss to the plaintiff. The court upheld the right of the plaintiff against the singer for breach of contract and also against the defendant for unjustifiably interfering and causing loss to him.  

The lesson one learns from *Rookes v Barnard*, is that a trade union is within its rights to threaten a breach of contract of employment in pursuance of an industrial demand. However, the trade union will not be protected if the threat given by it is not so much as to break their own contract which they had made with the employer, not to go on strike.  

This case serves as a beautiful example of the 'autonomy' argument. The parties who make the rules must abide by the rules or otherwise face the consequences as the unions had to at the hands of the Court.  

This argument is further strengthened by Lord Denning in *J T Stratford and Son Limited v Lindley and Others*. In this decision he laid down that whenever a trade union claims recognition on behalf of its members, and an employer declines to recognise a claim, there is a trade dispute.
within the Act. It is not necessary that there should be a trade dispute between any individual workman and his employer. It would suffice if that union, on behalf of all members desires to negotiate terms of employment and the employer refuses to recognize it. This would indicate a dispute between the employer and the workmen which is connected with the terms of employment and thus, the act done by the defendants Mr. Lindley and Mr. Watson were clearly done in contemplation of such a dispute.

The next question in that case was, whether the defendants had conspired together to secure an unlawful end. The Court felt that prima facie their motive was to protect what they conceived to be the legitimate interest of the Watermen's Union. They wanted the employer Bower and King to recognize the union. That meant they were not guilty of a conspiracy of the kind which rested on improper motive. Hence, their action was protected under Section 3 of the Trade Disputes Act, 1906. This Section laid down that

"Any act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment."

Thereafter the court distinguished the facts of this case from that of Rookes v. Barnard. Bringing out the distinction, Lord Denning said
"The important thing is that, under Section 3, it is not actionable for a person, in contemplation or furtherance of a trade dispute, to induce some other person to break a contract of employment. Note the emphasis on the word induce. It is inducement by one person of another which is not actionable. It is still actionable for a person to break his own contract of employment. It seems to me that the same must apply to threats. It is not actionable for one person to threaten to induce some other person to break his contract of employment. But it is still actionable for one person in concert with others to threaten to induce some other person to break his own contract. Rookes v Barnard was of the latter class. It was a very special case. There was a very unusual contract, namely, a contract between employers and employees that no lock-out or strike would take place, in flagrant defiance of that contract, the employees threatened to break it. They threatened to take strike action unless Rookes was discharged. The Trade Union Officer's were the agents of the employees to convey the threat to the employers. Rather than risk a strike, the employers dismissed Rookes by giving a regular notice."

To show how special was Rookes v Barnard, Lord Denning took the everyday case where there is no special contract forbidding a strike, and a Trade union officer gives a strike notice. He says to an employer:

"We are going to call a strike on Monday week unless you increase the
men's wages by £1 a week "

or

" Unless you dismiss yonderman who is not a member of the Union "

or

" Unless you cease to deal with such a customer, "

Such a notice, according to him, is not to be construed as if it were a week's notice on behalf of the men to terminate their employment, for that is the last thing any of the men would desire. They do not want to lose their pension rights and so forth by giving up their jobs. The strike notice is nothing more or less than a notice that the men will not come to work. In short, that they will break their contract. In these circumstances, the judge felt that the Trade Union Officer, by giving strike notice issues a threat to the employer. He threatens to induce the men to break their contracts of employment unless the employer complies with their demands. Such a threat, is protected under the Trade Disputes Act, 1906.

From the above distinction, clearly brought out by the learned Judge between the two cases referred above, it becomes crystal clear that every activity of a Trade Union may not be protected under the Law. It is only that activity which is done in pursuance of an industrial demand.
and in pursuance of legitimate trade union activity that comes to be protected. That is when strike is used only as a weapon in the process of bargaining.

The next similar case which throw light on and supports the proposition that strike is a legitimate weapon of collective bargaining is Morgan v Fry. In this case, four members of a union, including the plaintiff formed a break away union (P Union) owing to dissatisfaction with the settlement of a wage claim that their union had agreed. F, a Regional Organiser of the union gave to the employers of the plaintiff on March 14, 1963, notice that on April, 1963, members of his union would,

"be instructed not to work with"

the members of P Union, but that his union members were,

"to carry out their duties as far as possible without the assistance of"

the members of the P Union. The contracts of service of the members of P's union were determinable by a week's notice, which was a shorter period than the period of F's notice. The employers terminated the plaintiff's Contract of Employment. The plaintiff brought an action for damages against F and others based on the torts of intimidation and
of conspiracy. On appeal from a judgment in the plaintiff's favour based on the tort of intimidation, the matter came before the Court of Appeal and the judgment of the Court was delivered by Lord Denning. In declaring that there was no tort of intimidation, the learned Judge made out the following points:

(1) The notice given on March 14, 1963, being a notice for a period longer than was requisite for termination of the Contract of Employment was not unlawful and the giving of notice did not amount to the use of unlawful means for the purpose of the tort of intimidation,

(11) Merely because the notice given was for a longer period than necessary, it did not become unlawful. It was only a notice that the men would not work with non-unionists,

(111) In case of a strike, the Contract of Employment would not be terminated. It would remain suspended during the strike.
period and would revive again when the
strike was over. 47

From a reading of the- above, we can conclude that the
Law could intervene in conflict situation, either by way of
maintaining an equilibrium between them by recognising
'Strikes' as weapons of labour and 'Lock-outs' as weapons of
the employers or to help the parties, irrespective of their
strengths, to come to the table and work out a solution to
their problems by the rule making process, which is the
autonomous method of voluntariness. It is submitted that
though the British pattern of industrial relations has
entered the 'autonomous' phase after experiencing the pangs
of 'equilibrium' phase for many years, India unfortunately
continues to be in the thick of the 'equilibrium' phase. It
is in this sense that, when we view strikes as weapons of
collective bargaining, that we understand the role
perspective of strike as one trying to enforce by the
autonomy method an agreement reached between the workmen on
the one hand and management on the other.

Hence, any policy on labour management relations, is
required to clarify, what role is reserved for law. Is it
one of banning or controlling all strikes and work stoppages
or looking to strikes as legitimate actions in a process of
rule enforcement. Such an effort has not been made in free
and democratic India. Unless the role perspective is defined, we are afraid, we may remain in wilderness and left groping, while never really reaching the end. Acceptance of the 'autonomy' model and as one prevailing in Great Britain, would have helped the Indian industrial relations system achieve a sense of maturity, which we have seen in Chapter IV of this work, is greatly lacking.

However, the Supreme Court of India, in its various pronouncements has treated strikes as weapons of collective bargaining without relating this to any particular theory. We may now just go through some of the observations the Court has made over the years.

Justice P B Gajendragadkar in, Management of Kair Betta Estate v Rajmanickam, laid the Law thus:

"Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see to his point of view and to accept his demands. In the struggle between capital and labour the weapon of strike is available to labour and is often used by it, so is the weapon of lock-out available to the employer and can be used by him. The use of both the weapons by the respective parties, however, be subject to the relevant provisions of the Act, that is Chapter 5 which deals with strikes and lock-outs clearly brings out the anti-thesis between the two weapons.
and the limitations subject to which both of them must be exercised"

A similar sentiment has been expressed by Justice Krishna Iyer in *Bangalore Water Supply and Sewerage Board v A Rajappa*, wherein he said:

"How can we, confirmably to recognised rules of legal construction, attempt to limit, in an instrument of self-Government for this continent the simple and comprehensive words 'Industrial Disputes' by any apprehension of what we might imagine would be the effect of a full literal construction or by conjecturing what was in the minds of framers of the Constitution or by the forms industrial disputes had more recently assumed? 'Industrial warfare' is no mere figure of speech. It is not the mere phrase of theorists. It is recognised by the Law as the correct description of internal conflicts in industrial matters. It was adopted by Lord Loreburn in *Conway v Wade*. Strikes and lock-outs are correctly described as 'weapons'. These arguments hold good for the Indian Industrial Statute and so Section 2(j) must receive comprehensive literal force limited only by some cardinal criteria."

Again, in *Gujarat Steel Tubes Limited v G S T Mazdoor Sabha*, Justice Krishna Iyer said:

"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. While society in its basic needs of existence, may not be held to ransom in the name of the right to bargain and strikers must obey civilised norms in the battle and not be vulgar or violent hoodlums, industry, represented by intransigent managements may well be made to real into reason by the strike weapon and cannot then sequeal or well complain of loss of profits or other ill effects but must negotiate or get a reference made. The broad basis is that the 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 within the parameters to right to strike is integral to collective bargaining.

Reading the above excerpts, one is prone to conclude that there exists some theory, on the basis of which the Supreme Court has made these observations. The influence of the developments in Great Britain and USA in the field of industrial relations, on the minds of our judges is obvious. But these observations have in no way been linked to the statutory provisions or the strike law prevailing in India. Thus, one is likely to come to the conclusion that there exists the 'autonomy' model in India too, which actually is not so. Unconsciously, the Courts seem to think that the 'autonomy' model exists in India, while statutorily there exists the 'equilibrium' pattern of matching 'strikes' with
'lock-outs'. This state of confusion seems to have made many to believe that strikes act as weapons of collective bargaining to enforce rules made by the parties. The truth actually is, that the policy makers have not bothered to lay down the role perspective of strikes and the judiciary apart from making some observations 'obiter' has hardly made an all out effort to put into motion the 'autonomy' pattern so as to permit strikes to play their legitimate role in industrial conflict. It is here that one may find justification for legal intervention in a system wedded to democracy and only to enforce the values enshrined in the Constitution. Even developments in the international field seem to point in this direction as will be clear from a reading of the Chapter that follows.
FOOT NOTES

1 Elias, Patrik, Napier Brian Wallington Peter, 
Labour Law Cases and Materials at p 210

Committee, (Government of Gujarat, 1974)

3 Ibid at p 3

4 Ibid

5 Ibid at pp 4-5

6 Quoting Duksoo, Chang, British Methods of Industrial 
Peace

7 Behrend, Hilde, "The Field of Industrial Relations," 
British Journal of Industrial Relations, vol 1, No 3, 
October (1963) at pp 383 to 394

8 In Place of Strife- A Policy for Industrial 
Relations, Presented to Parliament by Secretary of State 
and Secretary for Employment in January (1963)

9 The National Commission on Labour, Report, p 57

10 Dahrendorf, Ralf, Class and Class Conflict in Industrial 
Society, (1963) at pp 64 and 65

11 Ibid at p 65

12 Ibid

13 The National Commission on Labour, Report at p 58

14 Flanders, A, Industrial Relations - What is Wrong With 
the System? (1965)

15 Ibid

16 Margerison, C J, "What do we mean by Industrial 
British Journal of Industrial Relations, at p 273

17 Ibid.

18 Ibid at p 274
19 Ibid
20 Ibid
21 Ibid
22 The National Commission on Labour, Report, at p. 307
23 Kahn - Freund, O., and Hepple, Bob, Laws Against Strikes, (Fabian Research Series 305) at pp 5-6
24 Ibid
25 Ibid
26 Ibid
27 Act No XIV of 1947
28 The National Commission on Labour, Report, p 383
29 (1909) A C, p 506
30 Ibid at p 509
31 Ibid at p 510
32 Ibid at p 511
33 Emphasis added
34 (1909) A C at p 506
35 (1909) 1 K B, at p 310
36 (1964) 1 All E R 367
37 Ibid, at p 367 to 379
38 Ibid at p 373
39 Ibid, at p 374
40 (1964) 1 All E R 367
41 (1964) 2 All E R 209
42 Ibid at p 214
43 (1964) 1 All E R. 367.
44 (1964) 2 All E R 209
45 Ibid at p 217
46 (1968) 3 All E R C A , p 452
47 Ibid at p 458
48 A I R (1960) S C p 893
49 Ibid at p 895
50 (1978) Lab I C p 467
51 Ibid at p 485
52 (1980) 1 L L J, p. 168
53 Ibid