RIGHT TO CIVIL DISOBEDIENCE: IS IT JUSTIFICATION FOR STRIKE BY GOVERNMENT SERVANTS?

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THE LEGALITY of strike[1] is a controversial issue since the enactment of the Constitution. Since the Constitution was the result of the freedom struggle the framers of the Constitution were very particular in ensuring that the fundamental freedoms of the citizens, including the rights related to dissent and protest, ought to be included in the Constitution. So the right to freedom of speech and expression, right to form association and union, and right to assemble are guaranteed as fundamental rights. There was a view that right to strike is a necessary concomitant of right to form association and union since most strikes[2] are undertaken by *labour unions* during *collective bargaining*.[3] However this argument was rejected by the Supreme Court in *All India Bank Employees Association* v. *National Industrial Tribunal*.[4] In *Rangarajan* v. *Tamil Nadu*[5] the court had gone a step further and declared that the government servants had not even the equitable right to strike. This extreme view of the Supreme Court gave rise

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1. Strike, is the withdrawal or cessation of labour by employees. See *Osborn's Concise Law Dictionary* (Seventh Edition). A strike usually takes place in response to *grievances* of workers. See also 9 *Encyclopedia Britannica* 614 (1977).

2. Strike was an effective weapon in the hands of employees during the *industrial revolution*, when mass *labour* became important in *factories* and *mines*. In most countries, they were quickly made illegal. However most western countries partially legalized strike in the late 19th or early 20th centuries. Strikes are sometimes used to put pressure on governments to change policies. Strikes may destabilise the rule of a particular political party. A notable example is the *Gdañsk Shipyard* strike led by *Lech Wa³êsa*. This strike was significant in the struggle for political change in *Poland*, and was an important mobilised effort that contributed to the fall of governments in communist East Europe

3. The object of collective bargaining is to obtain a contract (an agreement between the union and the company, and the contract may include a no-strike clause which prevents strikes, or penalizes the union and/or the workers if they walk out while the contract is in force. The strike is typically reserved as a threat of last resort during negotiations between the company and the union, which may occur just before, or immediately after, the contract expires.

4. AIR 1962 SC1962 (five member constitutional bench).

5. AIR 2003 SC 3030 (two member bench).

to strong protests from the trade union activists and others.[6]

The fundamental question involved in this issue is nothing but the legal basis of right to strike. A critical analysis of the judicial decisions on right to strike and the jurisprudence of right to dissent and protest establishes that the only justification of strike is the fact that it is an aspect of civil disobedience. In the first part of this article judicial decisions on right to strike is examined , in the second part the jurisprudential aspects of civil disobedience is looked at and in part three the legal consequences of treating right to strike as an aspect of right to civil disobedience is discussed.

I Judicial approach towards right to strike

The constitutional basis of right to strike had come before the Supreme Court in several cases. *All India Bank Employees Association* v. *National Industrial Tribunal*[7] is the most important decision in this regard since the constitutional basis of the right to strike was examined by a five member constitutional bench of the Supreme Court. Facts of the case disclose that section 34-A of the Banking Companies Act, 1949 was introduced in 1960, providing that no banking company shall be compelled to produce or give inspection of its books of account or other document or furnish or disclose any statement or information which the company claims to be of a confidential nature and the production etc., of which would involve disclosure of information relating to any reserves not shown as such in its published balance sheet or any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions. Sub-section (2) of section 34-A provides that any authority, before whom the question as to whether any amount out of such reserves or provisions should be taken into account, may refer the question to the Reserve Bank and it shall furnish to the authority a certificate stating that the authority shall or shall not take into account the amount specified therein. Sub-section (3) makes section 34-A applicable to only such banking companies whose operations extend beyond one state. The appellant contended that section 34-A contravened the fundamental right guaranteed to trade unions by article 19(1)(c) of the Constitution as it prevented them from effectively exercising the concomitant right of collective bargaining in respect of wages, bonus etc. before industrial tribunals by shutting out important and relevant evidence. Though right to strike was not a direct issue, the court examined that aspect since there was a specific contention

6. See Anirudh Rastogi & Siddharth Srivastava, "Is There a Right to Strike" 2 *Combat Law* 411(2004).

7. *Supra* note 4.

that right to strike is a fundamental right under article 19(1)(c) which reads thus: [8]

> Article 19 (1) All citizens shall have the right - (c) to form associations or unions.

On behalf of the petitioner it was contended that the right of workmen to form unions or associations which is the right guaranteed by sub-clause (c) of clause (1) of article 19 on its literal reading had been denied by the impugned legislation. So it was argued that it would not be a proper construction of the content of this guaranteed freedom to read the text literally but that the freedom should be so understood as to cover not merely a right to form union in the sense of getting their union registered so as to function as union, but that it extended to confer upon unions so formed a right to effectively function as an instrument for agitating and negotiating and by collective bargaining secure, uphold or enforce the demands of workmen in respect of their wages, prospects or conditions of work. The arguments were advanced as follows:

(1) The Constitution guarantees, by sub clause (c) of clause (1) of article 19, to citizens in general and to workers in particular the right to form unions. The expression 'union' in addition to the word, 'association' found in the article refers to associations formed by workmen for "trade union" purposes; the word "union", being specially chosen to designate labour or trade unions.

(2) The right to form union in the sense of forming a body carries with it as a concomitant right a guarantee that such union shall achieve the object for which it was formed. If this concomitant right were not conceded, the right guaranteed to form union would be an idle right, an empty shadow lacking all substance.

(3) The object for which labour unions are brought into being and exist is to ensure collective bargaining by labour with the employers.

The necessity for this has arisen from an incapacity stemming from the handicap of poverty and consequent lack of bargaining power in workmen as compared with employers which is the *raison d'etre* for the existence of labour organizations. Collective bargaining in order to be effective, labour

8. The right is subject to the qualification contained in cl.(4), reading:

"(4). Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interest of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

must withdraw its co-operation from the employer. This is an exercise of fundamental right to strike, a right which is thus a natural deduction from the right to form unions guaranteed by sub-clause (c) of clause (1) of article 19. As strikes, however, produce economic dislocation of varying intensity or magnitude, a system has been devised by which compulsory industrial adjudication is substituted for the right to strike. This is the ratio underlying the provisions of the Industrial Disputes Act, 1947 under which the government is empowered in the event of an industrial dispute which may ultimately lead to a strike or lock-out or when such strikes or lock-outs occur, to refer the dispute to an impartial tribunal for adjudication with a provision banning and making illegal, strikes or lock-outs during the pendency of the adjudication proceedings. The provision of an alternative to a strike in the shape of industrial adjudication is a restriction on the fundamental right to strike and it would be reasonable and valid only if it were an effective substitute.

However, the Supreme Court rejected this contention pointing out that the right to form association guaranteed by labour legislation is not confined to employers . It was observed:[9]

> [B]oth under the Trade Unions Act as well as under the *Industrial Disputes Act* the expressions 'union signifies not merely a union of workers but includes also unions of employers. If the fulfilment of every object for which an union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to an union of employers which would result in an absurdity. We are pointing this out not as any conclusive answer, but to indicate that the theory of learned Counsel that a right to, form unions guaranteed by sub-cl. (c) of Cl.(1) of Art. 19 carries with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within Cl. (4) of Art. 19 which might in any way hamper the fulfillment of those objects, should be declared unconstitutional and void under Art. 13 of the Constitution, is not a proposition which could be accepted as correct.

The court accepted the need to give a liberal interpretation to the constitutional provisions. It was pointed out that such interpretation did subserve the basic objective of the provision. It was observed:[10]

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9. Id. at 180.
10. *Ibid.*

> There is no doubt that in the context of the principles underlying the Constitution and the manner in which its Part III has been framed the guarantees embodied in it are to be interpreted in a liberal way so as to subserve the purpose for which the constitution-makers intended them and not in any pedantic or narrow sense, but this however does not imply that the Court is at liberty to give an unnatural and artificial meaning to the- expressions used based on ideological considerations.

The court further pointed out that the provision conferring right to form association is not absolute, but subject to reasonable restrictions under article 19(4) and observed:[11]

> Besides the qualification subject to which the right under sub-cl. (c) is guaranteed, viz., the contents of cl. (4) of Art. 19 throw considerable light upon the scope of the freedom, for the significance and contents of the grants of the Constitution are best understood and read in the light of the restrictions imposed. If the right guaranteed included not merely that which would flow on a literal reading of the Article, but every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefore, would be not merely those in cl.(4) of Art, 19, but would be more numerous and very different, restrictions which bore upon and took into account the several fields in which associations or unions of citizens, might legitimately engage themselves. Merely by way of illustration we might point out that learned Counsel admitted that though the freedom guaranteed to workmen to form labour unions carried with it the concomitant right to collective bargaining together with the right to strike, still the provision in the *Industrial Disputes Act* forbidding strikes in the protected industries as well as in the event of a reference of the dispute to adjudication under s. 10 of the *Industrial Disputes Act* was conceded to be a reasonable restriction on the right guaranteed by sub-cl.(c) of cl.(1) of Art. 19. It would be seen that if the right to strike were by implication a right guaranteed by sub-cl. (c) of cl. (1) of Art. 19 then the restriction on that right in the interests of the general public, viz., of national economy while perfectly legitimate if tested by the criteria in cl. (6) of Art. 19, might not be capable of being sustained as a reasonable restriction imposed for reasons of morality or public order.

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11. *Ibid.*

The court categorically stated that right to strike is not a fundamental right.

The issue again came before the Supreme Court in *Kameshar Prasad* v. *Bihar.*[12] The issue was the constitutional validity of rule 4-A, 371 which was introduced into the Bihar Government Servants' Conduct Rules, 1956, by a notification of the Governor of Bihar dated 16.8.1957 which reads :

> 4-A. Demonstrations and strikes:- No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service.

Considering the fact that in *All India Bank Employees' Association*[13] the Supreme Court had considered the question as to whether the right to form an association guaranteed by article 19(1)(c) involved or implied the right to resort to a strike and answered it in the negative, the petitioners confined their arguments to the question of the legality of the provision as regards the right to hold demonstrations. The validity of the rule, therefore, insofar as it prohibits strikes, was no longer under challenge. However, the arguments raised[14] in the case was relevant in the matter of the legal dimensions of strike by government servants.

The argument advanced on behalf of the appellants was that service rule being one framed under article 309 is a "law" within the definition of article 13(3) of the Constitution and it would have to be pronounced invalid to the extent that it is inconsistent with the provisions of part III of the Constitution. It was pointed out that article 19(1) confers on all citizens the right by sub-clause (a) to freedom of speech and expression, and by sub-clause (b) to assemble peacefully and without arms, and the right to "demonstrate" would be covered by these two sub-clauses. By the mere fact that a person enters government service, he does not cease to be "a citizen of India", nor does that disentitle him to claim the freedoms guaranteed to every citizen. In fact, article 33 which enacts that "Parliament may by law determine of what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them" obviously proceeds on the basis of persons in the service of government being entitled to the protection of fundamental rights guaranteed by part III of the Constitution. It is inserted to enable special

12. AIR1962 SC 1166 (five member constitutional bench).

13. *Supra* note 4.

14. The limitation imposed by law on the enjoyment of fundamental right by the civil servant is the most important issue.

provision being made for the abrogation, if necessary, of the guaranteed freedoms in the case of two special services only, viz., the army and the police force. According to the petitioner the approach to the question regarding the constitutionality of the rule should be whether the ban that it imposes on demonstrations would be covered by the limitation of the guaranteed rights contained in article 19(2) and 19(3).

However, on behalf of the Union Government it was argued that every one of the fundamental rights guaranteed by part III could be claimed by a government servant. It was urged that as a person voluntarily entered government service he must by that very act be deemed to have consented to enter that service in such reasonable conditions as might be framed for ensuring the proper working of the administrative machinery of the government and for the proper maintenance of discipline in the service itself. According to article 310 every office is held, subject to the provisions of the Constitution, at the pleasure of the President or of the Governor, as the case may be, and provided a rule regulating the conditions of service was reasonable and was calculated to ensure the purposes above- named its reasonableness and validity could not be tested solely by reference to the criteria laid down in clauses (2), (3) or (4) of Art. 19. In this connection counsel for the Union of India referred to a few decisions of the American courts for the proposition that the constitutionality of special rules enacted for the discipline of those in the service of government had to be tested by criteria different from those applicable to ordinary citizens. *Mc Auliffe* v. *New Bedford,*[15] was cited in support of the position that servants of government formed a class and that conditions of service imposed upon them which are reasonable and necessary to ensure efficiency and discipline cannot be questioned on the ground of their contravening any constitutional guarantees. Attention was drawn to the following passage in the judgment of Holmes J relating to The Police Regulation:[16]

> There is nothing in the Constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. *The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman.* There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle, the city may impose any

15. 91' Law. Ed. 791,794.
16. *Id.* at 796(emphasis added).

> reasonable condition upon holding offices within its control. This condition seems to us reasonable, if that be a question open to revision.

The Supreme Court rejected this contention and observed:[17]

> In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article- selects two of the Services under the State—members of the armed forces and forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them—from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be, deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19 (1) (e) and (g).

The members of the civil servants except the members of the two services mentioned in article 33 can claim fundamental rights as in the case of other citizens. The court allowed the appeal in part and granted the appellants a declaration that rule 4A in the form in which it stands prohibiting "any form of demonstrations is violative of the appellants' rights under article 19(1)(a) & (b) and should therefore be struck down". It is held that the rule, in so far as it prohibits a strike, cannot be struck down since there is no fundamental right to resort to a strike.

It appears that though the court reiterated the view that right to strike is a fundamental right the court recognized right to demonstration as a fundamental right.

In *Radhey Shyam Sharma* v. *The Post Master General Central Circle, Nagpur*,[18] the employees of Post and Telegraph Department of the

17. *Supra* note 12 at 1170.
18. (1964) 7 SCR 403.

government went on strike from the midnight of 11.7.1960 throughout India and petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before the Supreme Court. It was contended that sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No.1 of 1960 were violative of fundamental rights guaranteed by clauses (a) and (b) of article 19(1) of the Constitution. The court considered the ordinance and held that sections 3, 4 and 5 of the said ordinance did not violate the fundamental rights enshrined in article 19(1)(a) and (b) of the Constitution. It further held that a perusal of article 19(1)(a) shows that there is no fundamental right to strike and all that the ordinance provided was with respect to any illegal strike. For this purpose, the court relied upon the earlier decision in *All India Bank Employees' Association*.[19]

But there is a basic question whether strike is an illegal action inspite of the fact that it is not a fundamental right. The provisions of Industrial Disputes Act, 1947 indicate that strike could not be treated as an illegal action. Section 2(q) of the said Act defines the term strike. It says, "strike" means a cessation of work by a body of persons employed in any 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 accept employment. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise their strike would be deemed to be an illegal strike. Section 22(1) of the Industrial Dispute Act, 1947 put certain prohibitions on the right to strike. It provides that no person employed in public utility service shall go on strike in breach of contract:

(a) without giving to employer notice of strike within six weeks before strike; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

It is to be noted that these provisions do not prohibit the workmen from going on strike but require them to fulfil certain conditions before going on strike. Further these provisions apply to a public utility service

19. *Supra* note 4.

only. So the strikes which comply with the provisions of the Act could not be treated as illegal strike. In addition well accepted principles of human rights recognizes the right to strike.[20]

In *Gujarat Steel Tubes* v. *Its Mazdoor Sabha*[21] Krishna Iyer J considered the scope and extent of right to strike and observed:[22]

> The right to unionise, 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 itself, 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 reel into reason by the strike weapon and cannot then squeal or wail and complain of loss of profits or other ill-effects but must negotiate or got a reference made. The broad basis is that workers are weaker although they are the producers and their struggle to better their lot has the sanction of the rule of law. Unions and strikes are no more conspiracies than professions and political parties are, and, being far weaker, need succour.
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> Part IV of the Constitution, read with Art. 19, sows the seeds of this burgeoning jurisprudence. The Gandhian quote at the beginning of this judgement sets the tone of economic equity in Industry. Of course, adventurist, extremist, extraneously inspired and puerile strikes, absurdly insane persistence and violent or scorched earth policies boomerang and are anathema for the law. Within these parameters the right to strike is integral to collective bargaining.

Further, Krishna Iyer J had opined that a strike could be legal or illegal and even an illegal strike could be a justified one.

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20. Art. 8 (1) (d) of the International Covenant of Economic, Social and Cultural Rights (ICESCR) provides that the States Parties to the Covenant shall undertake to ensure: "the right to strike, provided that it is exercised in conformity with the laws of the particular country". Article 2 (1) of the Covenant provides: "Each State Party to the present Covenant undertakes to take steps, ... with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures".

21. AIR 1980 SC 1896 (three member bench).

22. *Id.* at 1927.

In *B.R. Singh* v. *Union of India* [23] Ahmadi J considered the issue of right to strike and observed:[24]

> The right to form association or unions is a fundamental right under Article 19(1)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit- in, work-to-rule, asentism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries.

It seems that Ahmadi J had projected the view that strike is a right. However, there is no clarity regarding the nature of right – whether it is fundamental right, statutory right or common law right. Since there is a larger bench decision in *All India Bank Employee's Association*[25] to the effect that strike could not be treated as fundamental right, so if the view expressed by Ahmadi J can be treated as the ratio of the decision one can arrive at a conclusion that right to strike is a statutory right or common law right.

In *Syndicate Bank* v *K Umesh Nayak* [26] Sawant J considered the extent of right to strike and took the view that though strike is a right its misuse should be controlled. Sawant J observed:[27]

> The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a

23. (1989) 4 SCC 7109 (two member bench).
24. *Id.* at 720.
25. *Supra* note 4.
26. (1994) 5 SCC 573 (five member constitutional bench).
27. *Id.* at 591.

> breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

In *Ex-Capt. Harish Uppal* v. *Union of India and Another*[28] the Supreme Court held that lawyers have no right to go on strike or give a call for boycott and they cannot even go on a token strike. The court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation.

In Rangarajan v. *Tamil Nadu*[29] the Supreme Court had taken a negative attitude towards right to strike. The case came before the court owing to the unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands. The court referred to the earlier decisions which stated that right to strike is not a fundamental right and cited the following observation from *Communist Party of India (M)* v. *Bharat Kumar and others:*[30]

28. (2003) 2 SCC 45.
29. *Supra* note 5.
30. (1998) 1 SCC 201.

> There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. The relevant paragraph 17 of Kerala High Court judgment reads as under:— "17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it".

In addition the court referred to the provisions of Tamil Nadu Government Servants Conduct Rules, 1973 and observed:[31]

> Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises — (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

The court arrived at the conclusion that there is no moral or equitable justification to go on strike and apart from statutory rights, government employees cannot claim that they can take the society at ransom by going

31. *Supra* note 5 at 3037.

on strike. According to it "even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances" since "strike as a weapon is mostly misused which results in chaos and total maladministration".[32]

It is submitted that the reasoning of the court is not correct. It is true that in *All India Bank Employees*[33] the Supreme Court had categorically stated that right to strike is not a fundamental right. That does not mean that right to strike is neither legal nor justifiable. Speaking for a three member bench Krishna Iyer J had opined in *Gujrath Steel Tubes*[34] that "a strike could be legal or illegal and even an illegal strike could be a justified one" In *Syndicate Bank*[35] speaking for a five member bench Sawant J took the view that "whether there has been a breach of the relevant provisions" is the only question to be considered for determining the legality of a strike. In such a situation how can a two member bench declare that there is not even an equitable right to strike. One can argue that the observation of Krishna Iyer and Sawant JJ is confined to the employees coming under Industrial Disputes Act and the decision in *T.K. Rangrajan*[36] is related to government servants who do not come with in the purview of Industrial Disputes Act. But such an argument is untenable considering the fact no specific reason had been stated in the judgment for adopting different standards for the strike of government employees. It is relevant to note that in *T.K. Rangrajan* the question whether right to strike is a right was not raised as an issue and arguments of both sides were nor heard. Inspite of this the court held that government servants had no right to strike. So it is difficult to treat this principle as a binding precedent.

So even after the decision the basic question remain whether strike is justifiable under any circumstance. If the answer is no, provisions of Industrial Disputes Act relating to illegal strike will become meaningless. So there should be justification for strike. For persons coming under

32. The court pointed out the adverse effects of strike in the following words:
> Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another.

33. *Supra* note 4.
34. *Supra* note 21.
35. *Supra* note 26.
36. *Supra* note 5.

Industrial Disputes Act all strikes other than illegal strikes may be treated as justifiable. A careful study of the concept of civil disobedience discloses that the right to civil disobedience is the only justification for strike of government servants.

Civil disobedience

Throughout the world civil disobedience has been adopted as an effective means of public protest.[37] It is a political act involving disobeying governmental authority on grounds of moral objection, with the aim of promoting a just society. The term was first used by H. D. Thoreau.[38] Usually this kind of protest is used to compel the government to change the unjust laws. But in India Mahatma Gandhi had used this method[39] as an effective weapon for freedom struggle. In the US, civil disobedience was the most important means adopted by Martin Luther King[40] in the civil rights movement, which intended fundamental social revolution. Peter Subir summarizes this concept as follows:[41]

> Civil disobedience is a form of protest in which protestors deliberately violate a law. Classically, they violate the law they are protesting, such as segregation or draft laws, but sometimes they violate other laws which they find unobjectionable, such as trespass or traffic laws. Most activists who perform civil disobedience are *scrupulously non-violent*, *and willingly accept legal penalties*. The purpose of civil disobedience can be *to publicize an unjust law or a just cause; to appeal to the conscience of the public*; to force negotiation with recalcitrant officials; to "clog the machine"

37. See Ronald Dworkin, *A Matter of Principle* 104-106 (1985).

38. H. D. Thoreau, *On the Duty of Civil Disobedience* (1849).

39. Civil disobedience movement launched in 1930 under MK Gandhi's leadership was one of the most important phases of India's freedom struggle. The Simon Commission, constituted in Nov. 1927 by the British Government to prepare and finalize a constitution for India and consisting of members of the British Parliament only, was boycotted by all sections of the Indian social and political platforms as an 'All-White Commission'. The opposition to the Simon Commission in Bengal was remarkable. In protest against the Commission, a hartal was observed on 3 Feb 1928 in various parts of the province. Massive demonstrations were held in Calcutta on 19 Feb1928, the day of Simon's arrival in the city. On 1 Mar 1928, meetings were held simultaneously in all thirty-two wards of Calcutta urging people to renew the movement for boycott of British goods.

40. M.L. King "The Civil Rights Struggle in the United States Today" 20 *Rec*. 21 (1965).

41. Peter Suber, "Civil Disobedience" in Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia* 110-113 (Garland Pub. Co, 1999) (emphasis added) .

> (in Thoreau's phrase) with political prisoners; to get into court where one can challenge the constitutionality of a law; to exculpate oneself, or to put an end to one's personal complicity in the injustice which flows from obedience to unjust law —or some combination of these. While civil disobedience in a broad sense is as old as the Hebrew midwives' defiance of Pharaoh, most of the moral and legal theory surrounding it, as well as most of the instances in the street, have been inspired by Thoreau, Gandhi, and King.

John Rawls defines civil disobedience as "a public, non violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.[42] According to Joseph Raz[43] morally and politically motivated disobedience may be classified as (1) revolutionary disobedience (intending to change system of government) (2) civil disobedience in intending to change law or public policy, and (3) conscientious objection (breach of law for the reason that the agent is morally prohibited to obey it) .

According to Mahathma Gandhi, it is a "civil breach of immoral statutory enactments".[44] Definition given by Rawls is broader than that given by Gandhi considering that according to Rawls' definition the enactment broken need not be immoral by itself, or even if it is , it should be accompanied by an aim of brining about change.

There exists divergent views regarding basic issue whether civil disobedience could be treated as a right. It is relevant to note that all advocates of civil disobedience had taken the view that though they are breaking the law they are willing to receive the punishments awarded by the state for violating the law.[45]

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42. John Rawls, *A Theory of Justice* 364 (1971).

43. See *Authority of Law* 263 (1994).

44. M.K. Gandhi, *Satyagragha* 3 (1951). According to Howard Zinn "civil disobedience is any deliberate violation of law for a vital social purpose". See Greena walt, "A Contextual Approach to Disobedience" 70 *Colum bia Law* 60 (1960).

45. See M.K. Gandhi *id.* at 14. However, there is a contrary view. Schlesinger observed in "Civil Disobedience: The Problem of Selective obedience to Law" 3 *Hastings Const. L.Q.* 948, 952 (1976):

> Both Prof. Howard Zinn and Ronald Dworkin state that those who engage in civil disobedience are under no obligation to accept the legal penalty. And in a sense Zinn and Dworkin are quite right; as Herbert Storing has pointed out, the usual manifestation of respect for law by citizens is obedience; if citizens needn't obey the law to show respect for it, why is it necessary for them to accept the law's penalty to show that respect? Thus Dr. King's argument that accepting the penalty is a logical necessary component of civil disobedience seems to be hard to sustain.

Advocates of civil disobedience have their theoretical support on both non legal basis and legal basis. The first non legal basis is that the right to disobey unjust laws is a matter of conscience. King had justified[46] his action of civil disobedience relying on this argument. In *United States* v *Seegar*[47] the US Supreme Court had pointed out that in the form of conscience there existed a "moral power higher than the state". According to the court, "liberty of conscience has a moral and social value which makes it worthy of protection at the hands of the state."[48] Rawls is of the view that "political principles that underlie and guide the interpretation of the Constitution" [49] influence the persons who resort to civil disobedience.

The "social good" is the second basis in this regard, Greenawalt justifies civil disobedience on the basis of its contribution to social good. According to him, civil disobedience is justified only when the reason for violation outweighs the inconvenience caused to society.[50]

Natural law theory is another non legal basis for justifying civil disobedience.[51] According to this theory, human beings are endowed with certain inalienable rights which can never be bartered away. Right to protest against intolerable wrong is recognized as an important inalienable right. Gandhi asserted that civil disobedience is an inherent right of citizens. It is a birthright that cannot be surrendered without surrender of one's self respect.[52] Giving answer to the question "how can you advocate breaking some laws and obeying others" King stated that:[53]

> [T]he answer is found in the fact that there are two types of laws . There are just and there are unjust laws. I would agree with Saint Augustine that 'unjust law is a human law that is not rooted in eternal and natural law'.

The only legal basis for justifying civil disobedience is the argument that it could be treated as an aspect of freedom of speech and expression. Though this view has been highlighted by some academics,[54] judiciary is

46. M.L. King, *supra* note 40.

47. 380 U.S. 163 (1965).

48. *Id.* at 170.

49. Rawls, *supra* note 42 at 690.

50. Greenawalt, *supra* note 44.

51. See John Locke*, Two Treatises of Government, Second Treatise* Ch. XI (1960).

52. M.K. Gandhi, *supra* note 44 at 174.

53. M.L.King, *Why We Cann't Wait* 82 (1963). In 1963 King went beyond, the distinction of just and unjust laws and justified the breaking of law which is not unjust, to call attention to overall injustice

54. See Narayana Rao Rampillai, : Civil Disobedience and First Amendment" 32 *JILI* 497, 498-99 (1990) See also Lira Goswami, "Legal Obligation and Limits of Civil Disobedience" 29 *JILI* 164, 178-80 (1987).

not yet prepared to accept this view. In *Walker* v. *Birmingham*[55] U.S. Supreme Court observed that the 'law is not hospitable to any non-legal claims of right and demonstrators are not constitutionally free to ignore all procedures of law and carry their battle to the streets'.[56]

Black J in his dissenting judgment in *Cox* v. *Louisiana*[57] expressed his fears thus:[58]

> Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind spirited multitude of today, to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplanted tomorrow by street mobs pressuring the courts for precisely opposite ends.

Krishna Iyer J summarizes his attitude towards civil disobedience as a judge and as a human jurist in the following words:[59]

> As Judge, I cannot contemplate civil disobedience which is illegal. As humanist jurist, I have to allow it play in the very restricted area rigorously delimited by Gandhi. In any case, those who advocate civil disobedience must do so with great sense of responsibility as they must bear full moral blame-worthiness for violent deviances and improper evasions which are bound to occur.

Another important aspect is whether different approaches should be taken in permitting civil disobedience taking into account the types of government. Lira Goswami justifies civil disobedience in a dictatorship citing the example of Nazi Germany:[60]

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55. 388 U.S. 307 (1967).

56. *Id.* at 321.

57. 379 U.S. 559 (1964).

58. *Id.* at 584.

59. V.R.Krishna Iyer , *Jurisprudence and Juris Conscience A La Gandhi* 47 (1976). See also V.R.Krishna Iyer, *Human Rights and the Law* 295-331 (1986).

60. It was observed: in Lira Goswami, *supra* note 54 at 170-77:

None would deny that Nazi Germany was a dictatorship sustained by terror. It enacted some of the most pernicious laws and imposed a total commitment to the state overriding all other commitments to family, society or humanity. To grudge-informer cases are an illustration of this total commitment to the raw power of the state. Few would deny the moral duty of the citizen to disobey such unjust laws under a government devoid of any sense of justice and morality. Whatever obedience was received by the state was pure "extortion" for it wears fear which made most people obey. The state itself had no moral authority to command any obedience. In such a society, even if the majority of the Germans approved of the pernicious laws, a small group of morally sensitive individuals would still be justified not only in opposing such draconian measures but also in refusing to obey them. When society degenerates to such an extent, it

> The Nuremberg Trials are often invoked to support the notion that a citizen has the right to disobey unjust commands of the state.

There exist divergent views regarding the question whether civil disobedience is permissible in a democracy. According to Schelsinger "Civil disobedience is destructive of a regime regarded as fundamentally democratic. Analysing the differences between the characteristic features of democratic regime and undemocratic regime he pointed out that "because the United States is fundamentally democratic, civil disobedience is not justified".[61]

It is to be noted that if the distinction of democratic and undemocratic character of regime is followed it would be difficult to justify Gandhi's *satyagraha* movement in India during British rule and the civil rights movement led by King in America. It is relevant to note that Gandhi had admitted practicing civil disobedience even after home rule. In his evidence before the Hunter Committee he was presented with the following questions:[62]

> But with all the rights of the self government we shall be able to dismiss the ministers? Answer: I cannot feel on the point so assured for ever. In England it often happens that ministers can continue in the executive even though they lose all the confidence of the public. The same thing may happen here too and therefore I can imagine a state of things in this country which would need satayagraha even under home rule.

It seems that the view taken by Gandhi is that even in a democracy the civil disobedience would be adopted as a means of protest, considering the fact that the elected representatives of the people may subsequently lose their confidence of the people. The possibility of abuse and misuse of powers by the elected representatives may be another reason.

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becomes the moral duty of every enlightened citizen to refuse to be a party to such an intolerable wrong and demonstrate his non co-operation by refusing to submit to such unjust laws

See also Abe Fortas, *Concerning Dissent and Civil Disobedience* 56 (1968).

61. Schlesinger, *Supra* note 45 at 948, 959.

62. Gandhi , *supra* note 52 at 34 : The following observation of Coffin in Willaim Solance Coffin, Jr. Morris 1. Leibman, *Civil Disobedience: Aid or Hindrance to Justice* 3 (1972) is also relevant in this context:

> Just as powerful nations dominate the international community, so powerful individuals or groups can dominate a domestic community, be it a small town, a big city, or a nation. The powerful have many legal forms of coercion-economic power, access to government propaganda . So it is hardly surprising to see the law protecting the right and powerful more often than it helps the poor and the weak.

Above discussion reveals that the cardinal principles civil disobedience are following:

1. Civil disobedience should be against government
2. Violation of law is the mode of practicing civil disobedience
3. It should not be violent
4. Only right available in relation to civil disobedience is the right to break law and receive the punishment
5. There is no right to disobey law if the offender is not prepared to receive punishment
6. The reason for disobedience is the fact that the particular law or policy adversely affects the offender or public at large

On the basis of above propositions the relation between civil disobedience and right to strike of government servants can be examined.

Civil disobedience and right to strike of government servants

Since the employer of the government servant is government, their strike will always be against government. Reason for the strike is either unjust laws or wrong policy of the government. Violation of law is involved in all strikes since withdrawing from work itself is the violation of law. Normally element of violence is not involved in strike. So there may be no dispute regarding the applicability of all cardinal principles of civil disobedience to the strike by government servants except the principle number five, that is willingness to receive punishment.

The question may arise whether in all strikes government servants are prepared to receive the punishment for breaking the law. The answer is no. There are instances of strike where government servants are going on strike even without losing their salary. Such strike could not be treated as justifiable strike since those who are breaking law are not prepared to receive the punishment for it. Even the strike in the essential services may be justified if the persons engaged in strike are prepared to received severe punishment like dismissal from service.

In this context another question may arise as to whether severe punishment like dismissal from service may be imposed in an ordinary strike? The answer is no since doctrine of proportionality is applicable in such a situation. It is pertinent to note that in *Gujrath Steel Tubes*[63] the three member bench of the Supreme Court had recognized the right to

63. *Supra* note 21.

strike. In *Syndicate Bank*[64] the five member bench of the Supreme Court has stated that "the strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed". Since strike is not a unjustified action, definitely doctrine of proportionality may be applied while awarding punishment for participating in strike. Different standards may be adopted for the cases of mere strike and strike coupled with violence. For tackling the problem of violence general criminal law of the land may be applied. If violence is involved in strike it will lose the character of civil disobedience.

In short all strikes of government servants except violent strike may be treated as the exercise of right to civil disobedience.

64. *Supra* note 26.