CHAPTER – VI

THE ROLE OF THE STRIKES IN INDUSTRIAL RELATIONS

Industrial relations is a dynamic socio-economic process. It is a "designation of a whole field of relationships that exist because of the necessary collaboration of men and women in the employment processes of industry".\(^1\) It is not the cause but an effect of social, political and economic forces. It has two faces, like a coin-cooperation and conflict.\(^2\) The relationship, to use Hegal's expression, undergoes change from thesis to antithesis and then to synthesis. Thus, the relationship starting with cooperation soon changes into conflict and after its resolution again changes into cooperation.\(^3\) This changing process becomes a continuous feature in industrial system.

The relationship between labour and management is based on mutual adjustment of interests and goals.\(^4\) It depends upon economic, social and psychological satisfaction of the parties. Higher the satisfaction, healthier the relationship and in practice it is, however, found that labour and capital constantly strive to maximise their pretended values by applying resources to institutions. In this effort they are influenced by and are influencing others.

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3 Ibid
4 Ibid.
Both of them try to augment their respective income and improve their power position. The major issues involved in the industrial relations process a terms of employment (wages, dearness allowances, bonus, fringe benefits) working conditions, (leave, working hours, health, safety and welfare) non-employment such as job security, personnel issues such as discipline promotional opportunities and among others recognition of trade unions however, in view of sharply divided and vociferously expressed rival claims the objectives of labour and management are not amenable to easy reconciliation. This is all the more so because the resources are limited. Be that as it may, the means adopted to achieve the objectives which vary from simple negotiation to economic warfare adversely affect the community's interest in maintaining an uninterrupted and high level of production. Further, in a country like India where labour is neither adequately nor properly organised, unqualified acceptance of the doctrine of “free enterprise” particularly between labour and management strengthens the bargaining position of the already powerful management.

It is apparent that the State, with ever increasing emphasis on welfare aspect of governmental activity, cannot remain silent and helpless spectator in the economic welfare. The legislative task of
balancing the conflicting interest in the arena of labour management relations proves to be an extremely difficult one, in view of mutually conflicting interests of labour and management. The substantive issues of industrial relations is of perennial nature and thus there can never be a “solution for all times to come.” There can only be broad norms and guidelines as criteria in dealing with issues of industrial relations. The law plays an important role in shaping the structure of industrial relations. It represents the foundation from which the present system and procedure flow to deal with the problems of industrial relations.

Labour problems in usufructuary or even retail handicraft types of industrial organisation do not attract public attention. The workers, wherever employed, are few in number, maintain close contact with the management and the relative position of the management and workers is such that the conflicts, if any, are generally resolved by mutual negotiations. Even where they cannot be resolved, the impact of their conflict on the community is negligible. But it need hardly be emphasised that our laws must ensure social justice to them.

5 See Report of the Study Group on Industrial Relations (Western Region), National Commission on Labour (1969) P.26
6 Ibid.
7 O.P.Thakkar, “Determinants of Industrial Relations” Indian Journal of Labour Economics, P.102
Problems affecting labour management relations assume significance in wholesale handicraft and get increasingly complicated as we proceed from the independent phase of the wholesale handicraft to the factory phase of centralised production. Helped by industrial revolution and buttressed by energy evolution it has become possible for the employer to engage thousands of workers at one and the same time. These employers cannot, and do not maintain personal contact with the workers, who are not infrequently drawn from entirely different regions and who do not even appreciate the implications of the emerging industrial civilization. The loss of workers’ individuality and impersonality are the factors which, among others, aggravate labour-management relations.

Agriculture dominates the Indian scene and the survey carried out by the National Sample Survey Organization in the year 1999-2000, the total employment in both organized and unorganized sector in the country was of the order of 39.7 crore. Out of this, about 2.8 crore were in the organised sector and the balance 36.9 crore in the unorganised sector. Out of 36.9 crore workers in the unorganized sector 23.7 crore workers were employed in agriculture sector, 1.7 crore in construction, 4.1 crore in manufacturing activities and 3.7 crore each in trade and transport, communication and services. The workers in unorganized sector fall in various categories but a large number of them are home based workers engaged in occupations like beedi rolling, agarbatti making, papad
making, tailoring, zary and embroidery work. However, the largest chunk of unorganized labour namely 60 per cent being agricultural workers and cultivators including small and marginal farmers who are badly in need of legal/social protection, has been left out. Be that as it may, the importance of industry cannot be minimized according to Javaharlal Nehru. The alternative to industrialization is to remain backward, underdeveloped, poverty stricken and a weak country. We cannot even retain our freedom without industrial growth.

Rural development is essential for upgrading the living conditions of the overwhelming majority of people and providing minimal economic sustenance to the poverty stricken sections of the community. This is all the more so in view of the 2003-04 statistics which reveal that out of 36.9 crore employees in India, 33.9 crore i.e., 92% work in unorganised sector. But, industrial development is necessary for affluence and for bringing the benefits of scientific and technological progress to all sections of the community.

The importance of sustained industrial production underlines the need of avoiding work-stoppages and loss of production. The economics of the work-stoppages may be recapitulated. Between 1921 and 2004 India lost about 1233.09 million man-days in work-stoppages caused by industrial disputes between workmen and employers. The alarming magnitude of the statistical data

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9 Report of the all Indian Congress Committee at Avadi (January, 1955).
shown in the 1991 census 65.25 million workers were at a standstill for 16.9 days. During 1993-96 the loss of production due to strikes and lockouts was Rs. 1721.6 million and the wage loss was Rs. 921.65 Million. If one were to add the secondary and tertiary effects of work stoppages the figures would be gigantic. Thus, it is said that India loses the highest number of mandays and has the highest rate of absenteeism.

Unemployment and under-employment are the most important economic evils of the welfare state and India is no exception to it. In India one-sixth of the total population of the country is either unemployed or chronically under-employed. As per the Government of India report during 2004 (January-August) about 36.10 million were on the live registers of Employment Exchange. The total number of job-seekers on the live register of Employment Exchange on 31.8.2004 was 40.92 million. The total number of job-seekers placed during 2004 (January-August) were 0.92 lakh. These are the phenomena of Indian industries that have affected to a considerable extent the standard of living and have also created disparity in the working class. They have hampered the growth of the labour movement and trade unions. Political parties may take advantage of the unemployed millions and divert them from the search for gainful employment towards unproductive political actions. Further, under-utilisation of human

13 Ibid.
resources in the agricultural sector is likely to convert agriculturist section of job-seekers into industrial. Unemployment poses a serious threat to development programmes. Government planners should be sensitive to the present problem of unemployment. Labour law can be modelled or remodelled to implement law, policies and programmes to provide relief to the unemployed.

6.1 Industrial Relation

According to 2001 census, there were 127.62 million cultivators and out of them only 32.35 per cent constituted female cultivators. Out of the agricultural labourers of 107.44 million in the same year, women agricultural labourers constituted 44.62 million of these. In case of agricultural labourers there is parity between men and women.

The employment of women workers in modern industrial system has given rise to several problems. First, a set of major social evil involved in the employment of women is "widespread disorganisation of family life."\(^{14}\) The lack of maternal care on the development of a child's personality may continue even in his adult life. The increasing number of juvenile delinquents, stillborn children, abortions, morbidity of women, abnormal pregnancy and premature births is a clear reflection on employment of women.\(^{15}\) Second, the economic problem involved in industrial employment of women is in no way less

\(^{14}\) Mathur and Mathur.
\(^{15}\) Ibid.
significant. The inadequacy of family income and the desire to supplement the meagre family income\textsuperscript{16} compelled women workers to work in industry. But employment in such an establishment does not provide them adequate wages. They are generally placed either in the lower jobs or in the traditional jobs which carry lower salaries and are not given higher posts. Third, “equal pay for equal work” for both men and women has not been fully implemented in; and despite legislation there is a disparity of pay between men and women. Fourth, the employment of women in industry creates a variety of other problems such as hours of work (particularly during night), overtime, health, safety, welfare and maternity leave. Fifth, the legal protection afforded to women workers is also inadequate and involves problems of inadequate inspecting staff. Sixth, working women faces the problem of sexual harassment for which norms have been laid down by the Supreme Court for prevention and regulation.

At an aggregate level, there was a decline in the number of strikes and lockouts during 2000 compared to the previous year. Strikes declined from 540 in 1999 to 426 in 2000, and lockouts came down from 387 in 1999 to 345 in 2000. The reduction in strikes and lockouts was prominent in the public sector and in the State sphere. The States of West Bengal, Tamil Nadu, Gujarat and Andhra Pradesh experienced maximum instances of strikes and lockouts in 2000. The industries facing the highest incidence of strikes and lockouts were textiles, engineering

\textsuperscript{16} Ibid.
and coal mining. Wages, indiscipline, violence and personnel issues were the primary causes for strikes and lockouts.

The mandays lost on account of strikes and lockouts, have shown a lower increase of 2 million in 2000 as compared to an increase of 4-7 million in 1999. The mandays lost due to lockouts increased by 06 million whereas those due to strikes declined by 1-4 million between 1999 and 2000. During the period of 2000 and 2009 the mandays lost in the central sphere and in the public sector increased by 9.2 million and 9.5 million respectively. In contrast, the state sphere and the private sector recorded a decline of 7-2 million and 7-5 million respectively.

It is obvious from the above analysis that industrial disputes are increasing in India. In fact, strikes and lockouts have become quite common in the country today. The rise in industrial disputes was mainly due to economic factors a sharp rise in prices, recession in certain industries which led to retrenchment, lay-off and closure. A striking feature of industrial disputes in India before Independence was a very high propensity to strike. It was because of the reasons that along with the members of trade unions, a large number of non-unionists also participated in strikes. Employers did not accept unions as a necessary institution of industrial society. The result was that in a large number of cases, where disputes would have been settled through negotiation where
strikes took place. Besides, trade unions were under the influence of political parties, therefore, they adopted and emphasised agitational methods. The government approached the problem from the angle of law and order and it was a passive spectator. It realized the importance of industrial harmony in twenties of this century and the Indian Trade Union Act. 1926, and the Industrial Disputes Act, 1929 were passed.17

It might be thought that the staying power of Indian workers would be very low because of their poor economic conditions and, therefore, the average duration of strikes would be short. But, as these figures show, this was not the case. The following reasons can be advanced for this peculiar phenomenon. It is said that during the period of strikes, the workers returned to their villages and their staying power did not have anything to do with the duration of strike.

It has been suggested that the standard of living of Indian workers was too low that they could face hardships better than workers advanced countries. The main function of trade unions in India was to organise and conduct strikes and further, inter union rivalries were so acute that sometimes they resulted in organisational chaos and strike was unduly prolonged. The political movement in the country built a tradition of a staining from work as a sign of protest and in quite a few cases strikes

started for economic reasons acquired a political colour and were
guided by political leaders.\textsuperscript{18} However, during the Second World War,
due to active intervention on the part of the British Government, the
average duration of strike declined. For the pre-War period, the
average duration of strike was 191 days. During 1940-47, it
dropped to 8-4 days. In post-independence period, it was 8.5 days.
One of the reasons for this drop is the establishment of a machinery for
the settlement of industrial disputes. Thus, since 1951, a large proportion
of industrial disputes do not last a long time.

Between 1951 and 1970, the percentage of disputes lasting a day or
less varied between 30-5 and 45-5. Between 1970-80, this percentage
varied between 20-50 and 25-00.

The percentage of disputes lasting for more than thirty days varied
between 4-8 and 12-5 for the period 1950-70. This percentage varied
between 9-5 and 23-5 between 1970-80. The present procedure of
adjudication is responsible for this pattern. At present, the highest
percentage of strikes is for the duration of more than one day but less
than five days. The percentage of strikes for the duration of one day and
less has reduced over the period 1960-80, while the percentage of strikes

\textsuperscript{18} Ibid, p. 131.
for the duration of period more than one day has shown an increasing trend.

The number of workers involved and mandays lost both have shown an increasing trend. It is generally assumed that the mandays lost indicate the loss of production as a result of an industrial dispute. But to get a correct picture of loss due to industrial disputes, the of mandays lost are not sufficient, the regarding wages and value of production should also be given. Loss of wages will reflect the loss to the workers and loss of production will reflect the loss to the employer and the community as a whole.

Besides, the effects of time loss of mandays lost should also be viewed in view of the fact that the number of the volume of employment and the number of establishment both are increasing since the inception of Five-Year Plans. Therefore, the question of decreasing the number of disputes and the magnitude of time loss does not arise so long as India believes in democratic principles and in the principles of collective bargaining. The proportion of successful disputes was small throughout the pre-War period, ranging from 9.4 per cent in 1926 to 26.7 per cent in 1940. Similarly, the proportion of partially successful disputes varied between 5.2 per cent in 1925 to 27.4 per cent in 1940. The proportion of unsuccessful disputes was very high in the pre-war period as high as 81.2
per cent in 1926. In 1939, for the first time, the proportion of successful and partially successful strikes was greater than proportional of unsuccessful strikes. This trend continued during the war period except for 1942. In the immediate post-War period, the proportion of successful and partially successful strikes was greater than the Proportion of unsuccessful strikes.

This may be due to the fact that during the war period the government intervened in industrial disputes and the intervention proved favourable to the workers. If this explanation is accepted, then once should not have any objection to compulsory adjudication.

In the post-Independence period the proportion of successful and partially successful strikes has been greater than unsuccessful strikes.

A classification of industrial disputes by causes reveals that the important causes on which the industrial disputes arise these days are economic in nature. Thus, most of the disputes arise either because worker's economic needs are not fulfilled, i.e., his wages are inadequate; or his need for security of employment is not satisfied, i.e., his employment is not stable. Besides, industrial dispute may arise because workers are not satisfied with the working conditions, leave and hours of work that 37.5 per cent of the total disputes for the year 1981 were due to
wages and allowances alone and after 1981 to date the disputes one of varied reasons. Disputes due to the causes relating to "Personnel" and "Retrenchment" together accounted for 26.5 per cent. The disputes due to "Bonus" accounted for only 8.6 per cent of the total disputes during the whole period of consideration.

When compared with the situation of 1951, the percentages of disputes due to Wages, Allowances, Bonus and Retrenchment have shown an increasing tendency in 1981, while those due to "Personnel", "Leave" and "Hours of work" have shown a decreasing tendency during the period 1951-1981 and increasing during the period 1981-2010. It is, thus, obvious that, more than 70 per cent of the total disputes occur because of economic reasons only.

However, wage-discontent has always been the most important cause of industrial disputes. In recent times, there has been a tendency to underplay this factor. It is said that, even if adequate wages are paid, industrial unrest may still remain. This does not mean that wage-problem is unimportant. As a matter of fact, if adequate wages are not paid, no amount of other improvement will help in establishing peaceful industrial relations than this; wage issue is unimportant only after it has been settled properly.
During the period of 2008 to 2010 the Manufacturing Division accounted for the highest time-loss of 17-41 million mandays (83.5 per cent of the total time-loss), followed by Mining and Quarrying (2-38 million mandays or 9.8 per cent of the total time loss) and Agriculture, Hunting, Forestry and Fishing (2-38 million mandays or 12 per cent of total time loss). These three groups together were responsible for 85.4 per cent of the total number of disputes and 94.0 per cent of the total time lost during the year 2008.

Again, these three groups together were responsible for 85.7 per cent of the total number of disputes and 97.4 per cent of the total time-loss during the year 2009.

It is, thus, obvious that if time-loss or mandays lost, the number of workers involved and the number of industrial disputes are considered as the index of industrial unrest, then industrial unrest may be said to be the problem of Groups Manufacturing, Mining and Quarrying, Agriculture, Hunting, Forestry and Fishing since these three division account for 85.7 per cent of the total number of disputes and 97.4 per cent of the total time-loss. Among these three groups, industrial unrest may be said to be concentrated in "Manufacturing" division, since about 93.5 per cent of the total time-loss is accounted for manufacturing. It is also revealed that about 25 percent of total National income is accounted for by
'agriculture', while the time-loss as a result of industrial unrest is only 1-42 per cent of total time-loss in 2008. It means the sectors which are contributing 75 per cent of the National Income also account for 98-58 per cent of the time-loss as a result of industrial unrest. It means industrial unrest is concentrated in non-agricultural sector and especially in Manufacturing, Mining and Quarrying given hereunder indicates the statistics of mandays lost by states during the years 2008 and 2009. During the year 2008, West Bengal accounted for the maximum time-loss 69 million mandays followed by Karnataka (2.2 million mandays) and Andhra Pradesh (3.4 million mandays).

During the year 2009, Tamil Nadu recorded the maximum time-loss 72 million mandays, followed by West Bengal (58 million mandays), and Maharashtra 33 million mandays.

This can be substantiated that industrial unrest or industrial disputes are not concentrated in any specific state or states. However, West Bengal and Tamilnadu can be said to be among those states where industrial unrest is higher as compared to other states.

Secondly, as compared to 2008 the time-loss appreciated only in States and Union Territories Bihar, Assam, Jammu and Kashmir, Goa, Kerala, Orissa, Meghalaya, Punjab, Tamil Nadu, Andaman and Nicobar
Islands, and Delhi in 2009. Thirdly, the number of disputes (470) was the maximum in Andhra Pradesh in 2008 and 540 in 2009.

As compared to 2008, the number of lock-outs and the number of mandays lost increased, from 366 and 13,446,483 in 2008 to 532 and 13,999,759 in 2009 respectively. However, the number of workers affected decreased from 145,568 in 2008 to 469,540 in 2009.

During the year 2008, West Bengal accounted for the maximum number of lock-outs (118) which was followed by Maharashtra (87) and Andhra Pradesh (34). As far as the mandays lost or the time-loss due to lock-outs is concerned, West Bengal suffered the highest time-loss due to lock-outs is 6-68 million mandays or 49-5 per cent of the total time loss.

Similarly, during the year 2009, the maximum number of lockouts (208) was recorded in Andhra Pradesh, followed by West Bengal (112) and Maharashtra (70). As far as the mandays lost or the time-loss due to lock-outs is concerned, West Bengal again suffered the highest time-loss due to lock-outs i.e., 5-8 million mandays or 41-2 per cent of the total loss during 2005.

Besides, the time-loss or the mandays lost due to lock-outs in West Bengal has decreased from 6.59 million mandays or 49.0% of the
total time-loss in 2008 to 5-8 million mandays or 41 0% or the total loss in 2009.

The figures of mandays lost, the number of industrial disputes and the duration of work stoppage give some idea of the industrial unrest. However, for measuring the incidence of industrial unrest in relation to employment, the figures of time-loss per thousand workers employed in different sectors of industry should also be analysed. Thus, the incidence of industrial unrest indicates the time-loss per thousand of thousand workers employed in different sectors of the economy.

7.1 Approach to Industrial Relations

John Dunlop has developed a system approach to industrial relations. This approach is quite helpful in studying the industrial relations in the sense that it focuses on participants in the process, environmental forces and the output. Further, it studies inter-relations among different facets of industrial relations system. 19

The basic elements of the system approach are:

(A) Participants in the system ate: (i) (workers and their organizations, (iii) management and representatives, and government agencies like labour courts).

(B) An Ideological linking to a considerable extent, regulates the relations among the parties, in the Dunlop, an ideology is a "set of ideas and beliefs commonly held by the actors that helps to build or integrate the system together as an entity."

(C) The context or environment is the ground in which participants interact. Dunlop has identified three types of environment that are relevant to industrial relations namely Technological characteristics of the workshop. The market or economic constraints; and The 'locus' and 'balance of power' existing in a society. He refers to components as "a technological sub-system," an economic sub-system, a political sub-system.
(a) Industrial relations would be very different in a labour-intensive industry from those in a capital-intensive one; in an industry planning significant, technical changes from one clinging to less productive primitive technology. Changes in technology enhance the employers expectations about the skills of workers. The work processes and methods with modern techniques reduce the rigours of manual work and workers acquire greater control over their work; and higher production can be achieved.

(b) Economic constraints also influence industrial relations, because the need for labour is closely associated with the demand for the products. As the competition hots up, the market share of an enterprise becomes uncertain which influences the industrial relations of a unit both in short and long run.

(c) The locus and balance of power in a society in the form of power centres the workers’ organizations, the employers and the government also influences the relationship between labour and management. In the initial stages, workers and employers demonstrate their strength to further their interests. The regulatory role of the government is, therefore, an important part in shaping the pattern of industrial relations. "A conflict emerges strongly when the parties are less mature, are power-conscious and, therefore, aggressive.
Contrarily, the conflict tends to recede from the scene when the parties become more mature, responsible and discreet in the use of power and learn to accommodate themselves with each other."

Shister has listed three sets of characteristics or factors which should define labour-management relationship. These are:

I. The forces economic, social, psychological and political that determine the policy decisions and actions of management, on the one hand, and the union officials, on the other;

II. The structure of power relationships within the management and the union; and

III. The balance of power between union and management.

The first factor is referred to as the framework factor while the remaining two are referred to as the structure of power factors. These factors influence the relationship between the government, business and labour. Their interactions lead to the formulation of rules of behaviour e.g., labour laws, voluntary codes, collective agreements, etc. which govern the behaviour of each of the three parties participating in the industrial relations system.

(d) The output is the result of interaction of the parties/actors of the system which is manifested in the network of rules, country’s labour policy and agreements etc. that facilitate a fir deal to workers.
STRIKES BY GOVERNMENT EMPLOYEES:

Out of the total working force in our country, the Government directly or indirectly controls more than 2/3 of them and the strike by Government employees is not a new phenomenon. Tracing back the strikes by government employees from the beginning of this century, there was strike in 1903 in Madras Government press as a protest against the working of overtime without additional payment\textsuperscript{20} In the year 1905 the workers of the Government of India press struck work for non-payment for sundays and gazetted holidays. They demanded higher rate for the overtime work. In the year 1907 there was a strike in Samastipur Railway Workshop for the increase of wages. There were strikes in the railway workshops, mint and dockyards during the year 1919 and in the year 1920 there were strikes by railway men, municipal employees and postal employees in Bombay. Between the years 1925 and 1930 there were a number of strikes on railways against wage cuts, retrenchment and against many other acts of discrimination and oppression by the railway administration.

There have not been many strikes during the Second World War either in public or private sector because they were specifically prohibited under the Defense of India Rules. In the year 1946, all India postman & Lower Grade staff union launched a strike for an Increase in emoluments.

\textsuperscript{20} Karnik V.B. Indian Trade Unions Manktala Pvt.Ltd Bombay (2\textsuperscript{nd} ed. 1966) p.37.
The strike was a massive one which paralysed the work of post offices and railway mail services in many parts of the country. The other major strike during 1946 was that of primary Elementary School teachers in the United provinces in which over 40,000 teachers struck work for higher wages. In 1949 railway men went on strike. This strike was nothing but a communist party was against Nehru Government and because of the friction among the unions the strike did not meet with success. The Government took stern measures and about 600 workers lost their jobs for participating in the strike.

There was a strike even by the defense employees in 1952 against the retrenchment policy. The All India Port and Dock Workers Federation organised a token strike during November, 1953 and on June, 16, 1958 they went on a strike which ultimately led to a complete stoppage of work at the three major ports of Bombay, Calcutta and Madras. The public employees' right to strike is neither statutorily prohibited as in many other countries nor it is permitted as in the case of industrial employees. Strikes by the Government employees are rather handled by departmental conduct rules. Till 1957, there was no specific Banking Industry, even in the conduct rules, on the strike by Government employees. Strike, in the absence of any specific prohibition, however, was treated as an unauthorised absence from duty which was subject to disciplinary action by the authority
concerned. A threat of strike in 1957 by the post and telegraph employees backed by the confederation of Central Government employees unions forced the Government to amend the Central Civil Services (conduct) Rules 1955, to prohibit the strike by Government employees. This was for the first time that specific restrictions on strike were imposed in the conduct rules.

In the case of Meghraj v State of Rajasthan\textsuperscript{21} there was a strike by the employees of state owned hospital. The High Court of Rajasthan has observed that "Though a Government servant as a citizen may have a right to strike that would not take away the power of the Government to dismiss a Government servant for good or sufficient reasons. So far as administrative departments are concerned, it stands to reason that strike, for the purposes of demonstrating again some order of the Government is clearly an act of indiscipline and administration cannot be run property if those who are serving the administration act in an indisciplined manner".

The Allahabad High Court in Bencheylal v. State of U.P.\textsuperscript{22} held that stoppage of work by an individual by itself may be due to many reasons but when such action (strike) is taken as a protest in an organized manner it may be regarded as a breach of discipline and violation of the conditions of

\textsuperscript{21} AIR (1956) RAJ. P 28
\textsuperscript{22} AIR (1959) A11.61 at 64
service rules. Thus, even in the absence of any other penalty, the Government employees are subject to disciplinary action for engaging in strike, which may extend to his dismissal.

The Bihar Government introduced rule 4 A into the Bihar Government servants conduct rules 1956 and this was challenged on the ground that it interfered with the workers rights guaranteed by Article 19 (1) (a) (b) & (c) of the Constitution. The High Court of Patna has held that both, the right to strike and demonstration were not included in the right of free speech and the right to form association or union under Cls.(a) & (c) of Article 19 (1) of the Constitution, so far as Government employees were concerned.\textsuperscript{23}

On appeal, the Supreme Court considered the constitutional validity of rule 4A and approved the power of the Government to prohibit absolutely Government employees from striking or put some restrictions on them or to impose any penalty on striking employees. The Supreme Court reviewed a number of American cases on this point such as Expert Court is\textsuperscript{24} and \textit{united public workers v. Mitchell}\textsuperscript{25}, which were relied by the State in Support of its position that Government servants formed a

\textsuperscript{23} AIR (1959) p. 187.
class and that the conditions of service' imposed upon them are reasonable and necessary to ensure efficiency and discipline and that they cannot be questioned on the ground of their contravening and constitutional guarantees. The result of the, decision in *Kameshwar Prasad v. State of Bihar*\(^\text{26}\) was that a civil service rule cannot impose blanket restriction on demonstrations but it can deny to the workers the right to strike for any purpose. A prohibition on strike does not mean that an employee cannot participate in other forms of agitation of protests even though connected with the strike. Thus, participation in a demonstration, though connected with the strike, would not amount to participation in strike. The court struck down that part of the rule 4A which prohibited 'any form of demonstration' by the Government servants on the ground that demonstration is a visible manifestation of the feelings or sentiments of an individual or a group - a communication of one's idea to other to whom it is intend to be conveyed, is in effect a form of speech and, expression which falls within the freedom guaranteed by article 19 (a) and 19 (1) (b) of the Constitution.

The Supreme Court in *Ghosh v. Jopeph*\(^\text{27}\) had stated that the restriction on strikes under the civil service conduct rules would not extend to cover the cases of instigation and preparation for strike, unless specifically provided for. The rule 4A at the time of its inception was applicable to

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\(^{26}\) AIR (1962) SC. 1166.  
\(^{27}\) AIR (1963) SC. 812.
industrial workers employed by state owned or state; managed undertakings other than railways to which these conduct rules were applicable. On March 10, 1959 the Government of India amended the central civil service (conduct) Rules and exempted its non-gazetted industrial employees drawing a salary of Rs.500/- or less per month and working in Government owned or managed 'Industries and commercial establishments, other than railways, from the operation of rule 4 A. In Ram Rao v. Accountant General\textsuperscript{28}, the Bombay High Court rejected the contention of discrimination and held that the categories of Government servants who are taken out of the application of 4A are a defined class who are governed by its own rules' and the mere fact that they are excluded from conduct rules cannot lead an inference that those who are within remaining class and are governed by conduct rules are discriminated against.

There is no such right as a legal right to strike for anyone in the Government employment. Whether a strike should be prohibited in one from or another according to the categories of employment in the Government service is a matter within the discrimination and powers the Government as an employer framing rules. Even for participating in a strike, prohibited under the Civil Service (conduct) Rules, a Government servant cannot be summarily dismissed. Procedure

\textsuperscript{28} AIR (1963) Bom. 121.
provided under Article 311 of the Constitution is required to be followed and the principles of natural justice are to be observed. Article 311 provides the following safeguards to civil servants against any arbitrary dismissal from their posts;

1) "No person holding a civil post under the Union or the States shall be dismissed or removed by any authority sub-ordinate to that by which he was appointed.

2) No such person shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges”.

The term civil post means an appointment, or office or employment on the civil side of the administration. Article 311 applies to both temporary and permanent servants.

During an inquiry no materials should be relied on against an employees without his being given an opportunity of explaining them. If the employer violates this in an inquiry, it is treated as unfair and violating the principles of natural justice and the reinstatement of the dismissed workers may be ordered.

29 Sher Singh v. State of M.P. AIR (1955) SC 175
30 Union of India v. T.R. Verma AIR (1957) SC 882
Apart from the rule 4A introduced in the conduct rules, the Government had at times promulgated special ordinance from time to time to declare strike by Government employees as illegal. Whenever the Government faced a serious threat of strike by its employees, the Government promulgated an ordinance under Article 123(1) deals with the ordinance making power of the President. Not only the Central Government, but the State Governments when they faced with a threat of strike by the State Government employees, promulgated similar ordinances.

Although the Central Government has prohibited strike by Government employees as per conduct rules, it has not defined strike. In December 1966, the Government clarified the meaning of 'strike' for the purpose of rule 7 of the conduct rules. It reads as follows:

'Strike' means refusal to work or stoppage or slowing down of work a group of employees acting in combination, and includes abstention from work without permission, refusal to work overtime where such overtime is necessary in public interest, and resort to practices or conduct which results or is likely to result in the cessation or substantial retardation of work in any organisation, including go-slow, sit-down pen down, stay in, token, sympathetic or any other similar strike and absence from work for participation in a ‘Bendh’ or any similar movement".
The Government thus intended to give a broader meaning to the term 'Strike' for the purposes of prohibition under the conduct rules.

The president of India for the first time promulgated the Essential Services Maintenance Ordinance on August, 7, 1957 to meet the challenge posed by the workmen of Posts & Telegraphs to go on 'strike. Subsequently Ordinances were promulgated in the years 1960, 1968 to meet the threat of strike by Central Government employees. These ordinances made strike penal offence. The objective sought to be achieved by the ordinances was to provide for maintenance of »essential services and the normal life of the community, and to achieve that objective, it was necessary that the persons in the essential services who were threatening to jeopardize the maintenance of essential services and thereby dislocate the normal life of the community should be deterred from doing so.

The courts have held that having regard to the danger to be averted, the restrictions imposed by the ordinance were reasonable and imposed in interest of public order and hence Article 19 (4) of the Constitution has not been contravened.31

Inspite of the promulgation of ordinances imposing on strike” with penal sanctions, it had a little impact. The failure on the part of

the Government to enforce the law due to various political pressures, undermines the value of law and brings disrespect both for the law and the authority. The time has come to realize that strike by Government employees is basically a labour management problem and deserves a treatment of that nature although there is a close association of employees' unions with the political parities. The Trade Union movement among central Government employees has not as yet acquired homogeneity due to the politics sponsored and encouraged by the various political parties.' In a strike by Government employees the employees or the Government do not seem to lose much but it is the general public that is put to great inconvenience and dislocation in normal civil life. The Essential Services Maintenance Act gave 'enabling powers' to the, Government to declare any services essential and strike in that services A permanent statutory Ban on strike by the Government is not desirable and it is for the Government and all the others who are concerned to devote their energies in improving the labour-management relations in the Government employment and search for the effective alternatives, so that a need for strike may not arise. Employees of most of the State Governments have either struck or threatened to strike work a few days before the scheduled dates for conduct of elections. The state Government employees "resort to strikes mostly to grant reliefs on par with the central employees. This act by the State Government employees to resort to strike before elections is to
bring pressure upon the Government and to yield to their demands. The timing to strike work seems to be quite opportune and to put the Governments in an uncomfortable position.

India, under the federal set up the Central Government is responsible for the management of all India services, central services and other subordinate services and the States for the State services. Organisationally and constitutionally it appears to be sound but strikes by state Government employees are primarily based on unsatisfactory services conditions and emoluments. There is an imperative need to maintain high level of efficiency and morale by the Government which, could be realised only when satisfactory service conditions are guaranteed. Further indiscipline among the services if not checks, and prevented would itself be a threat to democracy. A potent cause for strikes has been the existence of disparity in emoluments between the Central and State Governments employees. No sooner a rise in emoluments is announced in the centre, then employees of all the State Governments expect a corresponding rise. It would be advantageous to set up a machinery to review periodically the personnel problems of centre and state employees and to recommend uniform policy in an integrated base. There arises a number of basic financial questions closely connected with the question of strikes as far as Government employees are concerned. The state Governments have been lenient when
employees went on mass casual leave. The way the Governments handle
the demands of Government employees is also a question to be answered.
Generally in the beginning, the Government refuse to accept the demands
and promptly ban the strike and issues a communique stating that the
employees will be liable for disciplinary action. After protracted and
delayed bargaining, they partially accept the demands. Finally after
cessation of strike, the action taken and the punishment imposed are usually
withdrawn. This reflects an absence of clear policy in personnel matters
with regard to "Government employees on the part of the Government.
Strikes by state employees must be tackled on a national basis and not
in an isolated manner. Unless an integrated policy is formulated and
implemented by the states in dealing with the strikes there is an imminent
threat of their employees going on sporadic strikes resulting in the
administration being paralysed and the pace of planning and development
disturbed. Nearly 60-70 percent of the workmen in the organised sector are
employed in public utility services as defined under Section 2 (n) of the
Industrial Disputes Act read with first schedule, be they Government
Departments, local bodies or industries both public and private" sectors.