CHAPTER – VII

Strikes – Statutory Provisions

Let not the wings of thy soul take thee so high that
Thou losest sight of thy earthly duties

.....Yajur Veda. 5.43

It is the Statute that either creates or takes away the right(s) of the persons. Rights may be express or implied. Any right if expressly given by a statute can be exercised without any fear, But any right if not granted expressly but restrictions are imposed may be difficult to exercise. The Industrial Disputes Act, 1947 was passed with an object of preventing and settlement of disputes in the industrial undertaking. Industrial undertakings include both public sector and private sector. In this chapter various statutory provisions are discussed which are related to strike. The earliest legislation in our country was Bengal Regulation VII of 1819. Breach of law under this law was made a criminal offence. Thereafter Merchant Shipping Act, 1859; The workmen Breach of contract Act 1959; and the Employers' and Workmen's (Disputes) Act, 1860 were enacted. The Indian Trade Union Act, 1926 guaranteed the workers the right to organise and gave them a legal status and immunized them from civil and criminal liability. The Act had been changed several times to suit the changing circumstances.

The Trade Disputes Act, 1929 was codified for five years as an experimental measure with main object of making provisions for establishment of Courts of Inquiry and Boards of conciliation with a view to investigate and settle trade disputes. The Act prohibits strike or lock-out without notice in public utility services. It also further made any strike or lock-out illegal which had any object other than the furtherance of a trade dispute with in a trade or industry in which the strikers or the employers locking out were engaged, and was designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby compel Government to take or abstain from taking any particular course of action. The Act was amended in 1932 and was made permanent by the Trade Disputes (Extending) Act, 1934.

The World War-II brought rapid change in both economic structure and industrial relations. The necessity of keeping the production at high level without interruption and the claim of the workers for proportionate share in abnormal war profits, forced the Government to pass Defence of India Rules, 1942. The Rules for the first time laid foundation of "*Compulsory adjudication*" in India. The Government was empowered under The Defence of India Rules to make general or, special orders to suit the situation, to prohibit strikes or lock-outs and to refer any dispute for Conciliation or adjudication, to require employers to observe such terms and conditions of employment as might be specified and to enforce the decision of adjudication.

A notification was issued in May 1842, vesting much the same powers in the Provincial Governments, and in August Essential Services Maintenance Ordinance, promulgated prohibiting strikes or lock-outs without 14 days previous notice. Strikes and lock-outs were also prohibited when a trade dispute wad referred to a statutory enquiry or for conciliation or adjudication during the entire period of the proceedings and for two months thereafter. Rule 81-A of the Defence

of India Rules 1942 was due to expire on 1st October 1946 was kept in operation by passing Emergency Provisions (Continuance) Ordinance, 1946. In the period of post World War industrial adjustment the Government felt deep importance of the Rule 81-A on the basis of its experience during the war. The government felt necessity of permanent industrial law to check the industrial unrest.

The Industrial Disputes Bill was introduced by the Government of India in the Legislative Assembly on the 28th October, 1946. After the select committee's Report on 3rd February, 12947, with some amendments, it was passed in March 1947 and became law from 1st April, 1947 repealing the Trade Disputes Act 1929.[1] The main object of the Act was to provide compulsory reference to the Board of conciliation or to a Court of Enquiry, and its awards are binding upon the parties which was lacking in Trade Disputes Act, 1929 (which is the essential principle of Rule 81-A of Defence of India Rules).

7. 1 The Industrial disputes Act, 1947

The Industrial Disputes Act 1947 is a legislation calculated to ensure social justice to both employer and employees and advance the progress of the industry by bringing about the existence of harmony and cordial relationship between the parties. The object of the Act is not only to make provisions for investigation and settlement of industrial disputes, but also to secure industrial peace, so that it may result in more production and improve national economy. Co-operation between capital and labour is essential for maintenance of increased production and industrial peace[2].

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[1] G.M. Kothari, *A study of Industrial law*, p. 116
[2] 1977 Lab.I.C. 483 (485)

The sense and effect of the ID Act is to promote industrial peace, legitimate trade union activities and discouragement of unfair employer practices or victimisation of workers[3].

In dealing with industrial disputes, courts have always emphasised doctrine of social justice, which is founded on basic idea of socio-economic equality and have given it predominant consideration[4].

6. 1(a) STRIKES IN PUBLIC SECTOR UNDERTAKINGS (SECTION-22)

It is the duty of the State to recognise new forms of action due to labour disputes and must encompass them in the relevant national statutes which shall confirm to national and international standards. Such statutes must be capable of improving the living standards of the workers and improve production of the nation by taking in to account the specific national needs and circumstances. The Governments should periodically prepare periodical assessment of the impact of the provisions and its possible impact in future upon the nation in comparison to international scenario. It is also is the duty of the State (Country) to identify the alternative components that may substitute the existing provisions periodically to meet the needs of the society.

A labour dispute is a state of disagreement over a particular issue or group of issues over which there is conflict between workers and employers, or about which grievance is expressed by workers or employers, or about which workers or employers support other workers or employers for their demands or grievances[5]. In India after taking all the internal conventions and the then prevailed

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[3] AIR 1962 Mad 231; (1962-63) 23 FJR 527 (Punj).
[4] AIR 1968 Orissa 129 (131).
[5] Article 1 of Resolution concerning statistics of strikes, lockouts and other action due to labour disputes, 1993, adopted on 28th January 1993 in the fifteenth International labour conference of Labour Statisticians.

circumstances into consideration the legislature enacted Section 2(q) of the Industrial Disputes Act, 1947 defines the term strike, it says, "strike" means a cassation 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".[6]

It is to be noted that the provisions of sections 22 and 23 of the Act, 1947 do not prohibit the workmen from going on strike but require them to fulfil the condition before going on strike. The intention of section 22 is to provide sufficient safeguards in matters of public utility services as otherwise great inconvenience to the society and the general public would result.[7] If the conditions mentioned in Section 22 are fulfilled by the workmen before going on strike it will be a legal strike. Though the strike was recognised as a weapon in the hands of the workmen its exercise without caring for the inconvenience of the rest of the society may result in lawlessness and chaos. The right to strike (?), however, is to be exercised after complying with certain conditions regarding service of notice etc. also after exhausting the intermediate and salutary remedy of conciliation proceedings[8]. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention as to who goes on strike. The prohibition of strike in the circumstances mentioned in sections 22 and 23 of the Act is based on public policy. Whenever employees want to go on strike they have to follow the procedure provided by the Act otherwise there strike becomes illegal.

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[6] Detailed discussion is made in Chapter-2.
[7] AIR 1958 Pat. 51 (56).
[8] 1979 Lab.I.C. 1079 (1084) DB. (Punj).

Section 22(1) of the Industrial Dispute Act, 1947 lays down 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, as herein after provided, within six weeks before striking; 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.

6. 1(a)(i) Reasons for enacting the section

The provisions of section 22 do not prohibit the workmen from going on strike but require them to fulfil the condition before going on strike. The intention of section 22 is to provide sufficient safeguards in matters of public utility services as otherwise great inconvenience to the society and the general public would result.[9] If the conditions mentioned in Section 22 are fulfilled by the workmen before going on strike it will be a legal strike. Though the strike was recognised as a weapon in the hands of the workmen its exercise without caring for the inconvenience of the rest of the society may result in lawlessness and chaos. The right to strike, however, is to be exercised after complying with certain conditions regarding service of notice etc. also after exhausting the intermediate and salutary remedy of conciliation proceedings[10]. Further these provisions apply to a public utility service only. The Industrial Dispute Act, 1947 does not specifically mention

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[9] AIR 1958 Pat. 51 (56).
[10] 1979 Lab.I.C. 1079 (1084) DB. (Punj).

as to who goes on strike. The prohibition of strike in the circumstances mentioned in sections 22 and 23 of the Act is based on public policy. In the line of section 22 number of statutory provisions were made in the different statutes[11].

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[11] Some such provisions are as follows:

Rule (5) of All India Services (Conduct) Rules, 1968.

(1) No member of the service shall be a member of, or be otherwise associated with, any political party or any organisation, which takes part in politics, nor shall he take part in, or subscribe in aid of, or assist in any other manner, any political movement or political activity.

(2) It shall be the duty of every member of the Service to endeavor to prevent any member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any movement or, activity which is, or tends directly or indirectly to be, subversive of the government as by law established, and where a member of the Service is unable to prevent member of his family from taking part in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to the Government.

Central Civil Services (Conduct) Rules, 1964.

Rule-6

No Government Servant shall join, or continue to be a member, of, an association the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.

Vide O.M. No. 25/17/71-Ests, (A), dated the 26th August, 1971, the government Servants are made responsible for affixing notices, posters, of the associations or unions in irresponsible manner causing damage to the office building.

Rule-7.

No Government servant shall-

(i) engages himself or participate in any demonstration which is prejudicial to the interests of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offence, or

(ii) resort to or in any way abet any form of strike or coercion or physical duress in connection with any matter pertaining to his service or the service of any other Government service.

Holding of meetings demonstrations by Government servants within office premises is violative of Rule 7(i).

It has been noticed the demonstrations are sometimes held by Government servants in contravention of Rule-7 (i). The Government of India hereby wants to make it clear that holding of meetings/ demonstrations by the Government servant(s) without prior permission in writing his/their offices premises is strictly prohibited and any violation of these instructions will be taken serious note of those concerned will be dealt with suitably under the disciplinary Rules by which they are governed. (366 dated 10-6-1969).

The Railway Services (Conduct) Rules, 1966

Rule-6

No railway servant shall join, or continue to be a member of, an association or union s the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India or public order or morality.

Notice of strike

Irrespective of the issue, the worker before going on strike shall serve notice under section 22. Notice to strike within six weeks before striking is not necessary where there is already lockout in existence. In *Mineral Miner Union vs. Kudremukh Iron Ore Co. Ltd.*,[12] it was held that the provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. If meanwhile the date of strike specified in the notice of strike expires, workmen have to give fresh notice. It may be noted that if a lock out is already in existence and employees want to resort to strike, it is not necessary to give notice as is otherwise required. In *Sadual textile Mills v. Their workmen* certain workmen struck work as a protest against the lay-off and the transfer of some workmen from one shift to another without giving four days notice as required by standing order 23. On these grounds a question arose whether the strike was justified. The industrial tribunal answered in affirmative. Against this a writ petition was preferred in the High Court of Rajasthan. Reversing the decision of the Tribunal ***Justice Wanchoo*** observed:

Note:- It is not permissible for gazetted railway servant to join any association of non-gazetted Railway Employees Union. When a non-gazetted railway servant who is a member of a railway employees union is promoted to gazetted rank, either in an officiating or permanent capacity he shall resign his membership of such union. If, however, the officer concerned satisfies the General Manager of the Railway concerned that by such resignation he will lose financially or otherwise under any beneficent scheme organised by such union such as death, or accident insurance, he may be permitted to continue as an ordinary member but not as an office bearer or representative of that union. The responsibility of satisfying the General Manager in this respect, rest with the officer concerned.

Rule-7

No Railway servant shall engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or which involves contempt of court, defamation or incitement or an offence.

[12] (1989) I LLJ 277 (Karn).

" ....We are of opinion that what is generally known as a lightning strike like this take place without notice..... And each worker striking..... (is) guilty of misconduct under the standing orders .....and liable to be summarily dismissed.....(as)..... the strike cannot be justified at all." In Life Insurance Corporation of India and others v. Amlendu Gupta and others,[13] where the permanent Class III, Class IV employees of LIC went on strike after serving notice as per ID Act. The corporation did not pay bonus in spite of the orders issued by the Supreme Court. The corporation issued circular to deduct wages and allowances for the period of strike. It was held that under Industrial Disputes Act employees are entitled to go on strike in case of refusal or denial by the employer to give to its workmen benefits and emoluments to which they are entitled under the law of contract of service. But before going on strike certain formalities as prescribed by section 22 of the Act, have to be observed. If the strike is in accordance with the provisions of the Act, the strike must be legal.

The provisions of section 22 are mandatory and the date on which the workmen proposed to go on strike should be specified in the notice. Some times a situation may arise for several reasons the employees may not go on strike on the date the workmen proposed to go on strike. For any reason if the date specified in the notice expires, workmen have to give a fresh notice and all other statutory consequences following out of the said notice would follow. It is not correct that the provisions of section 20(1) and 12(1) of the Act are not applicable to second notice. Whenever a notice under section 22 is issued, even though such a notice necessitated by the failure of conciliation proceedings, provisions such as section 20(1) and 12(1) read with section 22 in its entirety will be attracted. It was further held that deduction of wages for days of illegal strike would be justified.[14] Notice

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[13] (1988) II LLJ 495 (Calcutta)

[14] Mineral Miner's Union v. Kudremukh Iron Ore Co. Ltd, (1989) I LLJ 277 (Karn)

required to be given under sub-section (1) and (2) must be given in the manner prescribed under the rules, and must mention the date of the proposed strike otherwise it is ineffective[15].

If on any day an employer receives from any person employed by him any such notice of strike as are referred in Section 22(1), he shall within five days of receiving such notice, report to the appropriate government or to such authority as that government may prescribe, the number of such notice received or given on that day.[16]

Whether the workmen were provoked to go on strike does not absolve the employers from the duty to follow the conditions required under section 22 before going on strike where the management was prepared to pay bonus as per Bonus Act. They were taking active steps for introduction of production bonus scheme. They were taking active steps in conciliation proceedings. They made certain proposals to the workmen and give a reply to the management. But the next day the workmen were incited to go on strike. The telegraphic request of the management to postpone the strike by one day was also not complied with by the workmen. Under these circumstances the demand of the workmen for *exgratia* bonus could not be considered to be of urgent and serious in nature. Strike was unjustified.

The provisions of section 22 read with those of Section 26 are of penal nature and have to be construed strictly. The proof will depend upon the facts and circumstances arising in a particular case. At the same time, it may be remembered that the expression 'breach of contract'[17] does not mean breach of conditions of

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[15] Employees of Dewan Bahadur Ramgopal Mills Ltd. v. D.B.R Mills Ltd. 1958 II LLJ 115.
[16] Industrial Disputes Act, 1947 Section 22(6).
[17] The expression 'breach of contract' means 'breach of contract of service of employment' and not a special contract not to go on strike. (Ram Naresh Kumar v. State AIR 1958 Cal. 445).

service, and it is not incumbent on the prosecution to produce and prove the standing rules in order to establish that the employees were guilty of breaking the contract.[18] Even if there is a contract between an employer and employee or employees, it is not legal and binding upon the employees.

Who should give it?

From the form prescribed, it is evident that the union of the workmen or the representative of the workmen elected at a meeting held for the purpose where no trade union exists may give the notice. However, the definition of strike itself suggests that the strikers must be persons, employed in any industry to do work. The words 'no person' appearing in section 22 (1) refers to workmen because no one other than a workman is likely to go on strike in an industry. It must further be proved that the workmen were employed in an industry was a public utility service within the meaning of section 2 (n).[19] Different states have made different provisions as to the persons who are entitled to give such notice. Copies of the notice are to be addressed to the various authorities mentioned at the foot of the form prescribed by the respective government in the Rules.

Period of Notice-importance

The first condition mentioned in section 22 is that "*a notice of strike must be given to the employer 6 weeks before striking*",[20] and the second condition is that "*there should not be declared strike before fourteen days of giving such notice*[21]. It is the duty of the government to safe guard the society from the

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[18] State of Bihar v. Deodar Jha, AIR 1958 Pat. 51.
[19] Swadeshi Mills Ltd. v. Its workmen. (1960) II LLJ 78 (SC).
[20] Industrial Disputes Act, 1947, Section 22(1)(a)
[21] Industrial Disputes Act, 1947, Section 22(1)(b).

possible inconvenience that may be going to be caused due to clash between two groups struggling to safeguard their own interest. With this intention the legislature for proving enough safe guard in matters of public utility services, these provisions were enacted by the legislature. Otherwise, it would result in great inconvenience to the society and the general public. This section does not prohibit workers in public utility services from going on strikes, but it requires them to fulfil the conditions mentioned in it. It enables the government to take necessary steps for prevention and settlement of the disputes with in the time of two weeks. In other words for a legal strikes it is necessary that all the conditions mentioned in Section 22 regarding strikes in Public Utility Services must be complied with. The requirement of notice must be fulfilled and strike must not be declared during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Where, the workers through their union secretary gave a notice to the management under section 22(1) of the Act that they proposed to call on a one day strike on the expiry of 6th November, 1949 for the fulfilment of their demands. The strike notice was received by the Regional Labour Commissioner (Central), Dhanbad on 5th October 1949. He conducted the conciliation proceedings on 22nd October 1949 but the workmen refused to participate in it alleging that they were convinced that nothing will come out and so no settlement could be arrived at. But the Regional Commissioner forwarded the report to the Chief Labour Commissioner, New Delhi on 22nd October 1949. The report was received by the Chief Labour Commissioner, New Delhi on 25th October 1949. The Chief Labour Commissioner actually sent a copy of the report to the Ministry of Labour, which was received by the ministry only on 17th November 1949.[22] The Supreme Court observed that as the strike notice was received by the Regional Labour Commissioner who was the Conciliation Regional Labour Commissioner 15th

[22] Workers of Industry Colliery, Dhanbad v. Management of the Industry Colliery 1953 SC 88

October, 1949, the conciliation proceedings commenced on that date under section 20(1) of the Act. The report was to be submitted within 40 days from that date. The report was received by the Central Government on 17th November 1949, and it is only on such receipt that the conciliation proceedings are deemed to have concluded according to the provisions of section 20(2)(b). *Prima facie*, therefore, the strike, which took place on 7th November 1949, was during the pendency of the conciliation proceedings. So the strike must be held to be illegal as it was in violation of section 22(1)(d) of the Industrial Disputes Act. The notice of strike referred in section 22 shall be given by such number of persons to such person or persons in such manner as may be prescribed.[23]

Notice when not necessary

However, notice of strike is not necessary where there is in existence a lock-out. In such circumstances the employer has to send intimation of such strike to such authority as may be specified on this behalf by the appropriate Government on the day on which it was declared.

Breach of contract

The word 'contract' means contract of service. Such contract may be express or implied[24]. The expression breach of contract in section 22 and 23 of the Act means breach of contract of service of employment and not a special contract not to go on strike. That in the contract of employment of every workman there is an implied term that he will work according to the rules of the concern. The

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[23] Industrial Disputes Act, 1947 Section 22(4) and (5).
[24] Ram Naresh Kumar v. State of West Benagl 1958 I LLJ 567; 1958 Cal. 445.

expression 'breach of contract' does not mean a 'breach of a condition of service'.[25]

Entering in to agreements is not enough for any party (viz. Government, employer or employee). Bona fide efforts should be made to implement the intention of the agreement otherwise it is mere an effort to wash the tears of the weeping child without giving food to him, which is of no use. The main goal of the agreement and ambition of the parties in entering into such agreements will be frustrated if genuine efforts are not made in time. After October, 1962 (Indo-China war) in tripartite meeting it was resolved not interrupt or slow down the production of goods and services and to exercise voluntary restraint and accept the utmost sacrifice, in an equitable manner, in the interest of the Nation and its defence efforts, immediately the sections in the Industrial Disputes Act, 1947 would have been amended by making necessary changes in the relevant sections. The government in consultation with the employers and employees would have made suitable amendments to made conciliation and compulsory arbitration mandate before declaring strike in 1960s itself. It is only in cases where the employer rejects arbitration and the government refuses to intervene and adjudicate the dispute that the union is justified in striking strikes that are called must be planned, efficiently conducted and speedily concluded. The relevant sections of the Industrial disputes Act, 1947 should have been amended to prevent long-drawn-out conflicts between labour and management. Specific provisions should have been incorporated prohibiting violence, threat and other forms of coercion against the employer and employee or by any one either directly or indirectly.

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[25] State of Bihar v. Deodar Jha, 1958 Pat. 51 @ 57 approved in Chemicals and Fibers of India Ltd. v. D.G. Bhoir, (1975) Supp. SCR 415; (1975) 4 SCC 332; 1975 II LLJ 168.

6. 1(b)(a) General prohibition of strike (Section 23)

The provisions of section 23 are general in nature. It imposes general restrictions on declaring strike in breach of contract in the both public as well as non- public utility services in the following circumstances mainly: -

(a) During the pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings;

(b) During the pendency of proceedings before a Labour court, Tribunal or National Tribunal and two month's after the conclusion of such proceedings;

(c) During the pendency of arbitration proceedings before an arbitrator and 2 months after the conclusion of such proceedings, where a notification has been issued under sub-section (3-A) of section 10-A; or

(d) During any period in which a settlement or award is in operation, in respect of any of the matter covered by the settlement or award.

The principal object of this section seems to ensure a peaceful atmosphere to enable a conciliation or adjudication or arbitration proceeding to go on smoothly. This section because of its general nature of prohibition covers all strikes irrespective of the subject matter of the dispute pending before the authorities. It is noteworthy that a conciliation proceedings before a conciliation officer is no bar to strike under section 23.

The intention behind passing of these provisions by the legislature is to avoid strikes as far as possible not only by bringing the parties together but also by referring of points of disputes between them, either voluntarily or otherwise, for decision by labour court, the tribunal and National Tribunals. Strikes are not

banned even in non-public utility services. The ban on strikes is subject to certain limitations. There is no doubt that the Act recognises strikes as legitimate weapon in the matter of industrial relations. Section 23 should be interpreted in the context whether the section was intended to apply to the disputes between the employer and the general body of employees or to individual workmen.

In the *Ballarpur Collieries Co. v. H. Merchant,*[26] it was held that where in a pending reference neither the employer nor the workmen were taking any part, it was held that section 23 has no application to the strike declared during the pendency of such reference.

It is in the case of an industrial dispute between an employer and an individual workman the whole elaborate machinery earlier set forth on the Industrial Dispute Act may not be necessary lest it would be like using a sledge hammer to kill a flea. There is a justification for preventing a strike when a dispute between the employer and the general body of workmen is pending adjudication or resolution, it would be too much to expect that the legislature intended that a lid should be put on all strikes just because the case of a single workman was pending. That the general body of labour should be prevented from resorting to strike where they had chosen to espouse the cause of a single workman is understandable and reasonable. It has been held that the employer and workman are parties to a reference the decision therein bind them even though they may have said they were not interested in it.[27]

But if strikes are to be prohibited merely because the case of an individual workman was pending, whose case was not sponsored by the general body of the workmen, there can never be any strike even for justifiable grounds. A strike is necessary safety valve in industrial relations when properly resorted to. To accede

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[26] (1967) II LLJ 201 (Pat).
[27] Ballapur Colliries v. Presiding Officer, AIR 1972, SC 1216.

to the contention of the employer in this case could be in effect acceding to a contention that there should never be a strike. While we realise the importance of the maintenance of industrial peace, it can not be secured by putting lid on the legitimate grievances of the general body of labour because the dispute relation to an individual workman under section 2-A is pending. That might mean the boiling Cauldron might burst. In that case the general body of workmen would be legitimately aggrieved that they are prevented from striking because an individual's case was pending with which they were not concerned. It is not enough in this situation to say that it is always open to the Government to make reference under Section 10 it may or may not happen.

In Chemicals and Fibres of India Ltd. v. D.G. Bhoir and others,[28] the attention was drawn to the contract between Clauses (c) and (b) of Section 23 and it was observed by the Supreme Court that it is not possible to give an extended meaning that under Clause (c) there is a limitation in respect of matters in relation to which there cannot be a strike, there is no such limitation under Clause (b), therefore Clause (b) provides a blanket ban on possible if proceedings are pending. As it has been pointed out that even in respect of Clause (b) some limitation should be read confining it to the parties to the proceedings either actually or constructively, as in the case of a union sponsoring the cause of an individual employee. No body, for instance, can argue that because the proceedings are pending in relation to one industrial establishment owned by an employer there can be no strike in another industrial establishment owned by that employer because there are no words of limitation in Clause (b).[29] The Supreme Court held that the word 'any person' cannot be given their ordinary meaning[30]. The Supreme Court after considering the decision in the Dimakuchi Tea Estate case[31]observed

[28] AIR 1975 SC 1660.
[29] Ibid.
[30] Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate, AIR 1958 Sc 353.
[31] ibid

that proper point of view from which to look at the problem is to give limited application to the fact of the introduction of Section 2-A in the Industrial Disputes Act and to hold that the pendency between an individual workman as such and the employer does not attract the provisions of Section 23[32].

Workmen generally raise several demands and some may be accepted and the rest may not accepted by the management. In such case the workers will go on strike for the demands which were not accepted by the employer. This situation may arise either before going on strike or after issuance of notice or even during strike period. But, if the notice of strike was given for certain demands and the management called for discussion wherein certain demands were accepted and the rest were refused among which the workers raised the issues which were not mentioned in the notice for strike. Under these circumstances workers going on strike regarding the issue which was not mentioned in the notice is in contravention of section 23 (c) and as such whole strike is illegal[33].

Where a pen-down strike was commenced in contravention of section 23 (b) and mere participation in such illegal strike can not necessarily involve rejection of claim for reinstatement.[34]

Mere breach of standing orders could not render the strike illegal under section 23 and 24[35].

Section 24 of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act does not prevail over s.23 and 24 of The Industrial Disputes Act 19497[36].

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[32] Chemicals and Fibres of India Ltd. v. D.G. Bhoir and others, AIR 1975 SC 1660.
[33] AIR 1960 Pat. 542 (545).
[34] AIR 1960 SC 178.
[35] AIR 1972 SC 1216.
[36] 1989 Lab.I.C. (92).

7. 3 Section-24

An act of strike by the workmen will have its consequences. In order to decide whether a 'strike' is legal or illegal the legislature had formulated the rules in section 24 of the Industrial Disputes Act, 1947. under section the conditions under which the strike becomes illegal are specified.

Illegal Strikes

Section 24 provides that a strike in contravention of section 22 and 23is illegal. This section is reproduced below:

(1) A strike or a lockout shall be illegal if,
(i) It is commenced or declared in contravention of section 22 or section 23; or
(ii) It is continued on contravention of an order made under sub section (3) of section 10 or sub section (4A) of section 10A.

(2) Where a strike or lockout in pursuance of an industrial dispute has already commenced and is in existence all the time of the reference of the dispute to a board, an arbitrator, a Labour court, Tribunal or National Tribunal, the continuance of such strike or lockout shall not be deemed to be illegal;, provided that such strike or lockout was not at its commencement in contravention of the provision of this Act or the continuance thereof was not prohibited under sub section (3) of section 10 or sub section (4A) of 10A.

(3) A strike declared in the consequence of an illegal lockout shall not be deemed to be illegal.

Strikes in contravention of sections 22 or 23 of the Industrial Disputes Act 1947 are declared illegal by section 24 of the Act. A strike which has commenced

and is not illegal under section 22 or 23 of the Act can be continued, unless an order under section 10(3) of the Act has been passed prohibiting the continuance of an existing strike. "Sub-section (2) of this section makes it clear that continuance of a lock-out or strike is deemed to be illegal only if an order prohibiting it is passed under section 10(3)[37].

7. 4 Consequence of illegal Strike

Every act shall have its consequences. "Strike" is not an exception to it. Strike declared and undergone as per the statutory provisions of the Industrial Disputes Act, 1947 can be protected and the employees will be entitled to the benefits as per the provisions of law. However, if the employees declare and undergo strike without following the statutory norms shall have to face the consequences like non- payment of wage for the period of strike, disciplinary proceedings for misconduct (for participating in an illegal strike) etc.

Dismissal of workmen

In *M/S Burn & Co. Ltd. V, Their Workmen*, it was laid down that mere participation in the strike would not justify suspension or dismissal of workmen. Where the strike was illegal the Supreme Court held that in case of illegal strike the only question of practical importance would be the quantum or kind of punishment. To decide the quantum of punishment a clear distinction has to be made between violent strikers and peaceful strikers.

In ***Punjab National Bank v. Their Employees***, it was held that in the case of strike, the employer might bar the entry of the strikers within the premises by

[37] State of Bombay v. K.P. Krishnan (1961) 1 SCR 227: 1960 II LLJ 592.

adopting effective and legitimate method in that behalf. He may call upon employees to vacate, and, on their refusal to do so, take due steps to suspend them from employment, proceed to hold proper inquires according to the standing order and pass proper orders against them subject to the relevant provisions of the Act.

Wages

In ***Cropton Greaves Ltd. v. Workmen***, it was held that in order to entitle the workmen to wages for the period of strike, the strike should be legal and justified. A strike is legal if it does not violate any provision of the statute. It cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether particular strike is justified or not is a question of fact, which has to be judged in the light of the fact and circumstances of each case. The use of force, coercion, violence or acts of sabotage resorted to by the workmen during the strike period which was legal and justified would disentitle them to wages for strike period.

The constitutional bench in *Syndicate Bank v. K. Umesh Nayak* decided the matter, the Supreme Court held that a strike may be illegal if it contravenes the provision of section 22, 23 or 24 of the Act or of any other law or the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause led to strike, the urgency of the cause or demands of the workmen, the reasons for not resorting to the dispute resolving machinery provided by the Act or the contract of employment or the service rules provided for a machinery to resolve the dispute, resort to strike or lock-out as a direct is prima facie unjustified. This is, particularly so when the provisions of the law or the contract or the service rules in that behalf are breached. For then, the action is also illegal.

Right of employer to compensation for loss caused by illegal strike- In *Rothas Industries v. Its Union*, the Supreme Court held that the remedy for illegal strike has to be sought exclusively in section 26 of the Act. The award granting compensation to employer for loss of business though illegal strike is illegal because such compensation is not a dispute within the meaning of section 2(k) of the Act.

The right to strike is not fundamental and absolute right in India in any special and common law, whether any undertaking is industry or not. This is a conditional right only available after certain pre-condition are fulfilled. If the constitution maker had intended to confer on the citizen as a fundamental right the right to go on strike, they should have expressly said so, on the basis of the assumption that the right to go on strike has not expressly been conferred under the Article 19(1) (c) of the Constitution. Further his Lordship also referred to the observation in Corpus Juris Secundum that the right to strike is a relative right which can be exercised with due regard to the rights of others. Neither the common law nor the fourteenth Amendment to the federal constitution confers an absolute right to strike. It was held in the case that the strike 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, to compel the other party to the dispute to see the justness of the demand. It is not to be utilized to work hardship to the society at large so as to strengthen the bargaining power. Every dispute between an employer and employee has to take into consideration the third dimension, viz. the interest of the society as whole.

Thus the sections 22 and 23 of the Industrial Disputes Act, 1947 must be amended incorporating the necessary provisions of exhausting legal remedies (including compulsory arbitration) before going on strike[38].

6.2 The Trade Union Act, 1926

Two third of legislation in India may be allotted to the industrial law. we have different statutes dealing with branches of labour and industrial laws. Industry plays a major role in building the economic structure of a country. Industry cannot be isolated from the society. Technological inventions may increase the number of industries and industrial outputs. On the other side technological advancement may also widen the social imbalance. For peaceful running of the industry, the harmonious relationship between labour and management is necessary. Proper legislation is necessary to regulate the relationship between the capital and labour. Every citizen or person of a country is one way or the other, are directly or indirectly is a consumer of a product. It is the duty of the State to safeguard the interest of the consumers by making uninterrupted supply of goods to hem. In a lust for more profits the capital and for more benefits the labour creates a new situation where the government in the interest of the society has to regulate the relationship between labour and management. The employer who is economically sound and socially strong likes to over power the labour who weak from all corners. Unity is the strength of the one and all. The week employees having identified or recognised this fact from nature started forming into groups for the purpose of their welfare. In the beginning the groups were formed not for their welfare but to protect them from external aggression. Once their security is assured, these associations started diverting their attention towards their welfare and development.

[38] Some other suggestions are given in Chapter -9.

After industrialisation the mutual conflict between the employer and employee over the question of adequacy of their respective of share in social produce, constituted, the crux of the labour problem, of which collective bargaining and industrial conflict are the two most important aspects. When the state fails to safeguard the interest of its subject they must force the state to take appropriate steps in this regard. A weak worker individually cannot make efforts to fight with both employer and state. The poverty had broken the backbone of the workers. Hence, in the beginning workers use to form association or unions as a temporary measure to achieve a particular demand from the employer. Once the purpose is over the association or union also ceases exist. Slowly importance of unions of permanent in nature was started taking its shape. The germs of trade unionism in India can be traced back to the year 1890 when for the first time an association of mill workers was formed in the name and style of "Bombay mill hands association". This association is not strictly a trade union in the present sense. First World War and Second World War added their share to the trade union moment in India. Though less number of cases can be seen in India where in injunctions were granted restraining the unions from going on strike. Filing of civil and criminal cases against unions and its leaders was also not uncommon. Hence to provide legal status and immunities from civil and criminal liabilities to the members and office bearers of trade union, the trade union Act 1926 was passed.

Section, 4 of the Trade Union Act lays down the mode of registration of a trade union. It lays down that "any seven or more members of a trade union may apply for registration of the trade union, section 5 (3) provides that:

> "A general statement of the assets and liabilities of the Trade Union prepared in the prescribed form and containing such particulars as may be required should be sent with the

application to the Registrar where a Trade Union has been in existence for more than one year before the making of an application for its registration".

The combined reading of section 4 and section 5 (3) make its clear that a trade union can also survive even without registration the only difference is an unregistered trade union cannot claim for advantages and immunities as laid down in the trade union Act 1926. Section 17 of the Trade Union Act confers immunity from liability in case of criminal conspiracy under section 120-Bof the Indian Penal Code committed by an office bearer a member of a registered trade union.

Section 18 of the Trade Union Act, 1926 provides the union leaders and members of a registered trade union, immunity from civil proceedings.
Section 19 of the Trade Union Act, 1926 provides that "an agreement, between the members of a registered Trade Union in restraint of trade shall not void or voidable". It protects the agreements entered in to between registered trade union and its members not to accept employment unless certain conditions as to pay, bonus, hours of work etc., are fulfilled.

7. 6 The Essential Services Maintenance Act, 1981

The Essential Service Maintenance Act, 1981(ESMA) empowers the Government to declare certain categories of industries/services to be essential services, based on the public utility of the industries/services in the State. For a vast country like India, essential industries/services are determined by agro-economic factors and natural resources available in each of the States in the country. The disputes/demands of workmen engaged in such industries/services are first taken up to be resolved by the negotiation mechanism under the Industrial Disputes Act, 1947 and even after that process, if they go on strike, only as the last option, they

resort to invoking the ESMA in order to prevent a loss in production and maintain the barest minimum public utility services for ordinary citizens and civil society. It must be noted that the ESMA does not take away the legal mechanism to negotiate and resolve disputes through the process of collective bargaining. Only trade unions functioning in industries that are included as Public Utility Services under the Industrial Disputes Act, 1947, are required to give 14 days' notice to the employer and the appropriate authorities of the Government before they resort to strike. The Ss. 3, 4 and 5 of Essential Services Maintenance Ordinance No.1 of 1960 were held not violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the constitution. The court 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.[39]

It has become necessary to strengthen the hands of the heads of the institutions and to arm them with sufficient powers, so that those who art keen to study and improve their career should not be made the victims of a handful of persons who are found to spoil the academic sphere by indulging in anti-social activities.[40] The mere fact that the impugned law incidentally, remotely or collaterally has the effect of abridging or abrogating those rights, will not satisfy the test. If the answer to the queries be in the affirmative, the impugned law in order to be valid must pass the test of reasonableness under Article 19. but if the impact of the law on any of the rights under clause (1) of Article 19 is merely incidental, indirect, remote or collateral and is dependent upon factors which may or may not come into play, the anvil of Article 19b will not be available for

[39] Radhey shyam Sharma vs. post Master General, Central Circle, Nagpur AIR 1965 SC 311
[40] Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

finding its validity.[41] Article 19 (1)(g) and (6)- Reasonable restrictions-Test to determine- Trade must be directly affected by restriction.[42]

During emergency situation even refusal by a single workman may hamper the work of the others. For example during the period of power cut, if the generator operator refuses to work, the work of the others will be suffered. Under these circumstances the act of a single workman amounts to "strike".

Hence, there is a need to amend the definition of "strike" including the "refusal of work by even a single workman amounts to strike". Under the Industrial Disputes Act, 1947, all workers can avail of the right to resort to strikes. Even in Public Utility Services, where withdrawal of labour inevitably disrupts normal life, workers enjoy that right. This is not to say that the right is limitless – it is qualifies, and the Essential Services Maintenance Act (ESMA) of the Central and State demarcates the bounds of such right. The application of ESMA is supposed to be after careful study of the public and community requirements, where after the Government may immediately after any strike in the concerned services as illegal and authorise arrests of striking workers. Now it became an accepted practice for Government to impose ESMA as a threat to coerce workers into submission. Identifying employees on the touch stone of the essentiality of the services rendered in a given scenario would not only appease employee unions, it would also relieve the State of the burden of imposing a blanket ban that is increasingly becoming difficult to enforce in the face of violent responses by trade unions. Though in the beginning the ESMA proved success, later the employees refused to obey the directions given by the Government (in Public Utility Services). The employees of PSUs start defying the orders issued under the

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[41] Bachan Singh v. State of Punjab,(1980) 2 SCC 684.

[42] Bishamber Dayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39, 62 see also (1986) 3 SCC 20. Viklad coal merchant v. Union of India. (1984) 1 SCC 619, 641, 642.

provisions of ESMA. The Government cannot do anything except to settle the matter with the employees unions.

7. 7 The Right to Information Act, 2005 (N0. 22 of 2005)

This Act was passed for revealing information in actual practice is likely to conflict wit other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information.[43]

Section 6 (2) of the Act, 2005 lays down that the person requesting the information need not furnish any reason or any other personal details for it. **Section 8** (1)(a) of the Act lays down exemption from disclosure of information. It lays down that "information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence". Section 8(1)(d) of the Act lays down that "information including commercial confidence, trade secrets of intellectual property, the disclosure of would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information".

These provisions of the Act creates reasonable doubt as to the disclosure of information to the employee (by the employer) with regard to the economic position of the employer which is essential for the fixation or payment of benefits to his employees like revised wages, bonus etc. The documents reveal the economic position (like ledger books etc) can be covered by the term "commercial confidence". The employer may avoid disclosure of information which is required

[43] The Gazette of India (Extraordinary), Part-II, Section 1 January 15, 2005.

by the employees for claiming financial benefits like bonus on the ground that the information may reveal his commercial secrets and may cause severe hardship in future business. Unless the judiciary clarifies that some transactions or documents like 'ledger books' etc, are not covered by "commercial secrets" the possibility of getting information with regard to the financial status of the employer is negligible.

The above information makes it clear that existing legislation is sufficient to protect the rights of the workmen, but, it is submitted that, lack of whole hearted belongingness on the part of both the Government and trade unions and lack of work-culture on the part of the employees is pushing the workers' community to the gallows.