

A SOCIO- LEGAL STUDY OF WORKMAN’S RIGHT TO PROTEST: CHALLENGES AND REMEDIES

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ABSTRACT

Every individual including workman have the fundamental right to protest. These protests can be demonstrated in a number of ways. However, the underlying rule remains that any resistance must be restricted for ensuring public order in the society. When an individual gets employment in a workplace, he/she becomes a workman of that particular industry bearing certain duties as a part of code of conduct. Once an individual becomes a workman, some additional duties and rights are created both on the part of the workman and the industry. This article aims to understand the differences between a workman’s right to protest and a workman’s right to strike. It explains at length the legality, contents and the extent of such a right. It is important for us to understand the circumstances in which an employer can curtail a workman’s right to speech and to form associations. During any conflicting situation, it becomes very difficult to control a mobilising group of workmen who resort to extreme measures and disrupt the functioning of an industry to demonstrate their point of view. While on one hand workman have the fundamental right to protest and a legal right to strike but they have a corresponding duty to not resort to disruption and violence. It is important to understand the legal standpoint in this situation so that there is a clarity as to the extent of the rights and duties of workman and authorities to ensure that protests in a peaceful manner. Further the article articulates suggestions considering the contemporary issues at hand.

Keywords: Workman, employer, industry, strike, protest etc.

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I. INTRODUCTION

There are times when in industries there are conflicts between workman and employer. Workmen feel that the employer is unapproachable and thus conduct protests as a means to raise their concerns. Protests can either be peaceful which means there is no violence, hindrance or annoyance of any kind to the employer, co-worker or passer-by or it can be violent involving any activity which might cause disruption, annoyance or hindrance to the daily routine work. In addition, it may also incite violent activities. In the former, there exists no conflict regarding legality concerning the scope of rights of workmen to protest however in the latter there are a number of issues that need to be dealt with such as what are the components of the scope of workmen's right to protest, what is the scope of authority of the industries to control a situation, rights of workmen who are not involved in protests and what are the remedies available to all the above when their rights are infringed or authority disregarded. The courts have dealt with various aspects of protests balancing the rights of every stakeholder clarifying the scope of such rights which will be articulated in this article.

Objectives:

1. To understand the concept and extent of workmen right to strike in industries.
2. To identify legal provisions and systems in place to understand the powers of various administrative and executive authorities for better regulation and peaceful functioning of industries in dealing with strikes.
3. To identify socio-political practical issues which are creating issues in smooth functioning of industries when dealing with different forms of agitations.
4. To provide solutions for dealing with the issues raised in this article.

II. PROHIBITING OR LIMITING PROTESTS TO PREVENT OBSTRUCTION

Courts have time and again reiterated that the right to protest is not an absolute right let alone the right to protest indefinitely at the workplace or obstructing activities of the workplace. The courts in many cases have prohibited protesting in certain areas of the industry or workplace holding that the authorities have the power to limit any such activity culminating into disruption or obstruction of daily routine activities which was evident from the cases of a prominent industry protests and strikes where court upheld the decision of authorities and directed that

“protests must not take place anywhere near 100 meters of the main administrative block.”¹ Every workman, employee or a worker has the right to organise a peaceful protest and a strike to raise its voice for their demands. But there exists absolutely no inherent right to disrupt the functioning of a workplace or to use violent, illegal and aggressive methods to be able to reach the authorities. This right provided under Article 19 is not absolute and therefore the person inheriting such a right must assume the responsibilities that comes with it. In the context of workmen or workers, their right to protest is often associated with industrial disputes and is primarily governed by labour laws. The Industrial Disputes Act, 1947 is a key piece of legislation that deals with the regulation of industrial disputes, strikes and protests at workplace.

III. LEGAL PROTECTIONS

The most controversial question during protests is the authority of police to enter campuses to control the growing situation and maintaining law and order. The court has extensively discussed the pros and cons of the same and further discussed the legal stance. The authority of the police in the context of workmen's protests at the workplace in India is governed by the law, and their role is typically to maintain law and order while respecting the right to peaceful assembly. It has been held that the police can only be allowed to enter the campuses to take cognizance of the situation when intimated by the authorities of ingress and egress.

The primary role of the police during a workmen's protest is to maintain law and order, ensuring that the protest remains peaceful and does not escalate into violence or create a threat to public safety. In some cases, workmen may be required to obtain permission or provide notification to the local authorities, including the police, before organizing a protest. The specific requirements may vary depending on local regulations and the nature of the protest. The police may be involved in managing traffic and ensuring public safety in the vicinity of the protest to prevent disruptions and maintain the normal functioning of the area.

If a protest turns violent, poses a threat to public safety, or involves unlawful activities, the police have the authority to intervene to restore order. This may include dispersing the crowd, making arrests or taking other lawful actions as necessary. While maintaining law and order, the police are expected to respect and protect the fundamental rights of individuals, including

¹ Hindustan aeronautics Ltd. V Workmen, 1975 AIR 1737

the right to peaceful assembly and freedom of expression. The use of force should be proportionate and in accordance with the law. If the protest involves a violation of law or poses a threat to public safety, the police may initiate legal procedures, including filing charges or taking individuals into custody, in accordance with the applicable laws.

The specifics of police authority may vary based on the state and local laws. Workmen and organizers of protests should be aware of the legal requirements and procedures governing public gatherings in their jurisdiction. Additionally, maintaining open communication with local authorities and seeking necessary permissions can contribute to a peaceful and lawful conduct of protests.

IV. CONTEMPT OF PREVIOUS ORDERS OF INDUSTRY AUTHORITIES

The age-old debate regarding the scope of rights of workmen to protest raises a number of dilemmas and legal issues. Sometimes as a preventive measure the industry authorities decide to pass orders to restrict the activities of the workmen' procession to avert any situation from going out of hands. A gathering in an industry forming human chains, vandalizing public property and making offensive speeches is a common sight when a protest goes haywire which is why authorities sometimes while analysing the heated situation foresee the dynamics of the protest and prohibit and restrict certain activities of the workmen. Such orders are generally overlooked and breached knowingly, therefore not adhering to the industry code of conduct and decorum. In this case, can the authorities file charges against the workmen of contempt of orders and if so, can such contempt order extend to any previous orders that were given in a different scenario. Further, the authorities perpetually restrict the rights of the workmen in order to maintain law and order.

Sometimes the industry had prohibited the workmen to call gatherings and to organise protests inside the workplace. Despite of which workmen went on to raise slogans and wrongfully confined the movement of staff members in the restricted area as contended by the authorities. Such activities time and again bring universities to a standstill and prevent the employees to perform their duties due to the violent nature of the protests. The issue that came up in court here was that the order prohibiting the organisation of protests was dated back to 2017 which was passed during a different protest. "The contention is that the order does not stand operative beyond a certain period of time, and in a different protest."² The notice need not be seen

² M.C Mehta v. State of Tamil Nadu AIR 1997 SC 699

necessarily in a particular factual matrix in which an order was passed, it could be presumed to be extended to a similar situation for precaution and prevention. Moreover, the plea of preservation of fundamental right to protest enshrined under article 19(1) (a) of the constitution is not maintainable in contempt proceedings. No citizen has an absolute fundamental right. Every right conferred upon an individual is bound by the duty to protect the rights of others which is why the court rejects the view. The fundamental right given to the citizens of this country under, Article 19(1)(g) to practice, follow or carry on any profession, occupation, trade or business within the limits which have been effectively imposed by the governments for the public good and welfare of the people.

“For a court to maintain discipline and sanctity of a court order, it is essential for the court to hold those guilty, who have purposely disregarded the court orders in a clandestine manner.”³ The courts power and the Rule of law will only be upheld if compliance of such orders is ensured.”⁴ “ The maximum punishment has been restricted to six months of imprisonment or a fine of Rs.2000 under or both under, Contempt of Courts Act.”⁵

V. RESTRAIN ON LOCATION

In a seven judge bench, the courts held “any place which clears triple test is held to be an ‘industry’, and its employees, ‘workmen’ under section 2 (j) for the purpose of the Industrial Disputes Act, 1947. This is why it was contended that it is the right of every employee or workmen to organise a protest in any place of the industry.”⁶ However this is not the correct stance. Firstly, when we talk about protests being disruptive, leading to obstruction and violence, the courts have held that no such protest can be allowed to take place at workplace where the daily routine of the work is hampered.

Under the Industrial Dispute Act, there is no right of workers to hold demonstrations or to organise protests at the residence of the employer which in this case of a industry exists on the campus making the situation even more vulnerable. “Holding such an event would amount to unfair labour practice of the workers.”⁷

³People’s Union for Democratic Rights v Union of India 1982 AIR 1473

⁴ ibid

⁵ Bandhua Mukti Morcha v Union of India AIR 1984 SC 802

⁶ Municipal Corporation of Greater Bombay v Labour Appellate Tribunal of India AIR 1957 BOM 188 (provisions Page 1251 of the Industrial Disputes Act, (See Schedule V Entry 6)

The concept of such restraints and restrictions revolves around the idea that no demonstration can be allowed to become aggressive or intimidating. The rights of other stakeholders are equally important including workmen, workers, employees and passer-by's who are not involved with the demonstration. Thus, the courts have formulated certain guidelines which need to be adhered to while holding a demonstration with respect to physical proximity leading to obstruction. The workers involved in a demonstration must not organise any such event within a particular distance from the employer's premises.

The protesters have no right to cause any kind of inconvenience to other people who may want to visit the employer. This method to achieve redressal of their issues cannot be legitimised and permitted which causes disruption to the functioning of the workplace. In a case of protests in the hospital VIMHANS, the court held the protest to be illegal as it was causing grave inconvenience to the patients and other visitors therefore ordered them to take their demonstration 200 metres away from the premises so that no obstruction of activity would take place. "The industry administration has the right to have an obstruction free ingress and egress of the staff, workmen, their parents, visitors etc"⁸

However, the court need not interfere in any internal matter of any industry as the management are deemed to be experts and specialists who have spent years in gaining experience and are well aware of the intricacies and issues pertaining to industrial dispute. Therefore, such matters must be left to the discretion of employers. "Wednesbury principle, will only apply to very few exceptional cases which enable petitioners to challenge any administrative decision on the basis of lack of reasonableness."⁹

Many state governments have been empowered to even permanently ban protests in certain public places and to designate places for conducting protests as it deems it. Chennai Police Act states that permission to hold protests shall be given to any individual or group of people by Commissioner of the City Municipal Corporation. This provision is widely criticised by many stating that it is violative of the fundamental rights granted under Article 19(1) of the Indian Constitution. If we have rights being a citizen of this country, we also have some fundamental duties. Article 51-A states that every individual must abide by law, protect public property, and to abjure violence. Article 38 was created for the welfare of the people with reference to

⁸ SAIL v National Union Waterfront Workers Appeal (Civil) 6009-6010 of 2001

⁹ Rama Muthuramalingam vs. Deputy Superintendent of Police, Mannargudi (2004 (5) CTC 554)

maintenance of public order. It has also been held that, “such programmes can only be help during non-peak hours which will not cause inconvenience to passers-by.”¹⁰

VI. RIGHT AGAINST COMPELLED LISTENING

“As citizens have the right to conduct protests and profess as a matter of fundamental right conferred to them under the constitution, citizens also have the right to not to listen which must also be taken into account by the court of law.”¹¹ Jurisprudentially, the values underlying the right to speech, right to listen, right to compelled speech, also gives rise to right against compelled listening. Can a state compel citizens to, watch a video about the ill effects of smoking? In the same manner, restricting the path of passers who have no interest in becoming a part of such ¹²processions cannot be forced to be a witness of the event. Conducting protests and processions on sidewalks of homes and residential areas will violate the privacy rights of individuals. One cannot captivate listeners and disrupt their peaceful living only to be heard. “Here the right to privacy can trump right to speech.” “Fundamental right does not empower anyone to conduct events at any place and any time.”¹³ Every individual has the right to read whatever he wishes to, listen to any diverse content available, or decide not to read, listen or witness anything. One cannot restrict the voice and visuals of such procession from reaching him. He cannot be forced to hear or see what he wishes not to.

This will be a violation of ones right to be let alone. This right has been conferred as an essential right to be read into Article 19 of the constitution. “We cannot allow others to trespass the mind or ear of an individual and commit auricular or visual aggression. The State needs to protect the mute, the unorganised and inarticulate, against onslaught of enthusiasm of the vocal or the vociferous.”¹⁴ Realities of life cannot and must not be ignored. Freedom and order go hand in hand. They are complimentary to each other. Citizens have the right to raise their voice and opinions to the state and to individuals who wish to listen, however people who do not wish to

¹⁰ Mazdoor Kisan Shakti Sangathan Vs. Union of India and another, WRIT PETITION (CIVIL) NO. 1153 OF 2017

¹¹ Government of Tamil Nadu and Others vs P Ayyakannu Lnind, W.A.No.1042 of 2018, C.M.P.No.8772 of 2018

¹² Corbin, C.M. (no date) The first amendment right against compelled listening - miami, Industry of Miami School of Law Institutional Repository. Available at: https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1292&context=fac_articles (Accessed: 05 August 2023).

¹³ P.A.Jacob vs. Superintendent of Police, Kottayam, (AIR 1993 Kerala 1 [LNIND 1992 KER 217])

¹⁴ Ibid

witness it, have the right to peaceful living. “The choice is not between order and liberty. It is between liberty with order and anarchy without either.”¹⁵

VII. ROLE AND LIMITATION OF POLITICAL ORGANISATION

The involvement of political organisations in the industry system has its pros and cons. On one hand it helps to raise legitimate workmen issues and demands and enables them to have access to higher authorities for their grievances. On the other hand political organisations politicise their personal agendas and ideologies for their personal gains. They manipulate, influence and mobilise workmen for expansion. It is usually seen as a necessary evil in the industry set up. The question however arises as to what is the extent of involvement and interference of such organisations in educational institutions. Where do we demarcate the line to maintain peace and an intellectual environment? This question was taken up by court which held that no authority is against any particular political philosophy or ideology and neither do they wish to discourage discussions for the same. As a matter of fact such platforms and forums for discussions are necessary but not through political workman organisations with which the management has no relation.

“Trade union of employers also have their fundamental rights which cannot be interfered with by any workman trade union Article 19(1)(g) of the Constitution.”¹⁶ The role of the head of an institution is to maintain the sanctity of the education institution and ensure the delivery of duties and responsibilities by the organisation and its employees. They need to maintain discipline which is the bedrock on which education flourishes.

Rule 22 of the Service Rules states that it is essential to balance the interest of an individual and the authority of the institutions to create service rules and code of conduct of employees for smooth functioning of the organisations. Such rules are essential for any institution and is protectable under Article 19(1)(g) of the Constitution in public interest.”¹⁷

The code of conduct of any industry authorises the administration to ban strikes, dharnas demonstrations, protests etc. at the workplace violation of which would culminate into initiation of disciplinary action.

¹⁵ (IN) Justice B P Banerjee : Writ Remedies- Remediable Rights under public Law, Vol. 1, 8th Edition

¹⁶ Workmen of M/S Firestone Tyre and Rubber Co. of India v Management 1973 SCR (3) 587

¹⁷ M.H. Devendrappa v. Karnataka State Small Industries Development Corporation, (1998) 3 SCC 732

“Collective bargaining, strike, go slow, dharna, agitation, gherao, absenteeism etc. are new concepts to the academia. As much as the court understands the need and power of such expression, it also emphasises on the need for limiting its use for an institution to thrive. Otherwise, they will end up engulfing the entire system and bring it to a halt.”¹⁸ Grievances of the workmen must be attempted to be resolved by the grievance forum first before any workman approaches the court of law.

VIII. COGNIZANCE BY COURT

In Patna industry, the union leader instigated workers to paralyze and stop the work of government offices by organizing gherao dharna. He attended a meeting of the Sanchalan Samiti where he forced this decision to meet and conduct the gherao in a bid to discourage the governor from attending the gathering. This constituted violation of prohibitor orders under Section 144 Cr.P.C. In response to this information, the court ordered the police officers to arrest him in order to prevent such an offense which would serve to maintain public order. In such a gherao there are elements of coercion and any retaliation against the person subjected to such resistance would undermine public peace and order. Agitation during period of orders under Section 144, Cr.P.C. is not only illegal, but ultimately leads to violence which has a detrimental effect on public order. Therefore, such grounds are not only relevant for such detention, but are essential for the maintenance of peace and justice.

However, for the court to pass such an order, it must establish a nexus between the acts of detenu which have been apprehended in the order and the objective of such detention. The main motive must be prevention of any act leading to disharmony and to uphold public peace and order. The “cumulative effect” of the activity in question has to be taken into consideration while discussing the merits of the case. “When the plaint is drafted on many separate grounds, then invalidation of any one ground would render the entire order ineffective.”¹⁹ The authority must be subjectively satisfied of the grounds for detention which will make it difficult to predicate the success of such an order in the absence mentioned data.

Usually, the police is seen invoking the fact that the protesters must have exhausted all possible legal remedies other than holding protests, to which the court said, “It is not for the

¹⁸ Harish Uppal v. Union of India, 2003 (1) KLT 192 (SC)

¹⁹ Ram Bahadur Rai vs The State Of Bihar & Ors, 1975 AIR 223, 1975 SCR (2) 732

police to raise an objection as if it were obligatory on the part of police. The signatory must exhaust all alternative remedies before holding a public meeting.” If the persons in question cannot demonstrate that they did not contact the competent authorities, their right cannot be considered unconditional.

But if they do so, their right to hold demonstrations cannot be arbitrarily restricted by the police, if such demonstration is legal and peaceful. When protests concern real issues of educational institutions, such as tuition increases, improper functioning of the system, unjust or arbitrary practices of authorities, or reformist calls, it is clear that such issues will not lead to public dissent and therefore cannot simply be dismissed on that ground. The reason for rejecting a request to organize demonstrations cannot simply be traffic congestion, as there are numerous cases where the police allow political parties and other organizations to organize demonstrations.

Another reason often used to reject such requests is the existence of rival groups, which will lead to a chaotic law and order situation. Even such a reason cannot hold because when there are dissenting opinions, rival opinions must exist and in a democracy such dissent should not be encouraged. Given this, demonstrations will never be able to be held.

The fact that two rival groups exist can never be a reason to deny any citizen permission to express their opinions in public. Complete consensus among people can never be expected, nor is it desirable. The expression "public order" must have a close and direct connection with the specific constraints referred to in the Constitution and must not be interpreted indirectly. “Restrictions must be real and concrete, not far-fetched or problematic.

That being so, it is not desirable for the police to curtail the freedom of speech by simply citing the reason that the rival group and may create law and order problem. It is their duty to maintain law and order and mere apprehension of the rival group being displeased by the holding of a meeting by another rival group cannot result in the police refusing permission on the ground of law-and-order situation. That being said the police has the right to apprehend what issues may be sensitive and need to be restricted such as Vinayagar Chaturthi where court gave discretion to police to be able to limit the routes of procession. “Any statement or set of words that have the capability to provoke an individual into retaliation must be curbed by the

police.”²⁰ “However this cannot be imported blindly with reference to the request which is made by a political party which feels duty bound to project its views and also to reply to some of the allegations which are said to have been made against the petitioner politic.” The restrictive grounds under article 19 (2) are exhaustive however must be construed strictly if on any ground beyond article 19 (2).

The court held that “it is not for the police to state whether the view point sought to be propagated by the applicant is correct or not. Neither the police nor even this Court can be concerned with the truth or merits of the issues which each of the political groups want to project in their respective meetings.”²¹ Courts have given discretion to police in many circumstances “to decide the grounds for rejection as they deem fit however such discretion depends upon each case and cannot be treated as a blanket licence for the police to act in an arbitrary and dictatorial manner.”²²

Section 76 IPC

“Melee as a direct consequence of such boisterous agitations. In the helter-skelter and stampede, it is quite natural that even non-participants will get injured. The role of the police in such situations can only be imagined.”²³ “The intent of the unlawful assembly can only be decided from the circumstances of the particular situation by the court.”²⁴ The fact that the Assistant commissioner had given orders of lathi charge does not itself show that the decision was illegal and unwarranted. The tense situation of a given time is unimaginable. The anxiety of the police officers in charge of law and order at the site etc. are all matters which will have to be taken stock of by the sentinels of law and order. The defence of subordinates for action in lieu of its superiors is essential for the morale and discipline of the force. Acting strictly as per the order of one's superior is a part of the discipline taught to forces. “If an order is illegal then the subordinate cannot be protected under the law.”²⁵ There must be no political bearing on the decision

²⁰ *Chaplinsky v. New Hampshire*, 315 US 568

²¹ *Adhirai M.M.Ibrahim vs The Commissioner Of Police*, W.P.No.3210 of 2005

²² *Supra* Note 11

²³ *Supra* Note 26

²⁴ *ibid*

²⁵ *Shiv Mongal Singh v. State* - 1981 CrL.L.J. 84.

whatsoever. There is however a paucity of decisions on this point and it will be useful to refer to some foreign authors. "Such a decision must be lawful in fact"²⁶.

Soleman J, said, "If any soldier truly is of the view that he is duty bound and must obey the orders of his superior then he would be protected from any liability, unless such an order is so gravely illegal that he must have known that they are unlawful."²⁷ Mere adherence to the superior's orders is not a sufficient ground for defence. This may prove absence of mens rea, establishing lack of motive, and that he was merely acting pursuant to the orders given to him, under mistake of fact. "If any government servant believes to have a claim of right to do the act that is in question, such establishment of lack of intent can dissolve one's liability under negligence, owing to the fact that he was merely following orders. This will help him negate any such charge of negligence. Reasonable mistake of law is no defence. However, the absence of realisation of grave illegality will make one liable for executing any order."²⁸

Order to remove agitators who were blocking the road of minister is enough information to ensure no further damage is done. "Police cannot take the risk of waiting to see that the Minister was actually assaulted or attacked by the unruly mob ordering his subordinates to tackle the situation by removing the agitators who were obstructing the way of the Minister."²⁹ "An extremely pernicious behaviour has been noticed in contemporary public course of work. If a certain group of individuals, a workman union, or an ideological group does not find itself palatable to the existing government or ideology, then it is commonly seen that they are not burdened or guilt stricken by the fact that they resort to extreme measures of expression and discontent.

Destruction of property, restricting routine work of government offices, restraining public servants from attending events and even violence is commonly seen as an acceptable and justifiable practice in the name of freedom of expression. "³⁰ This has resulted in creation of extreme annoyance, discomfort among the public at large. Lives of common people are disrupted by agitators, and are forced to face hardships effecting their daily lives. Such protestors are unwilling to accept the court orders and openly go against them as well only because their fair comments seem unpalatable to a certain section of society. Any vindictive

²⁶ Sir Rupert Cross, Philip Asterley Jones, 8th Edition of Cross and Jones " Introduction to Criminal Law

²⁷ Glanville William's "Textbook of Criminal Law", 1978 Edition at p. 408

²⁸ David Ormerod, Smith & Hogan's Criminal Law, 1978 Edition

²⁹ Supra Note 26

³⁰ Supra Note 26

reaction which leads to disruption of government offices or public at large cannot be accepted justifying them by criticising either the judicial authorities or the slow dispersion of justice.”³¹

Workman trade union of a particular industry assume the role of a supreme authority, having the right to constantly criticise the decisions of the administration without reasonable cause owing their allegiance to a particular ideology. A particular sect cannot decide for millions. And any legal remedy for violation lies in the court of law. Having said that, every individual has the right to voice their opinion and be heard which can be done within the garbs of law. Offensive military cannot be the standard of assessment of a workman. This has seen to have slowed down procedures and routine functioning at the industry levels. Rigidity becomes the norm of the authorities, aware of the grave consequences of any drastic changes for the benefit of workmen.

IX. CONCLUSION

Right to protest is a fundamental right which has been enshrined under Article 19 of the constitution. It is an inalienable right with wide limitations. Every individual has the right to voice their opinions and make themselves heard. However, other citizens of the country have concurrent rights to privacy, right against compelled listening, right to be left alone, right to peaceful living and right to not being interfered with. Courts have reiterated certain principles over a period of time for prevention of mishaps, violence and conflicts which people have chosen to not follow. Courts need to impose their authority which has been taken for granted by agitators for long.

This may be because judiciary has been liberally dealing with offenders or citizens who confidently disobey court orders knowing there will not be consequences for the same. Industry administration has been empowered to take decisions for maintaining peace and order. They can choose to refrain and limit locations for processions, install CCTV cameras, or even remove workman union from industry systems if it deems fit. Courts have validated the industry's power to take needed steps for ensuring smooth functioning of industry activities and peaceful pathway to workmen and employees. Every workman of the industry has a fundamental right to protest but not to go on strike which must be ensured through

³¹ Supra Note 26

implementing disciplinary strategies for dealing with workmen who have raised an issue through some form of agitation.



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