STRIKES, LOCK-OUTS AND GHERAOS—LAW AND PRACTICE. By V. P. ARYA. Calcutta Oxford And IBH Publishing Co. 1967. Pp. 73. Rs. 15.

LABOUR-MANAGEMENT RELATIONS in India suffered a serious set back due to recession in the industry. The situation was further aggravated owing to non-observance of labour laws, non-implementation of the recommendations of the wage boards and awards of industrial tribunals by the management and the political overtone of the current trade union agitation in the country. Economic recession resulted in the closure of several industries making workers redundent. The management adopted a policy of retrenchment and layoff of the surplus labour. In some instances extraneous considerations also led to the retrenchment of workers. To resist retrenchment and layoff by the management workers resorted to strikes, bundhs, hertals, gheraos and other violent methods. The extensive use and misuse of strikes, lockouts and gharsos in India has caused general concern and anxiety. The book such as the one under review provides some useful and timely guidelines to those involved and interested in such problem.

Mr. Arya's aim is to present "an integrated analysis of the legal and practical aspects of strikes, lock-outs and gheraos."[1] A study of such problems in the realm of industrial jurisprudence is not only most opportune but a welcome relief to those confronted with the maintenance of human relations in the industry. The book is worked out in seven chapters which include a study of the meaning of the term strike; types and forms of strike; meaning of lockout; right to strike; restrictions on the right to strike and lockout; some consequential issues arising out of strikes and lockouts and gheraos. It also refers briefly the statutory provisions and principles evolved by the labour judiciary on strike situations etc.

According to the learned author the book is primarily written[2] for lawyers, professional men—business executives, personnel managers, trade-union leaders—and laymen to assist all of them in understanding the rights and obligations of labour-management towards each other when faced with critical situations like strike, lockout and gherao. But this contribution would have been more profitable and interesting to those for whom it is meant, had the author dilated upon these issues in a more objective and realistic manner. The author adopts a legalistic view of things without taking into consideration the various economic and political complexities involved in labour-management relations. As such the entire effort turns out to be pedantic and barren. The nature of 'strike' and 'lockout' has been discussed in a known fashion with the help of relevant cases without understanding the fundamentals of these

1. Arya, "Preface" in *Strikes, Lockouts and Gheraos — Law & Practice* (1967).
2. *Ibid.*

concepts. For instance the author without much serious thought and objectivity takes the view that

> a *political strike* a mass absence without permission to attend the funeral of a political leader and a purely wanton and purposeless stoppage designed merely to inflict injury on the employer are all strikes.[3]

The basic element in normal industrial strikes is directly related to the working conditions. Strikes, of course, may be defensive to resist attempts of the management to take away existing privilege enjoyed hitherto by the workers. It may be aggressive to speed-up a change in the existing conditions with a view to secure higher wages, bonus etc. But by no strech of imagination political strikes can be said to be covered by section 2(*q*) of the Industrial Disputes Act, 1947. The same is the position of sympathetic and general strikes. The learned author has erred again by concluding that a general strike falls within the definition of 'strike' under the Act. The same can be said to be of hunger strikes. Such strikes are not only against the spirit of the Industrial Disputes Act but also of the Code of Discipline in Industry, 1958—the latter being a non-statutory, voluntary and a non-legislative measure which *inter alia* forbids coercion and intimidation.

As regards stayin-strikes the Supreme Court in the *Punjab National Bank* case[4] has legitimized them provided such strikes are *peaceful* and *non-violent*.[5] But in view of the attitude of the various tribunals and High Courts[6] with regard to gheraos the Supreme Court may reverse its *Punjab National Bank* case judgment in some future case. This supposition is based on the proposed Banking Laws (Amendment) Bill, 1968, which provides :[7]

> No person shall obstruct any person from entering any office or place of business of a banking company or hold any demonstration (including shouting any slogan) which . . . amounts to the commission, or incitement to the commission, of any offence within the precincts of, or inside, any building—within ten meters from any entrance.

It would, therefore, be incorrect to make categorical observations on the modality of strike without understanding the ever changing norms of a dymanic and developing society like India The "Fansteel doctrine"[8] expounded by the Supreme Court of United States making stayin-strike as unlawful and a criminal trespass seems to be now valid law for India also. Generally speaking it is rather difficult to conceive a stay-in strike without fear of intimidation, coercion, sabotage or violence. The same analogy can be equally applicable to picketing.

3. Arya, *Strikes, Lockouts and Gheraos—Law & Practice* 12 (1967)
4. A.I.R. 1960 S.C. 178-79.
5. Emphasis supplied.
6. The Madras High Court has held stay-in-strikes as criminal trespass, *Hindustan Times*, Delhi, Nov. 4, 1967.
7. § 36AD of the Banking Laws (Amendment) Bills, 1968.
8. *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U.S. 240 (1939).

Picketing cannot be termed as a concomitant of the right of the freedom of speech recognized and guaranteed by the Constitution. Further, efforts have been made by the author to define and distinguish 'lock-out' from 'closure,' 'layoff,' 'retrenchment', etc.

The right to strike as a part of collective bargaining process is completely misunderstood. The learned author presumes that the enactment of the Indian Trade Unions Act, 1926 and the Industrial Disputes Act, 1947 have ushered the growth of collective bargaining in India. However, like the Labour Management Regulations Act, 1947 of the United States in India there is no legal duty on the part of labour-management representatives to bargain with each other in good faith, voluntarily without outside aid or interference. In India the right to strike is not a fundamental right. It is restricted and limited in the interest of industrial peace and economic development—by several statutory, procedural limitations and voluntary devices. The author makes no comments on the feasibility of restrictions on strike. Of course observations have been made regarding the claim for wages for the strike period—such a payment of course depending on the nature of strike or lockout and other related facts and circumstances.

The author has rightly condemned gheroas as illegal and unlawful. The judgment of the Calcutta High Court in the *Gherao* case[9] has been correctly quoted in support of his thesis. However, author's remarks on gheraos are neither adequate nor objective. While condemning gheraos as illegal within the matrix of existing Indian law he perhaps deliberately ignores the circumstances leading to gheraos. He has ignored the political, economic and human motivations which lead to gheraos in the industry. Undoubtedly gherao is not a legitimate trade union weapon for achieving industrial goals of the workers. Management in India being despotic and traditional has not yet realized that industry has social functions and obligations—more particularly towards workers. No amount of legislation or judicial fiat can abolish gheraos from the industrial scene for good without removing the causes that give rise to such situation in the industry. The author too does not suggest any measures and remedies to banish this dragon weapon which is a great threat to the labour-management relations.

Notwithstanding some of the above limitations the author has made a good contribution to the existing literature on the subject.

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9. *Jay Engineering Works* v. *St. of W.B.*, (1967-68) 72 C.W.N. 441.

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