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**KAMESHWAR PRASAD V. STATE OF BIHAR: EXAMINING THE  
DICHOTOMY OF FUNDAMENTAL RIGHTS AND STATE  
REPRESSION IN INDIA**

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**I. INTRODUCTION**

A significant ruling on the “Right to Strike” was made in the “*Kameshwar Prasad*” case, where the supreme court upheld a rule of government service that forbade all forms of protest by employees but declined to declare the “Right to Strike” a fundamental right.

**‘Justice Ayyangar’ delivered the ruling.**

The case’s particulars:

By way of appeal from the Patna High Court, the case made its way to the Supreme Court. At issue was the constitutionality of Rule 4-A, which was added to the Bihar Government Servants’ Conduct Rules, 1956, by a notification from the Governor of Bihar dated August 16, 1957, & which is as outlined below:

***“4-A. Demonstrations and strikes. – No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service.”<sup>2</sup>***

The rule forbids government employees from taking part in any of the following:

1. Demonstrations
2. Strikes

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3. Activities related to the terms of their employment.

## II. WRIT PETITION FILED AT THE PATNA HIGH COURT:

The six appellants, of whom the first was the President of the Patna Secretariat Ministerial Officers' Association and the others were Assistants or Clerks employed by the Bihar State Government, filed their appeals immediately after this rule was notified:

1. On August 26, 1957, a plea was submitted to the Patna High Court
2. in line with Article 226 of the Constitution
3. contesting the rule's legitimacy on a number of grounds, including, among others, that it contradicted the petitioners' rights as provided by subclauses (a), (b), and (c) of clause (1) of Article 19 of the Indian Constitution.<sup>3</sup>
4. as a result, the regulation went beyond the scope of the rulemaking authority granted by Article 309 of the Constitution, which served as the basis for the creation of service rules.

The petitioners requested a court order prohibiting the respondent state from enforcing the law and forbidding it from meddling with the petitioners' freedom to strike or organize protests.

However, the Patna High Court viewed that regulation as a legitimate limitation on the freedom guaranteed by Article 19. Therefore, the judges ordered that the petition be dismissed. However, upon the appellants' request, they were given a certificate under Article 132 of the Constitution that allowed them to file a case with the Supreme Court.<sup>4</sup>

## III. A SIMILAR BOMBAY HIGH COURT MATTER:

When the Bihar Service Rule matter came before the Supreme Court, an analogous service rule from the Maharashtra government was also being considered there. In that instance as well, the Bombay High Court came to the same result as the Patna High Court had demonstrated.

## IV. ARGUMENTS IN FAVOUR OF THE APPELLANTS:

The argument made on behalf of the appellants may be succinctly stated as follows:

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<sup>3</sup><https://indiankanoon.org/> (last visited on June 14, 2023)

<sup>4</sup><https://www.legalserviceindia.com/> (last visited on June 14, 2023)

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- The service rule, which was formulated in accordance with Article 309, is a "law" as defined by Article 13(3) of the Constitution and must be declared unconstitutional to the extent that it conflicts with the rules of Part III of the Constitution.
- All citizens are granted the right to "demonstrate" under Article 19(1), which is covered by subclauses (a) and (b), respectively, which grant them the freedom of speech and expression and the right to peacefully congregate without weapons.
- A person does not lose his status as "a citizen of India" by joining the government; he is still eligible to exercise the liberties that are given to all citizens.<sup>5</sup>
- Indeed, Article 33 establishes:  
**“Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.”**

The amendment is included to allow for special provisions to be made for the dereliction of protected freedoms in circumstances involving only two special services, namely the army and the police force. It unquestionably proceeds on the basis that people working for the government have a right to safeguard the fundamental rights guaranteed by Part III of the Constitution.<sup>6</sup>

- *"An expression of one's feelings by outward signs"* is a definition of a demonstration. A prohibited demonstration could be of the most innocent kind—peaceful and orderly, like the simple sporting of a badge by a government employee or even by an innocuous assembly, say after hours—demonstrations that in no way could be interpreted as involving any disturbance of the peace or of a kind that might stir up or contribute to disarray.

The rule's legitimacy could have been safeguarded if it had been limited to types of demonstrations that would cause disorder, but because it imposes an overarching prohibition

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<sup>5</sup><https://www.ebc-india.com/> (last visited on June 15, 2023)

<sup>6</sup><https://www.studocu.com> (last visited on June 15, 2023)

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on all demonstrations of any kind, including innocent ones as well as malicious ones, it cannot be deemed to be justified.<sup>7</sup>

## V. ARGUMENTS IN SUPPORT OF THE RESPONDENT - UNION OF STATE

- While it is true that the Constitution controls the ability to create Service Rules under Article 309, meaning that any rules so created must not be in conflict with any provisions of the Constitution, it does not stipulate that a government employee has the same access to all of the fundamental rights protected by Part III.
- A person who voluntarily enters a government position must be perceived to have acknowledged doing so under any reasonable conditions that may be established to ensure the proper operation of the government's administrative apparatus and to maintain repression within the Service itself.
- Every office is held at the leisure of the President or the Governor, as the case may be, in accordance with Article 310, provided that the regulation governing the terms for holding the position was equitable and geared towards accomplishing the above-named aims.
- The reliability and proportionality could not be evaluated only in light of the standards outlined in Article 19's clauses (2), (3), and (4). The attorney cited several US court rulings to support the idea that specific regulations imposed for the disciplinary treatment of persons working for the government must be evaluated according to standards distinct from those that apply to regular citizens.<sup>8</sup>

## VI. A REVIEW OF THE GUIDELINES AND REQUIREMENTS:

### VI.I ARTICLE 309

According to Article 309 of the Constitution –

*“Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services....”*

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<sup>7</sup><https://www.casemine.com> (last visited on June 15, 2023)

<sup>8</sup><https://indiankanoon.org> (last visited on June 15, 2023)

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Until such time as such provision is established through or pursuant to an Act of the respective Legislature, the proviso to the Article authorizes the Governors of States to adopt rules.

The government's ability to make rules is thus highly restricted by the Constitution, and the legality of a rule would have to be determined using the same standards that apply to all laws and other forms of regulation.

## VI.II. RULE 4-A

The contested regulation forbids two different sorts of actions in relation to issues involving the terms of service,

- a. Demonstrations being held, and
- b. Strikes are used to accomplish the stated goal<sup>9</sup>

## VI.III. What Does Demonstration Mean?

The Supreme Court asserts that –

***“a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one’s ideas to others to whom it is intended to be conveyed. It is in effect, therefore, a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech.”***

Even though, the goal of a demonstration is to communicate the sentiments of the congregated group to the individual or institution to whom the communication is addressed. It follows that certain types of protest would be protected by Article 19(1) (a) & Article 19(1) (b), among other freedoms.

## VI.IV. Types of Demonstration:

It goes without saying that a demonstration may take a variety of shapes given the nature of things.

- It may be unruly and noisy; for example, stone-throwing by a crowd is a common violent and disorderly protest that certainly does not fall under Art. 19(1)(a) & Article 19 (1) (b).

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- It is possible for it to be both orderly and peaceful, as in the case when group members just wear badges that attract attention to their complaints. This specific type of demonstration is covered by Article 19(1)(a) & Article 19(1)(b).<sup>10</sup>

#### **VI.V. The Court's Judgement:**

The Supreme Court reached the following decision after hearing the arguments of both sides:

- We are unable to endorse the contention that the Constitution eliminates Government employees as a class from being assured of the various rights provided by the various Articles in Part III except in those instances where such individuals were explicitly identified.
- Without a doubt, the rule's legitimacy could have been upheld if it had been written to specifically target demonstrations that were expected to disturb the public peace or that 'Would come within the other restrictive criteria listed in Article 19(2)'.<sup>11</sup>

#### **VI.VI. Since there can be no such splitting, the whole rule has to be declared unlawful.**

- We have dismissed the broad claim that people who work for the government belong to a separate class to which Part III's rights do not generally apply.
- Accepting the claim that the freedoms protected by Part III, specifically those in Art. 19(1)(a), apply to government employees and should not be interpreted as indicating that this group of citizens' exercise of their civil liberties is not subject to some restrictions due to the responsibility associated with holding an official position.
- Because Rule 4 -A's prohibition on "any form of demonstrations" violates the appellants' rights under Article 19(1)(a) and (b), the supreme court partially upheld the appeal and provided the appellants an order that Rule 4 -A should be repealed.
- It merely has to be added that the rule cannot be broken insofar as it forbids a strike.<sup>12</sup>

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<sup>10</sup><https://indiankanoon.org> (last visited on June 16, 2023)

<sup>11</sup><https://www.lawinsider.in> (last visited on June 16, 2023)

<sup>12</sup><https://main.sci.gov.in> (last visited on June 16, 2023)

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