
PAPER ON ANALYZING THE CIVIL AND CRIMINAL IMMUNITIES AND ITS IMPACT ON THE TRADE UNIONS

Riya Dev Sharma, VIPS, Delhi

Kirti Siwan, VIPS, Delhi

ABSTRACT

This research paper deals with the analysis of the development of the immunities and privileges of the trade unions in three phases. Prior to the Trade Unions Act of 1926, the workers experienced an utmost absence of statutory shield which resulted in prosecution and penalization. After the Buckingham Mill Case, the dynamic shifted with the enactment of the Trade Unions Act as it legalised the formation of the trade unions through registration and the members of the union acquired legal immunities from certain acts. With the increase in labour activism and domestic trends, the Labour Code, 2020 was formulated to align with the modernised needs and interests of the workers. Further, the provisions under the Code with reference to civil and criminal immunities and enforceability of agreements are immunities keeping in mind the legislative intent.

Introduction

The question of the status of Trade Unions and their practices emerged in the wake of the Industrial Revolution in the nineteenth and twentieth centuries, which split society into two classes: entrepreneurs and the working/wage-earning class. Frequent clashes between these two and the exploitation of workers gave birth to labour and welfare laws. British India faced various labour movements and conspiracies. Before the Trade Unions Act, 1926 these strikes by workers were considered illegal conspiracies as it was believed that they would cause financial injury to the employers, and workers were to compensate the employers for the damages caused by such strikes. It was only after the enactment of the Trade Unions Act, 1926 that some privileges were granted to trade union activities for the enforcement of their rights. This paper dives into the concept of civil and criminal immunities provided to trade unions and their status in pre-independent as well as post-independent India, including current developments under the Indian Relations Code, 2020.

What are Civil and Criminal Immunities?

Forming unions is the most effective way to make demands. These were followed by workers in the pre-independence period until now for the protection of their rights and welfare. However, earlier, they were considered illegal, and the members were prosecuted. After many legislations, the Trade Unions Act, 1926, finally provided for immunities and privileges against criminal and civil actions for advocating the legitimate demands of the working class. These immunities are an important feature, taking into account, various Fundamental Rights enshrined in the Indian constitution involving, Right of Freedom of Speech and Expression, Right to Assemble Peacefully, Right to Form Unions, Right to Carry Out Any Profession, Trade or Business and Right Against Exploitation. The TU Act provided three kinds of immunities:

1. Immunity From Criminal Conspiracies Under **Section 17**
2. Immunity From Civil Liability Under **Section 18**
3. Privilege To Make Contracts for Restraint of Trade Under **Section 19**

In the year 2020, the parliament enacted The Industrial Relations Code (IRC, 2020). It amalgamated three erstwhile legislations i.e.: The Industrial Disputes Act, 1947 (ID Act), The Industrial Employment (Standing Orders) Act, 1946 as well as The Trade Unions Act, 1926. It was introduced for the purpose of simplifying and consolidating the country's matrix of labour laws, such as mandating the registration of trade unions, new sections and widening the scope of immunities and protections provided to workers. They are divided into 3 sections:

- ***“Section 16: Immunity from civil suit in certain cases - (1) No suit or other legal proceeding shall be maintainable in any civil court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of an industrial dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.***

(2) A registered Trade Union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of

an industrial dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.”

The section talks about the civil actions and conspiracy as a tort. It provides for a narrow scope regarding the immunity which is only granted in the circumstances where the activity is done in furtherance of any industrial dispute to which a member of the Trade Union is a party. In the case of *Rohtas Industries Staff Union v. State of Bihar*¹ where the Patna High Court held that if the combination is legitimate, bona fide and for the object of improving working conditions, the immunity shall be granted even if it causes injury to the interests of the employers.

- **“Section 17: Criminal conspiracy in furtherance of objects of Trade Union.** - No office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless such agreement is an agreement to commit an offence”
- **“Section 18: Enforceability of agreements.** - Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a registered Trade Union shall not be void or voidable merely by reason of the fact that any of the objects of the agreement are in restraint of trade: Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the purpose of enforcing or recovering damages for the breach of any agreement concerning the conditions on which any members of a Trade Union shall or shall not sell their goods, transact business, work, employ or be employed.”

The act also grants the protection to the agreements entered by the union in restraint of trade according to section 27 read with section 13 of the Indian contract act, 1872. This provision acts as an exception to this general rule.

Historical perspective: Pre-Trade Union Act, 1926

Colonial India was marked by unorganized, spontaneous workers movements and strikes,

¹ *Rohtas Industries Staff Union v. State of Bihar*, (1962) SCC OnLine Pat 68 (India)

which were instant reactions of the working class rather than planned protests to call out their exploitation. These movements were viewed as illegal conspiracies by unlawful organizations against employers and in restraint of trade. Before the Trade Union Act, 1926, these organizations were not recognized and were subjected to prosecution under criminal conspiracy laws, such as Sections 120A and 120B of the Indian Penal Code and breaches of employment contracts. The gradual shift from unrecognized trade unions and the criminalization of their activities to granting statutory protection under labour law can be traced in phases.

The initial forms of workers resistance typically involved stoppages, petitioning authorities, etc., and lacked formality. The first-ever major workers strike² in India was in 1862, when the Railway Workers of Howrah Station demanded a wage hike. In 1885 and 1889, jute workers of Budge Budge near Kolkata went on strike, where the police opened fire on the agitating workers. Similar strikes and protests took place between the 1850s and the 1910s. The Early Railway and Postal Union Suppressions (1907–1917) where associations like the Bombay Postal Union (1907) and the Amalgamated Society of Railway Servants (1897) were monitored by colonial administrators and several union leaders were dismissed or penalized for demanding fair working hours and pay, were also noted. Because these unions lacked legal identity, the government could easily disband them using administrative orders without recourse. These strikes led to the realization of the need to recognize formal trade unions with the establishment of the Bombay Mill Hands Association (1890) by N.M. Lokhande, marking the beginning of organized labour in India. However, all struggles ended in defeat, laying the crucial groundwork for further formalized movements and rights of workers.

Establishment of Trade Unions Act, 1926

Until 1920, the British government offered no legal framework for recognizing any union or association. From 1918-1930 the movements became more prominent, influenced by World War 1 and some famous international revolutions, including the Russian Revolution and nationalist movements. The most notable development during this period was the formation of the All-India Trade Union Congress (AITUC) in 1920 by leaders Lala Lajpat Rai and N.M. Joshi for advocating workers' rights and demanding the registration and immunity provisions. This led to the introduction of the Trade Union Bill in 1921, which provided legal recognition

² D P Buxi, *Indian Working Class Celebrates A Hundred Years of its First Political Strike*, (Oct 29, 2025, 4:37 PM) https://archive.cpiml.org/liberation/year_2008/april/working_class_hundred_years.html

of trade unions, similar to British laws under the Conspiracy and Protection of Property Act, 1875 (UK).

The pivotal point in the history of trade unionism was the Buckingham Mill case³ which led to the enactment of the Trade Unions Act, 1926 owes its origin. The Madras High Court granted an interim injunction against the Strike Committee of the Madras Labour Union forbidding them from inducing certain workers to break their contracts of employment by refusing to return to work. Trade Union leaders found that they were liable to prosecution and imprisonment for bona fide union activities, and it was felt that some legislation for the protection of trade unions was necessary. In March, 1921, Shri N. M. Joshi, then General Secretary of the All-India Trade Union Congress, successfully moved a resolution in the Central Legislative Assembly recommending that Government should introduce legislation for the registration and protection of trade unions.⁴

The Kanpur Bolshevik Conspiracy Case of 1924 underscored the growing response of workers ideologies against the British regime. It was a movement based on communist and socialist ideologies to overthrow the British government, with leaders like M.N. Roy, Muzaffar Ahmed, S A Dange, Shaukat Usmani, Nalini Gupta, Singaravelu Chettiar, Ghulam Hussain were charged for inciting revolution through strikes, propaganda, armed struggle and conspiring against the government leading to their imprisonment.

Growing unrest, strikes, and international attention to labour rights compelled the government to act accordingly. The Indian Legislature passed the Trade Unions Act on March 25, 1926, which came into force on June 1, 1927. The act finally granted legal recognition to registered trade unions and civil and criminal immunities for acts done in lawful furtherance of trade disputes, distinguishing legitimate union activity from sedition. This prevents them from being prosecuted by the government for legitimate claims.

However, the government's misuse of the provisions of the act was exposed in the Meerut Conspiracy Case of 1929, which became a symbol of the colonial government's suppression of labour activism in India. The accused were charged under colonial laws for conspiring to wage war against the British Crown. The government used the case to frame legitimate trade

³ Ministry of Statistics and Programme Implementation, *Chapter 41 Trade Unions* (Nov 1, 2025, 9:15 AM), https://mospi.gov.in/sites/default/files/Statistical_year_book_india_chapters/Trade_Union.pdf

⁴ PWONLYIAS, *Labour Conspiracy And Trade Union Movements In Colonial India* (Oct 30, 2025, 5:13 PM), <https://pwonlyias.com/upsc-notes/labour-conspiracy-trade-union-movements/>

union activities and political dissent as seditious conspiracy under IPC, aiming to criminalize the growing labour movement and the spread of communist ideology. However, the period also saw some major legislative developments in favour of labour classes, including the Payment of Wages Act, 1936, which provided some protections against wage exploitations, and the Industrial Employment (Standing Orders) Act, 1946, which mandated employers to clearly define terms of employment.

World War 2 intensified labour activism, and more movements emerged during the 1930s and the 1940s. The shift in strengthening these strikes was marked by the case of *R.S. Ruikar v. Emperor*⁵ in 1935 where, a strike was called by the workers of a textile Empress Mill in Nagpur on the ground that certain terms were not honoured by the mills. The strike was unsuccessful and the high court of Nagpur held that, the trade unions are not civilly or criminally liable for the acts done in furtherance of such acts as the trade unions act permits. However, the immunity under Section 17, shall not be granted if any criminal offences has been done during the course of carrying out the strikes such as use of violence, intimidations etc. Many such strikes were done later like, the Royal Indian Navy Mutiny and the HSRA railway strikes in 1946.

Legal Framework: Implementation of Labour Code, 2020

The migration from the Trade Union Act, 1926 to Labour Code, 2020 is a significant projection of the relationship among social-economic realities, state regulation and domestic labour trends. The Trade Union Act of 1926 was effected as a result of volatile disagreements between employers and labour which came to statutorily recognise trade unions, its registration and acknowledged civil and criminal immunities of such unions. The immunities under Sections 16, 17 and 18 of the Industrial Relations Code, 2020 protected unions and members from civil liability for inducement of breach of contract, from criminal prosecutions in lieu of peaceful collective acts, and shielded agreements in restraint of trade. However, India has seen a comprehensive change in the social, legal and economic dynamics in the contemporary times. The multitude classifications of labour laws and procedural regularities necessitated the introduction of a legislation which is consolidated and keeps up with the contemporary compliances. The Industrial Relations Code, 2020 replaced key provisions of the Trade Union Act, transformed the registration process, simplified the dispute resolution mechanism and reshaped the Trade union immunities. The new Labour Code includes the trade union rights

⁵ *R.S. Ruikar v. Emperor*, 1934 SCC OnLine MP 9 (India)

within the consolidated legal framework governing Industrial Relations which not just emphasizes transparency, accountability and balance of stakeholder interests but also shifts from the immunities as an utmost shield to one that ensures responsible collective action.

Under the 1926 Act, civil immunities shielded unions from being sued for tortious liabilities under acts done in connection with trade disputes, such as intimidation, inducement of breach of contract or interference with business. Trade unions that are registered under the act continue to enjoy immunity for acts done in furtherance of a trade dispute as long as they are not criminal or fraudulent. This restricts liability only to those acts that are outside lawful collective action, and includes personal injury or damage to property as any tort beyond interference with contracts is actionable in the court of law. Further, only the unions that were duly registered and adhered to statutory formalities could claim immunity, thus making the process of registration and legal compliances central under the Act. The Code formally immunises unions' office bearers, thereby protecting them from personal civil liability as long as they act in good faith. Moreover, the 1926 Act explicitly stated that agreements entered for furtherance of trade disputes were not criminally actionable per se unless it involved violence, intimidation or offences against the state. The Code emphasises that union activities such as peaceful strikes, negotiation, and picketing do not constitute criminal conspiracy. It reiterates that immunity is not a shield for criminal acts and no protection is available where violence, coercion or willful unlawful acts occur.

The provisions relating to immunities and privileges in the Labour Code have been curated in encouragement to the object of the legislation, i.e. achieving industrial peace and harmony as the ultimate pursuit in resolving Industrial disputes and to advance the progress of industry by bringing about the existence of harmony and cordial relationship between the employees and workers. The sections can be interpreted in the following specific manner:

- The civil immunity under Section 16 can be claimed only by a party to the dispute where an act is done in contemplation or furtherance of an industrial dispute, or it interferes with the trade, business or employment. Such act might also affect some other person's right to dispose of his capital or labour as per his accordance. Where the act has been done by the agent of the trade union, the latter cannot be made liable for the commission of such tort.
- Furthermore, criminal immunity under Section 17 can be sought by the office-bearer,

or the member of the registered trade union in an agreement made in furtherance of an object of the trade union. It expressly mentions that any agreement made to commit an offence is not immunised from the liability and punishment under Section 120B (2) of Indian Penal Code, 1860.

- Section 18 provides for the privilege that any agreement made between the members of the registered trade union in restraint of trade cannot be declared void or voidable.

As a result, the reforms have a key impact on the functionality of a trade union. On one hand, legal compliances for registration and formal requirements on stringent oversight of union finances have increased resulting in the narrowing of the immunities unions once enjoyed. On the other hand, the reiteration of peaceful collective action and statutory immunity on unlawful union activities result in the strengthening of unions' rights. The Code clarifies lawful procedures for conducting a strike including mandatory notice periods conciliation and compliance with service requirements. In presence of these compliances, the strike is said to be lawful and authorised retaining the statutory immunities and privileges. Likewise, this aptly conditional mechanism for immunities is applicable upon collective bargaining as acts done in pursuit of collective bargaining, if lawful, strengthen the effectiveness of negotiations.

The enforceability of the Labour code observed a critical debate whether immunities lead to abuse or are needed for effective balance as it was labelled as “a recipe to tear down trade unions”⁶. Immunities are essential for the workers' interests and rights as they can organise, bargain collectively and strike under unfair terms of employment and overreach by employer. Under undue conditional immunities, the unions risk persistent litigation, injunctions and criminal charges for conduct that is central to collective action and interest. However, even broad immunities and privileges can motivate irresponsibility, corruption and abusive conduct by trade unions resulting in inconvenience to the workforce and public.

Conclusion

Immunities and privileges serve as an incentive in lieu of due statutory compliance. Where the trade unions adhere to the formal procedures and protocol, they automatically qualify for

⁶ The Hindu, *A recipe to tear down trade unions*, (Nov 1, 2025, 7:45 PM), <https://www.thehindu.com/opinion/op-ed/a-recipe-to-tear-down-trade-unions/article33104097.ece?homepage=true>

immunities and shield against unfair acts of employers. The civil and criminal immunities in India journeyed from remaining unrecognised, gaining statutory recognition under Trade Union Act, 1926, to later recalibrating through creation of robust registration and procedural compliances under Labour Code, 2020. Though the political consensus claimed that all of these four Labour codes have a single commonality, i.e. it mostly dilutes the rights of the workers and favours the interests of the employers resulting in weakening of collective action and objective⁷. The legal reformation must strive to target codification in concurrence with the ever-changing domestic labour trends and equilibrium between workers' rights and their lawful conduct in pursuit of interests.

⁷ IASGyan, *A recipe to tear down trade unions*, (Nov 1, 2025, 7:57 PM), <https://share.google/9SnbqU6PDd8BWPGmh>