
PROTECTED WORKMEN: A LEGAL STUDY

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ABSTRACT

Protected workmen are employees who play an important role in trade unions and are given special protection under Indian labour law. Their protection is important because it prevents employers from targeting union leaders during industrial disputes. This article explains the meaning, purpose, and legal framework of protected workmen under the Industrial Disputes Act, 1947, along with the procedures for recognition, the rights granted, the responsibilities of unions and employers, and important judicial decisions.

Keywords: Protected workmen, industrial disputes, labour law, trade unions, disciplinary action, unfair labour practices, recognition procedure, statutory protection.

Introduction

Protected workmen are workers who act as leaders or office bearers of registered trade unions working inside an industrial establishment. They are given certain protections by law to ensure that employers do not take revengeful actions against them. In many workplaces, industrial disputes arise because of differences between workers and employers. Trade unions help workers by negotiating with employers. If union leaders fear victimisation, they cannot represent workers freely. Therefore, the law creates a special group called “protected workmen” and gives them protection from discharge, dismissal, suspension, transfer, or other punishment during the pendency of industrial disputes.¹ The concept of protected workmen is central to ensuring fair labour negotiations. Without this protection, employers might target union leaders to weaken collective bargaining. This would affect industrial peace and stability. The Industrial Disputes Act ensures that protected workmen can carry out their union responsibilities without fear.²

¹ Industrial Disputes Act § 33 (India).

² K.D. Srivastava, Law Relating to Trade Unions and Unfair Labour Practices (4th ed. 2014).

Historical Background

The concept of protecting union leaders has its origin in early labour movements across the world. In the early 20th century, many employers used their economic power to punish workers who organised unions. This discouraged union activities. India, after gaining independence, passed the Industrial Disputes Act, 1947, to maintain industrial peace. The Act introduced several provisions for the fair settlement of disputes. Section 33 of the Act specifically deals with protected workmen. This system was inspired by international labour standards that emphasise freedom of association.³ Over time, Indian courts and labour authorities developed clear rules regarding how protected workmen should be recognised and what rights they enjoy. The law aims to balance the rights of unions and employers by preventing victimisation while allowing necessary disciplinary control.⁴

Legal Framework under the Industrial Disputes Act, 1947

Section 33: Core Provision

- Section 33 of the Industrial Disputes Act provides that during the pendency of any industrial dispute before a Labour Court, Tribunal, or National Tribunal, the employer cannot take any action against a protected workman without the express permission of the authority before whom the dispute is pending.⁵
- The purpose of this section is to prevent employers from punishing or intimidating union leaders during negotiations. This ensures fair representation of workers in the dispute resolution process.⁶

Who is a Protected Workman?

A protected workman is a workman who is a member of the executive or office bearer of a registered trade union connected with the industrial establishment. Not all trade union office bearers become protected workmen. Only a limited number—not exceeding one percent of the total number of workmen, with a minimum of five and a maximum of one hundred—can be

³ International Labour Organization, Freedom of Association Convention, C87 (1948).

⁴ See B.R. Patil, *Industrial Disputes Act: Commentary and Case Law* (2018).

⁵ Industrial Disputes Act § 33(3) (India).

⁶ O.P. Malhotra, *The Law of Industrial Disputes*, Vol. 1 (7th ed. 2021).

recognised as protected workmen. This limitation ensures that employers are not burdened with an excessive number of protected employees.⁷

Procedure for Recognition as Protected Workmen

- Application by Trade Union

Every registered trade union must apply to the employer for recognition of certain office bearers as protected workmen. The application must be made in writing with the names and designations of those representatives.⁸

- Employer's Duty

The employer must recognise the protected workmen within fifteen days from receiving the request. If the employer refuses or delays recognition, the matter can be referred to the Labour Commissioner.⁹

- Role of Conciliation Officer

If there is a dispute about recognition, the Conciliation Officer can decide the matter, and the decision is binding on both parties.¹⁰

Need for Protection

- Trade unions require freedom to represent workers effectively. If leaders fear that they may be punished or transferred for taking strong positions against management, unions cannot function meaningfully. Protected workmen enjoy guaranteed safety so that collective bargaining is not undermined.¹¹

- Employers have significant power over employees. Without legal protection, they might misuse their authority during industrial disputes. The protected workman concept creates

⁷ Industrial Disputes (Central) Rules, 1957, Rule 61.

⁸ Industrial Disputes (Central) Rules, 1957, Rule 61(1).

⁹ Industrial Disputes (Central) Rules, 1957, Rule 61(4).

¹⁰ Industrial Disputes (Central) Rules, 1957, Rule 61(1).

¹¹ International Labour Organization, Collective Bargaining Convention, C154 (1981).

trust and transparency, which are necessary for industrial harmony.¹²

Rights and Privileges of Protected Workmen

- Protection from Punitive Action

An employer cannot dismiss, discharge, punish, reduce rank, or even transfer a protected workman during an industrial dispute without express permission from the adjudicating authority.¹³

- Reasonable Opportunity to Represent Union

Protected workmen can participate in union activities, negotiate settlements, attend meetings, and communicate with workers without fear of retaliation.¹⁴

- Protection from Victimisation or Unfair Labour Practices

Courts have repeatedly stated that employers cannot use their authority to target protected workmen or weaken union representation.¹⁵

Limitations on Protected Workmen

Protection does not mean immunity from all disciplinary actions. If the misconduct is serious, the employer may take action after obtaining approval from the relevant labour authority.¹⁶ Protected workmen must perform their duties efficiently. They cannot misuse their status for personal gain or disrupt productivity.¹⁷

Case Laws

- Tata Iron & Steel Co. v. Modak (1965)

In this case, the Supreme Court held that the purpose of Section 33 is to protect union leaders from victimisation, not to give them absolute immunity. Employers can take action but must

¹² S.N. Mishra, *Labour and Industrial Laws* (31st ed. 2022).

¹³ Industrial Disputes Act § 33(3).

¹⁴ Srivastava, *supra* note 2.

¹⁵ Patil, *supra* note 6.

¹⁶ Industrial Disputes Act § 33(3).

¹⁷ Mishra, *supra* note 16.

seek permission from the tribunal.¹⁸

- *Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union* (1999)

The Court emphasised that employers cannot use transfers or punitive actions to break union solidarity.¹⁹

- *Delhi Cloth & General Mills Co. v. Rameshwar Dayal* (1960)

The Supreme Court clarified that protection applies only during the pendency of industrial disputes.²⁰

- *Orissa Cement Ltd. v. Adikanda Sahu* (1960)

The Court held that protected workmen cannot demand immunity from action for misconduct but employers must follow statutory procedure.²¹

- *Indian Airlines v. Capt. P. Lal* (2003)

The Court reiterated that permission under Section 33 is mandatory before taking punitive action against protected workmen.²²

Practical Challenges in Implementation

Many unions complain that employers delay the recognition process. Employers sometimes reduce the number of recognised protected workmen by questioning the size or legitimacy of trade unions. This can delay collective bargaining. Sometimes multiple unions claim rights in the same establishment, causing confusion about which union's office bearers should be recognised. Labour authorities must carefully resolve such disputes to maintain industrial peace.²³

¹⁸ *Tata Iron & Steel Co. v. Modak*, AIR 1965 SC 486.

¹⁹ *Bharat Petroleum Corp. Ltd. v. Maharashtra Gen. Kamgar Union*, (1999) 1 SCC 626.

²⁰ *Delhi Cloth & Gen. Mills Co. v. Rameshwar Dayal*, AIR 1960 SC 806.

²¹ *Orissa Cement Ltd. v. Adikanda Sahu*, AIR 1960 SC 105.

²² *Indian Airlines Ltd. v. Capt. P. Lal*, (2003) 6 SCC 213.

²³ Labour Bureau of India, Report on Industrial Relations (2020).

Relationship with Unfair Labour Practices

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) clearly states that targeting union leaders amounts to an unfair labour practice. Protected workmen play a key role in preventing such practices. Courts frequently examine allegations that employers punished protected workmen for participating in lawful union activities.²⁴

Role of Trade Unions

Trade unions must fairly nominate office bearers for recognition as protected workmen. They must ensure that the number is within statutory limits and that selected workers genuinely participate in union activities.²⁵ Unions must also cooperate with employers in maintaining discipline and industrial peace.²⁶

Conclusion

Protected workmen are an essential part of India's industrial relations system. They help ensure that workplaces maintain fair negotiation processes and prevent employers from weakening unions through retaliation. While protected workmen enjoy significant rights, these rights come with responsibilities. Both employers and unions must follow statutory procedures to ensure that the system functions smoothly. Indian courts have played a major role in interpreting the law and balancing the interests of all parties. The protection given to union leaders is necessary to maintain industrial democracy, safeguard workers' rights, and promote stable industrial relations.²⁷

²⁴ MRTU & PULP Act, 1971, Sch. IV.

²⁵ Industrial Disputes (Central) Rules, 1957, Rule 61.

²⁶ Srivastava, *supra* note 2.

²⁷ O.P. Malhotra, *supra* note 8.