

New Labor Codes of India
Professor K D Raju
Rajiv Gandhi School of Intellectual Property Law
Indian Institute of Technology, Kharagpur
Lecture 10
Trade Unions – Recognition, Immunities

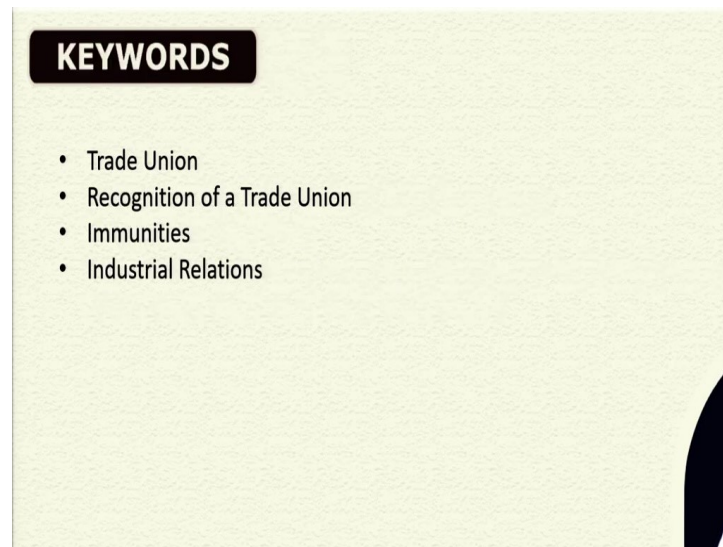
Dear students, today we are going to discuss about the trade unions, their immunities and also their recognition. So, if we look into the objective of a trade union, which we have covered in class classes. So, collective bargaining, so, we can see is one of the most important objectives of any trade union and at the same time, so, the British Time Act has been successfully amended through the code industrial relations code, 2020. And the government has absurd most of the provisions of this particular code.

(Refer Slide Time: 0:55)



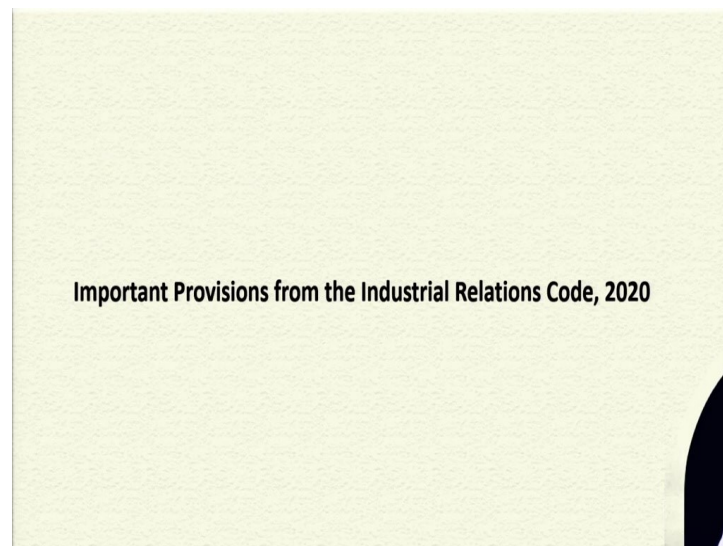
It is most of the provisions of this 1926 legislation into the new code of recognition and some of the provisions are added with regard to the recognition.

(Refer Slide Time: 1:08)



So, when we come to these, the old act of the Trade Union Act.

(Refer Slide Time: 1:15)



RECOGNITION OF THE TRADE UNION

We can see that there is no formal process or there no specific provision with regard to the registration not only registration, there are specific provisions with regard to the registration, but there is no specific provision with regard to the recognition of trade unions.

(Refer Slide Time: 1:33)

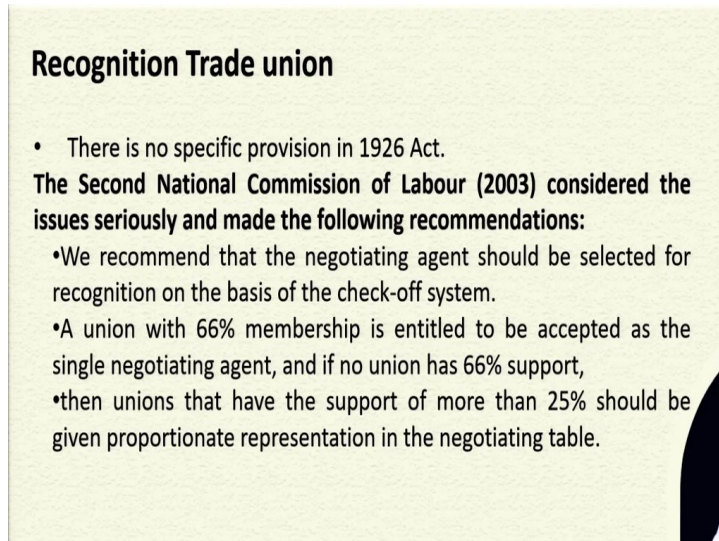
Recognition Trade union - objective

- An Act to provide for the recognition of Trade Unions for facilitating collective bargaining and to check 'multiplicity of Trade Unions in industrial establishments and for matters connected therewith or incidental thereto.

But if you look into these some of the state legislations, what is the objective, and why do you want to recognize a particular trade union? So, you can see the objective of the state Act, the Kerala the recognition of Trade Unions Act, 2010. It says that the act provides for recognition of trade unions for facilitating collective bargaining and checking the multiplicity of Trade Unions in industrial establishments. So, the objective of recognising why recognition is required for a trade union is very clear.

And we know that see, even though there is no specific provision in the Trade Union Act, 1926, the state governments, I think, a couple of state governments have passed specific legislation for recognition of trade unions. So, its objective is very clear. So first, collective bargaining in order to avoid multiplicity of trade unions in a particular establishment.

(Refer Slide Time: 2:35)



Recognition Trade union

- There is no specific provision in 1926 Act.

The Second National Commission of Labour (2003) considered the issues seriously and made the following recommendations:

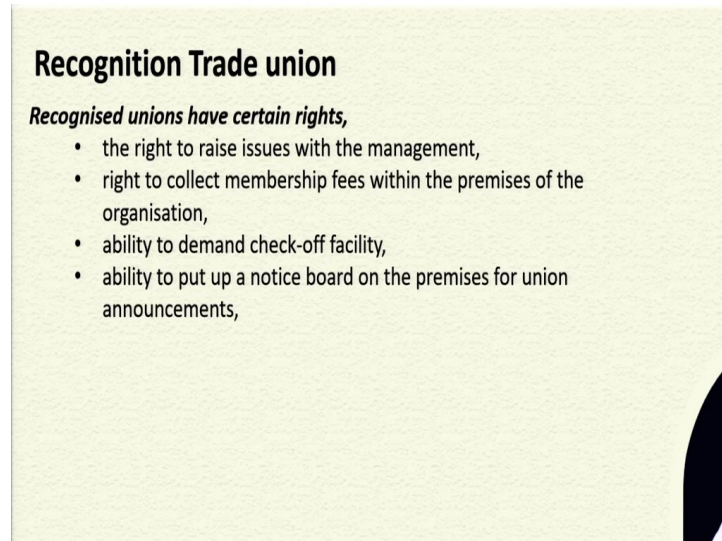
- We recommend that the negotiating agent should be selected for recognition on the basis of the check-off system.
- A union with 66% membership is entitled to be accepted as the single negotiating agent, and if no union has 66% support,
- then unions that have the support of more than 25% should be given proportionate representation in the negotiating table.

So, I said that at the beginning itself, there is no specific provision in the 1926 Act and the earlier recognitions were based on a voluntary commitment from the employer and also the recognition of the trade unions in certain establishments. In view of this, there is no provision, the second national commission of labour 2003, they have recommended for recognition of trade unions and provisions, what they recommended is that there must be a negotiating agent or a negotiating union selected in every establishment to avoid multiplicity of trade unions in every establishment and that will be facilitating our collective bargaining in every establishment.

So, the recommendation was that a particular union with 66 percent of the membership is entitled to be accepted as a single negotiating agent. So, if any union have 66 percent of full support then that will be the sole agent or sole negotiating agent for that particular establishment. In case there is no 66 percent support for a particular union, then there must be a proportionate representation, proportionate representation of various trade unions those who have the support of more than 25 percent. So, 25 percent of the support, so, the minimum support recommended was 25 percent support.

So, the sole negotiating union and the new Act have fulfilled this particular lacuna, and we will see what the new code proposed for the recognition of trade unions. So, this was the recommendation of the Second National Commission on labour, which recommended the recognition of trade unions at that point of time.

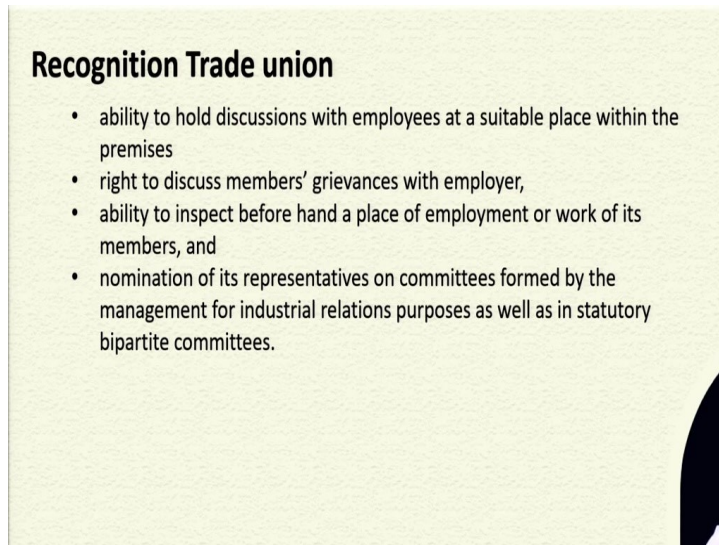
(Refer Slide Time: 4:56)



So, why it is to be recognized because certain privileges and also certain immunities are, therefore, recognized. And we can summarize what are those special privileges or rights of recognized trade unions, they have the right to raise issues with the management and also they have, can collect the membership fees within the premises of the union and the ability to demand a check-off facility. So, you can ask the employer to deduct the subscriptions from the employee on a monthly basis or yearly basis and this will be concluded as conclusive evidence of the membership or allegiance to a particular union.

This also can be used for finding out the support the percentage of support of the employees to a particular union and also they can put notice their union notices on the notice board within the premises. So, the union announcements can be put in these particular notice boards within the premises of the establishment. So, the registrar trade unions have only the notice boards, which can be in a conspicuous place, conspicuous place of the factory or a conspicuous place of the establishment which can be allowed.

(Refer Slide Time: 6:25)



Then also they have the ability to hold discussions with employees within the premises suitable place within the premises of the establishment also allowed for recognized trade unions and also they have a right to discuss the members' grievances, so, the complaints against the employer, so, they can raise the issues with the employer and also its ability to inspect beforehand a place of employment or work of its members and nomination of representatives to various committees formed by the management for industrial relations purposes or by the government.

So, these are some of the privileges or rights of recognized trade unions. So, we can see that there is a substantial number of rights conferred on a recognized trade union, then it is quite natural that every union is trying to be the recognized trade union within a particular establishment.

(Refer Slide Time: 7:22)

Recognition of Trade union – states

- ❑ Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971
- ❑ West Bengal Trade Unions Rules, 1998
Kerala Recognition of Trade Unions Act, 2010
- ❑ Orissa Verification of Membership and Recognition of Trade Union Rules, 1994
- ❑ Kerala Recognition of Trade Unions Act, 2010

And if you look into some of the states, much before the new code came into existence, one of the oldest codes, one of the oldest legislation is the Maharashtra Recognition of trade unions and Prevention of Unfair Labour Practices Act of 1971. So, these state acts have specific provisions or these particular legislations have provided, how a trade union has to be recognized, and what is the minimum percentage of support they required. And also in case of no absolute majority, then what are the provisions, how are the elections to be conducted, and how, what are the rights and duties of these recognized trade unions and followed by the West Bengal and then Kerala, as I said that the Kerala Recognition of Trade Unions Act, 2010, they also passed and Orissa passed the act in 1994 also.

So, you can see that a couple of states have passed legislation to give recognition to the trade unions in order to avoid the multiplicity of Trade Unions within an establishment for the welfare of workers. So, it is for it is easy for the employer to negotiate with a single recognized trade union rather than going with our ten trade unions in a particular establishment.

(Refer Slide Time: 8:48)

Recognition of Trade union – states - Kerala

- ❑ Mode of Election. –
- ❑ If there is more than one applicant **Trade Union** in respect of an industrial establishment or a class of industry in a local area as provided in sub-section (4) of **Section 5**, the Registrar shall arrange to conduct an election by **secret ballot** in the manner hereinafter mentioned in these Rules.

So how are these elections to be made, the mode of elections? So, this is one of the provisions in the Kerala Act, it says that, if there is more than one applicant for a recognized trade union, and in that case, the Registrar shall arrange to conduct an election by secret ballot. So the mode of selection should be a secret ballot. So the members of a particular union, those who have an allegiance or supporting or opposing, so in every establishment, there must be an election by secret ballot. So this is the rule. So this is followed in most of the establishments and the state legislation very clearly says that this has to be done through a secret ballot.

(Refer Slide Time: 9:40)

Recognition of Trade union – states – by secret ballot

- ❑ In **Food Corporation of India Staff Union vs. Food Corporation of India and Others**,
- ❑ the Supreme Court laid down norms and procedures to be followed for assessing the representative character of trade unions by the '**Secret Ballot**' system.

And this particular position has been recognized by the Supreme Court in Food Corporation of India, staff union, versus Food Corporation of India and others. So secret ballot is recognized as a norm for recognizing trade unions throughout the country.

(Refer Slide Time: 9:59)

Recognition of Trade union

- ❑ In **Balmer Lawrie Workers' Union, Bombay and Anr. v. Balmer Lawrie & Co. Ltd. and Ors.**, the underlying assumption made by the Supreme Court were that a **recognised union represents all the workmen in the industrial undertaking or in the industry.**
- ❑ The recognised Trade union also has a duty to submit returns to the registrar within the stipulated period of time, failure of which would be punishable with a penalty.

And if we saw that in some other cases, so, what is the status of these recognized trade unions, so, what are their rights? So, Supreme Court has made certain very important observations in Balmer Lawrie Workers union versus Bombay and Anr. versus Balmer Lawrie and Company Limited. So, the court said that a recognized union represents all the workmen in the industry in a particular industrial undertaking or a particular industry. So, it means that once they are selected, they are the sole agent, sole representative representing not only those who are voting for them, they represent the Indian industry or the Indian industrial undertaking, and if they are failed to submit yearly returns to the registrar, and they have to be punished with the penalty which is prescribed.

For example, in some of the state acts, you can find that 5000 rupees fine are imposed, if they are not going to file the returns within a stipulated period of time. So, it is not only they have certain rights, they have certain responsibilities and also certain obligations, legally made obligations to file returns also. So, violations they have to face penalties.

(Refer Slide Time: 11:30)

Section 14 – Recognition of negotiating union or negotia

- In an industrial establishment, having registered Trade Union – **there shall be a negotiating union or negotiating council** – for negotiating with the employer of such industrial establishment
- Where there is **only one registered Trade Union** functioning in an industrial establishment – there the employer subject to any prescribed criteria, **recognize such Trade Union as sole negotiating union.**

So, when it comes to the code, The Industrial Relations Code of 2020 there are specific provision is included for the recognition of trade unions. So, the recognition of trade unions and also the recognition of negotiating unions and two bodies negotiating council. So, it says that, so, we will see what is the difference between these two bodies, negotiating unions and negotiating councils.

So, here only one registered trade union that can function in any particular establishment will be subject to particular criteria. So, that recognized union the sole trade union will be acting as the sole agent or sole negotiating union for that particular industry. So, once it is selected, and elected, they are going to be the sole trade union for that particular industry. And this particular provision is included probably in the recommendation 2003 and they have been included in 2020 the new code, so, the Labor Commission recommendation has been included.

(Refer Slide Time: 12:45)

Section 14 – Recognition of negotiating union or negotiating council

- If there are **more than one registered Trade Union functioning** - the Trade Union having more than 51% or more workers – **be recognized by such employer as sole negotiating union of the workers.**
- If more than one registered Trade Unions are functioning in an industrial establishment – **but no Trade Union having sufficient numbers of workers** - the employer of such industrial establishment **shall constitute a negotiating council for such negotiation.**
- It shall consist of the representatives of such registered Trade Unions which having the support of **not less than 20 %** of total workers

So, if we look into the parameters, so, you can see that the Labor Commission has recommended a higher level of support, but the new code has included 51 percent support. So, if there is more than one registered trade union functioning, the trade union having more than 51 percent or more workers be recognized. So, the employer should recognize such unions as the sole negotiating Union for the workers. So, it means that, if there is 51 percent of the workers or more workers support a particular union, they are going to be the sole negotiating union of the workers in that particular industry.

But, if there is no 51 percent of support for a particular union, so, if there is no sufficient number of workers supporting a particular union, then the employer shall constitute a negotiating council. So, the registered trade union will be going to be the only one. If the registered trade union is not going to happen if there is not 51 percent of the support of the workers in that particular establishment, then the employer should constitute a council which is known as the negotiating council for the such particular industry and this council, the representatives to be elected, selected on proportional representation of the support of the workers not less than 20 percent of total workers.

So, it means that if a particular trade union or more than one trade union establishment first point is to select or appoint in negotiating council, the trade unions those who have more than the support of 20 percent can only become representatives or only they can become a representative in the negotiating council. So, the trade unions, those who do not have or less than 20 percent of the support of the workers, cannot participate in the negotiating council.

So, a higher level of support is mentioned. So, the sole Trade Union must have 51 percent of support, then they are going to be the sole agent or sole negotiating union. In the absence of a such sole negotiating union, the employer has to constitute a council, the council must have the representation of those who have more than 20 percent of the support of the workers on a proportional representation basis or proportionate basis.

(Refer Slide Time: 15:37)



Section 14 – Recognition of negotiating union or negotiating council

- When a negotiation is held, an agreement shall be entered by the parties, if it is agreed by the majority of representatives of such negotiating council.
- The validity of any recognition made by employer – **3 years** from the date of recognition or constitution and **not exceeding the period of 5 years as mutually decided by both the parties.**

So, these are clear provisions, so, clear cut provisions fulfil the lacuna in the old trade union Act for the appointment of negotiating unions and negotiating councils. So, when the negotiations are entered into between the employer and the employees, so, these employees' representatives, those who have more than 20 percent support will represent in the negotiating council.

So, the validity of the recognition is for 3 years, for example, some of the states like Kerala provide 5 years of recognition, but it is in the Central Act now, and it is confined to 3 years from the date of recognition. So, the maximum is also prescribed for not more than exceeding the period of 5 years as mutually decided by the parties. So, the minimum period is 3 years and the maximum period is 5 years. So, I think this particular portion has been taken from the state legislations so that there will be consistency, they do not have to go for every year or every 6 months for a new election. So, the appointment can be recognition can be for 3 to 5 years.

It is according to the negotiating power between parties, it can be for 3 years, it can be for up to 5 years. So, up to 5 years, and then again, the, for example, the state act provides for a

referendum, a referendum through secret ballots, then the management recognizes a particular union as the sole negotiating union for the next 5 years or 3 years as the case may be.

(Refer Slide Time: 17:25)

Section 27 - Recognition of Trade Unions at Central and State level

- Where the State Government is of the opinion that
- It is necessary or expedient that a Trade Union or federation of Trade Unions is to be recognised as State Trade Union at the State level
- It may recognise such Trade Union or federation of Trade Unions as State Trade Union

So, here, you can see that we now, as I told you, that the repercussion of the central code is that the state governments have to amend their state laws in accordance with the central law. Now, the specific provisions are provided and the percentages vary. So, 51 percent in the new code, for example, if you look into the Kerala act, it is 55 percent and in some places, it is 60 percent. Now, they have to amend the law and make it uniform 51 percent as prescribed in the code, the new code.

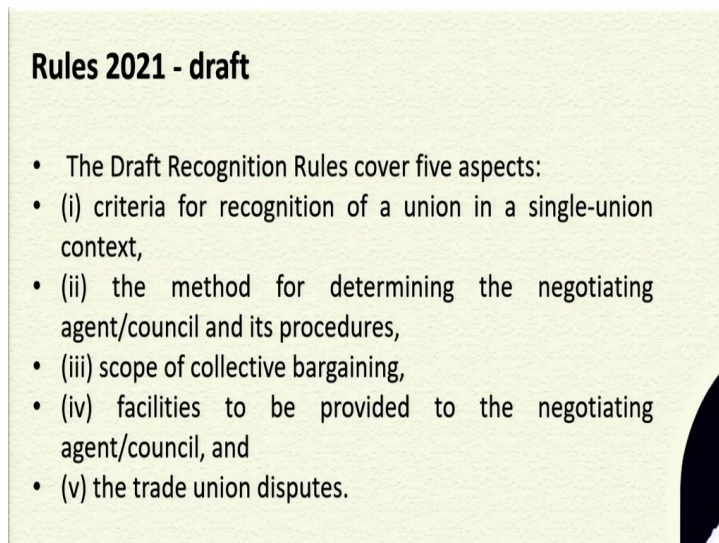
And so, it is the recognition of the trade unions, Federation of Trade Unions, and state trade unions and it is necessary to recognize this particular level of trade unions at different levels which means, that state, as well as the Federation of Trade Unions, also has to get recognition in every establishment.

(Refer Slide Time: 18:23)



And it is interesting to note that the government has come out with the draft rules, industrial relations centre recognition of negotiating union or negotiating council and adjudication of disputes of Trade Unions rules, 2021. So, it is publicly available and which provides elaborate provisions for the constitution of and recognition of trade unions and for the appointment or the election of negotiating union and also the negotiating council.

(Refer Slide Time: 18:58)



So, these provisions are in the public domain, I am very sure that it will be is going to be finalized by the government, and it is going to be notified by the government very soon. So, the draft rules mainly cover five aspects. These five aspects include the criteria for recognition of a union as a single union context which means, a sole negotiating union and

secondly, the method for determining the negotiating agent or council and the process the procedures, and the scope of collective bargaining, we cannot negotiate on each and everything. So, the scope of collective bargaining has been determined and specified in the new rules.

And also the facilities what are the facilities to be provided to the negotiating agent or council? So, we said that usually, the recognized union will get certain rights and privileges on the premises of the particular establishment or particular factories or particular industries. So, what are the provisions? Its rules are very clear on this. And also it provides for specific provisions with regard to the dispute settlement provisions, which are included in the new rules.

(Refer Slide Time: 20:16)

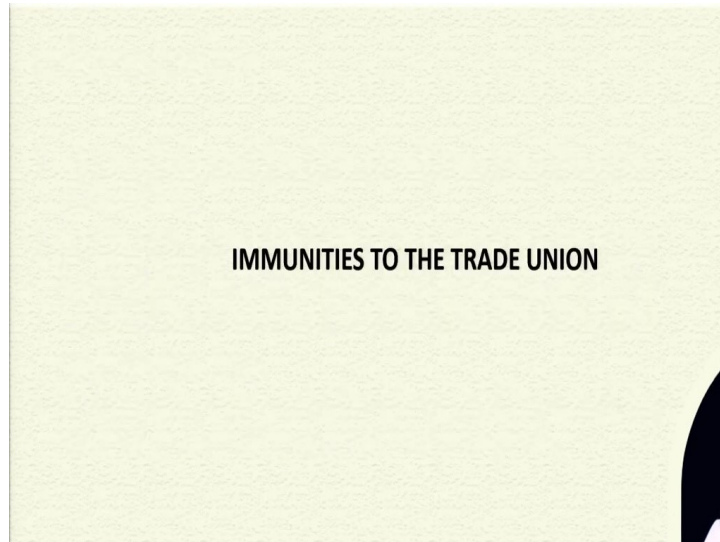
Rules 2021 - draft

- The Draft Recognition Rules provide two conditions for recognition:
- it must be a live registered trade union either under the [Trade Unions Act, 1926](#) or in the IRC, and membership of the union must be confined to the particular industrial establishment only.
- It is not clear as to whether the recognition would be limited by establishment, or industry, or regions.

And so, what are the conditions that took specific conditions for the recognition of rules, the draft regulation rules provide, that says that, so, it must be a live registered trade union under the Trade Union Act of 1926 earlier or under the new industrial relations code. And more importantly, the new provision very clearly says that this union is only applicable for an establishment what does it mean? It means that a trade union-recognized trade union is only for that industry, not for a particular state, not at the national level, then the question is, it is not very clear with regard to these rules. So, what is the provision for recognition of a trade union all over India or all over a state or all over a particular region or particular industry, for example, the plantation industry?

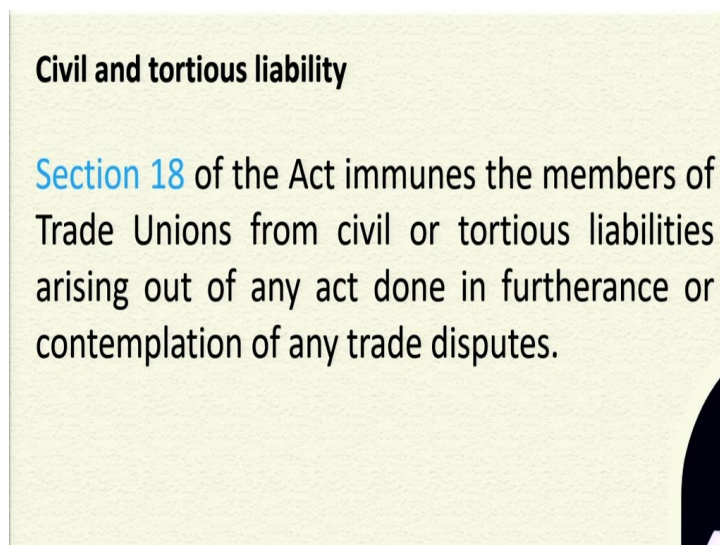
So, it talks about the recognition of trade unions at the establishment level. So, it means that each and every trade union get recognition only in a particular industry, and not in a particular state, not all over the state.

(Refer Slide Time: 21:54)



So, now, we saw that these are the provisions with regard to the recognition of trade unions. Now, we will see the provisions with regard to what are the special privileges and immunities available to a particular trade union.

(Refer Slide Time: 22:09)



So, we are talking about the civil and other liabilities of the trade union civil and criminal liabilities and tortious liabilities of trade unions under the former Act as well as the new code.

So, section 18, talks about the civil liabilities, immunities from civil liabilities of trade unions and also tortious liabilities. And it says that in furtherance or contemplation of any trade dispute.

So, their liability is limited only to the extent of in furtherance or contemplation of any trade disputes. It is these are not absolute immunities, these are not absolute immunities. So, sorry, they can only have this civil and tortious liability immunity available to the extent of trade disputes only.

(Refer Slide Time: 23:10)

Civil and tortious liability

- ❑ For example, in general, a person is subject to tortious liability for inducing any person to breach a contract.
- ❑ But, the trade unions and their members are immune from such liabilities provided such inducement is in contemplation or furtherance of any trade disputes.
- ❑ Further, the inducement should be lawful and should not involve any aspect of any violence, threat or any other illegal activity.

And when we look into these particular privileges, we can see that, for example, tortious liability which is talking about any liability for inducing any person to participate in a strike or inducing any person to breach a particular contract. So, it is not only the leaders, and leaders of the trade union, but the members of the trade union are also immune from such kind of breach of contract or it is tortious liabilities in another way out.

So, and as I already said, this is only to the extent of trade disputes and such inducement must be lawful and it should not involve any aspect of violence, threat or any other illegal activity. So, it means that this immunity is only to the extent of any trade dispute, any industrial dispute, not another way round, which is related to violence, threat or any other illegal activity or any other activity which is related to a particular dispute between employers and employees.

(Refer Slide Time: 24:29)

18 -Immunity from civil suit in certain cases

- **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 a trade 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 in 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

So, again, no suit or legal proceedings is maintainable in a civil court of law. So, again against a registered trade union or against the leaders of a particular trade union or members of a trade union and the most important wordings are in contemplation or furtherance of a trade dispute. So, that means, like we already said the grounds inducing some person to break the contract of employment and also we can see that these rights are to the extent of non-interference with the usual functioning of the industry.

So, and also we can see that the civil or tortious liability exemption or immunity is to the extent of which is only trade disputes which are relating to the employees of that particular establishment no another way out.

(Refer Slide Time: 25:41)

18. Immunity from civil suit in certain cases

- A registered Trade Union shall not be liable
- In any suit or other legal proceeding in any civil court
- In respect of **any tortuous 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.

And as I told you, all other tortious acts are liable under civil law. So, the trade union is like I said from day one, so, in the beginning, I said that the registered trade union liability is or their immunities are not absolute, it is subject to certain conditions. So, and also the trade union is not liable if they have done it with acted without the knowledge or if they acting contrary to the express instructions of the executive of the trade union, then also they are liable.

So, if somebody is some member of a trade union is acting against the instructions of the trade union leaders and then also this particular trade union is not going to be liable, but the members are going to be liable.

(Refer Slide Time: 26:33)

18. Immunity from civil suit in certain cases

- **Ahmedabad Textile Research Association versus Atira Employees Union and Anr. (1995 (1) LLN 348; (1994) ILLJ 912 GU)**
- wherein the division bench of the Gujarat High Court held that as long as the holding of shows or yelling of trademarks,
- **showing of notices or holding of dharnas don't turn unlawful, convoluted or rough such worker's guild exercises is admissible and genuine.**

So, this liability of civil liability is limited to its extent, only in furtherance of the trade disputes. In 1995 case law the Ahmedabad Textile Research Association versus Atira Employees Union and Anr. So, the, in this case, the division bench of the High Court held that so, in some activities, so, what exactly you mean by this, whether tortuously you are liable or not liable.

So, distributing notices, showing notices, and holding dharnas and is not unlawful. So, there is no tortious liability and no tortious liability for the trade union or its members for distributing trade unions, distributing notices or holding dharnas and also protesting peaceful protesting against the employer, this is not going to be so any liability, no civil liability, no tortious liability in these cases.

(Refer Slide Time: 27:42)

18. Immunity from civil suit in certain cases

Ram Chandra Tripathi v. UP Public Service Tribunal & others, 1994 SCC 1044.

Contemplation and furtherance of a trade dispute.
Incidents to induce some other employee to break a contract.

Interference with the trade, business, or employment of some other person or interference with the right of some other person to dispose of his capital or of his labour.

And in so, we can see that the Supreme Court has very clearly said that there is no civil law, and there is no civil case that can be instituted for inducing somebody for breaking a particular contract, the contract of employment. So, at the same time, it should not deal with or should not affect the employer in such a way that it is going to affect the entire working of that particular industry. So, inducing some workers to break the contract is no more a civil liability. So this is very Supreme Court very clearly said the Ram Chandra Tripathi versus UP Public Service Tribunal, and others 1994 Supreme Court.

(Refer Slide Time: 28:37)

James Robson v. Labour Commissioner, W.P. 15094 of 20

- 10% of the amount was deducted from the wages payable by the members of the Union and that, the **Union has no locus to deduct any amount from the wages of its members.**
- It was seen that, James Robson had signed a Resolution on 28.09.2006 and, he was agreeable to the same.
- Held that Court cannot go into the question as to whether there was any interpolation or not with regard to 10% deduction in the wages.
- As per Section 18 of the Trade Union Act, 1926, it is clear that, only with regard to certain disputes, legal proceedings are not maintainable in the Civil Court.
- In case, Petitioners are aggrieved that, there is an illegal deduction, certainly, **it is not with regard to the furtherance of a trade dispute and Civil Suit is maintainable.**

So in other cases also, other cases like a deduction from the wages. So in this particular case, the James Robson versus labour commissioner, and in this case in 2020 case, it was held that

10 percent of the amount deducted from the wages towards the particular trade union. So the question is whether the trade union have any local study to deduct wages deduct any amount from the wages of its members, the question is, the answer to this particular question is that yes, they can cause the employees to deduct their subscription fees.

But the question is where a 10 percent without the knowledge and consent of the employee, who is a member of the particular trade union. And here you can see that the petitioner so it was pointed out that James Robson has signed a particular resolution and he is signing a resolution means he is agreed to cut 10 percent of wages, 10 percent of the deduction in wages. So, in this particular case, what the court said that illegal deduction, what is a legal deduction and what is an illegal deduction?

So, this particular deduction the court said that it is not with regard to the furtherance of a trade dispute. So, this particular dispute, this particular deduction is nothing to do with a trade dispute. Hence, a civil suit can be maintainable against the trade union.

So, if the trade union is making any illegal deductions or asking the employer to deduct and the employer is deducting it, is, so, the damages can be, damages can be recovered from the trade union in that particular case. So, a Civil case will subsist, and is maintainable against a trade union in such cases.

(Refer Slide Time: 30:44)

17. Criminal conspiracy in trade disputes

- 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, 1860,
- 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 the agreement is an agreement to commit an offence.**

So, then in section 17, which talks about criminal conspiracy. So, the question is whether the trade union is liable under criminal law for any kind of criminal conspiracy. Criminal conspiracy to break a contract is the criminal conspiracy to do in any furtherance of trade

disputes. So, the provision says that no office bearer or member of a trade union shall be liable. Any punishment under Section 120B 2 of the Indian Penal Code, the penal code 120B talks about criminal conspiracy.

So, the trade union or its leaders are not liable for criminal conspiracy under 120B. In furtherance of a trade dispute. So, if there is an agreement, but if the agreement, is for committing an offence, then definitely they are liable. So, there should not be any agreement to commit an offence. So, in such cases, the trade union, its leaders and its members are liable. So, in a criminal conspiracy, also, the immunity is limited immunity, limited immunity to the trade union, its leaders and its members.

(Refer Slide Time: 32:16)

Criminal Conspiracy

Section 17 of the Act states that no member of a trade union can be held liable for criminal conspiracy mentioned under Sub-section 2 of **Section 120B** regarding any agreement made between the members of the union in order to promote lawful interests of the trade union.

So, it very clearly says that, so, conspiracy to the extent of so, this immunity is to the extent of lawful promotion of the interests of the trade union, lawful promotion of the interests of the Trade Union and its members, no another way out.

(Refer Slide Time: 32:38)

Criminal Conspiracy - Conditions

- 1.The individual looking for invulnerability ought to be the workplace conveyor or individual from a Trade union
- 2.Such Trade Union should be enlisted;
- 3.The individuals ought to have had the consent to accomplish some legal item;
- 4.The objects of the understanding should be covered under Section 15 of the Act; Protection is just for those intrigues covered under S 120B (2), IPC and
- 5.If the arrangement is consent to submit an offense, then, at that point no insurance is accessible under the Act.

So, this immunity is subject to certain conditions, these immunities are not absolute immunities. So, here the individual is looking for invulnerability or to be the workplace, conveyor or individuals from a trade union and that particular trade union should be no recognized trade union. And also, that member must have consented to such a legal item such a legal provision such a legal condition, so, he must have consented too.

And also this objective is very clear. So, the immunity is to the extent of Section 120B to the extent only to the legal activities. If it is in pursuance of any kind of offence to commit any kind of offences, then the trade union is liable and its members are also liable.

(Refer Slide Time: 33:40)

Roadways Mazdoor Sabha, UP v. State of UP, 2011(3)SCT215(Allaha

- No officer or member of a registered Trade Union shall be liable to punishment under Section 17 read with Section 120B(2) of the Indian Penal Code
- **Unless the said agreement can be considered to be an agreement to commit an offence.**
- Held:
- Section 17 is **not** a complete bar to the present proceedings.
- Whether an agreement is protected under Section 17 of the Trade Unions Act is essentially a question of fact to be determined on evidence.
- The question is one of fact which must be decided by a trial on evidence. Case Dismissed, the issues can be determined before Magistrate Court.

For example, the case of Roadways Mazdoor Sabha UP versus the state of UP, 2011. So, in this case, the High Court held that no officer or member of a trade union registered Trade Union shall be liable to punishment under Section 17 viz a viz with Section 120B(2) of the Indian Penal Code.

So, until that particular agreement is to commit an offence. So, these proceedings, proceedings can be taken against such trade union members or leaders only if it is to commit an offence otherwise, the immunity under Section 17 will be at also for the help of the trade union leaders and the members. So, it is very clear that so the codes are very clear that so, in furtherance of the trade dispute in order to protect the interests of trade union leaders and the members to the extent of the criminal conspiracy, not to commit an offence, in the case of committing an offence. This exemption is not applicable.

(Refer Slide Time: 34:53)

Jay Engineering Works Ltd. V. State of WB, AIR1968Cal40

- Retrenched employees along with 70 others, blockaded the corporation's premises, completely obstructing the passage of personnel and goods, including foodstuffs for the barricaded persons inside, who were wrongfully confined therein.
- Such methods likely to destroy the industry
- **Gherao** is illegal.

One of the famous cases is they one of the early famous cases are Jay Engineering Works Limited versus the state of West Bengal. Here the retention employees are conducting a complete obstruction of passage towards inside the factory inside the commode and they closed the gate and also they are not allowing people to pass from in or out. And they wrongfully confined all the people inside the gate and also they destroyed some of the properties of the industry.

So, the court very clearly said that, so, the Calcutta High Court said that a Gherao is illegal, it is illegal, even in furtherance of a trade dispute. So, Gherao is illegal. So, in the name of this particular immunity to trade union and trade union leaders, you cannot go on with you know,

distracting or destroying the properties of an establishment and which makes the environment very bad for the industry working of the industry.

(Refer Slide Time: 36:02)

**Rama Vilas Service Ltd. and Ors. vs. Simpson and Group Company
Workers' Union and Ors., (1979) 111 LLJ 284 Mad**

- Management, practically want to function normally, thereby nullifying the effect of the strike.
- Management has tried to regulate staging of demonstrations by the Union
- It is not possible to countenance and grant the reliefs prayed for by the Management
- **But** temporary injunction, restraining the Union
 - From preventing the officers and managerial staff of the plaintiffs or any member or members of the public entering or leaving the premises of the plaintiffs and
 - From holding out threats or intimidation, or
 - Indulging in **gherao** or wrongful confinement of the officers and managerial staff of the plaintiffs and other members or members of the public in the premises of the plaintiffs

And we can also say that, so, if the management functions normally, so, the striking people are not affecting the working of the industry, then absolutely this provision is applicable. So, and demonstrations if the management wants these particular demonstrations outside their premises, not inside their premises, that also can be a reasonable restriction. So, the question is whether a temporary injunction restraining the Union from doing such a demonstration inside the factory premises is the question.

And also the trade union whether the trade union leader is making threats or intimidations. So, the question is, it depends upon the court, we will look into it. So, what is the objective of or what is the nature of the gathering, whether they are doing the complete closure of the establishment or the factory or the confined, whether they are confining all the offices? So, and whether it is going to affect the working of the establishment, the court will look into all these aspects and then application the exemption of criminal liability in these cases.

(Refer Slide Time: 37:16)

Rookes v. Barnard, 1964 AC 1129

- Court held that if there be threats of violence this section gives no protection.
- Trade Unions have right to declare strikes and to do certain acts in furtherance of trade disputes.
- They are not liable criminally for conspiracy in the furtherance of such acts as the Trade Union Act permits, **but** there is nothing in the Act which apart from immunity from criminal conspiracy allows immunity from **any criminal offence**.

So, in this an old case, so, here, it is very clearly said that the court said that any kind of threat of violence is not going to give any protection. So, it is a criminal offence, and no protection will be provided to the union leaders or the members in case of violence or in case of threat to a particular people or particular industry. So, this immunity provision is not going to help the people in case of any violence, so, it is going to be a criminal offence.

(Refer Slide Time: 37:51)

18. Enforceability of agreements

- An agreement between the members of a registered Trade Union
- **Shall not be void or voidable**
- Only by the reason of the fact that ***any of the objects of the agreement are in restraint of trade***:
- Civil Court can still entertain any legal proceeding instituted for the purpose of enforcing or recovering damages for the breach of any agreement.

So, we come to the third part the enforceability of agreements. So, what is the legal status of the enforceability of agreements entered between the union and employees or the government tripartite bodies? So, we know that we saw in the last class that every trade union have a legal personality, they can enter into contracts, they can own property, and they have their own

seat, so, it is a complete legal personality. So, it is the agreement between members of a trade union shall not be void or voidable.

So, only on the reason that any of the objects of the agreements are in restraint of trade. So, it is not going to be void so voidable only reason that there is a particular provision, which is restraint of trade. So, civil courts can always look into the matter and look into the objective of that particular provision, whether it is restraint of trade or not, whether it is in violation of any of the provisions, whether there is any tortious liability or whether there is any civil liability.

And the civil courts can very well recover damages in breach of any such agreement. So, the agreements can definitely be subject to civil court scrutiny under these particular provisions. So the enforceability is very clear.

(Refer Slide Time: 39:19)

18. Enforceability of agreements

Collective agreements are agreements negotiated between one or more trade unions and employers or employers' associations and which relate to one or more of the following:

1. terms and conditions of employment, or the physical conditions in which any workers are required to work

So, collective agreements are always negotiated by negotiating trade unions and these their items. These items can include the conditions of employment, the physical conditions of workers, and also the physical conditions of the places they can go and look these employees association can go and look into the places.

(Refer Slide Time: 39:42)

19. Enforceability of agreements

2. allocation of work or the duties of employment between workers or groups of workers
3. matters of discipline
4. a worker's membership or non-membership of a trade union
5. facilities for officials of trade unions
6. machinery for negotiation or consultation, or other procedures, relating to any of the above matters, including the recognition by employers of the right of a trade union to represent workers in such negotiation, consultation or other procedures

And other points which they can look into are the allocation of work or duties of employment between workers and workers, groups, and also the matter of discipline they can look into and their workers' membership and non-membership of trade union also they can look into. And facilities for officials and trade unions are also they can look into and the what is the machinery for consultation procedures, what is machinery for negotiations and what is the machinery for dispute and main Procedures. So, all these provisions are applicable they can look into the trade unions can look into these matters.

(Refer Slide Time: 40:24)

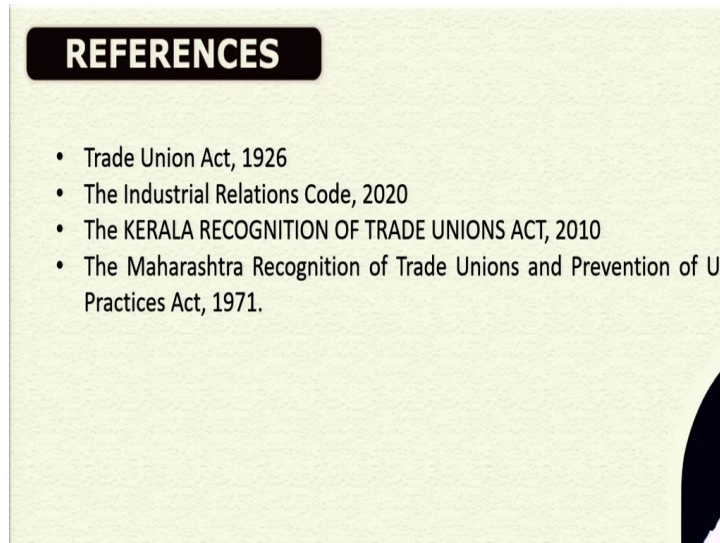
CONCLUSIONS

- The provisions of the now repealed Trade Union Act, 1926 were comprehensive regarding recognition and immunities of a Trade Union
- the important provisions of which have been incorporated in the Industrial Relations Code, 2020.

So, in concludingly, I can very well say that the legal lacuna in the Trade Union Act, 1926 has been fulfilled by the Industrial Relations Code 2020 by including specific provisions for

the recognition of sole negotiating agents or sole negotiating trade unions and also for the formation of sole negotiating councils. So, this is a welcome development and we hope that this is going to increase the bargaining power of the people at the same time. So, this is going to avoid the multiplicity of Trade Unions within a particular organization.

(Refer Slide Time: 41:06)



So, these are the references especially the state Acts are very good references for the new code and most of the provisions are taken and implemented. So, this is all about the recognition and the immunities and privileges of trade unions. Thank you.