Immunity of Trade Unions For Inducing Breach of Contract: A Study of the Evolution of English Law and its Application in India

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INTRODUCTION

Trade union activity, by its definition, involves unionism and the exercise of collective bargaining power. The collective action of trade unions and their members has been expressed in different ways from peaceful bargaining and picketing to strikes and lockouts. At several instances, trade union activity would include the threat or forewarning of strikes in order to have demands met at the outset itself. The question that arises would be to what extent is an act of a trade union for the furtherance of its objectives valid. Trade union activity includes industrial action such as the threat to break contracts and to stop work contractually undertaken, to disallow others from performing contractual duties and to threaten to do the same.

The development of the legal immunity to be accorded to a trade union for acts such as the ones stated above is long and inconstant. It has been subject to successive legislative modification and innovative and restrictive judicial interpretation. The history of the evolution is aligned with the evolution of the trade union movement in Britain. It was adopted in India only after a great degree of finality had been achieved in the position. The legal position depends also on principles of contract, such as privity and the law of torts.

There has been some development in the latter half of the twentieth century as well in this regard. Indian case law development regarding immunity of trade unions has been sparse even after the Trade Unions Act, 1926 was enacted. The present paper aims to analyze the development of the immunity of trade unions from civil liability for inducement of breach of contracts that has been statutorily provided. The principles of the law of tort and contract that have been developed in this area are examined in the paper. The changing scope of the immunity and the relevant case law is

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sought to be analysed. The paper aims to study the present position of the
immunity granted in India and in England.

INDUCEMENT OF BREACH OF CONTRACT AND CIVIL
CONSPIRACY

The provision of immunity to trade unions and members thereof from
civil action for certain activities succeeded the immunity granted in this
regard firstly under criminal law. During much of the nineteenth century in
England, it was a crime to breach a contract for service. When the
inducement for breach of contract was removed from the list of criminal
offences, several exceptions were made to the immunity. Therefore, if there
was use of coercion, intimidation, molestation or obstruction, the act would
still be criminal. These terms were vague and freely interpreted by the
Courts to the disadvantage of trade unions until the Criminal Law
Amendment Act of 1871 was enacted, which restricted their interpretation.

With the protection under criminal law gradually being established, the
Courts took recourse to imposing civil liability on trade unions. The
decision in the case of *Lumley v. Gye* crystallised an action for maliciously
inducing or procuring a breach in contract between two parties by a third
party. In the case, the defendant had procured a breach of contract between
the plaintiff, who owned a theater, and an opera performer who was bound
under contract to perform for the plaintiff exclusively. The breach of
contract was found to have been induced with a view to injure the plaintiff
and actionable. Interpreting this in *Douglas v. Hello! Ltd.*, Lord Hoffman
held that the test would be twofold. The tort would cover acts done which
were intended to cause loss to the plaintiff and were per se unlawful against
the third party as well. The dissenting opinion expressed in the same
judgment held that action could be found only on contract between the two
parties to the same and not with regard to the third party. The third party’s

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2 Master and Servant Act, 1867, 30 & 31 Vict. (Eng.) (prohibiting breaches of
contracts of service in certain industries as criminal offences). This law were repealed
by the Conspiracy, and Protection of Property Act, 1875, 38 & 39 Vict., c. 86, § 17
(Eng.).

3 The Molestation of Workmen Act, 1859, 22 Vict. (Eng.).

4 Criminal Law Amendment Act, 1871, 34 & 35 Vict., c. 32, § 1 (Eng.).

5 (1853) 118 Eng. Rep. 749 (Q.B.) (Eng.). For a critique on the principle laid down in
the *Lumley* case, see David Howarth, *Against Lumley v Gye*, 68 MOD. L.
REV., 195 (2005) (arguing that the tortious remedy can be precluded by the remedy in
contract law).


8 *Id.* For a detailed study of the difference of opinions between the Bench in the case,
see Janet O’Sullivan, *Intentional Economic Torts, Commercial Transactions and
liability could arise only in the case of labour disputes which required a master-servant relationship, a condition that did not exist in the first place. The evolution did not occur smoothly as in the case of Allen v. Flood, where the House of Lords held that the malicious nature of the defendant’s action in procuring a breach of contract was of no account if the means and acts committed were lawful. The intention to harm someone does not result in a tort unless some additional element of illegality is also present.

With the decision of the Lumley case, inducing breach of contract became actionable in tort. However, the same is not the position of law presently. If the acts committed are legal in themselves and if they do not amount to conspiracy, they are not actionable as interference in existing contractual relationships. The decision in the case of D.C. Thomson & Co. Ltd. v. Deakin, held that even when a third party knowingly acts in a way to render the performance of a contract impossible, he would incur no liability as long as his acts were legal. The legal position on inducing breaches of contracts has evolved because of a large number of judicial pronouncements that ruled on its ingredients, scope and defences.

Certain ingredients are required for liability for inducing breach of contract to arise. These have been laid down in decisions of Courts in Britain. Firstly, the liability for inducing a breach of contract arises only upon the actual breach of the contract in question. There does not exist a single, objective test for the determination of whether there has been a breach or not. The terms and conditions of the contract and the act alleged to constitute the breach would have to be examined, and would be the guiding factor in determining the existence of a breach. If the workers refuse to fulfil obligations undertaken by them at the time of employment, breach can be inferred. When a certain practice is implied in the contract

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9 Id. at 246.
10 Allen v. Flood, [1898] A.C.1 (H.L.) (Eng.). The defendant, Allen, was an officer of a union of ironworkers. The plaintiff workmen were employed as woodworkers. The ironworkers objected as they had been employed for woodwork and had now been made ironworkers. Allen demanded that work would be stopped unless all woodworkers were dismissed. The plaintiffs were dismissed lawfully and were not re-employed later. It was held by the Court of first instance, as well as the Court of Appeal, that the defendant was liable for having maliciously procured the termination of the plaintiffs. The House of Lords held that the element of malicious motive was inconsequential and that the means used by the defendant were lawful and that the acts committed by them were also lawful. However, there is a recognised exception to the principle laid down in the present case: the tort of conspiracy to injure. See Simon Deakin & Gillian S. Morris, Labour Law, 1040 (4th ed.2012).
11 D.C. Thompson & Co. v Deakin, [1952] Ch. 646 at 647 (Eng.).
12 J.T. Stratford & Son, Ltd. v. Lindley, [1965] A.C. 269 at 338 (Eng.). In the present case, dock workers refused to handle certain goods that were labeled by them as “black” and belonged to certain persons. It was held that the terms and conditions of the contract between the workers and the employers would be of relevance, and if the worker had undertaken to carry out certain acts, he could not later refuse to do the same under the original contract. However, the worker was free to agree upon new terms and conditions under the same contract through negotiation.
and has been the followed custom, nonperformance can be deemed to be a breach of contract notwithstanding the fact that the same has not been expressly made a condition.\textsuperscript{13} The requirement of actual breach is unclear as the House of Lords held that an action would lie when a third party conspired to cause breach by deliberately and directly interfering with the execution of a contract.\textsuperscript{14}

The second condition that needed to be satisfied for an action in tort to lie was that of interference with the subsisting contract, the breach of which was procured. Interference may be directly on the person breaking the contract or by indirect means rendering the fulfilment of the contract impossible.\textsuperscript{15} The nature of the interference has been a varyingly understood term with the condition laid down that the defendant must know that there exists a subsisting contract and that the inducement would lead to breach if successful.\textsuperscript{16} The knowledge to fulfil this condition can be implied even when the defendant did not have specific knowledge of the terms of the contract. The custom followed in the trade or profession may be deemed to be commonly known and therefore, inducing a breach of such a duty could amount to a breach of contract.\textsuperscript{17}

Third, the intention to procure a breach of contract is an important ingredient of the tort. It is important that the breach was foreseen and intended by the defendant. It must be proven that the interference was to procure the commission of an unlawful act. If the interference was to encourage an aim that could be lawfully reached, there is no tort committed even if illegalities were committed.\textsuperscript{18} It must also be shown that an injury is received due to the breach. Specific damages are not required and inference would be sufficient.\textsuperscript{19}

The Courts have also resorted to another tort apart from that of inducing breach in a subsisting contract. This is the tort of civil conspiracy. The

\textsuperscript{13} Id.
\textsuperscript{14} Emerald Construction Co. v. Lowthian, [1966] A.C. 691 at 700-701 (Eng.). In the present case, the trade union advocated for the removal of the subcontracting agreement, which was an agreement for the supply of “labour only”. The union demanded that the labour be directly employed and not subcontracted. When the demand was not met, the union resorted to a variety of industrial action that had the effect of slowing down the work considerably. An interlocutory injunction was granted on appeal due to the fact that the “labour only” agreement was not a term of employment and was not protected under the Trade Disputes Act, 1906. Lord Denning held, “The words ‘contract of employment’ in this context seem to me prima facie to denote a contract between an employer and workman; and not a contract between an employer and a subcontractor, even though he be a subcontractor for labour only.” Id. at 701.
\textsuperscript{15} M.A. Hickling, Citrine’s Trade Union Law, 68 (3d ed. 1967).
\textsuperscript{16} D.C. Thompson & Co., Ch. at 682.
\textsuperscript{17} Id. at 686-87 (Lord Evershed M.R.)
\textsuperscript{18} Hickling, supra note 15, at 73.
\textsuperscript{19} Id. at 74.
development of the tort and its application has been seen as the judiciary’s attempt to undermine the statutory protection granted to a growing trade union movement. Professor Jenks stated that the decisions of the Courts in the *Quinn v. Leathem*\(^20\) and the *Taff Vale*\(^21\) decisions amounted to creating a new form of civil liability and then creating a new defendant being alleged for the same.\(^22\) As one moves from the decisions of the Courts on this aspect, different nuances of this tort can be seen to emerge. In the case of *Mogul Steamship Company v. McGregor, Gow & Co.*,\(^23\) an arrangement to exclude competition was held to be lawful, and as the objects of the same were the promotion of business, the plaintiffs had no cause for damages.

In the decision in *Leatham’s* case, the Court found that the object of the unionist action was to cause injury to the plaintiff and not to promote their own interests. An action on conspiracy to injure was found. Though the individuals were not singly liable as they had not committed a tort, the combination was held to have committed it. Lord Macnaghten stated, “...a violation of a legal right committed knowingly is a cause of action.”\(^24\) The *Taff Vale* decision was of much importance because it conferred a corporate personality on the trade union itself which could in turn expose the union to any form of civil action and the assets of the trade union were therefore exposed to be utilised for payment of damages. According to Citrine, the decision was a “smashing blow” to trade union activity in England.\(^25\)

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\(^{20}\) [1901] A.C. 495 (Eng.). The plaintiff had employed certain workmen who did not belong to the defendant’s trade union. In order to procure the dismissal of these workers, the union threatened the plaintiff’s customer that it would withdraw union labour unless he stopped dealing with the plaintiff. The plaintiff’s offer to procure membership for the workers was refused by the trade union. See also, HENRY PELLING, A HISTORY OF BRITISH TRADE UNIONISM, 121 (3d ed., 1984).

\(^{21}\) The Taft Vale Ry. Co. v The Amalgamated Soc’y of Ry. Servants, [1901] A.C. 426 (Eng.). In the present case, a strike had arisen, and the union was indulging in picketing as well as persuasion of “blacklegs”. An injunction was sought and granted against the besetting and watching of the premises of the plaintiff company for the purposes of persuading the blacklegs or other interested workers to strike.


\(^{23}\) [1892] A.C. 25 (Eng.). The defendants had formed an association of ship owners and had formed schemes to offer rebates with a view to establish a monopoly of the business. The rebates and other schemes would be offered to agents and workmen only if they exclusively handled the defendant’s business. The House of Lords unanimously held that the defendants had acted with the object of promoting their own interests in a lawful way and no liability could be established.


\(^{25}\) Hickling, *supra* note 15, at 16. The “seeds of confusion” regarding the tort were sown in the decision of *Quinn’s* case. It is argued that the facts of the case were similar to those of *Allen v. Flood* with the difference that they included the act of a conspiracy done through lawful means. This allowed the Court to develop this tort which had as its unique feature the peculiarity that an act which was lawful in one became unlawful by many. Hazel Carty, *The Economic Torts in the 21st Century*, 124 L.Q.REV.641, 644 (2008).
The test of the purpose of the action was applied by the House of Lords in the decision of *Sorrell v. Smith*\(^\text{26}\) to determine whether the tort of civil conspiracy had been committed. In that case, the plaintiff had transferred his business to a firm named Watsons at the instruction of a union of retail newsagents. The defendants threatened to cut the supply of materials to Watsons unless it stopped dealing with the plaintiff. As a result, Watsons complied and the plaintiffs sued. The Trial Court held that though there was no intention to injure the plaintiff, damages had resulted and they were actionable because they had been procured by threats. This was set aside upon appeal and it was held that the purpose of the defendants was lawful and the means adopted were also legal. This represents a two step test where the real purpose of the action of the union was sought to be determined and then the question of whether the means were lawful was answered.

The same test of lawful means and the prominent purpose of the action was applied in *Crofter Hand Woven Harris Tweed Co. v. Veitch.*\(^\text{27}\) In the present case, the officials of a trade union and the spinning operatives of the Island of Lewis formed a caucus against certain other local producers of tweed cloth. They were able to sell the goods at a cheaper rate than the mill owners of the island. Due to this, the mill owners could not employ the entire members of the trade unions of dock workers and they refused to handle their goods. On an action for injunction and damages, it was held that the purpose of the union was predominantly to further their interests and not to injure and therefore, the action was refused.

### LEGISLATIVE PROTECTION AND JUDICIAL INNOVATION IN THE UK

The development of the law as has been described in the last chapter was not smooth or without friction. Often, in deciding important questions and evolving newer forms of liability, the Courts were working around statutorily granted protections to trade unions meant to enable them to carry out their activities successfully and effectively. It is easily discernible that the movement of the Parliament was towards evolving a broader and comprehensive set of protections towards workmen which was frustrated by judicial workings and evolution of newer forms of liability such as

\(^{26}\) [1925] A.C. 700 (Eng.). Lord Dunedin rejected the suggestion that the what was lawful if done by a person could become illegal if done by many if done with a view to injure and described the same view that was adopted in *Quinn v. Leatham* “the leading heresy”.

\(^{27}\) [1942] A.C. 435 (Eng.).
“obstruction”, “molestation and “intimidation”. 28

The development of the law of immunity of trade unions from civil actions have reached a mature stage with the enactment of the Trade Disputes Act, 1906 which granted the bodies and their members as well as office bearers certain immunity. 29 Substantially similar provisions are provided in the Indian legislation, The Trade Unions Act, 1926. 30 Just prior to the enactment of the British Act of 1906, there had been significant development in the area of trade union immunity. The Courts had developed the doctrines of civil conspiracy and inducement of breach of contract. According to Wedderburn, the same was a direct response to the curtailment of other avenues of civil action such as obstruction etc. by the legislation of 1875. 31 The result was that by these doctrines, the Courts could meaningfully dispense with the immunity of trade union activities. It was to undo this innovative judicial interpretation that the Act of 1906 was passed. 32

Section 3 of the Act of 1906 granted immunity against civil action. The corresponding provision in Indian law is Section 18 of the Trade Unions Act, 1926. Both the provisions bear considerable similarity and require the fulfilment of certain conditions before the immunity can be granted. Firstly, under the English law, any person who may commit an act in contemplation or furtherance of a trade dispute would be protected in respect of that act only on the ground that the act induced a breach of contract of employment and certain other forms of liability that are specifically mentioned. The Indian law is identical as far as the forms of liability protected against are concerned. However, the scope of the Indian provision mentions specifically that the immunity would be available to the trade union, a member or an office bearer thereof in respect of an act done in contemplation or furtherance of a trade dispute to which a member of the trade union is party.

Under both the Indian and the English laws, an important requirement was that the protection was limited by use of the term “on the ground only”. This implies that if there are other grounds for the institution of a civil suit apart from the one mentioned in the provision, a civil suit would lie. The interpretation of the term was in question in the celebrated case of

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28 W.V.H. Rogers, Winfield and Jolowicz on Torts896 (18th ed.2010). The author notes that the legislative reform was precipitated by judgments of the Court and to curtail the scope of the Common Law with regard to trade disputes. The Trade Disputes Act of 1906 is said to have been necessitated by the Taff Vale decision.
29 Trade Disputes Act, 1906, 6 Edw. 7, c. 47, §§ 1, 3.
31 Wedderburn, supra note 22, at 258. Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict. c. 86.
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Rookes v. Barnard\(^3\) where the House of Lords held that threats to break a contract could amount to “intimidation” and in that case, a tort of intimidation would have been committed.\(^4\) Lord Reid stated that the threat to breach a contract may be a greater coercive weapon than the threat to commit a tort.\(^5\) Lord Devlin concurred stating that the essence of the tort here was the element of coercion.\(^6\)

Therefore, it was held that the protection granted by Section 3 of the Act of 1906 was to be interpreted strictly and restrictively. It was a protection against inducement of breach of contract and not against the tort of intimidation. In the present case, the dismissal of the plaintiff was due to the threat to go on strike otherwise. The decision has evoked criticism as one which disregards the evolution of the law of trade union immunity. It has been argued that the recognition of damage to a person out of a threatened breach of contract is against the well settled principle of privity of contract and had been heretofore unrecognised in English law.\(^7\)

The decision can also be critiqued from the standpoint of the evolution of the trade union immunity and the purpose of the statutory provision. To propose such a narrow construction on the immunity against inducement to breach a contract renders the protection redundant. The effect of the decision can be put as an instruction to trade unions that they would be tortiously liable if they declare their intent to strike for non-fulfilment of demands that would very well fall within the definition of “trade disputes”. In the present case, the facts were that a “no strike” agreement was interpreted to be an implied term of the contract of service and therefore the threat to strike was a threat to breach the contract of employment. This would mean that any prior notice of strike can be held to be a tort if such a term is implied in the contract of service at a later stage.

The decision of the House of Lords had the practical effect of undermining the legislative development due to the Trade Disputes Act,

\(^3\)[1964] A.C. 1129 (Eng.).

\(^4\)Id.

\(^5\)Id. at 1167 (Lord Reid) (“It has often been stated that if people combine to do acts which they know will cause loss to the plaintiff, he can sue if either the object of their conspiracy is unlawful or they use unlawful means to achieve it. In my judgment, to cause such loss by threat to commit a tort against a third person if he does not comply with their demands is to use unlawful means to achieve their object.”).

\(^6\)Id. at 1209 (Lord Devlin) (“I find therefore nothing to differentiate a threat of a breach of contract from a threat of physical violence or any other illegal threat. The nature of the threat is immaterial, because... its nature is irrelevant to the plaintiff’s cause of action. All that matters to the plaintiff is that, metaphorically speaking, a club has been used. It does not matter to the plaintiff what the club is made of—whether it is a physical club or an economic club, a tortious club or an otherwise illegal club. If an intermediate party is improperly coerced, it does not matter to the plaintiff how he is coerced.”).

\(^7\)Wedderburn, supra note 22, at 591.
1906 by introducing a new and broad form of liability. It has been understood to be the most important decision after the enactment of that Act, and was also the reason for the new enactment in 1965. The Act’s statement of Objects and Reasons states that it is meant to prevent actions found on tort in respect of acts done in contemplation or furtherance of a trade dispute. Section 1 of the Act clearly specified that acts consisting of threats to break a contract of employment or inducement of the same would not be actionable. Thereby, the Parliament undid the decision of Rookes’ case and restored the immunity of the trade unions once again.

THE INDIAN POSITION ON IMMUNITY OF TRADE UNIONS

We must consider the Indian evolution of the immunity granted to trade unions. As has been noted, the forms of action from which protection is granted under Section 18 of the Indian law are identical with those under the English law. In Indian case law on the point, the issue that has been most often in question is the scope of the immunity with regard to the acts they cover. The term “on the ground only” present in the provision has been the subject matter of interpretation. In the case of Dalmia Cements Ltd. v. Naraindas Anandji Bechar, it was held that the immunity was to be restricted and the commission of trespass would not be protected. The words “on the ground only” were deemed to be of essential importance.

In the case of Punjab National Bank v. A.I.P.N.B.E. Federation, the facts related to a pen-down strike where the employees also refused to vacate their seats in the office when called upon to do so. Justice Gajendragadkar held that though the pen down strike was a valid and protected action of the trade union, the workers would have no right to stay on the office premises after office hours and such act could amount to an actionable wrong. In the decision of the Calcutta High Court on the case of Jay Engineering Works Ltd. v. State of West Bengal, it was held that the protection under Sections 17 and 18 of the Trade Unions Act, 1906 extended only to acts that were peaceful and did not amount to molestation or intimidation. In that case, the facts pertained to the “gherao” (siege or

38 Id. at 572.
39 Trade Disputes Act, 1965, c. 48 (Eng.).
40 Id. at Statement of Objects and Reasons (“An Act to prevent actions founded on tort, or of reparation, being brought in respect of certain acts done in contemplation or furtherance of trade disputes.”).
41 Id. at § 1.
42 Dalmia Cement Ltd. v. Naraindas Anandji Bechar, (1939) A.I.R. Sindh 256 (Ind.).
43 A.I.R.1960 S.C. 160(Ind.).
blockade) of industrial premises leading to the confinement of several persons. The High Court held that such acts would amount to wrongful confinement and would not be protected under the Act. 45

It is interesting to note, however, that the Calcutta High Court approves of the decision in *Rookes v. Barnard*. 46 Therefore, it would not be incorrect to state that the restriction placed on trade union immunity by that case, which was again reversed by the Act of 1965 has been lifted into Indian law by this judgment and the immunity granted is thereby restricted in India as well. This particular development is not favourable since the *Rookes* ratio was itself an aberration of the 1906 Act and has been reversed by legislative action.

The Calcutta High Court had approved of the *Rookes* decision when there was no need for it to do so. The tort of intimidation as was applied by the House of Lords itself had been much criticised. To follow the same line when the tort of intimidation has not been developed in India and to restrict the immunity and to follow the ratio in *Rookes*’ case which had been affected by the long line of conflicting English decisions. The same history has not been repeated in India and the statutory protection is clear. It is surprising to note that the High Court had not taken note of the Trade Disputes Act of 1965 while holding that the Indian and English laws were similarly restricted.

The restrictions on the scope of activities that can be covered under Section 18 have been placed by several decisions of the Courts. In India, the theoretical development of the law of torts has not occurred side by side with these judgments and the Courts have largely confined themselves to pronouncing strictures that must be followed. It has been held that the means which are adopted by a trade union in furtherance of its cause in a trade dispute must be legal *per se* and not tortious or unlawful. 47

In the case of *Rohtas Industries Staff Union v. State of Bihar*, 48 the workers had gone on an illegal and unjustified strike at the instance of the union. The matter came for arbitration where it was held that the workers participating in the strike would be jointly and severally liable for damage caused. The Patna High Court, on a writ petition, quashed the order of the arbitrator. The Supreme Court affirmed the judgment of the High Court and held that a claim for compensation by the employers would also not fall under the definition of a “trade dispute” under Section 24 of the Industrial

45 Id.
46 Id. at 30-31.
48 AIR Patna 170 (1962) (Ind.).
The decision of the Supreme Court in the Rohtas Industries case is extremely important because it cautions the judiciary against exactly the same attitude that was adopted in the case of Jay Engineering. Justice Iyer notes that the conditions under which the English trade union law has developed were completely different from those of India which was one "replete with organised boycotts and mass sathyagrahas." Therefore, to transplant torts developed in England to India was wrong unless they were adapted to Indian law. The decision of the High Court of Calcutta had held that the doctrines against immunity as applicable in India were the same as those of England. What is indeed more surprising is that it had based its reasoning on a controversial decision which had been effectively overruled by legislative action! With the decision of the Supreme Court in the Rohtas Industries case, some semblance of order has been restored on this point of law.

The question also arises as to what remedies are made unavailable due to the operation of Section 18 of the Trade Unions Act apart from the stated civil suits. An employer can sue for permanent injunction against a strike by the workmen and for fulfilment of their contractual obligations. This possible remedy was excluded by the decision in the case of Federation of Western India Cine Employees v. Filmalaya Pvt. Ltd. In the case, the federation of trade unions had instructed the workers not to report for work at the studios concerned with the effect that the business of the establishment came to a standstill. The Civil Court granted an injunction against continuation of the strike holding that the dispute was not a "trade dispute" under the Act. The High Court held that a blanket injunction could not be issued. However, the Court held that the protection was only for peaceful and lawful activities and any violence or threats to that effect would not be protected.

In the decision of the Madras High Court in the case of Indian Bank v. Federation of Indian Bank Employees’ Union, the Bank sought an injunction to restrain the federation from holding meetings and demonstrations within a radius of fifty metres from the bank offices and branches. The Court refused such a remedy stating that it would amount to curtailing the legitimate acts and rights of the trade unions and no injunction could be issued. However, the immunity would not be available.
in respect of acts which were unlawful. If a prima facie case is made out that unlawful activities are being conducted by the trade union then the suit would be maintainable and the issue of the actual commission of such acts would be decided during the course of the suit.\textsuperscript{54}

It has been argued that as a whole, the Trade Unions Act, 1926 needs an overhaul to better implement the constitutional mandate of ushering in economic, social and political justice. It is said that the legislation that is in force in India was framed at a time and by a Government which did not share the same ideals of social justice that have been enshrined in the Constitution since. It is also submitted that England herself has moved much ahead in the recognition of trade unions’ rights while the Indian law has stagnated at the point that it had been enacted originally.\textsuperscript{55}

CONCLUSION

The evolution of the immunity of trade unions and their members reflects on the tussle between the legislative intent of according trade union activity freedom and the \textit{laissez faire} induced ideology of the judges which was unfavourable to any such concessions.\textsuperscript{56} The extension of forms of tortious liability to trade unions and their activity was a manifestation of exactly this dichotomy. The development in this law has led to a multiplicity of legislation and conflicting judicial opinion as well.

The Indian legislation of 1926 has crystallised some of the immunity that had been present in English law due to the Act of 1906. However, there has been considerable development of the law in the latter jurisdiction with the result that there are better safeguards for trade union activity in England as compared to India where the law has been frozen after the enactment. The case law development in India with regard to the protection granted has also not developed the law greatly as it has done in the United Kingdom. The development in the case of \textit{Jay Engineering} actually pushed back the immunity granted to a lesser level by adopting the \textit{Rookes} ratio.

It is necessary that there should be some normative conclusions about the nature of the immunity that a trade union requires. In the opinion of the


\textsuperscript{56}“It is perhaps trite to observe that labour law (especially that branch concerned with industrial relations) is not - and cannot be - politically neutral, but rather reflects and reinforces particular ideologies which may change over time, in accordance with wider socio-economic trends, policy objectives, and political philosophies.” Keith Syrett, ‘Immunity’, ‘Privilege’, and ‘Right’: British Trade Unions and the Language of Labour Law Reform, 25 J.L. \& Soc’y 388, 389 (1998) (discussing the dissonance between sections of society and law enforcement in labour law).
researcher, the widest amplitude must be given to the interpretation of the immunity. The position after the enactment of the Trade Disputes Act, 1965 should be favoured. The right of the trade unions to threaten to resort to collective agitation mechanisms such as strikes must be recognised as has been done in the United Kingdom. The decision in cases such as *Jay Engineering* must be very cautiously applied. The judges, in that case, had applied actions resulting in tortious liability as outside the scope of the immunity granted to trade unions. These positions have long been discarded in the land of their origin where tortious action of molestation and intimidation are no longer exceptions to trade union immunity. In order to clarify the position, legislative action is the need of the day, whereby specific provisions can be added to the same effect.