

Freedom to Work
(Sajha Manch draft paper for discussion)
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Right to Work

Article 41 of the Constitution of India provides that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the **right to work**, to education, and to public assistance, in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. In the Olga Tellis case, the **right to work** was read by the Supreme Court as a part of the fundamental Right to Life conferred by Article 21. Thus, the **right to work** must be seen as quite distinct from an employment guarantee scheme that keeps people alive in times of distress. This **right** has to be read in conjunction with Article 19, which gives all citizens the freedom to move freely, reside, work, and settle in any part of India – in other words, to optimise their chances of leading a life of dignity.

Such a **right to work** would not only include:

- the Constitutional responsibility of the State to provide work, but also
- the case law protecting an employee's right to meaningfully carry out her/his work according to her/his skills,
- the statutory laws providing compensation to working people who are laid off or retrenched,
- cases preventing unfair dismissals and unfair labour practices,
- the protection of a single employee against monopoly union power,
- equality of remuneration and opportunity for weaker sections,
- the right of a woman to work and/or to share in the earnings of her husband,
- the right of self-employed persons to carry on their avocation,
- the rights of children and older people not to be forced to labour,
- the rights of the disabled, and
- the right not to work under illegal, ill-paid, ill-equipped, or hazardous conditions.

Freedom to Work Act

Hence, a proposed **Freedom to Work Act** must necessarily borrow from a body of law that includes a host of existing legislation, a few of which are given below:

- Workman's Compensation Act, 1923
- The Trade Unions Act, 1926
- The Weekly Holidays Act, 1942
- Minimum Wages Act, 1948
- Factories Act, 1948
- Town and Country Planning Act, 1954
- The Maternity Benefits Act, 1961
- Personal Injuries (Emergency Provisions) Act, 1962
- Equal Remuneration Act, 1976
- The Industrial Disputes Act, 1976
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
- The Child Labour (Prohibition and Regulation) Act, 1986
- 73rd and 74th Amendments, 1992
- 11th and 12th Schedules, 1993
- Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Act, 1996
- National Rural Employment Guarantee Bill, 2004
- Right to Information Act, 2005
- Resettlement and Rehabilitation Policy, 2005

➤ Unorganised Sector Bill, 2005

The proposed **Freedom to Work Act** must also recognise what is the status of work in current society, what are the categories within which people are enabled to work for a livelihood, how these categories are changing, what are the social and economic forces that propel the change, and therefore, what are the measures required to protect work itself. Thus, it must be able to deal in an integrated manner with all kinds of work in all kinds of sectors.

What is proposed here, as a starting point, is that there are presently three categories of work available. The first is the **formal** sector, within which most labour laws are functional primarily because the organised strength of the workforce enforces the law. The second is the **informal** sector, wherein laws are openly flouted for economic gain and the workers are not organised enough to force employers to meet their basic demands. And the third is the **unauthorised** sector, in which working people do not get even the minimum protection from the law because the work in which they are engaged in is regarded as being unauthorised and, therefore, the workers themselves are illegal. For each sector, the Act will have to address the following issues, at the very least.

Formal sector

- Existing labour laws are reported to protect only the 2% labour “aristocracy” in the organised workforce and, therefore, there is an increasing demand for the “reform” of these laws to permit greater “freedom” to capital. However, what is important to remember from the point of view of the freedom of labour, is that these laws also offer protection to other sections of the workforce, provided they become organised. Hence, these laws need to be reformed from the perspective of how they can provide greater flexibility to all labour to organise and obtain better working conditions.
- The regulation of the employer and the work process is intrinsically related to the freedom to work. This regulation has three aspects. Firstly, there is the regulation of capital itself. If present trends of mechanisation and automation are allowed to grow unchecked they will (already have) lead to rampant under and un-employment. Hence, a norm will have to be adopted stipulating the maximum investment-employment ratio. In other words, any capital investment must generate a certain number of jobs if it is to be socially useful. One way of computing this norm may be to divide the total annual investment of the nation by the total number of under and un-employed persons. This would also provide some flexibility to capital as the economy changes.
- The second mode of regulation has to do with the degree to which labour can be displaced from the work process, and the conditions that must necessarily accompany such displacement. This will also impact upon the privatisation of public enterprises, as well as closures and retrenchments. The critical element is that the onus should be on the employer to prove before a tripartite body that there is no other option than to displace the worker, and that any displacement is accompanied by evidence that the worker will be rehabilitated in a manner that improves her/his economic and social life. In other words, any scheme of displacement of labour has to incorporate a component of viable rehabilitation to which the worker must give her/his assent.
- Thirdly, there is the aspect of safety. Work must be safe, not only for the worker, but also for society. In other words, the environment must be protected both in and outside the workplace, not only with respect to the work process but also the product, the by-products, the raw materials, and the wastes. This is an obligation that has to be placed squarely on the employer or promoter, and the regulatory body, therefore, must have the skills and capacity to examine this aspect in detail. Representation of workers, their families (who often live near the work-site), consumers, citizens, and independent researchers on such a regulatory body

is also essential if it is not be dominated by government officials and “experts” nominated by employers.

- Finally, if the generation of employment in the formal sector has to be promoted, the active participation of prospective employees in planning for such employment will have to be enhanced through the formation of workers’ councils or shop stewards committees, or joint action committees of unions, etc. The Act has to, therefore, provide for the creation and maintenance of such bodies and the detailing of specific powers to permit their informed participation in decision-making. The setting up of technical advisory councils, support groups, legal cells, documentation and dissemination units, etc. will also have to be part of the legislation.

Informal sector

- As mentioned earlier, the scope of all labour laws available in the formal sector has to be extended to the other sectors too, but this is largely dependent upon the extent to which the workers in those sectors become organised enough to claim their rights under the law. Hence, legal reform is necessary to the extent it becomes easier for the workers to be organised.
- The provision of a minimum wage has to be made mandatory for this sector, but the computation of this minimum cannot be based on “capacity to pay” or on piece rates. Rather it has to be founded on the principle of a time-rated “living wage” that accounts for the minimum expenses required for food, shelter, health, and education for the family.
- Such a concept of “living wage” has also to be tied to unemployment benefits and social security measures. In other words, if the State is unable (or unwilling) to generate adequate employment for a willing population, then it must be penalised for defaulting on Constitutional provisions. The State cannot be allowed to withdraw from its welfare role, and merely be a “regulator”.
- For the large number of self-employed people in this sector, specific provisions have to be put in place to enable them to earn a productive living, particularly since they provide essential services to society. These provisions would have to include those of access to easy credit and markets, as well as the allocation of formal space to carry on livelihood activities. This is integrally related to the demand for participation in planning by representatives of workers’ associations.
- The freedom to work must also include the ability to create and grasp opportunities for work. Central to this is the issue of skill-upgradation, capacity-building, and training to meet the needs of the future. Rather than leave this to be determined by “free” market forces, there is a need to conceptualise how new skills and abilities can contribute to more meaningful and socially productive societies. Hence, many of the skills would be in fields such as preventive health care, relevant education, user-friendly transportation, and so on.

Unauthorised sector

- This sector is the most vulnerable of all, and hence deserves special attention. Zoning laws and restrictive regulations that make it impossible for the workers in this sector to enter, leave alone work in, specific areas on untenable grounds of “environment”, “conservation”, “security” or “congestion” etc. must be either struck down or made more transparent to public enquiry. The freedom to work has to prevail over the limitations put on freedom itself – as expressed in the fundamental rights to life, livelihoods, shelter, education, and health.
- The associated question of “illegality” has to be firmly dealt with. These have much to do with elitist xenophobic notions of “encroachment”, “migration”, and “criminality”, which should have no logical place in democratic and equitable societies. Hence, special bodies have to be set

up to deal speedily with such cases. These would include tribunals, tripartite boards, and citizen's councils with adequate worker representation, and would have to be linked to statutory commissions such as those dealing with human rights, minorities, women, minorities, vulnerable groups, and labour.

- Special emphasis has to be given to protecting women workers against sexual harassment and women and children against exploitation. Issues of gender equality, of women's access to security and justice, equal work and wages, the right of children to education and health, freedom from violence, the right to be equally represented and heard, and to participate freely in all aspects of the social and cultural life of the working community, have to be addressed through the proposed Act.

Governance

It is clear that the Freedom to Work Act touches upon several aspects of participation in governance by workers and their families. Hence, the provisions in the 73rd and 74th Amendments to the Constitutions have to be fully developed for this purpose, particularly the mandatory formation of general *sabhas* and democratically elected *samitis* at the *mohalla* level (100 households). In addition, the possibilities of direct worker participation in the formulation of Master Plans and Development Plans have to be codified to enable greater accountability in governance. This has to be facilitated by the use of the right to information, which has to be necessarily extended to cover the private sector too. Accountability of employers, planners, and administrators, with specific penal provisions for failure to generate and maintain livelihoods, has to be an integral part of the Act.

[This draft is meant for wider discussion amongst worker associations, trade and labour unions, mass organisations, and concerned intellectuals and citizens' groups. All responses may kindly be addressed to:
Hazards Centre, 92 H Pratap Market, Munirka, New Delhi 110067
011-26187806, 26714244; haz_cen@vsnl.net]