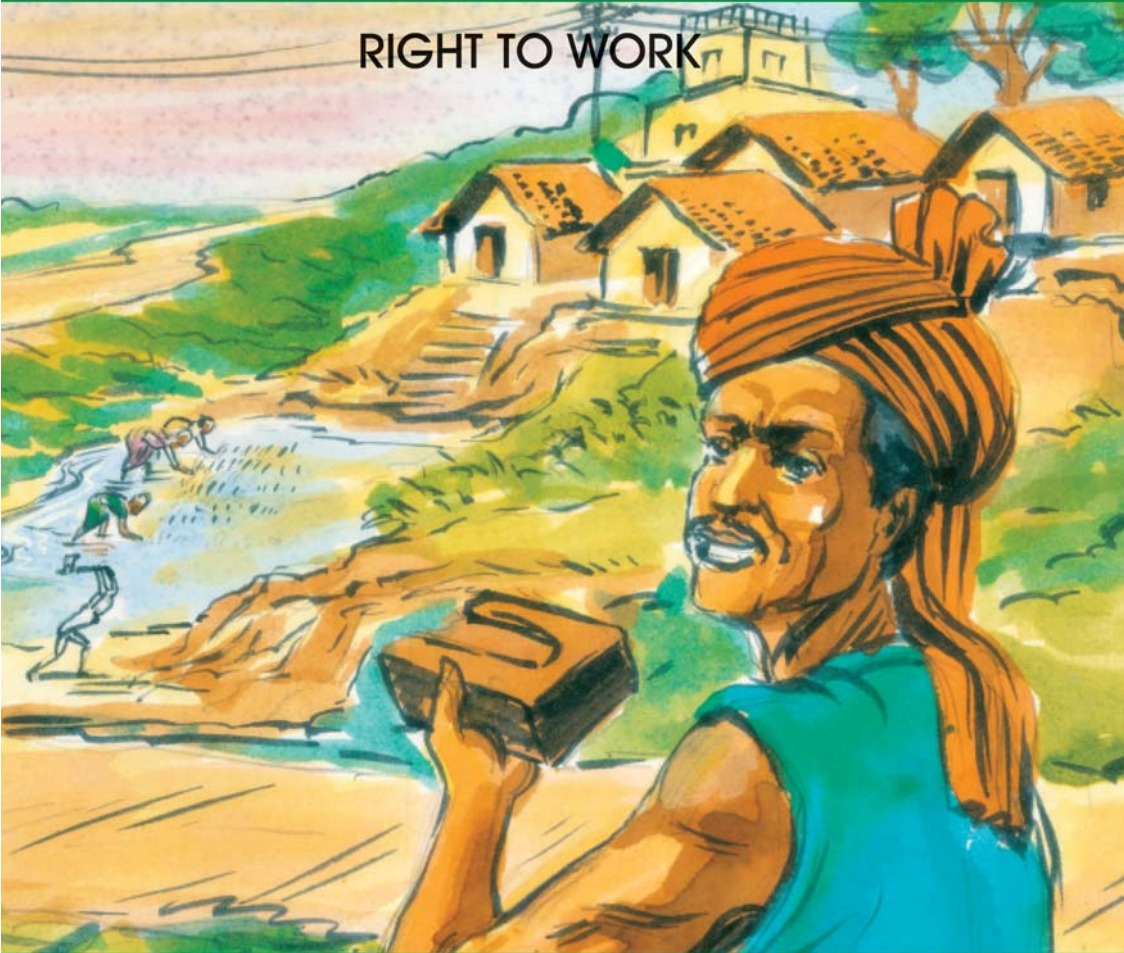


# KNOW YOUR RIGHTS

RIGHT TO WORK



National Human Rights Commission

**Know Your Rights Series**

**RIGHT  
TO  
WORK**



**National Human Rights Commission  
Faridkot House, Copernicus Marg  
New Delhi-110001**

## **Know Your Rights Series:**

### **Right to Work**

This publication is intended to assist a wide audience to achieve a better understanding of the basic human rights.

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# RIGHT TO WORK

## Introduction

Manu, the law-giver of ancient India, ordained that the king should support all his subjects as earth does for all the living beings, without discrimination. The epic Mahabharat mentions that the king should look after the welfare of the disabled, helpless, orphans, widows, victims of calamities, and pregnant women by meeting their minimum needs. Kautilya, the greatest economist of the medieval period of Indian history, said, "in the happiness of his subjects lies the king's happiness, in their welfare his welfare..." Mahatma Gandhi viewed work more as duty than as right.<sup>1</sup>

## What is meant by Right to Work?

The right to work is closely related to other basic rights such as the right to life, the right to food and the right to education. In a country where millions of people are deprived of any economic assets other than labour power, gainful employment is essential for these rights to be fulfilled. Indeed, unemployment is the main cause of widespread poverty and hunger in India. The right to work states that everyone should be given the opportunity to work for a basic living wage.

## International Legislations

The Right to Work is an important Human Right which has been explained in Articles 23<sup>2</sup> and 24<sup>3</sup> of the Universal Declaration of Human

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<sup>1</sup> <http://archive.peacemagazine.org/v14n6p24.htm>

<sup>2</sup> Article 23.

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Rights. Everyone has the right to work and free choice of employment in just and favourable conditions.

Everyone has the right to be protected against unemployment apart from having the right to equal pay for equal work without any discrimination, in particular women being guaranteed conditions of work not inferior to those enjoyed by men. The right to work emphasizes on the steps to be taken by a State Party for the achievement of the full realization of this right and includes technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. It also includes safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays and the right to form and to join trade unions for the protection of his interests.

### **What does the Indian Constitution say about the Right to Work?**

The Indian Constitution refers to the right to work under the “directive principles of state policy”. Article 39 urges the State to ensure that “the citizens, men and women equally, have the right to an adequate means to livelihood”, and that “there is equal pay for equal work for both men and women. “Further, Article 41 stresses that “the state, shall within the limits of its economic capacity and development, make effective provision for securing right to work...”

### **What is discrimination at work?**

Discrimination is defined under ILO **Convention No. 111** as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (among other characteristics), “which has the effect of nullifying or impairing equal) of opportunity and treatment in employment or occupation.”

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<sup>3</sup> Article 24.

1. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Discrimination can perpetuate poverty, stifle development, productivity and competitiveness, and ignite political instability, says the report which was prepared under the ILO's 1998 Declaration on Fundamental Principles and Rights at Work.

Discrimination is still a common problem in the workplace. While some of the more blatant forms of discrimination may have faded, many remain, and others have taken on new or less visible forms, the report says.

Global migration combined with the redefinition of national boundaries and growing economic problems and inequalities have worsened xenophobia and racial and religious discrimination.

More recently, new forms of discrimination based on disability, HIV/AIDS, age or sexual orientation are cause for growing concern.

- Progress in fighting discrimination at work has been uneven and patchy, even for long recognized forms such as discrimination against women. Discrimination at work will not vanish by itself; neither will the market, on its own, take care of it.
- Inequalities within discriminated groups are widening. Affirmative action policies, for example, helped create a new middle class of formerly-discriminated persons in some countries. A few rise to the top of the social ladder, while most remain among the low paid and socially excluded.
- Discrimination often traps people in low-paid, "informal" economy jobs. The discriminated are often stuck in the worst jobs, and denied benefits, social protection, training, capital, land or credit. Women are more likely than men to be engaged in these more invisible and undercounted activities.
- The failure to eradicate discrimination helps perpetuate poverty. Discrimination creates a web of poverty, forced and child labour and social exclusion, the report says, adding "eliminating discrimination is indispensable to any viable strategy for poverty reduction and sustainable economic development".



- Everyone gains from eliminating discrimination at work - individuals, enterprises and society at large. Fairness and justice at the workplace boosts the self-esteem and morale of workers. A more motivated and productive workforce enhances the productivity and competitiveness of businesses.

## **The development of a National Policy to promote equality**

- a. States must establish and implement a national policy to promote equality of opportunity and treatment in employment and occupation with a view to eliminating discrimination. This policy applies to both the public and the private sectors, as well as to vocational guidance, vocational training and placement services under the control of national authorities. States are required to cooperate with workers' and employers' organizations in the preparation and implementation of national policy. These organizations, in turn, must promote national policy in the workplace and within the organization itself.
- b. The State, according to the specific national circumstances, determines which measures are to be developed for the promotion of equal opportunity and treatment. The law and collective agreements are key instruments. Educational activities are a further means to foster the observance of national policy. Moreover, the elimination of certain forms of discrimination may require affirmative action measures.

The elimination of discrimination at work is an indispensable part of any viable strategy for poverty reduction and sustainable economic development.

## **Types of Discrimination**

Discrimination at work can be direct or indirect.

### **1) *Direct Discrimination***

Discrimination is direct when regulations, laws and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex.

## **II) *Indirect Discrimination***

Indirect discrimination may occur when apparently neutral rules and practices have negative effects on a disproportionate number of members of a particular group irrespective of whether or not they meet the requirements of the job. The notion of indirect discrimination is particularly useful for policymaking. It shows that the application of the same condition, treatment or requirement to everyone can, in fact, lead to very unequal results, depending on the life circumstances and personal characteristics of the people concerned. The requirement of knowledge of a particular language to obtain a job, when language competence is not indispensable, is a form of indirect discrimination based on national or ethnic origin.

### **Why is it important to eliminate discrimination at work?**

- The elimination of discrimination in the workplace is strategic to combating discrimination elsewhere. By bringing together and giving equal treatment to people with different characteristics, the workplace can help dispel prejudices and stereotypes. It can provide role models for members of disadvantaged groups. Socially inclusive workplaces can pave the way for more egalitarian, democratic and cohesive labour markets and societies.
- Equality in employment and occupation is important for the freedom, dignity and well-being of individuals. The day-to-day work atmosphere and labour relations generally improve when employees feel valued.
- The elimination of discrimination in the labour market allows human potential to expand and to be deployed more effectively. A rise in the proportion of workers with decent work will widen the market for consumer goods and enlarge development options.

### **Link between Discrimination and Equality**

Discrimination in employment and occupation often results in poverty, which furthers discrimination at work in a vicious cycle. Lack of work and work that is unproductive, insecure and unprotected are the main causes of the material deprivation and vulnerability that poor people experience. Discrimination in the labour market, by excluding members of

certain groups from work or by impairing their chances of developing market-relevant capabilities, lowers the quality of jobs they can aspire to.

## Gender Equality and Right to Work

The elimination of discrimination in remuneration is crucial for achieving genuine gender equality and promoting social equity and decent work. Convention No. 100 and its accompanying recommendation (also see box 1) provide policy guidance on how to eliminate sex-based discrimination in respect of remuneration and how to promote the principle of equal pay for work of equal value. This Convention is among the most widely ratified ILO Conventions.

### Box 1

Equal Remuneration Convention, 1951 (No. 100) and its accompanying Recommendation (No. 90)

Convention No. 100 and Recommendation No. 90 list a number of measures to promote and ensure the application of *“the principle of equal remuneration for men and women workers for work of equal value”*.

Convention No. 100 establishes that remuneration rates are to be established without discrimination based on the sex of the worker. Furthermore, it requires that men and women workers obtain equal remuneration for work of equal value and not just for the same or similar work. The implementation of this principle requires a comparison among jobs to determine their relative value. Since men and women tend to work in different occupations, it is important to have systems that can objectively measure the relative value of jobs that differ in content and skill requirements.

### What is remuneration?

The term “remuneration” includes “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment” (Convention No. 100, Article 1(a)).



The principle of equal remuneration may be applied by means of:

- (a) National laws or regulations;
- (b) Legally established or recognized machinery for wage determination;
- (c) Collective agreements between employers and workers; or
- (d) A combination of these various means (Article 2).

### **The application of the principle of equal remuneration:**

#### ***A common responsibility of the State and the social partners-***

Ratifying States must ensure the application of the principle of equal remuneration in the areas where they are involved in wage fixing. When they are not directly involved, they have the obligation to promote the observance of this principle by those who are involved in the determination of remuneration rates. States must cooperate with employers' and workers' organizations to implement the Convention and must involve them in the establishment, where appropriate, of objective job evaluation methods. Employers' and workers' organizations are also responsible for the effective application of this principle.

## **Women Workers' Right in India**

In the years following independence, despite the constitutional provisions and the enactment of various laws, it was felt that the slow pace of social change and the actualities of the enforcement of rights for women, required comprehensive examination. To this end, in 1975 came the watershed report, *Towards Equality*, of the Committee on the Status of Women in India (CSWI) constituted in 1971 by the Department of Social Welfare at the instance of the United Nations General Assembly. The report recognized:

*“The impact of transition to a modern economy has meant... that a considerable number (of women) continue to participate (in the productive process) for no return and no recognition. The majority of those who do participate fully or on sufferance, without equal treatment, security of*

*employment or humane conditions of work, a very large number of them are subject to exploitation of various kinds with no protection from society or State. Legislative and executive actions initiated in this direction have made some impact in the organized sector, where only 6% of working women are employed, but in the vast unorganized sector, which engages 94% of working women in this country, no impact of these measures have been felt on conditions of work, wages or opportunities<sup>4</sup>”.*

To operationalise the recommendations listed in *Towards Equality*, the Department of Social Welfare formulated a *Blueprint of Action Points for Women and National Plan of Action for Women* in 1976. Chapter III of the blueprint not only recognized ‘self-employed’ women and organizations working for their benefit but also laid out actions plans on how to encourage women’s participation in self-employment activities.

*Towards Equality* led to extensive policy debates. These contributed, in part, to a recognizable shift from viewing women as targets of welfare policies in the social sector to regarding them as critical actors of development. The report influenced the Sixth Five Year Plan (1980-85), which contained, for the first time in India’s planning history, a chapter<sup>5</sup> on ‘women & development’ and included therein a sub-section on employment and economic independence.

## **Women Workers’ Rights in India: Issues and Strategies– a reference study**

The *Shram Shakti*<sup>6</sup> report of the National Commission for Self-Employed Women (1987-89) and *Women in the Informal Sector*, submitted in June 1988, was the second landmark after *Towards Equality for Home-based workers’ rights*. Elaben Bhatt, founder members of SEWA was the Chair of the Commission. However, the setting up of the Commission itself was the culmination of a long struggle. In 1984, SEWA annual conference passed a resolution which asked for Commission for the Self-employed to study the conditions under which the self-employed workers lived and worked and to propose solutions. SEWA took a delegation to the labour Minister in 1985 and subsequently to the Prime Minister in 1986 to press

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<sup>4</sup> Chapter V – Roles, Rights and Opportunities for Economic Participation.

<sup>5</sup> Chapter 27, Sixth Five Year Plan (1980-85), Planning Commission, Government of India

for this resolution. The Commission was set up in 1987. The Commission adopted an inclusive approach and involved governmental and non-governmental organizations as well as activists in the discussions. For the first time, the report underlined the critical contribution of the marginalized poor women, in both rural and urban areas, to the growth of the formal economy.

The recommendations not only pointed to the need for recognition of homebased workers but also called for enlarging the *definition of women* workers in subsequent data collections efforts. Several suggestions were given on how to improve the living conditions of self-employed women in the informal sector, including home-based workers. *Shram Shakti* strongly advocated ownership and control over productive resources for poor working women because this was a proven formula for a qualitative improvement in the women's living conditions (sections 1.8 & 1.10):

*“Perhaps, it will be the single most important intervention towards both their empowerment and economic well-being. Some of the assets that women can be given are a plot of land, housing, tree pattas, joint ownership of all assets transferred by the State to the family, animals, licenses, bank accounts, membership of organizations and identity cards.”*

### **The report further noted (section 1.11):**

*“At least one-third of the households are solely supported and another one-third receive at least 50% contribution from women. Therefore, while fixing financial and physical targets and allocating of resources this reality should be kept in view. Such households should be specifically identified at the village level and covered by all programmes.”*

The *Shram Shakti* Report has been used as a tool for expanding home-based workers' movement at all levels. It was following this report that the government initiated several women-focused schemes for those working in the unorganized sector. The report was translated into 14 languages and triggered several follow-up state-level meetings.

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<sup>6</sup> Shram Shakti, A Summary of the Report of the National Commission on Self-Employed Women and Women in the Informal Sector, relevant extracts in the dossier.

## **Pronouncements/ Decisions of Apex Court on Right to Work**

The question whether a person who ceases to be a government servant according to law should be rehabilitated by being given an alternative employment is, as the law stands today, a matter of policy on which the court has no voice (**K.Rajendran v. State of Tamil Nadu (1982) 2 SCC 273, para. 34, p. 294.**) But the court has since then felt free to interfere even in areas which would have been considered to be in the domain of the policy of the executive. Where the issue was of regularizing the services of a large number of casual (non-permanent) workers in the posts and telegraphs department of the government, the court has not hesitated to invoke the Directive Principles of State Policy (DPSP) to direct such regularization.

### **The explanation was:**

Even though the above directive principle may not be enforceable as such by virtue of Article 37 of the Constitution of India, it may be relied upon by the petitioners to show that in the instant case they have been subjected to hostile discrimination. It is urged that the State cannot deny at least the minimum pay in the pay scales of regularly employed workmen even though the Government may not be compelled to extend all the benefits enjoyed by regularly recruited employees. We are of the view that such denial amounts to exploitation of labour. The Government cannot take advantage of its dominant position, and compel any worker to work on starvation wages even to a casual labourer. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state.

The Government should be a model employer. We are of the view that on the facts and in the circumstances of this case the classification of employees into regularly recruited employees and casual employees for the purpose of paying less than the minimum pay payable to employees in the corresponding regular cadres, particularly in the lowest rungs of the department where the pay scales are the lowest is not tenable . . . It is true that all these rights cannot be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance.

In the **Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161** case the court said: The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity, but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State.

Thus the court converted what seemed a non-justiciable issue into a justiciable one by invoking the wide sweep of the enforceable article 21.

More recently, the court performed a similar exercise when, in the context of articles 21 and 42, it evolved legally binding guidelines to deal with the problems of sexual harassment of women at the work place (**Vishaka v. State of Rajasthan (1997) 6 SCC 241.**). The right of workmen to be heard at the stage of winding up of a company was a contentious issue. In a bench of five judges that heard the case the judges that constituted the majority that upheld the right were three. The justification for the right was traced to the newly inserted Article 43-A, which asked the



state to take suitable steps to secure participation of workers in management. The court observed: It is therefore idle to contend 32 years after coming into force of the Constitution and particularly after the introduction of Article 43-A in the Constitution that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court.

It would indeed be strange that the workers who have contributed to the building of the enterprise as a centre of economic power should have no right to be heard when it is sought to demolish that centre of economic power.

**National Textile Workers Union v. P. R. Ramakrishnan (1983) 1 SCC249.**

## **BEST PRACTICES**

### **Significant Job Guarantee Schemes by the Govt of India**

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA)

**MNREGA** is a job guarantee scheme, enacted by legislation on **25 August, 2005**. The scheme provides a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage of Rs.100 per day. The Central Government outlay for the scheme was Rs. 39,100 crore (\$8 billion) in FY 2009-10.

This act was introduced with an aim of improving the purchasing power of the rural people, by providing semi or un-skilled work to people living in rural India, whether or not they are below the poverty line. Around one-third of the stipulated work force is women. The government is planning to open a call center, which upon becoming operational can be approached on the toll-free number, 1800-345-22-44.

No discrimination between men and women is allowed under the act. Therefore, men and women must be paid the same wage. All adults can apply for employment.

## **The Role of National Human Rights Commission (NHRC)**

The National Human Rights Commission ever since its inception has been concerned about the Right to Work with equality and dignity. The Commission examines and monitors the implementation of various provisions of the Minimum Wages Act and the Mahatma Gandhi National Rural Employment Act, besides reviewing the policies and programmes particularly pertaining to women.

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