

of the right to life, liberty and the right against self-incrimination. Viewed from the point of view of criminal trials, the unreliability of the procedure and the impact of the drugs on the psyche may result in miscarriage of justice and conviction of innocent persons. The logic of 'minimal bodily harm' being permissible for extraction of information

offered for upholding narco-analysis has grave implications as to the use of coercive third-degree methods specially in the context of growing curbs on rights in the name of tackling terrorism. The democratic rights movement must take up a sustained campaign against the use of invasive methods like narco-analysis and brain mapping.

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### BASIC HUMAN RIGHTS CONVENTION OF INTERNATIONAL LABOUR ORGANIZATION (ILO)

By

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**Introduction:** Much before the United Nations proclaimed the Universal Declaration of Human Rights in 1948, the International Labour Organisation had enshrined many principles in its Constitution. The Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" and of "equal remuneration for work of equal value" to be the means of improving conditions of labour and of establishing peace. The Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress, and that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity..."

As far as action by the International Labour Organisation is concerned, virtually all of its activities under its different programmes are aimed at making a reality of the rights and freedoms proclaimed in the Constitution of the ILO, they also are effective means of implementing many of the rights mentioned in the Universal Declaration of

Human Rights and the International Covenants of human rights which concern of ILO. ILO's work in the field of Human Rights aims *inter alia* at safeguarding freedom of association; abolition of forced labour; elimination of discrimination in employment; promotion of equality of opportunity, protection of children from economic exploitation, minimum wages, social security, and adequate conditions of work and life. During the year 1988, which marked a series of significant human rights anniversaries, the Director-General of the ILO presented a report on human rights issues to International Labour Conference. While reviewing the past activities in this field, he observed two distinct trends. On the one hand an impressive body of standards had been brought to existence, which bore a striking impact on attitudes, policies, laws and conduct. On the other hand, there have been innumerable situations in which the same standards were disregarded and where individuals were denied elementary rights. To reconcile these conflicting tendencies he stated that a major task of ensuring knowledge and understanding of these standards lay ahead and it required a global action and international co-operation.

Freedom of association occupies a unique place in the area of basic human rights. In view of the vital importance attached by the ILO to the observance of the principles and guarantees of freedom of association, special procedures have been devised for the examination of complaints regarding infringements of trade union rights. These procedures supplement the supervisory procedures or the special procedures for representations and complaints. Another feature of the procedures on freedom of association is that those can be brought into play against Governments even if they have not ratified the ILO's freedom of association conventions. The procedures comprising two bodies which are, (a) Fact-finding and Conciliation Commission; and (b) Governing Body Committee on Freedom of Association.

The Fact-finding Commission was established in 1950 comprising highly qualified and independent persons appointed by the ILO Governing Body. It examines complaints of alleged infringements of trade union rights. Only a complaint submitted by Government or by an employers' or workers' organization is receivable; such an organization must be a notional one with a direct interest in the matter, or an international one having consultative status with the ILO or an international workers' or employers' organization, if the allegation relates to matters directly affecting its affiliated organization. Complaints received by UN are forwarded to the ILO and the Governing Body may decide to refer them to the Commission.

The Governing Body Committee on Freedom of Association examines complaints and submits to the Governing Body its recommendations regarding the action to be taken thereon. It comprises 9 regular and 9 substitute members, 3 each from the Government workers' and employers' groups of the Governing Body, with an independent Chairman. The Committee meets three times a year and functions in a *quasi-judicial* manner. A complaint must be submitted either by

workers' or employers' organization or by Government and may be made against a Government that has not ratified the freedom of association conventions. When a complaint is received, it is communicated to the Government concerned for its observations. The Committee then examines the case on the basis of the Government's reply as well as the information supplied to the complainant. If a Government causes delay in sending its observations, the Chairman of the Committee may discuss the matter with the Government representative attending the Conference to get the reply expedited. If, however, there is persistent delay on the part of the Government in sending its observations, the Committee may submit its report on the substance of the case; in such cases wider publicity is given to the allegations, the decision of the Governing Body and the obstructive attitude of the Government. In practice, however, it is seldom necessary to take recourse to such action.

Mr. *Michel Hansenne*, Director General of the ILO, in his report to the 79th Session of the International Labour Conference, held in June, 1992, asserting that social justice is the prime objective of the ILO, emphasized that the ILO's concern in these turbulent times, should be to provide members with all the assistance they may ask for. He assured that:

"The organization can help member states to establish institutions that respect human rights – and, above all, freedom of association – and to bring their legislations in line with international labour standards. It can support efforts to eliminate discrimination in all its forms. It can support efforts to set up a market economy with a human face. It can advise employers and workers wishing to organize and can suggest bargaining machinery and modes of settling disputes".

So far 11 Conventions and 7 Recommendations have been adopted on this subject. They are classified as under:

A – Freedom of Association – 7 Conventions and 3 Recommendations.

B – Forced Labour – 2 Conventions and 2 Recommendations.

C – Discrimination – 2 Conventions and 2 Recommendations.

2 Conventions and 2 Recommendations are no longer of current interest. Conventions 11 and 84, Recommendations 35 and 36 are classified as “other instruments”. Therefore, analysis pertains to 9 Conventions and 5 Recommendations.

### A. Freedom of Association

#### *Conventions:*

**C.1** – *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87).*

**Scope:** General

**Object:** The Convention establishes and defines the right of workers and employers to set up and join occupational organizations, federations and confederations and to organize their administration and activities.

**Theme:** Ratifying states should recognize the right of workers and employers, without distinction whatsoever, to establish and join, without previous authorization, organizations of their choosing. These organizations may draw up their own rules, elect their representatives and organize their administration, activities and programmes, and public authorities shall refrain from any interference. Workers’ and employers’ organizations should not be dissolved or suspended by administrative authorities. These organizations may also constitute or join federations and confederations enjoying the same rights as well as the right to affiliate with international organizations of workers or employers. In exercising these rights, workers and employers and their organizations must respect the law of the land, but this law

must not be sure or so applied as to impair the above mentioned guarantees.

**Exceptions:** The extent to which the Convention applies to armed forces and the police is to be determined by national legislation.

**Enforcement:** Ratifying States should take all necessary measures to ensure that workers and employers may freely exercise the right to organize.

**Current Status:** 100 States have ratified the Convention. The instrument is of continuing interest.

**C.2** – *Right to Organise and Collective Bargaining Convention, 1949 (No.98).*

**Scope:** General

**Object:** The Convention seeks to protect workers and their organizations against acts of anti-union discrimination and interference by employers and to promote voluntary collective bargaining.

**Theme:** Workers should be protected against acts of anti-union discrimination, especially refusal of employment to or dismissal of a worker on grounds of membership or participation in activities of a union. Workers’ and employers’ organization must be protected against interference by each other in their respective affairs, with particular reference to acts designed to promote the establishment of employer-dominated workers’ organizations or to place workers’ organizations, financially or otherwise, under the control of employers. The full development and use of voluntary collective bargaining machinery must be promoted by appropriate measures. The Convention does not deal with the position of public servants engaged in the administration of the State.

**Exception:** The extent to which the Convention applies to armed forces and the police is to be determined by national legislation.

**Enforcement:** Appropriate machinery must be established where necessary to ensure respect for the right to organize.

**Current Status:** It is of current interest and 115 States have ratified it. References may also be made to Convention No.154 Collective Bargaining, dealt with under chapter Industrial Relation.

**C.3 – Workers' Representatives Convention, 1971 (No.135).**

**Scope:** General.

**Object:** It aims at protecting workers' representatives against prejudicial acts and providing them facilities in the undertakings.

**Theme:** The Convention requires the member States to ensure that workers' representatives are protected against any act prejudicial to them, including dismissal based on their status or activities as workers' representative or an union membership or participation in union activities, as long as they act in conformity with the existing laws or collective agreements. It also lays down that while workers' representatives should be afforded such facilities as would enable them to carry out their functions promptly and efficiently, account should also be taken of the characteristics of the industrial relations systems, the needs, size and capabilities of the individual undertaking and the non-impairment of the efficient operation of the undertaking. The Convention defines the term workers' representatives entitled to protection and facilities that may be determined by law, collective agreements, arbitration awards or Court decisions. The instrument also stipulates that appropriate measures be taken to ensure that the position of the trade unions or their representative in the undertaking is not undermined by the existence of elected representatives.

**Prior Consultation:** The instrument seeks to make provisions to encourage co-operation between the elected representatives and the

trade unions concerned and their representatives, on all relevant matters.

**Enforcement:** Effect may be given through law or collective agreements, or through any other measures consistent with national practice.

**Current Status:** 45 States have ratified the Convention and the instrument is of current interest.

**C.4 – Rural Workers' Organisations Convention, 1975 (No.141)**

**Scope:** Rural Workers.

**Object:** Aims at promoting organization of rural workers.

**Theme:** The Convention requires the national rural development policy to facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers and urges the member States to eliminate obstacles, if any, in the pursuit of the same and requires to ensure that the national laws do not inhibit such growth. It requires that all categories of rural workers should have the right to establish and to join organizations of their choice without previous authorization. The organizations should be independent, voluntary, and free from interference, coercion or repression. Conditions imposed for granting legal personality to the organizations should not restrict their rights. In exercising the rights, the rural workers and their organizations, must depend on the law of the land, but this law must not be such or so applied as to impair the above mentioned guarantees.

**Enforcement:** Steps should be taken to promote the widest possible understanding of the need to further the development of rural workers' organizations and their role in economic and social development.

**Current Status:** 31 States have ratified it and the instrument is of current importance.

**C.5 – *Labour Relations (Public Service) Convention, 1978 (No.151).***

**Scope:** All persons employed by public authorities.

**Object:** To afford adequate protection against acts of anti-union discrimination in respect of their employment.

**Exception:** Application to armed forces, police and policy making/managerial/employees handling confidential matters, to be determined by national laws or regulations.

**Theme:** It protects the rights of public employees' to organize and provides that public employees' organizations shall enjoy complete independence from public authorities. Appropriate procedures for determination of terms and conditions for employment are to be encouraged and utilized. The settlement of disputes shall be sought, as may be appropriate to national conditions, through negotiation or through independent and impartial machinery, such as mediation, conciliation and voluntary arbitration. Public employees shall have, as other workers, the civil and political rights which are essential for the normal exercise of freedom of association, subject only to the obligations arising from the status and the nature of their function.

**Current Status:** It has received 24 ratifications.

### ***Recommendations:***

**R.1 – *Workers' Representatives Recommendation, 1971 (No.143).***

This is supplementary to Convention No.135. The Recommendation details the protective measures that the workers' representatives should be entitled to including precise definition of the reasons justifying the termination of employment, requirement of consultation before dismissal becomes final and a special recourse procedure where

workers' representatives consider that their employment has been unjustifiably terminated or that they have been subjected to unfavourable change in conditions of employment or to unfair treatment. It also specifies the types of facilities to be afforded to workers' representatives such as time-off from work without loss of pay or social change and fringe benefits; access to all work places in the undertaking and to the management; permission to collect trade union dues and the posting of trade union notices; and provision of material facilities and information. The instrument requires that trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should also be granted access to the undertaking. Effect to the provision of the Recommendation could be given through law, collective agreement or in any other manner consistent with national practice.

**R2 – *Rural Workers' Organization Recommendation, 1975 (No.149).***

This is supplementary to Convention No.141 and elaborates the role of organizations of rural workers and the means to encourage their growth. The Recommendation envisages that the organizations should be able to undertake negotiations on behalf of workers; to represent them in formulation, implementation and evaluation of rural development programmes; to involve them in programmes of agricultural development, agrarian reforms, public works, rural development information and education; to promote extension of social security services; and to contribute to the improvement of the conditions of work and life of rural workers'. The Recommendation also envisages extension to rural workers organizations and their members such facilities for vocational education and training as available to other workers' organizations and their members. Member-States should ensure that minimum requirements in respect of membership, levels of education, and funds should not impede development of organizations in rural areas



with scattered, ill-educated and poor population. The instrument calls for provision of labour inspection for effective implementation and envisages supply of guidance and assistance in establishing and organizing rural workers' organizations. The

Recommendation calls for promotion of public information system on the role of rural workers' organizations in economic and social development including mass education campaigns; radio, television and cinema; seminars, meetings and visits to

## RIGHT TO INFORMATION ACT, 2005

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*"In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption". — Justice K.K. Mathew.*

Access to information held by a public authority was not possible until 2005. Lack of information precluded a person to realize his socio-economic aspirations, because he had no basis to participate in the debate or question the decision making process even if it was harming him. Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The common man did not have any legal right to know about the public policies and expenditures. It was ironical that people who voted the persons responsible for policy formation to power and contributed towards the financing of huge costs of public activities were denied access to the relevant information.

This culture of secrecy resulted in prolific growth of corruption, abuse of power and unscrupulous diversion of the public money was the order of the day. Under such conditions, public and various NGOs demanded greater access to the information held by public authorities. The Government

acceded to their demand by enacting Right to Information Act, 2005.

The 'Right to Information' statutorily refers to as a right of information accessible under the Act which is held by or under the control of any public authority and includes a right to:

1. Inspection of work, documents, records.
2. Taking notes, extracts, certified copies of documents and records.
3. Taking separate samples of materials.
4. Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or any other device.

### Evolution of the Right to Information

**(A) Movement for Right to Information in India:** Campaign for Right to Information