



**COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)<sup>1</sup>: INDIA**

***FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)***

<b>REPORTING</b>	<b>Fulfillment of Government's reporting obligations</b>	<b>YES</b> , since the start of the Annual Reviews (ARs) in 2000 but no change report for the 2007 AR.
	<b>Involvement of Employers' and Workers' organizations in the reporting process</b>	<b>YES</b> , according to the Government: Involvement of the Council of Indian Employers; Employers' Federation of India; All India Organisation of Employers; Standing Conference of Public Enterprises; All India Manufacturers' Organisation (Lagdhu Udyog Bharati-AIMO); Bharatiya Mazdoor Sangh; Indian National Trade Union Congress (INTUC); Centre of Indian Trade Unions (Hind Mazdoor Sabha-HMS); All India Trade Union Congress (AITUC); United Trade Union Congress; and National Front of Indian Trade Unions through communication of Government's report.
<b>OBSERVATIONS BY THE SOCIAL PARTNERS</b>	<b>Employers' organizations</b>	<b>2008 AR:</b> Observations by the CIE, comprised of 81 federations. <b>2007 AR:</b> Observations by AIMO. <b>2003 AR:</b> Observations by AIMO.

<sup>1</sup> Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

	<b>Workers' organizations</b>	<p><b>2008 AR:</b> Observations by the AITUC. Observations by the Bharatiya Mazdoor Sangh (BMS) Observations by the ITUC.</p> <p><b>2007 AR:</b> Observations by the AITUC. Observations by HMS. Observations by INTUC. Observations by the International Confederation of Free Trade Unions (ICFTU).</p> <p><b>2006 AR:</b> Observations by the ICFTU.</p> <p><b>2005 AR:</b> Observations by AITUC. Observations by the ICFTU. Observation by HMS.</p> <p><b>2004 AR:</b> Observations by AITUC. Observations by HMS. Observations by the ICFTU.</p> <p><b>2003 AR:</b> Observations by AITUC. Observations by HMS. Observations by the ICFTU.</p> <p><b>2002 AR:</b> Observations by the ICFTU.</p> <p><b>2001 AR:</b> Observations by the ICFTU.</p>	
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Ratification</b>	<b>Ratification status</b>	<i>India has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (C. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C. 98).</i>
		<b>Ratification intention</b>	<p><b>Unable to ratify C.87 and C.98</b></p> <p><b>2008 AR:</b> According to the Government: The practice in India has been to ratify the ILO Conventions only when the national legislations and practices have achieved full compliance with the provisions of the international standards. Therefore, the ratification of C.87 and C.98 is not possible at the current stage. The CIE, the AITUC and the BMS expressed their support to the ratification of C.87 and C.98.</p> <p><b>2007 AR:</b> According to HMS and INTUC: Ratification of all the remaining unratified Fundamental Conventions is supported by all trade unions of India.</p> <p><b>2006 AR:</b> The Government indicated that ratification of C.87 and C.98 would involve granting certain rights that are prohibited under the statutory rules for government employees, namely the right to strike and criticize openly government policies, the right to accept freely financial contribution, the right to join freely foreign organizations, etc. Since there is no change in the basic policy of the Government of India, it reiterates its stand that it is not possible to ratify these two Conventions.</p> <p><b>2000 AR:</b> The Government indicated that it was unable to consider ratification of the two Conventions due to a problem of a «technical nature» relating to restrictions placed on the rights of government officials in Indian legislation.</p>
	<b>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</b>	<b>Constitution</b>	<p><b>YES</b> Under article 19(1)(c), the 1950 Constitution provides that: «All citizens have the right to form associations or unions».</p>

		<p><b>Policy/ Legislation and/or regulations</b></p>	<p>• <b>Legislation:</b>  <b>2000–2005 ARs:</b> The Trade Unions Act, 1926, allows industrial workers to form trade unions. The Industrial Disputes Act, 1947, recognizes agreements between employers and workers.  <b>2002 AR:</b> The Trade Unions Act was amended in 2002 to authorize a trade union to register only if there is a minimum of 100 members or 10 per cent of the workforce, subject to a minimum of 7 workers members, whichever is less, per establishment or industry.</p>	
		<p><b>Basic legal provisions</b></p>	<p>(i) The 1950 Constitution, article 19(1)(c); (ii) the 2002 Trade Unions Act, 2002; (iii) the Trade Unions Act, 1926; and (iv) the Industrial Disputes Act, 1947.</p>	
		<p><b>Judicial decisions</b></p>	<p><b>2000 AR:</b> According to the Government: The highest courts of India and the courts have upheld the constitutionality and reasonableness of the restrictions imposed on freedom of association for government officials.</p>	
<p><b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b></p>	<p><b>Exercise of the principle and right</b></p>	<p><b>At national level (enterprise, sector/industry, national)</b></p>	<p><b>For Employers</b></p>	<p><b>2003 AR:</b> Government authorization/approval is not required to establish an employers' organization, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by all categories of employers. However, there is as yet no central law that enables trade unions a regular recognition, but many state governments have enacted such laws, in the context of the multiplicity of trade unions or for the purpose of collective bargaining.</p>
			<p><b>For Workers</b></p>	<p><b>2006 AR:</b> According to the Government: The workers in India enjoy the rights and protection envisaged under C.87 and C.98. However, government servants are treated as a separate category and they have an exceptionally high degree of job security flowing from article 311 of the Constitution. However, they are not allowed to form trade unions.   <b>2003 AR:</b> Government authorization/approval is not required to establish a workers' organization, or to conclude collective agreements. Freedom of association and the right to collective bargaining can be exercised at enterprise, sector/industry, national and international levels by the following categories of persons: medical professionals; teachers; agricultural workers; workers engaged in domestic work; workers in export processing zones (EPZs) or enterprises/industries with EPZ status; migrant workers; workers of all ages; and workers in the informal economy  However, persons employed in the armed forces, paramilitary forces, police service and prison, cannot exercise this principle and right (PR). Nonetheless, there is as yet no central law that enables trade unions a regular recognition, but many state governments have enacted such laws, in the context of the multiplicity of trade unions or for the purpose of collective bargaining.</p>
			<p><b>Special attention to particular situations</b></p>	<p>NIL</p>

			<b>Information, data collection and dissemination</b>	<b>2003 AR:</b> According to the Government: Data are available on the number and membership of registered employers' and workers' organizations (not disaggregated by sex), and on the numbers of disputes received by, disposed of and or pending before the Industrial Tribunals.
	<b>Monitoring, enforcement and sanctions mechanisms</b>	<p><b>2006 AR:</b> According to the Government: Government servants have the facility of negotiation machinery under the Joint Consultative Machinery and Administrative Tribunals for the recovery of their grievances.</p> <p><b>2003-2005 ARs:</b> According to the Government: The following measures have been implemented or are envisaged to promote the PR: (i) legal reform, (ii) inspection/monitoring mechanisms, (iii) penal sanctions, (iv) civil or administrative sanctions and (v) special institutional machinery.</p> <p><b>2001 AR:</b> According to the Government: A joint team, comprising State Labour Departments, the Central Government's Labour Ministry and representatives of trade unions of the EPZs, has been inspecting the industrial units in EPZs regularly to assess and improve the conditions of workers. A special task force and crash programmes of inspection have been established by the Government to implement the labour laws in the unorganized sectors.</p> <p><b>2000 AR:</b> According to the Government: The legislation provides for dispute settlements before conciliation officers.</p>		
	<b>Involvement of the social partners</b>	<p><b>2005 AR:</b> According to the Government: A meeting of the tripartite Indian Labour Conference was convened in October 2003.</p> <p><b>2003 AR:</b> According to the Government: A meeting of the tripartite Standing Labour Committee (SLC) was convened in May 2002.</p>		
	<b>Promotional activities</b>	<p><b>2008 AR:</b> The CIE indicated that it has been organizing regional tripartite consultations on the Declaration Follow-up since 2003.</p> <p><b>2003 and 2005 ARs:</b> According to the Government: The following measures have been implemented or are envisaged to promote the PR: (i) capacity building of responsible government officials and (ii) capacity building for employers' and workers' organizations.</p> <p><b>2000 AR:</b> According to the Government: Efforts are underway to educate and motivate employers and workers to have a collective approach to dispute settlements and differences.</p>		
<b>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>Special initiatives/Progress</b>	<b>2003 AR:</b> According to the Government: In the coal industry, subsequently to a strike notice given by many representatives of the Central Trade Union Organizations (CTUOs), the conciliation machinery invited the trade unions for conciliatory talks. A settlement was reached and the strike was averted.		
<b>CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT</b>	<b>According to the social partners</b>	<b>Employers' organizations</b>	<p><b>2008 AR:</b> According to the CIE: About 90% of workers are in the informal economy and need to be organized and integrated in the formal economy.</p> <p><b>2003 AR:</b> According to the AIMO: The establishment of an employers' organization is subject to the Labour Department's scrutiny.</p>	

		<p><b>Workers' organizations</b></p>	<p><b>2008 AR:</b> According to the AITUC: The main difficulty lies in the informal economy and poverty is still the prevailing problem in India. The ITUC reiterated the same challenges mentioned in the 2007 AR. It added that barriers to the organizing of trade unions continued in law and practice, and the government maintained strong restrictions on the right to strike in 2006. The government remains committed to a policy of creating greater flexibility in labour law, which would be detrimental to workers and their unions.</p> <p><b>2007 AR:</b> According to the ICFTU: (i) the Trade Union Act does not apply in Sikkim where workers do not enjoy trade union rights; (ii) the Delhi State has exempted EPZs from most labour legislation and there is a ban on the formation of trade unions; (iii) employers have a hostile attitude towards trade unions, which discourages workers from organizing.</p> <p><b>2006 and 2007 ARs:</b> The ICFTU reiterated the challenges it raised in its earlier observations: (i) concerning freedom of association, there are legal and practical barriers to the setting-up of trade unions (informal economy, agricultural sector...) and strong restrictions on the right to strike (especially in Tamil Nadu), which is forbidden to government employees following a High Court Ruling; (ii) concerning the right to collective bargaining, there is no legal obligation for an employer to recognize a union or engage in collective bargaining. In the absence of a statutory right to collective bargaining, employers are frequently reluctant to negotiate, and in particular refuse to negotiate with the unions of the workers' choice. Many restrictions on the exercise of this right are imposed in the public service, the construction and ship breaking industries and Export-Processing Zones (EPZs).</p> <p><b>2005 AR:</b> According to the ICFTU: Severe restrictions on trade union rights exist in the construction and ship-breaking industries. In the State of Tamil Nadu, a large number of public services are included in the legislative definition of «essential services», hence severely limiting the right to strike.</p> <p><b>2003 and 2005 ARs:</b> According to the ICFTU: (i) trade unions experience considerable challenges in organizing the vast majority of workers (93%) that operate in the informal economy; (ii) particular problems exist among workers in the public sector, millions of home-based workers (specially women) and among workers in Export-Processing Zones (EPZs); tea plantations and in the State of Sikkim; (iii) trade unions are pressured to enter into 10-year collective agreements, rather than the usual 5 years; (v) and many labour disputes are unresolved.</p> <p><b>2003 AR:</b> According to the HMS: (i) the right to collective bargaining does not exist, in practice in the informal economy where the relationships between employer and worker is difficult and where only individual bargaining exists; (ii) EPZs are exempted from labour laws, (iii) in practice, workers in EPZs do not enjoy the right to organize and to bargain collectively.</p> <p><b>2003 AR:</b> According to the AITUC: The main difficulties encountered in the realization of the PR are: (i) lack of public awareness/support; (ii) social and economic circumstances; (iii) legal provisions in some cases; (iv) prevailing employment practices; (v) lack of capacity of employers' and workers' organizations and (vi) lack of social dialogue on this PR. The AITUC further observes that certain States (e.g. Tamil Nadu and Kerala) have enacted legislation to prohibit strikes by government employees.</p>
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	<p><b>According to the Government</b></p>	<p><b>2007 AR:</b> In response to the ICFTU's observations, the Government made the following comments: (i) the right to form associations is a fundamental right, and workers can establish or join unions of their own choosing; (ii) a registered trade union can represent its workers and seek recovery of the grievances of the concerned workers; (iii) under the Trade Unions Act, 1926, a trade union can be registered if it has a minimum of seven members. In bigger establishments, the unions are required to have a minimum of 10 or 100 workers whichever is less for becoming eligible for registration. The Government considers this requirement legitimate as it promotes orderly growth of trade unions and reduces their multiplicity; (iv) the provision relating to strike notice is considered essential to enable the Government to intervene and avert a strike in public utility services. This is to ensure that people at large are not affected adversely. Moreover, the requirement of giving a prior strike notice is not necessary in the industrial establishment, which is not a public utility service; (v) even though the Essential Services Maintenance Act (ESMA) enables the State Governments to ban strikes in certain essential industries, a legal mechanism exists for challenging a decision taken under this Act; (vi) government employees who are workers under the Industrial Disputes Act, 1947, do not have any restriction on their right to organize and collective bargaining. Government employees who are not workers under the Industrial Disputes Act are governed by the Central Civil Services Rules, which impose reasonable restrictions on government employees in associating themselves with organizations, which are generally connected with political parties. They, however, enjoy job security under article 309 of the Constitution and also have the facility of negotiation machinery under the Joint Consultative Machinery (JCM). The grievances of these employees can also be redressed through the administrative tribunal; (vii) the Trade Unions Act, 1926 is yet to be extended to the State of Sikkim, an industrially backward State. The State Government is extending the labour laws, which are required from time to time and (viii) all labour laws as enforced by the State Governments are equally applicable to Special Economic Zones (SEZ) and Export Processing Zones (EPZ).</p> <p><b>2006 AR:</b> According to the Government: Unionization of Government servants in India, as provided for in the Conventions, is not possible because of the highly politicized trade union system of the country.</p> <p><b>2005 AR:</b> According to the Government: The main difficulties encountered in realizing the PR in India are as follows: (i) lack of public awareness and/or support; (ii) lack of data; social and economic circumstances; (iii) political situation; (iv) prevailing employment practices and (v) lack of capacity of employers' and workers' organizations.</p> <p><b>2003 AR:</b> In response to the AIMO's observations, the Government denied the fact that the establishment of an employers' organization was subject to the Labour Department's scrutiny.</p> <p>In response to the ICFTU's observations, the Government made the following comments: (i) the unions agreed to a ten-year collective agreement because the terms were beneficial to them; (ii) increasing number of cases reflects the transparent nature of the labour dispute settlement system and efforts are being made to avoid delay in backlog of unresolved cases in the specialized labour courts; (iii) the amended 2001 Trade Union Act provides that a union has to represent a minimum of hundred (100) workers or ten (10) per cent of the workforce in order to be registered, which is quite reasonable in the Indian context; (iv) the Government is currently carrying out a proposal for the amendment of the 1970 Contract Labour (Regulation and Abolition) Act; (v) the law on trade unions does not apply in the State of Sikkim; (vi) there is no restriction on the Export-Processing Zones (EPZs)/Special Economic Zones (SEZs), which are considered as essential services by certain State government; (vii) the right to strike is defined under the 1981 Essential Services Maintenance Act (ESMA); (viii) registered trade unions are recognized under the Code of Discipline; (ix) the Government appreciates the ICFTU's conclusion that India has a reasonable record of trade union rights in the formal economy and that trade unions can generally operate in a non-hostile environment.</p> <p><b>2000 and 2003 ARs:</b> In response to the ICFTU's observations, the Government made the following comments: (i) the 1950 Constitution (article 19 (1)), the national laws and practices are by and large in conformity with ILO Convention No. 87 and No. 98; (ii) however, India could not ratify these two Conventions due to a problem of a «technical nature» related to restrictions on the rights of freedom of association and collective bargaining for government officials.</p>
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<b>TECHNICAL COOPERATION</b>	<b>Request</b>	<p><b>2008 AR:</b> According to the CIE: ILO technical cooperation is required for the integration of workers from the informal economy to the organized economy. The AITUC requested ILO assistance to fight against poverty. The BMS stated that a country assessment was needed on the Declaration Follow-up.</p> <p><b>2007 AR:</b> According to the AITUC: ILO technical cooperation is required in cooperation with the Government with a view to strengthen the capacity building of the government and the employers' and workers' organizations in promoting and realizing the PR, rather than supporting the NGOs.</p> <p><b>2005 AR:</b> According to the Government: There is a need for ILO technical cooperation to facilitate the realization of this PR in India, in particular in the following areas in order of priority: (i) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR; sharing of experiences across countries/regions; capacity building of responsible government institutions; training of other officials (police, judiciary, social workers, teachers); strengthening tripartite social dialogue; training of officials dealing with labour law enforcement/administrative; (ii) strengthening capacity of workers' and employers' organizations; legal reform (labour law and other relevant legislation); awareness-raising/advocacy activities and legal literacy and (iii) strengthening data collection and capacity for statistical analysis.</p> <p><b>2000 AR:</b> In response to the ICFTU's observations, the Government made the following comments: (i) agricultural and contractual workers have the right to organize and bargain collectively in India; (ii) however, there are major obstacles as to their effective unionization due to the fact that most operate in the informal economy; (iii) the Labour Laws neither make any distinction between Export-Processing Zones (EPZs) and other areas nor between workers in these zones and other sectors.</p>
	<b>Offer</b>	NIL
<b>EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS</b>	<p><b>2008 AR:</b> The ILO Declaration Expert-Advisers (IDEAs) were concerned that the Government of India (and three other governments) had indicated the current impossibility to ratify C. 87 and C.98 without further justification. They encouraged the Government of India to (and some other governments) to initiate the necessary labour law reforms to remove the obstacles to the ratification of these two Conventions. They also noted that restrictions on the right to organize of certain categories of workers in India (and some other countries), such as workers in the public service and workers in the informal economy, were not compatible with the realization of this principle and right (Cf. Paragraphs 29, 32 and 38 of the 2003 Annual Review Introduction – ILO: GB.301/3).</p> <p><b>2007 AR:</b> The IDEAs listed India among the four countries in which 52 per cent of the total labour force of ILO member States live and which have not yet ratified C.87 and C.98. This leaves many millions of workers and employers without the protection offered by these instruments in international law, even if the governments concerned may consider that their law and practice are sufficient. Furthermore, the IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for workers in the public service (Cf. Paragraphs 32 and 37 of the 2003 Annual Review Introduction – ILO: GB.298/3).</p> <p><b>2005 AR:</b> The IDEAs listed India among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p><b>2003 AR:</b> The IDEAs were encouraged to see the Government of India pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by India for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>	
<b>GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS</b>	NIL	