

Rights and development

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Introduction

What is the nature and genesis of principles and rights? How can one move ahead in attaining rights, making them a reality in practice? These are two issues on which I would like to share some thoughts with you, moving from the seemingly abstract and the universal to practical policy issues in Pakistan today.

A **principle** is a fundamental truth or source taken as the basis for reasoning or action. A **right** is fair or just treatment, a moral or legal claim, a situation of being entitled to a privilege or immunity or authority to act. A **law** is a rule enacted or customary in a community, enjoining or prohibiting certain actions and enforced by the imposition of penalties. As such, a law typically encapsulates principles/rights, but the latter may be said to exist irrespective of whether a law governs them.

Rights tend to be borne from both pressures of activists and principles proposed by thinkers, typically aimed at legislators. This process tends to give rise to the enactment of national laws to guarantee these rights. Guaranteeing rights through law and its effective application implies that the legislator - the State - is subject to restrictions from its own citizens. A further stage of development of rights is one of universal positive rights. They are universal in that they are applicable not only to the citizens of a limited state but to all persons. They are positive in that society undertakes to protect these ideals and the individuals pursuing them, even against the state that may violate these rights.¹

In this perspective, international labour standards (ILS) and their principles, especially those relating to the core Conventions, are in the area of universal positive rights. This makes their enforcement and implementation complicated. In order to better operationalize issues of implementation, it may help to distinguish different levels of obligations and commitment that countries face in seeking to realize these rights.

In a framework of progressive realization of rights, one step may be seen as that of ratification of ILS: this requires an initial political impetus. The second step is putting into place the necessary legal, enforcement and administrative framework: this requires investment in terms of material and human resources from the government. A third step is that of ensuring that rights are practised on the ground, through empowering and reinforcing the social partners: this requires enabling the employers and workers and their organizations to assume greater responsibility in the enforcement process, through technical cooperation and policy advice. In fact, political will

¹ See Norberto Bobbio, The Age of Rights

is the driving energy that takes countries through all the steps involved. This political will can easily flag unless it is sustained by concrete institutional and procedural results emanating from the three steps outlined above. In practice, there is no neat and necessary movement from one step to another, and work in these three areas may go on side by side.

A leading scholar and practitioner of international labour law² has suggested distinguishing between three levels of obligations: *respect*, *protect* and *fulfill* rights. The first step is considered to be “cost-free”; the second means that the state must prevent violations, which usually requires some allocation of resources; the third requires substantial and substantive resources, but these may come from sources other than the state. While the distinctions proposed above do not follow these three levels, there may be some interesting parallels to pursue here. [intro pyramid here]

The end towards which rights and the law strives is social justice – which may be defined as the exercise of authority in the maintenance of fairness and rights. Social justice is a broad-ranging goal, and is discussed in the Declaration of Philadelphia, annexed to the Constitution of the ILO. Among the issues raised by this Declaration is that of national and international policies that give the right to all human beings to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Adopted in 1944, towards the end of the Second World War, this Declaration already contained the outlines of policies and programmes for giving effect to the principles of social justice: full and productive employment; training; decent pay and other terms and conditions of employment; collective bargaining and labour management cooperation in productivity and other socio-economic areas; social security; occupational safety and health; child welfare and maternity protection; housing and welfare; equality of educational and vocational opportunity.

More recently, as a response to current globalization, the world community adopted a newer Declaration, entitled the Declaration on Fundamental Principles and Rights at Work, in 1998 at the International Labour Conference in Geneva. This commits all member states of the ILO, by virtue of their membership, to respect, promote and realize in good faith, the following fundamental principles and rights:

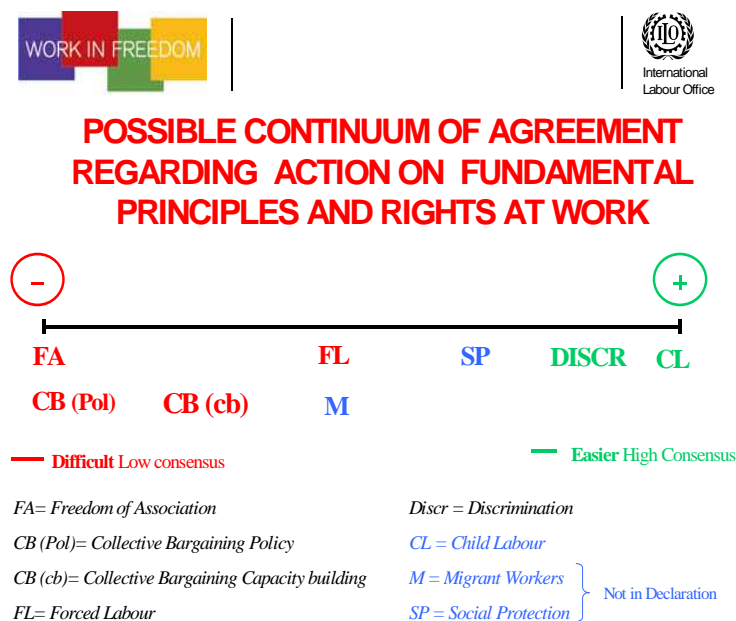
- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of forced labour;
- The abolition of child labour;
- The elimination of discrimination .

These precepts of social justice are usually not questioned in principle, and indeed often accepted as basic human rights. Why is it then often difficult in practice to give effect to them? There are certain issues of perception and of political obstacles. There are other issues relating to the fact that rights at work are not properly embedded in the current developmental framework. What can be done on these fronts, in order to achieve better consensus on recognizing and accepting that there is room for improvement in respecting, promoting and realizing rights, and taking practical action in this regard? The rest of this short paper considers these issues.

² See Bob Hepple, Rights at work, Discussion paper 147 (IILS, Geneva 2003)

Perceptions and political obstacles relating to rights

It is important to situate fundamental principles and rights at work within a practical perspective. These principles/rights are also not perceived as being at the same level. In practice, it appears that they lie on a continuum from highest consensus to lowest consensus on recognizing and accepting the obstacles to the principle/right, and taking action in favour of it. In this respect, there seems most consensus on child labour, discrimination and forced labour somewhere in between, and perhaps least consensus on freedom of association and the effective recognition of the right to collective bargaining (FACB).



Thus in Pakistan, the Government, its social partners and the ILO started work on child labour a decade ago in Sialkot and elsewhere. By now, the action against child labour is well advanced, with results to show, and the nation and world have a fairly good idea on what is being done, and what can be done, to address this problem. Yet I recall, not so many years ago, a senior Pakistani political leader active in human rights issues, coming to Switzerland. He was scheduled to attend a big international trade fair in Lausanne with our Ambassador to Switzerland, to try to promote our exports in Europe. He was concerned that journalists would pose difficult questions relating to child labour in the production of some of our exports such as carpets and sporting goods. When he asked a couple of us Pakistanis who work at the ILO for our advice, our response was unequivocal: “Be honest and truthful, and occupy the high moral ground. Admit openly to the problem. Child labour is brought about through a combination of poverty, unemployment, poor education possibilities and no social protection. It can be tackled head-on by political will, integrated developmental planning, practical programmes and applying

technical, human and material resources to the problem.” After this frank discussion, he went away heartened to face the media openly.

In the area of forced labour, the Government took an initiative in 2001, in adopting the national policy and plan of action for the abolition of bonded labour. There is also a fund set aside for this, an assessment of the problem has been initiated in a number of sectors, and rehabilitation plans under way. In this sense, Pakistan may be ahead of the curve, and may be in the company of Brazil, a country arguably in the lead on attacking this issue, with President Lula actively supporting work against forced labour, and linking this to the fight against poverty in that country. How is it that Pakistan has reached this stage? You know better the confluence of political considerations that made this possible – not least a combination, at a given time, of a government with a Cabinet of forward thinking people from different walks of civil society, the desire to do well in terms of national welfare and to be seen internationally in that light too.

In practice, of course, none of us is blind to the many real difficulties in addressing this issue. We at the ILO were proud that in June 2001, the late Omar Asghar Khan, then Minister of Labour, could present to the world – through the Labour Conference as well as the BBC and CNN – Pakistan’s forward looking approach to eliminating bonded labour. And yet a trip to the Chamber of Commerce of Hyderabad suffices to remind us of the up-hill task of convincing our more feudal cousins that traditional forms of labour utilization in agriculture may result in bonded labour situations, and that indeed many employers continue to resort to customs and practices that perpetuate bondage.

On the other hand, Pakistan does not seem to have done a great deal regarding discrimination, in terms of accepting and working on this problem. This is discrimination in employment and occupation not only against women but also based on religion, political views, ethnic origin, etc. Some of us assert that there are few people more bigoted than us Pakistanis – but why? This is an interesting issue to probe. A recently completed major project on women’s employment in Pakistan may provide solid grounds for assessing the distance that remains in addressing equal opportunity in this area.

Freedom of association and collective bargaining (FA/CB) is the most problematic of the principles and rights, while it is arguably the *primus inter pares* of them all. It is a basic human right at work that goes hand-in-hand with freedom to associate in the political sphere, and is closely linked to other basic human and political rights like freedom of expression and freedom of assembly. As such, it helps to form the basis of democratic representation and good governance. On the other hand, there is far from full consensus on its primary importance in practice and sometimes in ideology and policy. Large parts of the economy tend to be excluded in law and/or in practice from freedom of association and collective bargaining: parts of the public sector, agriculture, the informal economy, EPZs..... Why?

Part of the reason is surely our feudal background – still the dominant paradigm - where some do not wish to discuss terms and conditions of work with those who are traditionally regarded as their servants. Part of this is due to the fact that many of our original industrialists were transformed from traders into entrepreneurial captains of industry overnight by government support soon after independence. Now of course most of their successors have long experience in modern industry, many with solid education and training from the best international

institutions. And I can proudly say that our best employers, in terms of business and human resource strategy, are second to none. So there is little excuse for harking back to feudal times, in terms of rationalizing inequitable behaviour in labour management relations.

An important perception and therefore political obstacle to attaining rights is that they are somehow expensive and lead to labour market inefficiencies. What are the economic arguments made against FA/CB? The neo-classical economic model of the labour market argues that the free operation of the forces of supply and demand lead to optimal allocation of productive resources, and of a just distribution of economic returns. In this model, any external intervention in the labour market leads to sub-optimal outcomes. Therefore, in such a model, the right to organize and the institutions it gives rise to – workers' and employers' organizations and the negotiations between them – are seen as restricting competition, impeding efficiency and flexibility, creating distortions in the labour market, and leading to institutional rigidities in the economy as a whole. The model also holds that trade unions increase income inequality between members and non-members, both directly by the extra earnings resulting from successful trade union pressure, and indirectly through negative effects on the employment prospects of non-members.

Such arguments underpin the case against statutory support for FA/CB, and tend to influence disproportionately the views of policy-makers and the larger public. In fact, the practice tends to be quite different from the above model. Both theoretical arguments and practical examples are growing, regarding the contribution that greater participation by workers in the world of work, through the institutions and processes resulting from FACB, can make towards productivity, value-added and socio-economic stability. These include both OECD and World Bank surveys, as well as ILO work (see ILO, *Organizing for Social Justice*, Geneva 2004).

As long as employers' and workers' organizations are free and representative, and members are free to join, influence and improve their organizations, these organizations have a driving role to play in promoting broader human development and rights. The extent to which these organizations seek to spread their activities beyond their restricted membership – which is often declining – in a broader, more inclusive approach, towards lower-income groups, the lower skilled, the more disadvantaged and the unemployed, the more representative will they become, and thereby help to spread the scope of this inalienable human right.

However, they cannot hope to do this by themselves, without the support of the State and other actors in civil society. At a minimum, realizing the principle of FA/CB in practice requires:

- a legal basis which guarantees the enforcement of this right;
- an enabling institutional framework, to be decided among workers' and employers' organizations, or in a tripartite manner between these two and the State;
- no discrimination against individuals who wish to exercise their rights to play this representative, democratic role;
- societal acceptance of employers' and workers' organizations as valid partners for resolving problems and dealing with challenges.

Arguing for rights within the current developmental framework

Governments everywhere are concerned with attacking poverty and enhancing employment. Those interested in pursuing rights at work and social justice need to fit their arguments into a poverty reduction framework, to show how rights at work are part and parcel of an anti-poverty, pro-growth, pro-employment strategy. This is an important means of moving ahead on achieving broader consensus on perceptions and action on realizing these rights at work. Below are some arguments that could be made, in terms of integrating the rationale for rights into a poverty-reduction framework in Pakistan.

A rights-based labour market is essential if poor people are to benefit fully from policies to promote growth in employment. The vast majority of the poorest in Pakistan, both men and women (especially women) currently do not enjoy the basic rights of freedom of association and collective bargaining, and freedom from forced labour, child labour and discrimination at work. In fact, these freedoms have been gradually eroded even in those parts of the economy - starting with the public sector and ranging through large and small formal-sector enterprises - that are traditionally covered by the protective legislation and labour administration. The situation as regards the poorest elements of society requires even greater attention:

- Freedom of association and the right to collective bargaining does not apply to workers in the agricultural sector. Few workers in the informal economy are organized or able to engage in collective bargaining to improve their conditions of work and employment.
- Bonded labourers are amongst the most marginalized people, and frequently come from religious and ethnic minority groups. Although primarily found in agriculture, bonded arrangements exist also in domestic service and in different economic sectors where recruiting via labour agents is the norm (like mining and brick-kilns) and some small-scale manufacturing industries like carpet-weaving.
- Child labour is widespread in many sectors, including hazardous work and bonded child labour (in domestic service, agriculture and carpet-weaving). While the ILO, through IPEC, is helping in this area, more work needs to be done to mainstream child labour concerns in poverty reduction strategies.
- Labour market segregation along gender lines restricts the employment opportunities for women, though the demand on women to work is strong within poor and chronically poor households. Despite legal provisions to protect women's ownership rights – which might prevent women from slipping further into poverty - discriminatory and patriarchal property and inheritance laws continue to prevail. Chronic poverty is also positively correlated in Pakistan with areas in which tribal and or feudal agrarian relations prevail. The causes of the relative higher poverty of these areas are generally ascribed to their physical remoteness, lack of infrastructure, high population growth and scarcity of farmland, not to the status of tribal people as such. However, the relationship between ethnic status and poverty bears further investigation.

The absence of fundamental principles and rights at work directly undermines Pakistan's development objectives. The persistence of bonded labour and discrimination prevent the poorest from participating in and benefiting from economic growth and the employment opportunities that arise from this. It cannot simply be assumed that benefits of economic growth, even employment-intensive growth, will “trickle down” to the poorest people, and especially poor

women, without measures to guarantee their basic rights. Continuation of bonded labour and discrimination against some of the poor is also associated with lower earnings and hence a higher incidence of child labour. The extension of effective freedom of association and collective bargaining will allow poor workers to better defend their fundamental rights and ensure that the new employment opportunities generated by economic growth translate into decent work.

Some ideas for establishing a “rights-based labour market” in Pakistan to better enable the poor to access their rights include:

- Ensure that the labour law and labour administration functions properly in the more accessible parts of the economy, starting with the public sector, that are traditionally covered by these protective institutions.
- Improve the enforcement of property and inheritance laws in order to ensure equal access to women to productive assets that are essential to engage in productive work.
- Expand the coverage of the labour law and labour inspection to include agriculture and the informal economy. The provisions of concern are not only the four fundamental principles and rights mentioned above, but also key provisions relating to issues such as employment, training, social security and occupational safety and health.
- Workers in all sectors (including agriculture) should be eligible for the national social security schemes arrangements, regardless of the size or nature of the establishment. These could be made contributory schemes (with a nominal worker contribution), with the worker’s right to self- registration, particularly in the case of the self-employment or those in casual employment. Furthermore, rendering the schemes nationally portable across sectors and provinces, will allow inter-alia the coverage of internal migrants and their families.
- Promote the organization of the poor, and fruitful links and collaboration with existing national employers’ and workers’ organizations. Provisions for the formation of sectoral and industrial organizations in the labour law, and institutional support for this, would help in nurturing the right to organize for all.
- Strengthen the participation of the poor in local-level decision-making relating to resource allocation, with special attention to gender and ethnic-specific barriers towards full participation. For this purpose, use and strengthen the local government seats reserved for women, workers and peasants.
- Review the content, scope and formulation of development plans in areas inhabited by tribal peoples and other ethnic minorities, with a view to understanding and addressing the inter-linkages between poverty and ethnicity.

These are some thoughts for ensuring that rights are recognized and respected and used as effective tools for creating a society that is just, equitable and economically viable.