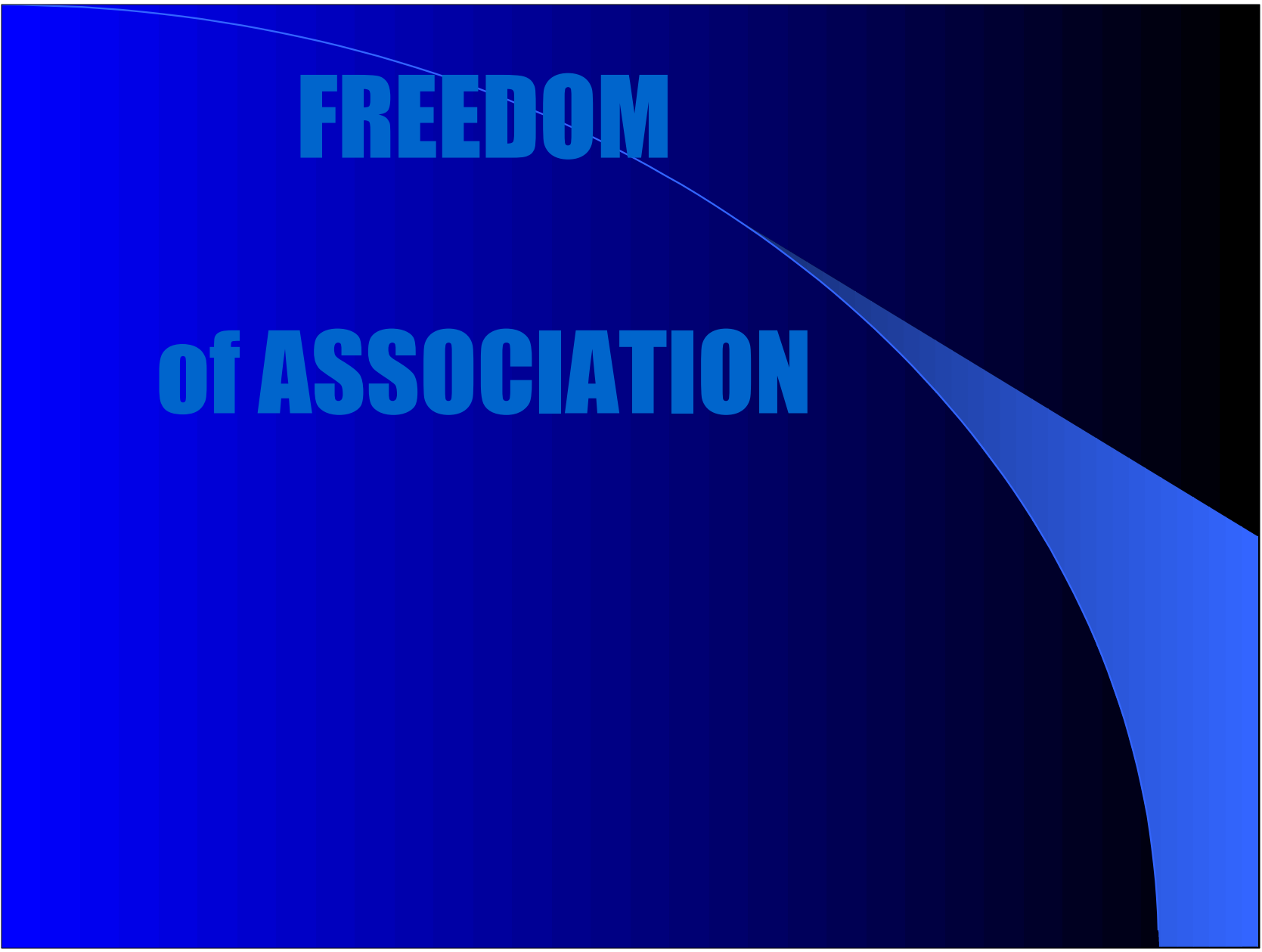


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FREEDOM of ASSOCIATION

WORKERS' FREEDOM OF ASSOCIATION

Content of the Presentation

- **FREEDOM OF ASSOCIATION IS A BASIC HUMAN RIGHT**
- **TRADE UNION RIGHTS**
- **CORE LABOUR STANDARDS AND INTERNATIONAL TRADE UNION SOLIDARITY**
- **THE RIGHT TO TRADE UNION INDEPENDENCE AND DEMOCRACY**

I.
FREEDOM
OF
ASSOCIATION
IS
A BASIC HUMAN RIGHT

UNIVERSAL DECLARATION OF HUMAN RIGHTS

“Everyone has the
right to form and to
join trade unions for
the protection of his
interests.”

- Convention No. 87 (Freedom of Association and Protection of the Right to Organize)
- Convention No. 98 (Right to Organize and Collective Bargaining)
- ILO Declaration on Fundamental Principles and Rights at Work

The right to organize and
the associated right to
bargain collectively are
the basis of
fair,
reliable,
healthy
industrial relations.

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**Freedom of association is a
Non-negotiable and universal workers'
right and fundamental for all other
trade union rights**

II. TRADE UNION RIGHTS

- 1. Right to self- organisation
- 2. Right to trade union autonomy
- 3. Right to protection against suspension and dissolution by administrative decision
- 4. Right to adequate protection against acts of anti-union discrimination
- 5. Right to establish and join federations and confederations and to affiliate internationally
- 6. Right to free and voluntary collective bargaining
- 7. Right to strike

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- **RIGHT
to
SELF- ORGANISATION**

RIGHT TO SELF-ORGANISATION (a)

- All workers, without any distinction, have a right to organise,
- No matter their sex, color, age, race, creed, nationality or political opinion,
- whether they are employed in public or private sector,
- in industry , agriculture, commerce or domestic service,
- Whether they have contracts of employment or not
- inside or outside a Free Trade Zone.

Should FTZ workers have a Right to Self-Organisation ?

- **“Sound labour- management relations are essential to the success of Export Processing Zones.**
- **Free, strong , and representative workers’ organisations have a major role to play in building workplace relations conducive to improvements in working conditions and increases in productivity and competitiveness.”**
- **(ILO)**

What about the Right to Self-Organisation for public sector workers?

- Freedom of Association and collective bargaining are inalienable rights of public sector workers as well.
- “The extent to which the guarantees ...shall apply to the armed forces and the police shall be determined by national laws or regulations.”
(ILO Convention No. 87, Art. 9)

Right to Self- Organisation (b)

- No previous authorisation from government is needed to establish a trade union
- Legal formalities as registration requirements are acceptable as long as they not hinder the establishment of a union
- Government has no discretionary power to refuse registration

Right to Self- Organisation(c)

- Workers have the freedom of choice in membership
- Trade union pluralism must be possible
- Trade union monopoly or compulsory trade union unity would violate freedom of association
- To guarantee free choice of workers, governments may not place any union at an advantage or disadvantage

What then about trade union unity?

- It is the free choice of workers to be divided or to be united
- “Unity must be chosen, not imposed: pluralism must likewise be the outcome of free choice and not external imposition” (ILO)

Right to Self- Organisation (d)

- **Workers must have the possibility to establish genuine workers' organisations with full rights that conform to ILO standards (= trade unions)**
- **Joint workers-management councils and workers' councils without the right to collective bargaining cannot be considered “workers' organisations” in the interpretation of ILO Conventions 87 and 98**

2.

**RIGHT
to
TRADE
UNION
AUTONOMY**

Right to trade union autonomy

- Government should not interfere in trade union matters such as:
- -drawing up of Constitution and Rules
- -election of representatives
- -organisation of administration and activities
- -formulation of programmes
- **ONLY WORKERS THEMSELVES SHOULD GOVERN THEIR ORGANISATIONS**

Right to trade union autonomy

“The fact that one of the members of a government is at the same time a leader of a trade union which represents several categories of workers employed by the State creates a possibility of interference in violation of Article 2 of Convention No. 98.”

(ILO Freedom of Association Committee)

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3.
RIGHT TO PROTECTION
AGAINST
SUSPENSION AND
DISSOLUTION
BY
ADMINISTRATIVE
DECISION

Right to protection against suspension and dissolution
by administrative decision

- **A trade union cannot be dissolved or suspended by administrative authorities.**
- **Only an independent and competent judicial authority can declare suspension or dissolution .**
- **The right to defense and the right to appeal must be guaranteed .**
- **Trade unionists are not immune from law- they are responsible for any violation of the law as other citizens are .**

4.

**RIGHT TO ADEQUATE
PROTECTION
AGAINST
ACTS OF
ANTI- UNION
DISCRIMINATION**

Right to adequate protection against acts of anti-union discrimination

- Protection of individual workers and trade unions through legislative provisions and other guarantees against unfair labour practices :
- No worker should be dismissed for his / her involvement in trade union activities
- No anti- union clause should exist to prevent a job- applicant from joining a union
- Trade unions must be protected against any act of interference by employers in their establishment, function, or administration

**5.RIGHT TO
ESTABLISH AND
JOIN FEDERATIONS
AND
CONFEDERATIONS
AND TO AFFILIATE
INTERNATIONALLY**

Right to establish and join federations and confederations and to affiliate internationally

- Trade unions should be able to form federations free from any restrictions, whether occupational or geographical in nature
- Public sector unions are no exception to that rule
- Unions and or federations should be allowed to constitute national confederations
- Unions, federations and confederations should be able to join international trade union organisations

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6. RIGHT TO FREE AND VOLUNTARY COLLECTIVE BARGAINING

Right to free and voluntary collective bargaining (a)

- Government should not interfere in negotiations between unions and employers or employers' organisations
- No compulsory arbitration should be imposed
- Public authorities should not intervene in the drafting of CBA's
- CBA's should not be subjected to administrative approval

Right to free and voluntary collective bargaining (b)

- Government should not only abstain from interfering in collective bargaining, but actively
- “encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and employers’ organisations and workers’ organisations”
- (ILO Convention 98, Art. 4)

Right to free and voluntary collective bargaining ©

- Collective bargaining should be made possible for all groups of workers, including public service workers (other than those engaged in the administration of the State), State-owned enterprises and FTZ
- Collective bargaining should not be restricted to wage bargaining but progressively cover all negotiable non-wage issues

Right to free and voluntary collective bargaining

- Principle of voluntarism
- Though collective bargaining is a voluntary procedure, its development and promotion would be seriously hindered if it were left to the employer's decision whether or not to bargain with a union.
- Therefore, the ILO supervisory bodies have not objected systems which makes bargaining compulsory upon a reasonable showing of representativeness by a union.

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7. RIGHT to STRIKE

Right to strike

- The right to strike is complementary to the right of collective bargaining.
- It is a legitimate trade union right.
- It is the ultimate resort of trade unions to overcome deadlocks in collective bargaining.
- Conciliation and mediation procedures should be employed first.

**May government
ban strikes in
essential
services
?**

YES...

- but

only in essential services
in the strict sense
of the term

What are Essential Services ?

- “Essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population...” (ILO)
- Essential services in the strict sense of the term: hospitals, electricity, water supply, telephon, air traffic control
- FTZ, radio and TV, ports, banking ,transport, hotels, education, postal services do not constitute “essential services” .

- **If strikes in essential services in the strict sense of the term are banned, appropriate compensatory guarantees like speedy and impartial conciliation and arbitration proceedings should exist.**

MINIMUM SERVICES

- “In order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term.”

• *Minimum Services:*

- Should be limited to activities which are strictly necessary to meet basic social needs
- Should be negotiated with trade unions
- Should not weaken strike

What are acceptable prerequisites for strike action?

- Secret ballot (without excessive quorum)
- Prior notice to employer

“The right to strike cannot be considered as an absolute right:

- Not only may it be subject to a general prohibition in exceptional circumstances ,
- But it may be governed by provisions laying down conditions for, or restrictions on, the exercise of this fundamental right.”
- (ILO Committee of Experts on the Application of Conventions and Recommendations

When are restrictions of the Right to strike acceptable?

- A general prohibition of strikes is acceptable only in a situation of acute national crisis and for a limited period.
- Prohibition of the right to strike in public sector should be limited to public servants exercising authority in the name of the State
- Prohibition of strikes may be acceptable also in “essential services” in the strict sense of the term.
- But restrictions should never be excessive!

What about political strikes?

- “Strikes of a purely political nature and strikes decided systematically long before negotiations take place do not fall within the scope of the principles of freedom of association...”
- But “while purely political strikes do not fall within the scope of the principles of freedom of association, trade unions should be able to have recourse to protest strikes , in particular where aimed at criticizing a government’s economic and social policies.”
- (ILO Freedom of Association Committee)

**IV.
THE RIGHT
to
TRADE UNION
INDEPENDENCE
and
TRADE UNION
DEMOCRACY**

ILO Conventions provide
protection of workers only against
interference into trade union
affairs and against anti- trade
union discrimination by
GOVERNMENTS
and
EMPLOYERS

UNIONS AND DEMOCRACY

Basic principles

- Leaders must be freely elected by the membership
- Leaders are accountable to the membership
- Full membership participation in union affairs
- Gender equity
- Informed, committed membership

***Party- political
independence
and internal democracy***
are fundamental
prerequisites for the full
enjoyment by workers of
their right to freedom of
association

Thank You For Your Attention!