

Workers connect...

Fixed Term Contract: Institutionalising Hire and Fire

In yet another effort by the government at the centre to boost Ease of Doing Business in the country and specifically to provide flexibility to employers to hire and fire at will, has extended fixed-term contracts to all sectors, beyond the apparel industry where they first introduced it. This move will allow employers to hire workers for short-term assignments and terminate their services when projects are completed.

Fixed term contract was first introduced by the NDA government in 2003. In the face of continuous opposition and countrywide protest, the UPA government retracted the amendment through a gazette notification in 2007.

The BJP government reintroduced it in the apparel sector in February 2016. In December 2017, FTC was extended to the leather and footwear industries. The government in the budget statement 2018 claims that this will result in 'employment generation' and hence must be extended to all sectors.

The rationale for governments for introduction of FTCs across the world have been the following:

- **Nature of the Contract:** (i) When employers need to temporarily replace an absent employee, for example, during maternity leave, medical leave etc.; (ii) During training or skilling; or (iii) During probation.
- **Nature of the Work:** (i) When the work is casual in nature; (ii) When the work is seasonal in nature; or (iii) When there is a temporary increase in work pressure in the establishment
- **Nature of the Task** – for example, in construction, when the work itself is based on contracts.

However, though this is the rationale for introduction, this is not how it is implemented. FTCs are being used to replace permanent workers, in permanent jobs as a mean to bypass

protection of workers under labour laws. It is used to break unions. It is used as a threat to create an atmosphere of fear among the most vulnerable workers, especially migrant workers, women workers. It also in many cases has led to sexual harassment of women workers across the world as women find themselves more vulnerable under such contracts.

What is the problem with a Fixed Term Contract?

As per the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018, a "fixed term employment workman is a workman who has been engaged on the basis of a written contract of employment for a fixed period".

What the amendment to the Standing Orders Rules mean:

1. An employer can hire as many workers under the FTC (upto 100% of the workforce) with no restriction on the nature of employment, whether perennial or not.
2. Employers can keep these workers continuously working at the establishment as long as they wish, by renewing contracts. No worker will be able to seek regularization after 240 days of working in the same establishment under the Contract Labour Act, even if they work longer.
3. Wages and benefits of the workers will remain at the entry level forever as workers will not be able to claim experience at work.
4. Workers will become more vulnerable as this amendment takes away the right to appeal of workers, which is in violation of the constitutional right of workers as citizens to redressal.

FTCs thereby institutionalise hiring and firing at will. The expiry of a fixed term contract does not constitute termination by the employer. It is a termination by operation of law. Hence the employer can no longer be held responsible for

the termination of a worker.

Along with this, the proposed amendments in the Contract Labour (Regulation and Abolition) Act, 1970 attempt to exempt principal employers from all responsibility of contract workers employed in their establishment. According to the proposed amendment the contract workers will be now considered the responsibility of the contracting company. Further, contractors can now get temporary work contracts even if they do not meet the minimum requirements. They would be required to fulfill those requirements within a given period. The changes are steadily being introduced, such that Fixed term contracts for short term periods that do not conform to minimum requirements could be allowed in law to work that will make workplaces more unsafe and precarious.

The nature of the job of a worker hired under a FTC will always remain temporary. With every new contract, the worker will have to go through the same cycle of getting the job, going through probation and be paid at the entry level wage rate, without ever reaching the stage of receiving retirement benefits. Thus workers will always be tied to a vicious cycle of insecurity and this will also affect how they respond to workplace conditions.

If unionizing contract workers was difficult, unionisation of workers under FTCs will be worse. Workers under FTCs will be scared to join unions in fear of not being rehired. Without unions, employers will have a free hand in determining workplace conditions and benefits. Wages will remain at entry level giving employers a pool of skilled workers at entry level wage without the capacity to bargain for better wages and conditions for themselves.

Is there any Framework for Protection of Workers under FTCs across the World?

The Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166) are the key ILO standards that provide regulatory guidance on FTCs.

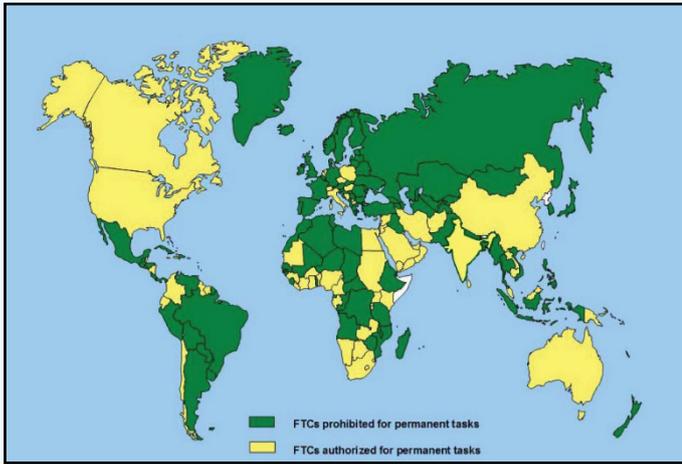
The ILO Convention and Recommendation lays out a framework of legal rules that member nations may adopt to prevent any abusive use of FTCs. The key recommendations being: (i) limiting the period of time for employing

workers under FTCs such that the employment relationship does not become one of indeterminate duration; (ii) non-discrimination in wages and benefits between permanent workers and workers under FTCs; and (iii) deeming contracts for a specified period of time, when renewed on one or more occasions, to be permanent contracts.

As an example of regional regulatory framework, the EU Council Directive forbids employers to treat FTC workers less favourably than permanent workers unless 'justified on objective grounds'. It also requires governments to put in place one or more of the following limits: (i) requiring objective reasons for renewal; (ii) setting a maximum total duration of renewals; (iii) setting a permitted number of renewals.

The table below gives the maximum legal duration of FTCs in some countries, the map on the next page (Source: ILO) gives an idea of how FTCs are used across the world:

Maximum duration of FTCs, including Renewals	Countries
1 year and less	Chile, Pakistan, Venezuela, Zimbabwe
2 years	Bolivia, Brazil, Cambodia, France, Germany, South Korea, Netherlands, Spain, Sweden, Thailand
3 years	Belgium, Cuba, Greece, Indonesia
4 years	Germany (for Start Up Companies), Saudi Arabia, Libya, Norway, Tunisia, UAE, UK
5 years	Argentina, Bahrain, Costa Rica, Finland, Hungary, Japan, Kuwait, Jordan, Paraguay, Peru, Qatar, Russian Federation, Syria
6 years	Mozambique, Portugal, Vietnam
10 years	China, Switzerland
No legal Limit	Afghanistan, Australia, Bangladesh, Canada, Denmark, Egypt, Ethiopia, Gambia, Ghana, India , Iran, Iraq, Israel, Kenya, Malaysia, Mexico, Nepal, New Zealand, Nigeria, Philippines, Poland, Singapore, South Africa, Sri Lanka, Turkey, USA



Comparative overview of national labour laws show that different countries across the world have broadly adopted the following safeguards to prevent abuse of FTCs by employers:

- (i) Prohibition of FTCs for jobs of perennial nature.
- (ii) Limitation on the number of successive FTCs.
- (iii) Limitation on the cumulative duration of the FTCs.

Unfortunately, the amendment to the Standing Orders introducing FTCs in all employments, does not take into consideration any of the three above safeguards.

Policy News

Kerala government sanctions Rs 20 crore for Rehabilitating Beedi Workers

27 March 2018: The Kerala government has decided to set aside a sum of Rs 20 crore to help rehabilitate the state's beedi workers by supporting them to start their own small ventures in poultry farming, stitching centres, mobile recharge centres, fancy shops and such ventures. According to the new scheme, 3,970 new jobs will be created for erstwhile beedi workers in the first phase.

As much as 80 per cent of the total cost of the venture will be borne by the Welfare Fund Board with the rest to be brought in by the beneficiary. The scheme also envisages the supply of 300 laptops to the students of beedi workers studying in engineering colleges.

Parliament passes amendments to the Payment of Gratuity Act, 1972

23 March 2018: The Payment of Gratuity (Amendment) Bill was passed by the Rajya

Sabha on 22 March 2018. The amendment extends the period of calculating continuous service in case of maternity leave from existing 12 weeks to 26 weeks, to bring it at par with provisions available under the Maternity Benefit (Amendment) Act, 2017.

The amendment has also done away with the ceiling on payment of maximum gratuity which was fixed at Rs.10 Lakh and has vested the power of determining the ceiling on the government. The Central Government has notified the new ceiling to be Rs.20 Lakh through a government order.

Finance Bill passed in Lok Sabha

15 March 2018: The Finance Bill 2018 was passed in the Lok Sabha through a voice vote. The highlights of the finance bill are as follows:

- **Income tax:** For salaried individuals, a standard tax deduction of Rs 40,000 has been introduced. The deduction for transport allowance and medical expenses has been removed.
- **Education Cess:** The 3% Education Cess has been replaced by a 4% Health and Education Cess for non-resident persons, including foreign companies.
- **Corporate tax:** The threshold of turnover for companies falling under the Corporate Taxation of 25% has been increased from Rs 50 crore to Rs 250 crore.
- The credit of any depositor in Public Provident Fund (PPF) account cannot be attached under any law to recover any debt or liability of the depositor.

Collective Bargaining

Maharashtra: Farmers walk from Nashik to Mumbai demanding loan waivers and pension

12 March 2018: Around 50,000 farmers walked from Nashik to the state assembly in Mumbai demanding an unconditional waiver of their loans, waiver of electricity bills, implementation of Swaminathan Commission recommendations and pension for farmers.

The long march which began on 6 March 2018 from CBS chowk, Nashik, lasted six days, during which farmers covered more than 180kms on foot and walked through the night to not cause inconvenience to students who were to appear

for their Secondary Board Exams during the day. The long march was organised by the All India Kisan Sabha a farmer's trade union affiliated to the Communist Party of India (Marxist).

The Maharashtra government was forced to agree to all the demands of the farmers and has promised to implement policies in phased manner to tackle with the agrarian distress in the state. Maharashtra has been grappling with increasing number of farmer suicides every year since the last decade or so.

Legal News

Supreme Court: Years of service as contract worker to be included in calculating gratuity period

30 March 2018: The Supreme Court, overturning a Chhattisgarh High Court order, has ruled that the gratuity of daily wage earners, who get regularized during the course of their employment should also include the period they spend as contract workers, if there is no break in service.

The Chhattisgarh High Court had dismissed the plea of Netram Sahu, who had worked as a contract worker with the government for around 22 years and subsequently regularized, where he worked for 3 more years before retirement. The Chhattisgarh government had denied him gratuity citing that workers are eligible for gratuity only if they complete 5 continuous years in regular service.

Supreme Court pulls up government for not implementing welfare measures for construction workers

20 March 2018: The Supreme Court has directed the central and state governments to implement the welfare provisions as promulgated in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act (BOCW Act), 1996, and the Building and Other Construction Workers' Welfare Cess Act, 1996 that govern the welfare of construction workers in the unorganized sector.

The directions were issued while the court was hearing a public interest litigation case filed by National Campaign Committee for Central Legislation on Construction Labour. The case was filed in 2006 regarding non-utilization of the cess fund lying with the Construction

Workers Welfare Board, the statutory body which is responsible for levying cess on real estate firms for the welfare of construction workers as per the BOCW Act, 1996.

Kerala High Court: Contract workers employed by government establishments eligible for 26 week maternity leave

20 March 2018: In a landmark judgment, the Kerala High Court has ruled that women employees working in the government sector on contract basis should also be entitled to maternity leave of 26 weeks as available to permanent employees under the Service Rules, applicable to state and Central Government workers.

Workers working under various central and state government schemes had petitioned the state government demanding that they be given maternity leave in accordance to the provisions of the Maternity Benefit Act as opposed to the current 90 days leave.

The government argued that the grant of 180 days of leave to contract employees who are employed for short terms such as one year period would be detrimental to the projects.

However, rejecting the contentions of the government, the court held that limiting maternity leave benefits to only 90 days amounted to discrimination against contract workers and directed the government to implement the provisions of Maternity Benefit Act in its letter and spirit.

Discrimination

Maharashtra: Government imposes Essential Services Maintenance Act, 2017 against striking Anganwadi workers

18 March 2018: In an order issued on 15 March 2018, Maharashtra government has invoked the Maharashtra Essential Services Maintenance Act 2017 (MESMA) against striking anganwadi workers. Anganwadi workers in different parts of the state have been demanding recognition as a worker, hike in wages and inclusion in social security benefits as available to other workers. Under the Act, striking workers could be jailed for six months.

Kerala High Court: Minimum wage notification for nurses and hospital staff put on hold

16 March 2018: The Kerala High Court on 15

March 2018 put a stay on the minimum wage notification which would have hiked the wages of nurses and other hospital staff employed in private hospitals at par with public sector health workers.

In 2017, an expert committee was set up by the Kerala government for fixing the minimum wages for employees in private hospitals, including nurses. The committee recommended that wages for all nursing staff should be in accordance of the wages decided by the government for nursing staff employed in public hospitals which ranges from Rs 20,000 up to Rs 32,960 depending on the number of beds in the hospital. Based on the recommendations the Minimum Wage Board had decided to release the new wage notification by March 31, 2018.

Workplace Safety Watch

Construction: On 2 March 2018, 3 construction workers, K Ramesh (20), M Alamelu (50) and Laxmanan (50), died and 2 workers sustained serious injuries after a wall collapsed in Tiruvannamalai in Tamil Nadu. The incident occurred when the workers were engaged in digging a trench along the compound wall of a century old mutt to build a house.

Manufacturing: Nunela Kumar Raja (28) a daily wage earner in LG Polymers private limited, Vishakhapatnam, Tamil Nadu was burnt to death in a fire on the plant premises on 3 March 2018.

Factory Fire: A major fire broke out after a boiler explosion in Ramdeo Chemicals Factory in the Boisar-Tarapur industrial estate in Palghar district of Maharashtra, killing 3 workers (Pintu Kumar Gautam, Janu Adaria and Alok Nath) and injuring 13 others on 8 March 2018.

On 18 March 2018, 3 workers along with 2 children were charred to death in a major fire which broke out in Real Paint Factory in the Rai industrial estate in Sonipat, Haryana.

The fire broke out in the basement of Real Paint Private Limited that spread out to the adjacent factories. Since all exits were blocked, several workers and their families residing on the second and third floors jumped to save their lives leading to several workers suffering fractured limbs and other injuries.

1 worker Kalyan Singh Parihar, (24) was killed

and 3 others Naresh Damor (21), Buntly Parihar (26) and Mahendra Parihar (43) were severely injured in a boiler explosion in Dhanlaxmi Industries, located in Phase 4 of Vatva GIDC area, Gujarat on 22 March 2018. Dhanlaxmi Industries manufactures dyes and intermediates.

Sanitation: Six workers of a paper mill, Mithun Prajapati, Udayraj Singh, Md.Najim from Uttarakhand and Amit Yadav, Binoy Verma and Ashok Boral who are locals, died in a gas leak while cleaning a tank used for storing chemicals in the Hazinagar area of Barrackpore in North 24 Paragnas district in West Bengal on 29 March.

On 20 March 2018 a sanitation worker G Gangaraju (37) died after slipping into a 22 feet manhole at H Block of Vambay Colony, in Vijaywada, Andhra Pradesh. The worker along with 5 other workers was hired by a contractor of Vijawada Municipal Corporation. Gangaraju along with another worker was made to climb on to the 22-feet manhole without any safety gear and while climbing up he slipped and fell into the manhole and was washed away immediately.

On 14 March 2018, Balram (32) a native of Madhya Pradesh asphyxiated to death after he entered a manhole in Shimlapuri, Ludhiana, Punjab.

On 8 March 2018, 2 workers Ramu and Ravi both migrant workers from Uttar Pradesh, died due to suffocation while cleaning the sludge from the polluted water tank at Jagdish Product Unit at the Balotra Industrial Area in Barmer, Rajasthan.

On 7 March 2018 in another incident, 1 worker Prakash (25) died and 3 others Ganesh (19), Kishore (32) and Lalit (18) were seriously injured after inhaling poisonous gases at Mahabalafi factory in the Balotra Industrial Area.

Health and Safety

USA: Labour Department quietly dismantles Workplace Safety Panels

29 March 2018: The work of five expert committees that were created by law to advise the U.S. Labor Secretary on how to improve health, safety and whistle-blower protections in almost every area of the workforce, has been stopped under the Trump administration and

their recommendations are now in limbo.

One of the boards that was shut down, the Advisory Committee on Construction Safety and Health was in the process of recommending ways to prevent workers from being killed by large trucks backing up. The recommendations were meant to prevent some of the most common accidents that occur nationwide. The 'Whistleblower Protection Advisory Committee' had been working on improving the culture for railroad workers, an out-sized number of whom "had been fired after reporting serious occupational injuries. Other committees had planned to work on guidelines to help construction and other industries implement new rules, finalized by the Obama administration, that limit the amount of beryllium workers can be exposed to. The rule was meant to prevent workers from developing lung disease and cancer from the widely used metal, but the Trump administration delayed enforcement for a year, until this May.

News Around the World

France: 2 lakh workers protest against Macron's reforms

23 March 2018: French railway unions affiliated to the CGT and six other unions joined air traffic controllers and other public sector workers in a national strike on 22 March in protest against the proposed labour reform that is looking to 'modernise' the transport sector through redundancies and the use of contract workers while opening up the rail network to competition. The government wants to phase out the system which effectively guarantees railway employees a job for life with a retirement age of 50-55. The unions are also opposing the manner in which the draft law was presented on 14 March without discussion with them.

Earlier, Jacques Chirac and Nicolas Sarkozy had both buckled under union pressure in their attempts to reform working practices, pensions and the railways during the beginning of their presidencies.

Civil servants also demonstrated on the same day over the proposed reform to offer redundancy packages and higher use of short-term contracts to public sector workers. Macron wants to cut 120,000 public sector jobs over the course of his five-year term.

UK: NHS contract courier worker's union wins right to collective bargaining

2 March 2018: The Central Arbitration Committee (CAC) declared that the Independent Workers' Union of Great Britain (IWGB) is the recognized union for collective bargaining on behalf of courier workers employed by The Doctor's Laboratory (TDL), a courier service provider to National Health Services (NHS), which undertakes the work of carrying pathology samples and blood to hospitals for emergency transfusions.

IWGB had secured workmen status for employees of TDL in June, 2017, the company had earlier termed these workers as 'independent contractors' to keep them from statutory employee rights like weekly off and minimum wages.

UK: Non-disclosure agreements should be banned to tackle sexual harassment says Equality and Human Rights Commission

The Equality and Human Rights Commission has warned of the "corrosive" and "toxic" workplace cultures that have allowed harassment to thrive in workplaces while those subjected to inappropriate behaviour have been systematically silenced. The commission set out a list of recommendations for government and employers aimed at better protecting people at work. These include restricting the use of non-disclosure agreements and confidentiality clauses that prevent employees from making sexual harassment claims public. The EHRC claims that by making discussion of harassment more open, people may be encouraged to report incidents more often.

Other recommendations made by the Equality and Human Rights Commission in its report include:

- A mandatory duty on employers to take steps that protect workers from harassment and victimisation at work, the breaching of which would constitute an unlawful act.
- Employers should publish their policy around sexual harassment and make it easily accessible online.
- The UK Government should introduce a statutory code of practice around sexual harassment, outlining steps that employers should take to prevent and respond to

incidents.

- The government should develop an online tool to allow individuals to report sexual harassment at work, addressing barriers around speaking out.
- Regular data collection about sexual harassment should be undertaken on a national scale to determine its prevalence and nature at work.
- The Advisory, Conciliation and Arbitration Service should develop sexual harassment training for managers and staff.

The recommendations were drawn up after the EHRC surveyed more than 1,000 people earlier this year.

Corporate Watch

From Bajaj to Tata, Auto Companies are hiring more Women on the Shopfloor

In the name of breaking the glass ceiling, being more inclusive, being gender sensitive, Auto companies in India have found a new way to make it difficult for unions to be organised in the country.

First, they hired migrant workers to break the unity among local workers, then they divided workers as regular and irregular, then they moved to rural areas and hired first generation industrial workers, and now they have decided to hire women on the shopfloor.

What do Corporates gain if they Hire Women?

There is no doubt that employers within a capitalist system act only to make more profit, or else it is irrational behaviour for them. Thus, even if it seems like one good step they are taking by including women on the shopfloor, there is a profit motive behind it.

According to the management at Tata Motors' Pune facility: the all-women's line brought in a new work culture and improved shop floor output, quality and the discipline so needed for competitiveness. This understanding is reflected in the move that others are also pushing for women on the shopfloor. And to ensure this, employers are demanding for an amendment to the Factories Act to allow women in all shifts.

Economic Times on 15 March published a profile of 5 major auto companies and how

they were breaking the glass ceiling. Based on that report, the following observations can be made:

Tata Motors

First introduced an all women line in its Pune facility. Productivity in this line increased by 15-20% and Zero Defect is higher.

Presently 1952 women are employed in all the plants together out of the total workforce of 41,390, which is 5% of the total.

The target is to reach 20-25% women in total workforce the next few years

To achieve this, Tata Motors has set up skill development centres across all plant locations, where it targets 50% to be women primarily from rural/ small towns/ economically-deprived areas.

Bajaj Auto

From 2% in 2014, number of women has increased to 4.3% of the total workforce of 7,371 workers.

In Pantnagar, women account for 13.7% of the total 983 workers, followed by 6.1% at Chakan of a total of 1,607 workers.

Target is to get to 10% in the next three years and then move towards 15%

Hero Motocorp

250 women employed in total

The packaging line at Neemrana, Rajasthan is completely managed by women workers.

Target is to double the number in the next 5 years.

Project Tejaswini, a gender diversity initiative to create job opportunities on the shop floor.

Yamaha

Started a Pink Line in collaboration with the Uttar Pradesh Govt.

5% of total workforce is women

Target is to get to 10% of the total workforce in the next few years

Renault Nissan

Employs 140 women in its Chennai facility

Royal Enfield

2 exclusive all-women lines — engine assembly and fabrication workshop.

Number of Women increasing 10% year-on-year for the last three years

Target is to increase women to 30% over the next five years

It is critical to note that while it is important to ensure more women participate in employment, the shift towards hiring women is grounded in the management understanding that women can be controlled more easily than men. Sexual harassment or the threat of it is often used as an effective mechanism to keep women under stress and control. Further, hiring women would pitch the men against them and create conflict both at work and at home. And finally, this move at best would require the unions to restructure and rethink their strategies and at worst would push the unions to take an anti-women position and hence weaken them.

Our Story

The **Triangle Shirtwaist Factory fire** in New York City on 25 March 1911 was the deadliest industrial disaster in the history of the city, and one of the deadliest in US history.

The fire led to the death of 146 garment workers – 123 women and 23 men – who died from the fire, smoke inhalation, or falling or jumping to their deaths. Most of the victims were recent Italian and Jewish immigrant women aged 14 to 23. The factory was located on the top 3 floors of the 10 storied Asch Building, at 23–29 Washington Place in Manhattan. The owners, Max Blanck and Isaac Harris, had locked the doors to the stairwells and exits to prevent workers from taking unauthorized breaks and to reduce theft. This made many workers jump from the high windows to escape from the burning building.



Added to this Blanck and Harris were notorious

for the low wage they paid to their workers - a mere \$15 a week - despite working 12 hours a day, every day. When the International Ladies Garment Workers Union led a strike in 1909 demanding higher pay and shorter and more predictable hours, Blanck and Harris' company was one of the few manufacturers who resisted, paying off police to imprison the striking women and politicians to look the other way.

Speaking at a Memorial meeting for the deceased workers, Rose Schneiderman, a prominent socialist and trade union activist, on 2 April 1911 said:

"I would be a traitor to these poor burned bodies if I came here to talk good fellowship. We have tried you good people of the public and we have found you wanting..."

We have tried you citizens; we are trying you now, and you have a couple of dollars for the sorrowing mothers, brothers and sisters by way of a charity gift. ...

This is not the first time girls have been burned alive in the city. Every week I must learn of the untimely death of one of my sister workers. Every year thousands of us are maimed. The life of men and women is so cheap and property is so sacred. There are so many of us for one job it matters little if 143 of us are burned to death. ...

Public officials have only words of warning to us—warning that we must be intensely peaceable, and they have the workhouse just back of all their warnings. The strong hand of the law beats us back, when we rise, into the conditions that make life unbearable. ...

I can't talk fellowship to you who are gathered here. Too much blood has been spilled. I know from my experience it is up to the working people to save themselves. The only way they can save themselves is by a strong working-class movement."

More than a 100 years later, we still have Rana Plaza which is reminiscent of the Triangle fire, we still have Unchahar, we still have workers dying every day across the subcontinent in factories, in mines, in construction, in manual scavenging and elsewhere and we are still fighting for a safe workplace.