



Gender Review of Labour Laws

Maliha Zia Lari



GENDER REVIEW OF LABOUR LAW

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FOREWORD

For any set of labour laws to offer protection and work in favour of labour, there is needed a well-rounded rights based approach, a judicious selection of language, constant up-gradation of laws to keep up with changing realities in the labour market and the economy, and access to institutions of justice. Pakistan's labour laws have largely kept behind these standards while gaps in implementation deny labour's access to the limited range of rights offered by the state. In this backdrop, the position of the marginalized, especially women stands more compromised due to a wide social divide on their role in the economy, an extremely male-centric model of workplace structure and the labour law order, and the absence of women-specific legislation in the face of a gender-neutral language that seeks to reinforce discrimination against women.

Though the recent enactment of legislation on sexual harassment at the workplace is counted as a success for women employed in the formal sector, Pakistan's economic structure is too complex to allow the benefits of such initiatives to reach to a larger section of the population. Apart from extremely restricted access to institutions of justice, women find themselves struggling with a range of direct and indirect discriminatory templates with regards to laws addressing the workforce. A large number of women are employed in the informal sector that is not covered by any labour laws. Women's

participation in the labour force is also under-represented as the term 'labour force' does not include women engaged in household activities. They are concentrated in certain sectors (i.e. agriculture, services), and within the sector hold lower positions than men. Another source of indirect discrimination is the presence of neutral laws that automatically sideline groups and communities by way of its 'one rule for all' structure. By that token, women are treated with the same benchmark regardless of the triple burden shouldered by them i.e., the combination of unpaid work in the home, paid work in the formal or (often) informal sector, and their work in the community. Differential treatment accorded to particular categories of workers, such as part-time labour, also work against women as they form the bulk of part-time domestic and agriculture workforce.

Pakistan's labour laws also fare poorly against international standards practiced across the world with regards to labour as well as to women. Pakistan has signed a number of international conventions related to workers' rights. However, neither the existing law structure, nor their implementation corresponds with a large section of universal standards set by these conventions and treaties.

'Gender Review of Labour Laws' is an advocacy note prepared by the Pakistan Institute of Labour

Education and Research to explore standards of the existing set of labour laws from a gender-centric prism. The paper studies the layers of complexities in labour laws that first marginalize workers and then go on to reinforce the vulnerable position of women because of the inherent biases in legislation, rules and practices prevalent in the workforce. It also examines domestic laws against international law that Pakistan is obligated to fulfil and international labour standards it should aim to achieve. The results exhibit that labour laws in Pakistan are severely out-dated and lacking in any rights-based approach. These do not cover the most basic human rights, much less a focus on gender

issues. As the Government of Pakistan has repeatedly pledged to review labour laws, there is need to bring into debate the existing gaps and lacuna and low levels of standards of the laws for workers to create space for the development of refined legislation. At the same time, the larger social context, which is very patriarchal in nature, needs to be taken into account as women's role in the economy is still seen in a negative light. All this has to be debated in the public domain to start the process of redefining women's position in labour laws as well as in the larger scheme of economic management. The advocacy note is a step in the same direction.



INTRODUCTION

Women as a part of the labour force face a variety of issues across the world. The public/private divide and the division of labour according to sex has given women a secondary and subordinate role in society and in the economy. Women work as mothers, household labourers and as social production workers. But unfortunately the economic and social values of their work have frequently been under-recorded and underestimated. Even where women have been long involved in economic activities—whether formal or informal, agricultural or industrial, household or market—gender ideology has placed a lower value on the work that women do.¹

Despite increasing education, awareness and participation of women in the labour force, the protection of the concept of working women and their rights continues to lag, making them extremely vulnerable, especially in developing countries. In Pakistan, women continue to be vulnerable to social, cultural and traditional norms and trends. Low literacy rate, high birth rate, poor health, low life expectancy, and non-recognition of their work within the family are some of the common characteristics of women in Pakistan. Although it is not stated on paper or recognized

as the official law of the land, Pakistan is a country where male guardianship over women is considered a social norm. The result is that women's entry into the labour force remains a controversial topic. Nevertheless, due to high poverty and a variety of other reasons, women are moving slowly into the workforce. This forces a large number of issues to the forefront e.g., contending with societal norms versus women actively participating in the public domain; the requirement of change and development from a predominantly male area to make space for women's involvement and advancement, etc.

The law in Pakistan dealing with labour recognizes to a certain extent the participation of women in the workforce, with some pieces of legislation providing extra rights to women while others specifically address women's issues such as the Maternity Benefit Ordinance, 1958. However, the law in Pakistan continues to discriminate against women.

The 'Time for Equality at Work', Global Report for the International Labour Conference 2003² discusses discrimination in detail. According to the report, discrimination at work can be direct or indirect. Discrimination is direct when

1. 'Globalization, States, and Social Rights: Negotiating Women's Economic Citizenship in the Maghreb', Valentine M. Moghadam, June 2007.
2. 'Time for Equality at Work', Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 91st Session 2003.

regulations, laws and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex. Indirect discrimination may occur when apparently neutral rules and practices have negative effects on a disproportionate number of members of a particular group irrespective of whether or not they meet the requirements for the job i.e., application for the same condition, treatment or requirement of everyone can, in fact, lead to very unequal results, depending on the life circumstances and personal characteristics of the people concerned. Indirect discrimination may also occur when differential treatment is accorded to particular categories of workers. Less favourable treatment of part-time workers relative to full-time workers is an example of indirect discrimination against women, who constitute the majority of part-time workers. The exclusion by law, in most countries, of domestic workers, agricultural workers or seasonal workers from social protection measures can result in indirect discrimination against various groups. Low-income women, workers belonging to ethnic minorities, migrants and elderly workers are disproportionately represented in these types of work and therefore suffer the most from this type of discrimination.

The report goes on to expose inherent biases in a wide range of institutions, rules and practices prevalent in the workplace. Examples include workplace schedules, including working

meetings, are often fixed according to a male model that ignores the childrearing responsibilities of employees. This restricts the flexibility of workers with children and may be viewed as workers with limited commitment, etc.

With this understanding of 'discrimination', an examination of the law of Pakistan exhibits a great amount of discrimination against women, especially with regards to implementation. This report aims to examine labour law in Pakistan not merely with regards to the language of the legislation, but to provide a holistic analysis. It will first provide a discussion on the difficulties of women accessing justice in Pakistan on the whole in order to contextualize the discussion specifically on labour law. The report will then go on to examine the international law Pakistan is obligated to fulfill and international labour standards it should aim to achieve. This discussion is important when evaluating domestic law in order for the reader to be able to compare the current law with the standards it SHOULD be reaching. The discussion will then examine the scheme of labour law in Pakistan. This discussion will take place under 5 headings that are specifically relevant to women in order to focus the discussion. The report will end providing general recommendations to the law with the view of increasing protection for women while also recommending means to ensure implementation of these laws.

Chapter 1

OVERVIEW OF THE LEGAL SYSTEM AND WOMEN'S ACCESS

Analysing any law in Pakistan from a gender dimension has many complications. First and foremost, the language of the law is discriminatory i.e., every single text uses the male pronoun as opposed to gender neutral language or inclusion of a female pronoun. Secondly, a large number of the laws are out-dated and do not reflect the modern principles of law—nor do they inculcate the principles of the large number of international treaties ratified and signed by Pakistan, much less adopt the universally accepted human/gender/labour standards and norms. Thirdly, there is a serious issue regarding implementation of existing law; therefore even the good principles and protections that are available in the existing law are of no relevance without proper implementation. Lastly, it is impossible to divorce the law from the social dimension i.e., perspectives of society. In a patriarchal society like Pakistan which is ruled by customs, traditions, religion and culture—where women are considered inferior and insignificant—it is impossible to ignore people's biases whilst attempting to execute law. Judges, judicial officers, lawyers, police and all other relating departments are products of this society and act on these rather than the black letter of the law. Without transparency, an independent judiciary or good governance mechanisms, these biases and executions go un-checked and flourish as the 'law of the land'. As a result, while a law may be gender neutral and holding potentially

pro-women outcomes, the implementation is perverted in order to ensure women's subjugation in all fields.

In order to attain a proper understanding of gender issues of labour law, it is necessary to firstly understand the relationship between women and the legal system i.e., the position women hold within the law as it functions. It is also important to realize that the law does not function in isolation and in reality is extremely influenced by the surrounding social environment. Therefore, the holistic relationship between women, law and society are closely linked and must be first be understood.

WOMEN, LAW AND SOCIETY IN PAKISTAN

Pakistan is a country in which the social, cultural, political and power strongholds continue to govern as opposed to the rule of law and all that it entails. There is an extremely strong feudal and tribal structure that still exists in the country. The community is more likely to follow the tribes, castes and clans than the Government. These take precedence over any State laws and rules. Often, state officials are implicit in these transgressions. Religion and culture is considered by many as an 'acceptable' justification for illegal actions.

Whether by culture, religion or tribes, Pakistani society is also extremely patriarchal. This

patriarchy, along with socio-cultural views and trends, have permeated themselves into the legal system as judges and give decisions based on their personal biases and not as unbiased adjudicators as they should be. This along with issues of poverty, huge economic disparities and corruption throughout the institutions of the Government, has resulted in the lack of independence in the working of the judiciary. Furthermore, without transparent systems of monitoring and evaluation, this bias goes unmonitored and unchecked.

Women's relationship with the law has to be first explained through their status in society. Women hold a secondary role to men as a whole, whether they are mothers, sisters, wives or daughters. Women lie at the bottom of the entire system as they face discrimination on the basis of being female and subject to patriarchal biases; but also if they belong to any of the other vulnerable classes, they are subjected to biases due to both factors. The general perception is that women 'belong' to men.

Men are responsible for their needs, requirements, and overall well-being. Women have their own roles within this society i.e., of child bearing, caring for the household and for the entire family; therefore their duty lies in the home and not in the workplace or any other public forum. Within these set roles, women should owe their 'fealty' to the men who are their providers. As a result of this ownership, women also are the key to a man's 'pride', his 'honour', etc.,. If a woman is seen to 'breach' or strain the existing social fabric, her behaviour is seen to represent her 'man' and thereby her family. Any untoward behaviour can brand her and her family as 'shameful' and 'dishonourable' and hence as outcasts.

The reality is that in the current state of society, women are dependent on men. Due to the patriarchal attitude which defines women's spaces, women's movement is restricted according to boundaries as decided by the men in their families, tribes or communities. There are also restrictions on women working, thereby having a direct affect on the economic independence of women i.e., for any finances they are usually dependent on men thereby further infringing on their freedom of choice as they feel without any financial support there are no options for them; if women do work, their earnings are used to support the household and children while the husband's money can be either used by him or stored elsewhere which she is unable to access. Also working women have to do double the amount of work i.e., their paid job as well as looking after the children and continuing to run the household. The balancing of these can be extremely difficult and result in many difficulties for women who can be vulnerable to exploitation by the employer making unnecessary demands regarding long hours with low pay for a woman with little or no skills who is dependent on his 'mood' and 'good will'; and who is vulnerable to household demands, which if she fails to fulfill can result in conflict within the family and often violence. Working women also face a lot of adversity through sexual harassment by employers or co-workers, and also because of negative attitudes about their working by society in general.

Women face a number of other obstacles in society. Overall with low literacy rates and general awareness, specifically legal awareness, they remain ignorant of their concepts of human rights and have minimal information about law, political structures, legal institution, etc. They also remain

disadvantaged in terms of accessing their most basic constitutionally recognized rights of freedom, movement, speech, choice, etc.

Due to this social standing of women, access to justice for women becomes extremely difficult. They have to not only combat the existing issues, but also face social biases, discriminatory laws and the condemnation by society. It is important to realize the access to justice does not only refer to women being able to physically approach the courts. The phrase 'access to justice' also refers to the environment within which women live and the acceptance of these women as individuals with inherent rights. Without the freedom of movement, of earning a livelihood etc., such access is not easy.

Apart from an inferior social status, women's legal status is totally unequal to men, despite the constitutional guarantees of equality under the law of equal protection, affirmative action and non-discrimination.

Even when they access the system, women are faced with additional problems. Accessing the judicial systems is hard for anyone who wishes to do so. In reality, mostly those who are extremely desperate voluntarily take a case to court. The cost of litigation is extremely high; the delays in court cases, due to the large caseload on each judge, is extremely frustrating for the litigant morally as well as financially; the court environment i.e., without basic facilities, lack of information, attitudes of the court personnel and judges and incompetent legal assistance, is intimidating and overwhelming. The low quality of judges and the mal-administration and illegality in the courts is obvious. There is a dire need to change the entire situation, which is difficult as all surrounding institutions and organs also need

to be changed accordingly to support it. For women these issues become mammoth because of the scarcity of financial resources, social pressures, lack of familial support, and inadequacy of support structures.

Women who try to assert their rights or make their own decisions are met with minimal or no support from their families, clans or society. If they still resist and take their cases forward, it is at the risk of disapproval, ostracization, or other more threatening measures.

Women also have to face such biased attitudes and non-supportive behaviour every step of the way. This behaviour is evident in not only the families, communities, tribes etc. but in different legal personnel, including the lawyers, judges, other court officials, government functionaries and police officials. These attitudes provide obstacles for women all along the way—treating her like she is the wrong doer and the criminal, treating her with suspicion and making her feel ashamed and guilty for transgressing the boundary allotted to her; these being considered to be 'shameless', 'bad' and 'troublemakers'. It is true when one says that when a woman takes a case to court, she is not only fighting the accused, but she is waging a war against society.

Alongside this, there are several laws that are discriminatory to women; and other laws that are interpreted in conservative and biased ways, making their application and implementation discriminatory towards women. With bad laws in existence, women's assertion of rights becomes problematic from the very beginning. Furthermore, in women's cases specifically, law is often over-turned and manipulated in favour of discriminatory laws, customary practices, and society's unwritten rules for women's behaviour—

a practice that through such behaviour by concerned institutions, openly condones or justifies these acts. This, not only encourages lack of respect,

but also the fear of the law in women.

It becomes clear that women's access to justice

and fight for equality is not limited to being able to access the legal system. It goes much further than that and has to be tackled at different levels including in the social and political sphere, before there can be any substantial change in the treatment of women.



Chapter 2

SITUATIONAL ANALYSIS OF WOMEN AND LABOUR IN PAKISTAN

As discussed above, that women in the labour force in Pakistan suffer great disadvantages due to the public/private divide in the country, that relegates them to lesser access to resources and opportunities. This has had a huge impact with that regards to women in the workforce. With an increasing number of women entering the workforce, a number of issues come up, including the issue of women's 'triple burden' i.e., the combination of unpaid work in the home, paid work in the formal or (often) informal sector, and their work in the community; the lack of adequate recognition and space given to women in the work environment; little or no social protection; the persistence of a gender ideology that has rendered women marginal in trade unions, government bodies, and other influential societal organizations;³ and the unfavourable market conditions for women resulting in absorption into traditional sectors such as agriculture, low paid occupations and the informal sector.

Pakistani women's working lives and their lives outside the workplace cannot be separated. In society, women are considered unequal, subordinate to men and under the guardianship of men. This perspective and treatment translates from the private domain into the workplace,

treating women in the exact same capacity. Further, working women feel the demand of both home and work life—the triple burden, as discussed above. As a result, they have severe difficulties in balancing their duties at work and at home—which is considered to be women's work, therefore no male will provide assistance in this regard. There is no or little recognition from the employers of the 'unofficial' women's work. For example, with regard to night work, Pakistani law was changed in 2006, increasing women's night work, which has a direct effect on their home and family life. This has led to a burden being placed on other females in the household, including on older female children, often requiring them to leave school or a job to look after the household and their siblings.

Women's participation in the labour force is also under-represented as the term 'labour force' does not include women engaged in household activities. Occupational segregation characterizes the labour force. Women are concentrated in certain sectors (i.e., agriculture, services) and within the sector hold lower positions than men. Women who are counted as employed include employees, self-employed and unpaid family helpers and are generally engaged in low skill, low wage economic activities. Women workers

3. 'Time for Equality at Work', Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 91st Session 2003.

are concentrated in the informal sector, both in rural and urban economy. In the rural economy, 64.4 percent of women are employed in farming, livestock, husbandry and off-farm activities which fall under the category of the informal sector. In the urban informal sector, 78.1 percent of women work in diverse sectors mostly as home-based, piece rate or casual workers on exploitative wages, or are employed as domestic workers on extremely low remuneration.

The increase of temporary employment, contract workers and piecemeal workers is focused more on women workers. Also, often employers terminate contracts and workers right before they become permanent in order to avoid being liable to give them any benefits that they will become entitled to as permanent workers. This leaves them with constant worry regarding job security. Further, women consistently fall at the bottom end of the wage pool. Despite Pakistan being a signatory to the ILO Convention on equal remuneration and equality provisions in the Constitution of Pakistan 1973, women are constantly paid less than men for the same work. Being in a desperate situation where they need the money in order to support themselves and their families, they would rather prioritize regular, albeit lower wages, than to fight for their rights. These women also know that there is a line of workers willing to take their jobs the minute they step out of line—they know they are dispensable.

Trade Unions in the formal sector tend to be male dominated in both membership and leadership. They also contain the societal biases against women in the public domain, thereby women are excluded and the patriarchal and discouraging attitude of male colleagues discourages women from participation. As a result, women are unable to be part of the collective bargaining and

negotiating in industries and establishments where trade unions do exist. As a result, women's issues are also not prioritized or brought to the fore, leaving their options for representation weaker. Additionally, the anti-union tactics adopted by the employers i.e., dismissal from work, intimidation and harassment of union members and office bearers, keep women out of union activities as they fear confrontation and threats from male employers and loss of job. Women in the informal sectors remain unorganized, largely due to cultural and societal overtones discouraging any such behaviour.

For many workers, violence is another issue. Apart from discrimination, women face different forms of violence at the workplace. For e.g., there is a large, unreported amount of sexual harassment. Sexual harassment includes uncalled for acts ranging from indecent verbal remarks to physical contacts to rape. Incidents of the worst form of sexual harassment (forced sex and rape) are high in the sectors where women workers are most vulnerable due to poverty and debt as is the case in brick kilns, tenant farming and domestic labour. Recent legislation dealing with harassment at the workplace is extremely welcome as one of the few positive movements towards gender equality at the workplace. It remains to be seen how well this legislation will be implemented by the State.

Many women also feel vulnerable going to and from the workplace. Without safe transport to and from the home, women remain exposed to sexual harassment and violence outside the workplace. This is especially high with women who work late shifts. Although the law requires the employer to provide transport to women working at night, this is rarely ever followed.

As discussed above, it is extremely difficult for women to access the courts. Labour courts have further issues due to an extreme lack of female representation i.e., lack of female lawyers and judges. This further discourages women from accessing courts. As a result there is very little judicial activity regarding women and labour. In fact, there are only a handful of cases that have pushed forward the women's agenda in labour.⁴ Cases relating to issues of violence are brought before the court but women remain apprehensive and resistant to taking their cases to court for discrimination and violations of their fundamental rights.

There is minimal state response to women's issues. As mentioned above, apart from two women specific labour laws (relating to maternity protection and sexual harassment), there is no legislation relating to women. There is also

minimal commitment in this regard as well. A Home-Based Women Workers Policy has been pending with the Ministry of Labour for over a year, and even now there does not seem to be any assurance as to it being promulgated. Legislation remains out-dated without inclusion of women. The National Labour Policy 2010, apart from many other issues and gaps, has minimal mention of women. It merely mentions ambiguous promises without mention of any substantive measures with clear outcomes. It also specifically relates to only registered workers and industries/establishments, thereby excluding hundreds and thousands of workers around the country. Additionally, as with earlier policies, its implementation is questionable. The State needs to make a firm commitment towards women labourers rather than remaining vague and uncommitted to half of its workforce.

4. Some examples include 2010 P L C (C.S.) 364, Mst. Samina Naheed versus The State, where relaxation of upper age limit in Government, Semi-Government and Autonomous Bodies, specifically in regard to educated divorced women of an advanced age; 2005 P L C (C.S.) 1335, Pakistan International Airlines Cooperation versus Samina Masood and others, directing that there shall be no discrimination between the retiring age of female and male cabin crew belonging to the same group.

Chapter 3

PAKISTAN AND LABOUR LAWS

In order to provide an analysis of Pakistan domestic labour laws, it is important to understand some of the obligations Pakistan has under international law which apply to Pakistan by virtue of the conventions and treaties it has signed and ratified. This not only allows us to appreciate standards that Pakistan should achieve but also to be aware of what is already lacking in domestic law in comparison with existing obligations and recommended obligations.

It is necessary for Pakistan to come up to universal standards. While the law itself may not even correspond to existing obligations under international law, it is still necessary to continue to pressurize the Government to not just undertake implementation of existing obligations, but also to take up new, modern and up-dated internationally recognized standards and obligations and inculcate them into its own law.

INTERNATIONAL LABOUR STANDARDS APPLICABLE IN PAKISTAN

Pakistan has a number of obligations under international law regarding labour rights. It is a signatory to the Universal Declaration of Human Rights 1948 which provides the right to work; to free choice of employment in just and favourable conditions of work, and to protection against

unemployment. It also includes the right to equal pay for equal work; the right to just and favourable remuneration ensuring an existence worthy of human dignity; and the right to form and join trade unions.⁵ The International Covenant on Economic, Social and Cultural Rights 1966 under Articles 6–8 further articulates these rights by placing positive obligations on the State to protect the right to work as well as working towards fully realizing the right through provision of vocational training, etc. It goes on to recognize fair wages with equal pay for equal work which is sufficient to provide a decent living for themselves and their family; the requirement for safe and healthy working conditions; equal opportunity for promotions; rest, leisure, holidays, limited working hours, etc. It also recognizes the right to join and form trade unions and all acts ancillary to it. The International Covenant on Civil and Political Rights 1966 protects civil rights and the right to join trade unions.⁶ All of the above, along with Convention for the Elimination of all Forms of Discrimination Against Women 1979, protect against discrimination, including specific mention of discrimination on the basis of sex. Pakistan is also a signatory to the 1998 Declaration of Fundamental Rights at Work which reaffirms the constitutional principle of the elimination of discrimination in respect of employment and

5. Article 23.

6. Article 22.

occupation, thereby confirming the universal resolve to suppress discrimination in the world of work through the promotion of equal treatment and opportunity.

Alongside these international human rights treaties are a large number of Conventions and recommendations promulgated by the International Labour Organisation (ILO). These Conventions cover a wide spectrum of labour rights. These Conventions work towards eliminating unjust and inhuman labour practices, thereby developing international labour standards which all national laws and practices have to be measured against. These include the eight core ILO Conventions⁷ that codify the four most basic and fundamental labour rights: the right to organize and engage in collective bargaining; the right to equality at work the abolition of child labour; and the abolition of forced labour.

While the eight core conventions cover some of the fundamental issues identified by the ILO and are considered to being 'human rights', there remains a criticism that this has created a division between different labour standards including those covering critical areas such as health and safety, working hours, minimum wage, etc. There still remains a large variety of ILO conventions that are particularly important in regards to women's issues.

Pakistan is a signatory to 34 ILO Conventions (of which 33 are operational), including all eight of the core Conventions. However, its domestic law is not at par with the obligations held within these. Further, a large number of the ratified

Conventions are out-dated and do not provide the current universal standards and models. There is an urgent need to ratify up-dated versions and other relevant Conventions.

PAKISTAN'S DOMESTIC LABOUR LAWS

Having examined the situation within which law functions in Pakistan and the international legal standards it should be achieving, we now turn to examine the domestic labour law. As discussed earlier, with regard to a gender perspective of labour law, it is not always the language of the law that is problem, rather the implementation of it. Implementation of law as a whole is weak in Pakistan without adequate safeguard in place to ensure compliance of orders. Furthermore, the huge delay in cases makes it even more difficult for labourers, often living on piecemeal or surviving on hand to mouth basis to be able to financially afford to take a case to court, much less see it through.

For women, the situation is much worse as they are discriminated against in an already discriminated class. This discrimination comes not just from the employers but also from society, the majority of whom believe women should not be in the workplace in the first place. If she is faced with any problems, it becomes ten times more difficult for her to access and receive justice, as is discussed above.

This review of Pakistani labour laws is done on different levels. Firstly, the law is examined as to identify where it fails to provide protection to labourers as a whole—with women forming a

7. C87 Freedom of Association and Protection of the Right to Organize 1948; C98 Right to Organize and Collective Bargaining 1949; C100 Equal Remuneration Convention 1951; C111 Discrimination (Employment and Occupation) Convention 1958; C138 Minimum Age Convention 1973; C182 Worst Forms of Child Labour 1999; C182 Worst Forms of Child Labour 1999; C29 Forced Labour Convention 1930; C105 Abolition of Forced Labour 1957.

group within that whole; it then also identifies how it specifically fails to not just provide protection to women, but where it also clearly discriminates against women labourers whether in terms of implementation, violations of existing law or just ignoring women specific issues.

Recommendations provided are also two-fold i.e., by providing effective legislation to the entire class of labourers, it officially directly provides it for women labourers; the next step is to identify

how to ensure effective implementation for women by recommending either women specific laws, provisions or policies.

Therefore, keeping all of this in view, while reviewing the Pakistan labour laws, the examination of these laws is done purely on the basis of how to make the laws more effective and easier to implement rather than just change the language of the laws.



Chapter 4

DOMESTIC LABOUR LAWS

The Constitution of the Islamic Republic of Pakistan 1973, being the basic legal document, contains a range of provisions with regards to labour rights. All domestic laws have to be in conformity with the Constitutional rights provided. The rights enunciated are reproduced below:

Article 11 of the Constitution prohibits all forms of slavery, forced labour and child labour;

Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;

Article 18 prescribed the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;

Article 25 lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone; and

Article 37(e) makes provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Article 38 of the Constitution provides that the state shall secure the well-being of the people, irrespective of sex, caste, creed or race, by raising

their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. All citizens are bestowed, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure and the basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective again of their sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

Labour legislation includes the welfare of labour; condition of labour; provident funds; employer's liability and workmen's compensation, health insurance, including invalidity pensions, old age pensions, trade unions. Industrial and labour disputes were a part of the Concurrent Legislative List subject, hence the Federation as well as the Provinces were equally competent to legislate, however, by virtue of 18th Amendment 2010, amending the Constitution of Pakistan, the Concurrent Legislative List has now been abolished, and labour legislation becomes provincial subject, as the same has not been incorporated in the Federal Legislative List.⁸

8. Serial No. 26, 27 Concurrent Legislative List.

Principally, the domestic legislation has to follow the principles laid down in the Constitution; following are the different applicable labour legislations on the issue in hand.

EQUALITY OF OPPORTUNITY AND TREATMENT

There are several non-discrimination clauses in the Islamic Republic of Pakistan, as mentioned above, that provide a formal equality in Pakistan. The reality is far from any sort of formality. Further, despite the fact that Pakistan has ratified CEDAW, as well as C100 Equal Remuneration Convention 1951 and C111 Discrimination (Employment and Occupation) Convention 1958, discrimination against women in labour remains rampant around the country. This issue will be discussed below under different categories. Nevertheless, this section briefly emphasizes different international obligations as per the above mentioned Conventions which need to be implemented and are relevant throughout this document.

C100 Equal Remuneration Convention 1951

The convention defines the term 'remuneration' as 'the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment'; it places an obligation on the State to promote and ensure the equal remuneration for men and women workers for equal value i.e., this refers to rates of remuneration established without discrimination based on sex; it identifies that this could be done through national laws or regulations; legally established or recognised machinery for wage determination; collective agreements between employers and workers; or

a combination of these various means. The convention also notes that it is necessary to take measures to promote objective appraisal of jobs on the basis of the work to be performed.

C111 Discrimination (Employment and Occupation) Convention 1958

This convention defines discrimination as distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It allows space further widening of the definition, leaving it to determination by the State after consultation with representative employers and workers organizations and other appropriate bodies. It further goes on to define that employment and occupation include access to vocational training, access to employment and to particular occupations and terms and conditions of employment. It however does note that if specific qualifications are needed for a particular job, is not discrimination. The convention goes on to place an obligation for the Member to design a national policy promoting equality of opportunity and treatment in employment and occupation. It further places an obligation for the Member to work with organizations and other bodies in promoting the acceptance and observance of this policy; to enact relevant legislation and education programmes geared towards this aim; to repeal statutory provisions and modify any administrative instructions or practices inconsistent with the policy, etc. It also promotes special measures of protection or assistance, specifically to persons identified after consultation with the representatives of employers and workers' organizations, which shall be seen as positive discrimination.

While the Discrimination (Employment and Occupation) Convention, 1958 deals with equality in employment and occupation, it does not expressly cover distinctions made on the basis of family responsibilities. Noting this gap, the ILO promulgated C156 Workers with Family Responsibilities Convention, 1981. This Convention is vital, specifically for women. It recognizes workers with families have wider issues and it is necessary to create a change in the traditional role of men and women in society and in the family in order to achieve full equality between men and women. It also recognized that workers with families have much wider issues. This instrument works towards providing support to such workers.

The Convention applies to workers with dependents including children as well as other members of the family who clearly need support. It also applies to all branches of economic activity. It mandates to take into account workers with family responsibilities in community building and providing support in the form of child care and family services and facilities. It protects workers from dismissal for having family responsibilities.

This instrument is critical in Pakistan where traditional societal roles do not allow women the freedom to take up employment or have a wider sphere of employment opportunities. Following Pakistan's commitment to gender mainstreaming, ratification of this Convention is vital.

With the majority of women working as home based women workers or in the informal sector, an extremely important Convention that also needs to be ratified and implemented is the C177 Home Work Convention 1996. This specifically recognizes the special characteristics and rights of home work i.e., work carried out by a person

at home to be called a homemaker, irrespective of who provides the material, etc. The Convention recognizes that a homemaker should have rights and treatment equal to that of other wage earners, as far as it is possible. This includes rights of joining or forming organisations such as trade unions; have protection in field of occupational safety and health, social security, minimum age safeguards and maternity protection. It also recognizes that employers can be identified as such through intermediaries as well, but should be detailed according to the law of the land.

CONDITION OF WORK/EMPLOYMENT

The basic law applicable to the industrial employment is Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (hereinafter referred as Standing Orders), whereas the law that governs the conditions of work of labour in factories is Factories Act 1934, which applies to factories employing ten or more workers; however the Provincial Governments are empowered to extend the provisions of the Factories Act to even five workers.

In every industrial or commercial establishment, conditions of the employment of workmen and other incidental matters shall be regulated in accordance with the Standing Orders Ordinance.

Workman is defined as any person employed in any establishment or commercial establishment to do any skilled or unskilled, manual or clerical work, for hire or reward. It further goes on to classify workmen as permanent; probationers; *badlis*; temporary; apprentices; and contract workers. A contract worker is further defined as a workman who works on a contract basis for a specific period of remuneration to be calculated on a piece rate basis.

The Standing Ordinance contains features which include definition of industrial/commercial establishments which has a necessity of a minimum of 20 workers; of industrial establishments; and of construction establishments, etc.

BASIC RIGHTS AVAILABLE TO EVERY WORKMAN UNDER STANDING ORDERS

- Every workman must be provided with the formal appointment letter containing the main terms and conditions of employment, namely nature and tenure of appointment, pay allowances and other fringe benefits admissible, terms and conditions of appointment;
- The working time, holidays, wage rates and pay days must be published at notice boards;
- Compulsory group insurance, the employer shall have all the permanent workmen employed by him insured against natural death and disability; and
- Termination of service required one month notice except when the termination is on the ground of misconduct where no notice is required.

Factories Act 1934

Application of Factories Act: it shall be applicable only to the labour in factories;

Factory means any premises where ten or more workers are working in a manufacturing process.

Manufacturing process: any process for making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal or pumping oil, water or sewerage, for generating, transforming or transmitting power.

Worker: a person employed in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process but does not include a person employed in a clerical capacity.

Employer: the owner of an industrial or commercial establishment, authority appointed by the Government or in any other industrial or commercial establishment, any person responsible to the owner for the supervision and control of such establishment.

The Bonded Labour System (Abolition) Act 1992 and its corresponding 1995 Rules effectively outlaw the system while also criminalizing it. It is wide and covers the issue of forced labour and includes in it restoration of rights for the bonded labourer, etc.

There is a provision in the Act for a room for children under the age of six belonging to female workers employed in factories where more than fifty women are employed.

Protection Against Harassment at the Workplace Act 2010 and the Criminal Law (Amendment) Act 2009 are two pieces of legislation adopted in the last year which deal with sexual harassment. The former is quite wide and cover both regular and contractual employees and include 'employers' which may or may not be incorporated. It also has a wide and encompassing definition of harassment. It lays down procedures on how to deal with any such cases.

The Criminal Law (Amendment) Act 2009 includes the definition of sexual harassment in the Pakistan Penal Code 1890 thus effectively criminalizing sexual harassment.

Critique

The basic necessity of procedures, such as contracts, weekly holidays, notice of termination, insurance etc., are not provided. These rights are recognised by Pakistan law and are considered mandatory by international law, for e.g., C106 Weekly Rest (Commerce and Offices) Convention, 1957. It becomes difficult for workers, specifically women who are already vulnerable, as discussed above, to challenge their employers because they are aware that they are dispensible with hundreds of others waiting to take their place.

Furthermore, an important aspect to conditions of work is related to the issue of forced or bonded labour. This is an issue rampant in Pakistan. Despite court verdict, the 1992 law and 1995 rules against bonded labour and the ratification of C29 Forced Labour Convention 1930 and C105 Abolition of Forced Labour 1957, the problem remains. The law overall is a good law on paper but it is not at all implemented. It often comes against the tenancy laws, making it redundant. Immediate and effective implementation of the law and international obligations is necessary, but with also a focus on rehabilitation of the workers.

The Standing Orders effectively exclude all worker in other establishments which may or may not fulfill the criteria of twenty workmen or as specified by the Province. Labourers in factories, managerial/supervisory staff and clerical staff in factories, domestic servants, home based women workers, women in agriculture are all thereby not protected by any of the clauses in this legislation including the right to written contracts, termination notices, regularizing wages, etc. This results in a large number of labourers effectively being excluded from protection with regards to employment of any sort whatsoever. The

Ordinance is silent on the temporary workers workmen including those monthly rated, weekly rated, daily rated or piece rated, and no prohibitioner or *badli* is entitled to notices if services are terminated by the employer. Part time workers and contract workers not working on piece rate are not covered in the definition of worker.

Home-based women workers, women in agriculture etc., are all unable to avail any contractual protection of their basic employment. This includes contracts with intermediaries, as well as the actual industries themselves. It leaves them vulnerable to exploitation on many levels including therefore being able to access their rights of wages, leave, social security and even their right to resolutions of conflict as they will not have as such any substantive rights. This falls in clear violation not just of Constitutional rights but also of international standards. It is necessary to widen the scope of the law to include workers/labourers of all kinds in any industry or form of work.

Another problem which is also discussed under other heads is the violation of the basic concept of contract work. With an increase in hiring of contract workers, employers have developed a trend in recent years by which they terminate the contract without warning, pre-emption and without fulfilling necessary criteria even if it is applicable, right before staff is confirmed as permanent in order to ensure that labourers are never eligible for the benefits provided to permanent employees.

An important Convention that deals with this issue is the C175 Part-Time Work Convention, 1994. It provides the same rights to part-time workers as to full-time workers e.g., the right to organize; the right to bargain collectively and the

right to act as workers' representatives; and protection from discrimination in employment and occupation, etc. The Convention also provides for adaption of statutory social security schemes to allow part-time workers to enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. It includes measures to ensure conditions in fields of maternity protection; termination of employment; paid annual leave and paid public holidays; and sick leave are also mentioned. It is mandatory that such terms for part-time workers be incorporated into Pakistani law.

The rooms for children are rarely implemented. Also this provision is only applicable to factories and not in any other sort of establishment. Also the number of fifty women is problematic as employers often manipulate the process to ensure the requisite number is not there. Further, most smaller factories do not have such a large number of workers, leaving most women unable to have access to such a benefit. Also, the age of six years is too young as children up to the age of 14 require constant care and supervision. The age limit makes it even more difficult for women who do have access to such facilities to work—especially in the evenings and at night, unless their children are provided with facilities. Without these, children of the workers get severely neglected. As per C156 Workers with Family Responsibilities Convention, 1981, the state should have an obligation to protect workers with families, and provide families with benefits.

While the promulgation of the two new pieces of legislation regarding harassment and sexual harassment are positive steps towards gender

equality, but whether they are effectively implemented and whether they are successful in protecting women labourers remains to be seen. It is hoped they do not go the way of a large number of other laws in the Pakistani legal system. However, it is important to note that there are causes of worry within the text of the 2010 act as well. One of the procedures identified relating to the Inquiry Committee stated that the Inquiry Committee may recommend to the Ombudsman for appropriate action against the complainant if allegations leveled against the accused found to be false and made with *mala fide* intentions. This could have severe repercussions for the complainant in situations where the Committee may be biased against the her for any reason, including being biased against the very fact that harassment at the work place has been made a penalized crime. A bias is already seen in this very clause i.e. the accused, if found guilty, is not referred to the Ombudsman but dealt with within the organisations, but a complainant who makes a 'false allegation' is immediately dealt with more harshly and 'sent' to the Ombudsman for appropriate treatment. If this clause was felt to be 'necessary', the treatment should have been the same i.e., within the company.

As mentioned earlier, job security is a huge problem in Pakistan. Alongside existing obligations, Pakistan should commit to undertaking better reform in providing protection to its workers. It should also ratify C158 Termination of Employment Convention, 1982. This Convention, addresses some of the vital issues relating to job security. Whilst revising and re-drafting the current laws, the State should focus on the rights contained in such and other ILO Conventions. This Convention applies to all branches of economic activity and all employed persons. While it also does exclude a number of

temporary and contract workers, it clearly states that adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

It goes on to specify that workers cannot be terminated without a valid reason. It provides certain examples of what shall not constitute as valid reasons e.g., union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; seeking office as, or acting or having acted in the capacity of, a workers' representative; the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and absence from work during maternity leave. It also provides procedures in case of termination which include an opportunity to defend himself against allegations made and an option of appeal to an impartial body such as a court, labour tribunal, arbitration committee or arbitrator. The burden of proof here shall lie on the employer. If termination is found unjustified, the relevant body can recommend reinstatement or order payment of adequate compensation or such other relief deemed appropriate. On termination a period of notice is required. Severance allowance or other separation benefits are also included dependent on the length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions;

or benefits from unemployment insurance or assistance or other forms of social security, etc.

WAGES

The Payment of Wages Act 1936 regulates payment to certain classes of industrial workers i.e., factories and railways. However, the Provincial Governments can extend this after three months' notice to employers.

Wages: 'All remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable'. It does not include the value of house accommodation and other such expenses, travelling allowance, any gratuity payable on discharge, etc. Payment periods have to be fixed and cannot exceed a one month time period.

The Act stipulates that wages to workers employed in factories and on railways are to be paid within seven days of completion of the wages period, if the number of workers employed therein is less than 1,000. In other cases, the time limit for payment of wages to the workers is 10 days. No deduction can be made from the wages of the workers except as specified in the Act, such as for fines, breach of contract and the cost of damage or loss incurred to the factory in any way other than an accident.⁹

Wages are regularized by the Minimum Wages Ordinance 1961 for workers employed in certain industrial undertakings—'industry' being given the definition as per the Industrial Relations Act. A 'worker' is defined here as 'any person including an apprentice employed in any industry to do

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any skilled or unskilled, intellectual, technical, clerical, manual or other work, including domestic work, for hire or reward'. The legislation forms a Minimum Wages Board that is mandated to recommend to the Provincial Government the rate of minimum wage for juvenile and unskilled workers, as well as workmen. The Board may also recommend minimum wages for all classes of workers and may specify minimum rates for wage for time work; piece work; overtime work; and the minimum time rates for workers employed on piece work to guarantee minimum wages on time basis for such workers. The final decision, however, will be made by the Government. Once minimum wage is decided, employers are prohibited to pay wages at the rate below minimum wage with penal provisions on violation.

Minimum wages for unskilled workers in certain commercial and industrial establishments is dealt under West Pakistan Minimum Wages for Unskilled Workers Ordinance 1969. It defines 'Industrial Establishment' a mine or quarry; a workshop or other establishment in which the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery, or disposal is carried on, or where any such service is rendered to a customer; and any other establishment which Government may, by notification in the Official Gazette, declare to be an industrial establishment.

Critique

Focusing on the issue of wages requires an understanding that is important to not only work towards protecting the remuneration of workers on the basis of equality but also of fixing standards of pay in order to ensure that the needs of workers are being met satisfactorily.

The definition of 'wages' is unsatisfactory. According to international standards, 'wages' are defined under the C94 Protection of Wages Convention, 1949 as 'remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered'.

This definition is vital as it relates to both written and unwritten contract, thereby opening the possibility of including informal workers within its scheme.

The legislation relating to wages causes a large number of problems for women. Apart from the flagrant violations of the law, the law itself is biased against women by remaining gender neutral and exclusive. As women in the informal sector are not included in any of the definitions, they are once again not able to gain any protection from these laws. Also, despite equality clauses in the Constitution and international obligations requiring, among other requirements, equal pay for equal work, women are consistently paid less than men who are doing the exact same job. Due to financial pressure and a morbid acceptance of their situation, women are forced to resign to lower wages.

Further, as mentioned earlier, there are clear violations of the law by employers. Women are not granted paid leave (which is also mandatory under the Factories Act 1934), including maternity leave, which is separately legislated but violated as well. Nor are they given overtime pay or compensated for working on leave days or public holidays. Another problem is delayed payment

of wages which is extremely problematic as workers usually do not have savings or extra financial support. Women, specifically, require immediate payments to support themselves and their children. When forced to wait, it not only places a burden on them but often results in borrowing of money then having to repay it the following month, spiraling into a cycle of loan and debt.

A majority of industries have also started hiring contractual workers, thereby avoiding the liability or obligation placed on them for the protection and welfare of permanent employees. Women, once again, are the biggest sufferers in this situation as they are most often the 'contractees'. There is no protection provided to them under any of these laws.

The legislation should, as specified by C94 Protection of Wages Convention, 1949, lay out the methods of paying wages, including the prohibition on deductions without following procedures laid out by national laws, regulations of by collective agreements.

Minimum Wages are decided by the Board which has no female representative nor any informal sector representative. This should be made mandatory as affirmative action under Article 25 of the Constitution. There is also no mandate on the Government to accept the recommendations of the Board. This should be remedied and the Board's decision should be final.

Almost 80 percent of workers do not receive the minimum wage. The responsibility lies on the Provincial Governments but no inspections or actions are taken to ensure that this is being done so. As a result, the majority of labourers are not receiving enough wages to even support themselves and their families, making them and

their families more and more vulnerable to exploitation.

The legislation on minimum wage is unsatisfactory as it does not cover half the issues that are relevant. The State should ratify and implement C130 Minimum Wage Fixing Convention, 1970, which also lays down a clear path for application of a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. It also goes on to confirm that the elements to be taken into consideration in determining the level of minimum wage includes the needs of the workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; and the economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

NIGHT WORK/WORKING TIME

Working time and night work is dealt with under two Acts: West Pakistan Shops and Establishments Ordinance, 1969 and Factories Act 1934. The relevant provisions, especially those relating to women are discussed below.

RESTRICTION OF WORKING HOURS OF ADULTS

Factories Act 1934 deals specifically with factories. Under Section 6, it is declared that the Provincial Government may, by order in writing, direct that the different departments or branches of a specified factory shall be treated as separate factories for all or any of the purposes of this Act.

No adult worker shall be allowed or required to work in a factory for more than nine hours in any day. Provided that a male adult worker in a

seasonal factory may work ten hours in any day. (Section 36)

Section 45 deals with specific regard to women.

FURTHER RESTRICTIONS ON THE EMPLOYMENT OF WOMEN

(1) The provisions of this Chapter shall, in their application to women workers in factories, be supplemented by the following further restrictions namely:

- (a) no exemption from the provisions of section 36 may be granted in respect of any woman; and
- (b) no woman shall be allowed to work in a factory except between 6 a.m. and 7 p.m.: Provided that if the employer arranges for the transport facilities, a woman with her consent may work up to 10.00 p.m. in two shifts;

Provided that the Provincial Government may, by notification in the official Gazette, in respect of any class or classes of factories and for the whole year or any part of it, vary the limits laid down in clause (b) to any span of ten and a half hours, or where the factory is a seasonal one, of eleven and a half hours, between 5 a.m. and 7.30 p. m.;

Provided further that, in respect of any seasonal factory or class of seasonal factories in a specified area, the Provincial Government may make rules imposing a further restriction by defining the periods of the day within which women may be allowed to work, such that the period or periods so defined shall lie within the span fixed by clause (b) or under the above proviso and shall not be less than ten hours in the aggregate.

(2) The Provincial Government may make rules providing for the exemption from the above restrictions, to such extent and subject to such conditions as it may prescribe, of women working in fish-curing or fish-canning factories where the employment of women beyond the said hours is necessary to prevent damage to or deterioration in any raw material.

(3) Rules made under sub-section (2) shall remain in force for not more than three years.

Section 8 of the West Pakistan Shops and Establishments Ordinance, 1969 likewise, restricts weekly work hours at 48 hours. The Shops and Establishments Ordinance regulates persons employed in shops and commercial establishments, who are neither covered by the Factories Act nor by the Mines Act.

Section 22-B of the Mines Act, 1923 also fixes weekly hours of work for workers at 48 hours or 8 hours each day, with the limitation of spread-over 12 hours and interval for rest for one hour every six hours. Section 22-C further limits the spread-over to 8 hours for work done below ground level.

Critique

As per Section 6, Factories Act 1934, Provincial Governments have the power to separate departments for men and women. This has not been done. With the Finance Bill 2006, women's working hours, specifically in the night has been increased—on the basis of two shifts and the condition of provision of transport. This is highly discriminatory on different levels i.e., international law has spelt out that women should not be mandated to do night work, especially during and after pregnancy. It recommends that alternative day arrangements be made for women.

With Pakistan specifically, this is a huge problem. Working hours and night work is often not ‘voluntary’ as dismissal is often used as a threat in order to ensure compliance. Employers usually violate the necessity of provision of ‘safe’ transport for women, leaving women vulnerable as they need to either use public transport late at night or find other means of private transport. In a country with high incidence of violence against women, specifically sexual violence and sexual harassment, this allows women labourers to be continuously exposed to different forms of violence, harassment, etc. Also, the logic behind not asking women to work at night was to allow them to look after their children and their household—which is also culturally considered to be the woman’s domain. The night timings will result in conflict between work and home life; also resulting in family disputes as many people do not allow their women to be out of their home till late night. These are also in contravention of the concept of ‘decent work’ by not allowing workers adequate time for leisure.

Furthermore, women in the informal sector, in agriculture, home-based, domestic workers etc., are once again excluded from these laws. No law regulates their working hours and often women are expected to produce results in impossible timelines, requiring them to work unnecessarily long hours. It is a necessity to ensure coverage to these women of this right by promulgating adequate legislation including these women in their ambit and requiring appropriate timelines and expectations for receipt of goods, etc.

While Pakistan has ratified a number of international Conventions and has obligations relating to working hours of full-time employees and of night work, it needs to also show its commitment by ratifying and implementing up-

dated Conventions, specifically those that cover rights previously not covered.

It is necessary for Pakistan to ratify C171 Night Work Convention, 1990, which is an up-dated Convention pulling together the most fundamental aspects from earlier Conventions. It defines the term *night worker* as ‘an employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit’. It then proceeds to provide the necessary protection of health and other rights of this person including regular health assessment before and during taking up such an assignment; provision of first aid kits and arrangements for transport to places where appropriate treatment may be sought if necessary; job security i.e., if they are unable to do night work, they shall be transferred and if that is not possible, they get the same rights regarding dismissal or notice of dismissal as other workers prevented from working for reasons of health.

This Convention specifically takes up the issue of women and night work. It obligates that measures should be taken to find an alternative to night work for women before and after childbirth, for a period of at least sixteen weeks of which at least eight weeks shall be before the expected date of childbirth; for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child; during pregnancy; during a specified time beyond the period after childbirth to be determined by a competent authority after consulting the most representative organizations of employers and workers. Possible measures may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave. Furthermore, job security if provided for women, i.e., a woman

worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth; the income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living; a woman worker shall not lose the benefits regarding status, seniority and access to promotion which may attach to her regular night work position; and these provisions of this Article shall not have the effect of reducing the protection and benefits connected with maternity leave.

WORKERS' REPRESENTATION IN THE ENTERPRISE

Article 17 of the Constitution provides for a fundamental right to exercise the freedom of association and the right to form unions.

The above quoted fundamental right has been incorporated initially in Industrial Relations Ordinance, 1969, Industrial Relations Ordinance, 2002 (IRO 2002), however the Industrial Relation Act 2008 has repealed the earlier laws. This law has since also lapsed as of 20-04-2010. Without any legislation currently over-seeing this area, the previous law will be discussed with recommendations as to the legislation currently being prepared. This law basically provides the rules relating to the formation of trade unions, and regulates the relations between employer and employee.

Trade Unions: Workers, without distinction shall have the right to establish and join an association of their own choice without previous authorization. This is any combination of workers formed primarily for the purpose of furthering and defending the interests and rights of the workers in any industry or establishment including an industry wise federation of two or more

collective bargaining agent unions and a federation at the national level of ten or more collective bargaining agent unions. In case where there is more than one trade union, through election procedure a Collective Bargaining Agent is to be elected, who in turn will negotiate with the employer regarding the matter of collective bargain. The important point to mention here is that, the IRA 2008 for the first time included the person employed in a supervisory capacity in the definition of Workmen, however, the definition does not include the persons employed mainly in managerial or administrative capacity.

IRA 2008 primarily deals with the following issues:

1. Formation of trade unions
2. Collective bargaining agent
3. Unfair labour practice on behalf of employers and workmen
4. Illegal strike and illegal lock-out
5. National Industrial Relation Commission
6. Workers participation and dispute resolution
7. Labour court and labour appellate tribunal.

Workmen can participate in the management in the following manner:

Shop Steward: shop steward acts as a link between the workmen and the management. The shop steward is to be nominated by the CBA if it exists, otherwise he is elected by the workmen of the shop, department or section. (Section 34 IRA 2008)

Workers participation in management: in every *factory* employing fifty or more persons there shall be elected or nominated workers' representatives who shall participate in the

meetings of the management committee. The management shall not take any decision in the following matters without the advice of workers' representatives in writing:

- Framing the service rules and policy about promotion
- Changing physical working conditions in the factory
- Recreation and welfare of workers
- Preparation of leave schedule, etc.

(Section 34 IRA 2008)

Joint Management Board: For every company which owns or manages a factory having fifty or more employees, there shall be a management board wherein the workers participation shall be thirty percent. The JWB shall deal with the following matters:

- Improvement in production, productivity and efficiency
- Provision of minimum facilities for workers employed through contractors
- Settlement through bilateral negotiations promoting vocational facilities for worker's children.

(Section 35 IRA 2008)

Inspector: An inspector appointed under section 10 of the Factories Act, 1934 (XXV of 1934), and such other persons, not being Conciliators appointed under this Act, as the Provincial Government may, by notification in the official Gazette appoint, shall be inspectors for ensuring compliance with the provisions of the Act within the local limits assigned to each.

(2) The inspector may:

- (a) at all reasonable hours enter on any premises and make such examination of any register and document relating to the provisions of section 34 and section 35 and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for discharging his duty;
- (b) call for such information from the management as he may deem necessary for the discharge of his functions and the management shall provide the information called for within such period as may be specified by him; and
- (c) make a report in writing to the Registrar having jurisdiction of any offence punishable under section 37.

(3) Every inspector shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code, 1860 (XLV of 1860).

(Section 36 IRA 2008)

AVENUES AND REMEDIES AVAILABLE FOR WORKMEN UNDER IRA 2008 FOR REDRESSAL OF GRIEVANCE

Negotiations: If the employer or CBA is of the view that an industrial dispute is likely to arise it shall communicate with the other party notice for negotiation. If however the negotiations are failed either party may send a notice to the other party for strike or lock out and at the same time also send a notice to the Conciliator for conciliation purposes.

Conciliation: The only job for the conciliator is to put in an effort so that the parties may arrive at a solution.

Arbitration: If the conciliation fails, the conciliator shall try to persuade the parties to approach the arbitrator for adjudication.

Strike and Lock Outs: In case no settlement is arrived and the parties do not intend to refer the matter for arbitration, either party may issue notice of strike or lock out. Thereafter the party raising a dispute may apply to the labour court to adjudicate the matter.

Labour Courts: It is the authority of the Provincial government to establish Labour Courts and also prescribe the territorial limits as well as the industry or classes of cases which the court can adjudicate. The presiding officer of a Labour Court shall be qualified to be a District Judge or additional district judge.

Functions of a Labour Court include adjudication and determination of industrial disputes, enquiry and adjudication into matters relating to the implementation of violation of settlement which is referred to it by the Provincial Government; to try offences under this Act and such other offences under any other law as decided by the Provincial Government; and exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Act or any other law.

The court for all intents and purposes follows the procedure of the Code of Criminal Procedure, 1898 (V of 1898) but is deemed to be a Civil Court and have the same powers vested in it under the Code of Civil Procedure, 1908 (Act V of 1908). A Labour Court shall, for the purpose of trying an offence under this Act or the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (W.P. Ordinance VI of 1968) have the same powers as are vested in the Court of a Magistrate of the first class specially

empowered under Section 30 of the Code of Criminal Procedure, 1898 (V of 1898).

Labour Appellate Tribunal: This is a new concept which was not available earlier. The Provincial Government may constitute as many Tribunals consisting of one member as it may consider necessary. The member of the Tribunal shall be a person who is or has been a Judge or an Additional Judge of a High Court, and shall be appointed on such terms and conditions as the Government may determine. It may, on appeal, confirm, set aside, vary or modify the award or decision given under this legislation. The Tribunal shall have authority to punish for contempt of its authority, or that of any Labour Court subject to its appellate jurisdiction, as if it were a High Court. Any person convicted and sentenced by the Tribunal to imprisonment for any period, or to pay a fine exceeding fifteen thousand rupees, may prefer an appeal to the High Court. If in an appeal preferred to it against the order of a Labour Court directing the reinstatement of a workman, the Tribunal makes an order staying the operation of the order of the Labour Court, the Tribunal shall decide such appeal within twenty days of its being preferred.

Critique

The right to organize and engage in collective bargaining is one of the core principles of the ILO. Pakistan is a signatory to C87 Freedom of Association and Protection of the Right to Organize 1948, which holds that the workers and employers shall have the right to join organizations of their own choice without previous authorization and restricts public authorities from any interference to restrict or impede this right nor is any administrative authority allowed to dissolve or suspend these organizations; and C98 Right to Organize and

Collective Bargaining 1949 which protects the rights of the workers from anti-union discrimination, providing security from dismissal for union activities or imposition of conditions relating to union activities for in respect of employment, etc.

Pakistan is in clear violation of the provisions laid down in the above mentioned Conventions. The IRA 2008 remained essentially restrictive. It excluded workers from some of the largest sectors i.e., agriculture, forestry, hunting, fishing, etc. It also excluded the informal sector, workers in urban industries and service sectors. It also denied the right to organize and the right to bargain collectively to the majority of workers, thereby discriminating against a large sector of labourers, a large part of which are women.

The definition of 'contractor' is omitted. The role of the contractor is vital in relation to women. Contractors/middle-men tend to be the biggest exploiters while working with women in the informal sector. Without recognition of their role and responsibilities in their dealings, adequate attention is not being given to women's priority issues. The definition also excludes multinational companies who come as contractors as opposed to investors, hiring workers on contractual basis.

Workers who join any form for collective bargaining or trade unions are discriminated against by the employers. Most employers ban any such organization in contravention of the law without any impunity. The majority of employers remove such 'trouble makers' immediately as an example to others. Anyone who does challenge them results in years spent in court while being out of work. With increasing

job insecurity, few workers are willing to risk their livelihood to partake in such activities. Further there have been cases recorded where the employers set up a mock trade union with their own loyal employees as members to put forward under inspection, etc. Women are sometimes coerced or pressured into playing a role at such occasions to 'keep face' of the organization.¹⁰

Due to reasons discussed above, women remain vulnerable even in this scenario. Even in establishments where such organizations exist, women face hurdles. The law involving the participation of women in management of the organization/collective bargaining and participating in trade union activities etc., by being gender neutral on the inclusion of women has resulted in indirect discrimination against women. Due to the socio-cultural set up, women are rarely involved in any of these activities. If they are, they are not involved in any decision making. In fact, there has only been only one female trade union leader in Pakistan! It is absolutely necessary for women not only to be part of employers' groups as well as labourers' groups, they also need to be part of reconciliation, negotiation and conflict resolution mechanisms. Trade unions and other groups all tend to not prioritize women's issues. Nor do they worry about issues such as equal pay, health services for women, etc. Affirmative action as per Article 25 of the Constitution needs to be applied in order to ensure women's participation by making their participation mandatory for registration. Policies should also be designed to encourage women only groups to advocate for their own rights.

10. Focus Group Discussion with Labourers, Piler.

The Labour Courts are infested with the same problems as with the rest of the courts in Pakistan, i.e. delays, expensive trials, lack of funds, lack of judges etc. Women are even less represented in Labour Courts than in mainstream courts. This is because labour is not considered a feminine issue. Therefore, through society's bias, women are discouraged from bringing labour issues to court. Further the environment is not conducive to women at all i.e., women rarely participate in Labour Courts as they do with other courts i.e. lack of female lawyers and judges in Labour Courts and labour related manner. Thereby, the environment in these courts is not used to women and thereby even more discouraging to women. Also women labourers, earning less than men and carrying all the other disadvantages of a female attempting to access courts risks losing her only sources of remuneration by being branded as a trouble maker, making her unhirable. As women not only earn less, they often cannot even afford to carry the case through to its finish which could take years. During this time, she will not be able to earn effectively, risking her attraction as an employee and losing her respect in society. Moreover, women are mostly involved in the informal sector which for a variety of reasons discussed throughout this publication, are deprived of proof of their identities as workers. Without encouragement from any side, they often become dispirited and are unwilling to take up the challenge. In fact, on reviewing case law in Pakistan, there have only been a handful of labour cases involving women.

Pakistan is in fact a signatory to C81 Labour Inspection Convention, 1947. This Convention, like others is clearly being violated under the current situation. The Convention includes within its functions to secure enforcement of legal

provisions relating to conditions of work and protection of workers while engaged in their work; to supply technical information and advice to employers and workers to effectively comply with legal provisions; to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions. Qualified, independent labour inspectors are to be appointed to be placed under central authorities which will be appointed by the State.

However, in Pakistan, labour inspections have been halted in Punjab. In other provinces, they are irregular and often corrupt and side with the employers, thereby not being able to provide an unbiased and proper evaluation. There are no women inspectors nor are any inspectors trained and specifically do not to understand gender specific needs.

Although the Government organized tri-partite conferences in order to get the views from trade unions, workers and workers federations, none of their recommendations were incorporated into the final draft of the IRA 2008.

It is also important to stress that while Pakistan has ratified the two fundamental Conventions relating to this subject, instruments relating to different professions such as industrial relations and agriculture and non-metropolitan territories should also be ratified in order to deal effectively with their specific needs. Relevant Conventions include:

- C141 Rural Workers' Organisations Convention, 1975
- C135 Workers' Representatives Convention, 1971
- C151 Labour Relations (Public Service) Convention, 1978
- C154 Collective Bargaining Convention, 1981

These Conventions lay out details specific to the profession. For e.g., wider definitions are provided in these Conventions such as the term rural workers¹¹ is defined as ‘any person engaged in agriculture, handicrafts or a related occupation in a rural area, whether as a wage earner or... as a self-employed person such as a tenant, sharecropper or small owner-occupier’.

Conventions such as C135 Workers’ Representatives Convention, 1971 establish the rights of the workers’ representatives including protection against any act including dismissal based on their status or activities as a representative or union membership or participation in union activities. Protection is also provided to public employees against anti-union discrimination under C151 Labour Relations (Public Service) Convention, 1978. Methods of collective bargaining are laid out in C154 Collective Bargaining Convention, 1981.

It is to be hoped that in the next IRA, the views of the trade unions, workers’ federation and workers will be taken into account, along with the principles enunciated in these Conventions and accordingly included in the final text, bringing Pakistan's standards up to date with international standards.

OCCUPATIONAL HEALTH AND SAFETY (OHS)

OHS means to assure so far as possible every working man and woman in the nation, safe and healthy working conditions and to preserve our human resources.

Occupational health should aim at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize, the adaptation of work to man and of each man to his job.¹²

- Chapter-III of Factories Act 1934
- Punjab Factories Rules 1978
- Sindh Factories Rules 1975
- West Pakistan Hazardous Occupations Rules 1963
- Mines Act 1923
- Provincial Employees Social Security (Occupational Diseases) Regulations 1967
- Workmen’s Compensation Act 1923 and Rules 1961
- Dock Labourers Act 1934

Chapter-III of Factories Act 1934

This Chapter deals with different aspects of Factories, detailing within its provisions safeguards which include cleanliness; effective disposal of wastes and effluents; ensuring and maintaining adequate ventilation by the circulation of fresh air, comfortable temperatures and adequate safety measures for workers when there is necessity for

11. C141 Rural Workers’ Organisations Convention, 1975.

12. Common definition of International Labor Organization (ILO) and the World Health Organization (WHO).

excessively high temperatures etc.; where the manufacturing process results in dust and fume which is likely to be injurious or offensive to the workers, effective measures shall be taken to prevent its accumulation in any work-room and its inhalation by workers; monitoring and ensuring effective methods of securing adequate ventilation and cooling of air through artificial humidification; to avoid overcrowding of work-room; sufficient and suitable light and including emergency lighting; regular supply of wholesome drinking water for workers; separate latrines and urinals for males and women which are accessible at all times and adequately lighted, ventilated and maintained in a clean and sanitary condition; provision of spittoons which shall be maintained in a clean and hygienic condition; compulsory vaccination of workers at the expense of occupier or manager of factory; women are specifically prohibited from being employed in processes exposing any person employed to a serious risk of bodily injury, poisoning or disease, nor are they allowed to clean, lubricate or adjust any part of machinery while it is in motion or allowed to work near cotton openers.

Punjab Factories Rules 1978

Factory safety regulations issued for the Province of Punjab under the authority of The Factories Act, 1934 of Pakistan. They provide detailed rules for: factory inspections; hygienic conditions (ventilation, temperature, dust and fumes, artificial humidification, overcrowding, lighting, drinking water, sanitary facilities); role of the welfare officer; precautions against fires; machine guarding; pressure plants; lifting equipment; carrying of loads; dangerous fumes; notification and investigation of accidents; working hours of workers in certain specified industries; paid holidays. In annex: samples of official forms; contents of first-aid boxes or cupboards.

Dock Labourers Act 1934

This Act had been enacted only to provide protection against accidents of workers employed in loading and unloading ships; further the Act only applicable to the works which is required for or is incidental to the loading or unloading of cargo of fuel into or from a ship and is done on board the ship or alongside it.

Mines Act 1923

Conservancy (Section 17): There shall be provided and maintained for every mine latrine and urinal accommodation of such kind and on such scale, and such supply of water fit for drinking, as may be prescribed.

Medical appliances (Section 18): At every mine in respect of which the Government may, by notification in the official Gazette, declare this section to apply, such supply of ambulances or stretchers, and of splints, bandages and other medical requirements, as may be prescribed, shall be kept ready at hand in a convenient place and in good and serviceable order.

CIWCE

The Centre for the Improvement of Working Conditions and Environment (CIWCE), also known as Markaz Bra-i-Bahtri Mahol-Wa-Halat Kar is a government controlled institution. It is part of the Directorate of Labour Welfare Punjab. It was established in 1988 in order to provide training, information and research facilities for promoting safety, health and better work environment in the industries and businesses.

Critique

Occupational safety and health should be one of the priority issues in labour. However, this is not the case in Pakistan. It has not ratified any of the

main Conventions related to this subject and regularly violates this labour right. It is vital that Pakistan ratify the relevant Conventions in order to provide adequate protection to its nationals.

This protection should extend to all branches of economic activity, including public service as per C155 Occupational Safety and Health Convention, 1981. The Convention also defines health in relation to work i.e., it is not merely the absence of disease or infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work.

It obligates the State to formulate and implement a national policy on the issue taking into account the main spheres of action including designing, testing, installing, use and maintenance of material elements of work, adaption of machinery, equipment, working time, training, communication and co-operation at the levels of the working group and the protection of workers and their representatives from disciplinary measures.

Employers are also obligated to ensure the workplaces, machinery and equipment, including chemical, physical and biological substances under their control, are without risk to health. This also includes provision to workers of adequate protective clothing and protective equipment as far as is reasonably practical. Workers are also obliged to fully co-operate with the employers.

The P155 Protocol of 2002 to the Occupational Safety and Health Convention, 1981 requires the recording and reviewing of all accidents, etc. This will determine the responsibility of the employers, to keep a record of accidents and to refrain from any retaliation against a worker who

has reported an accident. The Protocol notes the procedures for institution of an insurance complaint through notification. Through C187 Promotional Framework for Occupational Safety and Health Convention, 2006, the State is obliged to promulgate a national policy, a national system and a national programme. The first shall promote the right of workers' to safe and healthy work environment and basic principles such as assessing occupational risks or hazards; developing a national preventative safety and health culture, etc. The national system is to be established and maintained to progressively develop and periodically review a national system for occupational safety and health, in consultation with the most representative organizations of employers and workers. A national programme will be formulated to implement, monitor, evaluate and periodically review a national programme on occupational safety and health in consultation with the most representative organizations of employers and workers.

The current scheme of law clearly does not fulfill any of the above discussed criteria. From the outset, it is clear that despite the provisions that already exist in the Factories Act 1934 are violated in the majority of factories. Separate bathrooms are usually not allocated for men and women; cleanliness is not ensured, dust and fumes and other dangerous toxics are not protected against; over-crowding is always an issue; no clean drinking water is made available, etc. The current outdated Factories Act, established in 1934, requires only a very basic level of safety and health measures. There are no guidelines for minimum qualifications or employment of health and safety professionals in the industry. According to international labour standards set out in C155 Occupational Safety and Health Convention, 1981, safety procedures and checks on machinery

etc. are extremely extensive and missing from Pakistani law.

Legislation needs to be enacted to cover women in all sectors including formal and informal. This legislation on its own is not adequate. There are no specific provisions relating to women other than separate latrines. There are no specific measures be taken to extend special protection to women concerning reproductive hazards and sexual harassment. No mention is also made of the physical demands of heavy work for men and women, specifically pregnant women. There is a severe lack of space for women in factories. They do not have separate spaces, much less a latrine. There is no separate eating area, no sitting area, no kitchen area. No protective gear is provided to women such as goggles, masks, gloves, etc. No first aid facilities are provided- this is also relevant with reference to night work, where international standards demand the provision of medical care, especially at night. There is high exposure to pesticides, chemicals, etc. and diseases such as arthritis are related to different lines of work. Women are specifically vulnerable especially during pregnancy.

There is only certain provision in the Factories Act 1934, there should be a complete law on OHS according to modern needs. The system of check and balance is practically redundant and non-existent; males and females are treated similarly, no special provisions for female workers which could cover their special needs. At last, this law is only applicable to Factories not other establishments. Several important sectors, such as agriculture, construction and informal/self-employed are not even covered under any law.

With regard to dock labourers, our law does not provide the health, maintenance and welfare of dock labour, much less including a gender perspective. The Mines Act also clearly demonstrates that the mine workers have only these two provisions with regard to OHS which is in clear derogation of the OHS standards maintained by ILO and WHO.

The whole scheme of OHS needs to be revolutionized to make it up to date to modern standards and to include the specific needs of women, including women in the informal sector, home-based women workers, etc.

SOCIAL SECURITY

Provincial Employees Social Security Ordinance 1965

The mandate of this law is to provide a scheme of social security for providing the benefits to certain employees or their dependents in the event of sickness, maternity, employment, injury or death and for matters ancillary thereto.

Employee means any person employed, whether directly or through any other person for wages or otherwise, to do any skilled or unskilled, supervisory, clerical, manual or other work in, or in connection with, the affairs of an industry or establishment, under a contract of service or apprenticeship, whether written or oral, expressed or implied.

Domestic servant means any person working whole-time in connection with the work of any household for any consideration, whether in cash or in kind 7 (a).

Establishment means an organization, whether industrial, commercial, agricultural or otherwise.

BENEFITS UNDER SOCIAL SECURITY ORDINANCE 1965

- Sickness benefit (Section 35)
- Maternity benefit (Section 36)
- Death grant (Section 37)
- Medical care during sickness and maternity (Section 38)
- Medical care of dependents, etc. (Section 38-A)
- Injury benefits (Section 39)
- Disablement pension (Section 40)
- Disablement gratuity (Section 41)
- Survivor's Pension (Section 42)

55-A.MEDICAL TREATMENT OF DOMESTIC SERVANTS

Every employer of a domestic servant shall be liable to provide at his own cost to the domestic servant medical care which includes:

- (a) general practitioner care, including domiciliary visiting;
- (b) specialist care in hospitals for in-patients and out-patients and such specialist care as may be available outside hospitals;
- (c) essential pharmaceutical supplies as prescribed by a medical practitioner;
- (d) hospitalization where necessary, including cases of pregnancy and confinement; and
- (e) pre-natal confinement and post-natal care, either by medical practitioners or by qualified midwives.

Critique

This law has quite a comprehensive definition of employee and establishment; it includes almost all the areas of worker as well as organizational

sector, but said law only deals with the issue of social security, the employment contract, employment procedure, substantive rights with regard to employment/termination condition of workplace is beyond the scope of this law. Furthermore there is an overlapping situation with regard to Maternity issue, because simultaneous provisions are available in The Maternity Benefit Ordinance, 1958 and in this Ordinance as well.

The majority of workers are unaware of these benefits for e.g., with regards to domestic workers. Most of women workers remain unregistered and do not access these rights. The Government must take the responsibility to register all eligible workers to provide old-age pension, medical and disability coverage, etc. Institutions such as the EOBI have been existence for years and not more than 10 percent of the workforce has been registered and minimal efforts have been made to redress this situation. The fact that the changes made in the EOBI operations in the 2006 Finance Bill requiring compulsory registration only for establishments employing 20 or more workers will drastically curtail its applicability and will also deprive millions of workers from a fundamental right. Alternatively, the right should be given to self-registration of workers, specifically women, including home based women workers, domestic workers, agricultural workers, etc. This registration of a wider defined 'worker' will allow them to access a number of these benefits.

Social security is another fundamental area in labour rights that Pakistan fails to effectively provide as per international standards. It does not provide a minimum social security coverage to all of its labourers, nor has it chosen to commit to providing any. In order to provide effective financial support of its workers, this is a necessary element.

C102 Social Security (Minimum Standards) Convention, 1952 lays out the most basic social

security required and their procedures etc. These include medical care, including in case of pregnancy and confinement and their consequences and as well as pre-natal, confinement and post-natal care either by medical practitioners or by qualified midwives; sickness benefit; unemployment benefit; old age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; and survivors' benefit. Further benefit specific Conventions should also be signed as they outline methods and measures designed according to the specific needs of the benefit. These include C130 Medical Care and Sickness Benefits Convention, 1969, C121 Employment Injury Benefits Convention, 1964 and IC128 Invalidity, Old Age and Survivors' Benefits Convention, 1967.

MATERNITY PROTECTION

Article 37 (e) of the Constitution makes reference to maternity benefits for women in employment, there are two central enactments: one Federal and the other Provincial, both providing maternity benefits to women employed in certain occupations. The Maternity Benefit Ordinance, 1958 stipulates that upon the completion of four months' employment or qualifying period, a worker may have up to six weeks prenatal and postnatal leave during which she is paid a salary drawn on the basis of her last pay. The Ordinance is applicable to all industrial and commercial establishments employing women excluding the tribal areas. It also places restrictions on the dismissal of the woman during her maternity leave. Similarly, the Mines Maternity Benefit Act, 1941 is applicable to women employed in the mines in Pakistan.

Following are the laws applicable to the maternity issues:

- (a) West Pakistan Maternity Benefit Ordinance, 1958
- (b) West Pakistan Maternity Benefit Rules, 1961
- (c) Mines Maternity Benefit Act, 1941

West Pakistan Maternity Benefit Ordinance, 1958

The Ordinance is only applicable to Establishment i.e., industrial, commercial or otherwise; under the Ordinance there should not be any employment/ work during six week after the delivery. In order to achieve the benefits under the Ordinance an employee must have at least four months employment in the place of employment. The procedure is that a woman workman who is pregnant is required to give a notice to the employer and at the same time also nominates the representative. Immediately after the receiving of notice, the employer shall grant six weeks leave. The employer shall pay maternity benefit for twelve weeks the same can be paid at the option of workman that is to say;

- a. Six weeks before delivery and six weeks after delivery
- b. Six weeks before the delivery including day of delivery for remainder after proof of certificate
- c. After delivery for whole twelve weeks

Mines Maternity Benefit Act, 1941

An act to regulate the employment of women working in mines for certain period before or after childbirth and to provide maternity benefit to them.

Critique

One of the most important measures that needs to be secured for working women is maternity protection. While Pakistan does have domestic law relating to this, it is important to also show this commitment at an international level to ensure future protection as well as a commitment to ensure it reaches international labour standards.

The law is clearly lacking in any actual real substantive rights. It provides protection from dismissal for pregnancy and for provision of maternity benefit but it does talk of punishments

for employers who discriminate and who violate the legislation.

The reality is women are regularly discriminated against for the very purpose they can procreate. Married women are discriminated against 'in case' they get pregnant and leave thereby wasting the time and resources of the employer. In fact when working women get married, they are encouraged to leave or are often dismissed under other pretexts.

As mentioned earlier, contracts are actually used to discriminate against women specifically. As contractual workers, women are not expressly applicable for benefits under this legislation but are applicable under the Social Security Ordinance 1965. However, most of the time employers terminate the contract with the clear intention that women never become eligible for this benefit by completing the contract time period.

Often contracts specifically eliminate the option of benefits. Most often, there are no written contracts. Due to lack of information, knowledge and often even there is knowledge, due to pressure and desperation women opt not to contest the employers to avail this right.

The law is also silent on a number of other maternity related provisions. It refers specifically to the time of pregnancy and childbirth. It is silent on post-birth care required for children i.e., breast feeding, child care and nurturing including when a child is unwell, when a child has to be taken or brought home from school, etc. Maternity does not end at the birth of the child and when the mother has physically recuperated. These provisions need to be looked at as well.

C183 Maternity Protection Convention, 2000 is an updated Convention dealing with this right and it is vital that Pakistan, especially in view of its other international commitments towards women's rights and mainstreaming gender, should ratify it. It applies to all employed women, including those in atypical forms of dependent work. It obliges Members to ensure that pregnant or breast feeding mothers are not obliged to perform work which has been determined by a competent authority to be prejudicial to the health of the mother or child, or where there is a risk of doing so. It provides for maternity leave for not less than 14 weeks and includes negotiations in light of complications etc. It also provides for cash benefits to women who are absent from work or on maternity leave, which can ensure the woman can maintain herself and the child suitably, or social assistance benefits. She will also be provided medical benefits which include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

The Convention also makes it unlawful for an employer to terminate the employment of a woman during her pregnancy or maternity leave, except on unrelated grounds. Also measures should be adopted to ensure maternity does not constitute a source of discrimination. Further, a woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave. Breast feeding mothers will be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

Chapter 5

RECOMMENDATIONS

Having examined the background within which women's labour laws are to be examined and the whole scheme of international labour standards and domestic labour law, this section will put together some of the major recommendations that have come out of this report.

GENERAL

- The Government of Pakistan to sign and ratify the Conventions discussed in Chapter 3.
- The Government of Pakistan to introduce as enacting legislation introducing all its international obligations into domestic law.
- The Government of Pakistan to adopt the Gender Code as per Harassment at the Workplace Act 2010.

CONDITIONS OF EMPLOYMENT

- Expand the definition of 'worker' to include women in the informal sector including, amongst others, contract workers, piecemeal workers, home-based women workers, domestic workers, workers in the bangle industry, fisherwomen, farm and kiln woman.
- Definition of 'contractor' needs to be included with reference to his/her work and liability.
- Policies for home-based women workers, domestic workers etc. should be adopted.

- Register 'workers' as independent contractors/self employed/piecemeal workers of decent work.
- Written contracts should be given to all employees. In cases of illiteracy, an agent of the Trade Union should be available for signing of the contract.
- All establishments/industries etc., shall adopt the Gender Code as per Harassment at the Workplace Act 2010.
- The Harassment at the Workplace Act 2010 should be supported with rules and its provisions implemented in all workplaces.
- Important notices regarding working hours, transport facilities, gender code of ethics etc. should be displayed at all times in a public place.
- Night work for women should be reduced with exceptions only in extreme emergency cases whereupon transport shall be provided.
- Working hours should be defined by the law according to the standard of 'decent work'.
- The weekly holiday should be ensured.
- Medical leaves, casual leaves, maternity leaves etc., be ensured without loss of pay or loss of job.
- Workers' families should also be provided benefits e.g., educational assistance/facilities; health benefits etc.

- Trade Unions, Boards, Mediation Committees etc., should all have mandatory female members and participation.
- Women's collective/unions should be organized and formed to facilitate women labourers' issues.
- Women should be made mandatorily present in the Labour Courts as judges, attendants, clerks, etc.
- Legal aid and fee legal services should be provided for female labourers looking for redress.
- Labour inspection in all Provinces be continued with mandatory inclusion of women inspectors.

WAGES

- Equal pay for women for equal work shall be guaranteed with adequate penalization for violators.
- Employers/managers/supervisors ensure timely payments of wages with penal consequences.
- Overtime payments be made mandatory.
- Minimum wages should reflect the raise in inflation.
- The Minimum Wages Board should mandatorily include at least one woman worker.
- Minimum wages (daily wagers/work charge) should be fixed for the informal sector, contract workers, piecemeal workers, using different methodologies for e.g., a certain cost for number of pieces produced in one hour, etc.

OCCUPATIONAL HEALTH AND SAFETY

- Studies should be made in different industries to examine if and how different chemicals/toxins affect men and women and provide adequate safeguards accordingly.
- First Aid facilities should be made available at all establishments/industries etc. along with basic first aid training for all employees.
- Training and education on OSH specially for trade union leaders and worker activists.
- Basic safety measures from different fumes/toxins etc. be provided for e.g., goggles, gloves, masks, etc.
- The provisions of safe drinking water, separate latrines, clean environment etc., as per Factories Act 1934 should be expanded to all establishments and industries and up-dated to modern standards.
- To the above provision, child care centres, canteens, eating areas etc. should be added.
- Machineries etc. should be examined by their manufacturers to ensure their safety and smooth running before being used by any workers.
- Right to information for the safe use of machinery and chemicals (in the appropriate language).
- The entire scheme of health and safety be revised and updated in one consolidated form for workers in all sectors and fields.
- At least two percent of income from every industry should be spent to provide OSH protection.

- Warning signs in local language.
- Noise standards—this simple step may go a long way in reducing the toll of accidents and diseases in the work place.
- All workers should come under OSH protection instead of just registered workers etc., including informal sector, agricultural workers, home-based women workers, etc.

SOCIAL SECURITY

- Women workers in the informal sector shall have social security cards.
- All independent workers will be registered as ‘workers’ and thereby be able to access all social security benefits.
- Pension/old age benefit/ family benefit/ maternity benefit to be announced for women workers.

MATERNITY PROTECTION

- Maternity leave as per the law should be made mandatory for all establishments/industries

with penal consequences. The law should be implemented in its true spirit.

- Working hours, tasks at work should be revised for pregnant women e.g., no lifting of heavy items; no working with heavy or dangerous machinery; avoidance of all toxic chemicals, etc.
- Recognition that maternity does not end at childbirth and recovery of the mother. New provisions regarding responsibility to family shall be included allowing benefits under social security measures for families in health, education, etc.
- Other provisions to be included should be state run child care centres for working women; child care rooms in all establishments/ industries; special leave for working mothers to look after a sick child; special leave to take and bring the child from school; special provisions/benefits for medical illnesses of children, family members and dependents, etc.

Chapter 6

CONCLUSION

This report has brought together different perspectives of labour law in order to provide a holistic look at the law, its access and any gaps and lacuna, specifically with regard to international standards. The result exhibits that the labour law of Pakistan is severely out-dated and lacking in any rights based approach. It does not cover the most basic human rights, much less focus on gender issues. It reveals laws that date back to before the emergence of the state of Pakistan and are redundant.

The Government of Pakistan has committed to a review of the law and a consolidation of all existing laws. This is a huge task which cannot be taken lightly. Involvement of workers, labourers, trade unions, workers federation and especially the involvement of women from both formal and informal sectors is absolutely necessary in order to make labour laws truly inclusive with complete protection and coverage for all workers and labourers in the country.



Pakistan Institute of Labour Education and Research (PILER)

Pakistan Institute of Labour Education and Research (PILER), established in 1982, is a not-for-profit, citizen sector organization engaged in research, education, policy advocacy and networking in the areas of labour rights, social justice, human development, regional solidarity, and peace.

PILER, as a resource centre, facilitates the labour movement in building a wider social consensus on core labour rights through advocacy and linkages with local, national, regional, and global partners. PILER considers militarization, state conflicts, and social intolerance, as major barriers to realizing labour rights, and engages with peace movements at national, regional, and global levels. PILER is active in a number of peace initiatives at the regional level.

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