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A Historical Background of Labour Laws
and Labour Unions**

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Analyzing the Labour Issues in Pakistan: a historical background of Labour Laws and Labour Unions

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ABSTRACT

The study explores the historical development of labour laws in Pakistan during different military and democratic governments. The paper discusses the constitutional framework, international obligations and ILO conventions with regard to country's labour laws. However, the substantial focus is on the representation and problems faced by the labour unions, implementation of labour laws, Occupational Health and Safety of Labourers at workplace and low women participation in trade unions. The study reveals that the country has an exhaustive structure of labour legislation but practically, the labour laws are exploitive and discriminatory. Registration of Trans-Provincial establishments is unclear and constitutional right of formation of trade union has been suspended in the provinces. Serious Occupational health and safety issues at workplaces have been witnessed resulting in loss of several precious lives. Women membership is extremely low in trade unions mainly owing to their distrust on union leaders and fear of losing job, and they receive fewer benefits as compared to their male counterparts. The labour laws exclude the agricultural sector- the biggest employment sector in the country- from its scope.

Keywords: Labour law in Pakistan; Labour Unions in Pakistan; Historical background

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SUMMARY: 1. Introduction. – 2. Emergence of labour laws and unionism in indo-pak sub-continent. – 3. Workers organizations and labour laws in Pakistan. – 4. Dichotomy between theory and implementation of the constitution, labour laws and international covenants. – 5. Conclusion.

1. Introduction

Pakistan is one of the most populated countries in the world having over 191 million (1) populations with an estimated labour force of more than 61 million (2). The labour force of the country consists of individuals over the age of ten years. According to the statistical data, the total employed labour force is over 57 million (3); however, around almost 4 million people are unemployed (4). A huge number of the population, roughly 116 million, lives in the rural areas of Pakistan. The agricultural sector is the largest sector employing 42 percent of the labour force, followed by service sector with 33 percent, and the manufacturing and the industrial sector with 22 percent (5).

The labour union movement in the world began soon after the French Revolution when mining industry labourers first formed a labour association. This brought a revolution and a sense of collectivism because there was no legal status for labour associations (6). Subsequent to this initiative a rapid growth had been observed. This labour movement was not a worldwide movement; rather it began in Europe and in the Anglo-Saxon countries, such as the British colonies Australia, Canada and South Africa (7). Many Asian and African countries were ignored by the civilized world in this socialist movement of labour associations. Thus the Combination Act of 1828 was

(1) Pakistan Economic Survey 2014-2015, p.2

(2) Pakistan Bureau of Statistics, Labour Force Survey 2014-15, p.24

(3) *Ibid*, p. 26

(4) *Ibid*, p. 36

(5) *Ibid*, p. 26

(6) R. Bawa - W. Hashmi, *Labour Unionization in Pakistan- History and Trends. Pakistaniaat, A Journal of Pakistani Studies*, 2010, vol. 2, p. 1 ss.

(7) A. Losovsky, *The World's Trade Union Movement, The Trade Union Educational League*, Chicago, USA 1924, p. 9 ss.

passed by the British Government and these associations were given legal status as labour unions (8).

2. Emergence of labour laws and unionism in indo-pak sub-continent

The labour laws and trade unionism in Indo-Pak sub-continent has a deeply established history. The British ruled the Indian Sub-continent including Pakistan for nearly 100 years (1857-1947) (9). The East India Company took control over India and earned profits by utilizing the resources of this region at lower prices and selling these to the United Kingdom and other European countries at higher prices (10). The industrial revolution commenced when the British Government initiated the industrialization process in sub-continent with the construction of new Cotton mill in Calcutta in 1813 and construction of railway lines in 1853. The British Crown formally took control of Indian Sub-continent in 1857 and banned all Indian competitors of textile goods and products with strict legislation (11). The labour was subjected to inhumane working conditions that led to protests and strikes.

After the usurpation of the Indian sub-continent, a number of influential laws were introduced to further consolidate the control over the resources of Sub-continent. Industrial relations legislation was also introduced with its primary objective to provide England a “*Protected and bonded labour market*” (12). The British Government introduced two highly significant

(8) See Supra note 6 at p.1

(9) C. Kaul, *From Empire to Independence: The British Raj in India (1857-1947)*, online: http://www.bbc.co.uk/history/british/modern/independence1947_01.shtml

(10) I. Ahmed, *Labour and Employment Law. A Profile on Pakistan*, 2010, online: http://www.wageindicator.org/main/documents/Labour_and_Employment_Law-A_Profile_on_Pakistan.pdf.

(11) *Id.*, p.1; See also, Furqan Mohammed, Protecting Pakistani Labourers Post-Eighteenth Amendment: Recognizing Rights after the Devolution of Power, *Loyola University Chicago International Law Review*, USA, 2012,p.269; Osama Siddique, *Pakistan's Experience with Formal Law*, Cambridge Studies in Law and Society, Cambridge University Press, 2013,p.53; see also Natacha Wexels-Riser, *National Labour Profile: Islamic Republic of Pakistan*, 2004, online: <http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158916/lang--en/index.htm> (at p.1).

(12) A. Amjad, *Labour Legislation and Trade unions in India and Pakistan*, Oxford University Press, Karachi, Pakistan, 2001, p.5 (The utmost object of British government was not to find new markets for business and trade rather, their primary object was to continuous supply of raw material to their own industry and Europe to earn maximum

legislations, “Employers and Workmen Dispute Act 1860” (which only gave the right of punishment to the employer in the case of a breach of contract without any provision for the protection of employee’s rights) and “Indian Factories Act 1881” (this was implemented on the premise of a shift from skilled workers to mechanized labour and limited the number of hours a child labour between the age of 7 to 12 years could work to no more than 9 hours a day). The legislations seemed to shield the British Industry from Indian Competitors and safeguard the British investors in the area (13). During the early days, the trade unions were formed as workers aid organization without considering the working conditions of the employees. These groups were organized and sensitized mainly to have better-working conditions without representing workers which created a sense of deprivation amongst workers.

Before World War I (WWI), the British government forcefully and violently repressed the confrontation, labour agitation and collective labour actions in India (14). The economic disturbance and political unrest in Indo-Pak sub-continent during WWI gave momentum to the labour agitation and the struggle for better-working conditions and increase in wages. Particularly, the creation of the International Labour Organization (ILO) in 1919 imparted acknowledgment to the labour movements around the globe (15). Thus, the labour unions endeavored against the legal hindrances found in Section 120 of (Indian) Penal Code 1860 (16) and Section 27 of (Indian) Contract Act 1872 (17). This movement gave impetus in formation of labour unions in Sub-continent in Port Trust, Railway, and Post office. Resultantly, the British Government introduced Indian Trade Union Act in 1926 and Trade Disputes Act 1929 to legitimize and control the labour unions (18).

profit); See also O. Siddique, *Pakistan's Experience with Formal Law, Cambridge Studies in Law and Society*, Cambridge University Press, 2013, p. 46 ss.

(13) Furqan M., *Protecting Pakistani Labourers Post-Eighteenth Amendment: Recognizing Rights after the Devolution of Power*, *Loyola University Chicago International Law Review*, USA, 2012., p. 270 ss.

(14) *Ibid.*, p.270

(15) International Labour Organizations (ILO) is only a tripartite United Nations agency, which was established in 1919, the ILO brings governments, employers and workers representatives together of 186 UN member states, to develop labour standards, policies and formulate programmes which promote decent work for all people regardless their gender, creed, race, and ethnicity. See also International Labour Office, *Decent Work, Report of the International Labour Conference 87th Session 1*, ILO, Geneva, 1999.

(16) See Indian Penal Code 1860 § 20

(17) See Indian Contract Act 1872 § 27

(18) Iftikhar supra note 10. p. 2

The Indian Trade Union Act of 1926 gave rights to the workers for formation of unions, registration of trade unions and guaranteed union representation (19). Additionally, the Trade Disputes Act provided the right for arbitration between employers and employees to settle and prevent disputes in future. The disputes could also be forwarded to the court for further inquiry or reconciliation. Later on, other legislations were introduced for the labour welfare, which include but are not limited to The Factories Act, 1934, Payment of Wages Act, 1936, Mines Act, 1923, Workmen Compensation Act, 1923 and Dock Labour Act, 1934 (20). After the Second World War (WWII), the Essential Services Maintenance Ordinance, 1941 and the Industrial Employment Act, 1946 were promulgated (21). The Industrial Employment Act described the process of recruitment, termination, punitive action and conditions for work and welfare of the employees (22). Moreover, The Industrial Disputes Act, 1947 was promulgated for the permanent solution of disputes under specific rules and regulations.

On the political arena, The Indian Nationalist Leaders started to join hands with the working class because of agitations in late 19th century. Many sporadic protests and strikes occurred especially by the workers from different industries in Ahmadabad, Bombay, Calcutta and Madras. They were mostly irregular, spontaneous and un-organized which were primarily based on economic grievances (23). But the movement gained momentum after the Indian Nationalist Leaders joined the All India Trade Union Congress particularly after the boycott of Whitley Commission (24), which was

(19) Z. Hisam, *Struggle without end: Industrial Relations and Labour Rights in Pakistan*, Centre for Democratic Governance, The Network for Consumer Protection, Islamabad, 2004, p. 12 ss.

(20) *Ibid*, p. 12. Many laws were promulgated but these laws were found progressive and helpful because they allowed labourers to be a part of trade unions in all sectors except the armed forces and police.

(21) See National Trade Union Federation of Pakistan's *report on History Labour movement in South Asia*, 2015, online: <<http://pgil.pk/wp-content/uploads/2015/12/History-Of-Labour-In-South-Asia.pdf>> at p.2

(22) C. Candland, *The Politics of Labour in a Global Age: Continuity and Change in Late-industrializing and Post-socialist Economics.*, Chapter 3. *The cost of Incorporation: Labour Institutions Industrial Restructuring .and new Trade Union Strategies in India and Pakistan*, Oxford University Press Inc., New York, 2001, p.70 ss.

(23) M. Aggrawal, *Industrial Policy of British in India*, online: <<http://www.historydiscussion.net/british-india/useful-notes-on-the-industrial-policy-of-british-in-india/646>>.

(24) Whitley Commission was instituted as a mean of remedy for industrial unrest and also used for wage negotiations between the employer and employee by the Great

constituted by the British-Indian Government to oversee the labour conditions in 1929 in India.

3. Workers organizations and labour laws in Pakistan

Pakistan gained independence from Britain and separated itself from India in 1947 (25). Since then, the country has passed through a number of martial laws and democratic regimes (26). The leaders determined the labour laws throughout their term of office which resulted variation in the labour laws from government to government (27). However, most of the labour legislations are based on the inherited legal framework of Britain. Many of the legislations were derived from colonial acts and amendments, which were enacted from 1850 to 1947 and still exist as a part of the country's labour legislation (28). The newly independent country only inherited 9% of the total industry of India after partition and very few of these industries were located in urban areas with fewer numbers of employees as compared to India (29). Due to a smaller industrial base, a limited number of workers was affiliated with industry as well as with the trade unions and workers movement. The table below gives a glimpse of the number of workers registered under the Factory Act in some imperative industries in 1949 (30).

Britain in India; see also J.H. Whitley, *The Report of the Royal Commission on Labour in India*, 1931.

(25) In 1947, Pakistan consisted of East Pakistan and West Pakistan; East Pakistan became a separate country in 1971 with the name Bangladesh and West Pakistan is the present day Pakistan. See India-Pakistan Trade Unit, Bangladesh for a concise detail of labour law in Pakistan and Bangladesh, online: <http://www.iptu.co.uk/content/bangladesh-employment_1aw..asp>

(26) See discussion infra part III. B

(27) Pakistan has very poor infrastructure of check and balance, therefore, Pakistani leaders had full authority given by the Parliament to formulate legislations and amendments according to their requirement; See Furqan Mohammed, Exploring. Power. Politics and Constitutional Subversions in Pakistan: A Political and Constitutional Assessment of Instability in Pakistan, *Loyola International Law Review*, 2010.

(28) Zeenat supra note 19 at p.13

(29) Furqan supra note 27

(30) National Trade Union Federation Pakistan, online: <<http://ntufpak.org/links.html>>

Table 1: Distribution of Unionized Workers in 1949

Category of Industry	Numbers of worker
Factories workers	184,752
Mines Workers	9,413
Railway Workers	135,000
Dock Workers	15,000
Shop Workers	16,000
Workers on Ships	125,000
Total Workers	482,165

Source: National Trade Union Federation of Pakistan. www.ntufpak.org

It is worth mentioning, that the population of Pakistan was roughly 75 million at the time of independence and only 0.63% of the population's workers were engaged in industries (31). The above table depicts the weak economy of the country with a poor industrial infrastructure.

In 1948, there were merely 115,000 union members, in which Pakistan Trade Union Federation (PTUF) had 20,000 members in 38 associated unions primarily from the railway industry whereas, in 1949, All Pakistan Federation of Labour (APFOL) had 95,000 members from 49 unions in multiple industries, particularly ports (32).

A. Constitutional framework and labour laws of Pakistan

The Constitution of Pakistan is comprised of various provisions for the social and economic well-being of citizens and the encouragement of social justice. Fundamental rights, such as security of livelihood, prohibition of bonded labour, eradication of slavery, and the right of association, have been incorporated in the constitution. The state has the basic responsibility not to make any laws or implement such laws, which are inconsistent with the fundamental rights. Thus the constitution affirms the convinced progress of labour legislation, which is conducive to change and to benefit the working class.

(31) After the independence of Pakistan from India, the biggest question was about the Pakistan's economic condition because India got most of the industry and resources of the country, online: http://iba.edu.pk/News/speechesarticles_drishrat/Indo_Pak_economies_compared.pdf; see also Pakistan Labour Profile, 2014, Danish Trade Union Council for International Development Cooperation, Ulandssekretariatet, LO/FTF Council, Denmark.

(32) *Ibid.* p, 24-25

The Article 141 and 142 of the Constitution of Pakistan vest power with the National and Provincial Assemblies to formulate any law on the matters incorporated in the Concurrent List (33). The provisions of legislation with regard to labour as provided in the Constitution of 1973 were reasonably similar to the provisions drafted in the erstwhile Constitutions of 1956 and 1962 of Pakistan. The majority of rights and privileges concerning the working class of the country under the labour laws are protected in the Part-II of the Constitution, which requires being read together with Part-I.

Table 2 Relevant Articles & Labour Laws in the Constitution of Pakistan

Serial No	Article No	Description
	Article 4	<i>describes that every citizen has the absolute right to enjoy, life, property, reputation with the protection and to be dealt with unforfeitable law</i>
	Article 9	<i>specify that nobody shall be striped of life or liberty which is preserve in accordance with law</i>
	Article 11	<i>prohibitall kinds of human trafficking, forced labour, slavery, and child labour at hazardous places</i>
	Article 17	<i>encompasses the freedom of association or unionized provided to the citizens, considering the reasonable restrictions obligatory in the absolute interest of public writ and morality</i>
	Article 18	<i>stipulates that all the citizens have right acquired any lawful possession or occupation and to carry out any legitimate business or trade</i>
	Article 25	<i>describes that all citizens have equal rights before the law and forbid any discrimination on the basis of gender, creed, and sex</i>
	Article 37(c)	<i>allows the citizens of Pakistan to receive social security by using obligatory social insurance means</i>
	Article 37(d)	<i>involve the country should take care of fundamental necessitates of life such as (food, clothing, housing, education, medical relief) for the citizens who</i>

(33) The Labour Laws falls within the ambit of Concurrent Legislative List, which was amended and adopted in 1973. The Concurrent Legislative List comprised of 47 entries, the entries discuss labour concerns are: a) No. 26 – welfare of labour, health, safety and security considerations of labour, provident fund, employers' liability & responsibility, worker's compensation, including illogicality of pension and pension after retirement and health insurance; b) no. 27 – trade unions, industrial and labour conflicts and settlement mechanism); c) No.28–the formation and execution of exchange of labourers, establishment of employment info agencies, and training and development institutions; d) No.30.–regularizing the labour safety working in mines, factories and oil industries; e) No.31.–joblessness insurance; and f) no.45.– queries and statistical data on any matter which is given in the list.

are temporarily or permanently incapable of earning the sustenance because of sickness, feebleness or joblessness

Article 37(e) *Specifies to shelter the humane working conditions for workers, and assuring not to employ women or children in work, which is not suitable for their sex or age.*

Source: *The Constitution of Pakistan, 1973.* available at <http://www.pakistani.org/pakistan/constitution/> (Accessed on 25-06-2016)

Table No. 2 describes the relevant articles of fundamental rights of the people of Pakistan and also their right to form a union or association and necessary laws to cover the working conditions. The articles describe clearly that all the working classes or labourers should be provided these fundamental rights enumerated in the constitution of Pakistan. The detail of these constitutional fundamental rights will help to analyze the labour condition in the country during different regimes.

B. Formation of labour laws by the former governments

The first military government of General Ayub Khan came into existence in October 1958 (34). The government was acclaimed for the economic growth, which naturally occurred on account of efforts of the working class (35). The Government replaced the Industrial Disputes Act (IDA), 1947 with the Industrial Disputes Ordinance (IDO), 1959 (36) which included sectors such as textile and sugar in the description of public utility sectors despite the fact that these utilities had no direct connection with the public utilities. The change in the law prohibited protests and strikes in any industry from both public and private sector. In order to carry out such activities, trade unions need to have a compulsory arbitration process, which

(34) Y. Niaz Mohiuddin, *Pakistan: A Global Studies Handbook*, ABC-CLIO, 2007. General Ayub Khan emerged as a leader as a result of the military coup; he expelled the incapable politicians who were in power. Soon after declaring martial law in the country he announced himself the head of state, p.164.; See also Furqan M., *Protecting Pakistani Labourers Post-Eighteenth Amendment: Recognizing Rights after the Devolution of Power*, Loyola University Chicago International Law Review, USA, 2012, p.272

(35) *Id.* ("The Ayub's era is often known as the golden era of economic development in Pakistan. But his policies also led to sharp inter-regional and interpersonal inequities in income distribution and in the concentration of wealth and power..").

(36) The Industrial Disputes Ordinance (IDO) 1959, mostly followed the structural formation of Industrial Disputes Act (IDA) 1947, but drastically changed the underlying policies which curtailed the right of association, forming of trade unions and collective bargaining.

was discussed in the IDA 1947 (37). The IDO 1959 authorized both parties to request for arbitration proceedings, whereas prior to IDA 1947 only the aggrieved party was allowed to decide whether to go for consultation and arbitration. The Industrial Disputes Ordinance 1959 allowed only employers to file an application for arbitration of the disputes to industrial courts, which are against the fundamental rights and unfair to the trade unions. On the contrary, the IDA 1947 gave right to file an application for arbitration in district courts, which were apparently more justified for decision-making (38). The government further promulgated the Trade Unions Act 1968 wherein the management to prohibit any trade union representative from any activity against the establishment was authorized. The revised Industrial Disputes Act (IDA) 1968 permitted Federal or Provincial government to prohibit strikes in any industry by declaring that strike against “*public interest*” (39).

The new military government of General Yahya Khan amended labour laws significantly and acknowledged that the workers had not been treated fairly during the previous administration (40). Thus, he passed the Industrial Relations Ordinance 1969. The main characteristic of this ordinance was that following rights were restored: 1) the right of unionization for employers and employees; 2) the right to go on strike and walkout in case of failure in negotiations (41); 3) the initiation of a voluntary system of adjudication and; 4) to provide maximum shelter to the trade union leader from any adverse action

(37) Shaheed M., *The Labour Movement in Pakistan: Organization and Leadership in Karachi in the 1970's.*, Oxford Univ. Press 2007, General Ayub Khan did not want to contravene with the ILO therefore, he listed these sectors as public utilities to ban the strikes which made the sector nearly impossible to strike, p. 252.

(38) *Ibid*, In IDO 1947, the industrial courts were given authority to be tripartite with the chairman for advice two members as representatives from employers and employee, p. 252.

(39) Furqan Mohammed, “The sole purpose of the addition of this clause was to prohibit the trade unions from any strikes while considering the industry as “*public interest*”, p. 273.

(40) General Yahya Khan announced the Labour Policy 1968 in which he said: The government accepts that the workers have not been treated considerably in the past. Regardless, of rapid development, growing prosperity, and increased production, the workers have not been given their right to uplift their life standard even they remained static, rather, in many cases, their livelihood has been observed deteriorated.

(41) The government continued to hold the power to forbid collides within the eight public sector offices such as ports, fire-fighting services, security services, hospitals, postal and telephone services, railways and airways, and sanitation including the generation and supply of electricity, gas, and water available to the people.

during the registration of trade unions and the bargaining process (42). The labour appellate courts were established to handle and settle the appeals from industrial courts in a speedy manner and the clause of "public interest" was also omitted (43).

The Democratic Government of Zulfikar Ali Bhutto came into power in 1971 (44). He admitted that he came into power as a result of the unconditional support from students, workers and the unemployed (45). He announced a comprehensive Labour Policy in 1972 with an aim to address the following issues:

- i) An increase in workers wage,
- ii) An increase in production
- iii) To encourage the formation of the trade union for the betterment of the workers (46).

The most significant and notable features of this policy on labour rights encompass the following three points:

- (1) Any appointment or termination of the workers must be in writing and handed over to the worker;
- (2) Establishment of labour courts with condition to decide any pending disputes or matters within 30 days;

(42) The clause "public interest" was added by General Ayub Khan in the Industrial Disputes Ordinance (IDO) 1968 and give authority to the government to stop strikes in any sector it falls within the "public interest" sector.

(43) The disputes between labours and industries are initially filed in the industrial courts. The High Courts of Pakistan are designated to act as Labour Appellate courts and currently Pakistan have five High Courts, one from each province and one from the Federal Capital.

(44) Zulfikar Ali Bhutto's presidency led geographical changes in Pakistan's modern history that gave birth to East Pakistan which later becomes Bangladesh and West Pakistan became Pakistan. American Institute of Pakistan Studies, *Contemporary Problems of Pakistan* 176 (J. Henry Korson ed., Westview Press 1993) (After the first Democratic elections, the Awami League, a Political Party from East Pakistan won the majority of seats and civil war emerge on the issue of constituting government in National Assembly between East and West Pakistan)

(45) Zulfikar Ali Bhutto said in his first speech after entering in the presidential office by stating:

"Our electoral success was made possible because of the toiling masses, particularly peasants and labourers, co-operated with the Pakistan People's Party. We cannot forget their kindness". See also C. Candland, *The Politics of Labour in a Global Age: Continuity and Change in Late-industrializing and Post-socialist Economics. Chapter 3, The cost of Incorporation: Labour Institutions Industrial Restructuring .and new Trade Union Strategies in India and Pakistan*, Oxford University Press Inc., New York, 2001, p. 41.

(46) S. Ghayur, *Evolution of the Industrial Relations System in Pakistan*, Cornell University ILR School, DigitalCommons@ILR, 2009, p. 13.

(3) The Establishment of landmark National Industrial Relation Commission (NIRC), to encourage legitimate trade unionism and to deal with the unfair labour practices (47).

General Muhammad Zia-ul-Haq suspended the Constitution of Pakistan and declared martial law as a result of nationwide allegations of election rigging and government's corruption (48). Inspections of the factories under Factories Act 1934 were discontinued, workers rights were also curtailed and he completely banned strikes and protests. During his eleven years of government, he suppressed the unions and imprisoned union leaders from both public and private sectors and showed favoritism towards employers (49).

During the fourth Military Government of General Pervaiz Musharraf, the ban and restrictions on labour unions imposed by General Muhammad Zia ul-Haq were lifted (50). It is inevitable to mention that four democratic governments assumed the office but had not introduced any significant labour

(47) The National Industrial Relation Commission (NIRC) is a federal commission that has its branches in all the provinces as well. Likewise, the National Labour Relations Board (NLRB) is working in the U.S. in both formations and function.

(48) Z. Yaseen - A. Ahmed - T. Mahmood, *Hypothetical Political System of Martial Laws: A case of General Zia ul Haq*, *Journal of Punjab University Historical Society*, Lahore, Pakistan, 2016, p. 122.

(49) Christopher *supra* note 34, p. 46-47 (talk about the decisions made by General Zia-ul-Haq's martial law) and Pakistan Institute of Labour Education and Research, *Pakistan: PILER Welcomes Amendment in Services Tribunal Act and Repeal of Removal from Services Order*, South Asia Citizens Website, online: <<http://www.sacw.net/article1369.html>> [hereinafter PILER, *Amendments*] (talking about several laws passed by General Zia-ul-Haq's regime were replaced recently). General Zia proposed the labour class which made his impressions absolutely pro-employer. He said: "It is not for the employers to provide *roti* (bread), *kapda* (clothes) *aur* (and) *makaan* (homes). It was for God Almighty who is the provider of livelihood to his people. Trust in God and He will bestow upon you an abundance of good things in life".

(50) In late 1988, Benazir. Bhutto, the daughter of Zulfikar. Ali Bhutto abolished many sanctions which had been imposed by General Muhammad Zia ul Haq on Trade Unions. Christopher Candland, *supra* note 34, p.47. However, none of the governments before General Pervaiz Musharraf gained control in mid of 1999 have shown interest to legislate any detailed labour policy; *Ibid.* at p.47.-48 ("Since 1980, the government of Pakistan has been unable to formulate a labour policy, despite numerous promises by each of the several governments in power . . ."). It happened only because of the unstableness of previous democratic governments; See also I. Malik, *The History of Pakistan*, Greenwood Press, 2008, p.175 ("Benazir Bhutto and Nawaz Sharif were both chosen twice for office but would be removed before they finished a term; there were also three interim governments in place during this time period").

laws since the end of military government of General Muhammad Zia-ul-Haq (51).

General Musharraf's government amended the Industrial Relations Ordinance IRO 1969 with Industrial Relations Ordinance 2002. The amended IRO 2002 authorized the government to omit the particular classes of workers who had protection in the former IRO 1969 under the "*public interest*" clause (52). It also excluded the imprisonment clause for employers who conduct labour violations in IRO 1969 into only fines. Additionally, if an employee was wrongfully terminated and later won the case in court; the worker was only entitled to be paid lost wages. The employer was not legally bound to reinstate the wrongfully terminated workers. This new clause encouraged the employers to sack the workers with limited consequences (53). The Labour Appellate Courts were also abolished through IRO 2002 and all appeals were to be made to the High Courts of Pakistan. The section 3(d) of Industrial Relations Ordinance, 2002 states that all collective bargaining units must be affiliated with nationwide federations already registered with the National Industrial Relation Commission (NIRC). This affiliation with nationwide federations must be made within two months of award of the status of Collective Bargaining Agent (CBA) (54). Removal from Services Ordinance, 2000 was also promulgated which empowered the government to sack any employee without any sound reason (55).

(51) The Second Democratic Government of Benazir Bhutto assumed power on 2nd December, 1988, but her government was dissolved on 6th August, 1990. The third democratic government was made by Nawaz Sharif in the same year, but he resigned from the Prime Minister's office on 18th July 1993. The third democratic government formed by Benazir Bhutto in the same year on 19th October, 1993 but then the President used his constitutional power of Article 58 2(B) to dissolve the National Assembly on 29th January, 1997. Fourth Democratic Government was formed by Nawaz Sharif in the same year on 17th February, 1997 but he was ousted from the office as a result of military coup d'état by General Pervez Musharraf on 12th October, 1999, online: <[https://en.wikipedia.org/wiki/Timeline_of_Pakistani_history_\(1947%E2%80%93present\)#1988](https://en.wikipedia.org/wiki/Timeline_of_Pakistani_history_(1947%E2%80%93present)#1988)>.

52 Industrial Relations Ordinance, 2002, online: <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/62636/65260/EO2PAK01.htm>>; see also PILER, Denial and Discrimination, 2007, initially, the IRO 1969 was adopted by General Ayub Khan, it was also having the similar provision.p.8.

53 *Ibid*,p.18

54 Sabur supra note 46, p.19

55 A. Shadab, *President Signs Services Tribunal Amendment Bill*, *The Critical BLOG*, 5th March. 2010, <http://criticalppp.com/archives/6755>. Comparing with the Services Tribunal Act of 1973, workers were only allowed to file the cases to the Federal Services Tribunals and the Pakistani High Courts have jurisdiction to entertain appeals; See also *Removal from Services Ordinance 2000*, (Published in *Daily. Times Newspaper* on 27th January.2010), online:

The next democratic government of Asif Ali Zardari repealed Industrial Relations Ordinance 2002 with newly promulgated Industrial Relation Act (IRA) 2008. The main features of newly promulgated act were the re-establishment of Labour Appellate Courts which permitted the aggrieved parties a speedy hearing, and the abolishment of the “Public Interest” clause (56). Most notably, the IRA 2008 omitted the Section 3(d) of the previous Industrial Relations Ordinance, 2002 in which all Collective Bargaining Agents (CBAs) were required to be affiliated with a National Federation registered with the newly established National Industrial Relations Commission (NIRC). IRA 2008 remained in effect until the Parliament passed the remarkable Eighteenth Amendment in April 2010.

The approval of Eighteenth amendment abolished the Concurrent Legislative List (CLL) (57). The rationale behind the approval of Eighteenth Amendment was to give more autonomy to the provinces. The amendment made the Federal Government incapable of promulgating legislations which affect provinces.

C. Provincial response on eighteenth constitutional amendment

The Eighteenth Constitutional Amendment devolved the labour and 47 other subjects of Concurrent Legislative List (CLL) in April 2010 to the provinces. This amendment is considered to be a historic political development which led to the decentralization of power and autonomy to the

<http://www.dailytimes.com.pk/default.asp?page=2010%5COI%5C27_%5Cstory_27-1-2010_pg7_1>.

(56) IRO 2002, § 1(4) (“Provided that the Federal Government may suspend, in the public interest, by an order published in the official Gazette, the application of this Ordinance to any establishment or industry for a period specified in the order not exceeding six months at a time.”) replaced with IRA, section.1(4) (2008), online: <<http://www.ilo.org/dyn/travail/docs/51/Industrial%20Relations%20Act.pdf>> (regarding excluding the public interest article).

(57) IRA 2008, § 87(3) (a stipulated condition in the IRA of 2008 ultimately annulled on 30th April, 2010); See also A. Mukhtar, *Centre's Move to Enact Labour Laws Seen as Trespass*, *Dawn Newspaper*, 30th May, 2011, <http://www.dawn.com/2011/05/30/centers-move-to-enact-parallel-labour-laws-seen-as-trespass.html> (The IRA, 2008, accordance to the Section 87(3), automatically abrogated on 30th April, 2010). Both the International Labour Organization (ILO) and the Superior Courts of Pakistan interpreted that the abrogation was the virtual consequences of Section 87(3) of IRA, 2008. The Concurrent Legislative List (CLL) gives power to promulgate legislation to the federal and provincial governments. Pursuant to 18th Amendment, the power of federal government on promulgation of laws was abolished about the matter mentioned in the CLL. The power exclusively transferred to the provinces on such subjects.

provinces for the betterment and positive change in common people's life. The eighteenth amendment has altered about one hundred clauses of around two hundred and eight articles of the Constitution of Pakistan, which would have a "profound impact on the way the country is governed and its economy is managed" (58).

Federal legislation has been overruling the provincial legislation for many years, which created unrest between the Provinces on the issue of autonomy (59). The most important provisions relating to the labour legislations in the Council of Common Interest (CCI) (60) comprised of the following:

- i) Labour condition and welfare, provident fund, worker's compensation and employer's responsibility;
- ii) Industrial Relations, Industrial Disputes and Trade Unions;
- iv) Exchange of information regarding labour employment to the Bureau of Training;
- v) Legislation on the safety and security issues of labour in factories, mines and oilfields;
- vi) Insurance case of being jobless (61).

After the enactment of eighteenth constitutional amendment the responsibility of legislation concerning the above-mentioned subjects lies with the Provincial governments.

The Punjab Province has promulgated 15 laws by the end of December 2014 including Punjab Industrial Relations Act (PIRA) 2010 (62). The newly adopted law had one provision that is in conflict with ILO convention No. 87 which gives right to form trade unions. After several years of perennial discussions and lobbying by the trade unions in the country and continuous pressure from the ILO, an amendment to the Punjab Industrial Relations Act

(58) S. Javed Burki, *The 18th Amendment: Pakistan's Constitution Redesign*, Institute of South Asian Studies, Working Paper No 112, September 2010; See also, Z. Shaukat, *The devolved course: Constitutional Reforms and status of Implementation of Labour provisions, Pakistan Institute of Labour Education and Research (PILER)*, 2011, p. 91.

(59) C. Almeida, *Pakistan empowers its provinces', Federations: Forum of Federations*, December 2010-January 2011. Federal Government has been influencing the provincial autonomy over many issues particularly during the promulgation of any legislation, online: <<http://aigaforum.com/articles/federation.pdf>>.

(60) Council of Common Interest (CCI) was constituted under Article 153 of the Constitution of Pakistan. The purpose of CCI is to resolve disputes between Federation and Provinces over sharing of power, online: <<http://cci.gov.pk/rules-of-procedure-of-cci>>.

(61) Zeenia supra note 58,p.92

(62) Pakistan Institute of Labour Education and Research (PILER), *Status of Labour rights in Pakistan The Year 2014*. PILER, Karachi,p.15

2010 was made in which that conflicting provision stipulating fifty workers for the formation of unions was ultimately abolished (63).

After Eighteenth Amendment, the Khyber Pakhtunkhwa province also adopted seven laws which comprised labour laws, welfare and industrial relations laws (64). The labour union representatives asserted that the Provincial Government made amendments in laws unilaterally, which is inconsistent to the constitutional mechanism of the Tripartite Conference and Labour Standing Committee. In addition, the Provincial Government did not allow Labour Unions, NGO's, academicians and judiciary to review the amendments in the law.

The Sindh Province enacted only Sindh Industrial Relations Act 2010, the sole labour law of the province till the end of 2014. On the contrary, the labour department has circulated five drafts of laws such as Sind Workers Welfare Fund Act, Sindh Factories Act, Sindh Industrial and Commercial Establishment Act and Companies Profit (Workers Participation) Act amongst the different stakeholders. The department is yet to receive their feedback (65).

The Baluchistan Province has drafted three laws which are still pending for the approval from the assembly; i) Baluchistan Protection against Harassment at Workplace Bill, 2014, ii) Baluchistan Child Welfare and Protection Bill, 2014 and iii) Baluchistan Senior Citizens Welfare Bill, 2014. The government has enacted two laws pertaining to labour and welfare, i) Baluchistan Industrial Relations Act, 2010 and ii) Baluchistan Zakat and Usher Act 2012.

D. Fundamental labour rights and international obligations

International Labour Organization (ILO) was created in 1919 with the primary objective to help build a social framework for peace, prosperity, and stability during economic progress, which could bring success and social justice to the life of workers. The United Nations (UN) tripartite agency was established (employees, employers, and governments) to develop instruments

(63) A continuous lobbying and consultation with different stakeholders such as Labour Unions and ILO were occurred with the Punjab Government, finally, it was decided that the government will omit this clause from the PIRA 2010 with an amendment in May, 2014. This amendment was the result of continuous hard work and proper consultation with ILO, labour unions, and other counterparts.

(64) Zeenia supra note 58, p. 93

(65) Zeenat supra note 19, p. 15.

and labour standards, which help to achieve ILO's aims of building a better social framework for labourers. The ILO conventions are globally ratified by many countries. The signatory country has legal obligation to transform its legal position and includes these convention provisions in the constitution. The standards of such conventions are flexible, and do not let any government pick one of the articles of conventions which they wish to apply. It legally bounds the signatory countries to implement the true spirit of the conventions while harmonizing national legislation with the provisions of conventions.

Table 3. The Eight Core Convention of International Labour Organization (ILO)

Sr. No	Category Name	Name of Conventions
I	<i>The right to organize and engage in collective bargaining</i>	<i>Convention 87: Freedom of Association and Protection of the Right to Organize (1948); Convention 98: Right to Organize and Collective Bargaining (1949)</i>
II	<i>The right to equality at work</i>	<i>Convention 100: Equal Remuneration Convention (1951); Convention 111: Discrimination (Employment and Occupation) Convention (1958)</i>
III	<i>The abolition of child labour</i>	<i>Convention 138: Minimum Age Convention (1973); Convention 182 on the Worst Forms of Child Labour (1999)</i>
IV	<i>The abolition of forced labour</i>	<i>Convention 29: Forced Labour Convention (1930); Convention 105 on the Abolition of Forced Labour (1957)</i>

Source: International Labour Organizations (ILO) official website,
<http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:0::NO::> (accessed on 16-04-2016)

Pakistan became a member of ILO in 1947 and since then, including eight core conventions it has ratified a total of 36 conventions out of which 33 are in force and 3 were denounced ⁽⁶⁶⁾. Similarly, the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which encompasses the rights of children including two further protocols, has also been ratified. Pakistan has also signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) which contains a number of

(66) International Labour Organization (ILO) official website (July, 08, 2016)

provisions associated with economic independence and labour rights. The Federal Government is responsible for the implementation of ILO Conventions and other international labour treaties which fall under the exclusive legislative jurisdiction of the parliament as mentioned in the item (3) of Part (1) of the Federal Legislative List (FLL) (67).

4. Dichotomy between theory and implementation of the constitution, labour laws and international covenants

Pakistan has experienced significant variations throughout its history due to recurrent changes in political regimes. No labour laws were declared unconstitutional which were passed during the previous military and democratic governments (68). The labour laws only changed with the change in administration. Despite being favorable for the promotion of labour rights, labour laws have not been properly implemented, and thus benefits accruing thereof have not been adequately extended to the labourers. The Eighteenth Constitutional Amendment authorized the Provinces to legislate their own labour laws. The provinces have passed many labour laws which are against the true spirit of fundamental human and labour rights embodied in the Article 9, 11, and 17 of the Constitution of Pakistan (69).

A. Trade unions and status of labourers

A recent report revealed that around 7204 trade unions are registered with more than one and half million members which are less than 2.8% of the total labour force of the country (70). The enormous labour force in the country shows the economic capability and strong human capital. But their less participation in trade unions explains their distrust on trade unions as well as labour laws. However, the detail of Labour Force, Trade Union and the

(67) The Constitution of Pakistan is comprised of two lists; the Federal Legislative List (FLL) and the Concurrent Legislative List (CLL). Federal Government is only responsible for the legislation of items listed on the list first. The items listed in the second list authorize both Federal Government and Provincial Government to govern. However, the functions which are not mentioned in any list will have "residuary powers" allowed to the provinces.

(68) Christopher supra note 22, p.52.

(69) The Constitution of Pakistan, 1973, Article, 9, 11, 17; See also, K. Ahmed, *Labour Movement in Pakistan Past and Present*, 2nd Edition, 2011, Institute of Workers Education and Labour Studies, Lahore, Pakistan, p. 110-11.

(70) Sabur supra note 46, p.26; See also Pakistan Labour Profile supra note 31.

Trade Unions with the status of Collective Bargaining is presented in the following Table. 4.

Total Labour Force of the country	61.04 Million
Number of Trade Unions	7,204
Number of Trade Unions (Collective Bargaining Status)	1,905
Members of Trade Unions	1,800,000
Trade Union Members share of Labour force	2.8%

Apart from the aforementioned statistical data, the country's labour force is still facing many challenges ranging from membership and registration of trade unions, status of collective bargaining agents and right to strike. A recent report by International Trade Union Confederation (IUTC) discloses that the Federal and Provincial Governments are not fully guaranteeing trade union rights as preserved in law. In reality, their rights are often violated and four different cases were registered against the Government of Pakistan in 2013 (72); i) trade union leader was attacked during negotiation with employer on wages, benefits and job security which reached at deadlock; ii) dispersal of strike of 400 young doctors who were recording their protest on the criminal cases launched against their colleagues; the government refused to reinstate 200 young doctors although the health authorities has given written order to reinstate; iii) difficulty in recognition of Collection Bargaining Agents (CBAs) as a mining company was denied to be recognized a trade union; iv) undue and unlawful interference of government agencies or employers during strike when police intervene in peaceful protest and strike and refuse to bargain (73).

Subsequent to 18th amendment, the violations and contradictions in labour laws with the constitution have been noticed in under mentioned areas of labour rights. The Federal and Provincial labour laws are incongruous with Article 17 (1) of the Constitution of Pakistan (74). The law basically does not protect labour from anti-union discrimination. Moreover, the article 8(2) (b) of

(71) Pakistan Economic Survey, 2015; Pakistan Labour Force Survey, 2015; see also Pakistan Labour Profile supra note 31.

(72) Survey of violation of Trade Unions Rights, online: <<http://survey.ituc-csi.org/Pakistan.html#tabs-2>>

(73) *Ibid.*

(74) Constitution of Pakistan Article 17 (1) states "Every Citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of Sovereignty or integrity of Pakistan, public order or morality".

Industrial Relations Act (IRA) (75) and 6 (2) (b) of Provincial Industrial Relations Acts (76), require redundant formalities which create excessive delay in registration of a free and impartial establishment or trade union for workers. The article proscribes any other trade union to be registered in the same establishment or industry if it already has two or more registered trade unions, until and unless it has at least 20 percent of the workers in the same industry or group of industries.

Section 27-B of Banking Companies Ordinance 1962 prohibits that no member or officer of the bank can use office facility such as telephone, car to promote trade union or carrying a weapon at the premises of the bank or carry out any trade union activity during the office hours and only the banking employee can be the office bearer of a banking industry union (77). It further describes that if any person who violates this section shall be guilty of an offense punishable with imprisonment of 3 years, or with fine, or with both.

Moreover, section 18 of Industrial Relations Act 2012 stipulates that a person who has been declared guilty and sentenced to imprisonment for two or more years for committing an offense involving “*moral turpitude under the Pakistan Penal Code*” shall be disqualified from being an office bearer of a trade union, unless a minimum period of five years have been lapsed since his sentence ended (78). Similarly, section 7 of Provincial Relations Acts specifies that a person, who has been convicted of heinous offense under the Pakistan Penal Code, shall be considered unfit for an office bearer of a trade union (79). The newly promulgated Labour Laws authorize the Federal and Provincial governments to disqualify any office bearer of a trade union for an unexpired time period on non-compliance of its orders to stop strike (80). These laws impose restrictions on trade unions to formulate its programmes and activities freely because the section 8 of IRA and common section 6 of all Provincial Relations Acts controls the internal functions of trade unions. Particularly, the subsection 1(j) describes that a trade union should include and specify the time

(75) Industrial Relations Act 2012 Art. 8 (2) (b)

(76) See Punjab Industrial Relations Act (PIRA) 2010 Art. 6 (2) (b); Sindh Industrial Relations Act (SIRA) 2013 Art. 6 (2) (b); Balochistan Industrial Relations Act (BIRA) 2012 Art. 6 (2) (b); Khyber Pakhtunkhwa Industrial Relations Act (KPIRA) 2010 Art. 6 (2) (b).

(77) The Banking Companies Ordinance 1962 Art. 27-B

(78) Industrial Relations Act 2012 Art. 18

(79) See Punjab Industrial Relations Act (PIRA) 2010 Art. 7; Sindh Industrial Relations Act (SIRA) 2013 Art. 7; Balochistan Industrial Relations Act (BIRA) 2012 Art. 7; Khyber Pakhtunkhwa Industrial Relations Act (KPIRA) 2010 Art. 7.

(80) IRA 2012 Art. 44(10); PIRA 2010 Art. 56(7); SIRA 2013 and BIRA 2012 Art. 64(7); KPIRA 2010 Art. 60(7).

of trade union office which should not be more than two years in its constitution and section 1(l) specifies the frequency of meetings of general body and executive body of union (81). Furthermore, the newly formulated law also authorizes the Federal and Provincial Governments to restore the membership of any expelled member of the trade union with compensation as damages. The Industrial Relations Act 2012 prohibited certain sectors from forming or joining a union or holding a trade union office following the previous repressive and retrogressive Industrial Relations Ordinance 1969 (82).

The Eighteenth Constitutional Amendment induces numerous hurdles in the recognition of Collective Bargaining Agents (CBAs) under both Federal and Provincial Industrial Relations Acts. It requires excessive requisites on trade unions in respect of awarding a status of CBA such as the union should have one third of the employees as its members at the establishment or industry to bargain collectively. There is a possibility that employers can bypass the representative of trade unions in the absence of bipartite bodies on fixation of job, transfer of workers, remuneration packages directly with the worker's representatives (83).

The registration process of a trade union is extremely complicated because the trade unions are required to provide a list of its members with the name of employer. The list is then forwarded to employer for verification; mostly employer use delaying tactics including threats, harassment and dismissal from work to discourage the union activities. The formal private sector establishment has adopted a new policy to convert non-management employees' position into management cadre since labour law prohibit officer to carry out trade union activities. Moreover, the process of registering the Trade Union with branches in different province is another unclear area after devolution of labour laws to the provinces. In view of this, the Industrial Relations Ordinance (IRO), 2011 was passed to consolidate the legal system *"relating to the formation of trade union and management relations between employers and workmen in the Islamabad Capital Territory and in Trans-Provincial Establishment and Industry."*

(81) IRA 2012 Art 8; PIRA 2010 Art. 6; SIRA 2013 Art. 6; BIRA 2012 Art. 6; KPIRA 2010 Art. 6.

(82) See supra note discussion 52, 53

(83) See Survey of violation of Trade Unions Rights, online: <<http://survey.ituc-csi.org/Pakistan.html#tabs-2/>>

Additionally, the “*Trans-Provincial Establishment and Industry*” has not been included in the Federal Legislative List of Constitution of Pakistan. The Federal Legislative List only mentions the matters and coordination mechanism within the provinces which is “*altogether different from Trans-Provincial Establishment and Industry*” (84). Thus, a consolidated and comprehensive law is required to address the legal position of trade unions across the provinces because it cannot be acceptable to the trade unions to follow different legislations in any particular province.

The United States (US) Country Report on Human Rights Practices indicated various structural legal problems in Pakistan (85). Trans-Provincial labour laws are unclear and the power and authority on labour related areas have been already transferred to the provinces through the abolition of Concurrent Legislative List (CLL) which had six exclusive labour and employment related entries. The weak enforcement of labour laws shows the political unwillingness and lack of competence. In addition, many workers from several government institutions and export processing zones are prohibited from carrying out a strike and collective bargaining. Accordingly, many labour groups have reported that problems such as violence and freedom of association persist in their establishments (86).

In 2015, International Trade Union Confederation (IUTC) reported on Global Rights Index of World's Worst Countries for workers regarding their fundamental rights, right to bargain, right to strike, right to assemble freely and access to legal process. The report discloses that Pakistan is ranked at bottom with a score of 5 on a scale of 1 to 5 (87). This further states that the government and other companies are seriously engaged in crushing the efforts of collective voice of workers and putting their fundamental rights at threat. During 3rd World Congress in 2014, IUTC reveals that Pakistan is one of the 24 countries who are at risk of “*experiencing a profound failure to guarantee laws that ensure fundamental rights for all workers*” (88).

(84) Industrial Relations Ordinance, 2011, Business Recorder, published on 3rd August, 2011, online: <<http://www.forexpk.com/economicupdates/exclusive-articles/iro-2011.html>>

(85) The US Country Report on Human Practices, 2015 reveals serious structural legal problem on Federal level that Labour Laws are being violated, 2016, online: <<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>>

(86) Survey of violation of Trade Unions Rights, online: <<http://survey.ituc-csi.org/Pakistan.html#tabs-2>>

(87) *Ibid.*

(88) Human Rights Commission of Pakistan, online” <<http://hrcp-web.org/hrcpweb/wp-content/uploads/2016/04/Labour-2016.pdf>>

In relation to above said violations, three active and two follow-up cases have been registered in ILO's Committee on Freedom of Association against the Government of Pakistan (89). The cases include various serious allegations such as anti-union activities, harassment, and violence on trade union members against employers and government of Pakistan.

B. Occupational health and safety of workers

ILO has formulated more than forty regulations, particularly concerning with the Occupational Health and Safety (OHS) issues. It has three major regulations; The Occupational Safety and Health Convention 1981 No. 155, Promotional Framework for Occupational Health Services Convention 2006 No. 187 and Occupational Health Services Convention 1985 No.161. It is worth mentioning that Pakistan has not so far ratified any of these major conventions on Health and Safety of workers.

Pakistan is an agricultural country comprising a huge amount of informal workers in this sector. A large quantity of pesticides is used for farming which is extremely hazardous to the health and safety of the workers. Recently a report on labour injuries revealed that the percentage of injuries per sector were 49.1 % of workers in the agriculture and fisheries sector, 15.2 % from the construction sector, and 13.3 % from the manufacturing sector (90). Mostly workers from agriculture and other sectors are lacking access to education regarding protective measures, which results in injury and diseases while working in the field. Fire incident in Karachi at Gadani Ship Breaking Yard is one such example where at least 25 people were killed and 58 got injured when the ship's fuel tank exploded on 1st November, 2016 (91). Another devastating fire occurred in a Garment Factory in Baldia, Karachi that resulted in 276 workers death which highlights non-compliance and lack of

(89) ILO, Freedom of Association Cases, online:

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:20060:0::NO::P20060_COUNTRY_ID,P20060_COMPLAINT_STATU_ID:103166,1495810>

(90) Pakistan Bureau of Statistics conduct survey on many issues, Labour Force Survey is also one of them, the said report was published in 2013-2014, online: <<http://www.pbs.gov.pk/content/labour-force-survey-2013-14-annual-report>>

(91) Gadani Ship Breaking yard Industry, Karachi fire incident happened on 1st November, 2016 took 22 labourers died and more than 50 were injured, online: <<https://www.geo.tv/latest/119390-Death-toll-from-blast-at-Gadani-ship-breaking-yard-mounts-to-16>>

labour inspection (92). Such incidents indicate the authority's unwillingness and inability to comply with the OHS laws and standards as assured in the constitution.

Nevertheless, the Factories Act of 1934 specifies that factory managers must inform labour department about any mishap or accident but the factory managers and authorities consistently neglect to inform the department. Pakistan has ratified the ILO Convention No. 81 on Labour Inspection which requires regular labour inspection under the supervision of a central authority to secure and enforce legal provisions concerning the protection of labour's health and safety (93). The media generally covers major industrial accidents; however, individual industrial accidents are often not reported. There is no reliable source available to the public regarding industrial incidents except media in the country. Though, the Provincial Labour Departments have their own labour inspection system but they lack proper inspection and documentation and their reports are not shared with stakeholders. The Industrial establishments deliberately conceal such issues from public. The following table provides a glimpse of industrial accidents during the year 2015.

(92) A garment factory is situated in Karachi caught fire in 2012. The fire is considered to be the most devastating fire in the history of the country which resulted about 276 workers dead and 600 workers dead, online: <<http://tribune.com.pk/story/954524/baldia-factory-fire-three-years-as-many-reports-and-the-trial-goes-on/>>

(93) ILO Labour Inspection Convention, 1947 (No. 81)

Table 5. Industrial Accidents in 2015

Sr. No	Nature of Accidents	Date	Place	Deaths	Injured
1.	Electrocution	January	Coalmine, Mach, Bolan	1	-
2.	Mine Collapse	January	Marble mine, FATA	12	-
3.	Boiler Blast	January	Landhi, Karachi	-	2
4.	Coal Mine Blast	January	Kalaya, Shangla	6	10
5.	Mine collapse	January	Mohmand Agency	18	-
6.	Mine gas explosion	February	Dukky, Loralai	8	14
7.	Boiler Blast	February	Mirpurkhas	-	3
8.	Boiler Blast	March	Baldia, Karachi	2	1
9.	Gas Inhalation	April	Korangi, Karachi	6	-
10.	Boiler Blast	May	SITE, Karachi	-	18
11.	Quarry rock roll over	June	Gypsum mine, Lucky banda, Karak	1	-
12.	Gas Inhalation	August	Muzaffargarh	4	-
13.	Factory building collapse	September	Multan	4	18
14.	Boiler Blast	November	Gujranwala	-	3
15.	Factory collapse	November	Lahore	53	100
16.	Boiler Blast	November	Lahore	5	-
17.	Coal mine blast	November	Quetta	-	3

Source: <<http://hrp-web.org/hrpweb/wp-content/uploads/2016/04/Labour-2016.pdf>> (accessed on 15-12-2016)

The discussion and the statistical data on industrial accidents shown in Table 5 affirm the inability and non-compliance of Federal and Provincial Governments on labour laws and international conventions. The labour department is undermining the labour inspection which is against ILO convention. The current legal system covers only registered factories and shops, neglecting the informal sectors, such as the agricultural and service sectors, from the inspection mechanism perspective. The Provincial Labour Department is responsible for bringing such industrial incidents into the

record under Provincial Health & Safety Act particularly after 18th amendment. But the reports are not published regularly and distributed among stakeholders due to poor governance and ineffective functioning of labour inspection system.

C. Women workforce participation in labour unions

Women's participation in the global economy has enlarged their precariousness and vulnerability which is highest in South Asia because it has highest vulnerable employment rate around the globe at 84.5% for women and 74.8% for men (94). The status of women in Pakistan is not different from rest of South Asia; the contribution of women is fewer in all spheres of life particularly politics, economy and trade unions. Gender Development Index (GDI) observes the country's performance focusing on specific indicators, which involve life expectancy, living standards, level of income and education. In this index, Pakistan is ranked 147th out of 161 countries in the world (95). In addition, measuring Gender Empowerment in terms of evaluating Gender Equality in Decision Making on social, economic and political issues, Pakistan has been ranked 71st out of 88 countries. As a matter of fact mostly women work as an unpaid worker for their family; therefore, their participation in the economy is limited and unrecognized (96). Meanwhile, the participation of female labour force in Pakistan has increased from 9.8 % in 1999-2000 to 15.5 % in 2010 (97). Although the Articles 25 and 38 of the Constitution of Pakistan clearly mention that state is responsible to provide equal opportunities for the well-being of the citizens without discrimination on the basis of sex, creed or race (98).

(94) Gender Parity in Pakistan (TGP) Project, ILO Country Office for Pakistan, Islamabad. ILO, Social Protection Floor: For A Fair Globalization. Report by Advisory Group Chaired by Michelle Bachelet, Convened by the ILO with Collaboration of the WHO, 2011, Geneva, Switzerland.

(95) United Nation Development Projects observes the status of its member states by particularly focusing on some important issues such as, women empowerment, education, life expectancy and income level and rank the members states on their performance, Pakistan has been ranked as 147th country out of 161th members countries, online: <<http://hdr.undp.org/en/composite/GDI>>; T. Javed, *Understanding the Labour Issues in Pakistan*, Pakistan Institute of Legislative Development and Transparency, 2006, p. 18.

(96) T. Javed, *Understanding the Labour Issues in Pakistan*, Pakistan Institute of Legislative Development and Transparency, Karachi, 2006, p.18.

(97) ILO survey report on Labour Force Survey, 2009-2010.

(98) The Constitution of Pakistan, 1973 Art. 25 and 38

Moreover, the Government of Pakistan has ratified two important conventions; 1) Equal Remuneration Convention, 1951 (No. 100); 2) Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Both conventions require the application of these conventions in letter and spirit by the ratifying states. Convention 100 laid down the principles of equal remuneration for workers regardless their gender. Similarly, it obligates the ratifying states and other authorities to include the standards in national laws to determine their wage and written agreement between employer and employee and to ensure the application of all legal principles of equal remuneration for men and women workers for the equal level of work (99). Whereas, the convention on Discrimination (Employment and Occupation) Convention 1958 (No. 111) specifies “*discrimination as any 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*” (100) The article discusses the discrimination related to the right to receive vocational training, access to employment and in certain occupations and also terms and conditions related to employment. The convention requires the ratifying states to include these clauses and declare a national policy in order to provide equal opportunity and treatment for any specific employment and occupation. The main purpose of these conventions is to eradicate discrimination through cooperation between employers and employees by providing them educational training programmes.

The country has introduced various labour laws to ensure the guarantees provided in the Constitution of Pakistan and application of ILO convention on equal remuneration for women and men from time to time. In order to comply with the fundamental rights, ‘Factories Act 1934’ was promulgated. The Act contains provisions about medical care, working condition, rest interval, health and safety, overtime, holiday, child labour and working hours for men and women. Moreover, “Maternity Benefits Ordinance, 1958” was formulated which is generally applicable to formal industries.

(99) ILO Convention on Equal Remuneration, 1951 (No. 100); online: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312245:NO>

(100) ILO Convention on Discrimination (Employment and Occupation) 1958, (No. 111) article 1(a).

Commercial establishments are increasing day by day and employing more and more female workers but their employment terms do not cover the benefits which they are entitled by law otherwise. The benefits are only available for regular employees of such industrial establishments. A large number of female workers are employed in Transport Sector as receptionists, attendants, clerks, bus hostess, and supervisors but they are not given their legal privileges such as maternity benefits, exemption from odd duty hours (night duty), separate washrooms and dining place etc. due to weak legislation and lack of provisions on such issues under "Road Transport Workers Ordinance, 1961" (101). Social Security and Old age benefits are only restricted to permanent employees of such commercial establishments. However, most of the female workers are employed for the short period and as home-based workers where these laws do not apply. The informal and home-based workers are also not covered by Social Security and old-age benefits from Workers Welfare Fund (WWF) (102) because this merely covers the permanent workers. The Labour Laws of Pakistan do not allow gender discrimination in pursuance of employment, wage and profession; however, interpretation and practice of such laws lead to indirect gender discrimination. The significant example is agriculture sector, which is employing 54% of women labour force in the country but this sector is neglected in terms of scope and protection under labour laws (103).

The country's total labour workforce is about 61 million out of which half of the population consists of Female Labour Force, whereas the role of the female labour force in the Labour Market is much less as compared to other countries (104). According to the Government's recent Survey Report (105), the percentage of women in the workforce has raised to 17 % in the recent years. However, their wages, working conditions and benefits of social protection are far from satisfactory level. They are victim of discrimination in the payment of wages. The principle of "*Equal Pay for Equal Work*" as laid down in ILO Convention No. 100 ratified by the Government of Pakistan is

(101) Road Transport Workers Ordinance, 1961 of Pakistan

(102) The Federal Government established Workers Welfare Fund (WWF) in 1971 under "Workers Welfare Fund Ordinance 1971" with the initial contribution of PKR 100 (million) to provide housing and other facilities to industrial labour on subsidized rates.

(103) Pakistan Bureau of Statistics, Labour Force Survey, 2014.

(104) Government of Pakistan, Labour Force Survey, 2009-2010.

(105) Pakistan Bureau of Statistics, Annual report, 2015

not respected in its true spirit (106). They are subjected to lower wages, hazardous working conditions and deficit of social protection on account of a lack of organization and precarious job situation. They are also subjected to the “*Glass Ceiling*” that does not allow them equal opportunity for advancement in their careers in comparison to their male counterparts.

Most of the women labour force in the country is not educated which is one of the reasons for noncompliance and implementation of provisions for women labour force. For example the “*Standing Order Ordinance 1968*” states, the women workers who are working on a temporary basis should be regularized accordingly. But the industrial exploitation is depriving these women workers from welfare benefits such as maternity benefits, social security, and right to have permanent job.

Despite a huge number of female labour forces (about 15.5% in the country) (107), their participation in the labour union is inadequate. Most of women are employed on temporary and contractual basis and on piece rate. Mainly their job is concentrated in informal and home based sector where health, safety and working conditions are not suitable for them. Also, Labour laws, social security and maternity benefits cover only formal sectors. They also neglect agriculture sector from the scope and protection of labour laws which employs 54 % women of its labour force (108). Mostly female labourers believe that if they become a member of trade union, they will be harassed or sacked by the management. They also believe that trade unions are not helpful in any case therefore, it is better not to be a member of any trade union because of their sole breadwinner status in the family. Overall the reason for low participation of women labour force in trade unions is low job growth, low education and lack of skills. Gender discrimination is also one of the reasons for not participating in the trade unions.

It is, therefore, necessary to educate women labour force and trade unions about their legal rights as enumerated in the Constitution of Pakistan. Trade unions and civil society should come forward to raise this issue and stand beside the women workers and trade unions. Women workers should be encouraged to be a member of trade unions to fight for their right to freedom of association and bargain collectively against exploitation and for their legal rights.

(106) K. Ahmed, *Labour Movement in Pakistan Past and Present*, 2nd Edition, Institute of Workers Education and Labour Studies, October, 2011, Lahore, Pakistan, p.118.

(107) Pakistan Bureau of Statistics, Labour Force Survey 2014-15.

(108) *Ibid.*

5. Conclusion

The Constitution of Pakistan promises equal rights for men and women in relation to employment, wages, and occupation. The National Policies also reflect these constitutional commitments in adopting and respecting the international obligations and human rights. The country has ratified 36 ILO conventions including 8 core conventions and has incorporated most of these clauses in its national and provincial policies. The constitution uses legislation to ensure the fundamental rights of liberty and security of life of workers and right to form association or union and to become a part of such unions. The constitution prohibits slavery and forced or bonded labour. The state has the utmost responsibility to scrutinize and settle the contradictions between any laws and customs that are contrary to the fundamental rights enumerated in the constitution. This study explores many issues including the pre- and post-independence evolution of Labour Unions and Labour Laws in Pakistan, but three topics are particularly discussed i) Trade Unions status and Labour rights; ii) Occupational Health and Safety of workers; and iii) Women workforce participation in trade unions.

The history of Pakistan reveals that labour laws change with a change of government. The discussion also reveals that most of the governments, especially the military governments, had passed anti-labour laws prohibiting the formation of unions or associations at the workplace. These repressive policies resulted in the violation of fundamental rights. Nevertheless, most of these repressive labour laws were abrogated by the democratic government of 2008. The historic 18th amendment was an attempt to ensure further provincial autonomy. Consequently, the Concurrent Legislative List was abolished and many subjects including Labour were devolved to the provinces⁽¹⁰⁹⁾. Pursuant to the 18th Amendment, the provinces enacted their own labour laws. The provincial laws are mostly exploitive and anti-labour thus, the current labour laws are not sufficiently addressing the fundamental labour rights as promised in the constitution and international covenants. The Government of Pakistan should recognize that the constitutional amendments have not resulted in protecting guaranteed rights as promised in ILO Conventions. Essential measures are required to be taken to secure Pakistani workers from exploitation. Currently, the biggest challenge for Pakistan is 18th amendment which devolves this subject to the provinces. Therefore, first of all, the Federal government should ensure that the provinces are framing laws

(109) See supra note discussion at 57

according to international commitments and ILO conventions and secondly its implementation in true sense. Since the Federal Government is the member of ILO, not the provinces, therefore, the responsibility lies upon the Federal Government to save the workers from anti-labour laws.

Although, Pakistan has ratified the ILO Convention No 100 on "*Equal Pay for Equal Work*", but the country has been unable to ensure the same opportunity to women workers as available to their male counterparts. Furthermore, these factors, such as "*Protection of Family*" and "*Inhumane conditions for women and children's*," have also lessened the women representation in trade unions. The participation of women labour force is increasing day by day, therefore, the policies should focus on their smooth and comfortable entry in the business cycle. The main reason of less participation of women workers in trade unions is lack of knowledge of labour laws, lack of skills and low literacy rate. Women workers should be educated through different seminars on their right of freedom of association and bargain collectively to raise their voice against exploitation and their legal rights.

Pakistan is yet to ratify the most important conventions of ILO on the Occupational Health and Safety of Workers which has resulted in the exposure of safety related issues. For example, the failure of proper industrial inspection and monitoring under Factories Act 1934 resulted in a recent devastating fire incident at Gadani Ship Breaking yard, Karachi which took away 25 lives and Baldia Factory in Karachi taking away 276 important lives (110). The provincial governments should ensure thorough industrial inspection and ensure access to industrial accidents data on their website for the stakeholders. Pakistan needs to ratify these important ILO Conventions on Health and Safety of workers and establish a strong mechanism for the proper implementation and monitoring of such laws.

Thus, Federal Government should develop a broad policy framework taking into account the ILO Conventions and Constitutional provisions to guide provinces in promulgating their labour laws. Furthermore, the Federal government should develop coordination with provinces to provide necessary guidelines that provincial labour laws represent the international commitments and adherence to the constitution. The tripartite labour conference should be held regularly to ensure the viability and concordance of laws with all stakeholders.

(110) See supra note discussion at 92, 93

The Supreme Court Pakistan has the jurisdiction to revisit and interpret the labour laws which can play a pivotal role in protecting labour rights. The Court can save labour rights and ensure their proper implementation as stipulated and envisaged in the Constitution of Pakistan by using its jurisdictional power.

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