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HARMONIZATION OF LABOUR LAWS AND POLICIES IN THE REGION IN THE LINE WITH INTERNATIONAL LABOUR STANDARDS (INCLUSIVE LABOUR MARKET POLICIES)

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ABSTRACT

Entire South Asian Region except Afghanistan shares a common colonial heritage in the realm of labour legislation. Some of the countries interacted with the ILO after their independence and introduced substantial changes in labour legislation. Some new laws were promulgated in the sixties and seventies for social protection and welfare of the working classes. Pakistan also continued with the pre-independence legal framework with necessary amendments and new set of laws were enacted to cover terms of employment, regulate industrial relations, social protection and workers' welfare. Presently, multiplicity of laws and their enforcement agencies and inconsistencies in the meaning of various terms defined in different sets of laws require consolidation, rationalization, simplification and standardization. Following the 18th Constitution Amendment, 2010 the responsibility for harmonization of labour laws has been devolved to the Provinces. Provincial Legislatures are, therefore, required to take into account the ground realities of modern times in drafting and amending the legislation to ensure that while protecting the fundamental rights of the workers they must not harm the interests of the employers. **KEY WORDS**: Labour laws, simplification, Pakistan, working conditions

1. INTRODUCTION

The intent and purpose of the labour laws is to safeguard the rights of the workers at work place like provision of conducive working environment, maintaining balance of power between the workers and the employer through the right to organize trade unions, collective bargaining, security against dismissal, socially acceptable working conditions, minimum standards regarding rights to working hours, health and safety, and social protections. The labour laws emanate from national constitutions, collective agreements and supranational foundations as international treaties, jurisprudence of international bodies, international customary laws, bilateral trade agreements, regional trading blocks and regional human rights treaties. The present paper presents historical perspective of origin and development of labour laws in South Asia with special reference to Pakistan. Besides, highlighting important features of existing labour laws in Pakistan, the paper critically analyses the nature and complexity of labour laws and presents a way forward for the Provincial Governments to go ahead on the basis of the recommendations of National Law Commission and Task Force on Labour Laws.

2. HISTORICAL PERSPECTIVE

The origin of existing laws in Subcontinent may be traced to the British Common Law beginning with the Charter of 1726 for Presidency Towns of Madras, Bombay and Calcutta and culminating in the notion of equity, justice and good conscience. The labour laws may be regarded as a blend of civil and criminal approaches combined to resolve the industrial dispute amicably. The establishment of ILO set off the second phase of the promulgation of labour laws in the region. Workmen's Compensation Act, 1923 and Trade Union Act, 1926 were promulgated in the second phase under the influence ILO. Both the legislations were repealed by the Industrial Dispute Act, 1947 in India, Pakistan and Bangladesh. The third phase in the development of South Asian labour started with the independence of India, Pakistan, Sri Lanka and the beginning of the democratization process in Nepal during the middle of the twentieth century. The driving force behind the post-independence labour legislation were the new Constitutions drafted in the spirit of movements for independence and social justice with a strong emphasis on basic rights of equality, freedom and a need to eradicate poverty and discrimination. The state and public sector dominated much of the secondary and tertiary phases.

Strong trade unions of the colonial period were strengthened as partners in the planned development of the newly independent countries. Much of the legislation adopted in this period related to the organized, industrial and formal part of the economy. Studies point out that the industrial relations systems developed in this period were a compact of trade unions and management with an important role for the state to fulfil the goals of planning and rapid industrialization (Johri, 1967; Kennedy, 1966). It must be noted that labour policies were strongly industrial relations-centric in the sense of concentrating on labour relations in the formal sector which most closely mimicked the West (KahnFreund, 1974) and labour relations in the unorganized sector were largely ignored.

In the last couple of decades a lot of changes have taken place in the labour laws of the

South Asian Region to herald faster growth and flexibility instead of security to workers. The scope and application of labour do not extend to all the segments of workers as several groups of workers or groups of establishments are excluded from their purview. Generally the formal or organized sector (typically the larger scale manufacturing and service sector) was covered by the labour law limited to factories, mines or certain specific sectors normally interpreted as industry. Minimum levels of employment are set for their applicability missing vast numbers of smaller establishments. In Pakistan and India the applicability of labour laws is subject to employment of 10 or more workers and therefore majority of establishments stand excluded from application of these laws.

Similar is the case with the definitions of workers based on functional or remunerative criteria which excludes certain categories of workers such as those in domestic work, managerial or supervisory levels, teachers and doctors (do not fall within the description of workmen) or those earning above a certain ceiling, which results in limiting the coverage of labour laws- most glaring example is out sourcing of service. Legislative amendments incorporated due to economic policies have also affected the number of people covered by the labour laws. This situation has given birth to a new phenomenon of contract labour. Such workers in most instances would – given the limitations of the definition – be outside the scope of the protective labour laws. Some of the labour laws apply only to workers directly employed, however, in some cases contract labour is explicitly included in the scope of the law but this is by no means universal.

More than 50 per cent of workers in the unorganized/informal sector are self-employed. The percentage of women in the unorganized workforce is higher than that in the organized sector. There has also been a decline in fulltime employment and an increase in casual and contractual employment even in the formal sector. Many people in informal sector are the working poor who do not earn a minimum wage and whose conditions of work are precarious and unsafe. Family labour, child labour, forced labour and work under poor working conditions are important features of informal sector employment. The past couple of decades have seen new categories of exemptions – the case of export zones in the region. The choice of an export-led industrialization strategy caused the creation of Export Processing Zones (EPZ). National labour law clearly privileges the

maintenance of export sector manufacturing in the region. The rational of this approach is to attract FDI and increase export earnings. Special laws and instructions in the EPZ control terms of employment of the workers.

In the light of above analysis it is clear that agriculture, home-based and other unorganized or informal sectors are outside the purview of the important labour laws in the region, with the result that there is no institutional mechanism for dispute resolution and no regulations governing the terms and conditions of work. Multiple laws with differing definitions of „worker", „employer", „establishment", „industry", „wages" has meant a lack of uniform coverage. People may be covered under a law dealing with conditions of work but may be excluded from the scope of a social security law because their income is above the maximum income coverage limit. Uncertainty in the capacity of the law to protect all those working in a sector erodes its authority as much as the nonapplicability of the law to many sectors of the economy. Multiplicity of laws has another dimension affecting the capacity of any law to serve its purpose.

The adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up in 1998 has exerted pressure on countries in the region to reform their labour laws in line with the fundamental conventions.

3. **INTERNATIONAL LABOUR STANDARDS AND LABOUR LAWS**

Since 1919, the International Labour Organization has maintained and developed a system of I**nternational Labour Standards** (ILS) aimed at promoting opportunities for women and men to obtain decent and productive work in the conditions of freedom, equity, security and dignity. In today's globalized economy international labour standards are essential component of the international framework to ensure that the growth of the global economy provides benefits to all. Recently, ILO has developed a comprehensive Decent Work Agenda which takes up many of the same challenges that the organization faced at its inception. The Decent Work Agenda aims to achieve decent work for all by promoting social dialogue, social protection and employment creation as well as respect for international labour standards. The standards have grown into a comprehensive system of instruments on work and social policy backed by a supervisory system

designed to address all sorts of problems in their application at the national level. They are the legal component in the ILO's strategy for governing globalization, promoting sustainable development, eradicating poverty and ensuring that people can work in dignity and safety.

An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards with the belief that this may give them a greater comparative advantage in international trade. In the long run, such practices do not benefit anyone. Lowering labour standards can encourage the spread of low-wage, low-skill and highturnover industries and prevent a country from developing more stable high-skilled employment, while at the same time making it more difficult for trading partners to develop their economies upwards. International labour standards are sometimes perceived as entailing significant costs and thus hindering economic development. Research has indicated that compliance with international labour standards often accompanies improvements in productivity and economic performance.

Higher wage, working time standards and respect for equality can translate into better and more satisfied workers and lower turnover of staff. Investment in vocational training may result in a better-trained workforce and higher employment levels. Safety standards can reduce costly accidents and health care fees. Employment protection is expected to encourage workers to take risks and to innovate. Social protection such as unemployment schemes and active labour market policies can facilitate labour market flexibility making economic liberalization and privatization sustainable and more acceptable to the public. Freedom of association and collective bargaining may lead to better labour-management consultation and cooperation, thereby reducing the number of costly labour conflicts enhancing social stability. Fair labour practices set out in international labour standards and applied through a national legal system ensure an efficient and stable labour market for workers and employers alike[1].

[1] Rules of the Game, ILO, 2008

In most of the developing and transition economies a large part of the workforce is active in the informal economy. Such countries invariably lack the capacity to provide effective social justice so international labour standards can be effective tools to deal with such like situations. Most of the standards apply to all workers but some standards specifically deal with home-workers, migrant and rural workers, indigenous and tribal peoples; the ones employed in the informal economy. The extension of freedom of association, social protection, occupational safety and health, vocational training and other measures required by international labour standards has proved to be effective strategy in reducing poverty and bringing workers into the formal economy. Furthermore, international labour standards call for the creation of institutions, frameworks and mechanisms which can enforce labour rights. In combination with a set of defined rights and rules, functioning legal institutions can help formalize the economy and create a climate of trust and order which is essential for economic growth and development.

International labour standards are the result of extensive discussions held amongst governments, employers and workers, in consultation with experts from around the world. They represent the international consensus on how a particular labour problem could be tackled at the global level and reflect knowledge and experience from all corners of the world. Governments, employers' and workers' organizations, international institutions, multinational companies and non-governmental organizations can benefit from this knowledge by incorporating the standards in their policies, operational objectives and day-to-day actions (World Bank, 2005).

4. SITUATION OF LABOUR LAWS IN PAKISTAN

Four broad areas of fundamental labour rights as enshrined in the ILO Declaration on Fundamental Principles and Rights at Work, 1998, are freedom of association, right to organize and bargain collectively, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour and, elimination of discrimination in respect of employment and occupation[2]. These broad areas are generally considered as

[2] ILO, 1998

international labour standards. The ILO Conventions addressing the above areas are called Core Conventions. Pakistan has ratified 36 ILO Conventions Including eight Core Conventions.

a. Constitution of Islamic Republic of Pakistan

The Constitution of Pakistan contains a range of provisions with regards to labour rights enshrined in Part II as Fundamental Rights and Principles of Policy.

i. Article 11 of the Constitution prohibits all forms of slavery, forced labour and child labour; ii. Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;

iii. Article 18 recognizes the right of citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;

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

v. 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 gender, and for maternity benefits for women in employment.(2)

b. **Labour Legislation**

Pakistan‟s labour laws trace their origination to legislation inherited from India at the time of partition of the Indo-Pak Subcontinent. The laws have evolved through a continuous process of trial to meet the socio-economic conditions, state of industrial development, population and labour force explosion, growth of trade unions, level of literacy, Government‟s commitment to development and social welfare. The main features of labour laws are highlighted in the proceeding paragraphs.

i. Contract of Employment

The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 was enacted to address the relationship between employer and employee and provided for contract of employment. The Ordinance applies to all industrial and commercial establishments throughout the country employing 20 or more workers and provides for security of employment. Every employer in an industrial or commercial establishment is required to issue a formal appointment letter at the time of employment of each worker. The obligatory contents of each labour contract are confined to the main terms and condition of employment namely nature and tenure of appointment, pay and allowances and other fringe benefits admissible and terms and conditions of appointment.

The services of a permanent worker cannot be terminated for any reason other than misconduct unless one month‟s notice or wage in lieu thereof has been paid by the employer or by the worker if he or she so chooses to leave his or her service. One month‟s wages are calculated on the basis of the average wage earned during the last three months of service. Other categories of workers are not entitled to notice or pay in lieu of notice. If a worker is aggrieved by an order of termination he or she may proceed under Section 33 of the Punjab Industrial Relations Act, 2010 aimed at regulating the labour-management relations in the country, and bring his or her grievance to the attention of his or her employer in writing, either personally or through the shop steward or or her trade union within three months of the occurrence of the cause of action. Forms of termination have been described as removed, retrenched, discharged or dismissed from service. To safeguard against any unlawful exercise of power, victimization or unfair labour practices the Labour Courts have been given powers to examine and intervene to find out whether there has been a violation of the principles of natural justice and whether any action by the employer was bonafide or unjust.

ii. Working Hours

Under the Factories Act, 1934 no adult employee, defined as a worker who has completed his or her 18th year of age, can be required or permitted to work in any establishment in excess of nine hours a day and 48 hours a week. Similarly, no young

person, under the age of 18, can be required or permitted to work in excess of seven hours a day and 42 hours a week. The Factories Act, 1934 governs the conditions of work of industrial labour and applies to factories employing ten or more workers. Where the factory is a seasonal one, an adult worker shall work no more than fifty hours in any week and no more than ten hours in any day. A seasonal factory according to section 4 of the Factories Act is that which is exclusively engaged in one or more of the manufacturing processes namely cotton ginning, cotton or cotton jute pressing and the manufacturing of coffee, indigo, rubber, sugar or tea.

The Shops and Establishments Ordinance, 1969 regulates the persons employed in shops and commercial establishments who are neither covered under the Factories Act nor the Mines Act, 1923. The Ordinance extends to the whole of Pakistan except the Federally Administered Tribal Areas. Section 8 of the Shops and Establishments Ordinance, 1969 restricts weekly work hours to 48 hours. 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. The periods and hours of work for all classes of workers in each shift must be notified in the principal language and posted at a prominent place in the industrial or commercial establishment. The law further provides that no worker shall be required to work continuously for more than six hours unless he or she has had an interval for rest or meals of at least one hour. During Ramadan (fasting month) special

reduced working hours are observed in manufacturing, commercial and service organizations.

iii. Paid Leave

According to the Factories Act, 1934 every worker who has completed a period of twelve months continuous service in a factory shall be allowed during the subsequent period of twelve months, holidays for a period of fourteen consecutive days. If a worker fails in any one such period of twelve months to take the whole of the holidays allowed to him or her, any holidays not taken shall be added to the holidays allotted to him or her in the succeeding period of twelve months.

A worker shall be deemed to have completed a period of twelve months continuous service in a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorized leave not exceeding ninety days in the aggregate for all three, or by a lock-out or a strike which is not an illegal strike, or by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate. Authorized leave shall be deemed not to include any weekly holiday allowed under section 35 which occurs at beginning or end of an interruption brought about by the leave.

iv. Maternity Benefits

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.

v. Other Leave Entitlement

In addition to the 14 days of annual leave with pay, the Factories Act, 1934 provides that every worker is entitled to 10 days casual leave with full pay and further 16 days sick or medical leave on half pay. Sick leave, on the other hand, may be availed of on support of a medical certificate. Besides, workers enjoy festival holidays as declared by the Federal Government. The Provincial Government under section 49 of the Factories Act, 1934 notifies all festival holidays, approximately[3] 13 or as further declared, in the Official Gazette. Additionally, every worker is entitled to enjoy all such holidays with pay on all days declared and notified by the Provincial Government. If however, a worker is required to work on any festival holiday, one day's additional compensatory holiday with full pay and a substitute holiday shall be awarded.

Under agreements made with the Collective Bargaining Agent, employees who proceed on pilgrimage i.e., Hajj, Umra, Ziarat, are granted special leave up to 60 days.

vi. Minimum Age and Protection of Young Workers

Article 11(3) of Pakistan‟s Constitution expressly prohibits the employment of children below the age of 14 years in any factory, mine or other hazardous employment. In addition, the Constitution makes it a Principle of Policy of the State of Pakistan to protect the child and to ensure that children and women are not employed in vocations unsuited to their age or gender.

The Factories Act, 1934 allows for the employment of children between the ages of 14 and 18 years provided that each adolescent obtains a certificate of fitness from a certifying surgeon. The Act further restricts that the hours of work of a child should, therefore, be arranged in such a way that the spread over are not more than sevenand-a-half hours in any day. Moreover, no child or adolescent is allowed to work in a factory between 7 p.m. and 6 a.m. Similarly, no child is permitted to work in any factory on any day in which he or she has already been working in another factory.

[3] Depending upon Gazette Notification, the number of holidays vary from year to year

Factories are further required to display and correctly maintain in every factory a Notice of Periods for Work for Children indicating clearly the periods within which children may be required to work. The manager of every factory in which children are employed is compelled to maintain a Register of Child Workers identifying the name and age of each child worker in the factory, the nature of his or her work, the group, if any, in which he or she is included, where his or her group works on shifts, the relay to which he or she is allotted, the number of his or her certificate of fitness granted under section 52, and any such particulars as may be prescribed.

The provisions of the Factories Act, 1934 are cited in addition to, and not in derogation of the provisions of the Employment of Children Rules, 1995. The Rules extend to the whole of Pakistan with the exception of the State of Azad Jammu and Kashmir and delimit finite labour conditions afforded for the protection of minors. Rule 6 insist on cleanliness in the place of work. Rule 7 further calls for proper ventilation in work places where injurious, poisonous or asphyxiating gases, dust or other impurities are generated from any process carried on in such establishment. In addition, in every establishment an arrangement of drinking water for child and adolescent workers is to be provided free of charge. All shafts, couplings, collars, clutches, toothend wheels, pulleys, driving straps, chains projecting set screws, keys, nuts and belts on revolving parts, employed in the establishment, shall be securely fenced if in motion and within reach of a child worker and may not be operated by a child worker.

vii. Wages

Wages are construed as the total remuneration payable to an employed person on the fulfilment of his or her contract of employment. It includes bonuses and any sum payable for want of a proper notice of discharge but excludes the value of accommodations i.e., supply of light, water, medical attendance or other amenities excluded by the Provincial Government, the employer’s contribution to a pension or provident fund, traveling allowance or concession or other special expenses entailed by the nature of his or her employment and any gratuity payable on discharge.

The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of industrial workers. The main object is to regulate the payment of wages to certain classes of persons employed in industry. The provisions of the Act can, however, be extended to other classes of workers by the Provincial Governments after giving three months' notice to the employers of their intention to do so. 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 excepts 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.

The employer is responsible for the payment of all wages required to be paid to persons employed by him or her. The persons responsible for payment of wages must fix wage periods not exceeding one month. Wages should be paid on a working day within seven days of the end of the wage period, or within ten days if 1,000 or more persons are employed. The wages of a person discharged should be paid not later than the second working day after his or her discharge.

viii. Workers' Representation in the Enterprise

Eversince 1969 Pakistan had a three-pronged system of participation in management (i.e., the Works Council, the Management Committee and the Joint Management Board), independent of each other and each having its own sphere of activities which was replaced by Joint Works Council in IRO, 2002. The Joint Works Council has been replaced by the Workers Management Council in Punjab Industrial Relations Act, 2010 prescribing that in every establishment employing fifty persons or more, the management shall set up a Workers Management Council consisting of not less than six members in which the workers‟ participation shall be fifty percent and the convener of the council shall be from the management.

The Workers Management Council shall function for securing and preserving good labour management relation and look after the improvement in production, productivity and efficiency, fixation of job, transfer of the workers, introduction of new remuneration methods, provision of minimum facilities for contractual workers, maintenance of sympathy and settlement of disputes bilaterally between employers and workers and vocational training in the establishment.

ix. Freedom of Association

Under Section 3 of the IRA 2010, workers as well as employers in any establishment or industry have the right to establish and to join associations of their own choosing subject to the provisions of the law. Both, workers' and employers' organizations have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations and confederations of workers' and employers' organizations. Registration of a trade union is to be made under the Industrial Relations

Ordinance. Workers‟ trade unions are registered with the Registrar Trade Unions in the Province, and if the industry or establishment is expanded in more than on province, then with the National Industrial Relations Commission. Through its registration, the trade union obtains certain benefits: registration confers a legal existence as an entity separate from its members.

x. Collective Bargaining and Agreements

To determine the representative character of the trade union in industrial disputes and to obtain representation on committees, boards and commissions, the Industrial Relations Act makes provision for the determination of a Collective Bargaining Agent (CBA). The CBA is entitled to undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or any

right guaranteed or secured to it or any worker by or under any law or any award or settlement.

The law also provides mechanism for dispute settlement, dealing with strike and conciliation, arbitration and to deal with the matters relating to workers‟ participation in the management of an establishment. Pursuant to Section 33 of the PIRA, 2010, a worker may bring his or her grievance in respect of any right guaranteed or secured by or under any law or any award or settlement to the notice of the employer in writing, either personally or through the shop steward or Collective Bargaining Agent, within three month of the day on which cause of such grievance arises. Where a worker brings his or her grievance to the notice of the employer, the employer must within fifteen days of the grievance, communicate his or her decision in writing to the worker. If the employer fails to communicate a decision within the specified period or if the worker is dissatisfied with such decision, the worker or shop steward may take the matter to the Labour Court. Section 42 of the Punjab Industrial Relations Act, 2002 permits any CBA or any employer to apply to the Labour Court for the enforcement of any right guaranteed or secured by law or any award or settlement. Any party aggrieved by an award or a decision given or a sentence passed by the Labour Court may now submit an appeal to the Labour Appellate Tribunal constituted under section 47 of PIRA,2010. The Tribunal may vary or modify an award or decision or decision sanctioned by the Labour Court.

5. POST 18th AMENDMENT SCENARIO OF LABOUR LAWS IN PUNJAB

Pursuant to the 18th Amendment in the Constitution of the Islamic Republic of Pakistan, 1973 the power to legislate on labour issues stood transferred to the provinces. Government of the Punjab has taken a number of initiatives in the field of labour legislation. Labour policy envisaging the issues like empowerment of women, equality at workplace and conducive working environment is being launched. So far, 14 Federal Laws have been adapted by the Province of Punjab. The Punjab Industrial Relations Act, 2010 entailing the participation of women workers in the trade union activities within the establishment has been promulgated. Amendments in laws have been enacted to promote establishment of Day Care Centre in an establishment employing more than 25

women workers. A new law for regulation and protection of home based workers is under process. In order to improve the deterrence of law, penalties on violation of any provisions of labour laws have been enhanced many times through legal amendments. Provincial Health and Safety Council has been notified. Punjab Home based workers Policy has been announced and the government is working to formulate a policy framework for the protection of the rights of the domestic workers.

6. Consolidation of Labour Laws

It has been felt since long that labour laws of the country are rigid, out-dated, overlapping and thus lacking implementation. In order to make labour laws consistent with the Constitutional provisions, ILS, globalization processes, investment driven and high productivity moves the Government of Pakistan constituted a Commission called

„Commission for Consolidation, Simplification and Rationalization of Labour Laws" in 1999. The Commission was mandated to examine multiple definitions of „worker", „employer" and „wage" in order to reclassify those by proposing uniform definitions as far as possible and review the proposal of regrouping the existing labour laws into following broad categories:

i) Laws relating to industrial relations; ii) Laws relating to fixation and payment of wages; iii) Laws relating to employment and working conditions; iv) Laws relating to human resource development; v) Laws on occupational safety and health; and vi) Laws on labour welfare and social protection.

The Commission was a tripartite body headed by a retired judge of the Supreme Court of Pakistan. After long and exhaustive deliberations spread over one year the Commission came out with the following main recommendations:

i. National labour policy should be a permanent feature and may be produced after every five or seven years;

ii. Database should be established at the national level regarding enforcement of labour laws in the country;

iii. Labour judiciary should be re-vitalized through provision of necessary facilities and capacity building;

iv. The age of the child, as agreed upon under ILO Conventions, should uniformly be declared as fifteen years in all labour laws;

v. The definition of „workers‟ should be so adjusted that there should be one definition for set of laws relating to industrial relations and another for the rest; and

vi. It can be possible to have uniform definition of „employee‟ and „employer‟.

The Commission also proposed that contractors employing fifteen persons should obtain a license and only registered contractors should be given contract work. The right of the agriculture workers to unionize was recognized by the Commission and it was recommended that appropriate policies should be made in this behalf. It was also recommended that part-time workers should have a place in law. The Commission criticized extensive use of “Pakistan Essential Services Maintenance Act, 1952”, and recommended that its use may be restricted to targeted situations.

In order to facilitate employers improve efficiency of labour welfare schemes and extend coverage and scope of these schemes a Task Force was constituted in 1999. The Task Force deliberated upon following half a dozen labour welfare laws and equal number of agencies assigned to administer them:

i. The Employees‟ Old-Age Benefits Act, 1976;
ii. The Workers Welfare Fund Ordinance, 1971;
iii. The Companies Profits (Workers Participation) Act, 1968;
iv. The West Pakistan Employees‟ Social Security Ordinance, 1965;
v. The Excise Duty on Minerals (Labour Welfare) Act, 1967; and
vi. The Workers‟ Children (Education) Ordinance, 1972.

For the collection of these levies Federal and Provincial Governments have their own agencies. The agencies, at times allegedly become irritants for the industrial and

business undertakings. The large number of agencies also leads to pilferage and evasion. The Task Force underpinned the presence of multiple levy collection agencies which was deeply resented by the employers because considerable amount of their time and energies were being lost in dealing with these agencies. Some of the recommendations of the Task Force were as under:

i. For the collection of cesses under all welfare schemes at the federal level one window system should be enforced by making necessary amendments in the

Employees‟ Old-Age Benefits Act, 1976. Similarly, for all the collections at the provincial level one window facility should be established in the provinces, by making necessary amendments in the Provincial Employees Social Security

Ordinances; ii. The medical facility provided by the Social Security Scheme should be made more accessible and effective;

iii. In order to overcome the complaints against officials of Social Security and EOBI, self-assessment scheme be introduced in both the institutions;

iv. Old practice of inspection under these schemes should be replaced with joint inspection involving local chambers of commerce and industry;

v. The amount of penalties in case of violations of payment of social security amount should be reduced;

vi. Discretionary powers of inspecting staff should be restricted to a minimum level;

vii. Labour welfare schemes should be extended to agriculture and informal sector workers also;

viii. Necessary measures for extension in coverage and scope of benefits accrued from different social protection schemes should also be taken;

ix. In order to handle corruption in the system, adjudication should be referred to the labour courts;

x. Excise duty on minerals should be repealed and mines labour be given coverage under social security scheme[4].

The recommendations of the Commission on Simplification, Rationalization and Consolidation of Labour Laws and Task Force for Labour Welfare Schemes and Levies were formulated in consultation with all the stakeholders and after extensive deliberations. Analysis of the recommendations shows that both high level bodies went into the depth of labour laws and made solid suggestions for overhauling the current labour laws and labour welfare schemes[5]. They also proposed restructuring and capacity building of different agencies involved in administration and enforcement of these laws and schemes. Keeping in view the developments of globalization, they actually laid down guiding principles for the law and policy makers to move forward.

7. WAY FORWARD

In the light of the recommendations of the reports of the National Commission and Task Force on Labour Laws the efforts for consolidation, rationalization and simplification of labour laws should be expedited by the Provinces. Besides, the Provinces must take into account all ground realities and developments of the previous decade like globalization, significance of human rights and labour issues in international trade, expansion of informal sector, home based workers, part-time workers, contract workers and domestic workers. Good practices of the developing countries particularly that of the SAARC countries may also be considered because regions are emerging as hubs of trade and business activities during the recent past.

[4] The above portion of the paper heavily relies on the reports of Justice Shafi-ur-Rehman Commission and Task Force on Labour Levies.

[5] Globalization, Changing work organization and Labour Relations: A case study of Pakistan-a Ph.D Thesis by Mr. Javaid Iqbal Gill.

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