

Labour law in Pakistan

Overview



Labour law in Pakistan is broad and contains several ordinances, acts, rules and regulations and all other statutes relating to industrial, commercial and labour establishments.

These different laws give authentic guide to the Employers, the Employees, the Trade Unions and the concerned Agencies to realize their respective responsibilities and to become aware of their prescribed legal rights to be asserted. These laws compliment in smooth running of the business with regard to matters relating to employers and employees' in order to achieve the target of higher productively, reasonable profits, better wages and reduction in unjust practices or discrimination.

Social and economic well-being of the people is one of the principal objectives of the government. Labour Policy, like policies in other fields, should also aim in attaining the objectives in a manner best suited to the resources of the country and the state of economy. There is an equally genuine requirement to create among workers and employers, a better awareness of their obligations to the national objectives stated above. At the same time, the Government recognizes that workers and employers must enjoy reasonable benefits as can be sustained by the economy without suffering setbacks.

After independence Pakistan inherited different legislations from British India which includes Trade Union Act 1926, Industrial Employment (Standing Orders) Act 1946, Industrial Dispute Act 1926 and factories Act 1934. These laws provided the basis for labour laws and policy making in the country and were progressive as they allowed trade union activities in all sectors and the workers had the rights of collective bargaining and even strike. The Trade Union (Amendment) Ordinance 1960, containing provisions of the earlier Act, was promulgated in 1960 and it established the principle of compulsory recognition of trade unions by employers. It also included the unfair labour practices, both on the part of Employers and Employees. The Industrial Dispute Act 1926 was replaced by

Industrial Dispute Ordinance 1959, in the Ayub regime, changed the system, more enterprises were included in the public utility definition strikes were eventually banned. The compulsory adjudication system made workers going from one court to another court for years in the quest for justice. During Yahaya Khan Regime, the second military dictator, labour legislation was rewritten with emphasis on two points: the trade union movement should remain factory/plant based and delinked from the party politics. The martial law regimes, just after the first decade of independence, on the one had did bring increased industrialization and jobs but on the other hand, also brought retrogressive labour laws and the system of repression which still continues.

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

- Article 11 of the Constitution prohibits all forms of slavery, forced labour and child labour;
- Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;
- Article 18 proscribes the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;
- Article 25 lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone;
- Article 37(e) makes provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Legislation has its basis from the law of contract (the law of "master and servant") and industrial relations regulations are considered departure from common law. Since creation of Pakistan, five labour policies have been announced by the governments in the year 1955, 1959, 1969, 1972 and 2002. All these polices basically laid-down the parameters for the growth of trade unionism; the protection of

workers' rights; the settlement of industrial disputes and redressal of worker grievances. Between 2000 to 2002, 20 laws consolidated into following 6 draft laws:

- Industrial Relations Ordinance
- Conditions of Employment Ordinance
- Payment of Wages Ordinance
- Occupational Safety & Health Ordinance
- Labour Welfare & Social Security Ordinance
- Human Resources Development & Control of Employment Ordinance

After 2002, no Labour Policy was introduced although a number of developments took place in the intervening period, which would have necessitated the same. In this scenario the Prime Minister of Pakistan in his first speech emphasized the need to address the labour issues and announced the lifting of ban on trade unionism, repeal of Industrial Relations Ordinance, 2002, Removal from Service (Special Powers) Ordinance, 2000 and other anti-labour laws. In pursuance of Prime Minister's directions, a new Labour Policy of the Government is placed.

The new technologies demanded a high level of professional competence along with specialized skills. Considering the changes requirements of the time, it was imperative re-establishing technical training and human resource development programmes to train manpower in multiple trades. To have a productive consultation with the stakeholder, Pakistan Tripartite Labour Conference under the Chairmanship of the Prime Minister was held on 16th February, 2009 after about eight years, which culminated in useful recommendations for legislative, institutional and administrative reforms to meet the emerging challenges of the time. These recommendations were further discussed in Provincial Tripartite Committees, and all these recommendations are the basis of this new labour policy. The objective before the government is that the new Labour Policy should ensure a harmonious working relationship between workers and employers for improving performance and efficiency of the industry.

In 2010, subjects of labour and employment devolved to Provinces under the 18th Amendment to the Constitution of Pakistan, as a result of which the Federal labour laws made applicable on Provinces under Article 270AA(6) of the Constitution of Pakistan until replaced, amended or repealed by Provinces. Labour Policy 2010 announced on 1 May was noted by analysts as grossly lacking on all grounds. It fell short of a policy document, lacking in research and insights on ground realities and ignorant of the government's own past and current initiatives. Constitutional experts raised the question of its validity after the abolition of the concurrent list under the 18th Amendment which rendered labour a provincial subject.

Labour Policy 2010 was silent on agricultural workers' rights of unionization and collective bargaining. It only accedes to cover agricultural workers in mechanized farms for compensation on death or injury under the Workmen's Compensation Act 1923. On crucial issues of child labour and forced labour, the policy made cursory remarks. The policy failed to outline strategic actions to address gender disparity in the work force and in workplace. Rampant violation of ILO Convention on equal remuneration for equal work and low participation of female workers is indicative of anti-women work environment.

The policy talked of Smart Cards for registration of a minute section of workers already registered under Social Security and EOBI, and of payment of wages via banks, ignoring the fact that less than 15 per cent of the country's population has access to the banking facilities. The labour Policy 2010 aimed to merge and downsize labour laws in to five core laws. The writers of the policy missed that in 2001 the Labour and Manpower Division shared six drafts of consolidated proposed laws with the stakeholders. The drafts had included the Industrial Relations Ordinance, the Wages Ordinance, Conditions of Employment Ordinance, Occupational Health and Safety Ordinance, the Human Resource Development Ordinance, and the Labour Welfare and Social Security, Ordinance.

Sindh is still in the process of making proposals for reforming labour law while Punjab has enacted an industrial relations act, which allegedly has many anti-labour provisions. Government, while devolving labour ministry under the 18th amendment, has formed a new Human Resource Development Ministry with functions similar to its predecessor. The Government claims that the role of new ministry and Central labour advisor wing would be to ensure that provincial labour legislation is in accordance with the international labour standards ratified by Pakistan.

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A petition moved in Islamabad High Court challenging the legal existence of Ministry of Labour and Manpower, after repeal of Industrial Relations Act 2010. The petitioner argued that Federal Minister and staff of Ministry of Labour and Manpower (especially Industrial Relations Commission) were receiving their salaries illegally after repeal of above-mentioned act. The petitioner prayed that either court should order Ministry of Labour to form a new legislation or Industrial Relations Act of 2002 may be declared as functional now. A new legislation is necessary for registration and industrial dispute settlement of national level federations like unions in PIA, Railways, Pakistan Post and Civil Aviation Authority. However, it must be mentioned here that Government has already drafted a new law on industrial relations in federal territories as well as to cater to the needs of national level federations, which protects NIRC. While the current petition has been filed in Islamabad High Court, High courts of two larger provinces had already given their verdicts about IR laws. While Sindh High Court had decided to stick with IRO 1969, the Lahore High Court decided that until a new law is promulgated IRA 2008 would remain in effect. Nonetheless IRA 2010 was promulgated in Punjab in December 2010, the Sindh province and federal territory are still working on their laws. Khyber Pakhtunkhwa and Baluchistan have already notified their industrial relations acts in 2010.

Another issue with our operating labour laws is that most of them are applicable on workmen or employees and does not specifically include white collar workers which may be seen discriminatory against the upper working class as they also expect protection of their rights. Section 5 of the West Pakistan Shops and Establishment Ordinance 1969 provides the categories on which the ordinance is not applicable which also includes the white colour employees. As evidence to the aforementioned statement please find below some of the most commonly used labour laws and their applicability:

1. The West Pakistan Shops and Establishments Ordinance 1969: The West Pakistan Shops and Establishments Ordinance 1969 (the "1969 Ordinance") regulates the work hours and other conditions of work and employment of persons employed in shops and commercial, industrial and other establishments in Pakistan. Applicable on employees.
2. The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968: The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (the "Standing Orders") applies to all industrial and commercial establishments in Pakistan wherein twenty or more workmen are employed, directly or through any other person, whether on behalf of himself or another person. This is specifically applicable on workmen.
3. The West Pakistan Maternity Benefit Ordinance 1958: The West Pakistan Maternity Benefit Ordinance 1958 (the "1958 Ordinance") regulates the employment of women in establishments in Pakistan. It does not specify if woman include the white collar working woman.
4. The Employers' Liability Act, 1938: The Employers' Liability Act, 1938 (the "1938 Act") provides that certain defences shall not be raised in suits for damages in Pakistan in respect of injuries sustained by workmen.
5. The Employees Old-Age Benefits Act 1976: The Employees Old-Age Benefits Act 1976 (the "EOAB") provides for certain old age benefits for the persons who are employed in industrial, commercial and other organizations. Applicable on workman.
6. The Disabled Persons (Employment and Rehabilitation) Ordinance 1981: The Disabled Persons (Employment and Rehabilitation) Ordinance 1981 (the "1981 Ordinance") provides for the employment, rehabilitation and welfare of disabled persons and for matter connected therewith. Applicable on employee.
7. The Employment of Children Act 1991: The Employment of Children Act 1991 (the "1991 Act") prohibits the employment of children in certain occupations and to regulate the conditions of work of children.
8. The Essential Personnel (Registration) Ordinance 1948: The Essential Personnel (Registration) Ordinance 1948 (the "Registration Ordinance") provides for the compulsory registration of essential personnel (as defined herein below) at Employment Exchanges (as defined herein below) in Pakistan.
9. The Companies Profits (Workers Participation) Act, 1968: The Companies Profits (Workers Participation) Act, 1968 (the "CPA") provides for the participation of workers in the profits of companies.
10. The Workers' Welfare Fund Ordinance, 1971: The Workers' Welfare Fund Ordinance, 1971 (the "WWF") provides for the establishment of a Workers' Welfare Fund providing residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto.
11. The Workmen's Compensation Act 1923: The Workmen's Compensation Act 1923 (the "WCA") provides for the payment by certain classes of employers of compensation for injury caused to a workman by accident arising out of or in the course of his employment.
12. The Provincial Employees' Social Security Ordinance 1965: The Provincial Employees' Social Security Ordinance 1965 (the

"PESSO") introduces a scheme of social security for providing benefits to certain employees or their dependents in the event of sickness, maternity, employment injury or death and for matters ancillary thereto.

13. The Employee Cost of Living (Relief) Act 1973: The Employee Cost of Living (Relief) Act 1973 (the "1973 Act") provides for the payment of a cost of living allowance to employees and applies to all "undertakings" in Pakistan.
14. The Workers' Children (Education) Ordinance 1972: The Workers' Children (Education) Ordinance 1972 (the "WCO") provides for the education of workers' children and matters ancillary thereto.

Recommendations

In light of the above and notwithstanding the fact that labour legislation is now a provincial subject, all provinces and territories in Pakistan should coordinate with one another to ensure that labour legislation is as uniform as possible across Pakistan. Furthermore, it is recommended to:

1. Reduce number of laws
2. Fewer laws easier to implement, comply with and enforce
3. Rights and obligations easier to understand
4. Simplification and reduction of paperwork and procedures
5. Cost-saving and time-saving for all stakeholders
6. Removal of:
 - a. Overlapping, repetition and redundancies
 - b. Conflict
 - c. Gaps and loopholes
 - d. Penalties for non-compliance must have deterrence value
 - e. Creation of a seamless and comprehensive legislative framework
7. Laws applicable on conditions of employment should be bifurcated into separate laws applicable to commercial establishments and industrial establishments
8. Laws relating to payment of wages and minimum wage should not be separate laws as they are a major condition of employment and should be incorporated into the laws relating to conditions of employment in industrial and commercial establishments respectively.

Proposed law comments

Employment Act: For white-collar employees in commercial establishments

Labour Act: For blue-collar in industrial establishments and labour

Occupational Safety & Health Act: Applicable on commercial and industrial establishments

Human Resources Development Act: Technical education and vocational training

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