



REVIEW OF LABOUR LAWS OF KHYBER PAKHTUNKHWA



PROVINCIAL COMMISSION ON THE STATUS OF WOMEN, KHYBER PAKHTUNKHWA



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by

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**Provincial Commission on the Status of Women,
Khyber Pakhtunkhwa**



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Foreword

The Provincial Commission on the Status of Women had opted among its initial studies a broad based review of the provincial labor laws to provide a basis for more in-depth study of specific laws for purposes of needed amendments and updates as indicated in accordance with the exigencies of the current times.

The importance of review of national laws for their adoption at the provincial level has assumed critical importance in the wake of post devolution and greater autonomy to the provinces. The review of labor laws came up high on the priority of the Commission as women comprise a large proportion of the labor force and their entry is expanding rapidly with time. Issues related to women labor force have been the subject of widespread debate within civil society.

The report is primarily meant for the review of the Labor Department who are collaborating with the ILO (International Labor Organization) and other relevant donors for review of the existing laws and their relevance for the current times. The Labor Department should be very well placed to benefit recommendations from two different sources.

The Commission was fortunate to secure the services of Riffat Butt, a Consultant with the National Commission on the Status of Women and with very relevant experience and background of women related issues.

Thanks are due to UN Women for their financial assistance for the consultancy.

Zubeida Khatoon
Chairperson

1. Introduction

Human resources play a very important role in the overall development of a nation. Labor community constitutes an integral and important part of the human resources of a nation. There are instances that nations endowed with properly managed manpower have achieved heights of success even in eve of scarcity of other natural resources and a best example of the phenomenon is Japan.

Right to work and earn a decent living with freedom of association and dignity is recognized fully in the Constitution of Pakistan. According to the Constitution, 'the state shall make provision for securing just and humane conditions of work...' (Article 37c), and '...shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work' (Article 3).

Pakistan has also ratified all eight core Conventions that codify the four most basic human rights related to the sphere of work, the right to organize and engage in collective bargaining, the right to equality at work, the abolition of child labor and the abolition of forced labor.

Labor laws in Pakistan own their origin to colonial period. There are more than 70 labor laws which are old in content and have become obsolete now. These laws are also not commensurate with the international standards. The 18th Amendment in the Constitution of Pakistan has also changed the relationship of the Federation and the Provinces. Now labor has fall within the provincial domain with full authority to legislate on. The labor laws also need to be rationalized and consolidated and provisions which are outdated and redundant need to be deleted.

2. Background of the Study

The Provincial Commission on the Status of Women, Khyber Pakhtunkhwa is a statutory body established under NWFP Act X1X of 2009. The functions of the Commission are to review provincial legislation for women, assess government programs and projects for women, and monitor the mechanisms and institutional processes for social care and justice for women. In view of the aforesaid functions, the Commission initiated the review of the provincial labor laws in formal sectors.

2.1 Objective

Terms of Reference- Annex A- state the objective of this study; review of the major provincial and relevant national laws and work of relevant standing committees for labors in order to identify areas for amendments and/or propose new legislation for women workers in the formal sector.

2.2 Methodology

Keeping in view the TORs- for this study, qualitative method was used. It included desk review of the documents, clause by clause review of the labor laws and labor code. It also included interviews (semi structured- Annex B) with the provincial labor and law department. Meetings with the chair of PCSW were also held to discuss about the labor laws to be reviewed after the mapping.

In first phase, a work plan was prepared in consultation with PCSW (KP). A list of relevant labor laws was also prepared while utilizing different sources, including provincial government website of KP, documents, labor code and other relevant sources. After that, the list of the identified/mapped laws was shared with the Commission for getting the opinion to prioritize the laws to be focused on.

In the second phase, the prioritized laws were reviewed clause by clause from gender perspective and also meetings and discussions with the focal persons in labor and law

department of KP were carried out to know the initiatives of the government and the legal & policy directives (if any) of the government of KP .

In third phase, first draft of the report was shared with the PCSW. The report contained the list of major labor laws, the laws reviewed while pointing the lacunas in these laws and also the recommendations for new initiatives. Feed back of the Commission was obtained on the first draft and after incorporating the given suggestions of the Commission, final draft of the report was prepared. The report prepared focus on the purpose of the assignment, i.e.

- a. identify areas for improvement/amendments especially from the gender perspective
- b. review the provincial labor policy, if exists and identify if not covered by existing laws
- c. initiatives of the Government of KP to amend the labor laws

During the study, some limitations and constraints were also faced. First, during the course of this assignment, drafts of the labor laws under review with the labor department were not shared with the researcher, so it was difficult to get to know the potential amendments proposed in the laws under review by the Labor department. However, list of the laws in focus was provided.

Second, no labor policy of KP government was formulated after the passage of the 18th Amendment, making it difficult to understand as to on what issues the laws under review would be focusing on. For instance, it was not clear whether the laws under review would be pro-production or pro-laborer in nature. Moreover, it was also not clear as to whether these laws are being reviewed for the purpose of adoption as required by Art 270-AA of the constitution after 18th Amendment or tend to aim at addressing the issues in the industrial sector and laborers needs of the Khyber Pakhtunkhwa.

3. Constitutional Framework

The Constitution of Pakistan 1973 provides a framework of rights for labor force and contains provisions for the economic and social well being of the people and for the promotion of social justice. Right to work and earn a decent living under conditions of freedom and dignity is envisaged as one of the fundamental human rights in the Constitution. According to the Constitution of Pakistan, 'the state shall make provision for securing just and humane conditions of work...' (Article 37c), and '...shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work' (Article 3).

4. Labor Rights in the Constitution of Pakistan

- a- **Article 4;** states that the right to enjoy the protection of law and be treated in accordance with law is the inalienable right of every citizen;
- b- **Article 9** stipulates that no person shall be deprived of life or liberty, save in accordance with the law;
- c- **Article 11** prohibits slavery and all forms of forced labor and trafficking in human beings as well as impermissible child labor;
- d- **Article 17** deals with freedom of association and provides that every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order
- e- **Article 18** prescribes the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;
- f- **Article 25** lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone;
- g- **Article 37(c)** creates an entitlement of all citizens of Pakistan to social security by compulsory social insurance or other means;

- h- **Article 37(d)** requires the State to provide basic necessities of life (food, clothing, housing, education, medical relief) for citizens temporarily or permanently unable to earn their livelihood due to infirmity, sickness or unemployment; and
- i- **Article 37(e)** makes provision for secure and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex

5. Female Labor Participation in Pakistan and Challenges for Emancipation

Out of total population of the country, the total labor force in Pakistan is comprised of approximately 55.88% million of people ¹ with 47% within the agriculture sector, 10.50% in the manufacturing sector and remaining 42.50 % in various other sectors.

Unemployment rates have been high and increasing, especially amongst certain groups such as youth, women and young graduates.²

Labor participation rate, female (% of female population ages 15+) in Pakistan was 22.40 as of 2010. Its highest value over the past 20 years was 22.40 in 2010, while its lowest value was 12.50 in 1995.³

According to an ILO report on women's participation in the labor force, 79.6 per cent of the total employed persons are male with 20.4 per cent females whereas at the level of occupational group of legislators, senior officials and managers, only 3 per cent are female with 97 per cent seats occupied by men. Whereas 75 per cent of the total employed are working women in the agriculture sector with majority of them working as informal or officially unrecognized labor. It was observed that the enhanced role of women in the labor force could be achieved by providing them greater control over decisions related to earnings and expenditures. Women should be provided education,

¹ - http://www.indexmundi.com/pakistan/labor_force.html

² - ibid

³ - <http://www.indexmundi.com/facts/pakistan/labor-participation-rate>

skill training, and means of transportation and conducive environment at the workplace to improve their active participation in economic activity.⁴

The Gender Inequality Index (GII)_also reflects gender-based inequalities in three dimensions – reproductive health, empowerment, and economic activity. Pakistan has a GII value of 0.573, ranking it 115 out of 146 countries in the 2011 index. In Pakistan, 21 per cent of parliamentary seats are held by women, and 23.5 per cent of adult women have reached a secondary or higher level of education compared to 46.8 per cent of their male counterparts. For every 100,000 live births, 260 women die from pregnancy related causes; and the adolescent fertility rate is 31.6 births per 1000 live births. Female participation in the labor market is 21.7 per cent compared to 84.9 % for men. In comparison, India and Bangladesh are ranked at 129 and 112 respectively on this index.

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6. Participation rate in Labor Force

Country	Female	Male
Pakistan	21.7	84.9
India	32.8	81.1
Bangladesh	58.7	82.5
South Asia	34.6	81.2

Source: Human Development Report 2011, UNDP

The structure of trade unions laid down in the formal sector is also male dominated in terms of both membership and leadership. According to a report “that woman ...are culturally discouraged from forming organizations that might take on an active rights based approach. The barriers that restrict women from organizing and participating in the unions in the registered establishments to bargain collectively for better pay and conditions include discouraging, patriarchal and patronizing attitude of male trade union

⁴ - http://www.ilo.org/islamabad/info/public/pr/WCMS_140760/lang--en/index.htm

⁵ - <http://undp.org.pk/images/documents/Pakistan%20-%20One%20pager.pdf>

leadership, male co-workers, domestic workload and responsibilities, societal attitudes, restrictive mobility, and lack of access to information on human and labor rights.⁶ Other factors restricting women are anti-union tactics adopted by the employers, i.e. dismissal from work, intimidation and harassment by union members and office bearers; that keep women out of union activities as they fear confrontation and threats from male employers and loss of job.⁷ Lack of access to information on market dynamics, macroeconomic state policies and impact of globalization restrict women's world view, undermine their confidence and render them unable to assert their rights.⁸ The aforementioned challenges of increasing unemployment and the dearth of policies designed to tap the potential of the untrained and unemployed youth and women are further compounded by a defective legislative framework in some areas, and ill-enforcement of existing laws in others.

7. Labor Legislation in Pakistan

Labor legislation in Pakistan traces its origin to colonialism and was inherited from India at the time of partition. These laws have evolved through a continuous process of trial to adjust to changing socio-economic conditions, state of industrial development, level of literacy and social welfare. Unlike other laws in Pakistan, labor laws are less homogenous, ineffective, lack content and are old. Currently, about 70 Acts & Ordinances and around 89 Rules and Regulations are in place.⁹

Major Labor Laws of Pakistan: Major labor laws are categorized as follow

Sr. No	Name of the Act
1	Factories act, 1934
2	Industrial Relations Act

⁶ - Denial and Discrimination, Labor Rights in Pakistan, report of Pilar, 2007, p 47

⁷ - ibid

⁸ - ibid

⁹ - Briefing paper, " Understanding Labr issues in Pakistan, By PILDAT , P 21

3	Workman Compensation Act 1923
4	Minimum Wages ordinance, 1961
5	Payment of Wages Act 1936
6	Industrial & Commercial Employment Standing Orders ordinance 1968
7	Shops & Establishment Act 1969
8	Maternity Benefit Ordinance 1958
9	The Mines Maternity Benefit Act, 1941
10	Apprenticeship Ordinance 1962
11	Employees Old Age benefit Ordinance 1976
12	Industrial Statistics Act 1942
13	Prohibition of Employment of Children Act 1938.
14	Employments of Children Act 1991.
15	Bonded Labor Abolition Act 1992
16	Employees Cost of Living (relief) Act 1973
17	Employees Social Security Ordinance 1965
18	Worker Children Education Ordinance 1972
19	Companies Profits (workers participation) Act 1968
20	Workers Welfare fund Ordinance 1971
21	Minimum Wages (Unskilled Workers) Ordinance, 1969

8. International Obligations of Pakistan

Pakistan has ratified all eight core Conventions fundamental to workers' rights worldwide relating to:

i. Freedom of association and the right to collective bargaining

- a. ILO Convention No. 87 - Freedom of Association and Protection of the Right to Organize, 1948
- b. ILO Convention No. 98 - Right to Organize and Collective Bargaining, 1949

ii. Forced labor

- c. ILO Convention No. 29 - Forced Labor, 1930
- d. ILO Convention No. 105 - Abolition of Forced Labor, 1957

iii. Equality of opportunity and treatment

- e. ILO Convention No. 111 – Discrimination (Employment and Occupation), 1958
- f. ILO Convention No. 100 - Equal Remuneration, 1951

iv. Child Labor

- g. ILO Convention No. 138 - Minimum Age Convention, 1973
- h. ILO Convention No. 182 - Worst Forms of Child Labor, 1999

Of the four key ILO conventions for gender equality at work place, i.e. Equal Remuneration Convention No. 100 (1951), Workers with Family Responsibilities Convention No. 156 (1981), Home Work Convention No. 177 (1996), and Maternity Protection Convention No. 183 (2000), Pakistan has only ratified Equal Remuneration Convention and that too without making commensurate statutory provisions. Pakistan has ratified the UN Convention on the Elimination of Discrimination against Women (CEDAW) and several ILO Conventions related to women and work such as, Labor

Statistics Convention 1985, Maintenance of Social Security Rights Convention, 1982, Night Work (Women) Convention (Revised), 1948, and the conventions that cover core labor rights which are equally applicable to women workers. But the principles behind the ratified conventions have not been given statutory effect.

9. Khyber Pakhtunkhwa: Background and Situation

KP had a population of 17.7 million in 1998 in the last Census which has increased to 24.7 million in 2010. Nearly half of the population lives in mountainous and arid areas. The 10+ literacy rate in KP is only 50 percent. The gap is specially pronounced for female literacy, estimated at 31 percent for KP as compared to a national average of 45 percent.¹⁰

Unemployment rates show a significant gender differential, estimated at 14.2 percent for females in KP and 6.9 percent for males.

Patterns of male and female employment are different within urban or rural areas, as well as on average. Female employment in rural areas is concentrated in agriculture; and community and personal services, with negligible female employment in other major service sectors such as wholesale and retail trade or transport. In urban areas also, female employment is concentrated in community and personal services.

There are indications that disguised employment is high, and it is a fact that labor force participation rates are overall low, and are particularly low for females. It is also pertinent to mention that much of the economic activity in the province is taking place in the informal sector (particularly with regard to trade with Afghanistan), and there is little indication that the informal economy is benefitting the general population.

Gender disparity is endemic in KP, and is evident in the health, education sectors, in employment and political representation. There are very serious problems of gender

¹⁰ - Report On The Status Of Khyber Pakhtunkhwa Millennium Development Goals, UNDP, 2011

discrimination in the province, and social and cultural barriers are the leading factor in inhibiting the active participation of women.

Women's low participation in labor force is caused by factors like;

- a- Cultural norms which are opposed to women working for a wage;
- b- Low educational attainment; and
- c- Difficulty in accessing employment opportunities due to low mobility

9.1 18th Amendment & Devolution of Ministry of Labor

As a consequence of the 18th Amendment in the Constitution of Pakistan, Ministry of Labor and Manpower stands devolved. The passage of the 18th Amendment has changed the relationship of the federation and of the provinces. The concurrent list has been abolished and transferred many subjects including the labor to provincial legislative list. Now the provinces are to legislate on the labor issue through developing policies and making new laws.

As envisaged in Art 270 –AA of the Constitution, all laws enumerated in the concurrent legislative list will remain in force until altered, repealed and amended by the competent authority. It would be appropriate that while reviewing the labor legislation for enactment in the KP, its gaps and defects be removed in view of the recommendations of this report.

9.2 Status of the Labor Laws in KP after 18th Amendment

As featured in Art 270 - AA of the Constitution, all the labor laws until repealed, amended or changed by the competent authority, will remain valid. However, after the passage of the 18th Amendment, only one law named "Industrial Relations Act 2010" has been adopted and enacted in the province of KP; while rest of laws are under review.¹¹

¹¹ - Interview with Director Irfan Khan, Director Labor Department, KP

9.2.1 Labor Laws under Review by the KP Government

1	KP Factories Bill, 2012
2	KP Industrial and commercial Employment(Standing orders) Bill, 2012
3	KP Minimum Wages Bill, 2012
4	KP Worker's Compensation Bill, 2012
5	KP Payment of Wages Bill, 2012
6	KP Maternity Benefit Bill, 2012
7	KP Industrial Statistics Bill,2012

It would be appropriate that while reviewing the said laws, recommendations suggested, also be considered to remove the defects and gaps of these laws.

10. Review of Major Labor Laws under the Study

List of laws reviewed under the assignment is as follows:

1. Khyber Pakhtunkhwa Industrial Relations Act 2010
2. Factories Act, 1934
3. Workmen Compensation Act, 1923
4. Payment of Wages Act, 1936
5. Minimum Wages Ordinance, 1961
6. West Pakistan Maternity Benefit Ordinance, 1941
7. Industrial and Commercial Employment (Standing Orders) Ordinance 1968
8. Apprenticeship Ordinance, 1962

10.1. Khyber Pakhtunkhwa Industrial Relations Act, 2010

This is the only law which has been adopted and promulgated by KP after 18th Amendment. It governs the Industrial relationship between the employer and the workers to maintain industrial peace and settle disputes between them by negotiations, reconciliations, arbitration and adjudication. This Act establishes and provides procedures for settling grievances and resolving disputes between workers and employers. It also specifies the procedure for lock-outs and strikes and confers upon the right to establish or join trade unions of their own choices.

Important features of this Act are:

- a. Worker's right of association
- b. Recognition of registered trade union
- c. Right and privileges of registered unions and collective bargaining (CB) agents
- d. Procedure for determination of CB agent
- e. Worker's participation and dispute resolution
- f. Joint consultation, conciliation, mediation and adjudication
- g. Establishment of labor courts
- h. Labor judiciary system (Labor Courts, Appellate Tribunal)
- i. Unfair Labor Practices
- j. Fine, Penalties and procedures

Findings

- 1) The following establishments are expressly excluded from the scope of IRA :
 - i. Agricultural workers
 - ii. Rural workers in the informal non-farm sector
 - iii. Urban workers in the informal sector
 - iv. Pakistan Security Printing Corporation;
 - v. Pakistan Security Papers Ltd;
 - vi. Bata Shoes, when supplying shoes to the armed forces; Pakistan Mint;
 - vii. Hospitals and ambulance services;
 - viii. Fire fighting services;
 - ix. Postal, telegraphs and telephone services;
 - x. Institutions established for payment of employees' old-age pensions or workers' welfare (EOBI, Social Security Institutions);
 - xi. Watch and ward and security services staff maintained in any establishment;
 - xii. Establishments for generation, production, manufacture of supply of electricity, gas, oil, or water to the public;
 - xiii. Railways;
 - xiv. Civil services (applicable to all employees, including the low level staff);
 - xv. Export Processing Zones and Special Industrial Zones (SIZ)

2) The exclusion of some sectors of economy such as agriculture is likely to leave working women unprotected. Some other sectors where activities of trade unions are banned may likely to affect the women workers adversely such as Pakistan Security Printing Corporation, the Ministry of Defense, the Export Processing Zone and Special Industrial Zone, etc .

Recommendations

- i. The law needs to be revamped in view of the existing conditions of work and employment, and the vast majority of workers like in agriculture, fisheries and forestry be included in its ambit.
- ii. An appropriate representation of the women workers in trade unions commensurate with the percentage of the work force be ensured.

10.2. Factories Act 1934

The Factories Act is applicable mainly to the manufacturing processes and is applicable on any factory where ten or more people are working or were working on any day in the preceding 12 months.

Findings & Recommendations

- i. The whole law of the Factories Act 1934 needs to be amended to bring it at par with the current developments in the world. Substantial amendments in the Factories Act, in view of the global scenario, are required where technologies are changing at a rapid pace, the worker has to face new hazards and risks to his/her life. Against this background, the Factories Act should be amended to re-define hazards to ensure better operational safety and health standards.
- ii. Furthermore, with women workers increasingly joining the workforce, the proposed amendments also seek to address concerns like security, transportation, day care centers, congenial workplace, etc. to promote their employment.

- iii. Flexible provisions for women workers regarding compensatory leave, daily hours, interval of rests and spread over time need to be laid down.
- iv. Transportation facility for women workers intends to work in night shifts be provided by the employer.
- v. A clause providing “protection against discrimination” for women be also made part of the law

10.3. Workmen Compensation Act, 1923

This Law aims at providing financial protection to the workmen & his / her dependants in case of accidental injury by means of payment of compensation by employers. It covers all cases of an accident “arising out of and in the course of employment’ and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity.

Findings

- i) The Workmen’s Compensation Act does not contemplate injuries to be suffered by women at the work place. Although women workers do get compensation, there is absence of a gender based conceptualization of work place injury.
- ii) Age limit for an adult and minor in this Act is contemplated at “seventeen & fifteen years” which is not in accordance with the international standard.
- iii) Clause 2(d) defines the term “dependents”; the words “legitimate” and “illegitimate” occurring in this clause are undesirable.
- iv) The whole Act uses the word “workman”, which reflects a gender bias. A neutral term should be devised as in place of manpower the term human resources are used
- v) For “Methods of calculating the wages”, in Section 5 (a) the continuous service for a pregnant woman is not considered.
- vi) Provision speaking on “distribution of compensation “ by the commissioner is discriminatory against women as it lays down, “Where any lump sum deposited with the Commissioner is payable to a woman or a person under a legal disability, such sum may be invested, applied or otherwise dealt with for the benefit of the

woman, or of such person during his disability, in such manner as the Commissioner may direct.....” needs revision

- vii) List of “occupational diseases” mentioned in Schedule 111 needs thorough revision. As it also does not include mental disorder that can arise from particular kind of work, e.g. from monotonous jobs.
- viii) According to a report, women working in certain industries are at higher risk at the time of pregnancy and have a higher rate of miscarriages or still births. These health hazards are not mentioned either in the Workman's Compensation Act or the Provincial Employees Social Security Ordinance, thus a female worker cannot claim either compensation or special protection from risk.¹²
- ix) Employer is exempted to pay compensation where the disablement has arisen out of:
 - a. drugs or drink
 - b. willful disobedience
 - c. willful removal or disregard of any safety guard or any device

The grey area in this section that it does not define what is “drink”, “drugs”, “willful “ and disobedience.

Recommendations

- i. Age Limit for “adult” should be at 18 years and for “minor” less than 18 years
- ii. The words “legitimate” and “illegitimate” from the definition of “dependents” be omitted
- iii. A gender neutral word “worker”, “employee” or “work person” be used instead of “workman”.
- iv. The period of maternity leave be also considered in Section 5 (a) for “ methods of calculating wages”
- v. Compensation to a “woman” should be awarded directly by the Commissioner, not through indirect means. Rather, women should be compensated on the internationally recognized principles of equal pay for equal work.

¹² - Ahmad N., “A Review of existing Labor Laws with Special Reference to Female Workers,” 1993

- vi. List of “occupational diseases” mentioned in Schedule 111 should be revised and occupational health diseases and problems which may harm a woman, particularly a pregnant woman during the work is to be considered in this list as well.
- vii. Additional work place security, strict penalties for sexual harassment as well as other crimes against women and unreluctant enforcement to protect working women were recommended.

10.4. Payment of Wages Act 1936

The Payment of Wages Act, 1936 is applicable to the wages of any person employed in a factory, railway administration, or railway contractor. It also specifies the responsibility for payment of wages, fixation of wages, fixation of wage periods, time of payment of wages, deductions for damage or loss, delay in payment of wages and penalties for malicious or vexatious claim, application in respect of claim, appeal, and powers of the authorities and power to recover from the employees.

10.5. The Minimum Wages Ordinance 1961

This is applicable to all industrial establishments' employees (whether skilled, unskilled or apprentices and even domestic workers) but excludes those of Federal or Provincial governments, coal mine employees or persons employed in agriculture.

Findings and recommendations

- i. Amount of fine contemplated in Minimum Wages Ordinance, 1961 to be paid by the employer for contravening the provisions of the Act is required to be enhanced.

N.B: 20th Sept, 2012 Notification issued by Minimum Wage Board, Govt. of KP, enunciating the principle of equal pay for work of equal value for women. (Note by PCSW)

10.6. West Pakistan Maternity Benefits Ordinance, 1958

The law is applicable to female workers across the board within all establishments. Female worker is entitled to 12 weeks maternity leave. Every employer is liable for payment of maternity benefits at the rate of her wages last paid during the period of six weeks immediately preceding and including the day on which the female worker delivers a child, and for each day of six weeks succeeding the day.

Findings & Recommendations

- i. The period of maternity leave be enhanced to 14 weeks during which the mother must not be allowed to work and she be protected from being pressured to return to work.
- ii. No special medical attention is provided to pregnant women; maternity benefit and leave...is inadequate and the law does not address itself to the provision of crèches and daycare centers at places of work.
- iii. Amount of fine to be paid by the employer be enhanced.

10.7. West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968

The Standing Orders Ordinance is applicable to the commercial or industrial establishments where 20 or more workers are employed or were employed during the last 12 months.

Findings & Recommendations

- i. The whole Law uses the word “workman”, which is in this time and age is not gender sensitive language. It should be gender neutral.
- ii. Section 2 (b-A) defines “ permanent “ workman, which does not envisage the period of maternity leave while calculating the period of work engaged as a condition of work done for permanent position
- iii. Flexible working hours should be provided to female worker
- iv. Maternity period of a woman worker should be considered while considering a worker woman for giving permanent status of worker.

- v. At time of retrenchment or discharge, financial benefits for pregnant women should be provided for a specific period

10.8. Apprenticeship Ordinance, 1962

This Law lays down the provision for promoting, developing and regulating systematic apprenticeship programs in the industries and for securing certain minimum standards of skill.

Findings & Recommendations

- i. Vigilant implementation of this law needs to be ensured which is currently lacking.
- ii. A special minimum quota should be fixed for apprenticeship for women in order to ensure that they have access to training facilities.
- iii. Scope of the Apprenticeship Ordinance, which is at present confined to industrial establishments, be extended to commercial and service sectors.
- iv. The program should be integrated with the other stream of technical and vocational training to provide horizontal and vertical mobility to apprentices for better career prospects.
- v. Apprentices should be excluded from the definition of workman as given under various labor laws and they should only be governed by the apprenticeship ordinance.

Since this is the training phase of the careers of apprentices, the focus of their attention should be on learning only. The responsibility also rests with employers and trade unions to provide them with an environment which does not allow them to digress from their goal.¹³

¹³ - <http://dawn.com/2012/04/08/law-on-apprenticeship/>

11. General Recommendations

1. Rationalization and Consolidation of Labor Laws

Current Labor Laws are quite complex, over-lapping, anomalous, and at times render the subject matter difficult to understand, also create confusion for those who deal with these laws. Further, the penalties prescribed for offences and non-compliance is very low, since some of these laws were framed during pre-independence period. It would be appropriate that Labor Laws be consolidated and rationalized into following categories:

- i) Laws relating to industrial relations.
- ii) Laws relating to employment and service conditions.
- iii) Laws relating to occupational safety and health.
- iv) Laws relating to human resource development.
- v) Laws relating to labor welfare and social security.

N.B: The Deptt. of Labor KP has already gone through the exercise of reviewing and consolidation of laws. Same nature of laws clubbed, gender perspective, child labor etc are included in the laws (Note by PCSW)

2. Revamping of the labor laws

All the labor laws are old and hail from the British period. Although time to time changes were incorporated but these laws have failed to be at par with the development of the present day needs. All the labor legislation needs thorough review to bring it par with the modern day requirements. For this labor laws require examination of each law singly. In the process provisions which have outlived their existence may be deleted. If necessary, certain laws may be considered for being repealed. Records should also be maintained in electronic form.

3. Language of the Laws

Language used for a worker is masculine in nature in most of the laws. Word used is workman, which shows a gender bias. It should be gender neutral and the word like “worker”, “employee” be used.

N.B: According to information of PCSW, requirement under new conventions have been added and minor changes made over time in the Factory Act 1934. A general review undertaken to update Laws from the gender perspective.

4. Legislation for workers in the Informal Sector

Most of the labor laws exclude agricultural workers, informal sector workers and home-based workers, of which the majority are women. The Constitution of Pakistan specifically speaks of enactment of special laws for women.¹⁴ With the exception of the West Pakistan Maternity Benefits Ordinance, 1958 & West Pakistan Maternity Benefits Rules, 1961, there are no special laws to protect the rights of women at the workplace. Specific legislation is required on the following issues:

- i. Equal remuneration for equal work for women
- ii. Protection of labor rights of domestic workers
- iii. Minimum wage law for home based workers

5. Provision of “protections against discrimination” in Labor Laws

Although Pakistan is a party to the ILO Convention on Discrimination of 1958 and there is a constitutional provision regarding equal treatment of all citizens, yet no legislation exists on equal treatment or equal pay within the workforce. Therefore a clause needs to be incorporated in all labor laws to safeguard women’s workers against any discrimination at workplace. Decent working conditions as promised in international conventions need to be safeguarded in the laws for women.

¹⁴ - Art 35 (3) of the Constitution of Pakistan 1973

6. Enhancement of Fine

Amount of fines specified in the labor laws is very low in view of high level of inflation in the country. Therefore, these need to be reviewed to keep them compatible with current price situation.

7. Compliance with International Conventions

International Labor Standards provide backbone for creating social justice and decent work in the society, without which no social or economic progress can be made. These standards cover the whole spectrum of social and economic interactions between workers, employers, government and address such diverse issues as freedom of association, occupational health and safety, forced and bonded labor, child labor, social security, labor inspection, tripartite consultation, vocational guidance, employment policy, non discrimination, wages, work duration and maternity.

In today's globalised world these standards are the only hope for the marginalized workers as well as countries, to ensure a fair globalization without adverse effects on the workers and workplaces. Pakistan has ratified all eight Core Conventions fundamental to workers' rights (mentioned above). But the current labor laws do not commensurate with the international standards. Moreover, some of the International Conventions signed are yet to be given effect completely, for e.x, Pakistan is a party to the ILO Convention of 1958 on Discrimination but no legislation on equal treatment or equal pay within the workforce exists.

The 18th Amendment in the Constitution of Pakistan has also changed the relationship of Federation and of the provinces. Now Labor has fall within the provincial domain with full authority to legislate on. These labor laws need to be rationalized and consolidated for in view of the International standards and meet present day needs.

8. Developing a Labor Policy for Khyber Pakhtunkhwa

The 18th Amendment has devolved the functions of the Federal Government to the Provinces. Now, it needs to be ensured that the labor laws available in Khyber Pakhtunkhwa are adequate & sufficient to promote gender equality. Further, a labor

policy is required to be evolved with a vision and mission statement promoting gender equality, elimination of gender discrimination and promotion of gender mainstreaming. Further, the enforcement machinery is inadequate & inefficient for implementing the labor laws. The implementation mechanisms need to be strengthened for adequate enforcement of more gender sensitive labor laws.

References

- i. Constitution of the Pakistan 1973
- ii. 18th Amendment in the Constitution
- iii. Denial and Discrimination, Labor Rights in Pakistan, report of PILAR, 2007
- iv. Briefing paper by PILDAT, “ 18th Constitutional Amendment and devolution of the Labor Ministry”, 2011
- v. “Economic – Growth-Strategy”, a document by Planning & Development Department, Government of Khyber Pakhtunkhwa
- vi. “Gender Equality and Decent Work” Selected ILO Conventions and Recommendations that promote Gender Equality as of 2012, published by ILO
- vii. A report of brief session “ Impact of the 18th Constitutional Amendment on Labor Rights”, PILDAT, 2010
- viii. Labor Rights in Pakistan Declining Decent Work and Emerging Struggles, report by PILER ,2010
- ix. “ Understanding Labor Issues in Pakistan”, a briefing paper by PILDAT, 2005
- x. Report On The Status Of Khyber Pakhtunkhwa Millennium Development Goals, UNDP, 2011

Annex I

Terms of Reference for Review of Labor Laws

1. Introduction

The Provincial Commission on the Status of Women, Khyber Pakhtunkhwa is a statutory body established under NWFP Act X1X 2009. Among the important functions of the Commission is the review of provincial legislation for women. The Commission intends to initiate the process with the review of the provincial labor laws.

2. Assignment Title: Review of Labor Laws

3. Objective: Review major provincial and relevant national laws and work of relevant standing committees for labors in order to identify areas for amendments and/or propose new legislation for women workers in the formal sector

4. Duty Station: Peshawar

5. Period: 3 months from the time of award of contract

6. Qualifications/Experience/Skills

- i. Degree in Law from a recognized university
- ii. Knowledge of labor laws
- iii. Sensitivity to women's related issues and gender equality
- iv. Practical experience in drafting of legislation

7. Methodology

The review of labor laws are intended primarily as a desk review of provincial labor laws and to this effect review all relevant handbooks, manuals and reports published on the laws. The purpose is to:

- a. identify areas for improvement/amendments especially from the gender perspective
- b. review the provincial labor policy, if exists and identify if not covered by existing laws
- c. initiatives of the Government of KP to amend the labor laws

Meetings shall be requested to be held with the Labor Department, Law Department and relevant Standing Committee of the Provincial Assembly

8. Deliverables

- i. Draft report of findings and recommendations
- ii. Amended draft incorporating feedback of the Commission
- iii. Final report

Annex II

Interview Questionnaire

- i. Total population of KP, men/women
- ii. Labor ratio/participation in formal and informal sector, both men/women?
- iii. Type of formal labor work in KP
- iv. Issues faced by female workers in formal labor sector
- v. Situation of labor laws after 18th Amendment in KP
- vi. List of labor Laws under review in KP
- vii. Does any labor policy of KP exist after 18th Amendment?, if so, its status, if not, is it under consideration?
- viii. Which Labor laws have been enacted so far?
- ix. Employment rate/ratio of women in formal sector
- x. Rate of literacy & poverty in KP , men/ women
- xi. What is currently minimum wage in KP, how it is determined?
- xii. How many women workers are head of trade unions in KP?