

Labour and Employment Law: A Profile on Pakistan

Iftikhar Ahmad[1]

Introduction

Pakistan is the sixth most populated country in the world having a population of 167 Million, as estimated by the Population Census Organization. The estimated labor force is 51.78 million (32.2% participation rate). Labour force comprises all persons ten years of age and above, who fulfill the requirements for including among employed or unemployed. According to this concept, the employed labor force is 49.09 million (unemployed –2.69 million) and more than half of the population is concentrated in the rural areas. Of the employed labour force, women constitute only 20% (10 million). Agriculture sector employs 44% of the labor force, second to it is services sector (employing 35%); industry and manufacturing employ only 20% of the labor force. Formal sector accounts for only 27% of economic activity while informal sector is catering to more than 70% of the activity outside agriculture (Labour Force Survey, GoP: 2007-08).

Pre-Independence Era

The Indian Subcontinent, of which Pakistan is only one part, was ruled over by British for nearly a period of 200 years (1757-1947). It all started with trade, with coming in of a monopolist trader i.e. East India Company. The East India Company usurped and profited the resources of this region firstly by getting goods manufactured at lowest prices (mostly textile and spices) and then selling these in Europe and UK at higher prices and when textile industry was established in England in the wake of industrial revolution and British Crown took control of subcontinent, the market for these goods was closed for Indian competitors through stricter legislations (Amjad, 2001: 3-7).

After the takeover, a series of industrial relations legislation was introduced, in the remaining part of 19th Century, which had the primary objective of providing England a “protected and bonded labor market” (Amjad, 2001: 10). Two important industrial relations legislations of that era were Employers and Workmen Dispute Act, 1860 (making breach of contract by workers punishable, with no provision for employer breaches) and Indian Factories Act, 1881 (applicable to premises using mechanical power, employing 100 or more workers and it also prohibited employment of children between 7 to 12 years of age for more than 9 hours a day). It has been argued that the factory legislation and disputes legislation were enacted only to “protect” the British industry from Indian competition and British investors’ interests in the area. (Shaheed, 2007:67)

After the First World War, labor unrest increased and there were repeated strikes at that time. The labor-management relations were given importance for the first time, earlier the common law principle of conspiracy applied to labor unions.

The Indian Trade Union Act was passed in 1926 and after a span of three years, Trade Disputes Act, 1929 was also passed. The Trade Union Act allowed the workers to

associate and to be represented by unions. The Trade Disputes Act provided for the prevention and settlement of disputes between employers and employees. These disputes could be referred to a court of inquiry or board of conciliation (Amjad & Mahmood, 1982: 33). Much other legislation related to the labor welfare was introduced during this period. These include Factories Act 1934, Payment of Wages Act 1936, Mines Act 1923, Workmen Compensation Act 1923 and Dock Labor Act 1934. The Essential Services Maintenance Ordinance 1941 was promulgated in the wake of Second World War. The Industrial Disputes Act 1947 provided for permanent administrative machinery for settlement of disputes by specific procedures. The Act also provided for the constitution of work committees and referral, by the government, of a dispute to one man industrial tribunal constituted for that dispute (Amjad & Mahmood, 1982: 33). It is important to mention that the aforementioned Act was the last piece of labor legislation before the partition of subcontinent and subsequent independence of Pakistan.

Post independence Era (1947-69)

After independence, Pakistan inherited the following legislations, among many others, from the British India: Trade Union Act 1926; Industrial Employment (Standing orders) Act 1946; Industrial Disputes Act 1947 and Factories Act 1934. These four laws provided the basis for labor laws and policy making in the country. These laws were quite forward looking and progressive in the sense that these allowed trade union activities in all the sectors except armed forces and police and the workers had the rights of collective bargaining and even strike. Under the Trade Union Act 1926, the trade unions could also constitute a separate fund for promotion of civil and political interests of the members (Section 16) which meant that labor unions could use their funds in supporting some political party and in response gain support for pro-labor legislation in the parliament. The Trade Union (Amendment) Ordinance 1960, containing provisions of earlier Act, was promulgated in 1960 and it established the principle of compulsory recognition of trade unions by employers. It also reduced the number of outsider officers from 50 to 25 percent (Amjad, 2001: 72-76). It also included the unfair labor practices, both on the part of Employers and Employees. The Industrial Disputes Act 1947 was replaced with Industrial Disputes Ordinance 1959 by a military ruler, Ayub Khan. The legislation withdrew the right of strike in an indirect manner. The workers could not go on a strike without giving due notice to the employer nor could they strike when the matter was pending before a conciliator or a court. The courts could also prohibit any (in progress) lockout or strike (Amjad & Mahmood, 1982: 34). The Industrial Disputes Ordinance 1959, in the Ayub regime, changed the system; more enterprises were included in the public utility definition and 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 Yahya Khan Regime, the second military dictator, labor 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 hand did bring increased industrialization and jobs but on the other, also brought retrogressive labor laws and the system of repression, which still continues.

Constitutional Provisions

With Independence, Pakistan nearly adopted all the laws of British India and also the interventionist attitude of the government in regulating labor-management relations (Shaheed, 2007:83). Pakistan is a Commonwealth country and it is no wonder that it follows the common law principles. However, it has been argued that the British labour Constitutional

Provisions on Labor Rights

Article 11:

- All forms of forced labour and traffic in human beings are prohibited.
- No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

Article 17:

- Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Article 18:

- Every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

Article 25:

- All citizens are equal before law and are entitled to equal protection of law.
- There shall be no discrimination on the basis of sex alone.

Article 27:

- No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.

Article 37(e):

- The State shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Article 38:

- The State shall secure the well-being of the people, irrespective of sex, caste, creed or race, by ensuring equitable adjustment of rights between employers and employees.
- Provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means.

Legislation has its origins from the law of contract (earlier the “law of master and slave” and later ‘the law of master and servant’) and industrial relations regulations are considered as deviations from common law and violation of the principles of ‘laissez-faire’ (Ansari et.al, 2006: 991). Labour is a concurrent subject under the constitution of the Islamic Republic of Pakistan, making both the federal and provincial governments responsible for enacting laws and regulations regarding labour issues. Nonetheless, the laws are usually enacted by the Federal Government (Ministry of Labor) and then the Provincial Governments can issue rules/regulations in accordance with their specific conditions and needs. As labor is on the concurrent list, Provincial governments have the authority to limit the application of federal laws; this was witnessed when the Province of Punjab banned the workplace inspections in 2003 (under its Punjab Industrial Policy, 2003) although Pakistan has ratified ILO Convention 81 and has provisions on workplace inspection through Factories Act 1934. Pakistan follows a system of non self-executing treaties which means that any international ratified treaty (convention, covenant etc.) can be implemented only when a statute is enacted writing the country’s obligations into a law. The sources of industrial relations law have been enumerated as legislation, collective agreements, case laws and industrial custom (Rahman, 2001: 7).

Industrial Relations

It was in 1969 that laws relating to industrial disputes and trade unions were merged and consolidated into a single law, namely Industrial Relations Ordinance 1969. It has been argued to be the “legislative watershed” in the industrial relations in the country. It aimed at resolving more and more disputes through statutory provisions and leaving the least for collective bargaining and strikes. (Ansari et.al, 2006: 992). The ordinance was promulgated by yet another military dictator, Yahya Khan; however it was amended by the populist and pro-union leader, Zulfikar Ali Bhutto (1971-77). The second Ordinance was promulgated in 2002 during the military regime of Musharraf. It was termed as a retrogressive step; many of the rights granted under IRO 1969 were taken away. More establishments were added to the list of exclusions. In 2008, the newly elected government of Pakistan Peoples’ Party repealed the IRO and enacted a new (interim) legislation, Industrial Relations Act, 2008.[2]

Freedom of Association

Freedom of Association is guaranteed under article 17 of the Constitution of the Islamic Republic of Pakistan. The Supreme Court of Pakistan held (PLD 1997 SC 781) that right to form a trade union/association is a fundamental/constitutional right and includes the right of collective bargaining. However the right of strike or right to go slow is the right that can’t be spelt from article 17(1). The legal anomaly of this decision is that it regards collective bargaining as the fundamental right but not the right to strike/go slow which are the weapons of labour for effective collective bargaining. It has been argued that this anomaly is the result of amalgamation of trade dispute and union regulating laws into a single legislation (Ansari et.al, 2006: 992). Section 3 of IRA 2008 says that both the workers and employers have the right to join and establish organizations of their own choosing, join and establish federations and join international association without previous authorization.

Union Registration and CBA

The industrial relations legislation requires registration of trade unions before they can represent workers. However, all the members of a trade union must be actually engaged or employed in the industry with which the union is connected and where two or more unions are registered, every new union must have at least one-fifth of the total workmen employed as its members (IRA 2008: Section 6.2). Application for registration of trade union has to be submitted to the Registrar of Trade Unions (present at the provincial level), while in case of a Federation of two or more unions, the application needs to be submitted to National Industrial Relations Commission. The application procedure requires a trade union to have its constitution (drafted) before making application for registration. The right of trade unions to elect the representatives of their own choosing (by getting 25% outsiders as its executive) was taken away (in banking industry only) by introduction of section 27-B in the Banking Companies Ordinance 1962 (amended in 1997). According to this amendment, office bearers in the banking industry trade unions must be workmen employed by the banking company in question. Registration of a trade union gives it a legal existence, it becomes a corporate body with the power to contract, acquire, hold or sell a property and by its name sue or be sued (IRA 2008: Section 16). It also gives trade union immunity from law of conspiracy and criminal law suits (IRA 2008: Section 19-20). Registration of a trade union can be cancelled by Registrar or Labor Court if certain conditions are met (IRA 2008: Section 12).

Collective Bargaining was first introduced in Pakistan with the promulgation of IRO 1969. Collective bargaining has also been called a fundamental right which emanates from article 17(1) of the Constitution. A trade union can move application for determination of CBA if it has its members not less than one-third of those employed as workmen. However, if more than one union exists in the premises, the registrar of trade unions will conduct a secret ballot election/referendum and will issue the CBA certificate to union securing votes not less than one third of total votes. If none of the union is able to get one third of total votes, a run-off election between the top two unions will be held and the union getting majority votes will be certified as collective bargaining agent. Not every workmen employed in the premises is eligible for voting (Section 24.5). When a union is certified as a CBA, no application for (re)determination of CBA can be made for a period of two years except where the registration of trade union/CBA is cancelled. The CBA is entitled to undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the term of employment or the conditions of work other than matters which relate to the enforcement of any right guaranteed or secured to it or any workman by or under any law, other than this Act, or any award or settlement; represent all or any of the workmen in any proceedings; give notice of, and declare, a strike and nominate representatives of workmen on the Board of Trustees of any welfare institutions or Provident Funds (IRA 2008: Section 24.13).

Worker Participation in Management

Under the new IRA-2008, workers have a three pronged system of participation in the workplace management. These include “management committees, joint management board and work council”. A factory employing 50 or more persons has to set up a management committee of which worker representatives will be 50%. These representatives are either elected (if no CBA exists) or nominated (if CBA is there) for a period of at least one year. It has been made incumbent upon the management not to take any decision regarding matters, enunciated in section 34.5, without written advice from the worker representatives[3]. Under the joint management Board provision, every company which employs 50 or more persons should set-up a joint management board in which the worker representation is to the extent of 30%. Functions of the Board are described in section 35.3 of the Act[4]. As for the Works Councils, the employer is obliged to set up a works council (if the establishment employs(ed) 50 or more workers) in which the worker representatives should not be less in number than the management. Its functions are also explained in section 40 of the Act[5]. The IRA provides five institutions at the plant level (CBA, Shop Stewards, Management Committee, Joint Management Board and Works Council) in order to improve the bilateral relations. However, this decision is disputed on the argument that none of these except CBA has the real authority to ensure worker participation in management and have just created a big group of non-working workers.

Union is not entitled to joint consultation in cases of retrenchment, suspension, dismissal and lay off. There are some matters which are exclusive functions of management which include location of business, closing of old units, reorganization of work and introduction and use of contract system. However, Industrial and Commercial Employment (Standing Orders) Ordinance 1968 was amended in 1972 and section 11-A was inserted in it which requires an employer to get prior permission from labour court before terminating the employment (laying-off) of more than 50% of workers or closing down the whole establishment. Before this, employers could also close down the business in order to do away with unions. (Amjad & Mahmood, 1982: 40)

Disputes and Strikes

As discussed above, the industrial relations legislation after 1969 has consolidated the laws relating unions and trade disputes. The IRA 2008 has also provisions for collective and individual labor disputes. If at any time, the CBA or employer finds that an industrial dispute has arisen or likely to arise, it can communicate the views to the other party through Works Council. Upon receipt of this communication, parties are obliged to settle the dispute through bilateral negotiation within 10 days (or more if agreed). If bilateral negotiations fail, either party can serve the notice of strike/lockout to the other within 7 days. The duration for notice of strike or lockout is 14 days. A copy of such notice has also to be served to the conciliator (appointed by the provincial government), who will proceed conciliation in the dispute. If the matter is settled within 14 days (this duration can be increased by consent of both the parties), the conciliator is supposed to send the memorandum of settlement to the provincial government and both the parties. However if the conciliation process fails, conciliator has to persuade both the parties to agree to refer their dispute to (a third

party, neutral) arbitrator. If both parties agree, they need to make a joint request for arbitration. The arbitrator needs to give award within a period of 30 days and this award is final and no appeal can be made against it for a period of two years. (IRA 2008: Section 42-47)

If the conciliation process fails and parties don't want the arbitration, the workers can go on strike and employer can lockout the workers. The party raising a dispute may, before or after commencement of strike or lockout, make an application to the labor court for adjudication of dispute. If a strike/lockout lasts for more than 30 days and it is causing serious hardship to the community or is prejudicial to the national interest, the federal or provincial government may prohibit it and refer the dispute to the Labor court or Commission (NIRC) which will decide the dispute in 30 days and the award will be valid for a period of two years. If strikes or lockouts occur in the public utility services (or the industrial dispute is of national importance), the federal/provincial government can prohibit these before or after their commencement. Only eight set of activities have been described as public utilities (IRA 2008: Schedule)

A strike/lockout is treated as illegal if it is commenced without giving due notice to the other party, if it is not started by CBA or employers, is continued in contravention of prohibition orders passed by federal/provincial governments, labor courts/tribunals and Commission; or is commenced or continued in a period when settlement of award is in operation. The matter is then decided by the Labor court following an inquiry by the labor department and if the order of court is contravened, it can order dismissal of striking workers and registration of trade union/CBA can be cancelled (IRA 2008: Section 63-64).

Labor Judiciary

Labor Judiciary is composed of three parts: Labor Courts, Labor Appellate Tribunals and National Industrial Relations Commission. Labor courts are the successor of industrial courts established for the first time after enactment of Industrial disputes Act 1959. An important feature of industrial courts was their tripartite nature. However, the present labor courts (constituted at provincial level) are not tripartite and these are headed by a current or ex-judge, appointed by government.

The labor court can work both as a civil court and a criminal court. Territorial jurisdiction of labor courts is described in section 52.4 of the Act. A party aggrieved by the order of a labor court can appeal to the labor appellate tribunal (headed also by a judge) and award given by it is final. There is another provision, however, which says that "Any person convicted and sentenced by the Tribunal under sub-section (6) to imprisonment for any period, or to pay a fine exceeding fifteen thousand rupees, may prefer an appeal to the High Court" (IRA 2008: Section 55.7). National Industrial Relations Commission (created for the first time in 1972), composed of seven members (one member each from employer and worker side) has the functions of promotion and formation of trade unions, registration of industry-wise federations, determine CBAs among industry-wise trade unions, educating workers of their rights and most importantly to deal with unfair labor practices (either on part of workmen or employers).[6] Appeal against the Judgment of N.I.R.C. first lies before the Full Bench of N.I.R.C., then High Court and lastly before the Supreme Court of Pakistan.

So, both in the case of NIRC and labour courts, the appeals courts at the higher level are general and not specialized.

For the individual grievances, a worker may bring his grievance in respect of a right guaranteed/secured to him under the law/agreement/settlement to the notice of his employer through himself/shop steward or CBA. When a grievance is forwarded through CBA, the employer must decide it within seven days. If the worker is dissatisfied with the decision of employer, he may take it to the labor court within two months of this decision and the labor court is obliged to give its decision in seven days. The labor courts are allowed to go into all the facts of the case. Although there are no explicit provisions in the law on class action law suits however, section 41.8 of IRA 2008 states that “workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court”.

Unionization

After independence, Pakistan inherited a very small percentage (9%) of industrial establishments in the Indian subcontinent (Ansari et.al, 2006: 991). The area which constituted Pakistan had also a very low level of union organizing, mostly because a large part of workforce was involved in agriculture. The union membership as a percentage of total labor force was only 0.7 % (in 2000) while if you look at the union density, it is about 2% of the employed labor force. The total number of registered trade unions is more than 7200 but only about 1900 (26%) of these are collective bargaining agents (CBAs) (Ghayur, 2009: 25-47). Labor unions have shrunk both in size and power. The trade unions as pressure groups had emerged again during Bhutto regime (1972-77) but the military takeover in 1977, deregulation and privatization (1991 onwards) and military takeover (again in 1999) diluted their value as a pressure group. Structural adjustment program, which promotes deregulation of the enterprise, started on the advice of World Bank/IMF has led to the weakening of the labor rights movement. Starting from 1991 to February 2009, 167 state owned enterprises (mainly from banking, telecommunication, and energy sector) have been privatized. Thousands of workers have been fired in the wake of privatization and right-sizing.

Agriculture Sector

Although agriculture employs 44% of the labor force, it is still not included in the ambit of labor laws. There has been no provision in any of the three successive laws (1969, 2002 and 2008) allowing agricultural workers as they are not defined as an industry. It is worth mentioning here that Pakistan has also ratified a convention (although this Convention was ratified by pre-partition India in 1921, so Pakistan inherited this) regarding grant of freedom of association rights to the agriculture workers (Convention No. 11). All the successive labor laws, although not explicitly, exclude agriculture but these also do not expressly cover this and seem to be excluding small agriculture workers like tenants, sharecroppers and self employed from their definition. The Corporate Agriculture Farming (CAF) Policy also excludes agriculture from the purview of labor laws and aims to develop sector specific laws within 5 years.

Employment Contract and Termination

Industrial and Commercial Employment (Standing Industrial and Commercial Employment (Standing Orders) Ordinance 1968 was enacted in 1968 to address to the contractual relationship between employer and employee. The ordinance is applicable to establishments employing 20 or more workers. The ordinance classifies workmen in six classes: permanent, probationers, badlis, temporary, apprentices and contract workers (last was added in 2006). The legislation requires that workmen should be provided the contract in writing, showing the terms and conditions of his service, at the time of hiring, promotion and transfer. It also requires that the wage rates paid to different categories of workers/work should be posted on the notice boards.

Termination of an employment contract may be either termination simpliciter, which is termination on grounds other than misconduct after a notice (section 12) or termination on account of misconduct (section 15). Notice of termination, for termination simpliciter, is mandatory for permanent employees. A notice of one month must be served before severing the employment relationship or payment of one month's wages in lieu of notice may be provided (Section 12.1). The law also obliges the employer to provide the termination certificate in writing stating the reason behind it. Although there is no specific provision for just cause dismissal, the requirement of written termination letter and section 41 of IRA 2008 which allow the labor court to inquire into the legitimacy of termination provide that there should be bona fide and valid reason for dismissal. Termination on account of trade union membership and activity is an invalid reason for termination (ILO, 2000: 259). While termination is being done on account of misconduct, worker has still the right of fair hearing. Of the many types of misconduct is "go slow", for which a worker can be fired. Termination on economic reasons/retrenchment has not been focused in law; however law does provide the procedure of retrenchment (last come, first go) and preference for rehiring of retrenched workmen. In case of laying off the workers, they must also be given due notice or payment in lieu of notice. If the employer wants to close down the whole business or is terminating the employment of 50 or more workers, it must get the prior approval of labor court. An individual whose employment is terminated has first to use internal mechanisms for dispute resolution (shop stewards, CBA through grievance procedure), however if he is not satisfied with the decision, may appeal to the labor court. In that case, labor court is authorized to go into all the facts of the case and determine whether the termination was valid and bona fide or not. The above mentioned ordinance also provides for severance pay/gratuity to be paid (when an employee resigns or his services are terminated other than misconduct) equivalent to 30 days wages for every completed year of service or any part thereof in excess of 6 months (For 20 years of service, this means 90 weeks of severance pay)

Equality and Non-discrimination

Articles 25 and 27 of the Constitution deal with the issues of equality and discrimination and prohibit discrimination on the basis of race, religion, caste, sex, residence or place of birth. The constitution also makes it incumbent upon the state to secure the well-being of the people, irrespective of sex, caste, creed or race and by ensuring equitable adjustment of rights between employers and employees among other things (Article 38). Although Pakistan has ratified both the core conventions related to the issue but has not enacted any law incorporating the provisions of these

conventions. Currently, Government is in the process of labor law reform and Employment and Service Conditions Act (draft) has provisions on equal pay for work of equal value. Quota has been fixed for women in the public sector jobs (10%) and they can also compete on the remaining 90% seats.

Recently, the government has enacted a new law to make provisions for protection of women against harassment at the workplace. This Act requires all public and private organizations to adopt an internal Code of Conduct and a complain/appeals mechanism aimed at establishing a safe working environment, free of intimidation and abuse, for all working women. It shall establish an Ombudsman at Federal and provincial levels. The law also calls for imposing of fine (unspecified), a part of which will be payable to the complainant. A person committing harassment can also be dismissed/removed from service.

Working Hours

The Factories Act, 1934 (Section-34), Mines Act, 1923 (Section 22-B, C), Shops and Establishment Ordinance, 1969 (Section 8) and Road Transport Ordinance, 1961 (Section-4) are used to determine working hours and rest time in different industries.

Section 34 of the Factories Act provides that “no adult worker shall be allowed or required) to work in a factory for more than 48 hours in a week; if the factory is seasonal, 50 hours a week and if the work is of continuous nature, he may work for 56 hours in a week. As for the daily hours, these may not be more than 9 hours a day (in case of seasonal; 10 hours).

The working hours of a child/adolescent (15-18) are 5 hours in a day. The factories Act is applicable to all the precincts employing 10 or more workers. The law makes provisions for one weekly holiday and if that is not given, a compensatory holiday must be given as soon as possible. Shops and Establishments Ordinance 1969 and Mines Act 1923 also limit the weekly hours to 48 hours. The above ordinance covers shops and commercial establishments not regulated by Factories Act and Mines Act. Any adult worker is required to work overtime, if asked, and the rate of overtime payment is double the usual pay (Section 47). Overtime is not payable to the contract workers, employed on piece rate basis.

Leave and Maternity Benefits

Under the factories act, if a worker has completed 12 months of continuous service in a factory, he shall be allowed a paid annual leave of 14 consecutive days. Every worker is entitled to 10 days casual leave with full pay during a year. Workers are also entitled to 16 days sick leave with half pay (8 days with full pay) in a year. Festival holidays as notified by the provincial government with full pay (usually 10-13) are also allowed. If a worker is required to work on a festival holiday, he will be given one day additional compensatory holiday with full pay and a substitute holiday (300% of usual wages).

Maternity leave, under Maternity benefits Ordinance 1958, is also allowed to pregnant women for a period of 12 weeks with full pay. It is unlawful for an employer to dismiss a women worker who is on maternity leave. The qualifying period for getting this leave is four months of preceding employment with the employer. Maternity benefit and maternity leave of 16 weeks is also provided under the Mines Maternity Benefits Act, 1941(section 5).

Wages

The laws relating to fixation and payment of wages are Payment of Wages Act 1936, Coal Mines (Fixation of Rate of Wages) Ordinance 1960, Minimum Wages Ordinance, 1961 and Minimum Wages for Unskilled Workers Ordinance 1969. Civil Servants Act, 1973 (article 17) is the relevant legislation governing remuneration in the public sector and wages are recommended by the Pay and Pension Commission constituted by government. Under the payment of Wages Act, no wage period should exceed one month (section 4) and wages are to be paid within seven days after the end of wage period (except for establishments employing more than 1000 workers, they can pay within 10 days).

The Provincial Governments constitute Minimum Wages Boards under Section (3) of Minimum Wages Ordinance, 1961 to decide the wage rates. Minimum Wages Board is a tripartite body comprising the representative of Government, Employers and Employees.

The Board, upon reference to it by the Provincial Government, recommends to such government, the minimum rate of wages for workers as specified in the reference. The Provincial Government on the recommendation of the board fixes the Minimum Rate of Wages for all classes of workmen as provided in Section (6) of the Minimum Wages Ordinance, 1961. The Parliament specifies the minimum wages for unskilled through the Minimum Wage for Unskilled Workers Ordinance, 1969 from time to time (currently PKR 6000 per month: \$75) . The Minimum Wages for Coal Mines Workers are fixed under the Coal Mines (Fixation of Rate of Wages) Ordinance, 1960 after (non binding) consultation with Mines Welfare Board.

Occupational Safety and Health

As regards the Occupational Safety and Health (OSH), following legislation exists in Pakistan: Dock Labourers Act 1934, Factories Act 1934, Mines Act 1923 and Workmen's Compensation Act 1923. The OSH laws in Pakistan mainly cover the formal sector manufacturing industry. The Factories Act, 1934, the main law containing OSH provisions is applicable to manufacturing enterprises employing 10 or more workers. In addition the Mines Act 1923 covers the mining sectors. Other sectors are either not covered under OSH or the coverage is very limited.

Workers' Welfare

The workers welfare legislation includes Employees Old Age Benefits Act 1976 (with provisions for old age pension, old age grant, invalidity and widow(er) pension). This act is applicable to establishments employing 5 or more workers. Contribution has to be made both by the employer (5% of minimum wages) and employee (1% of minimum wages). Employees Social Security Ordinance 1965 (applicable like EOAB Act) provides benefit to the employees in cases of sickness, maternity, employment injury or death. The amount in this scheme is contributed only by the employer. The Workmen's Compensation Act, 1923 provides for the compensation to be paid by employer to workers or their legal heirs in cases of death, permanent total disablement, permanent partial disablement and temporary disablement during working in an establishment. The Standing Orders 1968 also provides for compulsory group insurance against natural death and injury for all the permanent employees in a workplace.

Conclusion

Pakistan has more than 70 laws relating to labor issues. The government of Pakistan is currently in the process of consolidation and rationalization of labor laws and all these laws are being consolidated in five broad categories of Industrial Relations, Employment and Service Conditions, Occupational Safety & Health, Human Resource Development and Labor Welfare & Social Safety Net. A tripartite labor conference was held at the start of 2009 to discuss the draft laws relating industrial relations, employment and service conditions and occupational safety and health. The problem with laws is the weak enforcement mechanisms at the provincial level. However the irony is that countries like Pakistan (with good labor rights provisions) are unable to attract the global capital as shown by the Doing Business Indicators or Global Competitiveness Index (World Bank, 2008: 126). These markets are called rigid markets with less flexibility in hiring and firing as well as high severance pay costs.

References

- Ali, Z and Ali, H (2006), Pakistan Labour Manual (2 volumes), Ideal Labour Laws, Karachi, Pakistan
- Amjad, A. (2001), Labour legislation and trade unions in India and Pakistan, Oxford University Press, Karachi, Pakistan
- Amjad, R and Mahmood, K. (1982), Industrial relations and the political process in Pakistan, 1947-1977, International Institute for Labour Studies, Geneva, Switzerland
- Bajwa, S.A (2009), Law of industrial relations in Pakistan, Asia Law House, Karachi, Pakistan
- Chaudhry, G.M. (2008), Chaudhry's annotated Constitution of Pakistan, 1973 : up to date and including all amending acts and orders, Federal Law House, Rawalpindi, Pakistan
- Ghayur, S. (2009) Evolution of Industrial Relations System in Pakistan, New Delhi, ILO SRO, India

- Government of Pakistan, Industrial Relations Legislation (1969, 2002, 2008)
- Government of Pakistan, Banking Companies Ordinance, 1962 (amended in 1997) Government of Pakistan (2008), Protection against Harassment of Women at Workplace Act 2010, Islamabad, Pakistan
- Shaheed, Z. (2007), The Labour Movement in Pakistan, Oxford University Press, Karachi, Pakistan
- Shafi, M and Shafi, P (2005), Labour Code of Pakistan (2 volumes), BLP, Karachi, Pakistan
- Government of Pakistan (2008), Labour Force Survey 2007-08, Islamabad, Pakistan
- ILO (2000), Termination of employment digest, International Labour Office, Geneva, Switzerland
- Rahman, O. (2001), Law of industrial relations in Pakistan : a commentary on the Industrial Relation Ordinance, 1969, Pakistan Law House, Karachi, Pakistan
- Siddique, Ansari, and Salman (2006), Governing the Labour Market: The Impossibility of Corporatist Reforms, Pakistan Development Review, 45 : 4 Part II, 981-1000
- Siddiqui, Fasihul Karim (2009, January 17) Future roadmap of industrial relations: comparative analysis of IRO 1969, IRO 2002 and IRA 2008, Business Recorder, Karachi, Pakistan
- World Bank (2008), Doing Business 2009, World Bank, Washington, DC, USA

[1] The writer, a former official at the Ministry of Labor, is currently a graduate student at ILR School, Cornell University.

[2] A new law, after consultation with workers and employer organizations has to be enacted by 30th April, 2010. IRA 2008 will no longer be applicable after that date.

[3] These include the issues of “framing of services rules and policy about promotion and discipline of workers; changing physical working conditions in the factory; in-service training of workers; recreation and welfare of workers; regulation of daily working hours and breaks; preparation of leave schedule; and matters relating to the order and conduct of workers within the factory”.

[4] Its mandate is related to improvement in production efficiency as well fixation of piece rates, remuneration methods for different workers.

[5] Works councils mainly aim at the maintenance of cordial relations between labor and management.

[6] Section 17 of the Act enumerates unfair labor practices on part of the employer while section 18 provides the unfair labor practices on part of employees. Section 72 provides for the penalties under the act.