

GENDER AUDIT OF LABOUR LAWS IN PAKISTAN

October 2018



WOMEN'S ACTION **WACTION**
for **BETTER WORKPLACES**

Trust for Democratic Education and Accountability – TDEA

GENDER AUDIT OF LABOUR LAWS IN PAKISTAN
WAction – Women's Action for Better Workplaces

All rights reserved. Any part of this publication may be produced or translated by duly acknowledging the source.

1st Edition: October 2018. Copies 400

TDEA Secretariat:
Building No 1, Street 5 (Off-Jasmine Road), G 7/2, Islamabad
Website: www.tdea.pk

GENDER AUDIT OF LABOUR LAWS IN PAKISTAN

October 2018



WOMEN'S ACTION | **WACTION**
for **BETTER WORKPLACES**

LIST OF ABBREVIATIONS

CBA	Collective Bargaining Agent
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CrPC	Criminal Procedure Code
EOBI	Employees Old-age Benefits Institution
FAFEN	Free and Fair Elections Network
GDP	Gross Domestic Product
GSLIS	Gender Sensitive Labour Inspection System
ICT	Islamabad Capital Territory
ILO	International Labour Organization
IMF	International Monetary Fund
KP	Khyber Pakhtunkhwa
PPC	Pakistan Penal Code
TDEA	Trust for Democratic Education and Accountability
WAction	Women Action for Better Workplaces

TABLE OF CONTENTS

No.	Description	Page No.
	Acknowledgements	1
	Executive Summary	3
1	Introduction	7
2	Methodology of Gender Audit	9
3	Labour Legislation: A Gender Perspective	13
4	Audit Findings and Recommendations	20
5	Status of Provincial Legislation	33
6	Conclusion	37



ACKNOWLEDGEMENT

Women's Action for Better Workplaces (WAction), a project of Trust for Democratic Education and Accountability (TDEA), undertook the arduous task of the Gender Audit of Labour Laws with the help of an able team. This first-of-its kind exercise involved an extensive clause-by-clause analysis of federal labour laws and an exhaustive comparative analysis of provincial laws with a gender lens.

The entire effort would not have seen the light without the expert guidance by the TDEA's Head of Programmes Muddassir Rizvi and Deputy Chief of Party Rashid Chaudhary who helped putting together the analysis framework and oversaw the audit through each step. The auditing team including Fatima Raja, Jublee Bano and Zahir Shah deserves applaud for their strenuous efforts to critically review 31 labour laws word by word. The project was fortunate to have leading Gender Expert Fatima Ehsan on board who helped writing the gender audit report. The Project Manager Rukhsana Shama put together and consolidated the recommendations after provincial and national consultations on the findings of this audit. This acknowledgement would not be complete without mentioning the legal firm Raja Akram and Company who gave their expert legal advice on drafting the legislative recommendations for the Parliament and Provincial Assemblies.

I am also thankful to the Embassy of the Kingdom of the Netherlands for its generous support to WAction and taking the agenda of women workers forward.



Shahid Fiaz

Chief Executive Officer

Trust for Democratic Education and Accountability

EXECUTIVE SUMMARY

Women Action for Better Workplaces (WAction) Project, implemented by the Trust for Democratic Education and Accountability - Free and Fair Elections Network (TDEA-FAFEN) and funded by the Embassy of the Kingdom of the Netherlands in Pakistan is focused on enhancing the capacities of women workers and their organizations to negotiate and advocate with employers, policy-makers and legislators for improved working conditions for women.

One of the objectives of this project was to generate recommendations for reforms in labour laws based on a gender audit of the existing labour legislation and policy framework. To undertake this task, a framework for conducting the gender audit of labour laws was developed. Statutes were selected and an exercise was carried out to identify, analyse and propose recommendations on how to eradicate discrimination against women. In addition, WAction project also examined the quality of labour statutes that were enacted by the federal and provincial legislatures between June 2013 and April 2018. Some of the main challenges identified and recommendations offered are summarized as follows.

1 General Findings and Recommendations

One of the biggest challenges relating to labour laws is multiple laws governing the similar subjects even to the extent of replication. Global best practice in labour legislation includes four distinguishable streams of laws covering the Terms of Services and Conditions, Industrial Relations, Social Security and Occupational Safety, and Health. Contrary to this, Pakistan's federal and provincial bodies of statutes have multiple laws governing each stream. A unified labour law comprehensively covering the aforementioned four streams and consistent across provinces is a way forward for the country.

In addition to this, most labour laws are gender neutral and just a minority of them have special provisions regarding women, such as health and safety measures in factories, evening timings, maternity leave and benefits. The laws are gender-blind when it comes to the workplace environment for women workers or their participation in the workforce.

To ensure women's participation in the workforce, the law should provide for women quotas in employment. The state may increase the women employment by incentivizing the process through tax rebates or other similar benefits for employers.

A number of definitional issues such as gender-blind language in statutes and men-focused definitions also require the attention in the different labour laws. Various laws, with the exception of those specific to women, use the terms like 'workmen' and the pronoun 'he' to refer to their subjects. Such a language may be replaced with more inclusive terms like 'worker' and 'they' or 'his/her', across the board. Moreover, the definition of workers may be expanded to also include women working in agriculture sector to make them part of the formal labour force, especially those who are hired on a seasonal or need bases.

Other major challenges in the implementation of labour laws pertain to the key administrative weaknesses including but not limited to the shortage of qualified staff, weak inspection mechanisms, poor data collection techniques and dearth of proper equipment. The government may consider centrally addressing the labour inspection issues in compliance with the relevant ILO convention by combining the responsibilities of labour inspector, areas of labour inspection and drafting comprehensive labour inspection policy and legislation.

The provincial labour departments have extremely poor gender ratios in staff with alarmingly low numbers of female inspectors. Not having enough female labour inspectors give rise to the point that



women's issues do not get highlighted. Furthermore, the labour department, by policy, is bound to respond to complaints alone instead of proactively inspecting the workplaces to ensure compliance with the legal requirements. The women workers facing a multitude of structural and social challenges may not take to the complaining course resulting in continued violation of their rights. The labour department may emphasize the women quotas and other affirmative actions to improve their gender balance in staffing. A training on women-specific legal requirements and provisions may also be beneficial in improving working conditions for women.

2 Specific Recommendations for Legal Reforms

This section includes the recommendations of the report under four core streams of Terms of Services and Conditions, Industrial Relations, Social Security and Occupational Safety, and Health.

2.1 Terms of Service and Conditions

- The Factories Act, 1934 (both the federal and provincial) is applicable to a workplace with 10 or more employees whereas the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 governs the workplaces with twenty employees. This implies that when the number of employees is below ten, employers could not be held accountable for refusing to extend benefits to employees. The inconsistency of numbers between different laws provides loopholes that can be manipulated by employers and need to be rectified to bring uniformity in laws. All members of the workforce are equally entitled to the legal benefits and rights irrespective of the number of workers at an establishment or the nature of contract i.e. part-time, full-time, permanent or contractual.
- The labour laws do not provide any protection against the discriminatory treatment towards women (or workers in general). To give effect to the ILO Convention namely Discrimination in Respect of Employment and Occupation (No.111), the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 may be amended to add the following non-discrimination clause.
 - Protection against discriminatory treatment: The employer shall not treat any worker with any distinction, exclusion, preference made on the basis of race, colour, sex, religion, political opinion or social origin which has the effect of or nullifies equality of treatment.
- The Factories Act, 1934 allows women employment during the defined hours (6:00 AM to 7:00 PM) only, thus restricting the work opportunities for women. Although the Act was in line with an earlier ILO Convention; however, it violates the spirit of ILO's Night Work Convention (No. 171) which takes a gender-neutral approach providing equal work opportunities for men and women with provisions for maternity related considerations. The Act, therefore, may be amended to treat men and women equally with regards to working hours and include the following new clauses seeking to ensure maternity benefits for women:
 - Income of a woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living; a woman worker shall not lose the benefits regarding status, seniority and access to promotion, which are attached to her regular night work position.
 - Every woman employed in an establishment shall be entitled to, and her employer shall be liable for the payment of maternity benefit at the rate of her wages during the period of maternity leave of 24 weeks. The woman employee shall, with a period of one-month notice, inform the employer of the duration of maternity leave preceding and succeeding the expected date of delivery of the child.

- The period of maternity leave may be extended by the employer, upon request of a woman employee and after production of medical evidence. This request must not be refused unreasonably.
- A woman who adopts a child and with the production of evidence of adoption shall be entitled to maternity benefits for a period of 24 weeks if the child is below the age of three months and for a period of 12 weeks if the child is above the age of three months, from the date the child is handed over to the adopting mother.
- In the event that a woman suffers from a miscarriage or an abortion or gives up her child for abortion or for any other reason is not caring for a child at the end of her pregnancy, she will be entitled to the same amount of maternity leave and benefits that she would be entitled to had she had a normal birth and was looking after a child thereafter.

2.2 Social Security

Women workers suffer from under-registration with the institutions providing social security related benefits. Therefore, the institutions responsible for implementing social security laws, such as Social Welfare Department, EOBI, and Workers' Welfare Fund need to ensure that women workers get their fair share in these social security schemes. Following are some suggestions for registration of workers and compliance with legal provisions on social security.:

- An already registered employee with the EOBI may be allowed to continue their registration in case he/she changes his/her job and the new employer is not registered with EOBI through self-payment (rates may be determined). This may also help in informing EOBI about establishments that are not in compliance with the legal provisions.
- Any person in the employment of any establishment, registered or unregistered with the labour department and irrespective of the type of employment, may register him/herself with Social Security Department and/or Workers' Welfare Fund, whichever is relevant, on the provision of evidence as defined by the law to be eligible for admissible benefits. This may also provide timely information to the Social Security Department and/or Workers' Welfare Fund about establishments, which are not in compliance with the legal provisions.
- All private limited companies may be required to furnish an annual EOBI Compliance Report to be certified by the Employee's Old Age Benefit Institution (EOBI). This report may be required to be submitted to the regulatory body along with the annual accounts and other documents as required by the law.

2.3 Occupational Safety and Health Benefits

- The provisions in the Factories Act, 1934 regarding toilets may be amended to further provide for separate toilets for male and female employees keeping in view their number.
- The clauses on 'dust and fume' and other 'hazardous work', in the Factories Act, 1934 may be amended to include positive discrimination so that the pregnant and nursing women are not be required to perform any such work which is assessed as detrimental to the mother or the child. Moreover, the nature of work agreed at the time of employment may be changed during pregnancy. These recommendations are in line with ILO Convention No. 183 and Recommendation No. 191.
- Some special provisions need to be made with regard to pregnant women such as their work stations being conducive to their special needs, i.e., footstool, proper chair, etc.



2.4 Industrial Relations

- In Pakistan, labour legislation regarding collective bargaining and unions is elaborated in the Industrial Relations Act 2012. Given that this law like other labour laws is silent on the inclusion of women workers, an amendment can be made to specifically include women representation in the trade unions.
- The trade unions in the establishments with no women employees may also consider including the representatives of women workers from the industry in their Executive Council on 20 percent seats that are legally required to be filled by members from outside the establishment.

For an improved and pro-women labour legislation, all recommendations made to specific laws through the gender audit should be incorporated and then upgraded in the laws with strong implementing mechanisms. This is the most imperative step to be taken by the government to show its commitment towards gender equality and against gender discrimination, in particular and towards better labour practices, in general.

INTRODUCTION

Women face many issues across the world as part of the labour force. The gendered division of labour gives women a secondary and subordinate role in the economy and society. Although, women work both in the private and public sectors. Their work is underestimated and unacknowledged and their rights are not safeguarded due to a gender ideology that not only gives them a subordinate and inferior status socially but places a lower value on their economic contribution. Despite a gradual increase in their participation in labour force over last 16 years, a mere 22 percent of women are engaged in some economic activity in Pakistan. This is one of the lowest rates of female labour force's participation in the region.

Closing gender gaps in economic participation could boost GDP in Pakistan by up to 30 percent according to an IMF paper. However, this claim contradicts global trends created by neo-liberal economic policies, which push for privatization of public assets. Such structural adjustment policies wreak havoc on women as they are forced to bear the burden of inflation and are thus pushed into the informal sector for sub-contracted work.¹ As the highest number of women is in the informal sector and more are being pushed into it, the pull factor for women entering formal sector economy needs to be made stronger. One such measure could be to make labour laws gender sensitive so that women are given gender equitable opportunities and privileges to help recruit and retain them.

The Constitution of Pakistan provides for equality of citizens and favourable working conditions including equal employment opportunities without any discrimination on the basis of sex. For instance, Article 25 of the Constitution emphasizes the principle of equality before law and bars any type of gender discrimination, whereas, Article 37 stresses the just and humane working conditions with special focus on women and children. Despite these constitutional guarantees, many labour laws are either gender blind or blatantly discriminate against women workers. This can be explained in part by the nature of women's relationship with the work and the law, both of which are considered to be non-feminine and public-realm issues while women are perceived to belong to the private sphere only. In a patriarchal society such as Pakistan, women have a secondary status to men as a whole regardless of their role as mothers, wives, sisters, etc. Women occupy the bottom-most tier of the entire system as they face discrimination based not only on their sex but other intersectional factors such as ethnicity, class, level of education, etc. Due to low literacy rates and lack of legal awareness, women remain ignorant of their human rights and have no access or knowledge of political and legal structures and institutions or how they function.

Pakistan has a number of obligations under the international law regarding labour rights.² It is a signatory to the Universal Declaration of Human Rights 1948 which provides the right to work; to free choice of employment in just and favourable conditions of work, and protection against unemployment. It also includes the right to equal pay for equal work; the right to just and favourable remuneration ensuring an existence worthy of human dignity; and the right to form and join trade unions. The Articles six to eight of the International Covenant on Economic, Social and Cultural Rights 1966 further articulate these rights by placing positive obligations on the State to protect the right to work as well as to strive for fully realizing this right through provision of vocational training, etc. It goes on to recognize the workers' right to equal and fair wages which are sufficient to provide a decent living for themselves and their families; the requirement for safe and healthy working conditions; equal opportunity for promotions; rest, leisure, holidays, limited working hours, etc. It also recognizes the right to join and form trade unions and all acts

¹ Khattak, Saba and Asad Sayeed: Subcontracted women workers in the world economy: A case of Pakistan. (2000). SDPI

² Pakistan has ratified all of the eight Fundamental Conventions of ILO, two out of four conventions regarding governance of Labour including the Labour Inspection Convention C 081 and 27 technical conventions. Out of a total of 32 conventions that were ratified by Pakistan, 26 are in force.



ancillary to it. The International Covenant on Civil and Political Rights 1966 also protects civil rights including the right to join trade unions. Other relevant ILO conventions are discussed later in the report.

The Convention for the Elimination of all Forms of Discrimination Against Women 1979 (CEDAW) protects the workers against discrimination on the basis of sex. Article 11 of the CEDAW advises its signatories to take all appropriate measure to eliminate discrimination against women in the field of employment and ensure equal rights for all workers regardless of their sex. It stresses on the right to the equal employment opportunities, the right to free choice of profession, the right to promotion, job security and all benefits. The Article also mentions that women should have the right to equal remuneration, including equal benefits in cases of retirement, unemployment, sickness, invalidity or old age and other incapacity to work. The right to protection of health and to safety in working conditions, including the safeguarding of reproduction, right to maternity leave and benefits are also saliently discussed in the Article.

Despite the abovementioned conventions, women workers in Pakistan generally face both discrimination and omission in the labour legislation. This comes in form of gender-blind language excluding the female pronoun even in a cursory manner in any legislation except some women-specific laws. A large number of laws are outdated and do not inculcate the state's obligations under various international treaties ratified and signed by Pakistan. Thirdly, weak enforcement of the existing laws continues to hamper the labour landscape in the country eroding the original spirit of the law. Moreover, women workers and their issues are rendered insignificant often by the apparent gender biases exhibited by lawyers, judges, and law enforcement departments. Without a system of transparency and accountability, such biases go unchecked and even flourish.³ Furthermore, when women resort to judiciary for any relief, they have to face additional problems in shape of the high costs of litigation, delayed court proceedings, and the male-dominant unwelcoming court environment which instead of supporting women becomes an intimidating factor for them.⁴

Keeping in view this exclusion of women as workers and lack of women-friendly laws, Women Action for Better Workplaces (WAction) carried out this gender audit to assess what changes need to be introduced to make labour legislation all-inclusive. Women Action for Better Workplaces (WAction) is a 24-month project being implemented by the Trust for Democratic Education and Accountability (TDEA) and funded by the Embassy of the Kingdom of the Netherlands. The project is focused on enhancing capacities of women workers and their organizations to negotiate and advocate with employers, policy-makers and legislators for improved working conditions for women.

³ Gender Review of Labour Laws. 2010. PILER

⁴ *ibid*

METHODOLOGY OF GENDER AUDIT

Pakistan has a wide body of legislation governing the subject of labour. Given the limited scope of the study, WAction selected 31 widely applicable laws for the gender audit as it was not possible to include each piece of legislation in the study. As no consolidated official compendium of labour laws is available, the audit accessed the texts of the statutes given in the Manual of Labour Laws in Pakistan⁵. The project reviewed the shortlisted laws clause-by-clause to identify the provisions which were detrimental to women's effective and equitable participation in labour force. This review was informed by the constitutional guarantees and international conventions and statutes on the workers' rights. The project developed a set of 25 parameters to categorize and arrange the legal clauses and any recommendations for amendments to the same. Following chart lists these parameters. These parameters are taken out after a careful review of the labour rights provisions in the Constitution of Pakistan, Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Conventions of International Labour Organizations signed by Pakistan, and Pakistani labour laws.

No	Parameters
1	Freedom of association/freedom to bargain collectively
2	Wages
2.1	Minimum wages
2.2	Equality of wage
2.3	Overtime compensation
2.4	Delay/non-payment of wages
2.5	Non-increase in wages
2.6	Increase in wages
3	Safety from bonded labour
3.1	Unpaid/undocumented work
3.2	Family bondage
4	Safeguards against child labour
4.1	Age discrepancies
5	Job security
5.1	Appointment letter
5.2	Illegal practices related to job security
5.3	Termination
6	Occupational Safety and Health
6.1	Safety from hazardous material
6.2	Machinery
6.3	Work conditions
7	Safeguards against hard labour for women
7.1	Weight carrying
7.2	Machine handling

⁵ Khan, A. K. (2017). Manual of Labour Laws in Pakistan. Lahore: Manzoor Law Book House.

No	Parameters
7.3	Temperature
7.4	Posture during pregnancy
7.5	Detriments to reproductive function of women
8	Safeguards against working during odd hours
8.1	Nature of work
8.2	Special facilities for women working in odd hours
9	Safeguards against sexual harassment at the workplace
10	Equality of work and opportunities for men/women
10.1	Trainings
10.2	Promotions
10.3	Other benefits
10.4	Marital status
10.5	Access/Quota
10.6	Merit-based jobs
10.7	Transfers
11	Day-care centers and shelters
12	Separate washrooms
13	Access to social and health security
13.1	Pension
13.2	Gratuity
13.3	EOBI
13.4	Social security cards/health insurance
13.5	Welfare fund
13.6	Death grant
13.7	Retirement benefits
13.8	Provident fund
13.9	Compensation
13.10	Commutation
14	Employment and service conditions
14.1	Total hours of work (daily)
14.2	Total hours of work (weekly)
14.3	Breaks and rest periods/leisure time
14.4	Overtime limitation
14.5	Sick/medical leave
14.6	Casual leave
14.7	Annual leave
14.8	Festival holiday
14.9	Recreational leave
14.10	Regularisation

No	Parameters
14.11	Non-regularisation
14.12	Overseas workers
14.13	Appointment
14.14	Employment terms
15	Maternity leave and benefits
15.1	Duration of maternity leave
15.2	Paid maternity leave
15.3	Timings of maternity leave
15.4	Dismissal due to pregnancy
15.5	Breast feeding breaks
15.6	Duration of paternity leave
15.7	Promotions during maternity
15.8	Provisions related to still birth
16	Availability of canteen within work premises
17	Maintenance of records
18	Registration
19	Labour inspection
20	Unemployment
20.1	Women's unemployment
21	Women's human rights
22	Access to privileges and benefits
22.1	Residences for public sector employees
22.2	Private sector
22.3	Others
23	Violence against women
24	Gender-gap and inequality
25	Representation of women in decision making

The following matrix, presented as a sample, indicates how the audit was conducted for each clause of a particular law and includes suggestions and recommendations made.

Framework sample

Industrial Relations Act, 2012								
Sr. No.	Clauses in the Law	Whether or not provision is gender-neutral 1= Yes 2= No	In case of No, whether it addresses the issue 1= Yes (in full) 2= Yes (partially) 3= No	Indicator applied From 1 to 25	Applicable International Convention From 1 to 25	Suggestion, Recommendations 1. Compliance with international law 2. Removal of contradictions within domestic law 3. Removal of vagueness in text	Suggestion Text Text	Recommended International Convention From 1 to 25



Based on this analytical matrix, WAction compiled its recommendations for changes in the laws. The proposals made in this report belong to one of the following three sets:

Amendments to Existing Clauses: A number of legal clauses have become redundant with time or lack necessary provisions for enabling women to participate in workforce. Therefore, amendments have been suggested to such clauses.

Addition of New Clauses: In the spirit of inclusivity, the recommendations in this report also suggest addition of fresh clauses in the law.

Revision of Fines and Monetary Penalties: The report also includes recommendations for revision of monetary penalties for violation of the laws. The upward revision of these penalties has been suggested taking into account following factors:

A five percent annual inflation rate	Number of years since the penalty was originally introduced	Original amount of the penalty
--------------------------------------	---	--------------------------------

Besides the audit of 31 laws, WAction also carried out an examination of the quality of labour-related amendments or legislation enacted federally or provincially during the term between June 2013 and April 2018.

LABOUR LEGISLATION: A GENDER PERSPECTIVE

Pakistan inherited a part of its legal framework governing the subject of labour from British India and further added in to this framework by introducing a number of new laws post-independence. While 130 federal and provincial laws touch the labour issues at some point, as many as 80 laws - federal and provincial combined – are specifically related to the subject of labour. A number of these pieces of legislation have become obsolete, warranting repeal, while many others need to evolve to keep pace with the changing realities of labour in the modern day. With little to no pressure from any quarter, efforts on the part of the federal and provincial legislatures to upgrade or consolidate these fragmented laws are virtually non-existent.

A major challenge in the way of effective governance of labour-related matters is the existence of multiple laws, some of which replicate each other. Globally, the labour laws are divided into four streams that include: terms of services and conditions, occupational safety and health, industrial relations, and social security. Contrary to this, Pakistan's federation and provinces have multiple laws governing each stream. For example, at least six different laws deal with the terms of services and conditions for workers employed in industrial or commercial establishments. Laws dealing with minimum wages and payment of wages entail the same issue.

The devolution of the subject to the provinces post Eighteenth Constitutional Amendment has further complicated the legislative landscape for the labour. Since the devolution, provincial legislatures have introduced and passed 51 pieces of legislation on this subject. As many as 44 of these laws, more or less, replicate the erstwhile federal laws while the remaining seven – three in Sindh and two each in KP and Punjab – were fresh pieces of legislation. Generally, the provinces are adopting the older legislations with minor amendments to the extent of updating levels of fines and/or extension of definitions. This provincial legislation is being carried out in the absence of any minimum standards for the provinces set by the federal Parliament or the government. The Parliament, the legislative forum for the federally administered areas including the Islamabad Capital Territory, has also not updated the existing laws.

1 Issues of Access and Inclusion

Generally, labour laws are gender neutral although there are some special provisions regarding women such as health and safety measures in factories, evening timings, maternity leave and benefits. However, these laws are gender-blind when it comes to the workplace environment or women's participation in the workforce. Generally, women are under-represented in the labour force as it does not include women engaged in domestic labour. Due to the gender division of labour, women are concentrated in certain sectors such as services and agriculture and even within these sectors, they hold lower positions as compared to men. According to Social Enterprise for Development Centre's factsheet⁶, 72.7 percent women are involved in agricultural activities compared to 33.1 percent men. Female agricultural workers work about 59.9 percent excessive hours, whereas men work only 26.6 percent additional hours. On the other hand, women are paid a monthly wage of Rs. 6,345 whereas men get Rs. 9041 for the amount of work they do.

The research suggests that due to the effects of globalization and neoliberal economic policies, more and more women are becoming involved in the informal sector and are engaged in temporary employment or as contract workers and piece-rate workers. Employers looking for cheap labour, often

⁶ Social Enterprise Development Centre, LUMS

terminate contracts right before workers are eligible to become permanent so as to avoid the provision of any benefits to them. Women fall at the bottom of the wage pool and are paid less than men for the same work. Generally, women's right to work is not accepted by the society and since their income is usually considered supplemental, they are offered low wages, which they accept, knowing the abundance of labour supply and situation of workers who will accept being exploited in favour of starvation. The global gender pay gap is about 22.9 percent, meaning that on an average, women earn 77.1 percent of what men earn.⁷ According to the analysis of Pakistan's Labour Force Surveys for 2013-2014 and 2014-2015, the present gender pay gap is 26 percent throughout Pakistan's workforce without taking into account differences in workers' characteristics. The global gender gap index 2017 places Pakistan at 143 among 144 countries.⁸

Exploitation against women workers continues to thrive based on two main factors; first, their rights are not clearly and specifically spelled out in labour legislation (exclusion), and second, certain aspects are not considered illegal and therefore carry no penalty (impunity). For instance, if any factory or establishment does not hire women or discriminates against their hiring for any particular reason, it is not considered a violation of their constitutional right to seek any kind of employment, nor is it taken to be an illegal practice and is therefore not penalized.

2 Women's Participation in the Workforce

It is important that women are hired in diverse sectors and at different positions as their presence will necessitate the engendering of certain labour practices. However, currently, the majority of women workers are part of the informal economic sector owing to the factors such as gender-based division of labour and being unskilled. To ensure women's participation in the workforce, the law should bind employers with quotas to hire a certain percentage of women in a particular workplace. The introduction of 10 percent quota for hiring women in the civil service is a good precedent to build on - anything below could be considered as part of mal-practice or illegal practice.

Punjab also made a step in the right direction by providing for 33 percent representation of women on the boards of all government corporations, institutions and companies including the university syndicates and Boards of Directors under the Punjab Fair Representation of Women Act, 2014. The purpose behind this clause and other measures, including a 15 percent increase in female quota of government jobs, is to increase the number of women on key decision-making posts. The government may also consider introducing tax benefits and rebates for employers ensuring equitable representation of women.

Recommendations

- The Factories, Act 1934 and the Shops and Establishment Act, 1968 may be amended to add the following clause:
 - Any shop or establishment or factory to which this act applies shall ensure that it employs a minimum of 50 percent women out of a total number of its employees, provided that if the employer is not able to meet this threshold then it must provide sufficient reasons for not being to do so subject to the inspection of labour.
- Moreover, the government may take steps to ensure absolute compliance with the provisions of the ratified international instruments including the International Labour Organization's Convention on Equal Remuneration (C-100), and the Discrimination (Employment and Occupation) Convention (C-111).

⁷ <http://labourwatchpakistan.com/women-and-wages-in-pakistan/>

⁸ *ibid*

3 Representation in Management

Women representation in managerial positions has increased over time but is still far behind from being adequate. An ILO estimate suggests that only five percent or less of the CEOs of the world's largest corporations are women⁹, while Pakistan has a meagre three percent representation of women at managerial positions, placing the country at 108th position among 126 countries.

Recommendation

- For representation in management of any organization, there should be special provisions in the law ensuring at least 50 percent women in the management and penalties may be prescribed in case of violation. This may also be made part of illegal labour practice and included in the Pakistan Penal Code to ensure deterrence.

4 Women's Representation in Work Councils, Welfare Committees and Boards

Women are either under-represented or totally absent from all work councils or welfare committees and boards. An ILO briefing note titled, 'Women on Boards: Building the Female Talent Pipeline,' showed that of all the companies and organizations surveyed globally, women only occupied 19 percent seats on boards and only 13 percent gender balanced boards of 40-60 percent women representation.¹⁰ This huge gap should be rectified and at least a quota of 10-20 percent – if not more – needs to be followed. Having women's representation on committees etc. can act to provide a level of comfort for other women workers, which can help retain them in the workforce.

5 Definitional Issues

There are also some definitional issues in various laws that need attention. The language of these laws does not account for women and need to be made gender inclusive. For instance, all laws, with the exception of women-specific laws, use the term, 'workmen' and the pronoun 'he'. These references may be replaced with more inclusive terms and pronouns like 'worker' and 'they' or 'his/her', across the board.

Omission of Transgender Workers

The term 'workman' also marginalizes transgender persons who in most cases (if born male) identify as women in terms of gender identity. The Parliament of Pakistan enacted the Transgender Persons (Protection of Rights) Act, 2018 which aims to protect the transgender rights including the right to employment. The law prohibits any type of unfair treatment of discrimination against the transgender persons in respect of employment, occupation or trade. The law bars every establishment, institution, department, or organization from discriminating against any transgender person in any matter relating to employment including, but not limited to, recruitment, promotion, appointment, transfer and other related issues. Save this law, the remaining legislation covering the labour issues not only heteronormative but also blatantly androcentric and exclusionary with regards to transgender persons.

⁹ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_334882.pdf

¹⁰ http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/briefingnote/wcms_410200.pdf



Omission of Workers with Disabilities

The workers with disabilities also face omission and are absent from most labour laws, apart from some specific clauses and a particular law namely the Disabled Persons (Employment and Rehabilitation) Ordinance 1981. In relation to this and in the spirit of inclusivity, they may also be specifically mentioned in the legal definition of the term worker.

Omission of Women Workers in Informal Sectors

Additionally, the legal definition of workers does not include the women employed in informal sectors such as agriculture. It may be expanded to include everyone especially women who are employed or hired on seasonal or need basis.

Sindh Reforms

The province of Sindh made an effort to revise the legal definition of workers to include the clerical staff in non-manufacturing sector which was omitted in the earlier definition. Below are given the two definitions for a comparison:

OLD DEFINITION

'Worker' means a person employed directly or through an agency whether for wages or not in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process. Definition also includes in any other kind of work whatsoever, incidental to or connected with the subject of the manufacturing process but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on.



NEW DEFINITION

'Worker' means a person employed in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever, incidental to or connected with the subject of the manufacturing process and includes clerical staff. But does not include occupier and manager having the hiring and firing authority; provided that no worker shall be employed through an agency or contractor or sub-contractor or middleman or agent, to perform production related work.

6 Administrative Gaps

One of the biggest challenges with regard to the implementation of labour laws lies in certain key administrative weaknesses in the system. Lack of qualified staff in adequate numbers, weak inspection mechanisms, poor data collection techniques and dearth of proper equipment, etc., present a despondent picture. The following sections discuss labour inspection mechanism and the state of labour departments in terms of gender related issues.

6.1 Weak Labour Inspection Mechanism

Pakistan ratified ILO Labour Inspection Convention, 1947 (NO. 81) thereby committing the government to ensure that arrangements are in place to educate and inform employers and workers on their legal rights and obligations concerning all aspects of labour protection and labour laws, etc. In addition, Pakistan entered into an agreement with the ILO relating to a Decent Work Programme that highlights the importance of labour protection and work safety and health that places further emphasis on the importance of an effective and efficient system of labour inspection.

The Labour Inspection Policy 2006 appears to be somewhat consistent with ILO Convention 81 but also introduces a number of innovations that extend the coverage of labour inspection and related activities to new areas, such as:

Encouraging the involvement of private sector in provision of labour inspection services through licensing and accreditation arrangements,	Encouraging the compliance with labour policies through non-rigid means	Encouraging dispute prevention and conflict avoidance principles
--	---	--

The policy is, therefore, based on key areas of prevention, protection and improvement through modern practice taking into account the lack of resources in the labour departments such as the necessary manpower to conduct routine, follow-up and special inspections as per rules. Despite some exciting innovative inclusions in the Policy, there remains a huge gap in theory and practice, a breach between what is written and implemented due to which the labour force cannot be monitored adequately and efficiently.

The ILO Convention No. 81 contains many clauses that can help make the inspection system better. For instance, the Article 11 of the Convention provides for the provision of transport facilities or travel reimbursements to the inspectors in case of usage of public transport. Similarly, the Article 12 seeks to authorize the labour inspectors to use powers such as forced entry if stopped, interrogation, production of documents, usurpation of documents to take as proof or for reporting purposes, etc. The Convention also talks about a centralized labour inspectorate at the provincial/federal level.

The Convention also mentions that the labour inspectorate shall be notified of industrial accidents and in cases of occupational diseases etc. Contrary to this, there is no provision in the domestic laws on the nature and content of reporting to the labour inspectorate by the employers, among other things.

Practically, the labour inspectors do not report to the directorate periodically on any of the subjects mentioned in the Convention and no annual reports of the inspection findings are published. In addition to this, there is no specific provision in the law about the frequency of visit of the labour inspectors. While there is a mention of labour inspection in the labour laws, there is no clarity on the number of inspectors to be employed for a number of factories or establishments; and nothing exists on the operating procedures of inspection or how data is to be collected and analysed.

The lack of labour inspectors is a serious issue and one of the biggest obstacles standing in the way of safer and better working conditions. According to an ILO estimate (2015), there were only 336 labour inspectors (with only three being women) for 60 million workers in Pakistan.¹¹ Another serious challenge provincial labour departments face is the lack of registration of workplaces for inspection services. However, in Sindh the Factories Act has made registration of factories mandatory but this is not reflected at the federal level or in any other province. Both the Factories Act, 1934 and the Shops and Establishment Act, 1969 need to be amended to include the provisions for making the employers responsible and accountable for the registration of the establishment/factory with the labour department.

The Labour Inspection Policy 2006 is silent on inspection for provisions related to women and most of the inspection forms and guidelines do not have any space for gender-segregated inspection mechanisms. A project titled, 'Promoting Gender Equality for Decent Employment' supported by the ILO and the Canadian Government was aimed at mainstreaming gender in the labour inspection. This project also helped launch a 'Gender Sensitive Labour Inspection System (GSIS) portal for the provinces; however, no gains made by this project can be found to build upon. The ILO developed the checklists for labour

¹¹ <https://www.dawn.com/news/1208750>

inspection in Quetta, Karachi, and Lahore. However, the current official checklists for the labour inspectors are gender blind.

For an effective and gender-responsive labour inspection, the checklists may be reviewed to reflect the following measures:

Understanding the different needs of men and women	Revising an inspection mechanism taking in to account women-related provisions and benefits and introducing strict penalties for violations	Including the use of anti-harassment policies and committees, maternity and day care benefits in inspection framework
--	---	---

According to the Industrial and Commercial Employment (Standing Order) Ordinance, 1968, an inspector can enter any premise at any reasonable hour and check whether the provisions in the law are being followed or not. Similarly, the Factories Act, 1934 also talks about inspection rules but these are not translated into practice. Generally, a comprehensive definition of inspection is missing, for instance the process of inspection is defined in bits and pieces in different laws, but a comprehensive approach and detailed guidelines are needed to make inspection an effective exercise.

6.2 Understaffed and Male-Dominated Labour Departments

None of the provincial labour departments are well equipped with the state-of-the-art data collection techniques and have no gender-segregated data at hand. There is also a serious dearth of sex-segregated, qualified and committed staff that can carry out inspections. More serious is the extensive gender gap that exists in the organizational makeup of the departments.

Balochistan Labour Department has a total of 321 staff of which only 6 are women while only one out of 38 labour inspectors is woman. The Sindh Labour Department has a total of 225 staff of which only 6 are female while only one out of 52 labour inspectors is a woman. The Labour Department in Islamabad has a total of one woman in 19 staff members and no female inspectors. The Khyber Pakhtunkhwa (KP) Labour Department has six women in 146 staff members while none of 43 labour inspectors is a woman. The Punjab Labour Department has 30 staff in total with 6 male labour inspectors and 2 female inspectors. Indicated in the table below is the provincial breakdown of the staff available in the labour departments.¹²

Cities	Gender Disaggregated Numbers of Staff Members			Gender Disaggregated Numbers of Labour Inspectors		
	Women	Men	Total	Women	Men	Total
Labour Department Islamabad	1	18	19	-	3	3
Labour Department Sindh	6	219	225	1	51	52
Labour Department KPK	6	140	146	-	43	43
Labour Department Punjab	-	28	30	2	6	8
Labour Department Balochistan	6	315	321	1	37	38

¹² The data presented in the table was provided in an informal manner by the labour departments. There is a lack of availability of data related to labour departments, e.g., on their key personnel, organizations that are registered with them or not – this could all be made available on their websites.

It is self-evident that all the labour departments have extremely poor gender ratios and alarmingly low numbers of female inspectors. Unavailability of female labour inspectors results in women workers' issues being ignored. Moreover, the labour inspectors wait for the complaints to visit a workplace instead of proactive inspections resulting in limited number of women issues being taken up as women do not tend to complain due to structural and social barriers. Women quotas and affirmative action practices may be introduced in the departments to make them more gender-balanced. In addition, all the inspectors should be trained on inspections related to women specific provisions.

AUDIT FINDINGS AND RECOMMENDATIONS

The following sections entail a review of the relevant labour laws from a gender perspective based on a framework detailed earlier under methodology. All recommendations made in relation to different audited laws are based on amendments proposed after an assessment by legal experts. Sections that follow are arranged based on groupings of major laws that include; employment and service conditions, wages, work hours and overtime, termination of employment, maternity benefits, sexual harassment, social security benefits, environment of the workplace and collective bargaining and trade unions.

This part of the report includes only audited laws; however, the unaudited laws where amendments have been proposed can be found in Annex-2.

1 Employment and Service Conditions

Mainly, the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and the Factories Act, 1934 govern the terms of employment and service in industrial and commercial establishment including factories and most of other workplaces.

1.2 Number of Employees

The Factories Act, 1934 is applicable to a workplace that has at least 10 or more employees whereas the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 applies on workplaces with twenty employees. None of these covers the workplaces with a number of employees below ten. This legal lacuna deprives the workers at small establishments of their employee rights and provides an escape for the employers from the responsibility to extend all the benefits to their employees.

Recommendation

- The legal cover may be extended to the establishments and workplaces employing less than ten persons to ensure that all members of the workforce are equally entitled to the legal benefits and rights irrespective of the number of workers at an establishment or the nature of contract i.e. part-time, full time, permanent or contractual.

1.3 Age of Employment

The age of employment merits some discussion due to the ambiguities present between the different laws. Taking into consideration the Factories Act, 1934, the upper age limit (seventeen) of an adolescent and adult does not correspond with the other laws relevant to the prohibition of employment of children in industrial and commercial establishments. Employment of children (both male and female) below the age of fourteen years is prohibited under section 50 of this law and children between the ages of fourteen and seventeen are allowed to work. The proposed amendments that can make the said law consistent with other labour laws relating to the definition of child, adolescent and adult could be based on altered definitions such as:

Recommendations

- The labour laws may be amendment to standardize the definitions of a child, an adolescent and an adult. An adolescent should mean a person who has completed his/her fifteenth year but has not completed his eighteenth year; an adult means a person who has completed his/her eighteenth year, whereas a child means any person who has yet to complete his/her fifteenth year. References to 'child' in all clauses may be taken out.
- New sections in the laws may be proposed to ensure that persons working in the commercial and industrial establishments other than the factories will hold conclusive proof of their age to rule out any controversy between the employers and the inspectors with regard to the child labour.
- Also, it is recommended to have a provision in the law that makes it mandatory for all employers of establishments in which adolescents are employed to maintain a register of the said workers showing the name and age of each adolescent working in the establishment, nature of his/her work, number of certificates of age and working hours.

1.4 Discrimination Against Women in Employment

There is no protection against discriminatory treatment towards women (or worker in general) by the employers in labour legislation. To give effect to the ILO Convention Discrimination in Respect of Employment and Occupation (No.111), the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 needs to be amended.

Recommendation

- The labour laws may be amended to add non-discrimination provisions prohibiting the employers from discriminating against an employee with any distinction, exclusion, preference made on the basis of race, colour, sex, religion, political opinion or social origin, which has the effect of or nullifies equality of treatment.

1.5 Equality of Wages

Wages can be paid on daily, weekly, fortnightly or monthly basis. However, a wage period cannot exceed one month. The detailed instructions on payment of wages are found in Payment of Wages Act, 1936. Employers, under the West Pakistan Minimum Wage Rules 1962, are required to maintain a wage register, issue wage slips in authorized format and a muster roll as prescribed under the law. A worker, within 6 months of non-payment of minimum wage on rates specified, may submit a claim to the concerned authority for payment of arrears.

Wages, as defined under the Minimum Wages Ordinance 1961, mean all remuneration, expressible in monetary terms, and payable to a person on fulfilment of the express or implied terms of employment contract. This, however, does not include contributions paid by the employer on behalf of the worker under any scheme of social insurance, pension fund or provident fund; travelling allowance or value of any travelling concession; amount paid to defray special expenses incurred by the worker in respect of his employment; any sum paid as annual bonus; or any gratuity paid on contract termination.

Recommendations

- The federal and provincial governments need to ensure that minimum wage rates fixed under the law are publicized widely to all workers and employers. They may also require the employers, to display the minimum wage rates in prominent places in a factory, workshop or other workplace, notices in Urdu, English or any other language specified in the order.
- Implementation of the public display of minimum wages may be made mandatory and included in the checklist of labour inspectors.

Laws related to wages not only create issues for women but are inherently biased against women, as these remain gender neutral and exclusive. Since women working in the informal sector are not included in any definition of a worker, they are unable to get any protection from these laws. Despite the promises of equality enshrined in the Constitution and international obligations, such as equal pay for equal work, women are consistently paid less than men doing the same job.¹³

Recommendations

- In order to give effect to the ILO Convention, Equal Remuneration Convention, 1951 (No. 100), following new clause in the Industrial and Commercial Employment (Standing Order) Ordinance, 1968 may be added:
 - The employer shall pay equal remunerations including basic or minimum wage, salary or any additional emoluments, whatsoever payable directly or indirectly as per law and practice, whether in cash or in kind to the worker for equal value of work without discrimination based on sex.
 - All claims of wage differential of a worker, where there is a discrimination in the payment of remuneration for work of equal value shall be settled and recovered in the same manner as provided for the determination and recovery of compensation under the Workmen's Compensation Act, 1923.

1.6 Work Hours and Overtime

Various labour laws deal with hours of work and overtime. Of them, the Punjab Shops and Establishment Act does not provide for shortened working hours for adolescents.

Recommendation

- The Punjab Shops and Establishment Act needs to be amended to include the following provision: Working hours of adolescents shall not be more than five hours a day in any establishment. In addition, the working hours of an adolescent shall be so arranged that they do not spread over more than seven and a half hours in a day. No adolescent should be allowed to work in any factory on any day on which he/she has already been working in another establishment.

The Factories Act, 1934 stipulates that working hours for women shall be between 6:00 AM and 7:00 PM. This legal provision was in line with the ILO Convention (No. 89), which prohibited night work by women. However, this convention was criticized as having discriminatory impact on women by limiting employment opportunities for them especially in the manufacturing sector, which used to employ night workers. Due to the criticism against ILO Convention (No. 89), a new Night Work Convention (No.171) was adopted in 1990 that uses a gender-neutral approach with provisions for maternity considerations. It suggests measures to find an alternative to night work before and after childbirth for a period of at least sixteen weeks of which eight weeks shall be before the expected childbirth.

¹³ Gender Review of Labour Laws, PILER. 2010

Recommendation

- Following new provision may be added in the Factories Act, 1934:
 - Income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living; a woman worker shall not lose the benefits regarding status, seniority and access to promotion, which are attached to her regular night work position.

Another issue with regards to working hour is absence of any legal framework for the informal sectors such as domestic labour, home-based work and agriculture sector. Due to lack of regulation, women workers in these sectors are exploited and pressurized to work for indefinite and long hours.

Recommendations

- There is a need for a concerted effort by the federal and provincial labour departments to move towards a policy of formalizing/regulating the informal sector. Sindh has already set this example by including workers in agriculture and fisheries in the definition of worker.
- Moreover, all workers including women working beyond the legally defined hours should be entitled to an overtime pay at double the rate of their ordinary pay, in accordance with section 47 of the Factories Act, 1934.

The law also discriminates against women in allowing paid overtime work. The law prescribes a maximum weekly overtime of 12 hours and a maximum annual overtime of 624 hours. However, women can work overtime up to 10:00 pm only and that too contingent upon her employer arranging transport for her while they can work overtime only up to 7:00 pm when there is no transport arrangement.

Recommendation

- The provisions restricting women to work overtime beyond certain hours are discriminatory and may be revised in so that all labour can work overtime if they so desire irrespective of their sex

The maximum weekly overtime hours are 12 hours, which can be spread out in terms of 2-3 hours per day. The total yearly overtime should not exceed 624 hours. A young person (older than 14, less than 17) can work 1.5 hours of overtime per day but the total overtime hours in a year cannot exceed 468 hours. In contrast, a woman can work up to 10:00 pm contingent upon her employer arranging transport for her, however, if the employer does not arrange this, a woman can only work up to 7:00 PM. This indicates that women cannot work overtime if they want to.

Recommendation

- This needs to be revised in the laws so that all labour can work to do overtime if they so desire irrespective of sex



1.7 Termination of Employment

The main statute governing termination of employment in Pakistan is the Industrial and Commercial Employment (Standing Orders), 1968. For terminating employment of a permanent worker, for any reason other than misconduct, one month's notice shall be given either by the employer or the employee. Otherwise, the notice period shall be compensated with a month's wages calculated on the basis of average earned by the worker during the last three months.

In terms of termination of employment, women are discriminated against for the very purpose that they can procreate. Married women are discriminated against 'in case' they get pregnant and leave, thereby wasting the time and resources of the employer. In fact, when workingwomen get married, they are encouraged to leave or are often dismissed under other pretexts. ¹⁴ The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 needs to be edited to include ILO Convention, Maternity Protection (No. C183) along the following lines:

Recommendation

- It is unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave or during a period following her return to work to be prescribed by national laws or regulations. Employer can only do so on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer. In addition to this, the Convention also upholds the right of the woman to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

1.8 Maternity Leave and Related Benefits

Laws regarding maternity protection should allow women to combine their productive and reproductive roles without compromising one at the cost of the other. Maternity protection includes health protection measures for pregnant and breast-feeding mothers, maternity leave, leave in case of illness related to pregnancy, provision of cash and medical benefits, employment protection and non-discrimination, allowing nursing breaks to breast-feeding mothers.¹⁵

Duration of Maternity Leave: There have been at least three ILO conventions regarding maternity benefits since 1919 to 2000. The latest ILO Convention 183 adopted in 2000 (not ratified by Pakistan) expands the scope of maternity protection to all workers and provides for at least 14 weeks of paid maternity leave. However, according to Recommendation No. 191 Maternity Leave (1), members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.

Convention No. 183 also highlights different aspects of maternity protection such as health protection, maternity leave, leave in case of illness or complications and employment protection and non-discrimination. Recommendation No. 191 complements Convention No. 183 by suggesting higher protection such as longer duration of leave and higher benefits. Also, the Recommendation is more precise about certain aspects of maternity protection treated in the Convention such as how to ensure health protection and adds some additional aspects related to types of leave and financing benefits.

According to an ILO report, globally, 51 per cent of countries provide a maternity leave period of at least 14 weeks, the standard established by Convention 183, whereas, 20 per cent of countries meet or exceed the 18 weeks of leave period suggested in Recommendation No. 191. Bangladesh provides 16 weeks paid maternity leave,¹⁶ about four weeks more compared to the current practice in Pakistan.

¹⁴ Gender Review of Labour Laws. 2010. PILER.

¹⁵ <https://paycheck.pk/main/labour-laws/maternity-work/maternity-law/maternity-and-work-worldwide>

¹⁶ http://www.ilo.org/wcmsp5/groups/public/--dgreports/--dcomm/--publ/documents/publication/wcms_124442.pdf

In terms of when the leave is to be taken, the West Pakistan Maternity Benefits Ordinance 1958 and the Mines Maternity Benefits Act 1941, both suggest that leave should be taken six weeks prior to and as many after delivery. However, Recommendation No. 191 mentions that to the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after child birth.

The following table shows all domestic laws associated with maternity leave and its varying conditions.

Maternity Benefits Laws

Law	Qualifying Condition	Leave Time/benefit
The Mines Maternity Benefits Act, 1941	Must have been working in the mine for at least 6 months	12 weeks (84 days)
The West Pakistan Maternity Benefit Ordinance, 1958	Must have been working in the organization for at least 4 months	12 weeks (84 days)
The Provincial Employees Social Security Ordinance, 1965	Contribution paid for worker for at least 90 days in preceding 6 months	Pre-natal confinement and post-natal care
Revised Leave Rules, 1980	Permanent worker	13 weeks (90 days)

As is apparent from the table above, with regards to maternity related benefits the two main laws are overlapping, confusing and redundant. Therefore, the Mines Maternity Benefit Act, 1941 may be repealed after inserting a number of its sections on maternity benefits (see recommendations below) in the West Pakistan Maternity Benefit Ordinance, 1958. The following sections can be added to the Maternity Benefit Ordinance:

Recommendations

- Following sections taken from the Mines Maternity Benefit Act, 1941 may be added to the West Pakistan Maternity Benefit Ordinance, 1958:
 - Every woman employed in an establishment shall be entitled to, and her employer shall be liable for the payment of maternity benefits at the rate of her wages during the period of maternity leave of 24 weeks. The woman employee shall with a period of one-month notice inform the employer of the duration of maternity leave preceding and succeeding the date of delivery of the child
 - The period of maternity leave may be extended by the employer, upon request of a woman employee and after production of medical evidence and the same must not be refused unreasonably.
 - A woman who adopts a child and with the production of evidence for adoption shall be entitled to maternity benefits for a period of 24 weeks if the child is below the age of three months and for a period of 12 weeks if the child is above the age of three months, from the date the child is handed over to the adopting mother.

Maternity Benefits in case of Miscarriage and Still Births:

The issue of miscarriage and stillbirths also needs to be addressed. The West Pakistan Maternity Benefits Ordinance 1958 defines still born child as any child, 'which has issued forth from the mother after the twenty-eighth week of pregnancy and which did not at any time after being completely expelled from the mother, breathe or show any signs of life'. This clause needs to be updated to the international standard that imposes the stillbirth restriction after 24 months of conception.

Recommendation

- Following new clause may be inserted in the Punjab Maternity Benefit Ordinance:
 - In the event that a woman suffers from a miscarriage or an abortion or gives up her child for abortion or for any other reason is not caring for a child at the end of her pregnancy, she will be entitled to the same amount of maternity leave and benefits that she would be entitled to had she had a normal birth and was looking after a child thereafter.

Maternity Benefits in case of Complications in Pregnancy: The laws covering maternity benefits need to be flexible enough to provide relief to the women workers in case of any pregnancy-related complications affecting their health and requiring measures such as rest for recovery. Similarly, complications in pregnancies should have some flexibility by law. An insertion into the Punjab Maternity Benefit Act, for instance, can be made in case the woman requires additional maternity leave, along the following lines:

Recommendation

- Following new provision may be inserted in the Punjab Maternity Benefit Ordinance:
 - Provided that in certain circumstances, upon the production of adequate medical evidence, the period of maternity leave prescribed under this section may be extended by the employer upon the request of a woman worker and any such request shall not be unreasonably refused.

Protection against Discrimination

As mentioned before, the termination of contract or employment on the grounds of pregnancy should be made part of illegal practice. Article 11(2) of the CEDAW also urges the states to take appropriate measures to prevent discrimination against women on the grounds of marriage and to ensure their effective right to work including the prohibition of dismissal on the grounds pregnancy or maternity leave.

Recommendation

- Stricter penalties may be imposed on the employers in case of any violations in the provision of maternity leave and benefits. The outdated penalties for the contravention of the law need to be upgraded on the urgent basis. The existing penalties are too inadequate to act as a deterrent for the offenders, as was noted in a 2010 report by the Law and Justice Commission of Pakistan. 17

Paternity Leave

At present, there are only half a dozen countries that offer fathers more than two weeks paternity leave. In Denmark for instance, 90% of fathers take more than two weeks leave on the birth of their child. Introduction of paternity leave has many benefits. For instance, fathers who make use of paternity leave are more likely to take on an active role in child-care tasks and this usually continues beyond the leave period. Secondly, paternity leave is also good for women's careers. When childcare responsibilities fall

¹⁷ (<http://labourwatchpakistan.com/pregnant-and-fired-a-pakistani-womans-workplace-dilemma/>)

exclusively on the mother, it has the effect of depressing women's wages and deprives them of other experiences. When men shoulder childcare burden, this effect is lessened for women.¹⁸

Recommendations

- In light of the above-mentioned benefits of the paternity leave for women workers, following recommendations need to be adopted in the concerned labour laws:
 - The number of days of paternity leave may be increased from five to at least two weeks commencing on or immediately before or after the birth of the child.
- Following new provision may be added to the Punjab Maternity Benefit Ordinance:
 - Provided that in certain circumstances related to the birth of a child, where it becomes necessary for the father to take leave in addition to the two weeks mentioned herein above, the employer shall consider granting and not unreasonably deny the requisite number of additional leave days as requested by the father. The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 may be revised to include the mention of both the paternity and the maternity leaves.

Case of Contractual Workers

As contractual workers, women are not eligible for maternity benefits under the Maternity Benefit Ordinance, 1958. On the contrary, the Social Security Ordinance, 1965 extends these benefits to contractual workers as well. Many employers terminate the contract of women workers in order to avoid granting them maternity benefits. Moreover, the lack of sufficient knowledge about labour rights and the employment without written contracts further complicates the problem.

Recommendations

- An amendment to the Maternity Benefit Ordinance, 1958 needs to be added related to the prohibition of employment of and work by women during the 12 weeks (to be increased from six as per law) following the day on which she delivers a child. There can also be added provisions for the mutually agreed work from home if the nature of work allows so.
- The West Pakistan Maternity Benefits Ordinance, 1958 may also be amended to make provisions for cash benefits with respect to the maternity leaves in line with Convention No.183.

1.9 Day Care Facilities

According to the Article 37(e) of the Constitution, the state is responsible for making provisions for just and humane working environment for every worker. The Labour Policy 2010 also carries this provision while Section 33Q of the Factories Act, 1934 requires a factory with 50 women employed to have a suitable room reserved for the children under the age of six years whereas KP has revised the minimum number of women employees required for setting up day care facility to 25. Under the Punjab Factories Rules, 1978, these rooms are restricted only to children, their attendants and mothers. Every establishment is also required to hire a trained nurse and a female servant for looking after the children. Women workers can also use this room for breast-feeding their children during breaks. The problem with the day care facilities is that it is contingent about a specific number of women, if it is less than 50, women do not get access to day care.

¹⁸ <https://www.economist.com/blogs/economist-explains/2015/05/economist-explains-18>

Recommendation

- The Factories Act, 1934 may be amended to replace the existing provisions about day care facility with the following:
 - Regardless of the number of women workers employed, a suitable space shall be reserved for the use of children under the age of six years.

1.10 Facilitation of Nursing Breaks and Flexi Timings

There is no provision in the labour laws regarding nursing breaks or flexible timings (hereinafter referred as flexi timing). The ILO Convention 183 states that a woman worker has the right to one or more daily breaks or daily reduction of working hours in order to breastfeed her child. The ILO Convention calls for a break every two hours for 15 minutes.

Recommendation

- An amendment to maternity related laws may be made to include the provision for nursing breaks as well as a provision that allows women who are returning from maternity leave or are pregnant to have flexi-timings.

The inclusion of flexi timings could have a positive effect on women as it encourages them to stay in the workforce without compromising their reproductive role or career choices and opportunities.

1.11 Sexual Harassment

Another pressing challenge faced by women workers is the issue of violence. Apart from discrimination that bars women from participating in the workforce, they face different forms of violence once they do enter the workplace. For instance, there is a large and unreported amount of sexual harassment that relates to women in different organizations, be they private or public. Incidents of extreme forms of sexual violence such as rape are prevalent in sectors where women workers are most vulnerable due to poverty and debt as in the case of brick kiln and in domestic and bonded labour. The Protection Against Harassment of Women at the Workplace Act, 2010 is a welcome step by the government; however, its implementation is far from being desirable.

In March 2010, the government passed two laws against sexual harassment in the workplace. The Criminal Law (Amendment) Act, 2010 amended the Pakistan Penal Code (PPC) and the Code of Criminal Procedure (CrPC), making workplace harassment against women punishable with imprisonment of up to three years or a fine of 500,000 rupees or both. The new law defines sexual harassment in a better way and provides for enhanced punishment under Section 509 of the PPC. The Protection Against Harassment of Women at the Workplace Act, 2010 requires the employers to display the code of conduct in their organization, form of a three-member inquiry committee on harassment, and holding awareness sessions for the staff. All organizations are required by law to adopt these practices in their workplaces.

What is Sexual Harassment?

The Protection Against Harassment of Women at the Workplace Act, 2010 defines the harassment as any unwelcome sexual advance, request for sexual favours or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.

However, this definition is not all encompassing and ignores various forms of harassment other than that of sexual nature.

Recommendation

- The Protection Against Harassment of Women at the Workplace Act, 2010 may be amended to redefine the harassment as, "an aggressive pressure or intimidation, behaviour of an offensive nature causing mental or psychological torture by unwanted and unwelcome verbal or written communication and physical conduct of a sexual nature. It also includes sexually demeaning attitudes causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment".

2 Social Security Related Benefits

The Employees' Old-Age Benefits Act (1976) is applicable on all firms, industrial or commercial, where five or more workers (both contractual and regular) are employed. This legislation pertains to a scheme of social security for providing benefits to certain employees or their dependents in the event of sickness, maternity, employment injury or death. This scheme is managed and implemented by the Employees' Old-Age Benefits Institution (EOBI). Other relevant legislation on social security include; Workers Welfare Fund Ordinance, 1971 and Workers Compensation Act, 1923. The biggest social security issue with regard to women remains to be the effective enforcement of the laws. Women are under-registered in the social security schemes and programs, a fact which requires the urgent attention of the institutions responsible for implementing the social security laws such as Social Welfare Department, EOBI, and Workers' Welfare Fund. Some suggestions for registration of workers and legal compliance are as following:

Recommendations

- An already registered employee with the EOBI may continue his registration in case he/she changes his job and the new employer is not registered with EOBI through self-payment, the rates of which may be determined. This may also provide timely information to EOBI about establishments that are not in compliance with the legal provisions.
- Any person in the employment of any establishment, registered or unregistered with the labour department and irrespective of the type of employment, may register himself/herself with the Social Security Department and/or the Workers' Welfare Fund, whichever is relevant, on the provision of evidence as defined by the law to be eligible for admissible benefits. This may also provide timely information to the Social Security Department and the Workers' Welfare Fund about establishments which are not in compliance with the legal provisions.
- All private limited companies may be required to furnish an annual EOBI Compliance Report to be certified by the Employee's Old Age Benefit Institution (EOBI). This report may be required to be submitted to the regulatory body along with the annual accounts and other documents as required by the law.

Generally, all laws coming under the rubric of social security need overhaul in terms of gender-neutral language and benefits. For instance, the Workers Welfare Fund Ordinance, 1971 discriminates against



the widower and children of a deceased female worker in the eviction from a house allotted to the deceased worker. The law provides a nine-month period for eviction to the widow of a deceased male worker but does not extend this facility to the family of female employee.

Recommendation

- The Workers Compensation Act 1923 may be amended for incorporating gender-neutral language and making provisions for equal treatment of men and women.

3 Occupational Safety and Health

There is no independent legislation on occupational safety and health issues in Pakistan. Mainly, the third chapter 3 of the Factories Act, 1934 governs these matters. Another relevant legislation is the Hazardous Occupations Rules, 1963. These rules specify some hazardous occupations but also authorize the chief inspector of the Factories to declare any other process hazardous. Since, it is the duty of the inspectors to enforce these laws, labour inspection becomes paramount. The usual powers of inspectors include the right to enter and inspect any workplace¹⁹, taking evidence from persons for carrying out their duties. ²⁰

Workers' safety and health are not only the concerns of workers and their families but also of enterprises themselves. According to ILO, every year around 160 million people suffer from occupational diseases and about two million people die due to occupation accidents and injuries²¹. The effects of potential occupational risks on women workers' reproductive health have been the major focus of concern the world over. In this regard stricter legislation to protect pregnant women is imperative so that they are not lifting heavy weights or around toxic fumes and chemicals without protection. However, these aspects are currently missing from labour legislation in Pakistan.

Recommendations

- The Factories Act, 1934 may be amended to insert new clauses related to separate toilets for men and women, keeping in view their strength at the workplace.
- The laws concerning the provision of canteen facility for workers may be amended to include women representation in canteen management and lessen the number of employees required at a workplace for becoming eligible for canteen facility from 250 to 100.
- In the Factories Act, 1934, the clauses on 'dust and fume' and other 'hazardous work', may be amended to include positive discrimination for pregnant and nursing women.
- Some special provisions may be made with regard to pregnant women such as their work stations being conducive to their special needs, i.e., footstool, proper chair, etc.
- The Factories Act, 1934 may also be amended to reduce the threshold of 500 workers for the appointment of a Welfare Officer at a workplace. Moreover, a provision may be made to appoint both male and female Welfare Officers proportionate to the strength of men and women workers.

²⁰ <https://paycheck.pk/main/labour-laws/health-safety-at-work/occupational-safety-and-health>

²¹ *ibid*

- A new section may be inserted in the Factories Act, 1934 providing for mandatory periodical vaccination of the workers against prescribed diseases at the expense of the employer.
- The Factories Act, 1934 prescribes the maximum limits of weights that may be lifted, or carried by men, women, adolescent and children. However, the employment of children is prohibited by law, so the Act may be amended to remove the mention of the children in the sections describing weight limits.
- The Shops and Establishment Ordinance, 1969 may be amended to include provisions for workspaces which are adequately ventilated with regulated temperatures and appropriate precautionary measures for the safety of workers. Moreover, following new sections may be inserted in the Ordinance:
 - No person shall be employed in any establishment to lift, carry or move any load so heavy as to be likely to cause him/her harm.
 - There shall be provided for every worker at least three hundred and fifty cubic feet of space.

4 Collective Bargaining and Trade Unions

For the women labour workforce that is already engaged in the formal sector, unionization could be one way to safeguard their rights, however, this does not paint a rosy picture. Most unions are male-centric, politicized and biased. According to a report by ILO (2012), women constituted only two percent membership of the trade unions in Pakistan. The women workers generally do not have an interest in joining the union due to its partisan nature and political leanings. In the same vein, women's representation in formal organizational committees also needs to be reviewed.

The constitutional freedom of association means that the workers and employers can associate to negotiate work relations. Along with a strong freedom of association, sound collective bargaining practices ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable. Research indicates that countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established.²²

The CBA is a registered trade union elected by the secret ballot. It is entitled to undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or any right guaranteed or secured to it or any worker by or under any law, or any award or settlement. Trade union can be defined as any combination of employees or employers formed primarily for the purpose of regulating the relations between workmen and employers or workmen and workmen or employers and employers or for imposing restrictive conditions on the conduct of any trade or business and it includes a federation of two or more trade unions.²³ Under the law trade union cannot operate unless it has been certified as a Collective Bargaining Agent (CBA).

Some of the ILO instruments that are relevant to the stream of collective bargaining are mentioned below²⁴:

²² <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/lang--en/index.htm>

²³ Industrial Relations Ordinance, 1969

²⁴ <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/collective-bargaining/lang--en/index.htm>



<p>Right to Organize and Collective Bargaining Convention 1949 (No. 98) –</p> <p>This Convention states that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote full development and utilization of machinery for voluntary negotiations between employers and workers in relation to the terms and conditions of employment.</p>	<p>Labour Relations (Public Service) Convention, 1978 (No.151) –</p> <p>This Convention promotes collective bargaining for public employees. It also provides that disputes shall be settled through negotiation between parties or through independent and impartial machinery such as mediation, conciliation and arbitration.</p>	<p>Collective Bargaining Convention, 1981 (No.154) –</p> <p>This Convention defines collective bargaining and calls for its promotion in all branches of economic activity.</p>
---	---	--

In addition to the above, there are many other ILO conventions and recommendations that deal with freedom of association, collective bargaining and industrial relations.²⁵

In Pakistan, labour legislation regarding collective bargaining and unions is elaborated in the Industrial Relations Act, 2012. However, the legal framework covering the collective bargaining is silent on women representation in the collective bodies of the workers such as trade unions, work councils and workers' representatives or CBAs.

<p>Recommendations</p>	<ul style="list-style-type: none"> ▪ Legally, the elected bodies of the trade unions can opt 20 percent of their total members from outside the establishment they belong to. This provision helps ensuring effective representation of workers in the unions and may be extended to guaranteeing women representation in the establishments where women are not employed at the time of elections of the union. ▪ In every factory or establishment in which fifty or more workers are employed or were employed on any day in the ongoing financial year, the employer shall constitute a Work Council consisting of the representatives of the employer and the workers in such a manner that the number of the representatives of the workers includes at least one woman and is not less than the number of the representatives of the employer in the Work Council. ▪ The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 may be amended to remove a legal lacuna which lets the employers to negotiate the collective agreement with a union of their choice, in case there are more than one union in a factory or an industry. The amendment may entail redefining the “collective agreement” by replacing the existing definition with the following: <ul style="list-style-type: none"> ○ “Collective agreement” means an agreement in writing intended to specify the conditions of employment and entered into between one or more employers on the one hand, and one or more Collective Bargaining Agents (“CBA”) or where there are no CBA, one or more registered trade unions or, where there is no trade union, the representatives of workmen duly authorized in the prescribed manner on the other. ▪ Moreover, the law may also include the following provision concerning monitoring of the unions: ▪ A monitoring cell should be constituted to periodically review the effectiveness, performance and representation of the unions.
-------------------------------	--

²⁵ <http://www.ilo.org/dyn/normlex/en/f?p=1000:12030:::NO::>

STATUS OF PROVINCIAL LEGISLATION

Following the 18th Amendment to the Constitution of Pakistan, 1973, the power to legislate on the subject of labour was devolved to the provinces. Since then, a number of laws have been enacted by each province. For instance, Khyber Pakhtunkhwa (KP) adopted the Factories Act, 1934 through the enactment of the KP Factories Act 2013. In Balochistan, the Factories Act, 1934 is still applicable with no provincial adaptation. Generally, the provinces tended to adopt the federal statutes in letter and spirit with some minor amendment to the extent of updating fines and at times taking into account modern developments.

Since the federal and provincial legislatures have the mandate to draft and pass legislation, WAction Project conducted an assessment of the quality of legislation done by the federal Parliament and four Provincial Assemblies (PAs) from May 2013 to April 2018 by categorizing these pieces of legislation under four major types:

i New Laws	ii Amendments in Existing Laws	iii Federal Laws Adopted without Changes	iv Federal Laws Adopted with Inconsequential Changes
Laws introduced and passed by the Parliament and PAs between the reporting period	Amendments to existing labour laws passed during the reporting period	Provincially adopted federal laws with no or minor changes in language	Provincially adopted federal laws with few changes which are of no consequence in terms of structural or legislative governance of labour issues

Cumulatively, the Parliament and PAs passed a total of 57 pieces of legislations that constitute 10 per cent of the total legislative business that resulted into laws. However, regional disparities in labour legislation were noted. Around 10 percent of the legislation done in the Provincial Assemblies of Sindh and Punjab each was on the subject of labour while this percentage was as low as six and four in the cases of Provincial Assemblies of Khyber Pakhtunkhwa and Balochistan. Moreover, the labour constituted three percent of the overall federal legislation. Following table shows the total number of laws passed by each legislature and the legislation on the subject of labour.

Assembly	Total Number of Legislation Passed	Number of Legislations Related to Labour	Percentage
Parliament	179	6	3
Punjab	175	17	10
Sindh	204	22	10
Khyber Pakhtunkhwa	158	9	6
Balochistan	70	3	4

The provincial legislation on the labour was mostly prompted by the requirements of the devolution under Eighteenth Constitutional Amendment. However, in most cases, the assemblies adopted existing federal legislations without updating and consolidating them. Following table shows the number of laws under each of the above-mentioned types disaggregated by the assemblies.

Provincial Laws by Nature of Legislation

Categories of Changes	New Laws	Amendments in the Existing Laws	Federal Laws Adopted without Changes	Federal Laws Adopted with Inconsequential Changes	Total Number of Labour Laws Enacted
Punjab	2	4	3	8	17
KP	2	1	-	6	9
Sindh	3	5	2	12	22
Balochistan	-	-	-	3	3

Almost half (47 percent) of the labour laws in Punjab were adopted from pre-devolution federal legislation with no substantive changes. For Sindh, the figure is as high as 55 percent. Similarly, up to two-thirds of the KP's labour legislation is mere adoption of federal laws while Balochistan did not make any changes in labour legislation except adopting three federal laws. Following table shows the fresh labour legislation in the provinces:

New Labour Legislations by Provinces

Punjab	The Punjab Fair Representation of Women Bill, 2014
	The Punjab Prohibition of Child Labour at Brick Kilns Bill, 2016
KPK	The Khyber Pakhtunkhwa Tibb and Homeopathic Employees Regularization of Services Bill, 2014
	The Khyber Pakhtunkhwa Journalist Welfare Endowment Bill, 2014
Sindh	The Sindh Sacked Employees' (Reinstatement) Bill, 2016
	The Sindh Occupational Safety and Health Bill, 2017
	The Sindh Fair Representation of Women Bill, 2018

1

Compliance of Provincial Laws with International Commitments on Women Workers' Rights

Provincial legislations do not effectively comply with international conventions pertaining to the rights of women workers. One of the indicators for labour laws to be effective with respect to gender representation is their ability to capture the best practices established internationally. Pakistan is signatory to the ILO's Convention C100 on equal remuneration. Similarly, ILO's C183, to which Pakistan is not yet a signatory, deals with maternity issues. It is striking to see that only a fraction of the labour laws passed by the provinces uphold the rights of women as outlined in the ILO's conventions.

Compliance of Provincial Legislation with International Conventions Related to Women Workers

Province	Number of Laws Complying with ILO C100 (Equal Remuneration)	Number of Laws Complying with ILO C183 (Maternity Protection)	Number of Laws Complying with Article 11 of CEDAW (Equal Employment Opportunities)
Punjab	-	1	3
Sindh	1	2	4
KP	-	1	4
Balochistan	-	-	1

2 Compliance with Equal Remuneration Convention C-100

Pakistan is signatory to the Convention C100 of ILO on Equal Remuneration; however, only one labour law of Sindh follows the principles of the convention. Even the legislation complying the provisions of this convention is vague and ambiguous on the issue of equal remuneration for men and women. Although Sindh added a section on non-discrimination to the Sindh Payment of Wages Bill, 2015, it does not mention that the pay scale for both men and women would be equal. Instead, it outlines a general set of characteristics (including sex) on the basis of which discrimination is prohibited, thus, giving room for exploitation resulting in pay gap.

3 Compliance with Maternity Protection Convention C-183

Punjab's Maternity Benefits (Amendment) Bill, 2015 ticks the criteria for addressing ILO's Convention C183 on Maternity Protection; however, the legislation does not effectively penalize offences under the law. The fines are randomly updated and the increase is unsubstantial, hence, leaving room for ineffective implementation.

The Khyber Pakhtunkhwa Maternity Benefits (Amendment) Bill, 2015 has added a provision that ensures relaxation of arduous work which can be availed six weeks prior to delivery and six weeks after.

4 Compliance with Article 11 of CEDAW

Of all the labour laws passed by four provinces, only three laws of Punjab, four each of Sindh and KP, and one law of Balochistan address some aspects of the women's rights as outlined in Article 11 of CEDAW, concerning equal opportunities in employment, service conditions and maternity protection.

In this regard, the Punjab Shops and Establishments (Amendment) Bill, 2013 specifically refers to the provision of day care rooms for children at establishments where more than 25 women are employed. The problem with restricting the number of women is that it excludes other small and medium sized establishments, which employ less than 25 women. Similarly, under the Punjab Fair Representation of Women Bill, 2014, 66 laws have been amended to ensure representation of women in decision-making bodies. While this does not directly impact the economic activities of women, it ensures the participation of women in the decision-making processes of various organizations, howsoever arbitrary the method of representation may be.

Balochistan's sole law that takes into account Article 11 of CEDAW with respect to protection of women is the Balochistan Harassment of Women at Workplace Bill, 2015. While the law builds on the existing federal document, it introduces two major changes. Firstly, a helpline is established for women under the Women Development Department (WDD) and, secondly, it states that the Ombudsperson should preferably be a woman.

The Khyber Pakhtunkhwa Shops and Establishment Bill, 2015, also touches upon the requirement of Article 11 of CEDAW but it contains a number of loopholes such as a loose definition of the day care centre as a 'facility at establishments for preschool and infirm children'. This definition leaves space for manipulation and interpretation by the employer. The law makes it mandatory to provide a separate washroom that can accommodate more than five women workers, but it is discriminatory in terms of the working hours for women.

In all of the above provisions, it is important to note that laws on similar themes do not talk to each other. For example, there is no standard for specifying the penalty amount in each of the relevant laws across



the provinces. Similarly, the issue of day care centres at establishments is not addressed in all the provinces in a uniform manner indicating the lack of minimum standards for legislation.

As an example of laws that are in contravention of international conventions, there is a contradiction in the Khyber Pakhtunkhwa Prohibition of Employment of Children Bill, 2015. The ILO Minimum Age Convention (No.138) states that anyone who has not completed fourteen years is a child, following which the employment of children has been made illegal across the board. Yet, this is in contradiction to itself, the federal laws and to the ILO convention. The law allows a child above 12 years of age to work under compelling circumstances.

5 Labour Inspection

Labour laws enacted by the federal and provincial legislatures during the reporting period do not comply with ILO Labour Inspection Convention adequately. These laws do not include provisions for centralized inspection mechanisms, frequency of inspection, consolidated areas of inspection and consolidated terms of reference for inspectors. Similarly, there is variation in the powers accorded to inspectors in different laws that contradict each other. Such inconsistencies should be removed for a robust and adequate labour monitoring mechanism to thrive.

The understanding of responsibilities of the labour inspectors varies across various laws. For example, in the Boilers and Pressure Vessels Laws; in all provinces, inspector's responsibilities are technical and involve ensuring the proper functioning of the machinery. However, other laws, such as those related to shops and establishments, the inspector's responsibilities involve monitoring compliance. The same is not reflected in the consolidated responsibilities of inspectors or the sort of inspection structure that will facilitate inspectors to deliver.

CONCLUSION

The in-depth gender audit of select labour legislation indicates that labour laws need structural reforms in the face of many gaps and contradictions. Changes required to enhance gender inclusivity of the laws and their language have been discussed in some detail in the main body of the report and in the relevant sections. The main issues that need some reiteration are discussed here to provide an overall composite picture.

Need for a Unified and Comprehensive Labour Law

One of the main issues with regard to the labour legislation is the multiplicity of laws, with each law containing some aspect of importance that can easily be contained within a single unified law and all overlapping laws may be repealed. Therefore, in order to avoid unnecessary replication of laws, the legislatures must undertake a comprehensive review of the labour laws in the light of constitutional provisions and international standards with specific emphasis on gender. Although the subject of labour is devolved to the provinces, federal Parliament may consider devising a set of guidelines as minimum legislative standards for provincial legislation on labour governance.

Revamping of labour legislation needs to be dealt with urgency and as a matter of priority in order to make labour governance, effective, efficient and compliant. The fresh legislation on the subject must cover all of the four core streams of labour governance i.e. Terms of Services and Conditions, Industrial Relations, Social Security and Occupational Safety and Health.

Strengthening of Labour Inspectorate

Without a robust monitoring mechanism in place and in the absence of a solid system of checks and balances, the labour rights and the wellbeing of workers cannot be achieved. This is the function and mandate of the labour inspectorate, which needs serious overhauling and revamping. It needs strengthening through the introduction of strong implementing mechanisms. In order for this to happen, the government needs to centrally address labour inspection issues in compliance with the relevant ILO conventions by consolidating the responsibilities of labour inspector, areas of labour inspection and drafting comprehensive labour inspection policy and legislation. Fulfilment of these aspects will be a positive step forward.

Revision of Labour-related Fines and Penalties

Another serious issue that needs to be addressed is the application of fines and penalty. Apart from revising penalties included in labour legislation, some labour practices need to be penalized more stringently. For instance, the cognizance of offences is only applicable under the Restriction of Employment of Children and Bonded Labour System Abolition Acts but is not extended to other labour laws. A comprehensive review of labour laws needs to be done and cognizance of offences should be extended to them so that it can act as a serious deterrent. Similarly, outdated penalties such as monetary fines., need to be updated according to contemporary value for them to have a serious impact.

Fair Treatment for Women

In order for labour legislation to have a pro-people stance, all recommendations made to specific laws through the gender audit should be taken in to consideration for the up-gradation of the labour laws with strong implementing mechanisms. This is the most imperative step to be taken by the government to show its commitment towards gender equality and against gender discrimination in particular and



towards better labour practices, in general. All labour laws need to inculcate and implement the idea of 'fair treatment' with regard to women workers and other genders, especially with regards to the equal remuneration for same amount of work and equality of opportunities in the jobs and the choice of profession. It is in this spirit and with this motivation that the legislative bodies can truly acknowledge the economic contribution of women and be able to provide them with safe working environment based on equality and fair treatment, which they deserve.





Kingdom of the Netherlands

Trust for Democratic Education and Accountability - TDEA
Building No. 1, Street 5 (Off Jasmine Road), G-7/2, Islamabad-Pakistan



www.tdea.pk |



[womens_action](https://twitter.com/womens_action) |



[WAction.official](https://www.facebook.com/WAction.official)