

THE HISTORICAL BACKGROUND OF PROTECTION OF LABOUR RIGHTS AND EIGHTEENTH AMENDMENT: KNOWING THE RIGHTS AFTER DEVOLUTION POWER

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Abstract

The constitution of Pakistan contains wide range of provisions for the protection of labour rights. Pakistan has been bestowed with 70 labour laws along with 90 rules and regulations thereunder. In spite of these labour laws along with rules and regulations, labour force is facing multifarious challenges that posit direct threat to their legal recognised rights. In this regard this study was carried out to study the main hurdles that labour rights encountered in historical perspective. Moreover, in the wake of devolution plan through 18th amendment to the constitution of Pakistan, what problems in respect of enforceability and legality have arisen? Labour laws promulgated in various Pakistani regimes have been discussed to figure out what really prevented successive governments to ensure minimum protection to labour strata of the nations. The article concludes with some recommendation that are sin-qua-non in current globalization where rights have emerged as the most sacred instruments in the hands of weaker portion of a society.

Keywords: International Labour Organization (ILO); Labour Rights (LR); Collective Bargaining Agent (CBA); Industrial Disputes Act (IDA); Industrial Disputes Ordinance (IDO); Labour law in Pakistan

Introduction

The situation of Industrial Relations¹ is detrimental in Pakistan. All the labour laws in Pakistan have been termed as progressives.² However, the workers in Pakistan have been directed under the guidance of articles wrapped in the Constitution.³ Since its inception, Pakistan has been bestowed with 70 labour laws along with 90 rules and regulations under the laws.⁴ Apart from this, Pakistan has ratified as a fellow of the International Labour

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¹ Industrial Relations Ordinance of 1969

² Zaifur Shaheed, *The Labor Movement in Pakistan: Organization and Leadership in Karachi in the 1970s* (Oxford University Press, 2007)

³ See Discussion Infra (discussing articles 17(1), 18(a) and 37(e) as bases for protection of workers).

⁴ See Sabur Ghayur, *Current Situation and Recommendations for Labor Law Reforms in Pakistan 4* (2010), available at <http://ituc-ap.org/ituc/live/binaries/document/labour-law-reform--Pakistan-study-revised-Feb-201.pdf>

Organization [ILO], which strictly directs their members to looking after as well as implement labour's right.⁵

Rights of labours as guaranteed by constitution are numerous while provision thereof is seldom. Some of such rights have been enumerated under fundamental rights while other enriched in principles of policy chapter. These rights include prohibition of all forms of slavery, forced labour and child labour⁶; freedom of association and the rights to form unions;⁷ lawful profession or occupation and to conduct any lawful trade business;⁸ the right to equality before the law and prohibition of discrimination on the grounds of sex alone;⁹ provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.¹⁰

It would not be false to say that these rights have been limited to the extent of books without translating them into reality. The industrial relations in Pakistan are facing wide range of issues such as, labour slavery, decent work, working hours and minimum wages rates.

This unfortunate situation is not the result of recent past, rather because of least priority subject for successive governments of Pakistan. In year 2010 after 18th amendment, labour related laws devolved upon provinces which has not yet brought any improvement. This paper attempts to deliberate and analyse how successive governments in Pakistan have miserably failed to lift the ignominious conditions of labour class.

Pre-independence Period Industrial relations

In 1947, during the time of liberation-Pakistani labour laws were made by predecessor [the Kingdom system].¹¹ However, the laws which were enforced before the independence were giving favor to the British trade. Similarly, the labour laws were deliberately made in such a way to control the markets of India because of their competition in it.¹² For instance, the employers and workmen dispute of 1860 was one of the best examples which were enforced by the British government for the sake of protection of the British industry from the competition of Indian one.¹³ However, in those days early trade union was formed because the aid organization of the workers went in vain, so the inhuman

⁵ <http://www.ilo.org/public/english/dialogue/ifpdialinfo/national/Pak.htm> (last visited October 11, 2011).

⁶ Article 11 of the Constitution of Islamic Republic of Pakistan, 1973 www.na.gov.pk at p.9

⁷ Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 www.na.gov.pk at p.11

⁸ Article 18 of the Constitution of Islamic Republic of Pakistan, 1973 www.na.gov.pk at p.11

⁹ Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 www.na.gov.pk at p.13

¹⁰ Article 37 of the Constitution of Islamic Republic of Pakistan, 1973 www.na.gov.pk at p.18

¹¹ shaheed, supra note: see also Iftikhar Ahmad, <http://www.wageindicator.org/main/documents/labour.and.employment.law-a.profile.on.Pakistan.pdf> (last visited Oct.11, 2011).

¹² Amjad, labour legislation and trade unions in India and Pakistan (oxford univ. press 2001).

¹³ The Employers and Workmen Dispute Act of 1860 enabled magistrates to dispose of tussles related to wages in some public sectors. P.R.N. Sinha et. al., industrial relations, trade unions, and labour legislation 363 (Pearson ed. 2006). Ahmad, supra note. The act was repealed in 1932 yet its use ceased many years before that. Sinha, supra note 33, at 363.

conditions came into being.¹⁴ On the other hand, stress-groups were loosely-base organized & impel for better positions first for work emplacement. Later on, they couldn't provide any representation to workers in any capacity.¹⁵ Apart from this, if a quick glimpse of history is revised, then it could be seen that before World War One (WW-I), the predecessor Kingdom's government in Hindustan (India) ban on collaborative action which was taken by the labour, and it was treated with violence if labour did so.¹⁶

The riots erupted in workers just after First World War, and its consistency turn it in many strikes.¹⁷ The workers also took a major benefit by doubling the rates, and they made a huge profit out from this plan.¹⁸ Apart from this, the increase in the profit didn't give any advantage to raise the wages of the workers.¹⁹ Therefore, numerous strikes and sit-ins took place from 1918 to 1920. At last, those strikes arrived at the peak in the winter season of 1921.²⁰

There are some laws of labour that were untouched i.e., survived the partition from India and Independence from Britain. These laws were the "Factories Act of 1934", the "Industrial Disputes Act of 1947", "Trade Union Act of 1926", and the "Industrial Employment Act of 1946".²¹ However, "Trade Union Act" (TUA) offers the employees (workers) to make and register the unions, which can reflect the interests of the workers.²²

In the past i.e., before this act, the unions were understood like an unlawful act, and they were restrained from showing any activity.²³ On the other hand, the factories act tells something else regarding the check and balance of the labour at workplaces so that the applicable laws can be enforced in an appropriate way.²⁴ Besides this, the Industrial Employment Act unfolds all the processes of the work and welfare, such as its termination, recruitment, conditions, and disciplinary actions.²⁵ However, Industrial Disputes Act 1947 was done for the sake of administration so that the disputes of the labour can be settled and put the deadlines if any of the party which is disgruntled group needs for fascinating with discussion and adjudication.²⁶

¹⁴ See Christopher Candland, labor, democratization and development in India and Pakistan (Routledge 2007). Id. at 21.

¹⁵ The Kamagar hitvardhak sabha (Workers Welfare Union). Id. at 18.

¹⁶ Id. at 19.

¹⁷ Shaheed, supra note 1, at 69. Candland, supra note 34, at 19. Shaheed, supra note 1, at 72-73; see also Candland; supra note 34, at 19.

¹⁸ Shaheed, supra note 1, at 69.

¹⁹ Id.

²⁰ Id.

²¹ Ahmad, supra note 31, at 2.

²² (Muinuddin Khan ed., ILO press 1988).

²³ Candland, supra note 34, at 21. Rashid Amjad & Khalid Ghayur Mahmood, industrial relations and the political process in Pakistan 1947-1977, 3 (institution for labour studies 1982). Candland, supra note 34, at 36.

²⁴ Asma Afzal, Pakistan, the WTO, and labor reform, 29 B.C. int'l & comp. l. rev. 107, 114 (2006) (citing factories act). Factories Act, S.10-13 (1934), available at <http://www.Pakistanlaw.net/Pakistan-law/business-law/factories-act-1934/>. Labour Unity, supra note 41. The factories act was applicable to factories employing 10 or more workers. Factories Act, 5(1).

²⁵ Candland, supra note 34, at 21. Id.

²⁶ Id. at 20. Amjad, supra note 32, at 57. Shaheed, supra note 1, at 88; Ahmad, supra note 31, at 5-6.

Similarly, this was forbidden all the “strikes & lockouts” until the pacifications were undecided. So, these actions were allowed only in conditions when all the efforts of conciliation were failed to decide regarding the disputes.²⁷&²⁸ However, once the conciliation becomes fail, then the first government exercises its procedures for the settlement of the dispute rather than parties go directly for strikes.²⁹ Once the court accepts the request of the government for the settlement of the dispute, then the government can apply its jurisdiction over the party, and it would be functional for three months.³⁰ So, neither strike nor the lockout can be carried out. After this action, if the parties are still unable to get any resolution for the mentioned period, then they are free to do strike or lockout.³¹ Thus, this option is necessary for the public utilities; however, it becomes optional for the other sectors.³² So, after independence, all above four mentioned laws developed as the pillar for the labour regulations of Pakistan.³³

Post-independence Industrial relations (1947 to 2008)

In 1947, Pakistan got independence from the British government, and it got partition from India.³⁴ However, the labour laws in Pakistan were being determined by its leaders since its independence. So, those laws were changing from one administration to another administration with the change of administrations.³⁵

However, it is pertinent to mention here that the very first subpart will unfold all the discussion regarding the declining policies which were enforced during the period of General Ayub Khan, the first dictator in Pakistan’s history.³⁶

Subpart two addresses the widening of rights by General Yahya Khan's regime.³⁷ Similarly, subpart three will give the details of how the workers’ rights were broadened, and were supported by Zulfikar Ali Bhutto, the democratically elected leader in Pakistan’s history.³⁸ On the other hand, the subpart four is going to discuss repressive policies of General Zia ul Haq.³⁹ In the last subpart five will enlighten all the repressive changes which were done by General Pervaiz Musharaff.⁴⁰

²⁷ Shaheed, supra note 1, at 252.

²⁸ Shaheed, supra note 1, at 88. Id.

²⁹ Amjad, supra note 32, at 72.

³⁰ Shamed, supra note 1, at 254.

³¹ See id.

³² G.K. Sharma, *Labour Movement in India*: (sterling publishers 1971).

³³ Christopher Candland, (Oxford University Press, 2001); see also Ahmad, supra note 31, at 2.

³⁴ Available at http://www.iptu.co.uk/content/bangladesh-employment_1aw.asp for a summary of labor law in Bangladesh (last visited 2017).

³⁵ Furqan Mohammed, 7 *loy. u. chi.*229, 240-42(2010), discussion infra part II-B.3 and part II-B.4 (discussing the repression of labor rights under general Zia-ul-Haq).

³⁶ See discussion infra.1 (discussing the rigid labor policies of general Ayub khan such as the IDO of 1959, the trade unions act of 1968 and the IDA of 1968).

³⁷ See discussion infra part II.B.2 (discussing the vast labor policies of general Yahya khan such as the IRO of 1969).

³⁸ See discussion infra part II.B.3 the labour policy of 1972.

³⁹ See discussion infra part II.B.4

⁴⁰ See discussion infra part II.B.5 the IRO of 2002 and the removal from services ordinance of 2000).

General Ayub Khan (1958-69)

General Ayub Khan took power in the month of October, 1958.⁴¹ However, his administration got the chance because of his economic development. Undoubtedly, to some extent, the economic development took place with the full support of the working class.⁴² However, his first step in the office was to change the Industrial Disputes Act with Industrial Disputes Ordinance of 1959.⁴³ Similarly, this change brought the addition of the public utility sectors in IDO of 1959, such as textile sectors and sugar sectors.⁴⁴ No doubt, these sectors had very little or even no matching to the public utilities. In this manner, the law has made it difficult to do strike in every industry, either it is a public one, or it is private on because it has to go under the necessary arbitration process, which is bound in the Industrial Dispute Act of 1947.⁴⁵

In the IDA of 1947, the aggrieved party was only allowed to decide for the consultation and arbitration. However, the Industrial Dispute Ordinance of 1959 permitted any of the parties can get this right to file for the arbitrating proceedings.⁴⁶ On the other hand, the Ordinance has put the results unfair because the treatment of unions needed an application for the process of verdict of the squabble only for the pro-employer Industrial Courts.⁴⁷ In comparison, the request for judgement was lodged only with the relevant District Courts there under IDA of 1947, who were seen as quite impartial decision-makers.⁴⁸ In the end, one more thing which can be considered is the jurisdiction of the court was capped for a period of three months under the act of IDA; however, IDO put no timing issue and mentioned that the battle could be dragged for years even.⁴⁹ In this manner, the labour union representative couldn't take any immunity in this way from the end of the employment⁵⁰.

In the 1960s, anti-labor legislation was also introduced, much of it curtailing the labour rights.⁵¹ Similarly, the 1968 Trade Unions Act permitted the administration to disqualify any trade union delegate for any reason it considered necessary.⁵² After the revision of the Trade Dispute Act of 1968, one clause was added in the act which permitted the federal as well as provincial government to curtail the right regarding strikes in industries if this happens for the best interest of the public.⁵³

General Ayub Khan is highly appreciated for the great achievement in terms of economy across the Pakistan in his 10 years of rule. However, it was big achievement in the spell

⁴¹ Yasmeen Niaz Mohiuddin, Pakistan: a global studies handbook 164 (abc-clio press 2007). Id.

⁴² Shaheed, supra note 1, at 251 available at <http://www.Pakistanpaedia.com/hist/Pak-years/Pak.hist2.htm> (last visited oct. 11, 2018).

⁴³ Amjad, supra note 32, at 72.

⁴⁴ See shaheed, supra note 1, at 252 id.; see also Amjad & Ghayur Mahmood, supra note 44, at 13.

⁴⁵ Shaheed, supra note 1, at 252. Id.

⁴⁶ Muinuddin Khan, see discussion supra notes 47-54.

⁴⁷ Shaheed, supra note 1, at 252. Id. at 255.

⁴⁸ See id.

⁴⁹ Ahmad, supra note 31, at 2. Ghayur, supra note 3, at 6.

⁵⁰ Ghayur, supra note 3, at 6.

⁵¹ Amjad, supra note 32, at 127. Id.

⁵² Ghayur, supra note 3, at 6-7.

⁵³ Amjad, supra note 32, at 37.

when he was at his desk. So, the precious time was named as “the decade of the development” by the supervision of General Ayub Khan. Therefore, General A. Khan celebrated several events due to this big achievement. Just after that time, the students and unemployed, along with the working class, went for protest against such personal policies. So, this led General Ayub Khan to resign from his post on 25 March 1969.

General Yahya Khan: (1969-71)

When General Ayub Khan resigned from its position, then the power was handed to another dictator in the history of Pakistan i.e., General Yahya Khan. He supervised the interim government until 1971 when the elected government came to hold the government.⁵⁴ After the downfall of General A. Khan, General Yahya Khan admitted that the workers couldn't get their rights in the previous administration of General A. Khan⁵⁵. Thus, General Y. Khan passed Industrial Relations Ordinance in 1969.⁵⁶ However, the Ordinance had features such as the unlimited rights of association for the employers and the workers, system of voluntary arbitration was introduced, strikes and lockout right was given back to the workers without any additional need of the court's appeal, and the leaders of the unions were provided with the protection when the adverse action of trade union registration and bargaining required.⁵⁷ Similarly, the public interest clause was also taken out.⁵⁸ Additionally, the appellate courts were also made for the sake of tackling the appeals from industrial courts quickly.⁵⁹ These developments only reflected temporary tenure of General Yahya that lasted for less than three years and mainly to appease growing voice of working class.

Prime Minister Zulfikar Ali Bhutto: (1972-1977)

Pakistan People's Party leader Zulfikar Ali Bhutto won the election of 1971.⁶⁰ He got the support of the workers' community and unemployed people.⁶¹ He declared his labour policies on 10th February, 1972.⁶² However, The policy's most prominent characteristics, as their application to labour 'rights' [included], all dismissal order of the an employee would have to be issued in written to the employee; labour courts would resolve matters pending before them within 30 days; and the National Industrial Relations Commission (NIRC) had been created.⁶³ However, the National Industrial Relation Commission was a

⁵⁴ Mohiuddin, supra note 62, at 172; Amjad, supra note 32, at 77.

⁵⁵ Amjad, supra note 32, at 78.

⁵⁶ Id. at 36.

⁵⁷ Id. at 36-37. See discussion supra note and accompanying text.

⁵⁸ Id. at 37. See discussion supra note and accompanying text.

⁵⁹ Id.

⁶⁰ (J. Henry Korson ed., west view press 1993) (Last visited 2017).

⁶¹ Candland, supra note.

shaheed, supra note 1.

⁶² Sabur Ghayur, (ILO 2009), <http://www.ILO.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new-delhi/documents/publication/wcms123344.pdf> (last visited 22.7.2017)

⁶³ See Id. At 13 Amjad & Ghayur Mahmood, supra note.

great reform in history.⁶⁴ This NIRC gave the power to arbitrate industrial clashes; wherein unions were the party-to punish and prevent all the unfavourable performs.⁶⁵

Zulfikar Ali Bhutto introduced another act i.e., Services Tribunal Act of 1973. It means this act needs government employees to gain the exact favour which is specially appointed the tribunals with the assistance of the high courts of Pakistan.⁶⁶ Undoubtedly, there were several anti-labour measurements,⁶⁷ the period of his leadership was termed as the benchmark from a progressive perspective, especially for the labour reforms.⁶⁸

General Zia-ul-Haque: (1977-1988)

The government of Zulfikar Ali Bhutto ruled over the nation till 1977. However, several allegations were put over his reign of election rigging and corruption, so Zia-ul-Haque, “the Chief of Army Staff”, imprisoned Zulfikar Ali Bhutto and other political leaders. Similarly, he suspended the constitution of the state, and he declared martial law in the country.⁶⁹ Later on, he appointed himself as a new president.⁷⁰ In the reign of General Zia, the worker's rights were buried.⁷¹ Apart from this, the processes of inspections under the Factories Act of 1934 were also blocked.⁷² Similarly, G.Zia also banned strikes.⁷³ Besides, the activities under the trade union were also banned in private as well as public enterprises.⁷⁴

On the other hand, if the dispute occurred in the private sector, then he used to show favouritism towards employers.⁷⁵ However, there was no important legislation that took place in the reign of General Zia-ul-Haque, whereas several restrictions were put by General Zia were withdrawn.⁷⁶ His regime attempted to reverse the progressive policies of Zulfikar Ali Bhutto's social agenda that had, to some extent, stagnated the economy.

⁶⁴ Amjad & Ghayur Mahmood, supra note.

⁶⁵ Id.

⁶⁶ See an repeals removal from service ordinance 2000, daily times (Jan. 27, 2010),

http://www.dailytimes.com.pk/default.asp?page=2010%5col%5c27%5c_story_27-1-2010_pg7_1.

⁶⁷ See the removal from services ordinance of 2000). see Labour Education Foundation, Pakistan Labour Movement 4, <http://www.lef.org.pk/images/study%20final%20draft.pdf> (last visited oct. 25, 2018). id.

⁶⁸ See, Pakistan Labour Policy 2010, available at

<http://www.ILO.org/dyn/travail/docs/995/government%20of%20Pakistan%20labour%20policy%202010.pdf> (Aug. 31, 2017), <http://Pakistantimes.net/pt/detail.php?>

⁶⁹ Supra note. see Generally Hamim Khan, Political History of Pakistan 339-56 (Oxford University Press, 2001) See Amna lone, zab case: revisiting history is necessary, express Trib. Blog (April 21, 2011).

⁷⁰ Supra note.

⁷¹ See, Candland, supra note (March 7, 2017), available at <http://www.sacw.net/article1369.html> (Sept. 12, 2018), <http://www.borderlinegreen.com/2010/09/12/the-not-so-Islamic-land-reforms-in-Pakistan/>.

⁷² piler, amendments, supra note.

⁷³ Candland, supra note.

⁷⁴ Id.

⁷⁵ Id. at 46-47. ch. 8, p. 1 (national book club 1996), available at <http://www.ghazali.net/book1/contents.htm> (last visited oct. 11, 2018). Id. at 47.

⁷⁶ See, sage publications 2003; New. Times (Oct. 19, 1988), <http://www.nytimes.com/1988/10/19/world/zia-crash-two-views.html>. Candland, supra note. Comprehensive Labor Policy. Id. at 47-48 (“since 1980, (Greenwood Press 2008) loy. u. chi. int'l l. rev. 229, 235-237 (2010) (arguing “power politics” and ease of removal of elected officials resulted in unstable governments in the 1990s).

General Pervez Musharraf: (1999-2008)

In 1998, General Pervez Musharraf was appointed as the “Chief of Army Staff”.⁷⁷ Nevertheless, he seized powers in a bloodless coup in the month of October-1999, and imposed martial-law.⁷⁸ On the other hand, the national emergency referendum voted him into the presidency.⁷⁹ Besides, he was known for several accomplishments,⁸⁰ and increasing the worker’s rights was not only one of them.⁸¹ First of all, Mr. Musharraf modified the “IRO of 1969 with Industrial Relations Ordinance-2002”.⁸² According to this law, the government can omit specific workers of classes from those protections which were comprised in the “Industrial Relations Ordinance” as that was in the best interests of public.⁸³ Similarly, he revoked the most powerful deterrent of imprisonment, which was possible in the “Industrial Relations Ordinance of 1969” against workers who were engaged in illegal practices like a violation of labour laws. So, employers now were only liable for paying the fine after those amendments.⁸⁴

Apart from this, if any termination occurs on the basis of misunderstanding, then the employees were terminated with back-pay. It means if the workers win the case in the court, even then, they were not able to come back to their positions.⁸⁵ This encouraged the system of termination of workers even for a little cause. So, the workers were disappointed with this encouragement.⁸⁶

However, the Industrial Relations Ordinance-2002 snatched ‘Labour Appellate Courts’ as well from the workers in Islamic Republic of Pakistan; further required workers to appeal in Pakistan High Courts. Unfortunately, those courts were already burdened with cases which had already been seriously delayed.⁸⁷ Similarly, Section-3(d) of the IRO-2002 urges that “Collective Bargaining Units” must be affiliated with the Federation at local base i.e. national level, and the same was already registered with NIRC in two months for going to declare the “Collective Bargaining Agent (CBA)”.⁸⁸

General Musharraf also passed a law for the removal from the Services Ordinances of 2000. It allowed the government to expel government workers from employment for any

⁷⁷ Sara Louise Kras, *major world leaders: Pervez Musharraf* 51 (Chelsea House Publishers 2003).

⁷⁸ Khan, *supra* note 95, at 486.

⁷⁹ *Id.* at 495. see Musharraf Plans to Bolster his Power, CNN (June 27, 2002), <http://edition.cnn.com/2002/world/asiapcf/south/06/26/Pakistan.presidency/index.html>

⁸⁰ See Malik, *supra* note 102, at 206-07. *Id.* at 206. *id.*

⁸¹ *Id.*

⁸² Zeenat Hisam, Pakistan Institute of Labour Education and Research, *Denial and Discrimination: Labour Rights in Pakistan* 19 (2007), <http://www.piler.org.pk/labourestatusreport.pdf> (last visited Oct. 11, 2017).

⁸³ Industrial relations ordinance 2002, S.1(4), available at <http://www.ILO.org/dyn/natlex/docs/webtext/62636/65260/eo2Pakoi.htm>. *supra* note 108, at 8. see discussion *supra* note 74.

⁸⁴ Pildat, *Understanding Labour Issues*, *supra* note 1, at 13.

⁸⁵ IRO 2002, S. 46(5); Piler, *Denial and Discrimination*, *supra* note 108, at 18.

⁸⁶ See Piler, *supra* note.

⁸⁷ IRO 2002, S.80(2) (d) *id.* S. 48; see also USAID, *Interim Report* 16 (2008), available at <http://www.usaid.gov/pk/downloads/eg/bcli.pdf> (Last visited 1.1.2017).

⁸⁸ IRO 2002, S. 3(d). (nob. 18, 2002), <http://archives.dawn.com/2002/11/18/ebri9.htm>. (last visit 3.2.2028). *Id.*

kind of reason.⁸⁹ General Pervez Musharraf remained on the position till 2008. However, he resigned only when he tried to control the sparked “Lawyers’ Movement.”⁹⁰

President Asif Ali Zardari: (2008-2013)

Just after the resignation of General Musharraf, Asif Ali Zardari was elected and became the president of Pakistan in the month of August 2008.⁹¹ He announced an Act i.e., Industrial Relation Act of 2008. This act went very against whatever General Musharraf gave in his government.⁹² He re-established the appellate courts with promoting quick hearings of appeals.⁹³ Similarly, the clause of Public Interest was also removed from the 2002 IRO. However, this public interest clause permitted the Federation of Pakistan previously restrains the labour’s law of all industries from its function if those laws are determined for the sake of public interest until 6 months.⁹⁴ Apart from this, his government also stretched out section 3(d) of the Industrial Relation Ordinance according to which it required all bargaining collection agents to register with federation and NIRC.⁹⁵

Similarly, Asif Ali Zardari also abrogated the Removal from Services Ordinance of 2000 and amended to the Services Tribunal Act of 1973.⁹⁶ However, the Removal from Services Ordinance was given by General Musharraf. It permitted somehow to the federal government to disqualify its workers for any cause⁹⁷. On the other hand, the Service Tribunal Act was given by Zulfikar Ali Bhutto. According to his law, an appeal by the workers should be submitted to Pakistan High Court rather than Labour appellate courts.⁹⁸

⁸⁹ Shahdab Anwar, ILO (March 5, 2010), <http://criticalppp.com/archives/6755>. (last visit 5.7.2018) An Repeals Removal from Services Ordinance 2000, Daily Times (Jan. 27, 2010),

http://www.dailytimes.com.pk/default.asp?page=2010%5c0i%5c27%5cstory_27-1-2010_pg7_1. Id.

⁹⁰ Harv. l. rev. 1705, 1710-16 (2010) (providing history of Lawyers’ Movement in Pakistan) and Jordyn Phelps, international center; Pakistan’s lawyer movement (2007-2009) (Aug. 2009),

<http://www.nonviolentconflict.org/index.php/movements-and-campaigns/movements-and-campaignssummaries/sobi2task=sobi2details&sobi2ld=30>. Lawyers’ movement, supra note 116, at 1715. id. at 1715-16, radio free Europe radio liberty (Aug. 18, 2008), <http://www.rferl.org/content/Pakistans-Musharraf-resigns/1191816.html>.

⁹¹ BBC News (sept. 6, 2008), <http://news.bbc.co.uk/2/hi/7600917.stm>.

⁹² Sharmila Faruqui, Zardari: International News (Dec. 22, 2010). Id. See, Pildat, supra note at 14. Ahmad & Ahmad, supra note 1, at 12. See Sabur Ghayur, Pildat, and Interim Industrial Relations Act 2008: a review 4 (2010), <http://www.pildat.org/publicationsipublication/lb/interimIndustrialrelationsact2008areview.pdf>. Id.

⁹³ Ghayur, Evolution, supra note. See no Appellate Tribunal in Punjab for Labourers, International News (May 1, 2009), <http://www.thenews.com.pk/todayssprintdetail.aspx?id=175170&cat=6&dt=5/1/2009>.

⁹⁴ See IRO 2002 S 1(4) with Industrial Relations Act S. 1(4) (2008), available at <http://www.ilo.org/dyn/travail/docs/51/industrial%20relations%20act.pdf>.

⁹⁵ See IRO 2002, S 3(d) with IRA 2008 S.3 (omitting registration language).

⁹⁶ AAJ news (Jan. 27, 2010), <http://www.aaj.tv/2010/01/na-approves-bill-to-repeal>. see Imdad Soomro, mazhar uses Musharraf’s ordinance to dismiss eminent writer, Imdad Soomro blog (Feb. 26, 2011), <http://imdadsoomro.wordpress.com/2011/03/20/mazhar-uses-Musharrafes-2%80%99s-ordinance-to-dismiss-eminent-writer-Pakistan-newsnewspaper-daily-english-online/>.

⁹⁷ See discussion supra note and accompanying text.

⁹⁸ See discussion supra note 92 and accompanying text.

However, the Industrial Relation Act 2008 was functional until April 2010 i.e. before the Eighteenth Amendment was passed.⁹⁹

The Eighteenth Amendment and the Abrogation of the Concurrent Legislative List

The motive to pass the Eighteenth Amendment was to give power to the provinces. It was the belief that once this amendment would be passed, then the provinces would be more efficient.¹⁰⁰ In this way, the province would legislate all without the interruption of the federal government.¹⁰¹ So, this left the federal government powerless as it cannot put action against the provinces.¹⁰²

For the sake of transition, the Execution Commission set just after the action of the Eighteenth Amendment.¹⁰³ According to the report, the devolution was required in the month of May 2011; however, its completion was set for June 2011.¹⁰⁴ So, this process of decentralisation was done in only three parts: the 1st part occurred in the month of December-2010; the 2nd part occurred in the month of April-2011, and remaining 3rd part was taken place in June 2011 as it was required.¹⁰⁵ So, the third part of the devolution officially abrogated the Federal Ministry for Labour and Manpower.¹⁰⁶

⁹⁹ IRA 2008, S.87(3); dawn (may 30, 2011), <http://www.dawn.com/2011/05/30/centres-move-to-enact-parallel-labour-laws-seen-as-trespass.html>. see *Air League of PIAC Employees v. Pakistan*, Constitution Petition No. 24 of 2011, 2, 6, 29 (2011), available at http://www.supremecourt.gov.pk/web/userfiles/file/const.petition.24_2011_dt02062011.pdf. Report no. 359, case(s) no(s). 2799 (2011), available at <http://www.ilo.org/ilolex/cgi/lex/pdconv.pl?host=status01&textbase=iloeng&document=5103&chapter3&query=Pakistan%40ref&highlight=&querytype=bool&context=0> see forexpk (Aug. 3, 2011), <http://www.forexpk.com/economic-updates/exclusive-articles/IRO-2011.html>; express trib. (may 14, 2011) paper pk (June 30, 2011), <http://www.paperpk.com/news/index.php/labor-unions-praise-industrial-revolution-act-2011/> dawn (Aug. 3, 2011), <http://www.dawn.com/2011/08/03/nirc-order-suspended-on-kesc-plea.html>. (Aug. 7, 2017) Pak workers (June 27, 2011), <http://www.pakworkers.com/news/islamabad-nirc-to-be-restored-babar-awan/> (last visit 6.5.2018).

¹⁰⁰ Alauddin Masood, *Weekly Pulse*, (July 8, 2011), <http://www.weeklypulse.org/details.aspx?contentId=919&storylist=1> (July. 4, 2017). See pildat, *Devolution*, supra note.

¹⁰¹ Pak. const., fourth schedule, available at <http://www.Pakistani.org/Pakistan/constitution/schedules/schedule4.html> (May. 9, 2018) see, cook man, supra note II, report: *Conference on Labour Rights as Citizens' Rights: Realizing Constitutional Reforms*, p.1 (May 27-28, 2011), available at <http://www.humanrights.asialopinions/columns/pdf/ahrc-etc-025-2011-01.pdf>.

¹⁰² See, Alam, supra note 131. See S.M. Yaqoob, <http://www.smyaqoob.com/c-119.htm>. (Sept. 28, 2017). forex pk (Aug. 3, 2011), <http://www.forexpk.com/economic-updates/exclusive-articles/IRO-2011.html>. (Oct. 13, 2018)

¹⁰³ Pak. till. (May 5, 2010) <http://Paktribune.com/news/18th-amendment-implementation-commission-formed-227181.html> (last visit June. 17, 2017) daily times (Nov. 10, 2010), http://www.dailytimes.com.pk/default.asp?page=2010%5cli%5c10%5cstory_10-11-2010_pg1_3 (last visit May. 9, 2017).

¹⁰⁴ Pak. const. S. 270aa (9). Section 270aa (8) provides: (8); express trib. (May 4, 2011), <http://tribune.com.pk/story/161301/18th-amendment-implementation-commission-report-unveiled/> [hereinafter called report].

¹⁰⁵ Ahmad Hassan, *Cabinet Approves Devolution of Seven Ministries*, Dawn (June 29, 2011), <http://www.dawn.com/2011/06/29/cabinet-approves-devolution-of-seven-ministries.html> (July. 19, 2019) south Asian news agency (June 30, 2011), <http://www.sananews.net/english/2011/06/13-standing-committees-to-be-dissolved-with-ministries/> (last visit March. 21, 2018).

¹⁰⁶ supra note. See Pak. const., art. 97. see also Alam, supra note.

As the devolution of powers, all the provinces made laws relating to labour. The Punjab Province promulgated 15 laws by the end of December 2014 including Punjab Industrial Relations Act (PIRA) 2010. The newly adopted law had one provision that was in conflict with ILO convention No. 87 which gives right to form trade unions. After several years of perennial discussions and lobbying by the trade unions in the country and continuous pressure from the ILO, an amendment to the Punjab Industrial Relations Act 2010 was made in which that conflicting provision stipulating fifty workers for the formation of unions was ultimately abolished.¹⁰⁷ The Khyber Pakhtunkhwa province also adopted seven laws which comprised labour laws, welfare and industrial relations laws. Similarly Sindh Government also enacted laws which comprised labour, welfare and industrial relations laws including Sindh Industrial Relationship 2013. Baluchistan Government has also promulgated Baluchistan Industrial Relations Act 2010.

Analysis

In the history of Pakistan, labour laws have consistently been changing because of changes in the different reigns.¹⁰⁸ It is also crystal clear from the history that none of the labour laws which were given by the head of state in the past became unconstitutional.¹⁰⁹ Therefore, the changes came in the labour laws only when there was a change in administration.¹¹⁰ However, the protection of labour in the constitution of Pakistan is elevated in the 'theory'. So, in practise, Government has not even used to strike any regulation down that denied basic rights of labours¹¹¹ Thus, it is very true that the judicial review was exercised for implementation of their rights, which are assured under the Constitution of Pakistan in several aspects.¹¹²

When the Eighteenth Amendment was passed, it gave the provinces a free hand to put their authorities over the passage of legislation in labour matters.¹¹³ However, several laws passed by the provinces were somehow anti-labour.¹¹⁴ Therefore, to protect the labourer's law, then it requires taking two actions, firstly court need to confirm and recognize their jurisdiction for the enforcement of whatever the labours' rights provided in the constitution.¹¹⁵ However, in the past government, the labourers were given fake promises

¹⁰⁷ Punjab Industrial Relations (Amendment) Act 2014 (XII of 2014), <https://labour.punjab.gov.pk/legalframework>, https://sindh.gov.pk/dpt/Labour_HRM/index.htm, <http://balochistan.gov.pk/acts/labour-and-manpower/>, and labour department KPK.

¹⁰⁸ See discussion supra part II.B (discussing the substantial variance in labor laws across leaders).

¹⁰⁹ See discussion supra part II.B (noting changes in policies as presidents took office).

¹¹⁰ See discussion supra part II.B (none of the anti-labor legislation was struck down for being unconstitutional but only changed when new president came into office and passed a new industrial relations act or ordinance).

¹¹¹ See discussion supra note I and accompanying text with discussion supra part II.

¹¹² See discussion infra note 208 and accompanying text (providing law cases where judicial review was exercised to protect parties).

¹¹³ See discussion supra part III.A (abolishment of concurrent legislative list means federal government has no power to legislate on labor and union affairs).

¹¹⁴ See discussion supra part III.B (discussing the IRAs passed by the provinces in the aftermath of the eighteenth amendment).

¹¹⁵ Some legal experts in Pakistan have raised the question as to whether Pakistani courts can monitor labor legislation in the provinces even under the constitution after the eighteenth amendment. See, e.g., Saitar, supra note (arguing Pakistani courts have jurisdiction over labor Matters to the extent the laws affect constitutional rights). I assume courts have jurisdiction even after the eighteenth amendment because otherwise, provinces

for the fulfilment of their rights, and state head's passed anti-labour laws that were not allowed in the constitution¹¹⁶. Similarly, the federal government needs to look at the amendments that are free from federal government implementation rights so that these amendments should not restrain the laws guaranteed by ILO.¹¹⁷ It is rightly argued because the only federal government is the member of ILO but not the provincial government.¹¹⁸ Therefore, it is only possible to protect labourers' law if this is taken under consideration; otherwise, the anti-labour legislation taken by provinces couldn't be solved.¹¹⁹

The number of acts and amendments are done in Labour laws which make industrial relations more ambiguous and complex. The standards of industrial relations are still undefined and would continue so unless government especially federal governments pays serious head to already deplorable conditions of labouring class.

Conclusion

Therefore, it would not be wrong to say that every leader who came on the hot seat announced the laws but never tried to implement it strictly and completely. The rules which were made for the labours can never be consistent. It means whenever an administration changed, then the laws also changed. On the other hand, the Eighteenth Amendment implementation gave a free hand to the provinces for placing their authorities to the path of legislation in all labour issues. So, it can be seen that the workers have been given the empty promises, and no proper implementation has been given to the laws which were guaranteed by ILO. So, it can be said that every new coming government was violating the labour laws, and no government could justify the rights of the workers in the country. The provincial government took advantage after the Eighteenth Amendment as they legislate anti-labour laws, which left workers useless and couldn't support their rights. So, labour rights are being neglected in the country. Thus, it is better to ask the NGO's and Government departments concerned with this issue to assist in implanting the labour laws in the country. Apart from this, courts must help out all the labours who are not getting equal rights as guaranteed by constitution, Once the courts and the leaders responsible for implementing these labor laws come on the same page, it becomes hard to act on the constitution laws and acts. Undoubtedly, history has exposed all the labour laws in the past, and it has showed that no law properly was acted upon in history. However, the past gives a clue like government was also responsible for damaging the laws for

could act in contravention to the constitution and take away fundamental rights of workers under the guise of labor legislation.

¹¹⁶ See discussion *infra* part IV. (providing a critical analysis of Pakistan's history of labor legislation).

¹¹⁷ See discussion *infra* parts IV.B, IV (arguing Pakistani courts have jurisdiction to enforce the constitution and the federal government has jurisdiction to implement ILO conventions).

¹¹⁸ See discussion *infra* part IV.B. (arguing otherwise, workers have no recourse against harsh policies enacted by provinces).

¹¹⁹ Two steps are recommended. But note that this article discusses the second step before the first step. The second step is that courts must take to provide "bite" to the constitution. This, in the author's opinion, makes the analysis easier to follow. See discussion *infra* part IV.A (arguing most changes violated the Pakistani constitution of 1973, and where applicable, the identical provision of the constitution of 1962). The first step—that courts and the federal government must recognize they still have jurisdiction—follows in part IV.B and part IV.C.

labour. It would be best if the leaders will instantly tackle this issue; otherwise, this issue may further worsen for our next generations.

Recommendations

This study clarifies that there should be uniformity in Labour laws in all provinces. All provinces of Pakistan should align with one another to ensure that labour legislation is a standard across Pakistan. Following recommendations may be considered for improving the industrial relations:

- i. Reduce number of laws and labour acts
- ii. Government and NGOs should take actions to ensure the implementation of laws and acts
- iii. Remove ambiguity, overlapping, gapes and penalties
- iv. Laws of applicable on conditions of employment should bifurcated into separate laws applicable to commercial establishments and industrial establishment
- v. Laws regarding the minimum wage rate should note be separate laws because these are directly related to employment so such points should be incorporated into the laws relating to employment in industrial establishments

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