

National Labour Law Profile: Islamic Republic of Pakistan

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Historical Background

The United Kingdom established its presence in South Asia in the early part of the 17th century. By the 1850's, the British had expanded their influence and controlled most of the Indian sub-continent, which included present-day Pakistan and Bangladesh. In 1857, the administration of the country was handed over to the British government.

Opposition to British rule began at the turn of the 20th century. Although vigorous efforts were made to include Muslims in the Indian nationalist movement, concern for Muslim political rights led to the formation of the Muslim League in 1906.

The concept of Pakistan, a Muslim nation distinct from Hindu India, was introduced in the 1930s, as fear grew among Indian Muslims of becoming a minority in Hindu India. In 1940, the Muslim League, led by Muhammad Ali Jinnah, called for the creation of a separate Muslim state, in the regions that housed a majority of Muslims.

The Indian Independence Act, which came into effect on 15 August 1947, provided for the partition of British India, and the establishment of a separate self-governing dominion within the Commonwealth, Pakistan. Under this arrangement, the various princely states could freely join either India or Pakistan. This resulted in a bisected Muslim nation separated by Indian territory, composed of an East Pakistan (present-day Bangladesh) and West Pakistan.

Problems rose in Kashmir, where a Hindu Maharaja ruled over a Muslim majority. He signed over Kashmir to India, but Pakistan refused to recognize the accession. The status of Kashmir has remained in dispute.

Muhammad Ali Jinnah became the first governor-general of Pakistan, and Liaquat Ali Khan its first Prime Minister. In March 1956, Pakistan finally produced a constitution and formally became an Islamic republic within the Commonwealth. General Iskander Mirza became its first president. In October 1958, President Mirza abrogated the Constitution, banned political parties, declared martial law and granted power to General Muhammad Ayub Khan. In 1960 he was elected to the presidency and abolished the office of prime minister.

East Pakistan declared its independence as Bangladesh on 26 March 1971, which was recognized by Pakistan's President, Zulfikar Ali Bhutto, in February 1974.

A new Constitution was promulgated in 1973 by then President Bhutto. In 1988, President Zia proclaimed the supremacy of Shari'a, by which all civil law had to conform to Islamic Law. In November of the same year, elections brought the first

elected woman in a Muslim country, Benazir Bhutto, daughter of Zulfikar Ali Bhutto, to the head of the state. She held office until 1996. In October 1999, General Pervez Musharraf, in a military coup, deposed Prime Minister Nawaz Sharif, issued a Provisional Constitutional Order, suspended the Constitution and the federal and provincial parliaments, and designated himself as Chief Executive. In August 2002, President Musharraf promulgated 29 constitutional amendments (the Legal Framework Order) with the effect of making Presidential power resistant to any political opposition in the parliament. In October 2002, Parliamentary elections were held and Pakistan Muslim League-Quaid (PMLQ) leader Zafarullah Khan Jamali was elected Prime Minister. Elections to the Senate were held in February 2003. By March of the same year, the Constitution was fully restored. In December 2003 several new amendments were introduced to the Constitution, which somewhat limited the Presidential powers.

General Constitutional Framework

A permanent Constitution of Pakistan became effective as of 14 August 1973. The [Constitution](#), as amended up to December 2003, provides for a federal democratic State, based on Islamic principles of social justice, though Pakistan has often alternated between civilian rule and extended periods of military rule.

Executive power

Executive power is vested in the President, who is also the Head of State. The President is elected by an electoral college composed of the members of both Houses, and the members of Provincial Assemblies. Pursuant to Article 41 of the Constitution, the validity of the election of the President shall not be called in question by or before any court or other authority. The President holds office for a term of five years, renewable once.

The President acts upon advice of the Cabinet or the Prime Minister, but may require them to reconsider such advice, before acting in accordance with it. The President acts in his or her discretion upon matters entitled to him or her by the Constitution. The validity of such acts may not be called into question on any grounds whatsoever (Article 48(2) of the Constitution).

The President has the power to dissolve the National Assembly, on the advice of the Prime Minister (Article 58 of the Constitution), or in his or her own discretion, under certain circumstances.

The President is advised in his or her functions by a Cabinet, with a Prime Minister at its head, appointed in the president's discretion among the members of the National Assembly (Article 91). The Prime Minister must obtain the confidence of the National Assembly. The Cabinet is responsible to the National Assembly, which may pass a vote of no confidence.

Legislative power

The *Majlis-e-Shoora* (Parliament) of Pakistan consists of two Houses i.e., the Senate (Upper House) and the National Assembly (Lower House). The Senate is a permanent legislative body and is comprised of 100 members, of which members of the four Provincial Assemblies, Federally Administered Tribal Areas and Federal Capital form its electoral college. The term of the Senators is 6 years. The Constitution provides for the number of women to be elected in the different bodies. The Senate may not be dissolved. The National Assembly has a total membership of 342 elected through adult suffrage, of which 60 seats are reserved for women, and 10 seats are reserved for non-Muslims. The seats of the National Assembly are allocated to each Province, the Federally Administered Tribal Areas and the Federal Capital on the basis of their population in accordance with the last officially published census.

The [Federal Legislative List](#), which identifies the subjects within the sole legislative purview of Parliament, is divided into two parts. Legislation on items in the first part, which includes national defense, nationality and citizenship, foreign affairs, civil service and a wide range of other items, must be introduced in the National Assembly. If passed by the National Assembly, the bill is then forwarded to the Senate for consideration. Within a period of ninety days, the Senate may either pass the bill with or without amendment, or reject it entirely. If the Senate should fail to take any action on the bill within the prescribed period of time, the bill is deemed to have been passed without amendment. It then moves on to the President for assent and for publication as an act of Parliament. An amended or rejected bill must be reconsidered by the National Assembly and, if it is again passed by that body, with or without amendment, the bill is forwarded to the President for his or her assent.

All other proposed legislation, bills relating to items in the second part of the Federal Legislative List or in the [Concurrent Legislative List](#) may be introduced in either house. The Concurrent Legislative List found in Article 70(4) of the Constitution, includes provisions for the welfare of labor: conditions of labor, employer's liability, workers' compensation and health insurance; trade unions, industrial and labor disputes; establishment of and carrying on of labor exchanges, employment information bureaus and training establishments; regulation of labor and safety in mines, factories and oil- fields; and unemployment insurance. Bills originating from the second part of the Federal Legislative List or the Concurrent List are sent to the President for his or her signature. If within seven days, he or she fails to do so, the bill automatically becomes an act of Parliament.

The Islamic Republic with its federal capital at Islamabad is comprised of four provinces: Punjab, Sindh, North West Frontier and Baluchistan, in addition to the Federally Administered Tribal Areas. All residual powers fall to the Provincial Governments, although the *Majlis-e-Shoora* retains exclusive power to legislate for those areas in the Islamic Republic of Pakistan, which are not delegated to any Province. In particular, responsibility for education, labour, health, industry, social welfare, agriculture, and roads is largely entrusted to the Provinces, even though the formulation of general principles in some of these matters is expressed in the Concurrent Legislative List.

Judiciary

Pursuant to Article 175 of the Constitution, there is a Supreme Court of Pakistan, a High Court for each Province, and other courts established by law. The Judiciary shall be separated progressively from the Executive within 14 years running from December 2003.

The [Supreme Court](#) is the highest court of justice in the country and maintains a permanent seat in Islamabad. It consists of a Chief Justice known as Chief Justice of Pakistan and such number of other judges as may be determined by Parliament. At present, in addition to the Chief Justice, there are twelve Judges in the Supreme Court. The Supreme Court (Number of Judges) Act, 1997 provides for a number of 16 judges in addition to the Chief Justice. The Chief Justice of Pakistan has recommended the names of justices from Provincial Courts to fill the four seats that have been vacant since January 2004. The Law Ministry is yet to draft a summary based on these recommendations. Two other Judges are to retire this year and questions are raised as to their replacement. The provincial High Courts are also facing a shortage of judges.

Any decision of the Supreme Court, to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all other courts in Pakistan.

There is a [Federal Shariat Court](#) composed of eight Muslim Judges, which may, pursuant to Article 203D of the Constitution, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet (the Injunctions of Islam). If the Court decides that a law or provision of law is repugnant to the Injunctions of Islam, the law ceases to have effect, and must be amended. Furthermore, this Court also has appellate jurisdiction over all cases which can be tried under Huddood Law. An appeal of a decision of this court lies in the Shariat Appellate Bench of the Supreme Court.

With reference to specific types of cases, in particular labour disputes, Special Courts for Trial of Offenses and Tribunals have been created. Appeals from the Special Courts are generally submitted to the High Courts, with the exception of Labour Courts, which retain separate forums of appeal.

Labour Rights in the Constitution

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

Article 11 of the Constitution prohibits all forms of slavery, forced labour and child labour;

Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;

Article 18 proscribes the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;

Article 25 lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone;

Article 37(e) makes provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Labour Legislation

Pakistan's labour laws trace their origination to legislation inherited from India at the time of partition of the Indo-Pak subcontinent. The laws have evolved through a continuous process of trial to meet the socio-economic conditions, state of industrial development, population and labour force explosion, growth of trade unions, level of literacy, Government's commitment to development and social welfare. To meet the above named objectives, the government of the Islamic Republic of Pakistan has introduced a number of labour policies, since its independence to mirror the shifts in governance from martial law to democratic governance.

Under the Constitution labour is regarded as a 'concurrent subject', which means that it is the responsibility of both the Federal and Provincial Governments. However, for the sake of uniformity, laws are enacted by the Federal Government, stipulating that Provincial Governments may make rules and regulations of their own according to the conditions prevailing in or for the specific requirements of the Provinces. The total labour force of Pakistan is comprised of approximately 37.15 million people, with 47% within the agriculture sector, 10.50% in the manufacturing & mining sector and remaining 42.50% in various other professions.

Contract of Employment

While Article 18 of the Constitution affords every citizen with the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business, the Industrial and Commercial Employment (Standing Orders) Ordinance was enacted in 1968 to address the relationship between employer and employee and the contract of employment. The Ordinance applies to all industrial and commercial establishments throughout the country employing 20 or more workers and provides for security of employment. In the case of workers in other establishments, domestic servants, farm workers or casual labour engaged by contractors, their labour contracts are generally unwritten and can be enforced through the courts on the basis of oral evidence or past practice.

Every employer in an industrial or commercial establishment is required to issue a formal appointment letter at the time of employment of each worker. The obligatory contents of each labour contract, if written, are confined to the main terms and conditions of employment, namely nature and tenure of appointment, pay allowances and other fringe benefits admissible, terms and conditions of appointment.

Termination of the Contract

The services of a permanent worker cannot be terminated for any reason other than misconduct unless one month's notice or wages in lieu thereof has been furnished by the employer or by the worker if he or she so chooses to leave his or her service. One month's wages are calculated on the basis of the average wage earned during the last

three months of service. Other categories of workers are not entitled to notice or pay in lieu of notice.

All terminations of service in any form must be documented in writing stating the reasons for such an act. If a worker is aggrieved by an order of termination he or she may proceed under Section 46 of the Industrial Relations Ordinance 2002, aimed at regulating the labour-management relations in the country, and bring his or her grievance to the attention of his or her employer, in writing, either him or herself, through the shop steward or through his or her trade union within three months of the occurrence of the cause of action. Forms of termination have been described as removed, retrenched, discharged or dismissed from service. To safeguard against any colorful exercise of power, victimization or unfair labour practices, the Labour Courts have been given powers to examine and intervene to find out whether there has been a violation of the principles of natural justice and whether any action by the employer was bonafide or unjust.

Working Time and Rest Time

Working hours

Under the Factories Act, 1934 no adult employee, defined as a worker who has completed his or her 18th year of age, can be required or permitted to work in any establishment in excess of nine hours a day and 48 hours a week. Similarly, no young person, under the age of 18, can be required or permitted to work in excess of seven hours a day and 42 hours a week. The Factories Act, which governs the conditions of work of industrial labour, applies to factories, employing ten or more workers. The Provincial Governments are further empowered to extend the provisions of the Act, to even five workers.

Where the factory is a seasonal one, an adult worker shall work no more than fifty hours in any week and no more than ten hours in any day. A seasonal factory, per section 4 of the Factories Act is that which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or cotton jute pressing, the manufacture of coffee, indigo, rubber, sugar or tea. However, if such adult worker in a factory is engaged in work, which for technical reasons must be continuous throughout the day, the adult worker may work no more than fifty-six hours in any week.

Section 8 of the West Pakistan Shops and Establishments Ordinance, 1969 likewise, restricts weekly work hours at 48 hours. The Shops and Establishments Ordinance regulates persons employed in shops and commercial establishments, who are neither covered by the Factories Act nor by the Mines Act. The Ordinance is exclusive in the whole of Pakistan except for the Federally Administered Tribal Areas. Section 22-B of the Mines Act, 1923 also fixes weekly hours of work for workers at 48 hours or 8 hours each day, with the limitation of spread-over 12 hours and interval for rest for one hour every six hours. Section 22-C further limits the spread-over to 8 hours for work done below ground level.

In factories, the periods and hours of work for all classes of workers in each shift must be notified and posted in a prominent place in the principal language in the industrial or commercial establishment. The law further provides that no worker shall be

required to work continuously for more than six hours, unless he or she has had an interval for rest or meals of at least one hour.

During Ramadan (fasting month), special reduced working hours are observed in manufacturing, commercial and service organizations.

Paid Leave

As provided in the Factories Act, 1934, every worker who has completed a period of twelve months continuous service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of fourteen consecutive days. If a worker fails in any one such period of twelve months to take the whole of the holidays allowed to him or her, any holidays not taken by him or her shall be added to the holidays allotted to him or her in the succeeding period of twelve months.

A worker shall be deemed to have completed a period of twelve months continuous service in a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorized leave not exceeding ninety days in the aggregate for all three, or by a lock-out, or by a strike which is not an illegal strike, or by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate; and authorized leave shall be deemed not to include any weekly holiday allowed under section 35 which occurs at beginning or end of an interruption brought about by the leave.

Maternity Leave and Maternity Protection

While article 37 of the Constitution makes reference to maternity benefits for women in employment, there are two central enactments, one federal and the other provincial providing maternity benefits to women employed in certain occupations. The Maternity Benefit Ordinance, 1958 stipulates that upon the completion of four months employment or qualifying period, a worker may have up to six weeks prenatal and postnatal leave during which she is paid a salary drawn on the basis of her last pay. The Ordinance is applicable to all industrial and commercial establishments employing women excluding the tribal areas. It also places restrictions on the dismissal of the woman during her maternity leave. Similarly, the Mines Maternity Benefit Act, 1941 is applicable to women employed in the mines in Pakistan.

Other Leave Entitlements

In addition to the 14 days of annual leave with pay, the Factories Act, 1934 provides that every worker is entitled to 10 days casual leave with full pay and further 16 days sick or medical leave on half pay. Casual leave is granted upon contingent situations such as sudden illness or any other urgent purpose. It should be obtained on prior application unless the urgency prevents the making of such application. As a customary practice, casual leave is approved in most cases. Sick leave, on the other hand, may be availed of on support of a medical certificate. Management should not refuse the leave asked for if it is supported by a medical certificate.

In addition to the leave entitlements, workers enjoy festival holidays as declared by the Federal Government. The Provincial Government under section 49 of the

Factories Act, 1934, states all festival holidays, approximately 13 or as further declared, in the Official Gazette. Additionally, every worker is entitled to enjoy all such holidays with pay on all days declared and notified by the Provincial Government. If however, a worker is required to work on any festival holiday, one day's additional compensatory holiday with full pay and a substitute holiday shall be awarded.

Under agreements made with the Collective Bargaining Agent, employees who proceed on pilgrimage i.e., Hajj, Umra, Ziarat, are granted special leave up to 60 days.

Minimum Age and Protection of Young Workers

Article 11(3) of Pakistan's Constitution expressly prohibits the employment of children below the age of fourteen years in any factory, mine or other hazardous employment. In addition, the Constitution makes it a Principle of Policy of the State of Pakistan to protect the child, to remove illiteracy and provide free and compulsory education within the minimum possible period and to make provision for securing just and human conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex.

The Factories Act, 1934 allows for the employment of children between the ages of 14 and 18 years provided that each adolescent obtains a certificate of fitness from a certifying surgeon. A certifying surgeon, per section 52 of the Act, shall on the application of any child or adolescent who wishes to work in a factory, or, of the parent or guardian of such person, or of the factory in which such person wishes to work, examine such person and ascertain his or her fitness for such work.

The Act further restricts the employment of a child in a factory to five hours in a day. The hours of work of a child should thus be arranged in such a way that they are not spread over more than seven-and-a-half hours in any day. In addition, no child or adolescent is allowed to work in a factory between 7 p.m. and 6 a.m. The Provincial Government may, by notification in the Official Gazette in respect of any class or classes of factories and for the whole year or any part of it, vary these limits to any span of thirteen hours between 5 a.m. and 7.30 p.m. Moreover, no child is permitted to work in any factory on any day on in which he or she has already been working in another factory.

Factories are further required to display and correctly maintain in every factory a Notice of Periods for Work for Children, indicating clearly the periods within which children may be required to work. The manager of every factory in which children are employed is compelled to maintain a Register of Child Workers identifying the name and age of each child worker in the factory, the nature of his or her work, the group, if any, in which he or she is included, where his or her group works on shifts, the relay to which he or she is allotted, the number of his or her certificate of fitness granted under section 52, and any such other particulars as may be prescribed.

The provisions of the Factories Act, 1934 are cited in addition to, and not in derogation of the provisions of the Employment of Children Rules, 1995. The Employment of Children Rules extends to the whole of Pakistan with the exception of the State of Azad Jammu and Kashmir and delimits finite labour conditions afforded

for the protection of minors. Rule 6 insists on cleanliness in the place of work. No rubbish, filth or debris shall be allowed to accumulate or to remain in any part of the establishment and proper arrangements shall be made for maintaining in a reasonable clean and drained condition for the workers of the establishment. Rule 7 further calls for proper ventilation in work places where injurious, poisonous or asphyxiating gases, dust or other impurities are evolved from any process carried on, in such establishment. As long as workers are present in an establishment, the latrines, passages, stairs, hoists, ground and all other parts of the establishment in so far as the entrance of the said places is not closed, must be lighted in such manner that safety is fully secured. In addition, in every establishment an arrangement of drinking water for child and adolescent workers is to be provided free of charge. All shafts, couplings, collars, clutches, toothend wheels, pulleys, driving straps, chains projecting set screws, keys, nuts and belts on revolving parts, employed in the establishment, shall be securely fenced if in motion and within reach of a child worker and further may not be operated by a child worker.

Under the Employment of Children Rules, anyone who employs a child or permits a child to work in contravention of the Constitution is punishable by imprisonment for a term extending up to one year or may be fined up to Rs. 20,000 or subject to both. Repetition of the offense is punishable by imprisonment for a term extending up to two years and shall not be less than six months.

Equality

Article 38 of the Constitution imparts the State's obligations aimed at achieving equality in the form of securing the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants. All citizens are bestowed, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure and the basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective again of their sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.

Pay Issues

Wages are construed as the total remuneration payable to an employed person on the fulfillment of his or her contract of employment. It includes bonuses and any sum payable for want of a proper notice of discharge, but excludes the value of accommodations i.e., supply of light, water, medical attendance or other amenities excluded by the Provincial Government; the employer's contribution to a pension or provident fund, traveling allowance or concession or other special expenses entailed by the nature of his or her employment; and any gratuity payable on discharge.

The [Payment of Wages Act, 1936](#), regulates the payment of wages to certain classes of industrial workers. It applies to those workers whose monthly wages do not exceed Rs. 3,000 (51.68 US\$) and are employed in factories, railways, plantations, workshops and establishments of contractors. The main object is to regulate the

payment of wages to certain classes of persons employed in industry. The provisions of the Act can, however, be extended to other classes of workers by the Provincial Governments after giving three months notice to the employers of their intention to do so. The Act stipulates that wages to workers employed in factories and on railways are to be paid within seven days of completion of the wages period, if the number of workers employed therein is less than 1,000. In other cases, the time limit for payment of wages to the workers is 10 days. No deduction can be made from the wages of the workers excepts as specified in the Act, such as for fines, breach of contract and the cost of damage or loss incurred to the factory in any way other than an accident.

The employer is responsible for the payment of all wages required to be paid to persons employed by him or her. Similarly any contractor employing persons in an industry is responsible for payment of wages to the persons he or she employs. The persons responsible for payment of wages must fix wage periods not exceeding one month. Wages should be paid on a working day within seven days of the end of the wage period, or within ten days if 1,000 or more persons are employed. The wages of a person discharged should be paid not later than the second working day after his or her discharge.

Workers' Representation in the Enterprise

Until the adoption, on 29 October 2002, of the [Industrial Relations Ordinance, 2002](#) (IRO 2002), which repealed the [Industrial Relations Ordinance, 1969](#), Pakistan had a three-pronged system of participation in management (i.e., the Works Council, the Management Committee and the Joint Management Board), independent of each other and each having its own sphere of activities.

The new text simplifies the system, introducing a single body in place of the three previous ones: the Joint Works Council (Article 24 of the IRO 2002). A Joint Works Council must be set up in any establishment employing fifty persons or more. It consists of no more than ten members, forty per cent of which are workers' representatives. In the previous system, the Management Committee and the Works Council were composed of an equal number of representatives of the employer and workers, whereas the Joint Management Board had a workers' participation of 30 per cent. The Convener of the Joint Works Council is from the management.

The Joint Works Council deals with matters, which were of the competency of the earlier Joint Management Board, such as the improvement in production, productivity and efficiency, provision of minimum facilities for those of the workers employed through contractors who are not covered by the laws relating to welfare of workers. It has also taken up tasks of the previous Works Council, i.e. promoting settlement of differences through bilateral negotiations, promoting conditions of safety and health for the workers, encouraging vocational training within the establishment, taking measures for facilitating good and harmonious working conditions in the establishment, provision of educational facilities for children of workers.

Trade Union and Employers Association Regulation

Freedom of association

The right to association is guaranteed by Article 17 of the Pakistani Constitution imparting on every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. Under Article 3 of the IRO 2002, workers as well as employers in any establishment or industry have the right to establish and to join associations of their own choosing, subject to respect of the law. Both workers' and employers' organizations have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations and confederations of workers' and employers' organizations.

Registration of trade unions

Registration of a trade union is to be made under the Industrial Relations Ordinance. Workers' trade unions are registered with the Registrar Trade Unions in the Province, and if the industry or establishment is nationwide with the National Industrial Relations Commission, after fulfilling a number of requirements, listed in Article 6 of the IRO 2002. Through its registration, the trade union obtains certain benefits: registration confers a legal existence as an entity separate from its members. Trade unions in Pakistan generally function on plant-wide basis, with their membership contingent on the size of the industry/trade to which they belong. Once established, the trade unions and employers' associations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

Collective Bargaining and Agreements

To determine the representative character of the trade union in industrial disputes and to obtain representation on committees, boards and commissions, the Industrial Relations Ordinance makes provision for the appointment of a Collective Bargaining Agent (CBA).

The CBA is a registered trade union elected by secret ballot. The CBA 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.

Collective agreements are thus formulated by the CBA. The agreements may contain matters such as the facilities in the establishment for trade union activities and procedures for settling collective disputes including grievances and disciplinary procedures. Substantive provisions settle terms and conditions of employment, wages and salaries, hours of work, holiday entitlement and pay, level of performance, job grading, lay-offs, retrenchment, sick pay, pension and retirement schemes. Such agreements once duly executed by both parties become the source of law. The agreements should invariably be in writing and should be drafted with care, for they are meant to settle disputes rather than raise them.

In addition to statutory benefits under the labour laws, the adjustment of rights takes place through collective bargaining including adjudication in Labour Courts. The IRO 2002 has changed the appellate procedure on the provincial level, which used to be brought before a Labour Appellate Tribunal. This institution was abolished by the IRO 2002. Appeals of Labour Court decisions now lie directly with provincial High Courts. Office bearers of trade unions are given protection against arbitrary transfer, discharge and dismissal. Any ill-intentioned action on the part of the employer against an office-bearer of a trade union or against a worker for trade union activities, is construed as an unfair practice and the National Industrial Relations Commission is entrusted with the task of preventing such offenses. Security of service is ensured to the workers. Similarly, unfair labour practices on the part of workers and trade unions is elaborated and incorporated in law.

Collective Labour Disputes

Commencement of a dispute

Under the IRO 2002, if an employer or a Collective Bargaining Agent finds that an industrial dispute has arisen or is likely to arise, they may communicate their views in writing to the other party. Upon receipt of the communication, the other party has fifteen days (or more if agreed) to try and settle the dispute by bilateral negotiations.

Conciliation

If the parties do not manage to reach a settlement, the employer or the CBA may, within fifteen further days, serve a notice of conciliation on the other party, with a copy to the Conciliator and to the Labour Court.

If the dispute is settled before the Conciliator, or a tripartite Board of Conciliators, a report is sent to the Provincial or Federal Government, with the memorandum of settlement.

Arbitration

If the conciliation fails, the Conciliator tries to persuade the parties to refer their dispute to an arbitrator. If they agree, the parties make a joint request in writing to the arbitrator they have agreed upon.

The arbitrator gives his or her award within a period of 30 days or a period agreed upon by the parties. The award of the arbitrator is final and valid for a period not exceeding two years.

A copy of the award is sent to the provincial or Federal Government, for publication in the official Gazette.

Strikes and Lock-outs

Proceedings of strikes and lock-outs

If dispute settlement proceedings before the Conciliator fail and no settlement is reached, and if the parties have not agreed to refer their dispute to an arbitrator, the

workers retain the right under section 31 of the Industrial Relations Ordinance 2002, to go on strike providing due notice to their employer within seven days, and the employer has the right declare a lock-out after the delay of notice of conciliation has expired. The party raising a dispute retains the option, at any time, either before or after the commencement of a strike or lockout, to make an application to the Labour Court for adjudication of the dispute.

Where a strike or lock-out lasts for more than fifteen days, if it relates to a dispute which the Commission is competent to adjudicate and determine, the Federal and/or the Provincial Government may, by order in writing, prohibit the strike or lock-out at any time before the expiry of thirty days, provided that the continuance of such a strike or lock-out causes serious hardship to the community or is prejudicial to the national interest. In such case the Federal Government or the Provincial Government shall forthwith refer the dispute to the Commission or the Labour Court. After hearing both parties, the Commission, or the Labour Court shall make such award as it deems fit, as expeditiously as possible but not exceeding thirty days from the date on which the dispute was referred to it.

Under section 32 of the IRO 2002, if a strike or lockout occurs within the public utility services sector the Federal Government and the Provincial Government may, by order in writing, also prohibit its occurrence at any time before or after the commencement of the strike or lockout.

No party to an industrial dispute may go on strike or declare a lockout during the course of conciliation or arbitration proceedings, or while proceedings are pending before the Labour Court.

In addition, the National Industrial Relations Commission (the Commission), adjudicates and determines industrial disputes to which an industry-wise trade union or federation of such trade unions is a party , as well as disputes which are of national importance.

The Commission also deals with cases of unfair labour practices.

Illegal strikes and lock-outs

A strike or lockout is declared illegal if it is commenced without giving notice of conciliation to the other party of the dispute, or if it is commenced or continued in a manner other than that provided by the IRO 2002 or in contravention with this text.

In case of an illegal strike or lockout, an Officer from the Labour Department may make a report to the Labour Court, and require the employer or CBA or the registered trade union concerned, to appear before the Court. The Court may, within 10 days, order the strike or lockout to be stopped.

In case of contravention of the order of the Court by the employer, and if the Court is satisfied that the pursuance of the lock-out is causing serious hardship to the community or is prejudicial to the national interest, it may order the attachment of the factory and the appointment of an official receiver, who will exercise the powers of management and may do all such acts as are necessary for conducting business.

In case of contravention of the order of the Court by the workers, the Labour Court may pass orders of dismissal against the striking workers, or cancel the registration of the trade union that committed such contravention.

Settlement of Individual Labour Disputes

Pursuant to Article 46 of the IRO 2002, a worker may bring his or her grievance in respect of any right guaranteed or secured by or under any law or any award or settlement to the notice of the employer in writing, either him or herself or through the shop steward or Collective Bargaining Agent, within one month of the day on which cause of such grievance arises. The IRO 2002 reduces the delay from three months to one month. Where a worker brings his or her grievance to the notice of the employer, the employer must within fifteen days of the grievance, communicate his or her decision in writing to the worker.

If the employer fails to communicate a decision within the specified period or if the worker is dissatisfied with such decision, the worker or shop steward may take the matter to the Labour Court within a period of two months.

Labour Courts

Section 33 of the Industrial Relations Ordinance, 2002 permits any CBA or any employer to apply to the Labour Court for the enforcement of any right guaranteed or secured by law or any award or settlement. The Provincial Government derives its authority to establish as many Labour Courts as it considers necessary under section 44 of the Ordinance. Each Labour Court is subject to jurisdictional limitations derived by its geographical parameters or with respect to the industry or the classes of cases allocated. Each Labour Court consists of one Presiding Officer appointed by the Provincial Government.

The Labour Court adjudicates industrial disputes which have been referred to or brought before it; inquires into or adjudicates any matter relating to the implementation or violation of a settlement which is referred to it by the Provincial Government; tries offenses under the Industrial Relations Ordinance; and exercises and performs such other powers and functions conferred upon or assigned to it. While deliberating offenses, the Labour Court follows as nearly as possible procedure as prescribed under the Code of Criminal Procedure, 1898. For purposes of adjudicating and determining any industrial disputes, the Labour Court is deemed to be a Civil Court and retains the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908) including the enforcement of attendance and examination under oath, the production of documents and material objects, and the issuance of commissions for the examination of witnesses or documents.

An award or decision of a Labour Court is produced in writing and delivered in open Court with two copies subsequently forwarded to the Provincial Government. Upon receipt, the Provincial Government within a period of one month publishes the award or decision in the Official Gazette.

The IRO 2002 abolished the Labour Appellate Tribunal. Any party aggrieved by an award or a decision given or a sentence passed by the Labour Court may now submit

an appeal to the High Court (Article 48 of the IRO 2002). The High Court, may vary or modify an award or decision or decision sanctioned by the Labour Court. It may, on its own motion at any time, call for the record of any case or proceedings in which a Labour Court within its jurisdiction has passed an order, for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order, in relation thereto as it thinks fit, provided that the order does not adversely affect any person without giving such person a reasonable opportunity of being heard.

Official Gazette

The Federal Laws of Pakistan are published by the Government in a document called the Gazette of Pakistan. The Ministry of Justice, Law and Parliamentary Affairs in addition publishes individual Acts through the Official Gazette.

Links

[Government of Pakistan](#)

[Constitution of Pakistan](#)

[Ministry of Labour, Manpower and Overseas Pakistanis](#)

[Ministry of Law, Justice & Human Rights](#)

[Pakistan Institute of Labour Education & Research](#)

[Province of Punjab, Labour & Human Resource Department](#)

[Provincial Assembly of Punjab](#)

[Province of Sindh, Labour, Transport, Industries and Commerce Department](#)

[The Supreme Court of Pakistan](#)

[Pakistan Lawsite.com \(to view texts of legislation, a registration fee is required\)](#)

[Daily Times](#)

[The Nation](#)

[PakTribune](#)

ILO Conventions Ratified by Pakistan

Pakistan joined the ILO in 1947. Until July 2004 it had ratified [34 ILO Conventions](#), of which 33 were in force for the country.

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