

RESOURCE KIT

# Addressing Bonded Labour and Gender Concerns at Work



Produced by:

**Centre for the Improvement of Working  
Conditions & Environment, Lahore**

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# **Resource Kit**

## **ADDRESSING BONDED LABOUR AND GENDER CONCERNS AT WORK**

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# Introduction to International Labour Standards

The International Labour Organization (ILO) is the oldest UN agency. It was established in 1919. The primary reason for its creation was to promote global peace and harmony by promoting social justice. The preamble to the constitution of ILO states that “*Universal and lasting peace can be established only if it is based upon social justice*”. Since its inception, the ILO has maintained and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity. According to the UN Secretary General Mr. Kofi Annan, “We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights”. In today's globalized economy, International Labour Standards are essential components in the international framework for ensuring that the growth of the global economy provides benefits to all. Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

Decent work should be at the heart of global, national and local strategies for economic and social progress. It is central to efforts to reduce poverty, and a means for achieving equitable, inclusive and sustainable development. The ILO works to promote decent work through its work on employment, social protection, standards and fundamental principles and rights at work and social dialogue. In each of these areas, people throughout the world face deficits, gaps and exclusions in the form of unemployment and underemployment, poor quality and unproductive jobs, unsafe work and insecure income, rights which are denied, gender inequality, migrant workers who are exploited, lack of representation and voice, and inadequate protection and solidarity in the face of disease, disability and old age. ILO programmes aim to find solutions to

these problems. Globalization has created opportunities and benefits for many, yet at the same time millions of workers and employers worldwide have had to face new challenges. The globalized economy has displaced workers and enterprises to new locations, resulted in the sudden accumulation or flight of capital, and caused financial instability in certain regions. Despite initial optimism, globalization has not ushered in an era of prosperity for all. In 2001 it was estimated that virtually half of the world's population survived on US\$2 or less per day, while some 1.1 billion people, or 21% of the world's population, were living on US\$1 or less per day.

Inequality within many countries and between the world's richest and poorest nations has also grown exponentially over the last few decades. In 1960 the income gap between the wealthiest and the poorest fifth of the world's population was 30 to 1. By 1999, it had increased to 74 to 1.

The continued development of the global economy in this direction is neither sustainable nor desirable. Inequality not only leads to a decline in productivity but also breeds poverty, social instability and even conflict. In view of this, the international community has recognized the need to establish some basic rules of the game to ensure that globalization offers a fair chance at prosperity for everyone.

The Decent Work Agenda of ILO aims to achieve decent work for all by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards. The standards have grown into a comprehensive system of instruments on work and social policy, backed by a supervisory system designed to address all sorts of problems in their application at the national level. They are the legal component in the ILO's strategy for governing globalization, promoting sustainable development, eradicating poverty, and ensuring that people can work in dignity and safety. The challenges of globalization have made international labour standards more relevant than ever. What benefits do they provide today?

International labour standards are first and foremost about the development of people as human beings. In the ILO's Declaration of Philadelphia of 1944, the international community recognized that "labour is not a commodity". Indeed, labour is not like an apple or a television set, an

inanimate product that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake but to improve the lives of human beings; international labour standards are there to ensure that it remains focused on improving human life and dignity.

Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, environment, human rights and labour. The ILO contributes to this legal framework by elaborating and promoting international labour standards aimed at making sure that economic growth and development go along with the creation of decent work. The ILO's unique tripartite structure ensures that these standards are backed by governments, employers, and workers alike. International labour standards therefore lay down the basic minimum social standards agreed upon by all players in the global economy.

An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards in the belief that this could give them a greater comparative advantage in international trade. In the long run such practices do not benefit anyone. Lowering labour standards can encourage the spread of low-wage, low-skill, and high-turnover industries and prevent a country from developing more stable high-skilled employment, while at the same time making it more difficult for trading partners to develop their economies upwards. Because international labour standards are minimum standards adopted by governments and the social partners, it is in everyone's interest to see these rules applied across the board, so that those who do not put them into practice do not undermine the efforts of those who do.

International labour standards are sometimes perceived as entailing significant costs and thus hindering economic development. A growing body of research indicates, however, that compliance with international labour standards often accompanies improvements in productivity and economic performance. The beneficial effects of labour standards do not go unnoticed by

foreign investors. Studies have shown that in their criteria for choosing countries in which to invest, foreign investors rank workforce quality and political and social stability above low labour costs. At the same time, there is little evidence that countries which do not respect labour standards are more competitive in the global economy.

International labour standards are the result of discussions among governments, employers and workers, in consultation with experts from around the world. They represent the international consensus on how a particular labour problem could be tackled at the global level and reflect knowledge and experience from all corners of the world. Governments, employers' and workers' organizations, international institutions, multinational companies and non-governmental organizations can benefit from this knowledge by incorporating the standards in their policies, operational objectives and day-to-day action. The standards' legal character allows them to be used in the legal system and administration at the national level, and as part of the corpus of international law which can bring about greater integration of the international community.

## **Conventions and Recommendations**

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either *conventions*, which are legally binding international treaties that may be ratified by member states, or *recommendations*, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention.

Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO Constitution to *submit* them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for *ratification*. If it is ratified, a convention generally comes into force

for that country one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals. The ILO provides technical assistance if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a convention they have ratified.

## **Fundamental Conventions**

The ILO's Governing Body has identified eight conventions as “fundamental”, covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998).

## **Priority Conventions**

The ILO's Governing Body has also designated another four conventions as "priority" instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labour standards system.

International labour standards evolve from a growing international concern that action needs to be taken on a particular issue, for example providing working women with maternity protection, or ensuring safe working conditions for agricultural workers. Developing international labour standards at the ILO is a unique legislative process involving representatives of governments, workers and employers from around the world. As a first step, the Governing Body agrees to put an issue on the agenda of a future International Labour Conference. The International Labour Office prepares a report that analyses the laws and practices of member states with regard to the issue at stake. The report is circulated to member states and to workers' and employers' organizations for comments and is discussed at the International Labour Conference. A second report is then prepared by the Office with a draft instrument for comments and submitted for

discussion at the following Conference, where the draft is amended as necessary and proposed for adoption. This "double discussion" gives Conference participants sufficient time to examine the draft instrument and make comments on it. A two-third majority of votes is required for a standard to be adopted.

There are two main ILO Conventions on forced labour. Convention 29 of 1930, ratified by 161 countries including Pakistan (23 December 1957) and Convention 105 of 1957, ratified by 158 countries including Pakistan (15 February 1960). Forced labour is defined in Convention 29 as "all work or service ...exacted ... under the menace of any penalty and for which the said person has not offered himself voluntarily". This convention requires the states to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. This Convention further stipulates that "Illegal extraction of forced labour will be a penal offense" (Article 25). This Convention does provide certain exemptions to the state to use forced labour in certain conditions and circumstances which are:

- Work extracted as military service.
- Work as part of prison sentence.
- Work in times of emergency.
- Minor communal work.

But under no circumstance a private entity can exact forced labour. Convention 105 makes further proposals to abolish certain forms of forced or compulsory labour and immediate and complete abolition of forced labour. Article 1 states: Member state to suppress and not to make use of any form of forced or compulsory labour:

- As a means of political coercion or education for opposing established political, social or economic system;
- To mobilize labour for purposes of economic development;
- As a means of labour discipline;

- As a punishment for participating in strikes;
- As a means of racial, social, national or religious discrimination

The ILO's supervisory bodies -- the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards -- regularly examine the application of International Labour Standards in ILO member States. Representation and complaint procedures can also be initiated against states that fail to comply with conventions they have ratified.

Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it. Every two years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four priority conventions they may have ratified; for all other conventions, reports must be submitted every five years, except for conventions that have been shelved (no longer supervised on a regular basis). Reports on the application of conventions may be requested at shorter intervals. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of conventions directly to the ILO.

The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for three-year terms. The Experts come from different geographic regions, legal systems and cultures. The Committee's role is to provide an impartial and technical evaluation of the state of application of international labour standards.

When examining the application of international labour standards the Committee of Experts makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular convention by a state. These observations are published in the Committee's annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but

are communicated directly to the governments concerned. Committee of Experts names countries violating their obligations in a report issued before every International Labour Conference. Inclusion in COE report means country will have to defend itself in the Conference Committee on Application of Standards (CAS).

The annual report of the Committee of Experts, usually adopted in December, is submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report. Inclusion of country's name in special paragraph is considered very serious and can have serious repercussions on the image of that country.

# Introduction to Labour Inspection

## 1. Why labour inspection

Labour Inspection is an important tool with which the state ensures social justice and protects human rights of the workers at workplaces. According to the former UN Secretary General Mr. Kofi Annan, “We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights”. An important role of labour inspection in any country is the promotion of compliance with national labour legislation as well as good labour practices, to achieve basic workers’ rights, balanced socio-economic development, and sound and effective industrial relations as a basis for constructive social dialogue and thus a positive investment climate. Labour inspectorates are expected to assist management and workers in developing good labour practices and achieving social justice and decent work for all. The adherence to social norms and human rights standards is becoming very important for the industry to compete in international market.

The importance of labour inspection was highlighted at the International Labour Conference in June 2006<sup>1</sup>, which discussed a General Survey report on the subject. At a subsequent ILO Governing Body meeting in November 2006, there was again strong tripartite support for effective labour inspection, and the Governing Body agreed to a broad strategy for modernizing and reinvigoration of labour inspection<sup>2</sup>.

The strategic objectives of a model labour inspection system have been outlined in the “A Tool Kit for Labour Inspectors” published by ILO<sup>3</sup>, which are:

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<sup>1</sup> <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-iii-1b.pdf>

<sup>2</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang-en/WCMS\\_077633/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang-en/WCMS_077633/index.htm)

<sup>3</sup> “A Tool Kit for Labour Inspectors”, International Labour Organization 2006.

- ***To promote good labour practices***, including better social protection, improved conditions of work, a safe and healthy working environment, and adequate welfare facilities. The LIS enforces labour legislation to achieve these objectives.
- ***To provide information and advice*** on all labour legislation: the Ministry of Labour is the initiator and guardian of the country's labour laws. Its enforcement agency, the LIS, has the responsibility to inform the social partners and all stakeholders about the laws, in particular about their rights and duties and, where appropriate, to advise, educate and instruct them, before resorting to sanctions.
- ***To ensure compliance*** with all labour legislation: the LIS will be both pro-active, (planning annual and monthly, national, field and sectoral inspection activities, identifying cases of non-compliance and taking corrective action), and reactive, (i.e. dealing with complaints, accidents, incidents and disputes).
- ***To ensure that all labour laws and regulations are fairly and fully complied with:*** compliance will be equitable to prevent distortions between economic competitors or between social groups (e.g. citizens and foreign migrant workers, men and women, etc). The appropriate use of enforcement powers, including prosecution, is important both to secure compliance with the law and to ensure that those who have duties under it are held to account for failures to safeguard health, safety and welfare.
- ***To assist the partners in production in implementing the country's labour legislation in the most productive manner and in a spirit of social partnership.*** The LIS will be seen to focus its resources on making a visible, measurable contribution to the country's social and economic development in a balanced, equitable manner.
- ***To promote sound, productive and harmonious labour relations***, in particular by promoting collective bargaining, as well as reacting to, and dealing with complaints in a timely and fair manner, and prevent or help solve disputes through social dialogue.

The labour laws have to be properly enforced not only as a tool for better administration and maintenance of public order, but also to ensure that the workers and their families are protected, that employers who invest in decent work are not undercut by non-compliant competitors, that a

level playing field is created for all, and that the economy and society continue to enjoy opportunities for growth in which all citizens have a fair share. The “business case” for providing decent work cannot be underestimated. For example, many multi-national enterprises are understandably concerned about their good reputation, and monitor their own enterprises and those of their suppliers to ensure that there is no illegal employment or sub-standard working conditions. A fair and effective labour inspectorate is a great advantage in this respect. As the Employer Vice-Chairperson said at the above-mentioned ILO Governing Body meeting, “Investors are not attracted by weak enforcement”.

The challenges of globalization pose unprecedented threats to the workers and employers particularly in the developing countries. With the opening up of the world trade there is a likelihood of increased competition of quality and pricing which is wiping out many businesses. At the same time there is mounting pressures on the government for economic liberalization, better governance, non interventionist policies and programmes. The globalization pressures have also placed enormous strains on the labour inspection system. There is a general misconception that the labour inspection is a hindrance in the way of economic progress. Also the last few years have seen a gradual reduction and scaling down of the role of the government in regulating and guiding the economy and to introduce a lean and less interventionist administration. Labour administration and labour inspection have also been facing the same pressures. In Pakistan particularly in Punjab province the labour inspection system has undergone radical changes. This working paper analyses the functions of the labour inspection system and its benefits for the society and the economy.

## **Labour Inspection in the Context of Constitution of Pakistan**

The Labour Inspection System in Pakistan has evolved in the light of labour laws and institutions established in light of the principles enshrined in the Constitution as well as the International Labour Standards ratified by Pakistan. Following Articles of the Constitution of Pakistan provide a backdrop for the labour laws and labour inspection system in the country:

### **Article 3 Elimination of exploitation**

The State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work.

### **Article 11 Slavery, forced labour, etc. prohibited**

- (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
- (2) All forms of forced labour and traffic in human beings are prohibited.
- (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

### **Article 17 Freedom of association**

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

### **Article 27 Safeguard against discrimination in services**

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

### **Article 34. Full participation of women in national life.**

Steps shall be taken to ensure full participation of women in all spheres of national life

### **Article 37. Promotion of social justice and eradication of social evils**

The State shall:

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

## **Article 38. Promotion of social and economic well-being of the people.**

The State shall :

(a) secure 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;

(b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;

(c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;

(d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;

The foregoing Articles of The Constitution of Islamic republic of Pakistan indicate the weightage given to the safeguarding and promotion of the rights of workers by the state of Pakistan.

## **International Labour Standards and Labour Inspection**

International Labour Standards in the form of Conventions and recommendations of ILO provide the backbone for creating social justice and decent work in the society, without which no social or economic progress can be made. These standards cover the whole spectrum of social and

economic interactions between workers, employers, government and address such diverse issues as freedom of association, occupational health and safety, forced and bonded labour, child labour, social security, labour inspection, tripartite consultation, vocational guidance, employment policy, non discrimination, wages, work duration and maternity.

In today's globalised world these standards are the only hope for the marginalized workers as well as countries, to ensure a fair globalization without adverse effects on the workers and workplaces. International Labour Standards are at the heart of labour policies and laws in Pakistan. Pakistan has ratified all the 8 core conventions of ILO which reflect the commitment of government to abide by these standards.

The primary standard from which the labour inspection systems of various countries are derived is the ILO Convention 81 (Labour Inspection) ratified by Pakistan in 1953. This ratification, more than 50 year's ago, is evidence of Pakistan's long standing commitment to labour inspection. This convention provides the basic principles for the establishment and roles of labour inspection system. A summary of the Convention 81 is given in the box below on the next page. As can be seen the Convention 81 deals with:

- The organization and role of the labour inspection system
- Responsibility of the authorities.
- Staffing of the labour inspectorate including women and qualification of the staff.
- Regular inspection and authorities and responsibilities of the inspectors.
- Publication of annual reports

The importance of effective inspection systems has been highlighted in several more recent documents, and is implicit in recent ILO standards such as the Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187). Inspection is thus a vital element within national systems for promoting compliance with legislation and upholding good practice, alongside education and training and other activities at local and national levels. Social partners also have a key role to play in helping inspectorates to become more effective, so that all parties work collaboratively to achieve decent work in practice.

### **ILO Convention No. 81<sup>4</sup>**

- Labour inspection should be organized as a system (Article 1) applying to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers are enforceable (Article 2).
- It should cover a basic set of functions, such as hours of work, wages, safety, health and welfare, the employment of children and young persons, and other connected matters (Article 3.1).
- Inspectors should supply information and advice to employers and workers on how to comply with the law, and alert the competent authorities on any defects or abuses not covered by existing legal provisions (Article 3.1).
- Labour inspection should be placed under the supervision and control of a central authority (Article 4.1).
- Effective cooperation with other government services and private institutions (NGOs) engaged in labour protection, as well as with employers and workers and their organizations must be promoted (Article 5).
- Inspectors must be public officials assured of stability of employment and independent of changes of government and improper external influences (Article 6).
- They must be recruited with sole regard to their qualifications and adequately trained for the performance of their duties (Article 7).
- Their number must be sufficient to secure the effective discharge of these duties in regard to, inter alia, the number, nature, size and situation of workplaces, the number of workers employed, and the number and complexity of the legal provisions to be enforced (Article 10).
- They must be properly equipped with local offices and transport facilities (Article 11).
- They must be provided with proper credentials and properly empowered (Articles 12 and 13).
- Workplaces must be inspected as often and as thoroughly as is necessary to ensure the effective application of relevant legal provisions (Article 16).
- Adequate penalties for violations of legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties must be provided for by national laws and regulations and effectively enforced (Article 18).
- • Annual reports of the labor inspectorate must be published in time (Articles 19–21).

### **Laws and Institutions of Labour Inspection in Pakistan (specific reference to Punjab)**

The labour inspection system in Punjab province can be used as case example of the system in implementation in the country. Labour issue being on the concurrent list of the constitution, legislation can be promulgated by the federal as well as the provincial governments on the labour issues. The Ministry of Labour in the federal government and the Departments of Labour in the provincial government are responsible for implementation of the policies and programmes on

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<sup>4</sup> “A Tool Kit for Labour Inspectors”, International Labour Organization 2006.

labour issues. The Directorate of Labour Welfare in Punjab is the enforcement arm of the Labour and Human Department Punjab. Through its field officers based in each district of Punjab the Directorate enforces the labour laws. Though there are over 60 laws governing labour related issues, the main labour laws enforced by the Directorate are given in the Table on next page. As can be seen these laws cover a wide spectrum of labour protection legislation covering conditions of employment, occupational health and safety, wages and remuneration, freedom of association, compensation for work related accidents and diseases, disciplinary practices, child and bonded labour.

**Table: Main labour laws enforced by the Directorate of Labour Welfare Punjab**

Name of Law	Applications
Factories Act, 1934	<ul style="list-style-type: none"> <li>• This law is applicable to “factories”, which have been defined as places where 10 or more workers are engaged in a manufacturing process.</li> <li>• Chapter-II lays down the principles for the establishment of factory inspectorates, functions and duties of inspectors and certifying surgeons.</li> <li>• Chapter-III deals with health and safety in the industrial enterprises. The focal areas include, cleanliness, disposal of waste and effluvia, ventilation and temperature, dust and fumes, artificial humidification, overcrowding, lighting, drinking water, latrines and urinals, spittoons, precautions against contagious and infectious diseases, vaccination of workers, fire safety, fencing and guarding of machinery, prohibition of employment of child and young workers near dangerous machinery, protection of hazards of cranes and lifting machinery, pressure vessels, provision of floors, stairs and means of access, confined spaces, eye protection, safety of the building and processes and safety of explosive or inflammable materials.</li> <li>• Chapter-IV regulates the working hours including the overtime</li> <li>• Chapter V regulates the employment of adolescents (age 14-17) and children in certain occupations and processes.</li> <li>• Punjab Factories Rules 1978 elaborate the provisions of Factories Act</li> <li>• Hazardous Occupations Rules of 1963 provide mechanism to deal with specific processes, where hazardous operations are carried out</li> </ul>
Industrial Relations Act, 2008	<ul style="list-style-type: none"> <li>• It regulates the trade union activity and provides for the freedom of association.</li> </ul>

	<ul style="list-style-type: none"> <li>• Mechanisms for registration/de-registration of trade unions, collective bargaining agents and industrial dispute resolution have been provided.</li> <li>• It prohibits unfair labour practices by employers or employees</li> <li>• It defines the powers/functions of various courts, including labour courts, High courts and National Industrial Relations Commission (NIRC)</li> </ul>
Shops & Establishments Ordinance 1969	<ul style="list-style-type: none"> <li>• This law regulates the employment and working conditions in industrial and commercial establishments (employing less than 10 workers)</li> <li>• It specifies working hours, overtime, holidays, time and conditions of payment</li> </ul>
West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968	<ul style="list-style-type: none"> <li>• It regulates and specifies working hours, overtime, holidays, time and conditions of payment in industrial and commercial establishment with 20 or more workers.</li> <li>• It provides for monetary benefits to the workers in the form of group incentives, compulsory group insurance and bonuses</li> <li>• It stipulates the procedures for stoppage of work, closure of business, termination of employment and retrenchment of workforce.</li> </ul>
Workmen's Compensation Act 1923	Provides the institutional mechanism for provision of monetary compensation in case of work-related accidents resulting in injuries or death.
Payment of Wages Act, 1936	Determines the mode of payment of salaries and wages of industrial workers
Minimum Wages Ordinance, 1961	Specifies the Minimum Wage to be paid to different categories of workers
Employment of Children Act, 1991	Regulates the employment of children

## Institutional setup for labour inspection

The overall supervision of the Labour Inspection in the province lies with the Chief Inspector of factories who is designated as Director Labour Welfare Punjab. Each district is headed by a District Officer (Labour) or DOL. Depending on the size and industrial concentration in a district, various categories of officers are assigned to the districts. However the overall classification of the inspecting officers is given below:

1. **Labour Inspector (LI)** : This is the lowest tier of inspection machinery. The Labour Inspector is a grade-9 official whose qualification can be matriculation or intermediate.

The LIs cannot carry out inspections of the factories. They undertake the inspection of shops and establishments. There are 83 LIs in Punjab.

2. **Labour Officer (LO):** The Labour Officer is grade-16 officer and usually is a graduate. The LOs are the Inspectors of Factories There are 83 LOs in Punjab.
3. **Assistant Director (AD):** The next higher tier of the inspection officers who are in grade-17. They work as Commissioners and Authorities under wage and compensation related laws. They donot carry out inspections. There are 38 ADs in Punjab
4. **Deputy Director (DD):** The next higher tier of the inspection officers who are in grade-18. They supervise the work of Labour Inspectors. They donot carry out inspections. There are 13 DDs in Punjab
5. **Joint Director (JD):** The Joint Directors are the highest tier of field officers in Grade-19 who usually are posted as District Officers Labour in districts with high industrial concentration. There are 9 JDs. In Punjab.

In addition to these officers, there are 2 Technical Inspectors of factories who are engineers. They are supposed to provide technical input in inspection. A Medical Inspectorate of Factories which was part of the Directorate of Labour Welfare has been abolished a few years ago, so there is not medical inspector of factories now in the Directorate.

## **Centre for the Improvement of Working Conditions and Environment (CIWCE) and Industrial Relations Institute (IRI)**

Both IRI and CIWCE are wings of the Directorate of Labour Welfare, functioning in the overall supervision of the Director Labour Welfare Punjab and headed by the Director of CIWCE. While the IRI is mainly an academic institute providing in-service training mainly to the officers of the Directorate as well as to the workers and employers' representatives on Labour Laws, the CIWCE is a technical arm of the Directorate of Labour Welfare providing training, information, and advisory services on control of safety, health and working environment hazards in the industrial enterprises.

## Other inspecting institutions

Besides the inspecting officers of the Directorate of Labour Welfare, personnel from a number of institutions from provincial and federal government carry out the inspections of the records or machinery in the industries in order to enforce laws which are directly or indirectly related with protection of workers. These include:

- Officers from Employees Social Security Institution, who enforce the Provincial Employees Social Security Ordinance.
- Officers from Employees Old Age Benefits Institution (EOBI), who enforce the EOBI related law.
- Boilers Inspectors from the Industries Department who enforce the provisions of law related to boilers inspection.
- Civil defence officials who carry out inspections of fire protection and flammable materials in certain industries.

## Challenges faced by the labour inspection machinery in Punjab

**Capacity gap:** The labour inspection machinery has severe shortage of technically qualified persons in the disciplines of science, engineering and medicine who can provide quality labour inspection and advisory services to the industry. There is no single female inspector in the whole of province.

**Facilities:** The essential facilities like transport, faxes, computers are available to only a select number of high officers. The rank and file factory and shop inspectors and even District Officers have no transport or other facilities. The health and safety checking facilities like light or noise meters, gas detectors or other instruments are not available with any of the field staff.

**Legal framework:** The present legal framework is also fragmented and old fashioned. It is punitive and prescriptive rather than preventive in philosophy. There is labour analysis on laws pertaining to gender equality, definition of Bonded Labour in Act and Rules is vague and debatable. A law reform exercise is under process.

**Coordination Issues:** There is very little coordination between the Labour Inspection officials and health department or other line departments who have important role to play in protecting the workers' health and other aspects.

**Non coverage of vulnerable sectors:** The labour inspection does not cover important sectors of economy. For example construction sector, which is one of the most hazardous sectors of economy is not touched by labour inspection. The **construction sector** in general has a fatal injury rate which is possibly up to 5 times higher than the all-industry average. It has the largest number of fatal accidents to workers in any sector. It also has a poor record of protecting the public. Similarly the agriculture, informal sector and many high risk sectors are not covered by the inspection. The present legal and institutional infrastructure does not provide coverage to vulnerable workers.

**Lack of reliable data:** There is very little credible data on occupational accidents and diseases. There is gross under reporting of the accidents and diseases as many sectors are not covered and data compilation, analysis and reporting system is very primitive. A few newspaper clippings from the last 3 months (Attached as **Appendix-A**) indicate that fatal accident rates are very high in construction sector, informal sector, utilities like electric supply companies, sewerage companies.

- Bonded labour in Pakistan and role of labour inspection in combating it.
- Gender concerns at workplaces with special reference to Pakistan
- Role of inspection officers in addressing gender concerns

Specific topics related to gender mainstreaming to be included in the module are:

- Equal employment opportunities
- Gender-based violence at workplace
- Gender wage gap
- Gender and decent work
- Gender and skills training
- Gender and trade unions
- Girls and labour
- Maternity protection
- Men and masculinities
- Sex discrimination
- Trafficking in women and children
- Women entrepreneurs
- Women in management

## **Introduction to Labour Inspection Policy of Government of Pakistan**

Pakistan's **Labour Policy 2002** and **labour Protection Policy 2006** provides the framework for the future development of the country's industrial relations and labour protection systems. For effective implementation of labour protection policy, the main concern is a vibrant labour inspection system. Successful labour protection and labour inspection initiatives depend on many factors but foremost is the degree of cooperation between workers and employers.

The main objectives of Labour Inspection Policy 2006 are:

- Flexible, transparent, fair and innovative approaches to labour inspection.
- Extension of inspection activities in both formal & informal sectors.
- Involvement of private sector in provision of labour inspection services.
- Compliance with labour policies and laws.
- Increased harmony and cooperation between workers and managers.

The Labour Inspection Policy 2006 contributes to the economic and social progress of the nation through institutional arrangements and procedures regarding labour protection policies and laws. The Policy provides a new direction to the approaches on a wide range of labour protection issues. The fundamental purpose of inspection is to improve;

- working conditions.
- working environment.
- by securing compliance with labour legislation.

The Labour Inspection Policy 2006 intends to change the approach of labour inspection towards modern from the traditional one. The traditional approach is based on strict enforcement of law, supported by penalties and sanctions. It focuses on the enterprises which have a formal contractual relation between employer and employee. Traditional labour inspection is confined to only those employees having formal contract of employment. It emphasizes on protection and enforcement, with little consideration of issues of prevention and improvement.

Modern Approach towards labour inspection envisaged in this Policy emphasizes on prevention, protection and improvement. Enforcement is seen as a last resort rather than the first and only means of gaining compliance. It places considerable emphasis on improving the working environment wherever possible. It is concerned with all workers in all work situations, including those employed in small and medium sized enterprises, those engaged in informal economy activities.

Modern labour inspection is concerned with prevention, protection and improvement in three main areas.

- The terms under which workers are employed.
- The conditions under which work takes place with regard to the safety of workers.
- The general environment in which work takes place with regard to heat and ventilation, dust, noise etc.

The Government plans to revitalize and restructure the labour inspection through following initiatives.

- Integrated inspection.
- Self-inspection and self-reporting.
- Systems inspection.
- Labour extension.
- Private sector involvement.

Inspection work is to be focused on those enterprises that pose the greatest threat to worker protection. Registration process involves identification of those enterprises liable to inspection and establishing some criteria for determining those work places ‘at risk’ in the sense of failing to reach an acceptable standard of labour protection.

Integrated inspection is aimed at rationalizing the nation’s inspection systems through progressive integration. Integrated inspection operates on the basis of one enterprise-one inspector’ with one **general inspector** undertaking inspection work in all areas.

Self Inspection means self-responsibility, with managers and workers assuming responsibility for compliance with standards concerning safety and health and working conditions in the

workplace. The role of the labour inspector under ‘self-inspection’ is limited to informing, educating, training etc.

Enterprises ( with ‘low risk’) are to be selected to participate in a self-inspection approach and will be required to check and report on working conditions and the working environment, using a checklist. After examining these reports, the labour inspectors will decide whether an actual visit to the organization is required or not.

“Systems inspection” is a concept of labour inspection in which the inspector does not check on details but, rather, focuses on the **systems** the enterprise has in place to prevent accidents, protect workers, and improve working conditions. The work of the inspector is no longer concerned with the details of compliance, and focuses more on advising management and workers how their systems can be improved and operate more effectively.

The reason for initiating the labour extension is that in Pakistan, the work of labour inspection is largely restricted to formal sector enterprises. Extension work means broadening the coverage of inspection activities to those categories of workers not traditionally covered by national labour laws. These include farmers, domestic workers, self-employed persons, and members of cooperatives.

Private sector has to be engaged in the inspection activities by introduction of accredited agents whereby individuals and companies in the private sector are licensed to undertake some aspects of inspection work including the inspection of boilers, cranes, hoists, other items of specialized equipment, and some aspects of industrial hygiene. Any involvement of the private sector will be consistent with the articles of ILO Convention 81

This policy will go a long way to benefit the employers and will help improve the working conditions of the workers and protect them from hazardous accidents.



# Addressing Bonded Labour through Inspection

Bonded Labour in Pakistan is prohibited under the Constitution and the law. All advances and debts in furtherance of the bonded labour are void. The law relating to bonded labour namely, the Bonded Labour System (Abolition) Act, 1992 was promulgated as a consequence to a historical decision of the Supreme Court of Pakistan which took notice of incidence of bonded labour practices in brick kilns in 1988 and declared all advances as illegal. The core point in the judgment of the Supreme Court, announced on March 15 1989, was the decree against the *Jamadari* system. The Supreme Court also directed the Federal Government to prepare a self contained code defining clearly the term forced labour and laying down essential elements regarding fundamental rights, deprivations and miseries to human beings and the rights guaranteed under Islamic injunctions.

The enactment of the Bonded Labour System (Abolition) Act, 1992 abolished the system of bonded labour with immediate effect and also extinguished the outstanding advances (*peshgees*) in the name of the bonded workers. The Act also made the commission of the offence of bonded labour punishable with imprisonment for a term of two to five years or with a fine not less than Rs.50,000/- or with both. Out of the fine, if recovered, payment is to be made to the bonded labourers at the prescribed rate. The Act also provides for the establishment of Vigilance Committees at the district level. The implementation of the law is the responsibility of the district administration.

The rules framed under the Act namely Bonded Labour System (Abolition) Rules, 1995 provide the mechanism and procedural details to meet the objectives of the Act and also contain provision for establishment of the fund for the rehabilitation and welfare of the freed bonded labourers.

The requisite fund has been constituted with an initial amount of Rs.100 million. Procedure for administration of the fund has been framed and notified. All provincial governments have made their contribution with fund and it is

Pakistan is constitutionally, legally and Internationally committed to abolish bonded labour system and forced labour practices in all economic activities. In order to achieve this objective a firm implementation of the law is of utmost importance. It is therefore desirable to put in place a comprehensive action plan for the eradication and rehabilitation of bonded labour.

Although no survey has been carried out so far by the Government to assess the quantum of the problem, it is generally alleged that bonded labour exists in certain parts of the country particularly in agriculture and brick kiln sectors. There is a need to have a countrywide survey to find the actual number of bonded labourers. This will help implement any action plan for their freedom and rehabilitation. As the abolition of bonded labour system carries serious economic and financial implications, the rehabilitation programme should provide suitable alternatives to make the plan effective.

The problem of bonded labour is steeped in history and is a result of prevailing socio-economic structures. An action plan, therefore, should address the problem through practical and long-term initiatives. An infrastructure is required to be evolved with training, employment generation avenues and schooling for the children of bonded workers and fully protective social safety net.

## **The Constitution of Islamic Republic of Pakistan**

The provision of the Constitution of Islamic Republic of Pakistan prohibiting slavery, forced labour, etc. reads as:

Article 11(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

(2) All forms of forced labour and traffic in human being are prohibited.

Bonded Labour is a practice designed to exploit the poor people for their needs. Article 3 of the Constitution vests in the State, the responsibility to ensure to eliminate all forms of exploitation and gradual fulfillment of the fundamental principles. The provisions of the Constitution regarding freedom of movement, freedom of assembly, freedom of association, freedom of speech, equality of citizens and inviolability of dignity of man all go together against the practices of bondage, slavery and coercion

## **The Bonded Labour System (Abolition) Act, 1992.**

The Government enacted the Bonded Labour System (Abolition) Act. in 1992, with a view to fulfilling its obligation arising out of the Constitution and international covenants. The Act abolishes the debt-bondage and forced labour in all forms regardless of age, sex, race, colour, and religion. It sets all bonded labourers free and extinguishes all bonded debts. It requires that no person shall make any advance under, or in pursuance of, the bonded labour system or compel any person to render any bonded labour or any form of forced labour.

The Rules framed in pursuance of the Act provide for the establishment of Vigilance Committees at District level, consisting of elected representatives of the area, representatives of the District Administration, Bar Associations, NGOs, workers body and different Departments of the Federal and Provincial Governments.

## **International Instruments**

Pakistan is also committed to end all forms of debt bondage, child servitude and forced labour by the ratification of certain international instruments including:

- The UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and institutions and Practices similar to Slavery 1956. The Convention was ratified by Pakistan in 1958.
- ILO Convention No. 29 concerning Forced Labour, 1930, ratified by Pakistan in 1957.
- ILO Convention No. 105 concerning the Abolition of Forced Labour, 1957 ratified by Pakistan in 1960.
- The 1989 UN Convention on the Rights of the Child, Article 32 of which guarantees children's protection from economic exploitation and from performing any work that is

likely to be hazardous or to interfere with the child's education.' The Convention was ratified by Pakistan in 1990.

- Philadelphia Declaration adopted by ILO in 1944 concerning aims and objects of the organization also stresses upon the member states to observe the principles regarding freedom of association and expression and work without exploitation and compulsion.
- ILO Declaration on Fundamental Principles and Rights at Work 1998 requires member states to furnish to ILO status report on the observance of core conventions including convention on forced labour.

UNO adopted Universal Declaration of Human Rights in 1948. It ordains to prohibit slavery, forced labour, bonded labour and all forms of exploitation. Pakistan being member of the United Nations is under obligation to respect and ensure the observance of fundamental human rights in the country.

The salient features of ILO Convention 29 regarding forced labour ratified by Pakistan are:

“The fundamental commitment made by State ratifying the Convention is to suppress the use of forced or compulsory labour in all its forms in the shortest possible time.

Convention does not apply to five categories of work or compulsory service, subject to certain conditions and guarantees. The five categories are: compulsory military service; certain, civic obligations; prison labour; work exacted in cases of emergency; and minor communal services. The illegal exaction of forced or compulsory labour shall be punishable as a penal offence”.

The ILO Convention 105 regarding abolition of forced labour which has also been ratified by Pakistan provides for prohibition of forced or compulsory labour in any form for certain purposes. Under the Convention, States undertake to suppress any form of forced or compulsory labour in five defined cases, namely:

- As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

- As a method of mobilizing and using labour for purposes of economic development.
- As a means of labour discipline.
- As a punishment for having participated in strikes.
- As a means of racial, social, national or religious discrimination.

## **What is Bonded Labour?**

The Bonded Labour System (Abolition) Act defines the 'Bonded Labour System' as a system of forced, or partly forced, labour under which a debtor enters, or is presumed to have entered into an agreement with the creditor to the effect that:

- in consideration of an advance (*peshgi*) obtained by him or by any of the members of his family (whether or not such advance (*Peshgi*) is evidenced by any document) and in consideration of the interest, if any, due on such advance (*Peshgi*), or
- in pursuance of any customary or social obligation, or
- for any economic consideration received by him or by any member of his family;

## **He would:**

- render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefits of the creditor, for a specified period, or for an unspecified period, either without wages or for nominal wages, or
- forfeit the freedom of employment or adopting other means of livelihood for a specified period or for an unspecified period, or
- forfeit the right to move freely from place to place, or
- forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him.
- and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

## **Situation in Pakistan**

“The practice of debt bondage in Pakistan is commonly known as *Peshgi* system. Instead of just seeking wages in exchange for their work, poor workers take an advance from an employer, in money or in kind, under the obligation to work for that employer until their debt is paid off. The loan (*peshgi*) may be taken for many reasons. Sometimes workers are in desperate need of money or food; in other cases they see it as a form of protection against unemployment: the loan ties them to a particular employer, who is then perceived to have an obligation to continue employing them.

“*Peshgi* advances are often quite substantial, much more than can be repaid in just a few months. In extreme cases, debts are so great that they are inherited from one generation to another. In other cases the amount of money may be relatively small”. (From: Anti-Slavery)

Unfortunately no authentic survey has been carried out so far to estimate the number of bonded labourers in the country. Identification of bonded labour is a very complicated and difficult task because of its invisibility. It is often argued that the families which are considered to be in bonded labour are specialized in the relevant skill and they bargain advance payments with their employers. It is the family that demands advances in return of their services. This is the case where the whole family is involved in a particular type of work. In such a system, it becomes difficult to identify them as bonded labourers in the true sense of the terminology and reach them for their rehabilitation. However, there are unofficial and unconfirmed reports of existence of bonded labour practices, in one way or the other, in the agricultural sector in Sindh, mostly controlled by land lords; brick kilns and carpet weaving in Punjab; coal mines in Balochistan.

### **Implementation Status of the Law relating to Bonded labour**

The Provincial Home Departments are basically responsible for the enforcement of the laws on bonded labour. The Act provides for the constitution of District Vigilance Committees to advise the District Administration on effective implementation of the law and to help in the rehabilitation of the freed-bonded labourers.

The Federal Government requires the Provincial Governments to send the implementation reports on the enforcement of the bonded labour law regularly. There are also reports of the release of bonded labourers in Sindh and Punjab through court orders due to the efforts of trade unions and human rights activists. But there has so far been no effort at the governmental level to rehabilitate freed bonded labourers.

## **Vigilance Committees**

The District Vigilance Committees have been restructured in the light of the Devolution of Power Plan and to make it viable and effective.

### **Bonded Labour Issues: An Appraisal**

Main issues relating to the system of bonded labour in the socio-economic context can be described as follows:-

- Loans and advances extended by creditors to ensure timely availability and supply of labour.
- Advance aim to keep the labour under control.
- Loans are never paid. Before any loan is realized, further amounts are advanced to meet further needs of workers. This chain continues indefinitely. Such an arrangement leads to unpayable debt and severe conditions of bondage.
- In the agriculture sector, a hari with low remuneration is the sole victim of the system.
- Mobility of the bonded labourers is restricted and so they cannot supplement their income by working elsewhere or doing a secondary job.
- Debts are transferred from generation to generation and the labourers can hardly get rid of the system. Landlords being influential persons find ways and means to defeat the purpose of the law.
- Relief Camps for bonded labour established by certain human rights activists as temporary arrangement in certain localities suffer from bad management and unhealthy sanitation conditions.



# **Role of the social partners in combating bonded labour**

## **Important social partners**

- i. Judiciary
- ii. Police Department
- iii. Labour and Human Resource Department
- iv. Home Department
- v. Law Department
- vi. District Government
- vii. Bar Councils
- viii. Social Welfare Department
- ix. Executive District Officer (Community Development)
- x. Executive District Officer (Literacy)
- xi. Press
- xii. NGOs
- xiii. Labourers
- xiv. Employers
- xv. General Public
- xvi. Religious Leaders
- xvii. Political Leaders
- xviii. Councilars

## **Judiciary**

Lower Courts give the relief to the Bonded Labourers in the light of judgments of Apex Courts. Judiciary is working for the elimination of Bonded Labour at District, Provincial and Federal level.

a). Session Courts are empowered at District level for the liberty of those labourers who are entangled in the Bonded Labour situation.

b). At provincial level, High Courts have jurisdiction to hear the cases against Bonded Labour.

c). Supreme Court of Pakistan has jurisdiction to take suo-moto action upon the telegram or complaint of bonded labourers. There is strict action being made upon the order of Supreme Court of Pakistan.

Supreme Court and High Courts are also known as Constitutional Courts.

## **Police Department**

As police is the part of DVC, so it is its responsibility to take strict action on receiving a case regarding male/female Bonded Labour directly or through District Vigilance Committee. Police Department should put up its monthly report of male/female bonded labour cases before DVC. Police shall keep regular liaison with concerned District Labour Officer in respect of both male/female bonded labour cases.

Besides these provisions, the system and procedure of police should also be gender sensitive. While making policies, it is important to keep the gender in mind. According to the present situation, men have control and access over power but women need to be empowered. This can be achieved through affected female's access to police. The availability of resources such as the number of police stations and their access by women, the issues of safety and security, transport

and finally the fair execution of cases, so that the effected bonded labour can be heard and released of the problem

.

Further to encourage women participation and giving them a right to speak, the police stations should hire female staff members also, so that the women from rural areas feel comfortable and open to share and talk about their domestic and work-related issues.

## **Labour and Human Resource Department**

As the complaint of any male/female bonded labourer is received to Labour Department, the concerned officer morally and legally helps the applicant at the spot. Being gender sensitive, the labour department should also keep in mind the female and their issues. They must be encouraged to bring their issues forward and this can be done by having a separate desk to listen to female agendas under the same roof. The availability of a female labour officer can encourage females to come forward and highlight their issues.

programs and facilities for the rehabilitation and welfare of the freed male/female bonded labourer is the responsibility of Labour Department. Moreover, all the recovery cases against Brick Kiln Owners can be filed before Assistant Director Labour welfare and Authority under payment of wages Act of the concerned District. An application for death grant or marriage grant should be given to Labour Department.

## **Home Department**

Bonded Labourers may also apply to Home Department Government of Punjab for their grievances. The number of female seats in the national and provincial assembly will be helpful in furthering this concept. Women perspective in policy making and decision making is quite essential and basic, since only female can feel and reflect the need of women. Mostly, a woman has both productive and reproductive roles to play and they carry a lot of burden in this regard. Solutions to their problems will not only empower them financially but will also add towards the economic welfare of the country.

## **Law Department**

It is the responsibility of Law Department that recommends to legislature the necessary amendments in the Bonded Labour System (Abolition) Act 1992 in accordance with present facts and circumstances and implements the law in accordance with its true spirit. It is also mentioned here that all the concerned information must be sent to Law Department. Sex disaggregated data comprising the number of male/female bonded labour cases will lead to a fair decision making by the judiciary.

## **District Government**

District Nazim is the head of District Government and is the chairman of District Vigilance Committee (DVC). It is their responsibility to ensure women participation in the process of vigilance committees. The meetings should be conducted at a place where women can easily come and provide their input, or they should be provided transport otherwise. the DVC must hire female staff also. District Nazim must call at least one meeting of DVC in every month and make assurance the meeting of DVC through DOL. He must inspect the workplaces from time to time where bonded labour situation created and take strict action to eliminate male/female bonded labour. The DVC secretary (DOL) sends the minutes of meeting of DVC to labour department Govt. of Punjab. It is the responsibility of every person of society that all the information about bonded labour must put up in the meeting of DVC through DOL or take into the notice of District Nazim.

## **Bar Council**

In execution of the order of Supreme Court of Pakistan, Punjab Bar Council has established Free Legal Aid Committees at district level in Punjab to provide free legal assistance to labourers for the eradication of bonded labour. If any worker faces any legal problems about bonded labour then he can approach to the concerned free district legal aid committee for legal assistance.

## **Viii Social Welfare**

Social welfare is the department which deals with the welfare schemes of workers. Workers must find out the various welfare schemes for laborers within the social welfare department and take advantage from the government's schemes. The policy must include allowances for the treatment and health of women e.g. problem related with child birth and thereafter.

### **Executive District Officers.(Community Development).EDO (CD)**

Community Development plays a role not only for common workers but also for poor male/female bonded labourers to rehabilitate and educate them and take action for the welfare and prosperity of both male/female bonded labour. EDO (CD) consists of labour department and social welfare department.

### **Literacy Department**

This department provides the basic education to workers and their Children and helps to eliminate the illiteracy. It also works along with community development department for getting 'education for all'.

Statistical data shows that it's mostly the boys who go to school and get education. There are number of reasons for this. Some of the problems may include the availability of female schools, and even when a school is opened for girls it is made in a distant place which is not easily accessible by girls, and they can not go alone hence they stay at home. With the provisions of facilities such as school in the nearby area, safety and security and the availability of transport etc can lead to a higher enrollment and retention of boys and girls.

Similarly, to encourage education of both genders govt. should provide free education or education at a minimum fee. To promote higher and secondary education govt. must announce scholarships for boys and girls.

These facilities will contribute towards the economic development of the nation, and highlighting both genders on equal basis.

## **Press**

Press should play its role to eliminate bonded labour and point out those workplaces where there is bonded labour. It should have regularly acquainted responsibility of public and govt. functionaries for the eradication of bonded labour.

Through media and press, a lot of awareness campaigns can be started. The issues of men and women bonded labour must be brought into the knowledge of general public. This may include the govt. functionaries, NGO's and other institutes working towards the eradication of male/female bonded labour.

Especially the families of female bonded labour must be focused so as to protect their rights which are being neglected so far. To further strengthening the cause, the families must be informed and educated about better income generation programs and activities. They must be told about the importance of female education and proper work, and that how this can bring fruit to the entire family.

## **NGOs.**

NGOs must play their role to eradicate bonded labour after joining hands with Govt. functionaries and represent Pakistan as a free bonded labour country at international level. NGOs working at district level must participate in the meetings of DVC regularly. Besides giving the recommendations for the eradication of bonded labour to DVC, NGOs can play very important role in freedom and rehabilitation of male/female workers.

The NGO's working for the eradication of both male and female bonded labour must be given support and cooperation by the government and banks.

NGO's/self-help groups and community based organizations should focus on capacity building through savings mobilization and credit management.

NGO's and bankers should meet regularly to strengthen their links for closer monitoring and evaluation of joint activities for the poor male and female. They must also highlight the need for further work in different areas.

## **Laborers.**

If labourer gets some loan then he must take receipt against it and save it as record purpose . He must avoid to take that debt from which bonded labour is created. The responsibilities of labourer are as under

1. if pay is less than as per Govt notification and some deduction has been made from it then he file an application against the owner before the Authority under Payment of Wages Act through DOL .
2. if any false case is registered then it is to be noticed to DVC's chairman through his union and the investigation be made through DPO.
3. the information of the complaint of bonded labour must communicate at once to DOL, Chairman of DVC or inform Legal Aid Service Unit (LASU) through Free Help Line No. 0800-33888.

## **Owners/ Employers**

Employers should not take any service from labourers which are repugnant to the injunctions of Islam and against law. Owners must participate regularly the meeting of DVC and join the hands with the Government functionaries to eliminate the male/female bonded labour. Brick Kiln Owners should register their brick kilns within labour department under Factories Act 1934, so that the workers can gain benefit from the welfare schemes of Government of Punjab. The workers of registered brick kilns have been given the following facilities.

- i. Death Grant
- ii. Marriage Grant
- iii. Children Scholarships
- iv. Social Security
- v. Residence Facilities.

## **General Public**

It is the responsibility of every person of the society that he should point out the premises or workplace of bonded labour. He should inform to Labour Department Government of Punjab or District Government for the purpose.

## **Religious Leaders**

Muslim theologians must get aware the people about the eradication of bonded labour according the theme Quran and Hadith during the Juma's sermons and their speeches. They should give the lesson of brotherhood. Worker is treated harshly by the owner and work is done unfaithfully by the worker is against the moral values and repugnant to injunctions of Islam. The co-operation of workers and owners of brick kiln in this respect is highly necessary.

## **Political Leaders**

The responsibility of political influential persons is that they should not stand by the side of those persons who have created the bonded labour situation. They should play their role to eliminate the bonded labour socially and politically.

## **Councilors**

Councilors should point out the male/female bonded labour situation at Union Council level. They must perform their social responsibility for the eradication of this curse especially present at brick kilns. They should play their role to eliminate the bonded labour by attending the meeting of DVC and joining hands with the concerned District Government Functionaries, social organizations, NGOs, Labour Leaders and Brick Kiln Owners.

They should refrain from being gender blind in the eradication of male/female bonded labour. They must be gender sensitive while making and announcing any future plans. They must keep women participation in plan development to make it practically feasible and successful.

## **District Vigilance Committees (DVCs)**

District Vigilance Committees are established at district level in accordance with Bonded Labour System (Abolition) Rules 1995. The members of DVCs are as under.

i.	District Nazim	Chairman
ii.	District Coordination Officer	Vice Chairman
iii.	District Officer Labour	Secretary
iv.	Public Representative	Member
iv.	Representative of District Administrative	Member
v.	President Bar Association	Member
vi.	President Press	Member
vii.	Representative of social department	Member
viii.	Representative of National and Provincial Assemblies	Member
ix.	Workers	Member
x.	Brick Kiln Owners	Member
xi.	Representative of local NGOs	Member

This committee is commissioned to eliminate the bonded labour.

## **Duties and Responsibilities of District Vigilance Committee (DVC)**

The following are the duties and responsibilities of DVC.

- i. To inspect premises or workplaces to ascertain existence of male/female bonded labour.

- ii. To call male/female owner, male/female worker or any other person for information about male/female bonded labour.
- iii. To conduct enquiries and take an appropriate action against violators of male/female Bonded Labour System (Abolition) Act 1992.
- iv. To use the powers to enforce male/female Bonded Labour System (Abolition) Act 1992.
- v. To hold the monthly meeting of DVC.
- vi. To advise the district administration and other concerned departments on matters relating to effective implementation of the law and to ensure its implementation in a proper manner.
- vii. To help in the rehabilitation of the freed male/female bonded labourers.
- viii. To keep an eye on the working of the law
- ix. To provide the male/female bonded labourers such assistance as may be necessary to achieve the objectives of the law.
- x. To send the regular minutes of the meeting of DVC to Government of Punjab.

## **Effective Measures taken by DVCs**

The following are the necessary ingredients to active the DVCs and make them efficacious.

- i. Set up a complaint cell at district level.
- ii. Make sure the monthly meeting of DVC.
- iii. Visit the brick kilns in delegation form.
- iv. Play an effective role for the registration of brick kilns.
- v. Help men and women in getting the National Identity Cards.
- vi. Include the men and women in the government's welfare schemes.
- vii. More funds should be used for the welfare of workers and to educate their children.
- viii. Reduce wage differences between men and women.
- ix. Work should be done on providing basic human capabilities e.g. nutrition, health and skills that will enhance gender equality in the productivity of labour.

Similarly, women should have access to resources such as land, equipment, finances and infrastructural support that will generate a surplus and lead towards gender equality. Additionally, women should have control over the disposition of own labour, to reduce various forms of allocative inefficiencies. Women should be brought forward to have access to other market opportunities.

## **Rights of workers in the light of Islamic teachings**

Bonded Labour in any form is a crime. The remarks of our Holy Prophet about workers are as under.

- These (servants) who work for you are actually your brothers. Allah almighty has only extended your authority over them and subjected them to work under your command(if the situation is that), you should provide the same food which you yourself eat and provide the same clothes which you yourself wear and never overburden them by compelling to do a work beyond their capacity.
- Pay every rightful claimant his dues.
- Always keep prayers in your mind and of the right of the people Who are your dependents.
- Pay the worker his wages before his sweat dries.

It is proved from the above Ahadith that Employer/Owner keep the right of the people who are their dependent and do not cause them inconvenience and pay them their right dues.

## **Issuance of National Identity Cards**

Labour and Human Resource department Government of Punjab has exploited the scheme to make National Identity Cards of brick kiln workers. Those workers who have no National Identity Cards and face any difficulty to get Computerized National Identity Cards (CNIC), then they should contact the concerned DOL along with their complete documents.

## **Legal Aid Service Unit (LASU)**

Legal Aid Service Unit is established at Industrial Relations Institute (IRI) near Chandni Chowk Township Lahore for the legal assistance to those workers who are entangled in male/female bonded labour situation. The basic purpose of LASU is, to give free legal and moral assistance to male/female bonded labourers. LASU is paying full attention to complete the commitment of the Government of Punjab to eliminate the bonded labour. The establishment of LASU is being made under Bonded Labour Fund Government of Pakistan. As the male/female bonded labourer approaches to LASU for the assistance or other problem through, Toll Free Help Line No. 0800-33888 or an application, Law Officer of LASU reaches at the spot along with the concerned DOL and record the statement of the complainant and helps the worker morally as well as legally. LASU plays its role for the eradication of male/female bonded labour at district as well as provincial level.

### **Procedure How to apply**

The male/female Bonded Labourer/ family may apply to LASU to get legal and moral help in the following manner.

You must tell your identity card no. during the call at Toll Free Help No. 0800-33888 or you may send a simple application along with photocopy of NIC to the Secretary Labour or Director Labour Welfare Punjab. You must write your complete address and contact number (if any), so that an enquiry may be conducted at the spot and moral help may be provided to you.

### **Role of the Inspecting Officers in addressing bonded labour<sup>5</sup>**

The most important function of labour inspectors is to ensure compliance with national labour laws. With regard to forced and bonded labour there is often ambiguities as these laws are not implemented like normal labour laws. These ambiguities include:

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<sup>5</sup> Excerpted from “Forced Labour and Human Trafficking A Handbook for Labour Inspectors, International Labour Office, 2008

- Bonded labour is a criminal offence and is primarily investigated by the police, inspecting officers do not see the traditional role of inspector.
- The scope of labour inspection does not clearly cover sectors in which bonded labour practices tend to occur, such as agriculture, domestic work, home based work and informal sectors of economy.
- There may also be a gap between legal provisions and their application in practice. Due to limited number of inspectors and scarce resources, bonded labour is not considered a priority area for the authorities at provincial and district level.
- If labour inspectors do not have access to a computers and means of transportation, they will have difficulties fulfilling their role to combat bonded labour.

The mandate to address bonded labour is divided between the Home Department and Labour Department in Punjab. However the Labour Inspecting officers have certain key powers which can lead to prevention and elimination of bonded labour. These are:

- Regulation of minimum wages
- Power to adjudicate in claims related to wages.
- Regulation of the trade union activities and other aspects of industrial relations
- Regulation of general conditions of work
- Inspection related to occupational safety and health
- Implementation of social security law by the Social Security Institution.

Labour standards, which labour inspectors are supposed to promote and safeguard, are a key instrument to ensure decent work. They are, however, often not applied to actual or likely victims of forced and bonded labour. In addition, victims of bonded labour are usually not organized or part of collective bargaining agreements. They are excluded from social insurance (like social security) and often work without regular employment contract under extremely hazardous and sometimes degrading conditions of work.

Labour inspection officers' three main **operational functions** are also relevant to the three “P”s” in the fight against bonded labour. These are: **P**revention, **P**rosecution and **P**rotection

## **Prevention**

Labour inspectors can put their knowledge and expertise to use in helping resolve problems encountered during on-site inspections or through their contacts with workers' and employers' organisations.

Labour inspectors can also advise on the development of information campaigns and play a key role in the campaigns, such as campaigns against illegal employment. Furthermore, labour inspectors may also provide training and awareness to key stakeholders like member of District Vigilance Committees, employers, NGOs, labour court officials and other government authorities.

## **Prosecution**

Labour Inspection officers can use prosecution as a deterrent and to persuade the delinquent employer to abide by the law. While maximum emphasis should be given to the prevention and protection strategies, where required rigorous enforcement of the laws will help in increase compliance and eliminate bonded labour conditions.

## **Protection**

Labour inspectors can also empower workers through direct contact during on-site inspection by disseminating information. Informing workers, employers and potential forced labour victims about their rights is an important prevention and protection strategy. Labour inspectors can apply a wide range of tools in a discretionary and flexible manner depending on the specific situation that they encounter at a work place. This makes them particularly well placed to respond effectively to often sensitive cases that involve potential victims of bonded labour. . For example, they can offer non-compliant establishments the opportunity to correct themselves by issuing notifications prior to initiating prosecution. They also consult during the process by involving employers, supporting workers and disseminating good practice.

## **Identification and investigation of bonded labour**

There are various obstacles to effective law enforcement. Some relate to the very nature of bonded labour, as it is difficult to identify due to its nature of being hidden from the public eye. It is difficult to reach likely victims who work in an isolated environment, such as private homes, geographically isolated areas like brick kilns in the rural areas and shifting workplaces such as construction sites.

Furthermore, bonded labour often takes place in a situation where likely victims have limited alternatives and may have no choice but to cooperate with the exploiters instead of labour inspectors. The victims may be migrant workers and may not like interaction with an inspector as they are afraid that they are working irregularly. Others may belong to a discriminated group (religious, biradri or caste or gender) that tends to avoid contacts with state authorities in general. Indeed, law enforcement can bring more offenders to justice when it receives support from potential victims empowered to resist exploitation and to seek the involvement of the authorities.

Labour inspectors frequently have no contact with criminal law enforcement, such as police or prosecutors. Hence, many bonded labour related cases may be identified by labour inspectors but not be followed up under criminal law and therefore not be counted as such.

## **Indicators of bonded labour situations**

The ILO Committee of Experts on the Application of Standards has provided guidance in this regard<sup>2</sup> in various occasions. There are six over-arching indicators that are proposed by the ILO. Each of these generic indicators should be linked to a sub-set of questions that are more specific. Some examples are given below:

### **Physical violence, including sexual violence**

- Does the worker have any sign of maltreatment, such as bruises?
- Does the worker show signs of anxiety?

- Is there any other sign of mental confusion or traces of violence?
- Do supervisors/employers demonstrate violent behaviour?

## **Restriction of freedom of movement**

- Is the worker locked up at the workplace?
- Is the worker forced to sleep at the workplace?
- Are there visible signs which indicate that the worker is not free to leave the workplace due for example to barbed wire or the presence of armed guards or other such constraints?
- Is the worker constrained to leave the workplace?

## **Threats**

- Does the worker make statements which are incoherent or show indoctrination by the employer?
- Do the workers report any threat against themselves, their co-workers or family members?
- Is there any sign that the worker is subject to racketeering or blackmailing (with or without the complicity of the employer)?
- Does the worker show anxious behaviour?
- Are workers forced to work excessive (unpaid) overtime or to carry out tasks that they prefer not to do, and are the workers threatened if they refuse?
- Is the worker in an irregular situation (e.g. migrant workers) and threatened with denunciation to the authorities?

## **Debt and other forms of bondage**

- Does the worker have to repay high recruitment or transportation fees? If so, are these deducted from the salary?

- Is the worker forced to pay excessive fees for accommodation, food or working tools that are directly deducted from the salary?
- Has any loan or advance been paid that make it impossible to leave the employer?
- Are work permits bound to a specific employer? Has there been any complaint about the employer before?

## **Withholding of wages or no payment of wages**

- Does the worker have a regular employment contract? If not, how are wages being paid?
- Is there any illegal wage deduction?
- Has the worker received any wage at all?
- What is the amount of the wage in relation to national statutory requirements?
- Do the workers have access to their earnings?
- Have the workers been deceived about the amount of their wages?
- Are wages paid on a regular basis?
- Is the worker paid in-kind?

## **Retention of identity documents**

- Are the identity documents of workers in their own possession?  
If not, are they kept by the employer or supervisor? Why?
- Does the worker have access to the documents at all time?

## **Investigation techniques**

Labour inspectors have at their disposal a wide range of investigation methods that other law enforcement authorities may not have. Most importantly, they usually have the power to enter freely at any time of the day or night any workplace liable to inspection without prior notice.

They can carry out inquiries freely and in particular speak with persons alone, examine documents and take samples. They also have the power to issue orders with a view to remedying defects, and to decide whether it is appropriate to give warning and advice, or to institute or recommend proceedings. These proceedings could ultimately also entail criminal proceedings. Besides, inspectors are required to investigate any complaint concerning labour law violations without revealing the source of the complaint, thus encouraging victims to come forward. Finally, as any other law enforcement authority, labour inspectors can use tact and the power of persuasion to obtain information or achieve compliance. Collaboration with social partners, including union and staff representatives, is a major tool in identifying violation and ensuring compliance.

A major challenge faced by labour inspectors is finding and gaining access to premises where likely victims may be forced to work. This is particularly the case for employment in the informal economy as well as illegal employment in the formal economy. Sometimes, very practical constraints can hinder identification and investigation of forced labour cases. In remote areas, for example, labour inspectors may be limited by the absence of adequate means of transportation. In many countries, only registered establishments of large or medium size are inspected. But these are not the places where bonded labour occurs most often, or indeed at all. Some employers may also hide behind sub-contractors that disappear in the event of any problem or they may obstruct access of labour inspectors. A fine can be imposed for obstructing inspections and investigations. But labour inspectors must strictly respect privacy. They should not enter the private home of the operator except with a letter of consent or with a special authorization issued by the competent authority. Many vulnerable workers, majority of whom are women, who carry out domestic work in private households, are excluded from workplace inspections due to the inviolability of the private home. For these cases, other techniques must be used, such as cooperation with trade unions, community based organizations or NGOs.

Most bonded labour victims are identified either through police raids, with the help of assistance organizations, or by coming forward themselves. When investigating potentially serious cases of labour law infringements, labour inspectors may have no choice but to resort to some form of

force, but it must be ensured that this will then happen only with the support of the police. In principle, however, labour inspectors should act in a no confrontational manner.

The following inspection methods are of key importance:

## **Interviews and direct observation**

Labour inspectors should be empowered to interview, alone or in the presence of witnesses, the employer, the staff or any other person whose evidence could be useful for the purposes of the inspection. Labour inspectors have to exercise their own judgment as to whether they carry out confidential interviews in order to obtain the most reliable information. In most bonded labour situations, workers are intimidated and are afraid to talk freely. In such instances, it could be useful to disseminate information from workers discreetly through help lines or other confidential ways of informing authorities about the situation. Labour inspectors have to be very sensitive about the possible risk of reprisals that workers could face from their employers once labour inspectors leave. During inspection and interviews, labour inspectors can use methods of direct observation to assess a particular situation and to verify statements.

## **Verification of documents**

Various labour laws give the right to inspectors to require access to any book, register, document or electronic information from employers in order to see that they are in conformity with the legal provisions, and make copies or make extracts from them. With regard to bonded labour, labour inspectors should focus on the existence of an employment contract and record of wages and on whether the contract entails any abusive clauses, such as working off debts or otherwise preventing the worker from leaving the employer. In the absence of any contract, interviews with workers should focus on deception, false promises and unfair threats.



## **Mainstreaming gender issue in Labour Inspection**

It is a well established fact that women workers are a major contributor in the economic growth of any country. Their participation in the economic activities is essential for their own self reliance and the well-being of their families. Today the rate of participation of women in the formal sector of labour market is very low in Pakistan. Women's employment is integral to gender equality, poverty eradication and sustainable development. A society cannot progress economically, politically or socially without participation of women. We are wasting enormous human resource potential by not making women a partner in the economic progress of the country. There are cultural and historical obstacles which will have to overcome in order to emancipate the women. The traditions of our society still reflect the life in old rural society, where work by women was frowned upon and still their work is not recognized. They rarely get paid for their toils.

We must acknowledge that the present indicators of women's empowerment in Pakistan are not very encouraging. In the Human Development Report of 2005 Pakistan stands 107/140 in the Gender-related Development Index. On the Gender Empowerment Measure ranking, Pakistan is placed at 71/80, and on the Female Economic Activity Index Pakistan ranked 129/177. Women's literacy rates are low (45%), maternal mortality rates are high (350 per 100,000 live births nationally Women's reported share of national income is less than 20% The official unemployment rate for women (17.3%) is nearly three times that for men (6.1%)

The low participation rate of women in the formal labour force in Pakistan does not mean that they are excluded from work. In fact large number of women work at their homes, family businesses, informal sector and in the agricultural farms. Lack of education and common gender stereotypes prevailing in our male dominated society have consigned women to less desirable jobs. Lot of work done by women is hidden and un-recognized.

The globalisation of world trade has brought feminisation of the workforce in Pakistan, as the industries which have seen expansion in the recent years like garment manufacturing sectors employ large number of women workers. This has brought about a positive trend in the workplace in the shape of better remuneration and increased recognition of the contribution of women workers in the development of national economy.

## **Role of Labour Inspectors in addressing gender Concerns**

Labour inspectors supervise the compliance with all legal provisions for the protection of workers. This is done by regular inspections of workplaces in industry and commerce. . This service should cooperate with employers' and workers' organizations and should be composed of sufficient qualified staff, including an adequate proportion of women.

Labour inspectors must have the power to enter freely any workplace at any time, interview employers and workers, examine documentation and take samples, order the modification of existing defects or the stoppage of machines or work, and give warnings and advice on proceedings.

The labour inspection service should play an important role in preventing and eliminating discriminatory practices in the workplace. Specifically, it should be ensured that:

- labour inspectors be provided access to the workplace and be freely able to maintain communication with management, as well as with employees of both sexes, if necessary also in the absence of management representatives;
- labour inspectors address workers' education programmes and training courses on all aspects of their duties, and particularly those which involve the elimination of discrimination and the promotion of equal employment opportunities;
- workers be encouraged to contact the labour inspection service for information and explanations on labour law, when problems arise concerning discriminatory practices in employment;
- labour inspectors be informed and trained on all aspects of policies and procedures concerning equal employment opportunities and non-discriminatory treatment, including sexual harassment;

- labour inspectors be recruited from both sexes, be aware of the importance of promoting equality and understand how this relates to their work; if necessary, women inspectors should be in charge of special women's issues;
- records of discriminatory practices in the workplace and measures or notices of redress be included in labour inspection reports.

## **Making work safer for women workers through inspection**

<sup>6</sup>While the job provides both income and personal satisfaction, it may also pose hazards and risks to health and safety. The ILO estimates that each year about 2.3 million men and women die from work-related accidents and diseases, including close to 360,000 fatal accidents and an estimated 1.95 million fatal work-related diseases.<sup>1</sup> Hazardous substances cause an estimated 651,000 deaths, mostly in the developing world. These numbers may be greatly underestimated due to the inadequate reporting and notification systems in many countries.

The risks to men workers are better known given that occupational safety and health considerations had previously focused on dangerous jobs, in sectors dominated by male workers. Today, however, women represent over 40 percent of the global workforce, or 1.2 billion out of the global total of 3 billion workers. This increasing proportion of women in the workforce has led to a range of gender-related questions about the different effects of work-related risks on men and women, in terms of exposure to hazardous substances, or the impact of biological agents on reproductive health, the physical demands of heavy work, the ergonomic design of workplaces and the length of the working day, especially when domestic duties also have to be taken into account. Moreover, occupational safety and health (OSH) hazards affecting women workers have been traditionally under-estimated because OSH standards and exposure limits to hazardous substances are based on male populations and laboratory tests.

More men than women work in jobs that expose them to accidents; they are more likely to be involved in fatal accidents and other work-related deaths.<sup>7</sup> Men also tend to be more exposed to hazards caused by substances that are carcinogenic or may cause circulatory and respiratory

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<sup>6</sup> Extract from "Providing Safe and Health Workplaces for both Women and Men, ILO Geneva.

disease. Researchers have also noted that men tend to adopt less preventive and protective ways of carrying out work than women.

Numerous male dominated sectors of industry have specific OSH considerations. For example, forestry, the iron, steel and non-ferrous metals industries, the transport sector (road, maritime and aviation), each have their own sets of hazards and OSH specificities. Three hazardous sectors are featured below:

According to ILO estimates, some 170,000 agricultural workers are killed every year. Mortality rates have remained consistently high over the past decade.<sup>8</sup> While agriculture employs both women and men, machines, tractors and harvesters account for the highest rates of injury and death, usually involving more men.

1Construction work is one of the most dangerous occupations, and yet the causes of accidents are well known and the vast majority are preventable. While the global number of accidents and diseases in the construction industry is difficult to quantify due to the high proportion of temporary workers, the ILO estimates there were some 60,000 work related fatalities in this industry during 2003. Data from a number of industrialized countries show that construction workers are three to four times more likely than other workers to die from accidents at work. Many more suffer from occupational diseases arising from prolonged exposure to dangerous substances, such as asbestos. In the developing countries, the risks associated with construction work are even higher. Available data suggests that the risk of accidents is three to six times greater than in developed countries where many precautionary measures are mandatory and enterprise liability in case of accidents is higher.

## **OSH hazards faced by women**

OSH concerns for women are very much associated with their dual reproductive and economic role. Traditionally women and men have assumed different responsibilities in the home sphere. With more women entering the labour force, they may carry out paid work and continue with their unpaid work of caring for the family and doing household chores. Adding these two

together, many women work longer hours than men.<sup>12</sup> Specific hazards and risks women face are associated with the working conditions of the economic sectors in which they are active.

In agriculture the share of women is globally 35.4 per cent of the workforce; in Sub-Saharan Africa and South Asia the agricultural sector makes up more than 60 per cent of all female employment.<sup>13</sup> Women in agriculture, whether in subsistence farming, self-employed, working as unpaid family members or as wage earners have a high incidence of injuries and diseases. Exposure to pesticides and mixing or applying harmful other agro-chemicals constitutes one of the principal occupational risks, with poisoning leading to illness or death. Other hazards are inherent in animal handling, and contact with dangerous plants and biological agents which give rise to allergies, respiratory disorders, infections and parasitic diseases. Noise-induced hearing loss, musculoskeletal disorders, such as repetitive stress injuries and back pain, as well as stress and psychological disorders are also frequent. The situation is particularly evident for women in developing countries where education and training on safety systems (including the use of personal protective equipment) and risk assessment are inadequate to prevent injury and illness. Some women are concentrated as unskilled workers in greenhouses where they risk greater exposure to pesticides and other hazardous chemicals. For pregnant women, such exposure can carry long-term health implications on themselves and their unborn babies. This situation is compounded with an insufficient access to health services in rural areas, so accidents may lead to permanent conditions.

In manufacturing, women factory workers in export-processing zones (where they are the majority) endure long hours at non-ergonomic work-stations and may often work with machinery without basic protection. Industrial machinery is generally designed for men and is often awkward and tiring for women (and small men) to operate. In microelectronics, another industry where women predominate, they are exposed to chemicals that can have carcinogenic effects.<sup>23</sup> In services and in office jobs – representing 46.3 per cent of female employment in 2008 - different psychological and physical stressors and ergonomic hazards can lead to occupational health problems and add to the workload, cause job dissatisfaction and affect health and productivity. In health services, workers are exposed to infections, violence, musculoskeletal injuries and burnout.

In general, women are more exposed than men to psychosocial risks at work. More women than men face discrimination and sexual harassment at the workplace, especially if they enter occupations that are traditionally dominated by men. A young woman with a precarious job in the hotel industry, for instance, is much more likely to be exposed to the risk of sexual harassment than a mature male office worker with a permanent job.

## **Violence at Work**

Sex-based violence at work is a very complex issue, rooted in gendered power relations in the society, the economy, the labour market, the employment relationship and organizational culture. Violence at work, including bullying and mobbing, is on the rise worldwide. Young males in many societies are reported to be disproportionately affected by physical violence, as they are often the main perpetrators and victims of violence at the same time. As women - especially young women - increasingly enter the workforce and move beyond the home, increased attention must be paid to workplace violence in order to preserve their freedom, equity, security and human dignity. There is a close connection between violence at work and precarious work, gender, youth, and certain high-risk occupational sectors.

Professions once regarded as sheltered from workplace violence such as teaching, social services, and health care are becoming increasingly exposed to acts of violence in both developed and developing countries. Women are at high risk of violent behaviour in the workplace precisely because they are concentrated in many of these occupations. Violence in the retail sector is increasing in some countries, and represents a high proportion of incidents. Domestic workers are also frequently and disproportionately affected by violence. Workplace actions to combat gender-based violence may include: regulations and disciplinary measures; policy interventions against violence; disseminating information about positive examples of innovative legislation, guidance and practice; workplace designs that may reduce risks; collective agreements; awareness raising and training for managers, workers and government officials dealing with or exposed to violence at work; designing and putting in place procedures to improve the reporting of violent incidents in conditions of safety and confidentiality.

# Understanding Gender issues at workplace

As an inspector charges with ensuring compliance with law, it is important to be familiar with the issues and concerns related to gender at the workplaces and one should be familiar with strategies to improve the gender concerns at the workplaces. Below is given a concise description of key terms and principles used in addressing concerns of women workers and to achieve gender equality at workplaces.<sup>7</sup>.

### **Cash and medical benefits for maternity**

The Maternity Protection Convention (No. 103) of 1952 provides that, while a woman is away from work on maternity leave, she is entitled to cash benefits sufficient to pay for the full and healthy maintenance of herself and the child at a suitable standard of living. She is also entitled to medical benefits, including pre-natal, confinement and post-natal care, as well as hospital care when necessary. It should be possible for her to choose a doctor freely, and also to choose between a public and a private hospital.

Cash benefits are to be provided either by means of compulsory social insurance or from public funds. When cash benefits are provided through compulsory social insurance schemes and are based on earnings, they should be not less than two-thirds of the woman's previous earnings taken into account for computing benefits. The employer should not be individually liable for the cost of these benefits.

### **Childcare and family services and facilities**

All workers, irrespective of their sex, should have the possibility of combining paid employment with their responsibilities for children and other family members. Sufficient childcare and family services and facilities should be provided so that workers with family responsibilities can exercise their right to free choice of employment. These services and facilities should be flexible

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<sup>7</sup> Based on "ABC of women workers' rights and gender equality", International Labour Office, Geneva

enough to meet the particular needs of children of different ages and of other family members requiring care. The use of such services and facilities should either be free of charge or set at a reasonable level in accordance with workers' ability to pay.

## **Child labour**

The general criteria for determining child labour are the age of the child and the nature of the work. An overriding principle is that work should not interfere with the education and the fullest mental and physical development of the child. Age is a crucial factor because, up to a certain age, the primary occupation of children should be obtaining an education and engaging in other activities appropriate for their healthy development, including play. In addition, children are affected by work differently and more intensely than adults — and the younger the child the greater the vulnerability. The hazardous nature of work and the conditions under which it is carried out are also important criteria.

Child labour is an issue directly affecting the rights of women — who as mothers and family carers have to deal with and compensate for the consequences of such abuse. It is a human resources development problem which deprives women and men of jobs they might perform far more satisfactorily than children and prevents future adult women and men from acquiring skills and exercising rights at work. It thus also prevents the development of equitable employment policies and programmes.

## **Collective bargaining**

In most countries, collective bargaining is a key means of negotiating terms and conditions of employment and can thus be an important means of promoting equality for men and women in employment.

While collective agreements are intended to represent the needs and interests of all workers, issues of particular interest or concern to women have often been overlooked or treated as “marginal”. There is therefore a need for specific consideration of gender issues in collective bargaining, particularly with respect to unequal pay, and women's access to promotion and vocational training. Not only do gender issues need to be addressed in collective bargaining, but traditional bargaining items should be reassessed from a gender perspective.

Some issues may be of more concern to women because of their reproductive role, or their ascribed role in regard to family and household care or because of past discrimination. At the same time, these issues are not limited to women. Men also need certain types of protection in regard to their reproductive function. Measures are also necessary to give both men and women the opportunity to share more family responsibilities (e.g. parental leave, flexible working hours and greater access to part-time work).

Gender issues are not sufficiently dealt with in collective bargaining because women are under-represented in trade union decision-making structures and negotiating teams. The reasons for this may include the double burden borne by women, which does not leave them enough time to participate in trade union affairs, lack of confidence, assertiveness and training, or the fact that the union is male dominated and insensitive to their needs. There is a need to emphasize women workers' representation in bargaining structures.

## **Conditions and benefits of employment**

All conditions and benefits of employment, including remuneration, should be made available on equal terms to all employees, irrespective of their sex. It should specifically be ensured that:

- terms, benefits and conditions which are available to some workers in a particular classification are allocated to all workers in the same or similar classification;
- eligibility for and participation in retirement and pension schemes are allocated on an equal basis; and
- working conditions and workstations are provided on an equitable basis.

All employees should be equally informed of the availability of employee benefits and schemes through means such as employee notices, bulletins or announcements.

## **Disabled persons**

Persons with disabilities are individuals whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment. These persons should have access to suitable employment (including vocational

guidance and training) and social integration, in conditions of full participation and equality.

Women with disabilities suffer from a double disadvantage, as they often find themselves discriminated against both because they are women and because they are disabled.

Equality of opportunity and treatment for male and female workers with disabilities should be respected and promoted. Special positive measures aimed at ensuring effective equality of opportunity and treatment for workers with disabilities should not be regarded as discriminatory against other workers.

## **Discrimination**

Discrimination is defined in the Discrimination (Employment and Occupation) Convention (No. 111), of 1958, as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which nullifies or impairs equality of opportunity or treatment in employment or occupation. Protection against acts of anti-union discrimination is provided for in the Right to Organise and Collective Bargaining Convention (No. 98), of 1949.

In most countries, discrimination based on sex is prohibited by law. In practice, however, women in both developing and industrialized countries continue to encounter discrimination in one form or another in their working lives.

Other grounds upon which discrimination is prohibited may be included in a country's laws or regulations. In some countries, for example, discrimination in employment is also prohibited on the basis of physical or mental disability, age, marital status, maternity, sexual orientation, material well-being or being HIV positive.

Discrimination may be direct or indirect. Direct sex discrimination exists when unequal treatment between women and men stems directly from laws, rules or practices making an explicit difference between women and men (e.g. laws which do not allow women to sign contracts). Indirect discrimination means rules and practices which appear gender neutral but in practice lead to disadvantages primarily suffered by persons of one sex. Requirements which are irrelevant for the job in question and which typically only men can meet, such as certain height and weight levels, constitute indirect discrimination. The intention to discriminate is not required.

Discrimination may be de jure, meaning the existence of discrimination in law, or de facto, meaning in reality or in practice. A labour code regulation providing that women shall receive less pay than men would be regarded as de jure discrimination, whereas the actual practice of paying women less would be de facto discrimination.

While cases of direct and de jure sex discrimination have declined, indirect and de facto discrimination continue to exist or have emerged. To identify discrimination based on sex, it is therefore advisable to look not only at an intent or purpose reflected in rules or action, but also at the actual effect generated.

Employment practices are not considered to be discriminatory when based on the actual and real needs of a job, if they are meant to promote equality by affirmative action or to protect women on special grounds such as maternity. When discriminatory practices exist in the workplace, women and their representatives should be able to call for the intervention of the public labour inspection service or make a claim with the designated competent authority or court.

## **Domestic workers**

Domestic work is the housework undertaken by a person who is not a member of the family, to facilitate the running of domestic life and personal needs. The majority of domestic workers are female and increasingly migrant women. Workers assigned to the cleaning of public and private buildings are not included in this group.

Domestic work can be done full time (on either a residential or a non-residential basis), part time or per hour. In principle, pay and social benefits such as pension contributions, maternity and sick leave, weekly rest and paid holidays have to be granted in accordance with national law. The remuneration must be proportional to the quantity and quality of work, and can be paid monthly, weekly or daily; pay for migrant workers must be the same as for local workers.

A few ILO Conventions contain clauses that explicitly include or exclude domestic workers from their scope, but no Convention deals specifically with domestic workers. In general, ILO standards that are applicable to other categories of workers also apply to domestic workers. This is valid in particular for their rights to equal opportunity and treatment, to collective bargaining and to organize, to sickness insurance and minimum age. Other Conventions contain flexibility clauses allowing the ratifying countries to exclude particular categories of workers or

establishments; this applies, for instance, to domestic workers' unemployment provision, maternity protection and restrictions concerning the night work of young people.

Domestic workers generally face the following problems: long hours of work; heavy workload; low salaries; exclusion from health schemes and cash benefits or protection against dismissal in case of maternity; lack of control by the labour authorities with respect to labour inspection and law enforcement; a weak collective bargaining position; and a high level of control by the employer. Resident domestic workers face additional problems of isolation, difficulty in organizing, a regimented lifestyle, poor living quarters, insufficient food, and lack of privacy. Violence at work, either physical or psychological, is also a common work hazard with which domestic workers are confronted.

## **Employment injury benefit**

All workers should be insured in case of an accident or disease resulting from employment; the contingencies covered by the employment injury benefit system are:

- medical care to maintain, restore or improve the ability to work;
- incapacity for work involving suspension of earnings;
- total or partial permanent loss of earning capacity;
- loss of support suffered by dependants resulting from death.

In the case of incapacity for work, total loss of earning capacity or the death of the breadwinner, the benefit should be a periodical payment. The benefit may be conditional on the incapacity for self-support on the part of a widow.

## **Equality of opportunity and treatment in employment**

Two aspects of equality in employment are important: opportunity and treatment. Equal opportunity means having an equal chance to apply for a particular job, to be employed, to attend educational or training courses, to be eligible to attain certain qualifications, and to be considered as a worker or for a promotion in all occupations or positions, including those dominated by one sex or the other. Equal treatment refers to entitlements in pay, working conditions, security of

employment, and so on.

The promotion of equality requires dynamic continuous efforts and the implementation of concrete measures, and is a step beyond the prohibition or elimination of discrimination.

## **Equal remuneration (pay)**

The principle of equal pay for work of equal value means that rates and types of remuneration should be based not on an employee's sex but on an objective evaluation of the work performed. This is a fundamental women workers' right, widely acknowledged and implemented in national legal systems. Statistics and research indicate, however, a persisting pay differential between the sexes which has only slightly decreased in recent years. On average worldwide, women's income per hour is about 75 per cent of men's.

There are several major reasons for these differences in earnings. Jobs done by the majority of women are classified at lower levels. Differences arise in skills and qualifications, seniority, and sectors of employment. Women are highly concentrated in "flexible" work such as part-time, piece-rate or temporary work, which are poorly paid. Women work fewer overtime hours than men. Finally, discrimination with respect to pay, access to and promotion in employment is presumed to be an important factor in the gender pay gap.

The principle of equal pay for work of equal value can be implemented by some practical measures:

- Job classification systems and pay structures should be based on objective criteria, irrespective of the sex of the people who perform the job.
- Any reference to a particular sex should be eliminated in all remuneration criteria, and in collective agreements, pay and bonus systems, salary schedules, benefit schemes, medical coverage and other fringe benefits.
- Any remuneration system or structure which has the effect of grouping members of a particular sex in a specific job classification and salary level should be reviewed and adjusted to ensure that other workers are not performing work of equal value in a different job classification and salary level.

Programmes and other measures should be adopted in the workplace to implement the principle of equal remuneration. It should specifically be ensured that:

- corrective measures are developed and applied whenever a situation of unequal remuneration is discovered;
- special training programmes are organized to inform staff, particularly supervisors and managers, of the need to pay employees on the basis of the value of the work and not of who is performing the work; and
- separate negotiations on equal remuneration ought to be conducted between management, employees' representatives and the women workers affected by the existing unequal job classification or pay structure of a particular workplace.

Part-time and hourly employees should be compensated in all types of remuneration on an equal basis with full-time employees, proportional to the number of hours they work.

## **Facilities and equipment**

All welfare facilities at the workplace such as health, catering services and rest-rooms, and equipment such as office supplies and work-related tools, should be freely available to employees on an equal basis. Facilities and equipment should, to the extent possible, accommodate the needs of all workers, including women, disabled persons, and members of particular religious and cultural groups. Information should be disseminated to all employees on an equal basis on the availability of these facilities and equipment.

## **Freedom of association and the right to organize**

Freedom of association and the right to organize are fundamental principles, aiming at freely exercised rights of workers and employers, without any distinction, to organize for the purpose of furthering and defending their interests.

Workers and employers have the right to establish and join organizations of their own choosing. Such organizations must have the right:

- to draw up their own constitutions and rules;

- to elect their representatives in full freedom;
- to organize their administration and activities, and formulate their programmes;
- not to be dissolved or suspended by administrative authority;
- to form and join federations and confederations.

Workers should be protected from anti-union discrimination. In particular, they should be protected against refusal to employ them because of union membership or participation in trade union activities.

Workers' and employers' organizations should enjoy protection against acts of interference by each other that are designed to promote domination, financing or control. Measures appropriate to national conditions should be taken to encourage and promote the development and utilization of voluntary collective bargaining as a means of regulating terms and conditions of employment. Throughout the years, many trade unions have been instrumental in supporting and defending the rights of women workers. It is of major importance for the promotion of gender equality that trade unions actively organize women workers and adequately defend their interests through collective bargaining.

## **Gender**

“Gender” refers to the social differences and relations between men and women which are learned, vary widely among societies and cultures, and change over time. The term “gender” does not replace the term “sex”, which refers exclusively to biological differences between men and women. For example, statistical data are broken down by sex. The term “gender” is used to analyse the roles, responsibilities, constraints, opportunities and needs of women and men in all areas and in any given social context.

Gender roles are learned behaviours in a given society, community or other social group. They condition which activities, tasks and responsibilities are perceived as male and female. Gender roles are affected by age, class, race, ethnicity and religion, and by the geographical, economic and political environment.

Changes in gender roles often occur in response to changing economic, natural or political circumstances, including development efforts or structural adjustment, or other nationally or internationally based forces. The gender roles within a given social context may be flexible or rigid, similar or different, and complementary or conflicting. Both women and men are involved in reproductive, productive and community management activities and play roles within social and political groups. Their involvement in each activity reflects the gender division of labour in a particular place at a particular time. The gender division of labour must be reflected in gender analysis.

## **Gender analysis**

Gender analysis is a tool to diagnose the differences between women and men regarding their specific activities, conditions, needs, access to and control over resources, and access to development benefits and decision-making. It studies the linkages of these and other factors in the larger social, economic, political and environmental context.

Gender analysis entails, first and foremost, collecting sex-disaggregated data and gender-sensitive information about the population concerned. Gender analysis is the first step in gender-sensitive planning for promoting gender equality.

## **Gender equality**

Gender equality, or equality between men and women, entails the concept that all human beings, both men and women, are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male or female.

## **Gender equity**

Gender equity means fairness of treatment for women and men, according to their respective needs. This may include equal treatment or treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.

## **Gender gap**

The gender gap is the difference in any area between women and men in terms of their levels of participation, access to resources, rights, power and influence, remuneration or benefits. Of particular relevance related to women's work is the "gender pay gap", describing the difference between the average earnings of men and women.

## **Gender mainstreaming**

Although developed earlier, the concept of gender mainstreaming was clearly established in 1995, at the Fourth World Conference on Women held in Beijing, as the main global strategy for promoting gender equality. Gender mainstreaming means introducing a gender perspective in the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes in any area and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.

Gender mainstreaming is not a goal in itself, but a means to achieve gender equality. Gender mainstreaming and special interventions to promote equality between women and men are complementary to each other. Special interventions for gender equality can target either women alone, both women and men, or men alone. There is no conflict between the two strategies; on the contrary, targeted interventions are seen as essential for mainstreaming.

Using a mainstreaming strategy based on gender analysis implies, in particular:

- awareness-raising and capacity-building activities;
- taking into account, at the planning, implementation, monitoring and evaluation stages, the effects of policies and programmes on women and men;
- adequate allocation of human and financial resources;
- active participation of both women and men in decision-making in all areas and at all levels.

Mainstreaming gender in the world of work is a means of integrating equality concerns across the board into all policy objectives and all activities in order to promote equality of all workers, irrespective of sex. Main areas of concern are the following:

- promoting and realizing fundamental principles and rights at work to ensure that the principle of non-discrimination is fully applied de jure and de facto;
- creating greater opportunities for women and men to secure decent employment and income, thus achieving the goals of decent living standards, social and economic integration, personal fulfilment and social development;
- enhancing the coverage and effectiveness of social protection for all in order to improve the socio-economic security of all people, including measures to safeguard working conditions and safety and health, and to extend social protection; and
- strengthening tripartism and social dialogue to ensure women's and men's equal participation so that their interests and concerns are adequately reflected in policy-making.

## **Girl child labourers**

Child labour includes all forms of employment or work done by children under a given age, but work which is detrimental to a child's health, welfare and development is particularly harmful. All children engaged in child labour are the subject of concern. However, girls deserve particular attention as discrimination against them frequently results in their being especially vulnerable to exploitation and abuse, as well as the denial of their rights. Girls are more likely:

- to start working at an earlier age;
- to be paid less for the same type of work;
- to be concentrated in sectors and areas characterized by low pay and long hours;

- to be working in sectors which are hidden and unregulated, making them more vulnerable to exploitation and abuse;
- to be working in sectors which pose excessive dangers to their health, safety and welfare;
- to be subject to sexual, physical and emotional abuse;
- to be excluded from education;
- to be responsible for housework; and
- to suffer the triple burden of housework, school work and economic work.

## **Glass ceiling**

The phrase “glass ceiling” is used to describe the invisible barrier arising from a complex set of structures in male-dominated organizations which prevents women from obtaining top positions in management and administration. This phenomenon prevails almost everywhere despite women’s increased level of qualifications and work performance. It has been demonstrated by research and statistics and is, at least partly, a result of persistent discrimination against women at work. Among other socio-economic reasons, the following were identified:

- The nature of women’s typical career paths blocks their progress to top positions. Women are primarily placed in non-strategic sectors and in personnel and administrative positions rather than in posts leading to the top.
- Women have less access to training and are cut off from formal and informal networks that are essential for advancement within enterprises.
- Women workers still tend more than men to bear the main burden of family responsibilities, as well as paid and unpaid work; this double burden hampers their upward movement.

The following strategies may help in promoting women to top positions:

- improving legal frameworks to eliminate sex discrimination;
- enhancing awareness of obligations and rights, including on gender equality;
- affirmative action, mentoring and monitoring for women;
- more flexible and reduced working hours, as well as adequate childcare and elder-care facilities, to enable both parents to better combine family and career;
- better access of women to business skills training and entrepreneurship development to help them run their own businesses;

- improving women's access to training, in particular in technical and management fields;
- reviewing human resource development practices to recognize the potential value of non-conventional career paths and to facilitate women's access to managerial positions;
- placing more women in strategic sectors and positions that provide them with good career prospects;
- sensitizing policy makers and employers to gender issues so that they contribute to creating a socio-cultural environment which effectively brings about equality of opportunity and treatment within and outside the enterprise;
- recognizing that investing in women makes good economic sense.

## **Globalization**

The impact of globalization and employment restructuring has had important consequences for gender- and equality-related policies worldwide. Investors and multinational companies have enjoyed much greater freedom to move capital from one country to another, thereby creating jobs in lower labour cost countries and destroying jobs in those with more expensive labour.

Women are often the first to feel both the positive and negative effects because international capital tends to be invested in more labour-intensive production, which tends to be female dominated owing to lower wages of women workers in these sectors. In the process of globalization, female participation in paid employment has considerably increased. This, however, has not led to equal benefit from their integration into the labour market, which remains highly gender segregated.

Many countries have responded to this economic process with legislative and administrative changes, in order to liberalize national labour standards and working conditions, and to make them more flexible. There is growing concern, expressed particularly in the international debate, that economic globalization must have "a human face", and be accompanied by a set of minimum standards in the social field. The tendency to level down social and labour standards in the process of globalization needs to be tackled. Political, business and trade union leaders must accept their shared responsibility and pay attention to international labour standards, thus contributing to improving working conditions for both women and men.

## **Harassment and pressure**

There should be no emotional abuse, persecution or victimization at work. No employee — female or male — should be subjected to harassment or pressure in any term or condition of employment. In particular, there should be no sexual harassment. Work assignments should be distributed equally and based on objective criteria. The job performances of all employees should be evaluated objectively. Employees should not encounter obstacles in the performance of their job functions and should not be required to perform additional work duties or assignments on the basis of their sex. Victims of harassment and pressure should be protected from retaliatory or disciplinary action by adequate preventive measures and means of redress.

Harassment and pressure at the workplace can take the shape of various offensive behaviours. It is characterized by persistently negative attacks of a physical or psychological nature on an individual or group of employees, which are typically unpredictable, irrational and unfair.

There is growing awareness that harassment and pressure at the workplace is not merely an individual human problem but rooted in a wider social, economic, organizational and cultural context. As research indicates, the effects of harassment are also a costly burden for the worker, the enterprise and the community, and should be addressed by adequate measures.

## **Home work**

Home work is work performed for remuneration, carried out at home or in other premises of the worker's choice, and resulting in a product or service specified by the employer. The difference between a dependent homeworker and an independent worker is determined by their degree of autonomy and economic independence.

In the area of home work, national policies should be designed, implemented and periodically reviewed to promote, as far as possible, equality of treatment between homeworkers and other wage earners and to improve the homeworker's situation, particularly with regard to:

- freedom of association;
- protection against discrimination;
- equal remuneration for work of equal value;
- statutory social security protection;
- occupational safety and health;
- minimum age and maternity protection;
- access to training.

Due to its hidden character and varied manifestations, home work may be difficult to identify and to include in labour statistics. Studies indicate, however, that the large majority of homeworkers are women and particularly women with young children (about 90 per cent of the worldwide average). Women with disabilities are also disproportionately represented. This female-dominated form of work is characterized by long working hours and poor remuneration, limited access to social security, welfare and similar benefits, safety and health problems, isolation and, in consequence, difficulties in organizing and bargaining effectively.

## **Hygiene in the workplace**

The following rules concerning hygiene in the workplace should be observed and enforced in all commercial and administrative (public and private) workplaces:

- Workplaces and their equipment should be properly maintained and kept clean.
- The lighting should preferably be natural, and artificial light should be appropriately distributed.
- The temperature should be maintained at appropriate levels, and natural or artificial ventilation should be available at all workplaces.
- Sanitary conveniences should be sufficient, suitable and properly maintained. Washing facilities should be provided for workers' use. Separate conveniences and facilities should be provided for men and women except in establishments with no more than five persons or when only the employer's family is employed.
- Rooms should be provided where alternative facilities are not available for temporary rest

during working hours, in particular to meet the needs of women workers.

- Workers should be protected by appropriate measures against substances, processes and techniques which are unhealthy, toxic or harmful.

## **Informal sector**

There is no universally accepted definition of the informal sector. Normally, this term is used to describe economic units which are operating totally or partially outside the formal, institutionalized economic structure. The following characteristics are frequently found: family ownership; small scale of operation; labour-intensive and adapted technology; and reliance on indigenous resources. Informal work may cover a range of diverse situations including own-account small businesses, family enterprises, retail trading, street vending, home work and certain forms of subcontracting.

There is evidence that profound changes are taking place in the processes which give rise to informal activities, and in the way they operate and fit into national economies. It is no longer true that goods and services in the informal sector are produced only for local consumption in low-income households. Links with formal-sector enterprises and with international markets, through subcontracting arrangements, have clearly increased.

Women are disproportionately and to a growing extent represented in the informal sector. Such work is an essential source of employment and income for many women workers who face occupational segregation, unemployment and underemployment, and for their families. They are mainly engaged in subsistence labour and informal activities linked to the new tradable sectors. Although they usually bear the costs of setting up their informal activity, they do not always control the benefits, which may be appropriated by male relatives.

In general, work in the informal sector is far less secure and more poorly paid than work in the formal sector. Workers in the informal sector are outside the realm of conventional social protection schemes. Limited access to resources, information, products, markets, credit, infrastructure, training facilities, technical expertise and improved technologies poses a serious problem for improving the productivity of and return on informal sector labour. An appropriate

strategy for upgrading the informal sector should therefore cover:

- improving productivity, and employment- and income-generating capacity, through access to credit, technology, and training;
- establishing a regulatory framework, including appropriate forms of social protection;
- encouraging the organization of informal sector workers; and
- improving welfare systems for the poorest groups;
- addressing the problem of guaranteeing fundamental rights for all workers, including equality issues.

## **Invalidity benefit**

Workers should be protected in the case of inability to engage in any gainful activity that is likely to be permanent or that persists after the exhaustion of sickness benefits. The benefit should be a periodic payment guaranteed to protect a person who has completed a qualifying period of contribution or employment. A reduced payment may be paid in other cases.

## **Labour administration**

Labour administration is the institutional framework within which national labour policy is developed, implemented, coordinated, checked and reviewed. National labour policy covers the following fields: employment and vocational training; labour protection; industrial relations; research; and labour market information.

An effective system of labour administration implies:

- a coordinated system of competent bodies;
- an institutional structure integrating the active participation of men and women workers, and employers and their respective organizations;
- separate structures responsible for service delivery and the management of planning, monitoring and evaluation;

- adequate human, financial and material resources;
- effective services in the fields covered (inspection, employment, vocational training, labour market information).

The principal functions of labour administration are to provide for the protection of workers through the preparation, development, adoption, application and review of labour standards, including relevant laws and regulations to promote equality and social justice in the world of work. In this respect labour administration:

- is instrumental in drafting and reviewing national labour standards;
- offers its services to workers, employers and their respective organizations with a view to adopting new labour standards through collective bargaining, smoothing out difficulties which may arise during negotiations, and reducing the risk of labour disputes;
- implements and coordinates the preparation and application of standards on working conditions, terms of employment and occupational safety and health by involving the social partners;
- checks the effective application of labour standards through labour inspection.

Despite a constant increase of women's participation in paid employment, women continue to experience greater difficulties than men in gaining access to decent work, and obtaining equal treatment in terms of remuneration and promotion. Certain categories of women such as those with disabilities, migrants, and those in the rural and urban informal sectors are particularly discriminated against, and lack basic resources and social protection. The labour administration system should play a vital role in preventing discrimination, making all actors aware of the concept of gender equality, and creating an enabling environment for promoting gender equality.

## **Labour inspection**

Labour inspection is a public service to supervise compliance with all legal provisions for the protection of workers. This is done by regular inspections of workplaces in industry, commerce and agriculture, and in many countries in non-commercial services, by providing advice and information to employers and workers. This service should cooperate with employers' and workers' organizations and should be composed of sufficient qualified staff, including an adequate proportion of women.

Labour inspectors must have the power to enter freely any workplace at any time, interview employers and workers, examine documentation and take samples, order the modification of existing defects or the stoppage of machines or work, and give warnings and advice on proceedings.

The labour inspection service should play an important role in preventing and eliminating discriminatory practices in the workplace. Specifically, it should be ensured that:

- labour inspectors be provided access to the workplace and be freely able to maintain communication with management, as well as with employees of both sexes, if necessary also in the absence of management representatives;
- labour inspectors address workers' education programmes and training courses on all aspects of their duties, and particularly those which involve the elimination of discrimination and the promotion of equal employment opportunities;
- workers be encouraged to contact the labour inspection service for information and explanations on labour law, when problems arise concerning discriminatory practices in employment;
- labour inspectors be informed and trained on all aspects of policies and procedures concerning equal employment opportunities and non-discriminatory treatment, including sexual harassment;
- labour inspectors be recruited from both sexes, be aware of the importance of promoting equality and understand how this relates to their work; if necessary, women inspectors should be in charge of special women's issues;
- records of discriminatory practices in the workplace and measures or notices of redress be included in labour inspection reports.

## **Maternity leave**

Maternity leave is the leave from work to which a woman is entitled for a continuous period before and after giving birth. The Maternity Protection Convention (No. 103) of 1952 provides that women working in industrial enterprises and in non-industrial and agricultural occupations, including wage earners working at home, should be granted a minimum of 12 weeks' leave, at

least six of which must be taken after the child is born.

This period of leave is to be extended by any period between the expected and actual dates of the birth, if the actual date is later than expected, as well as in the case of illness resulting from pregnancy or childbirth. Where the woman's health makes it necessary and where this is practicable, Recommendation No. 95 provides that the maternity leave should be extended to 14 weeks. If a medical certificate is produced, this period may be extended still further. In practice, collective bargaining agreements between unions and employers often increase the leave entitlement.

In many countries, a minimum length of service with the same employer and advance notice for taking maternity leave are required. In some countries, leave entitlement may depend on the number of children already in the family, the frequency of births, or both.

Convention No. 103 provides that, while a woman is absent from work on maternity leave, it shall be unlawful to dismiss her. A considerable number of countries have extended the protection against dismissal to a certain period following the employee's return to work after maternity leave.

Most countries provide cash benefits to replace partially the income lost during maternity leave. Without these benefits, many women could not afford to take maternity leave, or might be forced to return to work before their health allowed.

In order to promote gender equality and to adapt to the needs of working families, a considerable number of countries and the European Union have adopted legislation in which leave beyond childbirth is granted to either parent.

## **Maternity protection**

Maternity protection for employed women is an essential element in equality of opportunity. Among the first international labour standards to be adopted in 1919 was Convention No. 3 concerning the employment of women before and after childbirth. This Convention laid out the basic principles of maternity protection:

- the right to leave;
- the right to medical benefits; and
- the right to income replacement during leave.

The right to leave was reinforced by the explicit prohibition of dismissal during a woman's absence on maternity leave or at such time that the notice would expire during such absence. Employment security was thus seen as a vital aspect of maternity protection.

The Maternity Protection Convention (No. 103), of 1952, retained the same principal elements of protection (i.e. the right to maternity leave, medical care and cash benefits), but the means and manner of providing these benefits were made more explicit:

- The 12-week minimum leave period was to include a period of mandatory post-natal leave of at least six weeks; additional leave was to be provided before or after confinement in the event of medically certified illness arising out of pregnancy or confinement.
- Medical benefits were to include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners, as well as hospitalization if necessary; freedom of choice of doctor and of public or private hospital were to be respected.
- As regards cash benefits, a minimum income replacement rate of two-thirds of the woman's previous earnings was specified for those benefits derived from social insurance; payroll taxes were to be paid on the basis of the total number of workers employed without distinction of sex.

National laws designed to protect the health of mother and child and the employment rights of working women figure prominently in the legislation of almost every ILO member State. There are, however, important variations as regards the scope of coverage, the extent of protection, the complexity of the schemes in force, and the respective responsibility of the State and of individual employers for the provision of cash benefits.

Typically, a simple package includes the provision, under labour legislation, of leave before and after the birth, often with the payment of cash benefits, whether by the employer, out of social security schemes, through public funds, or by a combination of these means. It is declared unlawful for employers to give notice of dismissal during maternity leave and its eventual extension, or at such time as the notice would expire during such leave. Nursing mothers are authorized to take breaks, which are often paid, for breastfeeding.

More comprehensive packages improve on the above provisions in terms of the length of

maternity leave, the level of benefits and the length of the period during which employment is protected. They often include a series of measures aimed at protecting the health of the woman and the unborn child, such as the prohibition or limitation of night work or overtime work, and a right to transfer from work that may be detrimental to the outcome of pregnancy either because it is intrinsically dangerous or because it is inadvisable in view of an individual woman's state of health. The health protection measures envisaged for pregnant women often apply also to nursing mothers.

Explicit protection against discrimination is a feature of the most advanced schemes. In the European Union, any unequal treatment linked with pregnancy or motherhood is considered as direct discrimination on grounds of sex. In a growing number of countries, there is also a move towards adopting a parental approach. Under parental schemes, a period of maternity leave is reserved for the mother within a longer period of leave which is available to either or both parents.

As women's employment throughout their child-bearing years continues to rise and women return to work after childbirth in ever greater numbers, discussion has begun on possible new international standards on maternity protection. Important elements to be considered include: the extension of coverage to all employed women; stronger protection from dismissal during pregnancy or maternity leave and after return to work; and measures to remove maternity as a source of discrimination in employment. It is expected that new instruments will be adopted in 2000.

## **Maximum weight**

No worker should be required or allowed to carry a load manually if it is so heavy that it is likely to endanger her or his health or safety. For women and young workers, assignment to manual transport of loads other than light loads should be limited.

Where adult women workers are engaged in carrying loads, the maximum weight should be much less than that permitted for adult male workers. As far as possible, women workers should

not be assigned to the regular manual transport of loads. When necessary, measures should be taken to cut down the time spent on lifting, carrying and putting down, and to prohibit the assignment of women workers to certain specified jobs which are especially arduous.

No woman should be expected to carry loads during pregnancy or during the ten weeks following the birth of the child if, in the opinion of a qualified physician, this is likely to damage her health or that of her child.

Any worker assigned (even occasionally) to manual transport of loads other than light loads shall be, before such assignment, trained and instructed in the appropriate techniques in order to safeguard his or her health and to prevent accidents. There are special provisions for young workers of both sexes.

## **Night work**

In agricultural enterprises, the employment of women during the night should be regulated so as to ensure that they have a period of rest consisting of no less than nine hours, which ought to be consecutive.

Concerning night work for women in industry, Convention No. 89 provides that women should not work during the night for at least 11 consecutive hours, of which seven shall be between 10 p.m. and 7 a.m. Excluded from the scope of this Convention are:

- enterprises where only members of the same family work;
- women holding responsible positions of a managerial or technical character; and
- women employed in health and welfare services who are not ordinarily employed in manual work.

The Protocol adopted in 1990 has enlarged the flexibility of the Convention. It is now established that the duration of the “night” may be modified and exemptions from the prohibition introduced by governments after consulting the employers’ and workers’ organizations. In those cases, pregnant women and mothers of infants should be safeguarded.

In 1990, a new Night Work Convention (No. 171) was adopted according to which all workers, regardless of sex, working during the night should be protected by specific measures, including:

- health protection (first-aid facilities, health checks);
- maternity protection;
- social services;
- opportunities for occupational advancement;
- additional compensation (working time, pay or similar benefits).

Exempt from the scope of this Convention are workers employed in the agriculture, stock-raising, fishing, maritime, transport and inland navigation sectors working during the night. The “night” is now defined as at least seven consecutive hours which include the hours between midnight and 5 a.m.

A woman night worker should be transferred to day work or have the maternity leave extended before and after childbirth for a period of at least 16 weeks, of which at least eight should be before the expected date of childbirth. During this period, the woman:

- should not be dismissed or given notice of dismissal except for justifiable reasons not connected with pregnancy or childbirth;
- should be guaranteed an income at a level sufficient for the upkeep of herself and her child;
- and
- should not lose the benefits regarding status, seniority and access to promotion which may be attached to her regular night work position.

This development demonstrates a shift from the original concept of protecting all women to an understanding that protection, where necessary from the nature of work, should in principle be granted to all workers.

Women’s general exclusion from night work could have a negative effect on their chances in the labour market and is now increasingly seen as discriminatory (unless justified by reasons linked with maternity). Some governments have denounced Convention No. 89, asserting that its provisions could compromise the principle of equality and opportunity between men and women.

In 1991, the same Convention was declared incompatible with European standards by the European Court of Justice, because it discriminated directly against women.

## **Pension (old-age benefit)**

All workers should be protected by a pension system financed by the contributions of active workers and employers. The pension is a periodical payment that is payable to survivors after the prescribed age. The prescribed age limit should not be more than 65 years.

The benefit is secured after the person has completed a prescribed period of contributions (normally 30 years of contributions or employment). A reduced benefit may be secured after at least 15 years of contributions or employment. A reduced benefit can also be paid under certain conditions to a person who has not fulfilled the contribution period or the employment conditions required. This benefit may be suspended or reduced if the person undertakes any gainful activity.

In countries where there is the opportunity for women to take earlier retirement, they should have the possibility of choosing to remain in work up to the same age as is set for men. According to case law of the European Court of Justice developed since 1986, the fact that a person has reached the minimum age for retirement under the pension scheme gives no right to dismissal of the worker.

## **Protection of health during maternity**

The Maternity Protection Recommendation (No. 95) of 1952 states that night work and overtime work should be prohibited for pregnant and nursing women. During pregnancy and up to at least three months after confinement, women should not be employed on work prejudicial to their health or that of the child. In particular, the employment of pregnant and nursing women is prohibited with regard to:

- any hard labour involving lifting heavy weights, pulling or pushing or undue physical strain,

including prolonged standing;

- work requiring special balance; and
- work with vibrating machines.

A woman employed in a job which is defined as harmful to health should be entitled to transfer, without loss of wages, to other work not harmful to her health. A woman who presents a medical certificate saying that such transfer is necessary for her health and that of the child should also be entitled to such a transfer.

## **Sexual harassment**

The broad definition of sexual harassment is that of unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment. Examples of sexual harassment may include:

- insults, remarks, jokes and insinuations of a sexual nature and inappropriate comments on a person's dress, physique, age or family situation;
- undesired and unnecessary physical contact such as touching, caresses, pinching or assault;
- embarrassing remarks and other verbal harassment;
- lascivious looks and gestures associated with sexuality;
- compromising invitations;
- requests for sexual favours.

Sexual harassment is considered to be a violation of human rights, a discrimination and a safety and health issue. Sexual harassment has been dealt with by the Committee of Experts on the Application of Conventions and Recommendations as a human rights issue, notably as an issue of discrimination against women. Governments, and employers' and workers' organizations have become increasingly active in preventing and combating sexual harassment at work, but it is assumed that there are still many victims. These are often unaware of their rights and afraid of retaliation or of losing their jobs.

Sexual harassment offends the dignity and personal integrity of workers. It should be prevented in the workplace; where it occurs despite all efforts, it should be punished, and the victims protected. Protection against sexual harassment is accorded in many countries under the constitution, equal opportunities or labour law, under the penal code and/or specific legislation. The courts and tribunals at national level attach more and more importance to the issue by further developing the role of employers in the context of the prevention and consequences of harassment through case law (dealing with termination of work contracts, remedies and sanctions, etc.).

Sexual harassment is a potential threat both to workers and to the enterprise. It calls into question the individual integrity and the well-being of workers. It is also widely seen as contrary to the objectives of the employer since it weakens the basis upon which industrial relations are built, and might have a negative effect on productivity. The role of trade unions and employers in creating a healthy environment for the dignity of workers is of vital importance for prevention.

## **Social security/social protection**

Social security can be conventionally defined as: “the protection which society provides for its members against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children”.

This concept has been further expanded to encompass a framework of social protection which is “the provision of a generalized basic social support for all citizens, regardless of contribution or employment history”. This entails, for instance, income support to individuals on the basis of need rather than acquired rights, and health care for the entire population.

Minimum standards for all workers should be established in the following fields of social security:

- medical care;
- sickness insurance;
- unemployment benefit;
- pensions (old-age benefit);
- employment injury benefit;
- family benefit;
- maternity benefit;
- invalidity benefit;
- survivors' benefit.

Sickness insurance benefits, maternity protection and pensions concern all categories of workers employed in industrial and agricultural jobs, including women wage earners working at home and domestic workers in private households. Social security benefits can be proportional to the beneficiary's earnings or family support commitment, set at uniform rates or linked to the means of the beneficiary concerned. The State has the general responsibility for the payment of the benefits and for the administration of the institution concerned.

The majority of social security systems were originally designed on the basis of the "male breadwinner model". This model was based on the assumption that it is the male as head of the family who earns the living, and the female who is primarily responsible for the unpaid care work. Married women were granted a form of protection derived from that enjoyed by the husband. Their earnings deriving from professional activity were regarded as supplementary. Current legislation still tends to reflect these origins, even if unequal treatment has been eliminated or greatly reduced in most industrialized countries.

The position of women, as well as attitudes towards family structures and roles, no longer corresponds to the traditional model. However, as a prevailing characteristic of many societies, women have no or reduced earnings for a number of years because of the unequal division of responsibilities for childcare and the household. Specifically in order to prevent poverty of widowed women in old age, women's access to and coverage by social security and pension schemes should be revised at the national level. Social security systems can try to:

- compensate for this unequal sharing of domestic tasks (e.g. by pension splitting); and
- encourage more equal sharing (e.g. by providing parental benefits, available to fathers and/or mothers).

At national and international levels, the following areas of concern are at present under discussion in the context of promoting equal treatment for men and women in matters of social security:

- the tailoring of rights to benefits and the “individualization” of such rights;
- equality of treatment as regards retirement age;
- equality of treatment as regards survivors’ benefits;
- the division of pension rights in the event of separation; and
- taking into account the situation of parents with family responsibilities for the calculation of or access to benefits.

## **Survivors’ benefit**

All persons protected under social security systems should be entitled to survivors’ benefit. A woman who was maintained by her husband at the time of his death, or children that suffer the loss of support following the death of the insured worker, should be entitled to a periodical payment. The right of the widow may be conditional on her incapacity for self-support, and the benefit may be reduced or suspended if the person is engaged in gainful activity. This benefit may also be conditional upon a minimum period of contribution or employment. If a widow has no child and is presumed to be incapable of self-support, a minimum duration of the marriage may be required.

## **Teachers**

The teaching profession is one where women have traditionally been employed, but are nevertheless concentrated in more junior positions. In the joint ILO/UNESCO Recommendation

concerning the Status of Teachers, adopted in 1966, it was stressed that all aspects of the preparation and employment of teachers should be free from any form of discrimination on grounds of race, colour, sex, religion, political opinion, national or social origin, or economic condition. According to this Recommendation:

- marriage should not be considered a bar to the appointment or to the continued employment of women teachers, nor should it affect remuneration or other conditions of work;
- employers should be prohibited from terminating contracts of service for reasons of pregnancy and maternity leave;
- arrangements such as crèches or nurseries should be considered where desirable to take care of the children of teachers with family responsibilities;
- measures should be taken to permit women teachers with family responsibilities to obtain teaching posts in the vicinity of their homes and to enable married couples, both of whom are teachers, to teach in the same general neighbourhood or in the same school;
- in appropriate circumstances, women teachers with family responsibilities who have left the profession before retirement age should be encouraged to return to teaching;
- part-time service should be facilitated: part-time working teachers should receive proportionately the same remuneration and enjoy the same basic conditions of employment as teachers employed on a full-time basis, should be granted corresponding rights and should be entitled to adequate and appropriate social security protection, including coverage under employers' pension schemes;
- effect should be given to the standards laid down in the Maternity Protection Convention (No. 3) of 1919, and the Maternity Protection Convention (Revised) (No. 103) of 1952;
- women teachers with children should be encouraged to remain in the service by such measures as enabling them, at their request, to take additional unpaid leave of up to one year after childbirth without loss of employment, all rights resulting from employment being fully safeguarded.

## **Trade unions**

Trade unions are organizations of workers, established for protecting and/or improving, through

collective action, the economic and social situation of workers of both sexes.

Trade unions, their representatives and members should ensure the respect for and promotion of equal remuneration, opportunity and treatment through their relations with management. In this regard, they should engage in the following equal opportunity and treatment policies:

- encouraging management to introduce adequate measures in areas where they do not exist, and negotiating the extension of existing policies;
- negotiating for the inclusion in collective bargaining agreements of clauses on equal opportunities, protection against discrimination, affirmative action and family-friendly arrangements;
- cooperation with and assistance to management in formulating, implementing and monitoring equal opportunity and treatment policies.

Within the trade union organization, representatives and members should ensure equal opportunities and treatment. In this respect, they should:

- solicit membership from workers of all groups and both sexes in the workplace; this may include positive action measures to promote the affiliation of women;
- encourage the election of representatives from the under-represented groups and sex; special measures should be taken to guarantee women's equal sharing of decision-making;
- encourage all workers to participate in union activities, particularly in education and training, which are aimed at increasing awareness and capacity building to promote equality;
- provide information to all members on their equal role in the union, union procedures and structure, and their rights and responsibilities under collective bargaining agreements, relevant laws and other legal provisions and work rules; and
- provide support to members alleging discrimination in the workplace, in the form of guidance, educational activities, information and, where appropriate, representation.

## **Working time**

In case of reduced duration of the working day or week, priority should be accorded to industries and professions involving particularly physically or intellectually demanding work and health hazards to workers, especially when the labour force is made up of women and young people.

Concerning overtime, the situation of women during pregnancy and breastfeeding should be

taken into consideration, and such women should not be required to work overtime, without any prejudice to their career development. With respect to pregnant women and nursing mothers, the working schedule should be organized to allow them sufficient rest periods.

A weekly rest of at least 24 consecutive hours should be granted to workers in industry and commerce. Exceptions may be authorized by the central authority, for example in enterprises in which only the members of a single family are employed. The weekly time off shall be granted during the days already established by the traditions or customs of the country. In case of temporary exemptions, the worker should be entitled to a compensatory rest period of equivalent duration.

All workers should have the right to a period of at least three weeks per year of annual paid leave. For service of less than 12 months, a holiday with pay proportionate to the length of service shall be granted. Public and customary holidays shall not be counted as part of the minimum annual holiday with pay. In case of dismissal, the worker should receive a holiday with pay proportionate to the length of service for which a holiday has not been taken, or compensation equivalent to the holiday credit; a qualifying period not exceeding six months may be required. Contractual agreements to renounce the right to this minimum annual holiday for compensation or otherwise are illegal and not enforceable.



## **A model code of ethical behavior for labour inspectors<sup>8</sup>**

As a member of the Labour Inspection Service and of my profession, I recognize the following principles on which ethical behavior is based and I accept to follow and promote them in my work as a labour inspector.

### **Guiding principles:**

1. I shall perform my work to the highest professional standards and ethical principles at all times.
2. I shall perform all professional tasks in accordance with the law and international standards that the state has ratified, and with the rules and values of the inspection services.
3. I shall always act in good faith towards employers and serve the right to decent working conditions, safety and health and well-being of workers individually and collectively.
4. I shall enjoy full professional independence in the execution of my duties. To this end I have acquired and will strive to maintain the competences necessary for continuing improvement of my work and to meet any challenges the profession of labour inspection may bring.

### **Duties and obligations:**

1. I shall be guided in my duties by the requirements set down in the labour inspection enforcement policy and the operations and training manual.

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<sup>8</sup> A Tool Kit for Labour Inspectors: A Model Enforcement Policy A Training and Operations Manual A Code of Ethical Behaviour, Edited by Annie Rice, International Labour Office, 2006

2. I shall enforce all regulations objectively, that is in a consistent, fair, equitable and transparent manner, without regard to the national or ethnic origin, race, gender, language, political or religious beliefs or social position of the person to which the law is applied.
3. I shall recognize and abide by the basic aim of good inspection practice, that is to promote the establishment and maintenance of a decent, productive, safe and healthy working environment. Labour inspection is essentially preventive and should therefore help the enterprise in ensuring good working conditions which prevent impairments arising out of employment. A clear priority shall be given to high risk enterprises and vulnerable groups of workers.
4. I shall recognize and attempt to reconcile potentially conflicting collective and individual rights and needs (such as the right to protection of employment and the right to protection of health, the right to information and the right to confidentiality) with responsibility for improvements in working conditions and safety and health at the workplace.
5. I shall make decisions independently and objectively, in keeping with my knowledge and personal experience. Whenever needed, I shall consult with colleagues and other professionals who have the appropriate knowledge of the issues in question.

## **Principles of ethical behaviour:**

1. I shall oppose any act of attempted corruption.
2. I shall always perform my duties as a disinterested third party. I shall not use the inspection process to accept nor make available commissions, services, allowances, goods or other favours directly or indirectly.
3. I shall not engage in activities that are incompatible with my official job description and the provisions of this Code and which could lead to the violation of the reputation of the inspection services I work for and of my profession.
4. I shall make a full disclosure of any financial or personal interests I may have in my activities as a labour inspector in regard to a particular inspection and which could be legitimately interpreted as a conflict of interest by clients, officials, the public or colleagues.

5. I shall use all material resources rationally, for the best interest of the public, for the purpose of my work and the inspection services I work for. I shall not use them for the realization of my own personal interests and gain.
6. I shall not use my knowledge, position or influence to cause any damage to the public interest, the inspection services, my profession, colleagues or clients.
7. I shall not disclose any industrial or commercial secrets or data I collect during inspection visits or information given in confidence during such visits, without prior approval of the client and persons involved. However, should the concealment of any such information endanger the life and health of workers or the community, I shall be obliged to disclose it, whilst protecting confidentiality as far as possible.
8. I shall refrain from taking part in any group of colleagues or members of my profession who would further their own personal interests, or who would violate the provisions of this Code, against the interests of the inspection services, and whereby the rights and interests of the public would be undermined, or the reputation of my profession be put at risk.
9. I shall disclose any such act to a higher level official, whose responsibility it is to take appropriate action, or to the relevant institution that monitors the application of these rules. I understand that should I do so in good faith I am protected against reprisals or sanctions.
10. I shall disclose any act of attempted corruption on the part of clients to the other employees of the inspection services, and to the relevant institution that monitors the application of these rules.
11. I shall, if so requested, give to the relevant institution all the data and information I possess on the concrete cases of corruption that I have disclosed.

### **Furthering the institution of labour inspection:**

1. I shall at all times be aware of the fact that I represent a profession which has a public image of trust, honesty and courtesy to build and maintain. I will, by my attitudes and behaviour, set an example to colleagues and the public in this respect.

2. I shall always emphasize professional values at my place of work, work closely with my colleagues for the purpose of better understanding and cooperation, for the benefit of the inspection services, and for the clients we work with and for.
3. I shall strive to be an active member of the inspection services, making proposals where appropriate and participating in activities that are aimed at improvement of performance of the institution.
4. I shall try, personally and with my colleagues and through the work of our professional association, to transfer my experience, knowledge and ideas for the purpose of their application in practice and for the benefit of all.
5. I shall advance in my profession through the acquisition and adoption of new skills and knowledge, and I shall seek promotion only on the basis of my skills and knowledge.
6. I shall do my best to promote objective criteria for the recruitment of new employees, for the evaluation of work performance, and for decisions related to promotion or demotion of employees.
7. I shall actively seek the support of employers, workers and their organizations and other relevant organizations for implementing the highest standards of ethics in the labour inspection services and the profession.

# **Key Concepts of Labour Laws in Pakistan**

## **WAGE**

### **WAGE AS DEFINED IN THE PAYMENT OF WAGES**

**ACT, 1936:**

#### **INCLUDES**

- Basic wage
- Cost of Living Allowance
- Adhoc Relief Allowance
- Conveyance Allowance
- Attendance Allowance
- Bonus
- Medical Allowance
- Heat Allowance
- House Rent Allowance
- Overtime

#### **EXCLUDES**

- Value of house accommodation
- Supply of amenity
- Traveling Allowance
- Pension Fund
- Provident Fund

- Gratuity

**WAGE AS DEFINED IN THE MINIMUM WAGES ORDINANCE,**

**1961:**

**INCLUDES:**

- Basic wage
- Conveyance Allowance
- Cost of Living Allowance
- Adhoc Relief,
- Attendance Allowance
- Medical Allowance.
- Heat Allowance.
- House Rent Allowance

**EXCLUDES:**

- Provident Fund.
- Pension Fund.
- Social Insurance.
- Traveling Allowance.
- Annual Bonus.
- Gratuity

**WAGE AS DEFINED IN THE WEST PAKISTAN SHOPS AND ESTABLISHMENTS  
ORDINANCE, 1969:**

The definition of wages is the same as defined in the Payment of Wages Act, 1936.

### **WAGES FOR THE PURPOSE OF OVERTIME:**

Where a worker in a non-seasonal factory works for more than 9 hours in a day and 48 hours in a week and in a seasonal factory for more than 9 hours a day or 50 hours in any week, he shall be entitled in respect of the overtime so worked to be paid @ twice his ordinary rate of wage. For the purpose of overtime 'wages' means as defined in the Payment of Wages Act, 1936 but bonus is excluded from it.

### **WAGE FOR THE PURPOSE OF BONUS:**

No definition of wages has been provided in the Standing Orders Ordinance but according to the explanation of Standing Order 10-C, it has been stated that for the purpose of calculating bonus 'wage' does not include bonus referred to in clause-(vi) of Section-2 of the Payment of Wages Act, 1936. From this it seems that for the purpose of Standing Order 10-C the definition of 'wage' given in the Payment of Wages Act, 1936 excluding bonus referred to in that definition is to be adopted.

### **WAGE FOR THE PURPOSE OF GRATUITY:**

The Supreme Court of Pakistan in a case in 1994, Zain Packaging Industries Ltd., Karachi Vs Abdul Rashid and Others (1994 SCMR 2222), considerably widened the scope of the meaning of 'wages' i.e., what payments are to be included or excluded from it, for the purpose of calculating gratuity in Standing Order 12 (6). According to this decision gratuity be payable on the highest pay drawn during the last month of service, including all allowances of regular and permanent nature. This is close to gross wage.

### **WAGE FOR THE PURPOSE OF LEAVES AND HOLIDAYS:**

During the annual holidays, a worker is to be paid @ equivalent to the daily average of his wages as defined in the Payment of Wages Act, 1936, for the day on which he actually worked during



1. Family Enterprises

2. Government Managed Training Institutes

Industries wherein Child Labour is allowed

Major Regulations

- ✓ No child to work for more than 3 hours at a stretch.
- ✓ One hour rest after every 3 hours of work compulsory.
- ✓ Maximum working day not to exceed 7 hours
- ✓ Overtime, Night hours work not allowed
- ✓ Entitlement of one holiday each week

## **Other Conditions**

The working place should have

- Cleanliness
- Proper Waste Disposal
- Proper Ventilation & Temperature
- Environment free of Dust & Fumes
- Proper Lighting
- Drinking Water
- Latrines

## **Working Hours**

No adult worker in a factory shall be allowed to work for more than nine hours in any day and for more than 48 hours any in week, or, where the factory is a seasonal one, for more than 50 hours in any week, and for 56 hours in a week in a factory engaged on work which for technical reasons must be continuous throughout the day. They will however, be entitled to a weekly holiday. The period of work of an adult worker in a factory shall be so arranged that along with his interval for rest it shall not spread over for more than 10½ hours, or where the factory is a seasonal one, 11½ hours in any day. The period of work of adult workers in a factory during

each day shall be fixed in such a manner that no worker shall work for more than six hours before he had an interval of rest for at least one hour or no worker shall work for more than 5 hours before he has had an interval for rest of at least half an hour, or for more than 8½ hours before he has had at least two such rest intervals.

A child worker between 14 and 17 years of age is allowed to work in a factory only for five hours in a day with usual weekly holiday. The hours of work of a child are so arranged that they shall not spread over for more than 7½ hours.

No worker will be employed on a vehicle covered under the Road Transport Workers Ordinance, 1961 for more than 8 hours a day and 48 hours a week and he will be entitled to a weekly holiday. Similarly under the West Pakistan Shops and Establishments Ordinance, 1969 an adult above 17 years of age can be employed for 9 hours a day and 48 hours a week, with a spread over of 10 hours a day in winter and 11 hours a day in summer and 9 hours in winter and 8 hours in summer in the case of a young person. Young person (between the age of 14 to 17 years) can work for 7 hours a day and 42 hours a week.

## **Prohibition of Employment**

The employment of children below the age of 14 years is prohibited in factories, shops and establishments covered under the Factories Act, 1934 and the West Pakistan Shops and Establishments Ordinance, 1969.

Similarly under the provisions of the West Pakistan Road Transport Workers Ordinance, 1961, no person other than a driver, can be employed in any Road Transport Service unless he has attained the age of 18 years. In case of drivers the minimum age fixed is 21 years. No woman or child worker is allowed to work in a factory or establishment or shop after 7.00 P.M and before 6.00 A.M.

## **Overtime**

Workers cannot be employed to work in excess of their normal hours of employment in a factory except with the prior permission of the Chief Inspector of Factories and the Labour Department

of Provincial Government. Total overtime of any adult worker in a factory shall not exceed 12 hours in any week except in respect of workers engaged on urgent repairs, who can be engaged on the following conditions

- That the period of exemption of any one worker shall not exceed 14 days in any month shall not be employed for more than 14 consecutive days without one full day holiday. He shall not be engaged continuously for more than 8 hours without rest interval of at least one hour.
- Persons holding position of supervision or employed in a confidential position in a factory, are not entitled to overtime under the law, but there is no bar on such persons to get any facility through custom, usage, contract or Collective Bargaining.
- Total over-time in a year under the Road Transport Workers Ordinance, 1961 cannot exceed 150 working hours.
- Under the West Pakistan Shops and Establishments Ordinance, 1969 adult persons employed on shops and establishments can be engaged on overtime for 150 hours in a year and a young person between 15 to 17 years for 100 hours in a year. Workers so engaged shall have to be paid double the normal wages for the overtime. No child or a woman worker can be employed on overtime.

## **Leave**

Each worker, who has completed a period of 12 months of continuous service in a factory, during the subsequent period of 12 months will be entitled to 14 days annual leave with pay. If a worker fails in any one such period of twelve months to avail the whole or part of the holidays allowed to him, these shall be added to the holidays to be allowed to him in the succeeding period of twelve month. However, the number of holidays which may be carried forward to a succeeding period shall not exceed 30.

Besides, each worker shall be entitled to 10 days casual leave, sixteen days sick leave on half average pay and festival holidays with pay as declared by the Provincial Government. Similarly workers employed in Commercial Establishments are also entitled to the above mentioned

holidays. A worker may be required to work on any festival holiday but one day additional compensatory holiday with full pay and a substituted holiday shall be allowed to him.

Workers employed in Transport Industry: In addition to the period of daily and weekly rest, every worker who has been in continuous employment for a period of one year is entitled to not less than 14 days leave with full pay or if he has been continuously employed for a period of six months, he will be entitled to not less than seven days leave with full pay.

This is the minimum ratio prescribed under the law, there is, however no ban to allow more leaves through collective agreement between the employer and workers.

Persons employed in shops and establishments are entitled to the following leaves:-

Annual Leave                      15 days (can be accumulated  
upto 30 days).

Casual Leave                      10 days (cannot be carried  
over to the next year).

Sick Leave                         8 days (accumulation allowed  
up to 16 days).

Festival Holidays                 10 days in one calendar year.

## **Termination**

In factories and commercial establishments where the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 are applicable (Viz. Where 50, 20 or more workmen, respectively, are employed) one month's notice or wages in lieu thereof for terminating the services of a permanent workman is the legal requirement.

Labour courts have invariably held that while terminating the services of a workman there should be a “sufficient cause” which can be sustained in a court if contested by the workman.

Sufficient cause includes curtailment in production, closure of business, and workers rendered surplus to the requirements due to circumstances beyond the control of employer.

Similar provision of notice pay also exists under the Road Transport Workers Ordinance, 1961 and West Pakistan Shops and Establishment Ordinance, 1969.

## **Gratuity**

Under the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, where the services of a permanent workman are terminated for reasons other than misconduct or if a workman resigns from service he will be paid gratuity equivalent to 30 days wages for every completed year of service or any part thereof in excess of six months, provided that no such gratuity is payable where the employer has established a Provident Fund to which such workman is a contributor and the contribution of the employer to such fund is not less than the contribution made by the workman. However, where a workman dies while in service of the employer, his dependent shall be paid gratuity as stated above but the payment of gratuity shall be made through the Commissioner Workmen Compensation.

The dispute, as to what does mean ‘wage’ for the purpose of payment of statutory gratuity, is resolved by a decision by the Supreme Court of Pakistan, in a case of M/S. Zain Packaging Industries Ltd., dated 25-08-1994. According to the decision, all permanent and regular allowances are to form part of wages for the payment of gratuity and all conditional allowances are not to form part of wages for calculating statutory gratuity.

## **Retrenchment/Re-employment**

Retrenchment can be resorted to in case of closure of business, curtailment in production, breakdown of machinery epidemics, civil commotion, etc. Principle of last-in first-out is to be followed.

The retrenched workers will be re-employed on the basis of last-out first-in.

## **Dismissal/Discharge**

A workman can be dismissed/discharged from service on account of misconduct only as enumerated under sub-order (3) of Standing Order 15 of the schedule appended to the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 but no order of dismissal is to be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances against him.

A worker of Transport Industry can be dismissed / discharged from service on account of misconduct as enumerated in Sub-section (3) of Section 7, without service of any notice of payment in lieu thereof, however, if a worker is dismissed from service, the act of misconduct has to be brought home to him.

## **Suspension of a Workman**

Previously in case of misconduct an employer had the right to suspend a worker for a period not exceeding 4 days at a time but there was no restriction as to how many times he could be suspended. Now an embargo on suspension has been laid by virtue of which total period of suspension shall not exceed 4 weeks except when the matter is pending before an arbitrator or the Labour Court, Tribunal or Conciliator. During the period of suspension the workman would get 50% of his wages as substance allowance.

## **Lay-Off Benefits**

Where the provisions of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 are applicable and in cases of stoppage of work due to fire, breakdown of machinery, power supply, etc. a worker detained in a factory for more than one hour is entitled to wages for the period of detention.

For failure of plant or temporary curtailment in production a worker will get half of his wages for the first 14 days of lay-off as compensation. If the duration of lay-off is for an indefinite period, beyond above said fourteen days the services of workmen can be terminated after giving them due notice or pay in lieu thereof alongwith other dues such as gratuity, pay of un-availed annual holidays (S.O.11). Notwithstanding anything contained in Standing Order (11), for the total closure of an establishment following restrictions on the employer have been laid down in the law.

No employer shall terminate employment of more than 50% of the workmen or close down the whole establishment without prior permission of the Labour Court in this behalf except in the event of fire, catastrophe, stoppage of power supply, epidemics or Civil Commotion. Close down includes lay off of workmen beyond 14 days.

## **Bonus**

- a. Every employer employing 20 persons or more in his establishment, whether Industrial or Commercial, who makes profit during the year, shall pay bonus to the workmen who have been in his employment in that year for a continuous period of not less than 90 days in addition to the wages payable to such workmen. Bonus payable shall not be less than 30% of the profit or the aggregate of one month's wages.
- b. Every employer of an industrial establishment employing 50 or more workmen is obliged to introduce a group incentive scheme to provide greater incentive for production provided it has been so notified by the Government.
- c. Every employer employing 50 workers in Industrial establishment and 20 workmen in commercial establishment, shall have all the permanent workmen, employed by him

insured against death and injury arising out of contingency not covered by the Workmen's Compensation Act, 1923 or the West Pakistan Employees Social Security Ordinance, 1965 including natural death and if no such insurance has been made, the employer has been made responsible to pay compensation and the amount of such compensation shall not be less than the amount specified in schedule vi to the workmen's compensation Act, 1923.

- d. The premium and all administrative arrangements are the responsibility of the employer.

## **Occupational Hazards and Preventive Measure**

The problem of Occupational Health is a part of overall problems of public health and that is why special emphasis on Occupational Health has been laid down in Factories Act and various provisions regarding occupational health and other aspects of Hygienic condition have been made. In Factories Act, 1934 it has been contemplated that each worker in a factory shall be inoculated and examined to the effect that no worker is suffering from any contagious or infectious disease. The fee for such an examination is to be paid by the employer. Provision in the Act has been made that workers in every factory must work in hygienically clean environments. The law expects that (i) industrial workers shall work in healthy environments; (ii) the child shall not work unless certified fit by the Certifying Surgeon (iii) in hazardous occupations, the workers are physically protected against the hazards and are examined once every six months to ensure that they are not suffering from a disease as a result of the hazardous process. There are certain industrial processes which are hazardous for the workers. The Hazardous Rules apply to 25 types of industrial occupations.

Industrial establishments carrying out these hazardous occupations are required:

- i) To obtain Medical Certificate for a person to be employed for more than 15 days;
- ii) Every person so employed shall be medically examined by a Certifying Surgeon after every six months; except engaged on lead process who is to be medically examined after every month.
- iii) No woman or a child worker shall be allowed to work in the above named processes;

- iv) No persons shall be allowed to work in or remain without wearing a suitable protective helmet, overalls, gauntlets, respirators to cover nose, mouth, bare foot as the case may be;
- v) No employee whose certificate of fitness has been suspended shall work in the named process.
- vi) Fee for examination of workers under the Hazardous Occupational Rules 1963 is to be paid by the employer.

## **Payment of Wages**

Wages are to be disbursed to workers before the expiry of the seventh day of the wages period by factories employing less than 1,000 workers, and before the expiry of the 10th day of the wage period by factories employing more than 1,000 workers. No deduction from the wages of an employee can be made or fine could be imposed otherwise than authorized deductions and fines as laid down in Sections 7(2) and 8 of the Payment Wages Act, 1936.

Where an employer has deducted/delayed the wages of an employee or has not made payment of dues relating to Provident Fund or Gratuity payable under any law, the employee within 3 years from the date such deduction/delay has been made can file a claim with the authority appointed under the Act for the recovery of such dues along with such compensation as the authority may think fit but not exceeding 10 times in the case of deduction and exceeding Rs. 10/- in the case of delayed wages. The Authority appointed under the Act is competent to waive the condition of 3 years limit if the applicant satisfies the authority that he had sufficient cause for not making the application within the stipulated period. The authority under the Payment of Wages Act has now been empowered to recover the decreed amount himself without a recourse to the D.M/Collector.

## **Compensation**

Workmen's Compensation Act envisages payment of Compensation to the dependent of deceased workman or to a workman who has lost earning capacity as a result of accident arising out and during the course of his employment with the employer. The Act in Schedule II has enumerated classes of persons establishment to whom the provision of the Act are applicable.

Similarly schedule I and III appended to the Act mention list of occupational diseases and injuries deemed to result in permanent / total disablement. Besides, schedule IV has been appended to the Act wherein compensation on the basis of certain injuries/occupational diseases mentioned in schedule III and IV of the Act has been calculated. A worker having met an accident is required to serve a notice on the employer as soon as practicable and then file a claim within three years from the date of the accident to the Commissioner for the determination and loss of earning capacity and compensation. In case a deceased workman has no dependent, the compensation money, deposited with the Commissioner shall be transferred to the welfare fund. An appeal against the order of the Commissioner lies to the Labor Appellate Tribunal and the appeal shall lie, only if a substantial question of law is involved in the order of the Commissioner. Where compensation is claimed in the form of lump sum money a fee at the rate of one rupee where the sum does not exceed Rs. 500/- plus one rupee for each additional sum of Rs. 500/- or fraction thereof, shall be affixed. However, if Commissioner is satisfied that the applicant is not of sound financial position to affix the required fee, he can waive the condition of affixing the court fee. The Court of the Commissioner Workmen's Compensation is a Civil Court within the meaning of the Civil Procedure 1908 as defined in the Act.

For the speedy recovery of the compensation amount, Commissioner under the Workmen's Compensation Act, 1923 has been authorized to recover the decreed amount himself without recourse to the D.M/Collector.

There is a general impression that where Provisions of West Pakistan Social Security Ordinance are applicable the provisions of the Workmen's Compensation Act are not applicable. This contention is not tenable in view of various decisions of Labour Appellate Tribunal, Punjab, High Court in the case of Lal Jan V/s Silver Paper Tube Co., reported in P.L.D. 1974 Karachi 140 and the Supreme Court of Pakistan as reported in P.L.D. 1984 S.C. 242.

Besides, the preamble to the Workmen's Compensation Act states that an enactment to provide for the payment by certain classes of employers to the Workmen of compensation for injuries by accident. On the other hand, the West Pakistan Social Security Ordinance provides benefit to certain employees or their dependents in the event of sickness, maternity, employment injury or

death and for matters ancillary thereto. The West Pakistan Employees Social Security Ordinance nowhere speaks of a compensation for injury, whereas Workmen's Compensation Act provides for the payment of Compensation. Social Security Ordinance speaks of 'benefits' and 'Grant' but not of "Compensation". Under Section 2(l) (b) of the Workmen's Compensation Act, "dependent" has been defined and similarly under Section 2(6) of the Social Security Ordinance "dependent" has been defined and there is a vast difference between the two definitions.

Under the Workmen's Compensation Act, "dependent" is a person who is either a widow, minor legitimate son and unmarried legitimate daughter, or windowed mother and also several other persons related to the deceased whereas the Social Security Ordinance limits the definition of "dependent" to wife or wives or a needy Invalid husband and any unmarried child under the age of sixteen years dependent upon the secured person. Besides, compensation under the Workmen's Compensation Act, has to be paid by the employer to the employee if he is alive or to the dependents of the employee if he is dead. Under the Social Security Ordinance such payment is made from the fund created under section 2(5). Moreover in chapter V entitled "Benefits" what Social Security Ordinance contemplates are sickness benefits, maternity benefits, disablement pension, disablement gratuity, and survivor's pension. It does not at all speak of compensation on account of bodily injury or death that a workman may suffer, while 'he is employed, in the course of his duties with the employer.

Furthermore Section 37 of the West Pakistan Employees Social Security Ordinance speaks of death grant, and it reads as follows:-

"Death grant. On the death of a secured person receiving or entitled to receive injury benefits sickness benefit or medical care at the time of his death, the surviving widow, widows or needy widower, the person who provided for the funeral, shall subject to regulations, be entitled to a death grant equal to the daily rate of sickness benefit multiplied by thirty, but in no case less than five hundred rupees".

From the plain reading of the provision it would appear that if a secured person "receiving or entitled to receive" injury or sickness benefit at the time of his death, dies, a sum equivalent to 30 times the sickness benefit as stated in section 36 of the Ordinance will be payable to the

surviving widow, widows or needy widower and in case there is no widow, to the person providing funeral. "Sickness benefit" according to Schedule, appended to section 35 of the Ordinance is payable at 50% of the daily wages only. Since death grant is to be equivalent to "daily rate of sickness multiplied by thirty", the death grant will be equal to 15 days wages only. Firstly Section 37 does not speak of compensation and secondly it does not speak of dependent as in Workmen's Compensation Act. If compensation on account of death of a workman was contemplated by Section 37 of the Ordinance, it would be unreasonable to assume that in case of absence of widow the same would be payable to the person providing funeral expenses. Thus it would be observed to conclude that "death grant", if it were a substitute for "Compensation" as mentioned in the Workmen's Compensation Act, 1923 should be payable to the funeral expenses rather than the dependent children of the deceased workman. The "death grant", however, can be in no way substituted for "Compensation" so as to conclude that section 81 of the Social Security Ordinance has replaced any such provision of the Workmen's Compensation Act for payment of compensation.

Section 37 of the Social Security Ordinance comes into operation only if a secured person dies after falling sick and if receiving injury. The plain words are that he should be receiving or be entitled to receive injury benefit or sickness benefit. A person would be entitled to receive injury benefit for the days excluding the first 2 days after receiving the injury so that if a person dies instantaneously he would not be entitled to any death grant for the simple reason that he can't be considered to be receiving, or entitled to receive any injury benefit, clearly for such reason. It would appear that the concept of "death grant" is widely different from "Compensation" Section 37 of the Ordinance is designed only to provide funeral expenses. Section 8(4) of the Workmen's Compensation Act has a provision with regard to the funeral expenses. By implication it is possible that section 81 of the Social Security Ordinance may be deemed to imply a repeal of Section 8(4) of the Workmen's Compensation Act. However, provision of Section 4 or 10 of the Workmen's Compensation Act or Schedule IV of the said Act are not repealed by virtue of Section 81 of the Social Security ordinance.

Before proceeding further, it would be worthwhile to analyse the meanings of words "Compensation" and "Grant" given in both the enactments and similarly the word "inconsistent" which has been used in the fore-going paragraphs. The word "inconsistent" has come up for

definition before the Supreme Court of Pakistan in the case of Chittranjan Cotton Mills Ltd. V/s Staff Union reported in P.L.D. 1971 C —197 Mr. Justice Hamoodur Rehman, C.J. considered the impact of the two words, “inconsistent” and “incompatible” as compared with “Dissimilar”. His Lordship was pleased to express his opinion in the following words:-

“The provision of the two statutes is, in my opinion, not only dissimilar but also inconsistent and incompatible. It is true that mere dissimilarity may not be enough to establish incompatibility in substance and in spirit, and not merely in form”.

The word “Compensation” has been defined in various dictionaries. A definition that was accepted by Mr. Justice Anwar-ul-Haq, in the case of land acquisition Collector Vs. Abdul Azeez reported in P.L.D. 1965 Lah. 3279 was the definition given in the Oxford Dictionary. The definition was counter-balancing, rendering equivalent, requital, weighing one thing against another.

In Chamber’s dictionary, the word “compensation” is defined as “an act of compensation” making amends for the loss sustained, Webster’s dictionary has given a definition of the word “compensation” as applicable to cases of Labour and the definition is “amount received by workman or his dependent for claims under Workmen’s Compensation Act”.

On the other hand there are definitions of the word “grant”. These definitions are being given because the Social Security Ordinance speaks of “grant”. Chamber’s dictionary defines “grant” as:

“Bestowing, something bestowed, an allowance, gift and conveyance of property by deed”.

The Oxford dictionary again defines “grant” and this definition is a general definition, not reliable to workmen, but all the same the definition is:

“To agree, consent; to assent to the request of; to accede to, consent to fulfill a request, prayer, wish etc. to allow or concede as an indulgence; to permit or suffer a person to have something; to bestow or confer as a favor or in answer to a request”.

Besides, Workmen's Compensation Act, 1923 is a Central Statute and the West Pakistan Social Security Ordinance is a Provincial Statute. The workmen's Compensation Act, being an Act of Parliament cannot be barred by an Act/Ordinance of the Provincial Government, if any provision of the Provincial statute is in conflict with the Central Statute, the Central Statute shall prevail.

Welfare of Labour, condition of labour, employer's liability and Workmen's Compensation are mentioned at item 26 in the fourth Schedule (Article 76(6) of Part II of the Constitution of Islamic Republic of Pakistan. Above all, Article 143 of the Constitution of Islamic Republic of Pakistan is clear on the subject which states that:

“If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of parliament , which parliament is competent to enact or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent Legislative list, then the Act of Parliament, whether passed before or after the Act or Provincial Assembly, or, as the case may be, the existing law shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void”.

## **Restriction on Employment of Women**

As prescribed in the West Pakistan Maternity Benefit Ordinance, 1958, no 'woman is to be employed in a factory during the six weeks following delivery. Six weeks, wages during the pre-natal and six weeks wages during the post-natal period shall be paid to her and no termination would be resolved to during pre and post-natal period.

## **Industrial Relations Act, 2008**

### **1. Position of Collective Bargaining Agent.**

To check proliferation of trade unions and to strengthen the position of Collective Bargaining Agent, it has been provided that no worker shall be entitled to be a member of more than one trade union at any time and it has been added that in establishments where there are two or more

unions, no additional union shall be registered unless it has, as its members not less than one fifth of the total member of workmen employed in such establishments. Where there is only one union in an establishment or a group of establishments it should have as its members not less than one third of the total number of workmen employed in such establishment or group of establishments.

## **2. Protection of the Rights of Collective Bargaining Agent.**

The rights of Collective Bargaining Agent have been protected by providing that no employer shall enter into a settlement with another union where Collective Bargaining Agent exists and that any contravention of this provision shall be deemed to be an unfair labour practice on the part of employer.

## **3. Workers Representation in Management.**

In every factory employing 50 persons or more workers representation in management committees has been increased from 20% to 50%. The workers representatives shall hold office for a period of two years from the date of their election or nomination. The following subjects have been added to the list of subjects already under the purview of these committees and in this manner the committees have been made more effective.

- i) Preparation of leave schedule.
- ii) Regulation of daily working hours and breaks.
- iii) Matters within the factory.

Previously state-owned factories were outside the purview of this scheme but now they have also been included in this scheme.

## **4. Establishment of Joint Management Board.**

In order to make the scheme for workers participation really effective and meaningful, provision has been made for Joint Management Boards at the company levels in respect of companies

which own or manage a factory, employing 50 or more workers. The employer's representative on the Joint Management Board shall be from amongst the Directors or Senior Executives.

The Joint Management Board shall look after the following matters, namely:

- a) Improvement in production and efficiency;
- b) fixation of piece rates;
- c) re-grouping of transfer of workers;
- d) Principles of remuneration; and
- e) Provision of minimum facilities for workers employed through contractors.

For the settlement of labour disputes, it is obligatory on the parties to open direct negotiations and utilize the services of the Conciliators before resorting to strike or lock-out. Officers of the provincial Labour Department or the Federal Ministry of labour, as the case may be, designated as such to function as conciliators. In the event of failure of conciliatory efforts, the party raising the dispute has three options:

- (i) it can refer the matter to arbitration, provided the opposite party agrees;
- (ii) it can refer the dispute to a labour court for adjudication;
- (iii) it can declare a strike for any length of time after a notice of 15 days.

In case the matter is referred to arbitration, the award of the Arbitrator is final. But if the matter is referred to a labour court for adjudication, the award of the court is appeal able before a Labour Appellate Tribunal and the decision in appeal is binding on the parties. During a legal strike, the employer is prohibited to recruit fresh hands.

In the case of disputes of national importance and those relating to public utility services, strikes and lockouts can be prohibited by Government.

Provincial Governments have set up Labour Courts to adjudicate labour disputes including individual grievances. Disputes in which industry-wise trade unions are involved are determined and adjudicated by the National Industrial Relations Commission and Federal Government may also refer disputes of national importance to the Commission.

## **Minimum Wages Ordinance, 1961:**

This Ordinance provides for the regulation of minimum rates of wages for workers employed in certain industrial undertakings. A worker defined in this Ordinance means any person including

an apprentice, employed in any industry to do any skilled or unskilled, intellectual technical, clerical, manual or other work, including domestic work, for hire or reward, but does not include:-

- I) person employed by the Federal Govt., Or Provincial Government.
- ii) Persons employed in coal mines in respect of whom minimum wages may be fixed under the Coal Mines (Fixation of Rates of Wages) Ordinance, 1969; and
- iii) Persons employed in agriculture.

The Government has established a Minimum Wages Board which upon reference from Provincial Government and after eliciting public opinion make recommendations for introduction of minimum rates of wages for the workers in certain industrial undertakings. After considering the recommendations of the Board, the Government enforces it through a notification and no employer after the issuance of the said notification can pay wages to the workers at a rate lower than the rates fixed by the Government. The latest notification was issued in February, 1998

## **Companies Profits (Workers Participation) Act, 1968**

It provides for the participation of workers in the profits of a company with a minimum employment level of 50 or with the paid up capital of Rs. 20 Lacs or the fixed assets of Rs. 40 lacs or more.

A participation fund is established out of net profit of the Company. The payment to the fund is made annually @ 5%.

The fund is annually distributed amongst workers whose monthly wages are up to Rs. 1,500/-. Any amount left out in the fund after distribution is transferred to the fund created for the purpose of providing residential accommodation and welfare facilities.

## **The Punjab Fair Price Shops (Factories) Ordinance, 1971**

Under this Ordinance, every employer of factory other than those owned by Government employing 100 or more workers is required to establish a Fair Price Shop in which sufficient stock of articles is available. The following articles should be sold:

- i) Wheat

- ii) Pulses.
- iii) Vegetable Ghee.
- iv) Sugar.
- v) Wheat Flour.
- vi) Coarse Cloth.
- vii) Laundry Soap.

The employer is bound to sell these articles at the rate at which they have been purchased from the manufacturing factories at whole sale ex-factory rate.

### **The Workers Welfare Fund Ordinance, 1971**

This Ordinance provides for the establishment of Workers Welfare Fund for providing residential accommodation and other facilities for workers. This fund was initially created with a contribution of Rs. Ten Crore, made by the Federal Government. Under the law, every industrial establishment, the total income of which in any year of account is not less than one Lac of rupees, shall pay to the fund in respect of that year a sum equal to two percent of so much of its total income as is accessible under the Income Tax Ordinance, 1981.

# **International Trade Competitiveness and Labour Standards**

The world is rapidly becoming a global village. Trade barriers are rapidly coming down. Flow of information is rapid and out of the control of the governments. While on one hand it is creating massive opportunities, simultaneously it is creating barriers and obstacles for a free trade. The world trade is formally regulated by the principles of world trade organization. But on the same time autonomous regimes in the form of GSP schemes and buyers' and consumers' requirements are gaining more importance.

## **An Introduction to WTO**

The past 50 years have seen an exceptional growth in world trade. Merchandise exports grew on average by 6% annually. Total trade in 1997 was 14-times the level of 1950. GATT and the WTO have helped to create a strong and prosperous trading system contributing to unprecedented growth.

The system was developed through a series of trade negotiations, or rounds, held under GATT. The first rounds dealt mainly with tariff reductions but later negotiations included other areas such as anti-dumping and non-tariff measures. The latest round — the 1986–94 Uruguay Round — led to the WTO's creation.

The negotiations did not end there. Some continued after the end of the Uruguay Round. In February 1997 agreement was reached on telecommunications services, with 69 governments agreeing to wide-ranging liberalization measures that went beyond those agreed in the Uruguay Round.

In the same year 40 governments successfully concluded negotiations for tariff-free trade in information technology products, and 70 members concluded a financial services deal covering more than 95% of trade in banking, insurance, securities and financial information.

## **WTO Agreements**

The WTO's rules — the agreements — are the result of negotiations between the members. The current set were the outcome of the 1986–94 Uruguay Round negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT).

GATT is now the WTO's principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews. The complete set runs to some 30,000 pages consisting of about 60 agreements and separate commitments (called schedules), made by individual members in specific areas such as lower customs duty rates and services market-opening.

Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries' markets. Each promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

## **WTO and Labour Standards**

Labour Standards are currently not subject to World Trade Organization rules and disciplines but some industrial nations believe the issue should be studied by the WTO as a first step toward bringing the matter of core labour standards into the organization.

These industrial member states believe the right to bargain collectively, freedom of association and workplace abuse, (including male/female involved in forced labour and certain types of child labour), are matters for consideration in the WTO. WTO rules and disciplines, they argue, would provide a powerful incentive for member nations to improve workplace conditions. These proposals have been highly controversial.

Many developing and some developed nations believe the issue has no place in the WTO framework. These nations argue that efforts to bring labour standards into the arena of

multilateral trade negotiations are little more than a smokescreen for protectionism. Many officials in developing countries believe the campaign to bring male/female labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners.

During preparations for the Singapore Ministerial Conference, proposals were made by the United States and Norway for a decision to be taken by Ministers for the WTO to undertake work on promoting core labour standards in the context of global trade liberalization and to report back to Ministers at their 1998 Conference. Both proposals view WTO work in this area as complementing that of the ILO, which they recognize has primary international responsibility in this field. Both countries view the objective as reaching a common understanding among WTO members on how to reinforce the mutually supporting nature of increased trade and improving labour standards.

While some WTO members expressed support for the approach suggested by the United States and Norway, many others raised serious reservations about any structured discussion of trade and labour standards in the organization.

The then WTO Director General Renato Ruggiero had suggested four points on which a consensus on this difficult issue might be built. In his consultations with member states, Mr. Ruggiero has found wide support for the four points, which are as follows:

- All WTO member nations oppose abusive work place practices, through their approval of the United Nations Universal Declaration of Human Rights.
- The International Labour Organization holds primary responsibility for labour issues.
- Trade sanctions should not be used to deal with disputes over labour standards.
- Member states agree that the comparative advantage of low wage countries should not be compromised.

However it must be noted that social/labour issues are strongly linked with international trade although they are not on the agenda of WTO Furthermore, the issue of human rights and bonded labour is gaining more and more importance globally to the extent that it will have a strong bearing on the competitiveness of Pakistan's economy

The European Union's new General System of Preferences (GSP) for what GSP stands? scheme (called as GSP plus) offers strong incentives to countries abiding by core labour standards of ILO and major international covenants on human rights, good governance and environment. Pakistan has not yet been able to qualify for that. European Union (EU) is insisting on ratification and implementation of 16 conventions relating to human and labour rights. Pakistan has not as yet ratified 3 conventions of the 16 and hence has lost out on the GSP plus advantage vis-à-vis its competitors e.g. Sri Lanka.

The 0% duty as opposed to general GSP rate deeply affects competition of exporting countries with particularly Pakistan in terms of export loss and job loss translating into poverty aggravation. According to some estimates the financial impact on the economy of the country is around US\$ 500 million, which is a huge loss. If we could qualify for the GSP plus status it would mean more exports, more jobs, reduction in poverty and availability of more funds for education and healthcare schemes and development projects.

Some buyers like Nike stung by the criticism of consumers are implementing strict quality, environmental and social/labour standards on all their suppliers.

In the past, USA also excluded some Pakistani products particularly carpets and soccer balls due to allegations of (boys/girls) child labour. But due to timely action by the employers assistance by ILO and intervention of the Government of Pakistan, effective steps were taken to combat child labour from these sectors. This has resulted in enhanced exports in these sectors.

In today's world the final driver of trade would be the buyers' requirements irrespective of any other restrictions. It is hoped that the officers in the district governments will keep these issues in mind when posted in relevant government agencies and contribute to policy formulation, which addresses the key concerns pointed out earlier. We must remember that

- Labour issues of men and women will influence export competitiveness and opportunities.
- The more we adapt the better it will be for the country and for the exports.



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