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IMF, Labour Law and Economic Structure

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Executive Summary

Under the Structural Adjustment Programs of the International Monetary Fund, disempowerment of labour in Pakistan is the main issue. Gaps in Pakistani Labour Law act as an accomplice to this disempowerment which is also in direct violation of the International Labour Organization's Conventions. The power structures of society create susceptible conditions and loopholes in law shall arise if the society has excessive inequality. Therefore, to create conditions in which labour rights are preserved under international law, the solution shall be simultaneous empowerment of the labour so that there is a push towards the inclusion of the most vulnerable of them to the formal economy while filling the gaps in the labour laws.

Following are the brief recommendations: -

- In the discussions with IMF, Pakistan must actively advocate this point that a free economy, inflation, indirect taxation, and labour deregulation cause extreme levels of impairment of labour rights in Pakistan which Pakistan is required to adhere to under the international conventions.
- Under ILO Conventions, social security is extremely important to decrease the vulnerability of labour to any external factors. Therefore, basic access to social security for labour must be provided through subsidy schemes like 'Labour Card' so that the bargaining power of the labour is increased, and they are not pushed to accept contracts which are inherently a creation of legalese such as employment of ghost entities or Fixed Term Contracts ('FTCs').
- Pakistan must ratify the ILO Convention 94. In pursuance of the ratification, Pakistan must ban with separate legislation any subcontracting through other agencies. Moreover, if there are temporary employees, benefits such as compulsory membership of trade union and minimum working hours must be prescribed within that legislation with all the benefits of Payment of Wages. For this purpose, amendments in the Industrial and Commercial Employment (Standing Orders) Ordinance shall be required.
- Entities such as ghost entities which are mushrooming for hiring labour need to be banned and a designated cell within the labour department needs to be established for the regulating of such entities.

IMF, Labour Law and Economic Structure

Introduction

Pakistani labour law has failed to buffer the power imbalance in society, especially in situations which emerge after the imposition of the Structural Adjustment Programs ('SAPs') of the International Monetary Fund ('IMF').¹ This failure of the Pakistani labour law is also in direct conflict with international labour laws. The problem emerges with the legalese which is wilfully ignored to allow capital holders to evade any kind of liability for violating labour laws.

The legal loopholes are not rectified primarily owing to the absence of proper governance arising due to the collusion of the different fragments of the elite. Moreover, these legal lacunas are also present due to the tangible policy shifts under SAPs of IMF which exacerbate the imbalance of power relations between the large business owners and industrial labour. Legal protections cannot arise in such a milieu when the problem is political and socio-economic in its originality.² Therefore, this brief shall connect the social implications due to the economic theory promulgated under the SAPs of IMF in Pakistan and the loopholes in Pakistani labour law primarily tolerated due to conditions.

Taxation and Elite Capture

Under IMF policies in Pakistan, fixed tax schemes were imposed and discretionary exemptions on General Sales Tax ('GST') were banned. The ambit of the GST included the retail level.³ GST was placed on medicine. The government further introduced taxes on petroleum to collect 2.5 billion rupees annually.⁴ The government also introduced a broad-based Federal Value Addition Tax.⁵

These indirect taxation measures are justified on the basis that such taxes are easy to collect. However, these measures serve the interests of the capitalistic class in contrast to wage earners

¹ Structural Adjustment Programs are a mix of policy decisions which the Government of Pakistan promises to implement if IMF provides loans to the government. They are generally agreed after intense negotiations between the Government of Pakistan and the IMF.

² Duniya Aslam Khan, 'UNHCR looks at the economic contributions of Afghan Refugees in Pakistan' *UNHCR*, (Karachi 10TH February 2011)

³ Government of Pakistan, Memorandum of Economic and Financial Policies (Letter of Intent, November 4, 1998) Para 26

⁴ Government of Pakistan, Memorandum of Economic and Financial Policies (Letter of Intent, October 16, 2002) Para 14

⁵ Government of Pakistan, Memorandum of Economic and Financial Policies (Letter of Intent, May 3, 2010) Para 11

like industrial labourers as they treat both classes equally and without equity.⁶ These types of taxation are a ‘quick fix’ at the expense of the industrial labour.

Fiscal Deficit, Taxation and IMF

After the green revolution of the 1970s, rising consumerism resulted in increased consumer spending in Pakistan. Consumer spending increased from \$19.63 in 1980 to \$321.26 in 2022.⁷ As a result, tax on the consumption economy is a big source of revenue for the government to reduce fiscal deficit.

In most SAPs of IMF for Pakistan, the IMF considers that the budget deficit is the root of the economic problems of Pakistan. Therefore, it is essential to improve the budget deficit with increased taxation and low spending. However, this concept is not tangibly practicable as almost 70% of the Pakistani budget is allocated for those areas which cannot be altered due to their excessive need for statecraft. Therefore, the budget deficit is reduced with new taxation on people already within the fold of the formal economy and due to unnecessary cutting down of development spending which is essential for economic growth.⁸

Disempowerment and Pakistani Labour Law

Under the SAPs of IMF, the policies of repressive taxation; the presence of an informal economy and the strengthening of elite groups create an excessive tilt of power which the international retailers and factory owners can enjoy in Pakistan. This situation allows international retailers to sway any kind of government control. As a result, they sub-contract the labour in countries like Pakistan. They design the supply chain in a way in which they possess zero ownership of the units while allowing their advertising branding to whitewash this labour exploitation. If any accident occurs, accountability is shifted to local factories. The poor economic situation of countries like Pakistan results in collusion of the State and private capital

⁶ Mazhar Waseem, ‘Does Cutting the Tax Rate to Zero Induce Behaviour Different from Other Tax Cuts? Evidence from Pakistan’ (2018) <Does Cutting the Tax Rate to Zero Induce Behaviour Different from Other Tax Cuts? Evidence from Pakistan by Mazhar Waseem: SSRN>

⁷ ‘Pakistan Consumer Spending 1960-2024’ (*Macrotrends*)

⁸ S Akbar Zaidi, ‘The Structural Adjustment Program and Pakistan’, External Influence or Internal Acquiesce’ (1994) 10:1 Pakistan Journal of Applied Economics 21, 27,29, 37-40

as Global South States often desperately need foreign exchange to integrate with the liberal economy.⁹

A considerable problem occurs in Pakistan due to the issue of subcontracting popularized due to the disempowerment of power relations of labour. Pakistan is one of those countries which does allow a fixed term of contract of nine months or less.¹⁰ Fixed-term contracts ('FTCs') are problematic as workers are further disempowered in comparison to employers. The disempowerment is due to the probationary nature of these FTCs with shorter time – periods as well as unequal treatment of these workers due to the exclusion of them from many benefits such as bonuses. Moreover, workers of FTC also do not join trade unions due to the fear that their contracts will not be renewed.¹¹

Many times, in factories in Pakistan, the wage of the industrial labour is linked to the number of clothes they stitch. This type of contract leads to insecurity for the workers as there is no fixed income, and workers are paid for only 26 days a month although they work on Sundays.¹² This situation also provides the management with a situation in which they don't issue appointment letters, and they can fire the workers without any repercussions as there is no proof of employment. Similarly, a contractor is often used to hire labour in Pakistan as the Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 considers that the "establishment of a contractor" is a separate establishment from the main establishment making it easier to not attract the provisions of the Standing Orders on the industrial labour hired through a contractor.¹³

The Pakistani industrial units also often hire pay-rolling agencies which are ghost entities with a temporary existence. These agencies are difficult to trace. They hire workers who are not employees of the client industry and thus perform a payroll function. They work for the client industry without having any kind of legal relationship with them as these organizations quickly evaporate. As a result, none of the labour benefits are accorded to this kind of industrial labour making them vulnerable to all kinds of exploitation. In very few cases, the employer-employee

⁹ Muhammad Arslan, 'Mechanism of Labour Exploitation; the case of Pakistan', (2020) 62(1) International Journal of Management and Law 1, 1, 12 - 14

¹⁰ Industrial and Commercial Employment (Standing Orders) Ordinance, S.O. 1(b) (e)

¹¹ Maryia Aleksynsaka and Angelika Muller 'Nothing more permanent than temporary? Understanding fixed – term contracts? (ILO Policy Brief No. 6, March 2015), 4,5; Mansoor Raza, 'On Death Door: trade unions in Pakistan' (*DAWN*)

¹² Industrial and Commercial Employment (Standing Orders) Ordinance, S.O. 1(b) (g)

¹³ Human Rights Watch, "'No Room to Bargain' Unfair and Abusive Labor Practices in Pakistan', (Report, January 2019) 22 – 23 Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, section 2(f)(iv)

exists between the original industry and the worker hired by the agency. Similarly, even in cases of genuine agency creation by an industry, temporary contracts are provided by that agency which allows that industry to have a particular source of employee with no trade union.¹⁴ Thus, there is a legal ambiguity in the status of agency workers as employees. Nevertheless, they must be provided social security; gratuity; old-age – age benefits, and life insurance.¹⁵ In practical terms, it does not happen as 34% of the workers in a survey did not receive any benefits, while 48% received partial benefits.¹⁶

International Labour Law and Empowerment of Labour

ILO also considers that any suspension of earnings due to any reason which includes an inability to obtain employment for a person qualifies that person for social security.¹⁷ Social Security coverage should include any problem arising due to sickness, old age, maternity, death of breadwinner and invalidity.¹⁸ Social security floors must also be provided which include access to healthcare, basic income security for children with sufficient nutrition, and basic income security for everyone who is not able or in a state to work.¹⁹

In terms of remuneration, ILO recommends to Pakistan that this concept can include cash or kind, and all those perks which will be paid ‘directly or indirectly’.²⁰ Therefore, wages must be paid properly. For instance, the Supreme Court of Argentina applied ILO Convention No – 95 which allowed the workers to receive their ‘agreed upon’ salaries. Therefore, decrees that reduced the remuneration of employees were deemed invalid.²¹

ILO Convention 1949 also clearly prescribes that the Convention applies to work carried out by subcontractors or assignees of contracts. Article 2 of the ILO Convention No.94 further prescribes that “workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character. “²² ILO Convention prescribes that workers who are subcontracted or not indirectly employed must not be discriminated against in any way. No such legal provision shall be

¹⁴ Abdullah Sheikh, ‘Political Economy of Agency Employment: Flexibility or Exploitation?’, (2017) 8 World Review of Political Economy 162, 166

¹⁵ Ibid, 167 - 169

¹⁶ Ibid 175

¹⁷ ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), Article 20

¹⁸ ILO Income Security Recommendation, 1944 (No. 67), Article 6,7

¹⁹ ILO Social Protection Floors Recommendation, 2012 (No. 202)

²⁰ ILO Equal Remuneration Convention, 1951 (No. 100), Article 1

²¹ *Asociación de Trabajadores del Estado (A.T.E.) and others v. Government of Argentina* (Executive Branch), [2000] Supreme Court of Argentina 19896

²² CO 94 - Labour Clauses (Public Contracts) Convention, 1949 (No. 94), Article 1(3), 2

allowed which creates conditions in which perks and privileges to employees or workers can be evaded through apertures of legalese.

Political nature of SAPs of IMF

IMF SAPs are political with much intermingling of international and local interest groups. It is no surprise that IMF conditionalities have a nexus with political alignments with the West and more particularly the United States. For instance, during Egyptian alignment with the USA in 1991 and 1987, there were considerably fewer conditions in Egypt than would have been proposed in light of pure economic wisdom. Therefore, it shall not be a mere conjecture only that the lack of American interest in Pakistan after the Afghan war is one of the reasons for extremely hard conditions within the SAPs of IMF.

In addition, due to the SAPs of IMF, the local colonial nature of the State structure relies more on foreign advice rather than internal introspection. Much of the State relies on the concept of modernization and development through foreign enterprises so that the locally developed enterprises of Pakistan never compete with the international market players. In this way, a familiar environment is created for foreign investment attracted to the prize of cheap labour in Pakistan and much of the interest payment returns to colonial masters.

Recommendations

- Pakistan needs to focus on resolving the power imbalance in society and vulnerability of the labour. In the discussions with IMF, Pakistan must actively advocate this point that a free economy, inflation, indirect taxation, and labour deregulation cause extreme levels of impairment of labour rights in Pakistan which Pakistan is required to adhere to under the international conventions.
- Under ILO Conventions, social security is extremely important to decrease the vulnerability of labour to any external factors. Therefore, basic access to social security for labour must be provided through subsidy schemes like 'Labour Card' so that the bargaining power of the labour is increased, and they are not pushed to accept contracts which are inherently a creation of legalese such as employment of ghost entities or Fixed Term Contracts ('FTCs')

- Pakistan must ratify the ILO Convention 94. In pursuance of the ratification, Pakistan must ban with separate legislation any subcontracting through other agencies. Moreover, if there are temporary employees, benefits such as compulsory membership of trade union and minimum working hours must be prescribed within that legislation with all the benefits of Payment of Wages. In the case of FTCs, there needs to be no automatic renewal of the same employee of that FTC, so they are not accorded to evade the benefits of permanent employees. For this purpose, amendments and additions to the Industrial and Commercial Employment (Standing Orders) Ordinance shall be required.
- Entities such as ghost entities which are mushrooming for hiring labour need to be banned and a designated cell within the labour department needs to be established for the regulating of such entities. For this purpose, penal measures including criminal proceedings must be provided within PPC.

Recommendations and Action Matrix

Legal Options for Government

Recommendations	Pathways to Solution	Implementation of Solution	Actors Responsible	Implementation Timelines
IMF Negotiations	In the discussions with IMF, Pakistan must actively advocate this point that a free economy, inflation, indirect taxation, and labour deregulation cause extreme levels of impairment of labour rights in Pakistan which Pakistan is required to adhere to under the international conventions.	Under ILO Conventions, social security is extremely important to decrease the vulnerability of labour to any external factors. Therefore, basic access to social security for labour must be provided through subsidy schemes like ‘Labour Card’ so that the bargaining power of the labour is increased.	<ol style="list-style-type: none"> 1. Federal Ministry of Commerce 2. Federal and Provincial Ministries of Law 3. Ministries for Labour 4. Federal Ministry of Finance 	<p>3 Months for consultation and research.</p> <p>6 Months for capacity building, legislation and hiring.</p>
Ratification and Labour Legislation	Pakistan must ratify the ILO Convention 94. In pursuance of the ratification,	In pursuance of the ratification, Pakistan must ban with separate legislation any subcontracting through other agencies. Moreover, if there are temporary employees, benefits such as compulsory membership of the trade union and minimum working hours must be prescribed within that legislation with all the benefits of Payment of Wages.	<ol style="list-style-type: none"> 1. Federal Ministry of Commerce 2. Federal and Provincial Ministries of Law 3. Ministries for Labour 	6 months of the legislation process

<p>Capacity Building</p>	<p>Entities such as ghost entities which are mushrooming for hiring labour need to be banned</p>	<p>A designated cell within the labour department needs to be established for the regulating of such entities. For this purpose, penal measures must be provided.</p>	<p>1. Federal Ministry of Commerce 2. Federal and Provincial Ministries of Law 3. Ministries for Labour</p>	<p>3 Months for consultation and research. 6 Months for capacity building, legislation and hiring.</p>
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