

Pakistan

**National Studies in Employment
Situations
and Workers Protection**

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1. Introduction

This is a study commissioned by t

he International Labour Organisation (ILO). The objective of the study, as stated in the Terms of Reference (TOR) provided by the ILO, “is to describe the various ‘situations’ in which workers may provide services and the characteristics and tendencies of these ‘situations’ with a view to identifying the shortcomings in the protection provided by Standards or in practice in each of them, or in their most important forms, and to propose measures to redress these defects.” The TOR identifies four potentially distinct employment “situations.” These are 1) subordinate employment: employment within a legal framework, which establishes rights, obligations and benefits of workers. 2) triangular employment relationship: a situation in which more than two parties are involved, e.g., a principal employer or entrepreneur, a provider of product or services and the worker who provide these products and services. 3) self-employment: workers who organise their own activities based on their own criteria and provide goods and services to a varied clientele. 4) Self-employment but in conditions of dependency (economic or other): workers, though self-employed are actually dependent on the person for whom they work. These distinctions may help, the TOR suggests, towards a deeper and more refined understanding of the complex and multifarious employment relationships which may otherwise be lost under the more common and all encompassing rubric of “contract labour.” In many cases, however, the use of this term is unavoidable, especially in the case of Pakistan, because it is widely used in both official and unofficial sources of information and judicial and legislative documents.

The study is encumbered by two main problems that should be noted. The first, as anticipated in the TOR, is the difficulty in establishing neat and exact definitions, classification, and therefore identification of the object of study. In most cases there are no clear lines separating employment situations mentioned above instead they are often over-lapping and fluid. The second is the great paucity of reliable documented information but an abundance of misinformation on the subject. Nonetheless, this study has attempted to cover, as much as possible, available official and unofficial statistical documents, survey data and supplemented it with extensive interviews with officials, trade unionists, workers and experts as well as case studies and anecdotal evidence. The study is divided into three main sections. The first provides a brief overview of changes in nature of employment patterns and then focuses on the three least protected employment situations, i.e., triangular, self-employment and self-employment in conditions of dependency. The second examines the legal aspects of workers protection and the third draws conclusions and offers some recommendations to redress existing shortcomings in workers protection.

2. Employment Patterns, Trends, and Situations

The last three decades or so have witnessed some dramatic changes in the structure of employment in Pakistan which have created new and multiple kinds of employment situations and the corresponding need to revise old, or device new, laws and institutions for workers protection.

Table 1
Sectoral Employment as percentage of Total Employment

Year	Agriculture	Mining and Manufacturing	Construction	Utilities	Transport	Trade	Others	Total
1963/64	60.5	13.6	1.4	0.4	2.0	7.6	14.5	100
64/65	59.5	14.0	1.7	0.4	2.4	8.1	13.9	100
65/66	58.6	14.4	2.1	0.4	2.9	8.6	13.1	100
66/67	57.6	14.8	2.5	0.4	3.4	9.1	12.1	100
67/68	56.7	15.2	3.1	0.3	4.1	9.7	10.9	100
68/69	55.8	15.7	3.7	0.4	4.8	10.3	9.3	100
69/70	57.0	15.6	3.9	0.4	4.7	9.9	8.4	100
70/71	57.6	15.3	3.6	0.3	4.9	10.9	7.6	100
71/72	57.3	12.9	3.4	0.4	4.8	9.9	11.3	100
72/73	56.5	13.2	3.7	0.4	4.9	10.3	12.2	100
73/74	55.6	13.5	3.9	0.5	4.9	10.7	10.0	100
74/75	54.8	13.8	4.2	0.5	4.9	11.1	10.8	100
75/76	54.3	14.0	4.4	0.5	4.8	11.1	10.9	100
76/77	53.7	14.2	4.6	0.6	4.8	11.1	11.0	100
77/78	53.2	14.4	4.7	0.7	4.8	11.1	11.2	100
78/79	52.7	14.7	4.9	0.7	4.7	11.1	11.2	100
79/80	52.7	14.4	4.9	0.8	4.7	11.3	11.3	100
80/81	52.7	14.1	4.9	0.9	4.7	11.5	11.3	100
81/82	52.7	13.8	4.8	1.0	4.6	11.7	11.3	100
82/83	52.7	13.5	4.8	1.1	4.6	11.9	11.3	100
83/84	51.6	13.7	5.2	0.9	4.9	11.7	12.0	100
84/85	50.6	13.8	5.6	0.7	5.2	11.5	12.6	100
85/86	54.0	13.4	5.2	0.5	4.4	11.4	11.0	100
86/87	49.2	13.2	6.0	0.7	5.3	12.1	12.5	100
87/88	51.2	12.8	6.4	0.6	4.9	11.9	12.2	100
88/89	51.2	12.8	6.4	0.6	4.9	11.9	12.2	100
89/90	51.2	12.8	6.4	0.6	4.9	11.9	12.2	100
90/91	47.5	12.4	6.6	0.8	5.2	13.2	15.2	100
91/92	48.3	12.5	6.3	0.8	5.5	13.1	13.5	100
92/93	47.6	11.0	6.9	0.8	5.5	13.3	14.8	100
93/94	50.0	10.1	6.5	0.9	5.0	12.8	14.8	100
94/95	46.8	10.5	7.2	0.8	5.1	14.5	15.1	100
95/96	46.8	10.5	7.2	0.8	5.1	14.5	15.1	100
96/97	46.8	10.5	7.2	0.8	5.1	14.5	15.1	100

Source: Moazzam Mahmood, "Macro Explanations of Poverty," in *A Profile of Poverty in Pakistan*, Islamabad: Mahbul Haq Centre, 1999.

Table 2
Sectoral Employment in Numbers

Year	Agriculture	Mining and Manufacturing	Construction	Utilities	Transport	Trade	Others
1963-64	9.8	2.2	0.2	0.1	0.3	1.2	2.4
64/65	9.8	2.3	0.3	0.1	0.4	1.3	2.3
65/66	9.8	2.4	0.4	0.1	0.5	1.4	2.2
66/67	9.8	2.5	0.4	0.1	0.6	1.6	2.1
67/68	9.7	2.6	0.5	0.1	0.7	1.7	1.9
68/69	9.7	2.7	0.6	0.1	0.8	1.8	1.6
69/70	10.1	2.8	0.7	0.1	0.8	1.8	1.5
70/71	10.6	2.8	0.7	0.1	0.9	2.0	1.4
71/72	10.6	2.4	0.6	0.1	0.9	1.8	2.1
72/73	10.9	2.5	0.7	0.1	0.9	2.0	2.1
73/74	11.0	2.7	0.8	0.1	1.0	2.1	2.2
74/75	11.1	2.8	0.9	0.1	1.0	2.3	2.2
75/76	11.4	3.0	0.9	0.1	1.0	2.3	2.3
76/77	11.8	3.1	1.0	0.1	1.1	2.4	2.4
77/78	12.1	3.3	1.1	0.2	1.1	2.5	2.5
78/79	12.4	3.5	1.2	0.2	1.1	2.6	2.7
79/80	12.7	3.5	1.2	0.2	1.1	2.7	2.7
80/81	13.0	3.5	1.2	0.2	1.2	2.8	2.8
81/82	13.3	3.5	1.2	0.3	1.2	3.0	2.9
82/83	13.6	3.5	1.2	0.3	1.2	3.1	2.9
83/84	13.6	3.6	1.4	0.2	1.3	3.1	3.2
84/85	13.6	3.7	1.5	0.2	1.4	3.1	3.4
85/86	14.6	3.6	1.4	0.1	1.2	3.1	3.0
86/87	14.1	4.1	1.7	0.2	1.5	3.5	3.6
87/88	14.8	3.7	1.9	0.2	1.4	3.5	3.5
88/89	15.3	3.8	1.9	0.2	1.5	3.6	3.7
89/90	15.8	4.0	2.0	0.2	1.5	3.7	3.8
90/91	14.2	3.7	2.0	0.3	1.6	4.0	4.3
91/92	15.0	3.9	2.0	0.3	1.7	4.1	4.2
92/93	15.3	3.5	2.2	0.3	1.8	4.3	4.8
93/94	16.5	3.3	2.2	0.3	1.6	4.2	4.9
94/95	16.5	3.5	2.4	0.3	1.7	4.8	5.0
95/96	16.0	3.6	2.5	0.3	1.7	5.0	5.2
96/97	16.5	3.7	2.5	0.3	1.8	5.1	5.3

Source: *Ibid.*

In broad terms, the share of the agricultural sector in total employment has dropped from 60% in 1960s to about 47% in 1996-97.¹ This slack, however, has not been replaced by rising employment in the manufacturing sector. As a matter of fact, the share of the manufacturing sector in total employment has also dropped; from about 15% in 1960s to 10% in 1996-97. In short, agriculture and manufacturing, the mainstays of employment in Pakistan, have lost about 18% of their share in total employment. This has been picked up predominantly by sectors such as trade (increase of 7%), construction (increase of 6%), and transport and storage with an increase of about three percent (see Tables 1 and 2). More importantly, for the purposes of this study, it should also be noted that of the about 4 million people currently employed in manufacturing sector almost 3 million are actually employed in manufacturing activities in the so-called “unregulated informal sector.” Outside of

¹ For an explanation of this phenomenon see an overview of literature in Nazre Hyder, “The Employment Situation in Pakistan: An Assessment,” (Islamabad: Ministry of Labour and Manpower, 1994).

manufacturing the unregulated sector is much larger.² If we add to this the fact that the decline in employment in the agriculture sector has been replaced by a sharp increase in so-called “casual” labour we can reach two interrelated conclusions. First, that the percentage of the employed work force which could be classified as “wage-earning employment whether subordinate or dependent, i.e., which is carried out within the framework of an employment relationship,” and therefore likely to receive maximum protection is extremely small. Second, the bulk of the work force is involved in employment situations which are likely to be least protected; self-employed, self-employed but dependent and workers in triangular relationships. The rest of this section takes up these employment situations.

Self-Employed and Dependent Self-Employed

The official census definition of self-employed is as follows: “person who, though owns an enterprise, does not employ any person for pay to help him/her in his/her enterprise. Such a person may have others working for him/her without pay, such as unpaid family helpers.”³ Self-employment is the dominant feature of Pakistan’s occupational structure. Labour Force Survey, 1990-91 showed that out of a total employed in the country, numbering 29.83 million persons, employers and employees constituted only 0.5 million (1.68%) and 10.3 million (34.53%) respectively. Whereas the self employed and unpaid family helpers formed 12.60 million (42.25%) and 6.43 million (21.54%) respectively. This position has remained largely constant as the latest Labour Force Survey (1996-97) shows that 42.18% out of a total employed work force of 34.13 million were self-employed. According to one estimate about half of household incomes in the country is generated from the self-employment sector. According to the Household Income and Expenditure Survey of 1987-88 about 55.61% of household incomes as a whole were generated from self-employment.⁴

As table 3 below indicates self-employment is most prevalent in agriculture where 25.25% of the total workforce and 59.76% of the total self-employed constituting 7.53 million persons were engaged as self-employed in 1990-91. In the manufacturing sector self-employed comprised only 3.05% of the total employment during the same period. In other sectors numbers have remained largely constant with a general trend towards faster expansion in urban areas.⁵

According to a sample survey of 1500 units covering all four provinces of the country and four sectors, i.e. manufacturing, trade, transport and services, the extent of self-employment is varied within wood and cork products. In the service sector almost the entire employed labour force was found to be self-employed. In retail trade highest self-employment was found among cloth merchants (56%) and lowest in trading in metal products (14.3%). In wholesale trade highest self-employment was found in electrical goods (76.2%) and the lowest in dealers of non-metallic products (14.3%).⁶

Another employment situation, often called self-employment, though closer to putting out system, is piece-rate work. The larger numbers of piece-rate workers are home based women workers. They work through a middle person who provides work, materials, designs etc., collects the finished products and makes payments. Workers have little control over choice of work or wages. In

² See Moazam Mahmud, “Macro Explanations of Poverty,” in *A profile of Poverty in Pakistan*, (Islamabad: Mahbubul Haq Centre, 1999) pp. 73-74.

³ See *Household Integrated Economic Survey*, (GOP Federal Bureau of Statistics) p.xvii

⁴ See Hyder, Nazre, *op.cit.* p.35.

⁵ *ibid.*, p. 38.

⁶ See, Kemal, A.R., and Mehmood, Zafar., *Labour Absorption in the Informal Sector and Economic growth in Pakistan*, (Islamabad: Fridrich Ebert Stiftung, 1993) pp. 50-56.

addition there are factory based piece-rate workers and “own-account” workers. They own their tools, purchase raw materials and get orders for their work.⁷

Table 3.
Number and percentage of self-employed persons of 10 years Age and Above
By Major Industry Division in 1986-87 and 1990-91

Major Industry Division	1986 - 87						1990-91					
	Total		Rural		Urban		Total		Rural		Urban	
	Persons	%age	Persons	%age	Persons	%age	Persons	%age	Persons	%age	Persons	%age
Total Self-Employed	12.67	44.13	9.87	45.65	2.80	40.06	12.60	42.24	9.87	46.62	2.73	31.58
Agriculture, Forestry, Hunting and Fishing	6.16	21.45	6.15	28.36	0.01	2.94	7.53	25.25	7.20	34.03	0.33	3.82
Mining and Quarrying	0.001	0.03	.001	0.03	0.001	0.01	0.001	0.02	0.001	0.03	-	-
Manufacturing	1.55	5.55	0.86	3.90	0.69	9.71	0.91	3.05	0.54	2.56	0.37	4.26
Electricity, Gas and Water	0.01	0.05	0.01	0.04	.001	0.09	0.15	0.5	0.01	0.04	0.01	0.06
Construction	0.94	3.31	0.70	3.25	0.24	3.47	0.27	0.91	0.18	0.86	0.09	1.07
Whole Sale, Retail Trade, Restaurants and Hotels	2.32	8.21	1.16	5.36	1.16	15.84	2.62	8.77	1.27	5.99	1.35	15.60
Transport, Storage and Communication	0.51	1.87	0.35	1.62	0.16	2.53	0.47	1.58	0.27	1.26	0.20	2.34
Financing, Insurance, Real Estate and Business Services	0.19	0.07	0.01	0.03	0.18	0.20	0.02	0.08	0.001	0.01	0.02	0.25
Community, Social and Personal Services	0.99	3.48	0.62	0.87	0.37	5.11	0.75	2.51	0.38	1.80	0.37	4.22

Triangular Employment Situation

Triangular employment situations in Pakistan come closest to what is variously called “contract labour,” “irregular labour,” “temporary labour,” etc. The common feature of all these categories is that workers are hired through intermediaries, contractors or subcontractors who stand between the principal employer and the worker. In some cases the principal employer may hire workers directly but the terms and conditions under which they are hired is quite similar to the ones prevailing in a triangular situation. Broadly speaking we can distinguish three kinds of “contract”, “triangular” employment situation:

- 1) Workers, who are hired directly by the employer for temporary, short term or piecemeal jobs and are paid directly by the employer and may appear on the pay roll of the establishment. Such workers are usually hired for three months, have no job security or benefits, can be fired at any moment and are not paid when there is no work.⁸

⁷ See Ahmad, Nigar, “Women Home Based piece-rate workers: A Study,” in Ghayur, Sabur, ed., *The Informal Sector of Pakistan: Problem and Prospects*, (Islamabad: Friedrich Ebert Stiftung, 1993) pp. 63-65.

⁸ By contrast a “regular” “worker is enrolled on the labour register of the firm, has job security, is paid wages even when there is no work and receives benefits and facilities such as social security, medical care, education cess, pension, housing, transport, etc.

- 2) Workers who are hired by the employer through contractors for specific jobs. They work under the supervision and control of the employer in respect of their working hours, output, leave, discipline and other conditions of work. The contractor supplies labour to the employer who pays the contractor wages for the workers supplied by him. The contractor pays the workers on terms reached between the two of them. They are shown, in the books, as employees of the contractor.
- 3) Workers who are employed by contractors for execution of a job contract which has been awarded to the contractor by an industrial or commercial establishment. The workers work under the supervision of the contractor. The principal employer has nothing to do with number of workers employed, wages, hours, conditions, etc. The workers do not appear on the pay roll of the establishment.

The use of these kinds of labour practices is not new and can be traced back to at least early 1950s. But then it had a very narrow base restricted largely to janitorial services, packing, loading and transportation activities. It was beginning 1970s that the use of irregular, temporary and contract labour became an increasingly prominent feature in almost all sectors of the economy. We do not have any census data on this increase but two surveys carried out in late 1980s demonstrate this increase.⁹ According to the survey by Shahid Associates contract labour as percentage of total employees rose from 4.9% in 1980-81 to 6.3% in 1987-88. The Systems survey, however, estimates that this percentage rose by about 34% in Sind and by 8% in Punjab. This difference may partly be explained by the fact that the Systems survey focused largely on industries with higher incidence of contract labour. The increase was particularly sharp in industries requiring more unskilled, than skilled workers presumably because a high turn over of experienced skilled workers would reduce production more than the decline in wage cost. The incidence of contract labour across industries is detailed in tables four and five.

It is generally agreed that the incidence has almost certainly increased since late 1980s but recent data is very scant. A 1997 study conducted by the Pakistan Institute of Labour Education and Research (PILER) in the Garment and Textile sector of Karachi found that at least 50% of the workforce was hired through contractors. According to some trade unionists the percentages in some sub-sectors of the textile industry may be as high as 90 percent.¹⁰ According to surveys conducted by the All Pakistan Federation of Labour, in the industrial estates of NWFP, workers employed through contractors ranged from about 36% in the Gadoon Amazai Industrial Estate to about 70% in the Hattar Industrial Estate. (See Tables 4 and 5).¹¹

⁹ Systems Private Ltd., carried out a survey in 1989 for ARTEP, entitled "Survey of Large Scale Manufacturing Enterprises: A Study in Contract Labour." It surveyed 162 firms in the provinces of Punjab and Sind, selected randomly based on latest establishment census, and stratified by sub-sector and employment size. The other survey was carried out by Shahid Associates, also in 1989, for the Manpower Commission. It covered 760 firms belonging to Punjab, Sind and NWFP and included all major manufacturing industries for the periods 1980-81 and 1987-88.

¹⁰ Sayeed, T.T., Ali, K. Parveen F., Ali, S., *op.cit.*, p. 57.

¹¹ See, All Pakistan Federation of Labour, (APFOL), *Working Conditions in Gadoon Amazai Industrial Estate*, (Rawalpindi: APFOL, 1997. And APFOL, *Working Conditions in the Hattar Industrial Estate*, (Rawalpindi: APFOL, 1996).

Table 4.
Contract Labour by Industrial Sector and Sex
Gadoon Amazai Industrial Estate

Sl. No	Sector	Male		Female		Child	Total
		Contract	Other	Contract	Other	Contract	
1.	Chemical Products	55	266	-	12	-	333
2.	Electric Goods & Electronics	200	552	-	152	-	904
3.	Food and Vegetable Oil	542	431	-	-	-	973
4.	Marble	23	55	-	-	-	78
5.	Paper and Board	70	89	-	-	-	159
6.	Plastic	508	713	-	-	-	1221
7.	Soap	-	59	-	-	-	59
8.	Steel	384	232	-	-	-	616
9.	Textile	1214	2946	-	-	-	4160
10.	Miscellaneous	148	189	-	40	-	377
Total		3144	5532	-	204	-	8880

Source: All Pakistan Federation of Labour (APFOL), *Working Conditions in Gadoon Amazai Estate*, (Rawalpindi: APFOL, 1997)

The two principal reasons for the expansion in the triangular employment situations are; a) the attempt, on the part of the manufacturer, to lower production costs, increase productivity, and circumvent labour laws, and b) the existence of surplus labour. On the average workers hired through contractors cost less. This is true even if, in some cases, such workers may be paid higher wages than

Table 5.
Contract Labour by Industrial Sector in Hattar Industrial Estate

Sl. No.	Sector	Male		Female		Child	Total
		Contract	Other	Contract	Other	Contract	
1.	Building Material, Minerals and Marbles	217	47	-	-	-	264
2.	Chemical Products	233	169	-	-	-	402
3.	Engineering, Steel and Metals	448	65	1	-	-	514
4.	Electric and Electronics	250	-	50	-	-	300
5.	Food, Beverage and Oil	1517	565	410	10	40	2542
6.	Glass, Ceramics and Fibers	1416	1003	-	4	-	2423
7.	Paper, Chip Board and Packaging	284	128	-	4	-	416
8.	Pharmaceuticals	464	229	25	28	-	746

9.	Rubber, Plastic and Leather	330	198	18	-	-	546
10.	Textile	1125	192	10	-	5	1332
11.	Miscellaneous	238	99	-	-	-	337
	Total	6522	2695	514	46	45	9822

regular workers because this increase is more than made up by the reduction in cost of benefits which are denied to contract workers. To take one example, establishments have to pay Rs.100 per worker yearly for education cess to the Excise and Taxation Department for regular workers which can be avoided by hiring contract workers. Similarly contributions for social security, provident fund, group insurance etc. can also be avoided.¹² According to one estimate the public and the private sector each spends about Rs.150 million annually through the job contract public system. If these undertaking were to be performed by the management of the establishments through regular workers the cost of production would increase three to four times.¹³ At the same time, some surveys, e.g., the one by Shahid Associates, found that irregular and contract workers are more productive with higher production per man hour compared to regular workers presumably because the fear of losing their jobs at any time forces them to be more efficient and disciplined. Finally, fragmentation of contract workers into small self contained units or departments, usually numbering under 20, and the ability to dispense with providing letters of appointment, thereby showing proof of employment and identification of the employer, prevents the contract workers from forming unions. There are also several other technical impediments to forming a union by contract workers. At the same time, as the survey by Systems Ltd., shows in overwhelming cases establishments simply do not report the employment of workers hired through contractors to any government agency, department or the Federal Bureau of Statistics. In effect, therefore, such workers simply do not exist hence cannot be entitled to any protection. The existing trade unions, on their part, sometimes do not press for regularisation of contract workers out of fear of losing some share in the profits of the establishment.

The second reason for the prevalence of irregular and contract labour, is the surplus of illiterate and unskilled labour. At the same time the contraction in the share of total employment in both the agricultural and manufacturing sectors has greatly reduced the availability of regular employment. Relaxation of regulations by the Government in order to promote labour absorption has also encouraged the use of irregular/contract workers. Over time the triangular employment situations tend to become self-perpetuating. As one study points out, “generally labourers have taken credit from landlords, friends or relatives in their villages, and have reached an urban area with a large accumulated debt to be repaid. The labourers immediate cash requirements to sustain themselves in the city, as well as to send money to their village homes, cause them to become dependent on anyone who can provide them with food and shelter. The contractor does exactly this.”¹⁴

The workers are largely at the mercy of the contractor for housing, medical assistance in case of sickness, etc. They often live in overcrowded *juggies*, *Katcha* houses, temporary sheds, etc. They remain away from their families for long lengths of time since leave is not available to them. In most cases their working conditions are also worse than those of regular workers. They are more likely to be working in hazardous environment. It may be pertinent to note here that Pakistan has one of the highest number of deaths due to accident at work in the less developed countries. During 1988-92, e.g., Pakistan had an annual average death of about 45 per 100,000 compared to 22 in Kenya, 19 in India,

¹² See, *Contract Labour*, Report of National Seminar, Karachi, May 1992. Pp. 38-39.

¹³ *Ibid.*, p.45.

¹⁴ Freedy, F.A., “Contract Labour and Manufacturing in Pakistan,” in *Contract Labour: Looking at Issues*, (ILO) p.59.

16 in Egypt, and 9 in Mexico.¹⁵ In addition to sub-standard living and working conditions workers in triangular situation are also denied protection under labour laws in various ways; either the labour laws are inadequate in providing complete protection or where such legal protection is available there are enough ambiguities for them to be easily circumvented. In addition, and even more glaringly both the administrative and judicial machinery to implement whatever labour laws exist is notoriously inefficient and corrupt and generally hostile to workers, specially the unprotected ones. The next section takes up some of these issues.

3. Legal Framework for Workers Protection

This section will examine the Labour code, its operation in practice, and various case laws as they pertain to the protection of the most vulnerable segments of the workforce. It will examine the legal context for the protection of workers in triangular relationships and also touch look at the special cases of women workers, piece-rate workers and bonded labour.

Triangular Employment Situations (“Contract Labour”)

The law recognises that labour hiring methods may be varied and "non-traditional". In a case in 1976 the Lahore High Court stated that "the prima facie test for the determination of the relationship between the employer and the employee is the existence of the right in the employer to supervise and control the work done by the employee not only in the manner of directing what work the employee is to do but also the manner in which he shall do his work."¹⁶ In certain contract labour situations the Courts have even said that Standing Order 20 will not be applicable.¹⁷ Standing Order 20 of the Standing Orders Ordinance 1968 states, "20. Liability of employer - The employer of the industrial and commercial establishment shall personally be held responsible for the proper and faithful observance of the Standing Orders, whether or not the workmen of such establishment are employed through contractors". The Court observed that a distinction should be made between the situation where a workman is employed through a contractor and the other where the contractor himself employs workmen for carrying on the contract that he has taken. The Court stated that in the latter case "the industry would be paying only for the finished goods and could not be said to have any control or supervision over the workers, and, as a logical corollary, the employees will be the employees of the contractor alone".¹⁸ Thus in this situation Standing Order 20 would not be applicable. Similar observations were made by the Court in *Mian Munir Ahmad V The State*¹⁹ and in *Farid Ahmad V Pakistan Burmah Shell Ltd*²⁰ (which followed the dicta laid down by the Supreme Court in the *Mian Munir* case). It was stated by the Supreme Court that "this question already stands decided by this Court vide its judgement in *Mian Munir Ahmad*...wherein it has been held that a company is not responsible for the acts of the contractor employed by it to carry out any particular work for the company." The tenor of the judgement is such that a clear distinction is attempted by the Court between a contract to provide labour and a contract to provide services which requires the hiring of labour on contract. The distinction would be based on the Court's assessment of the facts as presented to it. It is submitted that the distinction is a difficult one to make as in many instances employers are able to window dress labour contracts to make these legally acceptable. The Indian Supreme Court in *Hussainbhai, Calicut and Alath Factory*²¹ therefore stated, "the presence of intermediate contractors with whom alone the workers have an immediate contractual relationship is of no consequence, when

¹⁵ See, *The News*, Karachi., 1/4/98.

¹⁶ Pakistan Labour Code (Henceforth PLC), #758, 1976

¹⁷ Pakistan Labour Digest (Henceforth PLD), 1977 Kar 214

¹⁸ PLD 1977 Kar 214, p.216

¹⁹ 1985 SCMR 257

²⁰ 1987 SCMR 1463

²¹ 1978 LLJ 1463

on lifting the veil, the naked truth is discovered, though draped in a different paper arrangement, that the real employer is the management and not the immediate contractor. It was further held "that Courts should be astute to avoid the mischief and achieve the purpose of the law and not be misled by the legal appearance". In a recent Pakistan case at National Industrial Relations Commission (NIRC) level²² Indian case law has been followed to hold that workers employed through a contractor for bagging, loading, stitching and insertion activities were employees of the company rather than the contractor. The test proposed by the NIRC to make this determination was not a new test however the positive feature of this Judgement was that the Court said that the burden of showing that labour was contract labour would lie heavily on the company which was claiming that "labour employed through a contractor in a particular establishment ...was outside the territory so carefully and so assiduously defined by the Legislature"²³. The Court also stated that the "legislative intent was not to make any distinction between workers employed directly or through a contractor but beneficent provisions of Labour Law, was equally to be applicable to all workers in an establishment whether they were recruited directly or through a contractor in any manufacturing or commercial establishment". This Judgement is presently under appeal. Even otherwise, the scope of this Judgement is restricted it is submitted by the following factors:

- a) The test is factual and subjective in nature and a situation could therefore always be contrived to camouflage an arrangement as a contract for services.
- b) The "protective territory" delineated by the Legislature is itself limited in scope. (See comments in next section).
- c) The Court is saying in this judgment that "the beneficent provisions of Labour Law, would be equally applicable to all workers in an establishment whether they were recruited directly or through a contractor... ". The implication in this statement is that the worker should in both cases look to the Company as his Employer vis a vis the Labour Laws. However, it is submitted that this Judgement would be consistent also with the position that a contractor employing contract labour should guarantee the rights available under the Labour Laws to the workers employed by him. It is comparatively more difficult to monitor implementation by small individual contractors as opposed to large companies. Also, it is easier for individual contractors to evade application of the Labour Laws using a variety of methods like different trading names so that one establishment cannot be said to be employing 20 or more workmen for the purposes of the Standing Orders Ordinance 1968.

Piece-rate Workers

The protective scenario becomes even murkier in the case of piece rate or home based work. Presently the protective scope of labour legislation extends to "Workmen" (those who are not in a managerial, supervisory or clerical grade) employed in areas covered by legislation (e.g. shops, commercial or industrial establishments or factories). Thus, those workmen who have a direct contractual relationship with the employer through an employment contract can hope for protection. This scope may also be extended to other workers by virtue of their physical presence in the workplace. Thus, if the worker is physically present in the workplace he could make a case out for enforcement of his rights and either look to his contractor or the company for implementation of his rights. The law does not extend to home based workers who are not physically present in a shop, commercial or industrial establishment or a factory.

²² 1993 PLC 937

²³ 1993 PLC 937. P.957

S. Mullaly²⁴ comments with regard to the Labour Code," (1) It divides workers into a variety of categories and provides each category with varying rights and entitlements; (2) Its application varies according to the type of workplace and number of workers employed with the result that a large number of workers fall outside the scope of existing legislation; it is also difficult to determine whether or not certain categories of workers fall within the scope of existing legislation. A pertinent example of this particular problem is referred to in a recent ILO report in which it was noted that a complete lack of consensus exists as to whether or not existing provisions of the Labour Code could be invoked by home workers".

This means then that these workers are excluded from application of laws relating to hours of work, weekly rest, overtime, annual leave etc.; They are not entitled to pension or social security benefits nor is there any specific prohibition with regard to undertaking work at home which could endanger the worker, the persons living with him or the public at large (as would be the case for example with workers manufacturing firecrackers/fireworks at home). As minimum wage laws are not applicable to home based workers studies show that they are extremely poorly paid. The lack of regulation of home based work has also meant that a high proportion of child labour is employed in this area. Studies also indicate that the future trend is that more and more women and children will be employed in home based work. A study conducted by the Pakistan Institute of Labour Education and Research (PILER)²⁵ for example showed the use of female child labour (5% of the sample in the age group 10-15) mainly in the garment industry. A World Bank report (1989) cited in this PILER study says that 53% of employed women in the urban sector are home based workers. It is estimated that this number will grow with women working not only in the home but also as the PILER study terms them, as "micro - entrepreneurs" i.e. women involved as family labour in small enterprises or those who sub contract work out further to other women.

Woman Workers

It would also be pertinent to point out here that the number of working women in the urban economy (both in the formal and informal sector) is on the increase. The percentage of women workers in the manufacturing sector as a percentage of women employed in all sectors has increased from 5.45% in 1973 to 15.27% in 1981²⁶. A PILER survey²⁷, which was conducted in 1988, shows the following pattern emerging:

Decade	50s	60s	70s	80s
% Of women Employed by a firm	10%	12%	20%	58%

However, despite this trend the Labour Laws do not adequately protect women. Only a few of the laws deal with women separately e.g. the Maternity Benefits Ordinance which gives women paid maternity leave and the Factories Act which prohibits women from working at night; the Mines Act prohibits women from working underground. This legal framework is far from sufficient. Mullalay²⁸ comments "an analysis of State practice reveals a highly protective approach to women's participation in paid employment, an approach that is clearly sanctioned by Constitutional doctrine (Mullalay argues that the 1973 Constitution assumes that women are in need of protection). Domestic legislation

²⁴ Mullalay, S., *Women and Employment Legislation in Pakistan: A Review*, 1994

²⁵ Sayed, A.T., Ali, K., Parveen, F., and Ali, S., *Contract Labour in the Pakistan Garment and Textile Sector*, (Karachi: PILER, 1997).

²⁶ Hafeez, S., *Metropolitan Women in Pakistan*, (Karachi: Royal Book Company, 1981)

²⁷ Ali, K., Survey of Female Industrial Labour Force, Unpublished MS.

²⁸ Mullalay, S., *op.cit.*

referring specifically to women workers is almost exclusively "protective" in nature. Although Pakistan is a party to the ILO Convention of 1958 on Discrimination²⁹ as yet no legislation on equal treatment or equal pay within the workforce exists. Neither has any legislation been enacted to give effect to the Constitutional norm of non-discrimination on the basis of sex³⁰. The development of international law in this field has had very little impact within Pakistan..." Pointing out the limitations of "protective legislation", Ahmad states³¹ "studies reveal that women working in certain industries are at higher risk at the time of pregnancy and have a higher rate of miscarriages or still births. These health hazards of course, are not mentioned either in the Workman's Compensation Act or the Provincial Employees Social Security Ordinance thus, a female worker cannot claim either compensation or special protection from risk. No special medical attention is provided to pregnant women; maternity benefit and leave...is inadequate and the law does not address itself to the provision of crèches and daycare centres at places of work. The Mines Maternity Benefit Act does stipulate that a crèche should be provided but, the West Pakistan Maternity Benefit Act does not." The Report of the Commission of Inquiry for Women³² and the Task Force on Labour³³ acknowledge the subordinate role of working women vis a vis their male counterparts and recommend that measures should be taken to evolve "certain minimum standards" which will protect women workers from exploitation.

Bonded Labour

In addition to home based workers the bonded labour sector also employs a large proportion of women and children. The Supreme Court handed down an important decision in the case of bonded labour (those in self-employment in conditions of dependency) stating that such labour could be violative of constitutional provisions³⁴. One of the significant features of this decision is that the Court accepted jurisdiction under Article 184(3)³⁵ and decided to take up this issue based on a telegram received from one Darshan Masih and twenty of his companions with women and children who were all working as brick kiln bonded labourers in the heart of Lahore (Main Market, Gulberg). The case was disposed off through an order agreed by both sides (attached as Appendix A) but the Court recognised that the issue of forced labour would require further work. In continuation of this Judgement the Bonded Labour System (Abolition) Act 1992 was passed. This goes much further than the Supreme Court Judgement in that Section 4 states: "(1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour. (2) 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 other form of forced labour".

"Section 6 states "(1) On the commencement of this Act, every obligation of a bonded labourer to repay any bonded debt, or such part of any bonded debt as remains unsatisfied immediately before such commencement, shall stand extinguished". The commencement date of the Act is 11th March 1992. The Act provides for Vigilance Committees to be set up at District Level consisting of elected representatives of the area, representatives of the District Administration, Bar Association, Press, recognized social services and Labour Departments of the Federal and Provincial Governments. The functions of the Vigilance Committees are specified in Section 15(2) as the following:

- (a) To advise the District Administration on matters relating to the effective implementation of the law and to ensure its implementation in a proper manner;

²⁹ Convention on Discrimination in Employment and Occupation, 1958.

³⁰ Constitution of Pakistan, 1973, Article 25.

³¹ Ahmad N., "A Review of existing Labour Laws with Special Reference to Female Workers," 1993.

³² Report on the Commission of Enquiry for Women, 1997.

³³ Report on Task Force on Labour, 1994.

³⁴ PLD 1990 SC 513

³⁵ Article 184 (3), Constitution of Pakistan, 1973.

- (b) To help in the rehabilitation of the freed;
- (c) To keep an eye on the working of the law; and
- (d) To provide the bonded labourers such assistance as may be necessary to achieve the objectives of the law." The Law provides that a Magistrate specially designated under this Act would be competent to try offenses under this Act and no other Court would have jurisdiction. This would mean that appeals to the High Court for example would not be permitted. Under the Bonded Labour System (Abolition) Rules 1995 District Magistrates especially designated for the purpose would have the power to investigate premises or esquire into any matter which could be considered a violation of the Act. A rehabilitation and welfare fund is also to be established to assist freed bonded labour. Figures are not presently available with regard to the efficacy of these laws however, the Human Rights Commission of Pakistan (HRCP) continues to catalogue instances of forced labour and it would be safe to say that the law has had little or no impact. HRCP's State of Human Rights in 1997 report says that in Sindh alone the HRCP taskforce addressed 160 communications to the authorities identifying private jails and large concentrations of bonded labour.

Limitations of the Labour Code

Whilst one cannot over emphasise the need to improve legislation with regard to women workers it is important to acknowledge that workers generally are not adequately protected by the Labour Laws. The point has already been made earlier that the Labour Code divides workers into different categories and each category is allowed varying rights. Some examples of this are:

- (a) Standing Order 1 of the Standing Orders Ordinance 1968³⁶ permits the classification of workmen into permanent, probationers, badlis, temporary or apprentices. Only a permanent workman is entitled to one month's notice for termination of his employment (for any reason other than misconduct) or one month's wages in lieu of notice. The services of a temporary worker (and by implication this would apply to probationers, badlis and apprentices) can be terminated by the employer at any time, even without notice. Under Standing Order 10-B the employer is required to insure permanent workmen against (1) natural death and disability and (2) death and injury arising out of contingencies covered by the Workmen's Compensation Act 1923 or the Provincial Employees Social Security Ordinance 1965³⁷. Standing Order 12(5) provides that the services of a permanent or temporary workman will not be terminated for misconduct without following the dismissal procedure laid down in the Ordinance however this right is not available to other categories of workers. In a few cases though the Courts have sought to extend the dismissal procedure to all categories of workers. Under Standing Order 19 only a permanent workman is entitled to a service certificate at the time of his dismissal, discharge, retrenchment or retirement from service. It should also be emphasized that even for permanent workmen the pre conditions to enforcing their rights under the Standing Orders Ordinance are onerous. A workman is required to have a written contract of employment under Standing Order 2A which would display the permanent nature of his work and therefore differentiate him from other categories of workmen employed in the same factory. In many cases the workmen do not have written contracts. Further, to fall within the definition specified by the Ordinance the workman would also have to show that the work he was doing was not of a supervisory

³⁶ West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968.

³⁷ 1989, PLC 506 (Permanent Workers) and 1993 PLC 303 (Temporary Workers)

or managerial type. The work done by him would have to fall within the manual or clerical categories. By using this test it is submitted that the Labour Code, further restricts the categories of workers who will receive protection and therefore affords coverage to a small proportion of the workforce.

- (b) In the case of welfare legislation also certain categories of workmen are excluded:
- (i) Casual workmen are excluded from the operation of the Workmen's Compensation Act 1923.
 - (ii) There has been some debate as to whether only permanent employees are covered by the Employees Old Age Benefit Act 1976 or the Provincial Social Security Ordinance 1965. The trend seems to be to interpret the concept of a workman covered under these laws in a broad manner especially in the case of EOBI to cover all categories of workers. The EOBI Act does not however extend to persons employed in an administrative or managerial capacity earning more than 1,500 rupees per month unless they were members of the scheme prior to 1983 (when this amendment was introduced). This means that those in identical jobs but who were not employed prior to 1983 are now excluded.
- (c) Not all workers have the right to unionise in order to demand their collective rights. Though Section 3 of the Industrial Relations Ordinance 1969 prima facie seems to give an absolute right to all workers to form trade unions ("workers without distinction whatsoever shall have the right to establish....") this is not the case as the following categories are excluded:
- (i) Those in the police or any of the Defense Services of Pakistan or any services or installations connected with or incidental to these services.
 - (ii) Those in the administration of the State other than those employed by Railways, Posts, Telegraph and Telephone Department.
 - (iii) In Pakistan Television corporation or the Security Printing Corporation.
 - (iv) In an establishment maintained for the treatment or care of sick, infirm, destitute or mentally unfit persons or,
 - (v) as a member of the security or fire fighting force of the National Airline, an oil refinery or of an establishment engaged in the production, transmission or distribution of natural or liquid petroleum gas.

It would therefore be illegal for these workers not only to form a union but also to take action individually or collectively in pursuance of their demands. Additionally, from time to time the Federal Government has added other categories to the aforesaid list thereby preventing workers falling within these categories from organizing for example:

- (i) Vide the Finance Act 1992, as an incentive to foreign investors the application of the Industrial Relations Ordinance 1969 was excluded from "the Industrial undertaking or class of undertakings situated in the Industrial Zones" (as notified). The Export Processing (Control of Employment) Rules 1982 also contain a prohibition of strike clause.

- (ii) Under MLR 52 dated 15th August 1981 the PIA Worker's Union was dissolved. The union was then restored in 1988.
- (iii) Under the Pakistan Water and Power Development Authority (Amendment) Ordinances of 1998 (XX of 1998 and XXI of 1998) the application of the Industrial Relations Ordinance 1969 and the Standing Orders Ordinance 1968 to the employees of WAPDA has been excluded. This exclusion has been upheld by the Supreme Court .

Under an amendment in the Offenses in Respect of Banks (Special Court) Ordinance 1984 the use of office facilities for trade union activity in banks during office hours was banned. The amendment also barred outsiders from being elected to a bank trade union. These changes are violative of the Industrial Relations Ordinance 1968, Article 17 of the Constitution of Pakistan and also ILO Conventions 87 and 89 on the right to organise and do collective bargaining.

The Labour Code has also been criticised because its application varies according to the type of workplace and the number of workers employed. Thus, the Standing Orders Ordinance 1968 is applicable to commercial or industrial establishments employing more than 20 workmen (including managerial and supervisory staff). However establishments employing less than fifty workmen are exempt from the provisions of Standing Order 10-B (compulsory group insurance), 11 (stoppages of work and lay off) 12(6) and (8) (gratuity) and 15 (punishments and procedure for dismissal) unless notified by the Government. The Factories Act 1934 applies to precincts where 10 or more workers are working or were working in the last twelve months. The Provincial Employees Social Security Ordinance 1965 applies to notified establishments with 10 or more workers. The Employees Old Age Benefits Act 1976 also covers establishments with 10 or more workers. Reported cases amply illustrate the difficulty which is often experienced by the Courts in determining the number of workmen employed in a particular establishment given the fly-by-night tactics being used by employers and the fact that the number test is applicable not with reference to all persons working in an establishment but only those who undertake manual, menial or clerical work (excluding those employed in a supervisory or managerial capacity). This would also exclude in most cases contract labour.

As economic conditions within the country deteriorate businesses are under pressure to improve their competitiveness. In many instances it is in the area of employment of human resource where employers feel they can make savings. Thus, there is a growing trend towards contract labour and other methods of employing staff, which are cheaper. There is also a growing move towards retrenchment of workers in an effort to improve profitability of businesses. Under World Bank and IMF "structural adjustment" pressures Government Corporations especially, are required to reduce staff through downsizing or right sizing. In these instances, unions are less vociferous in their concerted action as there is a growing understanding that businesses have become more resistant to union demands because of their own economic pressures. Thus, in many instances unions cannot protect the rights of workers and the Courts then become the protectors of last resort. In recent decisions however the Courts seem to have taken a more pro-Government view.

Thus in a case filed by employees of United Bank Ltd against the Bank's retrenchment scheme, the Court observed the following:

- (a) The Bank was entitled to down size the number of staff employed in view of economic stress.
- (b) The Bank was entitled to reorganise its business in order to run it more efficiently and if, in the process, some members of staff had become redundant, the Bank was entitled to terminate their services.

- (c) The retrenchment scheme could not be challenged if it was motivated by commercial considerations. It could only be challenged if it was based on mala fide extraneous considerations.

It is ironic of course that the Court assumes that the same management which was probably responsible for mismanaging the enterprise so that it was "...suffering continuous losses for the last several years" would now be able to reorganise the enterprise to make it commercially viable. However, technically a Court would not be competent to delve into "extraneous" issues of this nature and herein lies the limitation of attempting to rely on the judicial system as the sole protector of rights as opposed to other organs of civil society. In the backdrop of rising economic tension the need for protection of workers will increase and it will also be even more important to protect their ability to collectivise. The recent decision of the Supreme Court in the WAPDA case is also the cause of concern in this context. The Court stated that the exclusion of the application of the Industrial Relations Ordinance 1969 and the Standing Orders Ordinance 1968 to the employees of WAPDA was not violative of any of their fundamental rights. In this petition the petitioners (the WAPDA union) had also challenged the Government's action of handing over management of WAPDA (a State run Corporation) to the Armed Forces. However, the Supreme Court felt that such handing over to the Armed Forces was justified and valid under Article 245(1) of the Constitution of Pakistan. The Court said that it was an admitted position that "WAPDA on account of malpractices in its working was at the verge of financial collapse. In the above factual background it cannot be urged that the action of calling the Armed Forces in aid of civil power i.e. WAPDA, which is a state functionary entrusted with the functions on behalf of the State to supply electricity without which the State cannot be run is unwarranted". This Judgement sets a dangerous precedent because the Supreme Court is legitimising the encroachment of organs of civil society by the Armed Forces.

To summarise, in looking at the legal protection afforded to workers who are self-employed, self-employed but in conditions of economic or other dependency or involved in a triangular employment situation only certain categories or classes of workers come within the ambit of the Labour Code.³⁸ For these workers a minimum level of protection is provided through the Labour Code. However, the workers who are covered by the Labour Code are in fact in the minority, they work in the formal sector mainly in manufacturing or service industries and by nature of the definition of "Workman" in various laws, they are really those who are at the very bottom of the production pyramid. Thus, the majority is not covered either because they work in the informal sector or in units which are too small to be covered by the laws or, because by virtue of the nature of their work they fall outside the classification of a workman. These employees would have to rely on the principle of master and servant and any redress required by them would be under the terms and conditions of their Contract of Employment (if they have such a contract) through the normal Civil Courts. Those governed by the master and servant rule can sue and claim damages for breach of a contract for personal service but are not entitled to a declaration or injunction. Specific performance is also not possible. Given the backlog of work in the Civil Courts and the enormous costs involved in litigation, it would be safe to say that most employees would not receive any form of redress at all. There is also a growing tendency in the Civil Courts as has been pointed out earlier to uphold commercial considerations as being of paramount importance when deciding such cases. The Labour Courts on the other hand still have a more employee sensitive approach, but these Courts would not have jurisdiction.

Recently civil servants, even those who could fall within the category of "workmen" have been precluded from approaching either the Civil Courts or the Labour Court (in the case of workmen) due to the insertion of Section 2A in the Service Tribunal Act 1973. The amended section states "service under any authority, corporation, body or organisation established by or under Federal Law or which is owned or controlled by the Federal Government or in which the Federal Government has a controlling share or interest is hereby declared to be service of Pakistan and every person holding a post

³⁸ For the workers view on the labour Code also see Appendix B which is extracted from Report of the Task Force on Labour, 1994.

under such authority, corporation, body or organisation shall be deemed to be a civil servant for the purpose of this Act." Following insertion of this provision the Courts agreed that even workmen would be covered by this change and would therefore have to petition the Services Tribunal for their grievances. This change limits the jurisdiction of the Labour Court and has made challenge of management decisions more difficult. Both the Karachi and the Lahore Tribunals are presently dysfunctional, as members have not been appointed. There is however a growing body of opinion which maintains that workers cannot be deprived of the protection afforded to them through laws like the Standing Orders Ordinance 1968 or the Industrial Relations Ordinance 1969 and that a procedural change in law cannot take away the substantive rights guaranteed under these laws. The Supreme Court is yet to uphold this contention.

Other workers get excluded from application of the Labour Code by virtue of their relationship with the Employer. Self employed persons for example are treated as "contractors" and are therefore only governed by their contractual relationship. They cannot look to the Labour Code for protection. Home based workers would fall into this category also and we have already pointed out that these workers along with bonded workers suffer the most exploitation.

Labour law enforcement machinery is generally weak. Whilst corruption is an issue, problems are also caused by wrong staffing, lack of technical knowledge and expertise and, inadequate awareness. Because of the inadequate number of Labour Courts decision of cases is delayed for years. Some remedies are discussed next.

4. Recommendations /Conclusions

The magnitude of the problems posed by the rapid and widespread expansion of triangular employment situations has been a cause of concern for both the trade unions and policy planners. A number of remedial measures have been put forward but no action has been forthcoming.

Trade unions and workers organisations in general have been demanding legislation to abolish contract labour altogether. Political parties, both in and out of power, have sometimes even promised it. Predictably, employers are opposed to abolishing contract labour on grounds of pragmatism. "The employers maintain," as a recent statement of the Employers Federation of Pakistan put it " that contract labour is a bona fide media of providing employment opportunities to the unemployed labour force besides being a universal source of getting efficient and productive workforce at competitive cost."³⁹ Many analysts and policy makers tend to agree that in the face of the huge surplus of unskilled labour force and shortage of regular and permanent employment Contract labour is here to stay. The need is to contain its expansion, regulate the system and bring it under more stringent and comprehensive protective umbrella. Various proposals merit consideration in this context.

- 1) Although existing laws provide some protection they are antiquated or inadequate and in need of change. Two commissions (Justice Shafiur Rahman and Justice Afzal Lone) are independently looking at the simplification and rationalisation of the Labour Code but each Commission we understand has had one meeting each and progress has not been made. Any amendments or new legislation must ensure that:
 - (a) Definitional ambiguities are removed. For example, at present there is no clear definition of a "workman" which allows the disqualification of a large segment of the workforce as workers hence denies them any protection.
 - (b) The practice of replacing permanent workers, or filling permanent jobs with

³⁹ Response to the proposed Labour and Manpower Policy 1999. Issued on Jan 17, 1999.

workers hired through contractors should stop. Employers should also be required to provide justification for hiring contract workers indefinitely instead of either making them permanent or letting them go after maximum of ninety day as the law stipulate. At present a very large number of contract workers qualify for permanent position. Such workers should be made permanent.

- (c) Once an establishment or premises has been registered under the Factories Act all workers on the premises, regardless of their status, should be entitled to the protection provided under the law.
- (d) All workers within an establishment should be able to form one union irrespective of employment status. Workers engaged in similar work should receive same wages, benefits and terms of employment.

There is an urgent need to regulate the contractors and his relationship with the principal employer. Several measures are possible.

- (a) Contractors could be required, under the law, to submit monthly returns providing comprehensive statistics on labour employed by him.
 - (b) Contractors should be legally bound to observe provisions of the law with respect to wages, benefits, working conditions, health and safety etc.
 - (c) It should be obligatory for the principal employer to maintain accurate address of the contractor who should be required to notify any changes in address to the employer and the Labour Department. The employer should also share the responsibility of ensuring that the contractor provides the legally required wages and benefits to the workers.
- 3) In addition to the inadequacy of existing legislation a more serious problem, perhaps, is the highly inefficient and corrupt administration and implementation of these laws. This implementation machinery needs extensive overhaul settling mechanisms need to be improved.
- 4) Finally, there is need to remove some serious shortcomings in unionisation of contract workers. If they form a union the contract of the contractor and the services of labour may be terminated. Since workers have no proof of employment or name of principal employer, required for registering a union, they are unable to unionise. Moreover, existing laws, such as IRO Section 7 (2) (a) disallows contract labour membership in existing union. Trade unions need to be generally strengthened as means eventually to abolish contract labour.

Appendix A

EXTRACT PLD 1990 SC 153 : Order Passed at p.540

(In the matter of Enforcement of Fundamental Rights Re: Bonded Labour in Brick Kiln Industry).

"Members of both the parties in person and through their learned counsel have been heard in the above-noted case. The following agreement in principle has been reached and be made at the order/decision of the Court:-"

a) Past Peshgis:

(i) It is to be made clear that past unreturned Peshgis given to the labourers by brick kiln industry owners are still outstanding against the labourers. The Labourers are legally bound to return all such outstanding peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorised to recover the same by legal means i.e. through Court decrees--cases to be decided expeditiously with effective notices to the labourers; but, they are not authorised to use unlawful means for the recoveries of such Peshgis, such are coercive methods or use of police.

(ii) Past Special Emergency Loans. A maximum of Rs.5,000 per household granted to the labourers in the past, in the form of formal loans or grants for: marriages, religious festivals, medicine/treatment and death ceremonies, by the owners (to the labourers) shall not be recoverable from them and shall be treated as donation. This concession shall only be available to those labourers who return and resume their work voluntarily.

b) Future Peshgis. Peshgis system in future is to be discontinued. Although in proper cases if a valid agreement on this point is reached between a labourer and a brick-kiln owner, the latter shall give to the former an advance loan, which shall not be in any case more than seven days wages, against a proper receipt in duplicate, copy of which shall be retained by both the parties. The payments/adjustments of which shall be made to the owners in easy installments as agreed by the parties. However, if a loan in the behalf is not settled/adjusted, no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would be at the risk of the owner.

c) Return to work. A notice/direction is to be issued to all the labourers to come for work and report to their respective Bhatta owners; who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case a labourer does not want to come back or having returned, wants to leave his work in the Bhatta of an existing owner, or to get job elsewhere, or in the Bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned District Judge/Civil Judge 1st Class, gets a certificate for the purpose.

d) Payment of Wages. Payment of wages shall have to be made to the labourers on daily/weekly/fortnightly/monthly basis as agreed upon between the labourer and Bhatta owner, regularly. No deductions are to be made from their wages; for the damage/losses to bricks caused on account of rain and it shall be borne by the Bhatta owners.

e) Jamadar/Jamadarni System. The existing Jamadar/Jamadarni system is to cease forthwith. all the labourers shall have direct dealings with their respective owners. No payments on behalf of the labourers shall be made to them nor recoverable/adjustable.

f) The owners shall not directly or indirectly ask or pressurise any labourer for employing the womenfolk or children. However, if the latter do so at their own risk and responsibility, no complaint shall then be made against the Bhatta owners in this behalf. The head of the household who employs any of their womenfolk against her wishes and/or children might in proper cases, be proceeded against."

Appendix B

EXTRACT

7.3 Workers' Point of Emphasis

- i) A serious concern was expressed by the Workers' representatives over the delays in the dispensation of justice and the quality of judgement. It was suggested that labour courts should be set up at district level to provide justice to the aggrieved parties at the doorsteps. All establishments except army and police should have the right of unionization and collective bargaining. Restrictions imposed on formation of trade unions in EPZs should be withdrawn and Pakistan Essential Services (Maintenance) Act, 1952 be repealed.
- ii) For encouraging industry wise unions and trade unions at the national level like those in WAPDA, Telecommunications etc., should be declared as one establishment.
- iii) All those workers who are doing jobs of continuous nature must be made permanent.
- iv) Wage ceilings for the purpose of workers' benefit may further be enhanced because the present upper wage ceiling of Rs.3,000 is too low even to cover an ordinary worker who is certain establishment earns about Rs.6,000. Foremen, supervisors etc. should be entitled to have the benefit and coverage of existing labour laws.
- v) The term "worker" may be redefined to exclude only those persons who perform managerial job. This will bring all workers including supervisors within the purview of the definition of worker.
- vi) The minimum wage of unskilled workers fixed at Rs.1,500 per month is applicable only to those establishments which employ 50 or more workers. Unskilled workers of smaller establishments have not benefitted from the amendment in the Minimum Wage Ordinance. The condition of 50 workers should, therefore, be removed.
- vii) Wages should be increased in keeping with the inflation and be pegged to price indices.
- viii) Measures should be updated for protection of workers against health and work hazards. Provision of housing and medical facilities and enhanced benefits of social security, EOBI etc. should be ensured to workers.
- ix) Paid leave may be increased for those workers who are engaged on hazardous occupations.
- x) The Minimum Wage Ordinance 1961 provides for periodical review of minimum wage rates for all categories of workers. While Government has uniformly fixed minimum wages of unskilled workers at Rs.1,500 per month. Provincial Government may be asked to review minimum wages of semi-skilled and skilled workers who, in most of the cases, at present, receive minimum wage at the rate less than minimum wage of an un-skilled worker.
- xi) High Court has given the decision that the union will not be registered without the consent of the employers. The judgement has far reaching consequences for trade union movement and will act as a hindering factor.
- xii) It was brought to the knowledge of Task Force Team during its meeting with workers and employers delegates that the working conditions for mine workers in general in Baluchistan were deplorable, as they were not provided with basic amenities of life and health facilities.

It was, however, observed that PMDC workers enjoyed better facilities. It was suggested that a separate legislation should be made for mine workers by repealing the outdated law.

- xiii) Right of unionization and freedom of association has been curtailed or denied in certain cases, for example, agriculture, civil aviation, hospitals, Radio, T.V. teaching institutions etc. Right of unionization has been denied in Irrigation and Forestry Department by the Judgement of the Supreme Court. The government should, therefore, take effective legislative measures by removing flaws and deficiencies in the laws.
- xiv) In certain public utility services workers do not enjoy the right of unionization since strike can be prohibited in such organizations by invoking the relevant provisions of IRO, the workers should have in all cases the right to form unions.
- xxv) Workers enjoy no protection during pendency of bilateral negotiation. The law should be amended to provide such protection.
- xxxviii) The workers in mines demand amendment in the Mines Act, 1923 particularly in Sections 10, 11, 19, 20, 22 and 30 concerning safety matters etc. Employees Old Age Benefits Scheme should be introduced also in mine.
- xl) The penalties and fines for defaulters of labour laws should be enhanced in proportion to inflation rate.