# THE IMPACT OF HUMAN RESOURCE LEGISLATION ON BUSINESS PERFORMANCE



Submitted

by

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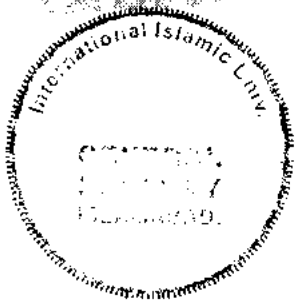
**A thesis submitted in partial fulfillment**
**of the requirements for the degree of**
**MASTER IN LAWS**
**(Faculty of Shari'ah and Law)**
**International Islamic University Islamabad**
**1428/2007**





Hours of labor - law and legislation

Wages - Law and legislation

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# LIST OF ABBREVIATIONS

**BM** Business Management
**CB** Collective Bargaining
**CBA** Collective Bargaining Agent
**CEDAW** Convention on the Elimination of all Forms of Discrimination against Women
**CPRW** Convention on the Political Rights of Women
**EEO** Equal Employment Opportunities
**EO** Equal Opportunities
**HR** Human Resource
**HRD** Human Resource Development
**HRL** Human Resource Legislation
**HRM** Human Resource Management
**ICESR** International Covenant on Economic, Social and Cultural Rights
**ILC** International Labour Conference
**ILO** International Labour Organization
**IR** Industrial Revolution
**JIT** Job Instruction Training
**JMT** Job Methods Training
**JRT** Job Relations Training
**PM** Performance Management
**SROs** Statutory Regulatory Orders
**UDHR** Universal Declaration of Human Rights
**UNGA** United Nations General Assembly

# LIST OF CONVENTIONS

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# DEDICATION

The thesis is dedicated to all those labourers of 1886 who sacrificed their lives in Chicago for the rights of their community that paved the way for an organised labour movement for the cause of social justice and fair play with working people and deserved to be remembered by their fellows from around the world on the occasion of international labourer's day.

# ACKNOWLEDGEMENTS

First of all, thanks to Almighty Allah, the most Beneficial and the most Merciful, Whose blessings are showering on me throughout the life. A special thanks is due to Imran Ahsan Khan who has placed a wealth of information in Thesis Handbook to help the students and new researchers. The credit also goes to the Institute of Labour and Manpower which facilitated me to have an access to volumes of books for the purpose of my research. Finally, I am very grateful to my supervisor, Muhammad Younus, to help and guide me at each and every step whenever I faced any trouble in my research.

# PREFACE

Tracing the path marks of Human Resource, developed countries evolved the concept of Human Resource Legislation. Under-developed countries are still not inclined towards the mechanism and are found ignorant from the consequences thereof. There is a wealth of material available about human resources. Human resources are basic to the development process but unfortunately have been neglected in Pakistan. Very little research has been carried out in this area from Pakistan perspective. All the books and material found on internet had been written by the English writers/researchers. In spite of hard search, I found the only book **"Human Resource Development and Management in Pakistan"** by the contribution of M. Aslam Chaudhary and Abdul Hamid. The book is written on the economic point of view, not the legislative point of view. That's why; I endeavour my best to restrain my research to the legislative way only. All the legal aspects involved in Human Resource Management are gone through in my research. In my research efforts has been made to discuss the key issues relating to the Human Resource Legislation. The research contains six exclusive chapters; The ***First*** Chapter introduces the human resource legislation and its historical background. The ***Second*** Chapter in my thesis outlines the nature of the contract between an employee and employer and distinguishes; in particular, between the explicit and implicit terms of the contract .The ***Third*** Chapter deals with the key aspects of Equal Employment Opportunities. The ***Fourth*** Chapter looks at Hours of Work and ***Fifth*** Chapter examines issues of Payment of Wages and ***Sixth*** Chapter accomplish on the conclusion.

# ABSTRACT


## *TITLE: THE IMPACT OF HUMAN RESOURCE LEGISLATION ON BUSINESS PERFORMANCE*

*by*

*NOREEN KHAN*

The impact of law on Human Resource is indicative of the development of laws governing all business and societal activities. The main objective of any organization or enterprise is to enhance the capability of the employees in order to generate more profit. It is also the core requirement of any business or non-business organization to reduce the turn over rate of trained workers. Moreover, it cares about the competitive edge of the company over its rivals. Enterprises tried their best to make the customer loyal. This research relates the alignment of human resource practices within an enterprise with legal aspect of human rights. How the business performance will be affected by the deployments of human resource legislation in organization. The Government had passed various laws such as Employment laws, Labour laws and Discriminatory laws etc. But there is a need to make a reliable assessment of the impact on the organization of the latest changes in employment law and internal and external labour market requirements.

There is a wealth of material available about human resources. Human resources are basic to the development process but unfortunately have been neglected in Pakistan. Very

little research has been carried out in this area from Pakistan perspective. All the books and material found on internet had been written by the English writers/researchers. In spite of hard search, I found the only book *"Human Resource Development and Management in Pakistan"* by the contribution of Muhammad Aslam Chaudhary and Abdul Hamid. The book is written on the economic point of view, not the legislative point of view.

There is a dire need to develop creative literature relating to Pakistan in all fields. Literature from aboard has been found extremely useful but contain no relevance to Pakistan's conditions, culture, practices or other aspects. Therefore, there is a great need to produce the useful material oriented to conditions found in Pakistan. The laws and legislation found in Pakistan, in this respect should be examined, through human resource management aspect.

The research will provide organizations with the knowledge, insight and skills required to understand and apply employment law principles in workplace, or to advise others on employment law issues. Most of the organizations have qualified lawyers or experts in the Human Resources field for this purpose. It is a stimulating, challenging and academically rigorous research that endows organization with sophisticated legal implementation and practical skills as well as providing them with the knowledge base requirements of successful employment organization.

The research is executed by following the Islamic Ideology on Human Resource Legislation. The brief statement of International Conventions and Treaties of Human Resource Legislation are elaborated in a concise form. Then in the light of these International Conventions and Treaties, National Laws on the subject are also observed. Recent leading cases with reference to Pakistani Law are also admitted. The impact of this Human Resource Legislation on Business Performance is assessed in the last. Obviously, laws are enacted to the welfare of the people. Simply where there is legislation, there is an impact which proves it either positive or negative. The impact of Human Resource Legislation also leads to bisect view which encircles the positive and negative aspects.

# CHAPTER I

# INTRODUCTION

This research work aims to assess the impact of human resources legislation **(HRL)** on the business performance. Assessing the impact of HRL on business performance is important at this juncture for many reasons:-

1. There is a dire need to determine the impact of HRL to evaluate the performance of business. As this legislation will contribute in increasing protection for workers and improve their working conditions leading to increased motivation.
2. The secondary objective is to examine the implementation of HRL to find out the difficulties in this respect if any.
3. In the light of these findings, the recommendation will be made to make implementation of HRL more effective.

Human Resource Management **(HRM)** plays the main role in clarifying the firm's human resource problems and develops the solutions to them. Today, it would be difficult to imagine for any organization, to achieve and sustain effectiveness without efficient HRM programmes and activities. The impact of law on HRM is indicative of the development of laws governing all business and societal activities. Human Resources Legislation is thus a necessary instrument for a government's administration of HRM programmes and activities. The best human resource legislation improves the employee performance, which results in improving organizational output.

Improvements in quality, profits and business performance turnovers are the heart of the interests in the HRL. A system of law is a guarantee for people's personal safety,

liberties and rights. This applies in matters of labour and employment just as in another sphere of human life. Labour administrators have a fundamental duty to uphold the rule of law at all times, in their field of responsibilities. As there is an old legal maxim

***"Justice must not only be done, but must manifestly be seen to be done".***

This maxim applies in its true sense, in respect of HRL only when the employees of the same categories, enjoy themselves with same incentives, benefits and equality before the law. The HRL is necessary to increase production and to maintain good-will as means to achieve that end.

**Huselid** defines *'high performance work practices'* as including 'personnel selection, performance appraisal, incentive compensation, job design, grievance procedures, information sharing, attitude assessment and labour management participation, together with *'the intensity of recruiting efforts'* the average number of hours training per employee per year and its promotion criteria. **Huselid** organizes these factors reflecting concern to improve employee skills and provide effective organization structures which will assist in maximizing employee contributions and those practices that are concerned with employee motivation and reinforcing desired employee behaviours.[1]

HRM practices are increasingly influenced by laws. Employment discriminatory laws pose very apparent and direct constraints on human resource planning. Additionally tax laws, labour laws, employment laws, safety and health laws all serve to guide management practices in human resource field.[2]

## 1.1 HUMAN RESOUCE MANAGEMENT

Human Resource Management **(HRM)** deals with the issues like planning, recruitment, selection, memorization, training, compensation, appraisal and other job related aspects of the human resources of any company. HRM can broadly be defined as a strategic and coherent approach to the management of an organization's most valued

[1] Huselid, M.A, The Impact of HRM Practices on Turnover, Productivity and Corporate Financial Performance,(Academy of Management Journal, vol.38.no.3,1995), 645-47

[2] James, W.Walker. Human Resource Planning: Legislation (USA: Mc. Graw Hill Inc, 1987), 38-39.

assets, the people working there, who individually and collectively contribute to the achievement of its objectives for sustainable competitive advantage.[3]

HRM involves "*all management decisions and actions that affect the relationship between the organization and employees, called its human resources*".[4] A further definition is provided by **Pettigrew and Whipp (1991)** who suggest that: "*HRM relates to the total set of knowledge, skills and attitudes that firms need to compete. It involves concern for and action in the management of people, including: selection, training and development, employee relations and compensation such action may be bound together by the creation of a HRM philosophy*".[5]

The emphasizes is therefore, **first** on the interest of management, **secondly**, on adopting a strategy, **thirdly**, on obtaining added value from people by the process of Human Resources Development **(HRD)** and performance management **(PM)** and finally, on gaining their commitment to the objectives and values of the organization. HRM can be regarded as a "*set of interrelated polices with an ideological and philosophy underpinning*".[6]

Human Resource Management **(HRM)** is the effective management of the people at work. HRM examines what can or should be done to make working people more productive and satisfied.[7] HRM refers to the decision about the deployment and treatment of personnel taken by line units as well as personnel specialists. HRM implies approaches which recognize that employees are only one group among several, such as customers and shareholders, who have a claim on the resources of the organization.[8]

Since the business has become more dynamic and challenging, there is the increasing need of the developing, grooming and motivating the employees, because,

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[3] Michael Armstrong, The Art of HRD (Human Resource Management): The Basis of HRM, vol. 2 (New Delhi: Crest Publishing House, 1999), 13-21.
[4] M Beer, Reward Systems: Managing Human Assets (New York: The Free Press, 1984)
[5] A. Pettigrew and R. Whipp, Managing Change for Competitive Success (Oxford: Blackwell Publishing House, 1991).
[6] J. Storey, Corporate Training Strategies: New Perspective on Human Resource Management (Oxford: Blackwell Publishing House, 1989)
[7] John Invancevich, Human Resource Management: Introduction to Human Resource Management and the Environment. (USA: Richard D. Irwin, Incorporation, 1995),1

[8] Gerald Cole, Personnel and Human Resource Management: Glossary of Management Terms (New York: Continuum Publishers, 2002), xii

after all it is employee through which a company can achieve its goals of market share leadership, product quality leadership, profit or any other possible objective, like serving humanity. Without the proper selection, training, developing and motivation of the employees, no company can survive in the competitive business world.

If we compare the performance of successful with the low performing firms, employees will seem to be distinctive in most of the cases of success of the top performing companies. Few decades before, this dimension of management was not explored by many companies. They always perceived their financial, capital resources to be the most important for them. They thought that their employees are liabilities for them, since they have to pay them, spend on their training and coaching. They did not possess the department of HRM and only some administrative officers used to keep the record of the salaries and leaves and other few aspects of the employees.

## 1.2 SCOPE OF HUMAN RESOURCE LEGISLATION

About three decades before, HRM was neither considered being important nor it was taught in the business programmes as a separate course of study. But in these days HRM is gaining importance, because the business has become more and more complex, challenging and demanding. Many new trends have taken place and others have been changed. Managers have to face great challenges in the competitive business and HRM is considered to be the key function or HRM department of any company to lead it towards confronting the challenges of the business successfully and achieving the goals efficiently and effectively.

All good companies, nowadays, believe in the philosophy that the most important resource for them is no building, no machine, no source of energy, but people, people and people. They believe that their employees are not liabilities but assets for them. If the management is engine, employees are like wheels, and no one can run any vehicle without wheels. That's why HRM is receiving excessive attention from the gurus of BM and HRM managers are given the status of top level and strategic position in the companies. Effective HRM focuses on action rather than on record keeping, written procedure or rules. HRM emphasizes on the solution of the employment problems, to

achieve business objectives and facilitates employee's development and satisfaction. HRM treats each employee as an individual and offers services and programmes to meet the individual needs. Many organizations around the world treat people fairly, with respect and with sensitivity.[9]

HRM is future oriented also because it helps an organization in achieving its objectives in the future, providing for competent well-motivated employees, thus, HRM need to be incorporated into an organization's long-term strategic plan.

## 1.3 EVOLUTION OF HUMAN RESOURCE MANAGEMENT

Different people belonging to varying backgrounds have contributed to the development of HRM. Following are the main theories, approaches, movements and personalities who have shaped the HRM as it looks today.

The history of HRM can be traced to England, where masons, carpenters, leather workers and other crafts people organized themselves into guilds. They used their unity to improve their working conditions. These guilds became the forerunner of trade unions.[10] After the birth of Industrial Revolution **(IR),** the following philosophers played an important role in the evolution of HRM.

***ROBERT OWEN (1771-1858)*** A Scottish manufacturer wrote a book in 1813 naming ***"A New View of Society"***. He for the first time built model working villages by his cotton mills at New Lanark Scotland. He built decent health sanitation facilities in his factories and established schools for worker's children. Most of the employers of that time opposed him because of his sincere attitude towards workers.[11]

***ADAM SMITH (1723-1790)*** He wrote a book ***"Wealth of Nations"*** in 1776. He is known as a father of Capitalism, mentioned motivational techniques such as wage

[9]John Invancevich. Human Resource Management: Introduction to Human Resource Management and the Environment. (USA: Richard D. Irwin, Incorporation, 1995), 4-5.
[10] Henry S Gilbertson, Personnel Polices and Unionism (Boston: Ginn and Co., 1950), 17.
[11]Helen Hemingway Bendon, The New Encyclopedia. Britannica, 15th Ed., Labour Law (Chicago: Encyclopedia Britannica, Incorporation, 1974), 574.

incentives, profit sharing and plans of employee participation in the establishment of shop rules.[12]

***CHARLES BABBAGE (1791- 1871)*** He wrote the book ***"The Economy of Machines and Manufacturers"*** in 1832. He emphasized on mutuality of interest between employer and workers. In his book he also advocated adoption of such motivational practices like wage incentive, profit sharing, and plans for employee participation in the establishment of shop rules.[13]

***FREDERICK W. TAYLOR (1856-1915)*** He was real father of scientific management. He emphasized on the application of scientific rules to work fields. He emphasized that by appointing right person on the right job, proper training, application of scientific rules to work, and establishment of an appropriate wage system would reduce most of the conflict between employee and employer.

***HENRY L. GANTT (1861-1919)*** Gantt was also a follower of W. Taylor. In order to motivate the workers he came up with a new idea. He announced that every worker, finishing a day's assigned work would win a 50 cent bonus and the supervisor will be given the bonus in the same way and an extra bonus if the workers finish their work.[14]

In early 19's social reformers and writers awakened the public about exploitative conditions of working people. As a result welfare movement became widely spread in United States. This movement aimed to uplift the physical, hygienic, social and educational conditions of working class people. The early welfare programmes of the companies included health facilities, washrooms, lunchrooms, recreations facilities, libraries, schools and insurance and pension programmes for employees. But, this was only on a limited scale and most of the workers were not enjoying these facilities.

***HUGO MUNSTERBERG*** **(1863-1916)** He was popularly known as the father of Industrial Psychology, published his book entitled ***"Psychology and Industrial***

[12]Helen Hemingway Bendon, The New Encyclopedia. Britannica, 15th Ed., (Chicago: Encyclopedia Britannica, Incorporation, 1974)
[13]Ibid.
[14]Ibid.

*Efficiency"* in the year 1913. Major contributions of Industrial Psychology to the field of HRM is employee testing, interviewing, attitude, management, training, job stress, monotony and fatigue studies and human engineering (now commonly called human factors analysis). Many large corporations nowadays employ industrial psychologists.

The widespread training of workers began during the Second World War .This programme was designed to develop employees' skills in manufacturing industries. For the war effort thousands of employees were trained in three principal programmes of Job Instruction Training **(JIT)** Job Methods Training **(JMT)** and Job Relations Training **(JRT).**

Employee health and safety concern came under discussion in the period of 1910-1920s. National Safety Council was the first company to devote to research, education, technical service and publications in the filed of safety. The filed of industrial hygiene and medicine has grown up in the same era.

## 1.4 EVOLUTION OF HUMAN RESOURCE LEGISLATION IN ISLAM

The theoretical and conceptual framework of industrial relations in an Islamic Society is based on Quran and Sunnah. Islam declares the human beings to be *"the best of Proportions"* (Ahsan-e-Taqweem). This completely negates the commodity approach to labour. The following Quranic verse further elucidates this point:

> *"And most surely We have honoured the children of man, and We provide them with means of carriage on earth and as well as sea; and We have provided them with pure food; and We have distinguished them with a distinction about most of those We have made".*[15]

The message contained in this Quranic verse nullifies the application of commodity approach to be applied to human beings.

Islam leads the humanity in respect of doctrine of mutuality. As Almighty Allah says:

[15] Al-Quran,17:70

*"O ye who believe: Do not unjustly consume your belongings amongst yourself, But do trade by mutual concert".*[16]

It is apparent from above mentioned verse that the doctrine of mutuality is a divine gift based on moral values. This doctrine is based on the concept of benevolence according to the following Quranic verse:

*"And forget not benevolence amongst yourselves".*[17]

The philosophy for creating a man in this world as told by the Holy Quran is as under:

*"Surely we have made man for hard work".*[18]

The incentive for productivity is rooted in the following Quranic verse:

*"And that for man there is nothing but what he strives for: And that (the result of) his striving for shall be seen".*[19]

The following Quranic verse describes the principles of scientific management in following words for our contention:

*"Let there be no compulsion in religion"*[20].

The compulsion or coercion is disallowed by Islam for accepting its faith. The implication is for voluntary mental acceptance and it thus encourages a persuasive approach for work.

Regarding cementing the bonds of mutual cooperation and strengthening its ties, Almighty Allah says:

*"And hold fast to the pact of God all together and split not"*[21].

*"And cooperate in doing well and in being reverent".*[22]

And motivation for maximum output is provided in the following Quranic verses:

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[16] Al-Quran,4;29
[17] Al-Quran,2:237
[18] Al-Quran,90:4
[19] Al-Quran,53:39-40
[20] Al-Quran,2:256
[21] Al-Quran,3:102
[22] Al-Quran,5:2

*"For men there is a share out of what they earn, and for woman there is a share out of what they earn".*[23]

The Almighty Allah has permitted men and women to participate in any trade, industry and other related jobs for achieving maximum output, sharing out of the earning is allowed.

The foundations of welfare movements are found throughout the Holy Quran. However, a pertinent Quranic verse is quoted below:

*"And seek out of that, which God has given thee the home of the future, And forget not the share of this world, And do good as God has done good to thee and seek not evil in the land. Surely God loves not those who do evil".*[24]

Almighty Allah prescribed certain desirable qualities for workers if they are to be employed. The following Quranic verse explains qualities:

*"One of the two (girls) said: O my father! Employ him; Surely he is the best of those thou canst employ very strong, very trustworthy".*[25]

From this verse, it is clear that the strength and trust worthiness which are two pillars of efficiency were known much earlier to the time when the father of industrial psychology talked of them.

Almighty Allah emphasizes the formation of such association of people as stand for championing the cause of virtues and is against the performance of bad deeds. The guidance of the Holy Quran is given in following verse:

*"And it is necessary that there should be amongst you a community (who) should call (people) to goodness; And bid (them) do right And forbid them doing wrong".*[26]

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[23] Al-Quran,4:32
[24] Al-Quran,28:70
[25] Al-Quran,28:26
[26] Al-Quran,3:103

## 1.5 SCOPE OF HUMAN RESOURCE LEGISLATION

The Human Resource Legislation **(HRL)** contributes to labour productivity enhancement within enterprises through improved working conditions and a safer and healthier working environment. This legislation assists enterprises to become more efficient and competitive. Even if wages increase, unit labour costs will fall, if measures are taken to increase labour productivity. It will also have an important demonstration effect by alerting employers, workers, potential investors and the international community that Pakistan is committed to improve labour protection as a key strategy in national development.

Labour law or employment law is the body of laws, administrative rulings and precedents which addresses the legal rights and restrictions on workers and their organizations. As such, it mediates many aspects of the relationship between employers and employees. In some countries, employment laws related to trade unions and workplaces are different from those relating to particular individuals. In most countries, however, no such distinction is made. The labour movement, which was heavily influenced by socialism, has been played an instrumental role in the enacting of laws relating to protection of labour rights in the 19th and 20th centuries.[27]

Employment law is a broad area including all areas of the employer/employee relationship except the negotiation process covered by labour law and collective bargaining. Employment law consists of thousands of federal and state statues, administrative regulations and judicial decisions. Many employment laws (e.g.minimum wage regulations) were enacted as protective labour legislation whereas other employment laws take the form of public insurance such as unemployment compensation.[28]

In the modern age, the HRL has three important roles. **First**, it has the function of protecting workers and affording them certain minimum standards including wages which they might not enjoy if the fixing of such conditions were left entirely to the free play of market forces. **Second,** function is to regulate labour relations i.e. relations between employers, trade unions and governments by establishing rules for the conduct

[27] www.enwiki.com "Wiki Encyclopedia"
[28] www.hg.org/ "Employment law"

of collective bargaining, the settlement of labour disputes and other forms of joint dealings. **Third,** function of HRL is to look after the welfare of the workers as it helps in improving their efficiency and productivity, benefiting both the management and the employees.[29] Labour law arose due to the demands of workers for better conditions and the right to organize, and the simultaneous demands of employers to restrict the powers of workers' organizations and keep labour costs low. Employers costs can increase due to workers organising to win better wages, or by legislation imposing costly requirements, such as health and safety or equal opportunities conditions.Workers' organizations, such as trade unions can also transcend purely industrial disputes, and gain political power. The state of labour law at any one time is therefore both the product of, and a component of the conditions for, struggles between different interests in society.

### 1.5.1 HUMAN RESOURCE LEGISLATION IN GENERAL

The origin of labour laws can be traced back to the remote past and the most varied parts of the world. While European writers often attach importance to the guilds and apprenticeship systems of the Medieval World, some Asian scholars have identified labour standards as far back as the Laws of Hammurabi and for labour management relations in the Laws of Manu; Latin American authors point to the laws of the Indies of the conquistadors. None of these can be regarded as more than anticipations with any influence on subsequent developments. Labour law as it is known is essentially the child of successive industrial revolutions from the 18th century and onward. It became necessary when customary restraints and the intimacy of employment relationships in small communities ceased to provide adequate protection against the abuses incidental to new forms of mining and manufacture on a rapidly increasing scale at precisely the time when the 18th century enlightenment, the French revolution and the political forces that they set in motion were creating the elements of the modern social conscience. It developed rather slowly, chiefly in the more industrialized countries of Western Europe,

[29]Rafique Butt, Employment Issues in Pakistan (Review of Some Evidences): Labour Legislation and Its Impact on Employment, Ed. Dr. S.N. Hyder, (Islamabad: Pakistan Manpower Institute, 1990), 84-87.

during the 19th century and has attained its present importance, relative maturity, and worldwide acceptance only during the present century.

The first landmark of modern labour law was the British health and morals of Apprentices Act of 1802, sponsored by the elder Sir Robert Peel. Similar legislation for the protection of the young was adopted in Zurich in 1815 and in France in 1841. By 1848, the first legal limitation of the working hours of adults was adopted by the Landsgemeinde (citizen's assembly) of the Swiss canton of Glarus. Sickness Insurance and Workmen's Compensation were pioneered by Germany in 1883 and 1884, and compulsory arbitration in industrial disputes was introduced in New Zealand in the 1890s. The progress of labour legislation outside Western Europe, Australia, and New Zealand was slow until after the First World War. The more industrialized states of the United States began to enact such legislation toward the end of the 19th century, but the bulk of the present labour legislation of the United States was not adopted until after the 1929 depression. There was virtually no labour legislation in Russia prior to the October revolution of 1917. In India the hours of work of children between 7 and 12 were limited to nine per day in 1881 and the hours of adult males in textile mills to ten per day in 1911, but the first major advance was amendment of the Factory Act in 1922 to give effect to conventions adopted at the first session of the International Labour Conference (**ILC**) at Washington in 1919. In Japan rudimentary regulations on work in mines were introduced in 1890, but a proposed Factory Act was controversial for 30 years before it was adopted in 1911, and the decisive step was the revision of this Act in 1923 to give effect to the Washington Convention. Labour legislation in Latin America began in Argentina in the early years of the century and received a powerful impetus from the Mexicon Revolution, which ended in 1917, but, as in the North, the trend became general only with the impact of the world depression. In Africa the progress of labour legislation became significant only from the 1940s onward.

The legal recognition of the right of association for trade union purposes has a distinctive history. There is no other aspect of labour law in which successive phases of progress and regression have been more decisively influenced by political changes and considerations. The legal prohibition of such association was repealed in the United Kingdom in 1824 and in France in 1884; there have been many subsequent changes in the

law and may well be further changes, but these have related to matters of detail rather than to fundamental principles. In the United States freedom of association for trade union purposes remained precarious and subject to the unpredictable scope of the labour injunction, by means of which the courts helped in restrain trade union activity until the 1930s. In many other countries the record of progress and regression with respect to freedom of association falls into clearly distinguished periods separated by decisive political changes. This has certainly been the case with Germany, Italy, Spain, Japan, and much of Easter Europe, there have been many illustrations of it, and there may well be more, in the developing world.

Labour Codes and ministries of labour were not introduced until the 20th century. The first Labour Code was projected in France in 1901 and promulgated in stages from 1912 to 1927.Among the more advanced formulations affecting the general condition of labour were the Mexican Constitution of 1917 and the Weimar Constitution of Germany of 1919. Both of which gave constitutional status to certain general principle of social policy regarding economic rights. Provisions of this kind have become increasingly common and are now widespread in all parts of the world.

Department or ministries of labour responsible for the effective administration of labour legislation and for promoting its future development were established in Canada in 1900, in France in 1906, in United States in 1913, in United Kingdom in1916, in Germany in 1918.They became general in Europe and were established in India and Japan during the following years and became common in Latin America in the 30's. A labour office was established in Egypt in 1930, but only in 40's and 50's did similar arrangements begin to take root elsewhere in Asia and Africa under the different political circumstances, those continue, of course, to wide variation in the authority and effectiveness of such administrative machinery and in the extent of its influence in matters of general economic policy and labour conditions.[30]

[30] Helen Hemingway Bendon, The New Encyclopedia Britannica, 15th Ed.,: Labour Law (Chicago: Encyclopedia Britannica, Incorporation, 1974)

## 1.5.2 HUMAN RESOURCE LEGISLATION IN PAKISTAN

### (a) Pre-Independence Period

During the pre-independence period, the British labour policy in India was designed essentially to maintain peace and security rather than promoting the well-being of the working class. The other important objective of the policy was to protect the interests of the British textile industry against the stiff competition from the newly established Indian textile industry which was due to the availability of cheap labour in the country. The Workmen's Breach of Contract Act 1859 and the Employer's and Workmen's Act, 1860 were enacted to meet the first objective, whereas the Indian Factories Act 1881 along with factory legislation of 1891 and 1911 served the other objective. This factory legislation regulated the employment conditions of women and children and prescribed the hours of work for men to twelve per day.

The industrial unrest was on the peak in 1921 which together with India's membership of International Labour Organization (ILO) led to the passing of number of important labour laws such as Indian Factory Act 1922; Indian Mines Act, 1923; Indian Workmen's Compensation Act 1923; Indian Trade Union Act, 1926 and Trade Disputes Act,1929. In 1931, the Royal Commission on Labour made a number of recommendations for improving the working conditions of the labour which were mostly incorporated in Bombay Trade Disputes Conciliation Act, 1934. The Trade Disputes Act was also amended in 1939 to provide for the appointment of conciliation officers for the settlement of trade disputes. The Bombay Act was also amended in 1938 in order to make provisions for exploring the peaceful means before the declaration of strikes and lockouts. The Industrial Employment (Standing Orders) Act passed in 1946 provided for the regulation of conditions of employment and day-to-day employment relationship.[31]

[31] Rafique Butt, Employment Issues in Pakistan (Review of Some Evidences) : Labour Legislation and Its Impact on Employment, Ed. Dr. S.N. Hyder, (Islamabad: Pakistan Manpower Institute, 1990), 84-87.

### (b) Post-Independence Period

Pakistan got independence on 14th August, 1947. All the labour laws and rules that were in force in undivided India at the time of partition came in to force in Pakistan subject to the provisions of Pakistan (Adaptation of Existing Laws) Orders, 1947. The country became the member of ILO on 31st October, 1947 and despite a bleak situation at that time, the Government of Pakistan pledged to honour all the commitments to the ILO made by the then Government of British India.

In the beginning, the Government was pre-occupied with political and other problems inherited and, therefore, did not pay much attention to the labour problems. The first labour policy was announced in August, 1955 aiming at to encourage the growth of genuine and healthy trade unions to promote collective bargaining. However, the policy was never seriously implemented. The **First Five Year Plan (1955-60)** lamented that the labour conditions in the country were far below the desired level and emphasized the need for their improvement but nothing practical was done in this regard.[32]

The Martial Law regime came into power in October, 1958 and a new labour policy was announced in February, 1959. The main objectives of labour policy were to ensure industrial peace, improve existing working and service conditions and enlarge employment opportunities through vocational training programmes. However, due to unfavourable situation prevailing in the country, the policy did not work properly. Consequently, the strikes were banned and labour courts were set up for compulsory adjudication of industrial disputes. While commenting on the situation, the **Second Five Year Plan (1960-65)** stated that industrial labour in Pakistan was among the lowest paid in the world. The Government, therefore, made some provisions in the new labour legislation for minimum wages and social security to industrial workers through Minimum Wages Ordinance, 1961 and Social Security Ordinance, 1965. [33]

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[32] Government of Pakistan, National Planning Board (1957). First Five Year Plan ,1955-60, Karachi
[33] Government of Pakistan, Planning Commission (1960). Second Five Year Plan, 1960-65, Karachi.

**The Third Five Year Plan (1965-70)** also observed that industrial workers were getting lowest wages and as a result there were large scale industrial disturbances in 1968 throughout the country. Later on, with the change of the Government, **Third Labour Policy** was announced in July 1969 giving greater rights to workers than offered before. This included group insurance, bonus on profit, gratuity and right of strike. Moreover, the Government recognized that the welfare of the workers was not concern of employers and workers alone and, therefore, the Government set-up a Workers' Welfare Fund with a contribution of Rs.100 million to construct low cost houses and to provide other facilities to the workers. It was for the first time in the history of labour legislation of the country that Collective Bargaining **(CB)** was used as an instrument for fixing the minimum wages.[34] The Ordinances/Act promulgated during the period was as under:

i) The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968;
ii) Companies Profit (Workers Participation) Act,1968;
iii) Industrial Relations Ordinance, 1969; and
iv) West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969.

The **Fourth Five Year Plan** also made some recommendations for further improving the welfare of industrial workers and giving wider coverage to it.[35] Unfortunately, this policy could not take-off due to tragic events of 1970-71. In 1971, when the new Government came into power, there was a large scale industrial disorder in the country. In order to improve the situation, the Government announced a new Labour Policy in 1972, called the *"New Deal for Labour"*. Under this policy, fairly large number of benefits such as education-cess to workers, a pension scheme and security against arbitrary retrenchment and dismissal from service were provided to workers. The Workers' Children (Education) Ordinance, 1972 and the Employees Old Age Benefits Act, 1976 were added to the existing labour legislation. This policy also failed to produce

[34] Government of Pakistan, Planning Commission (1965). Third Five Year Plan, 1965-70, Karachi.
[35] Government of Pakistan, Planning Commission (1970). Fourth Five Year Plan, 1970-75, Islamabad.

sound labour management relations. It led to the closure of a number of factories affecting adversely the employment situation in the country.[36]

The Martial Law Government came into power in 1977 which banned the trade union activities to keep the factories and mills away from political involvement. In case of industrial disputes, the system of compulsory adjudication was introduced and instructions were issued for prompt action to deal with cases of illegal strikes. The conciliation machinery was alerted for the settlement of disputes at the stage of negotiation. In order to improve the labour productivity and to make the workers realize their obligations in an industrial society, a scheme for Workers' Education Programme was also introduced. The civilian government has come into power since 1985 and is making efforts to promote employment and improve the welfare of workers under the Prime Minister's Five Point Programme for the period of 1986-90.

A **Labour Policy 2002** has been formulated (as the first labour policy after 1972).This policy elaborated administrative, legal and judicial actions of government, employers to workers in relishing labour rights and their welfare along with promotion of social justice. Labour policy was a focus on dignity of labour, fair balance of bargaining power and productivity based work culture, with fair and equitable distribution of gains and proceeds of the industry amongst employees, entrepreneurs and the society at large.[37]

Another labour policy named, **Labour Protection Policy 2005**, has been announced to contribute to the economic and social progress of nation by ensuring that worker's rights are protected, working conditions are fair, and that enterprise efficiency and competitiveness is encouraged. There is a clear linkage between development and labour protection. A properly protected workforce is more motivated more committed and more protective, resulting in benefits for workers, enterprises and the nation as a whole. It is stressed that this **Labour Protection Policy 2005** is not an instrument of social policy alone but rather an instrument of both social and economic policy. There is little doubt that effective labour protection bestows economic benefits on enterprise's workers and the nation as a whole through increases in labour productivity. In a well

[36] Government of Pakistan, Labour Division (1972). New Deal for Labour, 1972, Islamabad.
[37] Government of Pakistan, Ministry of Labour and Manpower and Overseas Pakistanis (2002) Labour Policy 2002, Islamabad

managed enterprise the costs of labour protection are far outweighed by the economic benefits .In short, good labour protection reveals good business.[38]

In Pakistan, there are 64 labour laws in the Statute Book which have been enacted between 1855 and 1980. Most of the laws were enacted by the Federal Government, but their administration rests mostly with the Provincial Governments. The responsibility for administering labour laws devolved upon the provinces mainly because labour was a provincial subject under the 1962 Constitution. For the sake of legislation, labour, under the Constitution of 1973, is on the concurrent list[39].

> *"Current labour laws are outdated and do not apply to the unorganized and informal sector".*[40]

Pakistan has about 60 labour laws which the government is trying to consolidate, simplify and rationalize into six categories:

a) Industrial Relations

b) Employment Condition

c) Wages

d) Human Resource Development

e) Occupational Safety Health

f) Labour Welfare and Social Protection

## 1.6 IMPACT OF HUMAN RESOURCE LEGISLATION

Labour law differ from the older branches of law in that its history has been in some cases so much influenced by the ebb and flow of political change, its development so rapid and its expansion on a world scale so recent, that it is exceptionally difficult to predict its impact on business sector.

No where is labour law becoming less important. While some types of protective legislation notably special provision for the protection of women workers are losing their

[38] Government of Pakistan, Ministry of Labour and Manpower and Overseas Pakistanis (2006) Labour Protection Policy 2005, Islamabad

[39] Item 26 of Concurrent Legislative List,4th Schedule, Constitution of Pakistan 1973

[40] The News, "Labour Laws need to be revised" Feb 23, 2006.

importance. The general tendency continues to be toward more comprehensive legislation embracing a wider range of subjects and often dealing with matters previously left to collective agreement, individual contract or the discretion of the employer.

Irrespective of ideology or economic or social structure, the transition everywhere has been from a class law, protecting the weakest segment of society to a community law, designed to serve the common interest. This is a development that can be seen not only in the elimination of limitation and exceptions to the law but in the increasing emphasis being given to matters of general interest, including full employment, equitable distributions of wealth, and community responsibility for these incidents of misfortune in individual lives. Labour law must also be said to serve the social interest in promoting civilized labour management relations .This evolution of labour law is an important contribution to the evolution of the law as a whole, form a law for the trading classes with a special chapter for the working class to a common law for the entire community.

The importance of a body of law that has a dynamic and progressive impact rather than restrictive influence is now widely understood and the need for legal flexibility to facilitate economic development and change is increasingly appreciated. In addition, the value of delegated powers is increasing and procedures of consultation with interested groups generally recognized. Social objectives remain the test of the validity of economic policy and labour law plays major part in defining these objectives and ensuring that economic policy respects them in the interest of the whole community.[41]

In the modern age, the HRL helps in protecting workers and affording them certain minimum standards including wages which they might not enjoy if the fixing of such conditions were left entirely to the free play of market forces. It regulates labour relations i.e. relations between employers, trade unions and governments by establishing rules for the conduct of collective bargaining, the settlement of labour disputes and other forms of joint dealings. HRL look after the welfare of the workers as it helps in improving their efficiency and productivity, benefiting both the management and the employees. Labour legislation provides better conditions for living and the right to

[41] Helen Hemingway Bendon, The New Encyclopedia Britannica, 15th Ed.,: Labour Law (Chicago: Encyclopedia Britannica, Incorporation, 1974 ),574

organize for the workers. It restricts the powers of workers' organizations and keep labour costs low.

# CHAPTER II
# CONTRACT OF EMPLOYMENT

Employment is a contract between two parties, one being the employer and the other being the employee. In a commercial setting, the employer conceives of a productive activity, generally with the intention of creating profits, and the employee contributes labour to the enterprise, usually in return for payment of wages. An employment contract is an agreement entered into between an employer and an employee at the commencement of the period of employment and stating the exact nature of their business relationship, specifically what compensation the employee will receive in exchange for specific work performed.

The central focus of most employment contracts is money. The employee may be compensated through wages, salary, or by commission. In addition to monetary compensation, the employment contract often specifies a fringe benefit package, including a retirement plan, employee stock options, the termination or resignation notice period, holiday entitlement, required hours of work, and health insurance benefits.[1]

## 2.1 SCOPE OF CONTRACT OF EMPLOYMENT

Prior to the advent of industrialization the development of human society was from status to contract. But the industrial society all over the world has been moving, particularly today, from contract to status. In modern era, there are various ways to determine the relationship between employer and employees. The employer-employee relationship may be broadly categorised into two heads. They are as follows: **(a)** voluntary regulation

[1] www.enwiki.com

system and **(b)** legal regulations. Therefore, modern regulation of employer-employees relation had wide coverage of contracts, standing orders, awards and laws.[2]

However, the relation between the employer and the employee has made dimensional change after the First World War. Freedom of contract was the paramount symbol of economic movement in the early capitalist society. The relation between the employer and the employees was mainly regulated by the contract of employment. In theory, of course, the rights were mutual. However in reality, freedom meant the unilateral imposition of the terms and conditions of labour, by the employer on the employee. Gradually, the state realized the hard reality of unequal contracting parties. It adopted various ways for regulation of employer-employees relationship.

The relationship between master and servant is governed by the terms of contract between the parties. Wider interests of the state demand the maintenance of peaceful running in the industrial sector for high prosperity of the nation. This easily reveals the harm of the disputatious situation in this regard. State, therefore, becomes the watch dog of the various intricacies and conflicts arising out of the working of capital and labour in unions and takes notice lest the weak is not exploited by the stronger and that too at the cost of the whole community. An industrial worker has the right to know the terms and conditions under which he is employed and the rules of discipline which he is required to follow, such rules or standing orders governing the day to day relations between the employer and worker need to be drawn up with preciseness and be definite so that friction between the two parties may be minimized. Therefore, the legislature is fit to lay down conditions of employment in sizeable organizations for regulating certain ancillary matters too.[3]

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[2] Encyclopedia of Social Sciences, vols.13-14, 367

[3]Simon Honeyball and David Pearce, Contract, Employment and the Contract of Employment Industrial Law Journal, vol. 35(1) (Oxford University Press, 2006), 30-55

## 2.2 EMPLOYMENT PERSPECTIVES IN ISLAM

One of the foundations on which the structure of industrial relations stands is based on the strength or the weakness of the relationship between the employer and the employee. The guidelines provided in the Holy Quran and the Sunnah are the basis on which the relations between the employer and employee should be built. Equality of human brotherhood has been emphasized in the Holy Quran. The Holy Quran provides excellent guiding principles for selecting the best worker for a job as under:

> *"One of the two (girls) said: "O my father! Employ him; Surely he is the best of those thou canst employ-very strong, very trust-worthy".* [4]

The above-quoted Quranic verse is based on the story of Prophet Moses who assisted the two girls in watering their flocks.

The analogy in this Quranic verse is that the following two qualities should govern as basic criteria for the selection of a suitable worker:

1. *Physical fitness:*

   This has been referred to in the above verse as "very strong".

2. *Honesty:*

   It is emphasized that a worker for selection of employment must be "trustworthy". In comprehensive terms, this would mean that an employee must be wholly committed to the achievement of organization objectives.

Prophet Joseph desired to play the role of an excellent professional manager. Explaining his qualities, he declared that he would be watchful of all the resources at his command because he knows his job. The related Quranic verse in this respect is as under:

> *"He said: Appoint me over treasures of the land, surely I am watchful, knowing".* [5]

Islam permits the employment of non-muslims.[6] However, certain conditions should be taken into consideration before employing them. It is laid down in the Holy Quran that

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[4] Al-Quran, 28:26
[5] Al-Quran, 12: 55
[6] Al-Bukhari, Vol..III, p.116

key posts should not be given to non-muslim as is clear from the following Quranic verse:

> *"O ye who believed! Take not the Jews and Christians as allies; they are the allies of one another; and he who is allied to them from amongst you is, then one of them, Surely, God guides not the people who are unjust".*[7]

The above Quranic verse has been interpreted to mean that the Muslim community should not look up to Jews and Christians for help and advice.[8] The inference is that they may be employed on ordinary posts but key posts should not be given to them. The Muslims too, are not prohibited to seek employment with non-muslims. However, Almighty Allah says that Muslims should avoid doing undignified labour with non-muslims. This has been brought out from the following Quranic verse:

> *"And to God belongs all might (honour) and to His Messenger and to the faithful".*[9]

The inference from the above verse is that a Muslim, in the sight of Allah, is a dignified personality, he should not seek an undignified employment with non-muslims.

For strengthening the bond of relationship between an employer and employee, the guideline is provided in the following Quranic verse:

> *"And hold fast to the pact of God all together and split not, And remember the blessing of God on you, When you were enemies of one another. Then He put love into your hearts, and Then by His blessing you become brothers. And you were on brink of the pit of fire, and Then He rescued you therefrom. Thus does God explain to you His signs? That you may be guided (alright)".*[10]

At present the grievance handling procedures have different types for settling an industrial dispute. Several organizational approaches, ranging from arbitration, to

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[7] Al-Quran, 5 :55
[8] Abdul Majid; The Holy Quran, English Translation, Taj Company, 1987, 17
[9] Al-Quran, 63:8
[10] Al-Quran, 3:103

recourse to the court of law exist. But, by and large, satisfactory relation has yet to be found. The Holy Quran provides an excellent guideline in this respect as given below:

> *"And if two parties of the faithful fight each other, then make peace between them. But if one of them transgresses against the other, then fight those who transgress till they return to God's command, but when they do return then make peace between them with justice and be equitable. Surely God loves the equitable."*[11]

The following principles emerge from an analysis of the above Quranic verse:

1. The effort to resolve the issue should be for peaceful settlement.
2. If one of the parties does not agree to a peaceful settlement within the framework of the Quran and Sunnah, he should be brought round by force so that peace may be restored.

The differences between an employer and an employee in a Muslim community is required to be settled with reference to God and His Messenger i.e. through an institutionalised approach of a Muslim Court which is to be guided by the Quran and Sunnah. To expedite the settlement of industrial disputes, Muslim Labour Courts should be set up separately.[12]

For strengthening the relation between an employee and an employer, Islam on the one hand emphasizes on the welfare and betterment of employees and on the other hand gives a moral incentive to an employee to work for his employer efficiently and honestly by a disciplined approach that will bring him a redoubled reward.[13]

A tradition of the Holy Prophet (PBUH) has been quoted by Muslim stating that every Muslim must follow the under-mentioned code of life:

1. Avoid misunderstanding
2. Shun espionage of others

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[11] Al-Quran, 49:9
[12] Mujalla Ahkam Al-Adliya,Eygpt 5th Ed.,1968,pp. 16-28.
[13] Sahih Muslim, Vol. V, p. 94.

3. Ward off prejudice and jaundice

4. Avoid back-biting

5. Live as humble servants of Almighty Allah and just like real brothers.[14]

All employers and employees are required to follow the above mentioned guidelines for ensuring an excellent framework of mutual relationship and industrial peace. A strict, disciplined and honest approach to work is expected from a Muslim. Three things i.e. life, goods and honour of the employer and the employee are required to be well guarded by an employee and by the employer.[15]

The bonds of brotherhood are encouraged to be strengthened by requiring an employer to have an employee to sit with him for sharing meals. If it is not possible, i.e. food may be little or other genuine reasons may exist, then something should be given to him.[16]

In ordinary circumstances, no fine is to be imposed for any defective goods unless it is proved that it was intentional and malafide and was supported by a witness. Of course the wages will be paid to him.[17] Physical torture to an employee is strictly forbidden by Islam. Several explicit Hadith in this connection have been reported to substantiate this point.[18]

The following three cardinal principles relating to employee and employer relation spring from the Quranic verses which are mentioned in connection with the story of Prophet Moses:

1. Work should not be extracted from a person except to the extent of his capacity.
2. No torture should be inflicted on a worker.
3. The determination of wages should be based on mutual understanding. The last point is further expressed in the following Hadith narrated by Abuzer:

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[14] Sahih Muslim, Vol. VIII ,p. 18
[15] Sahih Muslim, Vol. VIII, p. 11
[16] Sahih Muslim, Vol. V, p. 94.
[17] Mujalla Ahkam Al-Adliya,Eygpt 5th Ed.,1968,p.111
[18] Sahih Muslim, Vol. V, p.p.90-91

*"Your slaves or (servants) are your brothers whom God has given into your protection, so he who has brother (working) under him, should feed and cloth him as he himself feeds and dresses; and do not ask them to do things (and jobs) which are beyond their strength and endurance and if you do ask them to such things (and jobs) then help them."*[19]

The inference is that when slaves are to be treated as brothers, servants who are employees should be given a better treatment.

Benevolence amongst each other is laid down as a guiding rule for maintaining pleasant relationship in the following Quranic verse:

*"And forget not benevolence amongst yourselves; For God sees what you do".*[20]

Almighty Allah ordains guidance to us in connection with behaviour towards employees, as under:

*"None of you should say to your slaves, this is my slave and this is my slave- girl; you should rather say: This is my man and this is my maiden."*[21]

The message of Almighty Allah prescribes no violation of trust amongst people as an inflexible principle; to strengthen the Doctrine of Mutuality. Quranic verse in this respect is quoted below:

*"O ye who believe! Violate not (the promise of) God and The Messenger, and violate (not) the trust amongst yourselves. Whilst you know.* [22]

In our view, Collective Bargaining Agreements are permitted in Islam. Breach of faith resulting in non-compliance and non-implementation of Collective Bargaining Agreements is not permitted in accordance with the spirit of the above noted Quranic verse. In such a situation, the matter is to be referred to the Muslim Court.

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[19] Mishkat-ul-Misbah, Vol. II, p. 231
[20] Al-Quran, 2:237
[21] Mishkat-ul-Misbah, Vol. II, p. 566
[22] Al-Quran , 8:27

For cementing the bonds of relationship between the employer and the employee, the Holy Quran also ordains us to do of certain acts or omissions as is explained in the following Quranic verses:

*"O ye who believe! Let not one people laugh another people to scorn, It may be that they are better than themselves; Neither women against women, it may be that the (other) women are better than themselves. And do not defame your own people nor call one another by nicknames. Bad is the reputation of wickedness after that of faith, And he who does not turn to (God), then he (is of those) who are unjust".* [23]

*"O ye who believe! shun most suspicions, Surely some suspicions are sins; and pry not; and do not backbite one another; does anyone of you love to eat the flesh of his dead brother? Surely you loath it. Therefore reverence God; Surely God is oft-Returning, Merciful".* [24]

While declaring Muslims to be the best of all mankind, Almighty Allah has laid down a code of ethics wherein, He has exhorted them to do well and abstain from doing wrong as is explained in the following Quranic verse:

*"Of all the communities raised amongst mankind you are the best, (For) you did them do good and you forbid them doing wrong, and you believe in God. And if the people of the Book had (also) believed, Surely it would have been better for them."* [25]

Other aspects relating to mutual relationship have been explained in the Holy Quran as under:

*"And do not do evil in the earth after the reformation thereof, And call upon Him with fear and with hope. Surely the mercy of God is near to those who do well".* [26]

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[23] Al-Quran , 49:11
[24] Al-Quran, 49:12
[25] Al-Quran, 3:110
[26] Al-Quran, 7:56

Accountability for control purpose is an Islamic Concept as is explained in the following Quranic verse:

*"And then on that day you shall surely be asked about the blessings".*[27]

Therefore, both the employer and the employee are exhorted to perform their duties well, exercise due vigilance; do good deeds, and ensure strict preservation of mutual interest. On the Day of Judgment, Almighty Allah will surely ask them about the proper utilization of the blessings which were bestowed upon them.

## 2.3 SCOPE OF EMPLOYMENT LEGISLATION

Many of the rights and duties of the parties in an employment relationship arise out of the characterisation of the contract of employment as such. Employment also occurs by virtue of the fact that a contract of employment has been entered into. In consequence, it is natural to think of the contract of employment and the employment relationship as co-existent. It is thus of some importance, both in legal theory and in practice, to establish a logical account of the rights and obligations between the parties that exist because of the contract of employment other than during the period of employment, both after and possibly before that relationship exists. Various possible accounts are explored, and the conclusion is reached that the theoretical nexus between employment and contracts of employment should be broken in order to provide a more logical conceptual framework.

Rights and obligations that are particular to the employment relationship are normally seen as determined exclusively by the contract of employment together with overriding legislative provisions. Within certain statutory constraints, together with others under the common law, the parties to an employment contract are free to make whatever agreement they wish in order to determine their respective rights and duties. These contractual entitlements and liabilities are thought to be found in a single concept ***"the contract of employment"***. Although they may take various forms, whether by way of express terms, or implied terms or terms imposed on the contract by statute, and they may

[27] Al-Quran, 102:8

exist in successive contracts. The contract of employment defines the relationship in the sense that employment occurs by virtue of the contract of employment. The relevance of statutory provisions relating to employment is determined by the existence of the employment relationship, and the boundaries of the employment relationship are determined by the existence of a contract of employment. In short, where a contract of employment exists there exists also an employment relationship, and *vice versa*.[28]

On the assumption that a person is entering freely into a contract of service what conditions must exist if the contract is to be considered valid in law, there are several conditions that are important here and they are as follows:

1. The person making the agreement must be competent to do so, in the sense that they are sane, of age, etc.
2. The parties concerned must intend the agreement to be legally binding.
3. The objects of the contract must be legal.
4. There must be offer and acceptance, for example by the offering of wages on the one side, and the attendance at the due time on the other side.
5. Finally, some consideration must be exchanged between the parties, e.g. the payment of wages by the employer, and undertaking of tasks by the employee.

The law generally takes the view that the parties to the contract are equal and free. In employment matters, however, the situation is quite different. For example, there is no doubt that the employer is usually in a stronger position in the labour market than the individual seeking employment. An employer may lose business if unable to recruit sufficient and suitable staff to meet a particular order but he or she is unlikely at that stage to go out of the business altogether.[29]

The rational behind regulation of collective contracts like standing orders is that it seems to minimize industrial conflicts by providing uniformity in terms and conditions of the contract of employment. The reason for allowing the claim of bonus in addition of wages determined on terms of employment lies in the fact that *"where both, i.e., labour and capital contribute to the profits, it is but fair that labour should derive some benefits*

[28] Simon Honeyball and David Pearce, Contract, Employment and the Contract of Employment Industrial Law Journal, vol. 35(1) (Oxford University Press, 2006), 30-55

[29] Gerald Cole, Personnel and Human Resource Management: Conditions Of Employment, (New York: Continuum Publishers, 2002),225-31

*so that legitimate claims of both labour and capital are satisfied"* It is, however, to be noted that the various ways in which it interferes with existing employer-employees relations does not always make the contract of service in fructuous. In absence of certain rules or standing orders, the law of master and servant governs the relationship between the employer and the employees.[30] Therefore, it is sufficiently clear that the state interferes in existing employer-employee relation only when, the minimum standards required by the society are not fulfilled by the employer.

This is the traditional rule for the legal relationship between the parties to the contract by which one agrees to work for other. The relationship is contractual and involves mutual assent. It may be inferred by the conduct of the parties and the terms may entail variance by operation of law, collective bargaining and sometimes by implication. An employee, in normal circumstances, is obliged to perform his duties quite diligently with appropriate care and skill, obeying all reasonable orders and avoiding use of his position for a purpose detrimental to the interests of employer. In turn, comes the position of the employer for discharging his liabilities. However, it need not be forgotten that employee is considered a weak contracting party having weaker bargaining ability at his disposal. This position has been internationally recognised and proper measures including statutory ones have been resorted to for safeguarding and defending his position. Labour disputes usually arise from the dissatisfaction of the workers with their terms and conditions of employment. Labour legislation thus becomes the wish of the society as a whole to regulate such terms and conditions and also securing some reasonable standards of livelihood for the employees.[31]

## 2.4 EMPLOYMENT LEGISLATION IN PAKISTAN

Legislative process is carried out in order to provide a framework of laws to the society which helps it to be regulated in the best way. Various laws are framed to protect and sustain the symmetrical relation of employer and employee. Contract of employment also finds its footsteps under the shadow of different legislations. Laws, ordinances,

[30] Modern Labour Laws and Industrial Relations
[31] Simon Honeyball and David Pearce, Contract, Employment and the Contract of Employment Industrial Law Journal, vol. 35(1) (Oxford University Press, 2006), 30-55

notifications, policies and statutory regulatory orders **(SROs)** are placed to bring the dreams of legislation into stable form.

### 2.4.1 Industrial Relations Ordinance, 2002

Cardinal principles of contract of employment laid down in this Ordinance are as follows:

1. Workers and employers of an establishment or the industry shall respect each other's rights and promote the interests of their enterprise for reasonable return on investments and for its expansion and growth.
2. The rights and duties of workers and employers shall be such as given in Schedule II and as may be prescribed.
3. Workers and employers both shall promote and foster an atmosphere of mutual trust, confidence, understanding, cooperation and shall make every effort to avoid conflict or dispute amongst them and resolve their differences, if any, through bilateral dialogue and shall strive to develop good industrial relations for the efficiency and increased output of the enterprise.
4. Workers and employers in their individuals capacity as well as through participative approach shall take reasonable steps to ensure compliance with mutual agreements arrived at between them and follow agreed procedures to achieve the objectives of higher productivity in the interest of the growth of the enterprise.[32]

Reflection of all above mentioned principles is found in Schedule II of the same Ordinance that explicitly describes them as under:

**(i) Rights and duties of the employers**

The rights of the employers are as follows:

**(a)** The employer shall have the right to manage, control and use the property of his enterprise and conduct his business in any manner considered appropriate by him.

[32] Industrial Relations Ordinance 2002 , Sec 83

**(b)** The employer shall have the right to use available resources including human resources efficiently and effectively in the best interest of the enterprise.

The duties of the employers are as follows:

**(a)** While exercising the right to conduct business and the right to manage the enterprise, the employer shall act in accordance with the law and shall comply with the law faithfully.

**(b)** The employer shall protect rights of the workers as guaranteed under the law or secured to them by any award, agreement or settlement in force.

**(c)** The employer shall protect and safeguard the interest of his workers and take measures within his resources for their socio economic uplift and welfare. He shall create an environment congenial for enhanced productivity of labour and maximum output of the enterprise.

**(d)** The employer shall respect the right of workers to employment, wages, decent living and better quality of working life.

**(ii) Rights and duties of the workers**

The rights of the workers are as follows:

**(a)** It is the right of a worker to work according to the job assigned and to receive wages as per agreed terms and conditions of employment and to such welfare benefits and safety measures as one is entitled to according to law, agreement settlement and award.

**(b)** Worker has inherent right to trade unionism and collective bargaining and the right to enjoy the benefits guaranteed to him under the law, rules and regulations, settlement, award or agreement.

The duties of the workers are as follows:

**(a)** Worker will perform his duty, as assigned by the employer or his representative, according to his best ability with due diligence, care, honesty and commitment.

(b) Worker will fully observe norms of organizational discipline.

(c) Worker, in exercise of his right, willfully respect the rights of the employer and will cooperate with him in the efficient performance of the business of the establishment or, as the case may be, enterprise.[33]

### 2.4.2 West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968

Standing Orders Ordinance, 1968 prescribes special rules relating to terms and conditions of service of the persons employed in industrial and commercial establishment employing 20 or more persons. It provides for the Compulsory Group Insurance, Wage Payments during layoff, Termination, Gratuity and Dismissal and Disciplinary Procedures. Certain provisions apply to the industrial establishments which employ 50 or more workers, whereas all the provisions apply to the commercial establishments which employ 20 or more workers. However, Ordinance does not apply to the establishment which has its own statutory rules of services. Hence, Standing Order Ordinance is discerned as a chain member of those legislations which scatter the versatile rules in favour of employees. The preamble of Standing Orders Ordinance, 1968 was discussed before a Division Bench in ***Ghulam Ahmed v. Sind Labour Appellate Tribunal, Karachi***, in the following words *"Standing Orders Ordinance is a beneficial legislation intended to protect the interests of the workmen and to produce harmonious relationship between the employer and workmen. Therefore, it should be liberally construed to give maximum benefit within the framework of the law. Not only that the workman whose services have been terminated has a right to know the reasons on account of which such action has been taken by the employer, but the reasons must be such as can be sustained by the Court of law".*[34]

Workers are to be classified in various categories such as permanent worker, probationer, badli, temporary workman, apprentices for the purpose of applicability of conditions laid down in Standing Orders Ordinance, 1968.

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[33] Industrial Relation Ordinance, 2002, Schedule II

[34] PLC 1990 (CS) 385

A workman falls in any of these working capacities on the basis of the terms and condition laid down in the contract of employment. Each type of employment has its respective moods and yields in different forms. Two major kinds of workers are discussed here:

A **"Permanent Worker"** is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another profession in the industrial or commercial establishments, breaks due to sickness, accidents, leave, lock out, strike or (not being an illegal lock out or strike) involuntarily closure of the establishment and includes a badli who has been employed for a period continuous three months or for one hundred and eighty three days during any period of twelve consecutive months.

A **"Temporary Workman"** is one who has been engaged for work which is of an essentially temporary nature likely to be finished within the period not exceeding nine months.

The classification of workers has been observed by the Supreme Court in ***Muhammad Yaqoob v. The Punjab Labour Court*** as follows *"In order to get the benefit of the Standing Orders Ordinance, in the matter of termination of service, petitioner has to show that he was a permanent workman. A 'Permanent Workman' has been defined in the Standing Orders Ordinance, by reference to the nature of work on which he has been engaged or employed if the work is not of permanent nature, then howsoever long may be his employment, he cannot be taken to be a permanent workman. The length of the period of employment by itself has not been made the ground or a test for determining the nature of work. Keeping in view the nature of the work on which the petitioner was employed, namely, an addition to the regular strength of malis for the maintenance of garden and ground on daily wages or work charge basis, it cannot be said that such additional work being done by him was of a permanent nature necessarily. As regard the stigma attaching to the permanence of his service, the petitioner has as witness admitted that the termination order was oral and not in writing. Leave to appeal was refused."*[35]

[35] 1990 SCMR 1539

In this case, the nature of the work was not of permanent nature. That's why the workman was a temporary one and was not entitled to claim a written order for termination of his employment.

There is another landmark case which gives inference of some legal principles to determine whether the person is a workman or not. ***Sadiq Ali Khan v. Punjab Labour Appellate Tribunal, Lahore*** provides certain legal principles which can be deduced as follows: **Firstly,** onus to prove that a particular person was workman within the labour laws was upon him and that onus must be discharged by leading sufficient evidence. **Secondly,** while determining this question, it is the substantial nature i.e. pith and substance of duties of person concerned which should be taken into consideration and neither designation of post nor salary is of such relevance, and **Lastly,** while considering nature of duties, subsidiary and incidental nature of duties are not to be given much importance.

The petitioner was employed as Assistant Accountant with supervision of employees performing clerical work sometimes cannot claim to be a workman with contention that he was doing clerical job. That fact itself would not be conclusive, as it is overall nature of duties of an individual which determinates the status of worker.[36]

## Main Provisions of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968

There are some main provisions of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 which describe special rules relating to terms and conditions of service of the persons employed in industrial and commercial establishment employing 20 or more persons.

1. Terms and conditions of employment are submitted in writing, contained in the appointment letter.[37] In ***Hazoor Bux v. United Bank Limited, Karachi*** the employee was employed as temporary workman. He worked with employer Bank initially for three years as messenger without break satisfactorily and thereafter also worked for two years

[36] NLR 1994 Lah (Labour) 21
[37] Standing Order, 2-A

performing various duties satisfactorily without any break, but his services were terminated by employers orally after continuous service of seven years alleging that he was not their employee as no appointment letter was issued by them to employee. The learnt Labour Appellate Tribunal held:

> *"Standing Order 2-A of Ordinance had made it obligatory for employer to issue appointment order to employee at time of his appointment, transfer and promotion in writing showing terms and conditions of service of employee. If employer would not issue appointment order accordingly, he was liable to be prosecuted but employee could not be punished for such lapse on part of employer".*[38]

There is another case which determines the effect of non-issuance of appointment letter or absence of terms and conditions of the employment in issued appointment letter to the employee by the employer. It was held in ***Resident Engineer, Natural Gas Station, Multan v. Khalid Amin*** that the appointment letter must contain clear terms and conditions and nature of employment. Absence of such terms and conditions cannot be construed into temporariness of workman. The ignoring of such statutory obligations, held, raise presumption of being permanent in favour of workers. A worker who continued in service from month to month for over one year, held, and had attained status of being permanent.[39]

2. The periods and hours of work for all classes of workmen in each shift are displayed on the notice boards to make it obvious for all.[40]
3. Holidays and Pay days are to be notified.[41]
4. Rate of wages payable to all classes of workmen and for all classes of work is to be displayed on the said notice boards.[42]
5. More than one shift may be worked in a department or any section of a department of the industrial or commercial establishment at the discretion of the employer.[43]

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[38] PLC 1992 Kar.255
[39] PLC 1991 Kar.528
[40] Standing Order, 3
[41] Standing Order, 4
[42] Standing Order, 5

6. All workmen shall be at work at the establishment at the time fixed. Workmen attending late are to be liable to the deduction in the payment of wages.[44]
7. The workman has a right to certain leaves and holidays during the course of employment.[45]

In addition to the 14 days of annual leave with pay, the Factories Act, 1934 provides that every worker is entitled to 10 days casual leave with full pay and further 16 days sick or medical leave on half pay and all the festivals holidays with pay declared by the Government. If however, a worker is required to work on any festival holiday, one day's additional compensatory holiday with full pay and a substitute holiday shall be awarded. Prior sanction or extension of any kind of leave is mandatory except in case of emergency.

In ***Faizuddin v. Messrs Shezan Kohsar,*** the worker was dismissed from service for remaining absent for more than ten days without leave. The workman met with an accident and his right thigh was fractured, when he was returning home from his duties. After 2 or 3 days, he left the hospital as he could not bear the expenses for his hospitlization. He did not move any application for leave after he was discharged from hospital. He was thus guilty of misconduct. Medical certificate showed that workman was suffering from 60% disability. It was accepted by the employer for the purpose of award of compensation from Insurance Corporation. Under the circumstances even though the workman was guilty of misconduct, but such misconduct did not deserve punishment of dismissal from service. Thus the punishment of dismissal was converted into retirement with all back benefits.[46]

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

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[43] Standing Order, 6
[44] Standing Order, 7
[45] Standing Order, 8
[46] PLC 1991 Kar.28

**8.** Different aspects of payment of wages to workmen of an establishment have been discussed here in this Standing Order, all the workmen are supposed to be paid their due wages on any fixed working day before the expiry of the 7th or 10th day after the last day of the wage period, in case the total number of workmen in an establishment is 1000 or more than 1000 respectively.

The wages to be paid to workman, but could not be paid on the fixed pay day, due to any reason must be paid by the employer on any *"unclaimed wages pay day"* in each week to be notified on the notice boards of the establishment. [47]

**9.** All the relevant aspects of Compulsory Group Insurance have been covered by the Standing Order 10-B. The employer is expected to insure his permanent workman against the natural death and disability, and death and injury arising out of contingencies which are not covered by the Workmen's Compensation Act, 1923 or the Provincial Employees Social Security Ordinance, 1965. This is the responsibility of an employer to pay the premia and to do all the administrative arrangements in this respect, otherwise the employer shall be held responsible to pay the compensation accordingly.[48]Certain decided cases have been cited to elaborate certain points: In ***Karachi Transport Corporation Karachi v. Kajeer Khan and another,*** the facts of the case are: Kajeer Khan was employed by the petitioners as a workman. He preferred a claim for compensation on account of disability allegedly occurring due to an accident. That claim was accepted by Commissioner for Workmen's Compensation Act, 1923 and Authority under the Payment of Wages Act, 1936. Though it was incumbent on employer under clause (1) of Standing Order 10-B of Ordinance, 1968 to insure all his permanent workmen employed by him against (1) natural death and disability (2) death and injury arising out of contingencies not covered by the Workmen's Compensation Act, 1923 or the Provincial Employee Social Security Ordinance, 1965. Although the term "disability" occurred in clause (1) of Standing Order 10-B, but under clause (4) of the same Standing Order an application could be filed by a workman claiming compensation from employer on account of failure of employer to insure workman had made no reference to any disability suffered by workman, but only referred to death or injury which might have been

[47] Standing Order, 10
[48] Standing Order, 10-B

suffered by workmen. The effect of omission of word "disability" from clause (4) of Standing Order 10-B, would be that although a claim could be preferred by workman against employer on account of death or injury occurring to him, but no such claim could be preferred on account of "disability" which might have been suffered by workman. So the application filed by employee before Authority for compensation claiming compensation from employer on account of alleged disability could not have been accepted by Authority. The order of Authority regarding to the extent of his disability was not based on evidence and was declared illegal, in circumstances.[49]

**10.** The workmen are entitled to receive bonus from the profit. Every employer making profit in any year is bound, to share his profit as bonus to the workman within three months of the closing of that year, who remained in his employment in that year for a continuous period of not less than 90 days, in addition to their wages due to them.[50] The entitlement of employees to claim bonus of one month is discussed in ***Pak Cigarette Labour Union v. Pak Tobacco Company Ltd***. Employers defence to employees claim was that settlement between parties had already been arrived at according to which three months pay was to be given to the employees and that including one month salary as bonus. Grant of three months bonus to the employee was only by virtue of settlement arrived at between the parties and was not in accordance with the terms of employment. Employer might or might not have agreed to pay additional bonus and such agreement, settlement, had arisen out of industrial dispute between the parties. If employer had not agreed to pay the extra bonus, employees would not have been able to claim the disputed bonus and would have confined their claim only to the bonus from the profit. Employees were thus, entitled to claim one month's wages as bonus from the profit, in addition to the terms of settlement whereby three months pay was to be given to the employees.[51]

**11.** Prior permission of the Labour Court is must for any employer for termination of more than 50% of his workmen or close down the whole of his establishment except in

[49] PLC 1993 Kar.96
[50] Standing Order, 10-C
[51] PLD 1981 SC 495

the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion etc.

12. In order to terminate the employment of the permanent workman for any reason other than misconduct one month notice on either side is to be given or in lieu of one month's wages to be calculated on the basis of last three months average wage shall be paid or surrendered by the employer and workman respectively except permanent workman, no temporary workman of any kind is entitled to any notice if his services are terminated. Order in writing is essential, if the service of workman is terminated, removed, retrenched or dismissed.[52]

Case laws are pertinent to explain the provisions of law, so here the manner in which temporary worker may be terminated is ascertained in the below mentioned case. ***Metro Garments Industries Karachi v. Sind Labour Appellate Tribunal, Karachi and 2 others.*** The brief facts of the case are: A temporary workman was appointed as a Stitcher on purely casual and temporary basis for specified period. The letter of appointment not only states the reasons for termination of service but have condition that after expiry of said period, his services were automatically to stand terminated. Once the date on which services of employee were to be terminated and reasons for such actions were communicated to him. Employer was not obliged to serve employee with another notice under Standing Order 12(3) of Ordinance, 1968, particularly when his services could be terminated by employer at any time without notice irrespective of the fact whether the work had been concluded or not yet.[53]

13. A workman may be penalized or fined according to the manner prescribed in the Payment of Wages Act, 1936. If it is applicable to the establishment the list of acts or omissions for which fine may be levied shall be approved by the chief inspector of factories or any other officer concerned. In other cases the following shall be, the list of acts or omissions to be treated as misconduct by the workmen:

a) Disregard and disobedience of rules or orders

[52] Standing Order. 12
[53] PLC 1993 Kar.303

b) Improper behavior such as drunkenness

c) Making false or misleading statements

d) Inefficient, Dilatory, Careless or wasteful working

e) Malingering [54]

In ***Pakistan Tobacco Company Ltd v. Channa Khan and others,*** the respondent was charged for false implication by his masters. Channa Khan was employed by the appellate as Naib in its Watch and Ward Department and his duty was to maintain discipline and efficiency among the chowkidars who were required to look after the properties of the Appellate. On 19th of May, 1974 at 1:50 PM, he was searched by the Security Staff and found to possess three packets of Gold Leaf Cigarette. He was, thereafter, charged sheeted for misconduct under Standing Order 15 followed by an inquiry in accordance with the procedure laid down herein and eventually he was held guilty of misconduct and a second show-cause notice was issued and as his explanation of false implication by Masters Rehmat Gul and Shabbir Shah was found to be unsatisfactory. He was dismissed from the service on 28th of June 1974.[55]

**14.** The workman has a right to live in accommodation provided by his employer, up to a period of two months, after the termination of his service, who has resigned or retired, or has been retrenched, discharged or dismissed, or whose services have been terminated.[56]

In ***Messrs Pakistan Burmah Shell Ltd. v. Wazir Ahmed and 17 others,*** *it* was held "a workman has a right not to be ejected; save in accordance with the law through Civil Court which right is also protected under Sec. 9 of the Standing Order Ordinance. They could, only be ejected in case of retrenchment, discharge, dismissal or termination of services. This right which forms the part of the statute can not be adversely modified even by the CBA as the effect of such agreement would be taken away or diminishing the right of benefit available to the workman. Thus, CBA also is not entitled to enter into any

[54] Standing Order, 15(iii)(b)
[55] 1980 PLC (SC) 981
[56] Standing Order, 16

agreement for the vacations of quarters and any such agreement would not create any right that could be enforced through the Labour Court".[57]

## 2.5 THE IMPACT OF EMPLOYMENT LEGISLATION

As in a developing country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. In such conditions, it becomes the duty of the state to protect the interest of general public by fixing minimum rates of wages irrespective of the consideration of employer's capacity to pay.

Where there is legislation, there is an impact which proves it either positive or negative. Sometimes its impact is visible to all at large or confine to specified group of individuals. Impact of contract of employment also leads to bisect view which encircles the positive and negative aspect. Every individual traces its influence over the performance of an employee in consonance to his own gun. Things, common to all are that contract of employment assists employees to comply with all the terms and condition of employment which had been given in the contract letter at the time of appointment. It also helps individuals to take in all the works and duties assigned to him in true sense and strive further to discharge them and not to contravene any of the specified provisions. The contract of employment provides grounds of judicial litigation in favour of an employee in case of default from employer side. It further enables employer and employee to create harmonious relationship between them. Individual appointed in an organization seems to be bound to fulfill the required criteria (mentioned in the contract of employment) for the said vacancy. This works as an edge in the up-coming life of an employee in respect of his experiences. Common views in repugnancy to contract of employment are considered as salt in the floor. This is stated in this regard that contract of employment confines employees to their respective work while sometimes organization may stand in need of extra work besides the assigned ones. Contract of employment let the employees know the specified time of job, therefore, they heed no extra attention to their work when they don't find any promotion.

[57]PLC 1989 Kar.576

In a nutshell, modern ways to promote human resource legislation **(HRL)** with regard to contract of employment ought to be adopted irrespective of critical and satirical views. If non-legislative attitude is to be nourished any more, so it will really give result in stagnation which might bring the nation at the verge of backwardness again.

# CHAPTER III
# EQUAL EMPLOYMENT OPPORTUNITIES

Organizations and businesses are made up of many individuals working together to achieve organizational success. These individuals bring different attitudes, perceptions and learning experiences to the workplace, as well as ethnic, gender and personality differences. These can be a source for developing creativity within an organization. However, they can also be the cause of problems. Over the last thirty years or so employment has changed beyond all recognition. This change has led to a fundamental thinking of the way to manage the employees. Managers had to recognize the need to develop and enforce company policies aimed at reducing and eliminating discrimination. In addition, the increasing globalization of business has meant that managers must be aware of cultural and race issues.

Equal Employment Opportunities **(EEO)** is a universally used and understood term which describes the idea that everyone in an organization should have an equal chance to apply and be selected for posts, to be trained or promoted and to have employment terminated fairly. Employers can discriminate only on the basis of ability, experience or potential. All employment decisions are based solely on an individual's ability to do a particular job. No consideration should be taken about a person's sex, age, racial origin, disability or marital status.[1]

Equality at work place is basically about fair treatment for the individual. EEO, in particular, is about enabling individuals to have fair access to job opportunities, promotion, training and other employee services. It also encompasses equal pay for work of equal value. Achieving equality of opportunity at work is not as simple as it sounds

[1] www.accountancy.com.pk/ Ball John, Equal opportunities, Articles for students

primarily, because, for anyone opportunity that arises there will almost certainly be competition among employees to be considered for it. Managers, therefore, have to decide between individuals. We talk of discriminating buyers in an antique market or an art fair with approval. We clearly think that such people know what a quality product is and can recognize it. In the arena of human resource management, however, the very word "discrimination" has a negative ring about it. Thus, there is a view that managers ought not to discriminate between people, and yet that is what they are being paid to do, to optimize the skills and effort of their staff.[2]

## 3.1 SCOPE OF EQUAL EMPLOYMENT OPPORTUNITIES

EEO is promoted as a key component of good management as well as being a legal requirement. It is also socially desirable and morally right. Managing diversity on the other hand expands the horizons beyond equality issues and builds on recognized approaches to equal opportunities **(EO)** It adds new impetus to the development of EO and creates an environment in which enhanced contributions from all employees' works to the advantage of the business, employees themselves and society generally. It offers an opportunity for organizations to develop a workforce to meet business goals and to improve approaches to customer care. Managing diversity is about having the right person for the right job regardless of sex, race or religion.

Essentially the management of diversity is a quality assurance approach. It helps in identifying hidden organizational barriers, which make it more difficult for people who are perceived as being different from the majority of their colleagues to succeed and develop careers. It also helps to effect cultural change and to create an environment in which people from all backgrounds can work together harmoniously. The management of diversity combats prejudice, stereotyping, harassment and undignified behaviour.[3]

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[2] Gerald Cole, Personnel and Human Resource Management: Equal Opportunities Policies and Practice, (New York: Continuum Publishers, 2002), 232-39

[3] www.accountancy.com.pk/ Ball John, Equal opportunities, Articles for students

## 3.2 SCOPE OF EQUAL EMPLOYMENT LEGISLATION

It is in the best interest of the organization for the human resource management **(HRM)** unit, to develop policies and procedures, which comply with the law. The best way to begin studying the relationship between HRM and the law is to devote time and attention to EEO. No other regulatory area has so thoroughly affected HRM. EEO has implications for almost every activity in HRM: hiring, recruiting, training, terminating, compensating, evaluating, planning, disciplining and collective bargaining.[4] EEO programmes are implemented by employers to prevent employment discrimination in the workplace or to take remedial action to offset past employment discrimination.

EEO cut across every HRM activity, and this means that human resource **(HR)** officials and managers, in every function of the organization, are involved. Top managers must get involved in EEO issues and programmes to make sure that the organization complies with the law, avoids fines, and establishes a discrimination free work place. Operating managers must assist by changing their attitudes about protected-category employees and by helping all employees adjust to the changes EEO bring to the workplace.[5]

Government regulations are an important source of influence on the human resource function. The labour laws gave employees the right to form unions and bargain with employers over the terms and conditions of employment. Certain human resource activities were affected by them, particularly compensation and internal staffing. However, the fairly recent laws and executive orders pertaining to EEO have had an even more profound impact on the total human resource function.[6] The present chapter examines EEO legislations on international and national level and their widely felt effects on virtually all human resource activities.

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[4] Labour letter, The Wall Street Journal, September 8, 1992,p.A1

[5] John Invancevich. Human Resource Management: Equal Employment Opportunities (USA: Richard D. Irwin, Incorporation, 1995), 66.

[6] Heneman and Schwab. Perspectives on Personnel / Human Resource Management: Equal Employment Opportunities, (USA: Richard D. Irwin, Incorporation, 1978), 337.

## 3.3 RELEVANT INTERNATIONAL INSTRUMENTS RATIFIED OR ACCEDED TO BY PAKISTAN

Generally, ***convention*** means *"coming together"*. The senses of physical meeting of people in one place, social norm, and formal agreement, are all derived from that sense. All adopted ILO Conventions are considered International Labour Standards regardless of how many national governments have ratified them. The topics covered by them cover a wide range of issues, from freedom of association to health and safety at work, working conditions in the maritime sector, night work, discrimination, child labour and forced labour. International Labour Organization (ILO) introduced in 1919 radical new standards for working patterns. The object of each of these measures was to limit hours worked because long or abnormal work patterns are deemed to be hazardous to health. The coming into force of a Convention results in a legal obligation to apply its provisions by the nations that have ratified it. Ratification of a Convention is voluntary. Conventions that have not been ratified by member states have the same legal force as Recommendations. Governments are required to submit reports detailing their compliance with the obligations of the Conventions which they have ratified. Pakistan had ratified the following conventions relating to equal employment opportunities for most neglected class for example women, minorities and persons with disabilities etc.

❖ **International Labour Organization Conventions relating to Equal Employment Opportunities**

**(i) Underground Work (Women) Convention, 1935 (No. 45)**

Establish certain principals concerning the employment of women on underground work in mines of all kinds and prohibit the employment of women on underground work in mines, but subject to some exceptions.

**Summary of the provisions**

Generally the females, whatsoever their ages, are not to be employed on underground work in any mine. (Article 2) Although national laws or regulations of the member states which had ratified the convention, may exempt from the above prohibition certain females; (a) females holding positions of management only; (b) females employed in health and welfare services; (c) females who, spend a period of training in the underground parts of a mine for study purpose; and (d) any other females who may occasionally have to enter in the underground parts of a mine for the purpose of a non-manual occupation. (Article 2)

### (ii) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities.

**Summary of the provisions**

The right to organise is to be granted to workers and employers, without discrimination. (Article 2) Only the armed forces and the police may be exempted by national laws or regulations. (Article 9)

It must be possible for organizations to be established without previous authorization. (Article 2)

Workers and employers are guaranteed the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choice. (Article 2)

Organizations shall be free from interference by the public authorities when drawing up their constitutions and rules, electing their representatives, organising their administrative activities and formulating their programmes. (Article 3)

Organizations shall not be liable to be dissolved or suspended by Administrative Authority. (Article 4)

Organizations shall have the right to establish and join federations and confederations (Article 5); the guarantees provided in Articles 2, 3 and 4 shall apply to these federations and confederations of higher-grade. (Article 6)

Organizations, federations and confederations shall have the right to affiliate with international organizations of workers and employers. (Article 5)

The acquisition of legal personality by organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4. (Article 7)

In exercising the rights provided for in the Convention, workers and employers and their respective organizations shall respect the law of the land; however, the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in the Convention. (Article 8)

### (iii) Night Work (Women) Convention (Revised), 1948(No. 89)

Treats specifically with the working status of women at night in respect of public or private industries.

**Summary of the provisions**

This Convention forbids a woman hiring in night shift workings irrespective of their ages whereas there are certain exceptions to this general rule in Articles 4 and 5 of the same convention. (Article 3)

It states two exceptions where women in night shift work can be engaged (i) on accuracy of interruption of work which was impossible to foresee (ii) rapid execution stands in need due to deterioration of raw material. (Article 4)

The convention further provides that in case of serious emergency with regard to national interest, a woman can be hired in night shifts, but through proper channel. (Article 5)

This is a model article which in spite of engaging a woman in night work caters variance (relaxation) in working hours for them and that can be reduced without prior approval of government. (Article 6)

It permits the work at night for the women holding responsible positions of a managerial or technical character and employed in health and welfare services, in which manual work is not required. (Article 8)

Pakistani territories, in respect of which the Pakistani legislature has jurisdiction, are also subject to this convention provisions. (Article 11)

It is a procedural article which gives procedure to bring draft amendments in this convention through International Labour Conference. (Article 12)

**Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89)**

Protocol of 1990 to the Convention concerning Night Work of Women Employed in Industry (Revised 1948)

**Summary of the provisions**

National laws or regulations, adopted after consulting the most representative organizations of employers and workers, may provide that variations in the duration of the night period as defined in Article 2 of the Convention and exemptions from the prohibition of night work contained in Article 3 thereof may be introduced by decision of the Competent Authority. (Article 1)

It shall be prohibited to apply the variations and exemptions permitted in pursuant to Article 1 above to women workers during a period before and after childbirth of at least 16 weeks, of which at least eight weeks shall be before the expected date of childbirth. This prohibition shall also apply to additional periods in respect of which a medical

certificate of pregnancy is produced stating that this is necessary for the health of the mother or child. (Article 2)

During the period of pregnancy and after childbirth of at least 16 weeks: a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth; the income of a woman worker concerned shall be maintained at a level sufficient for the up keeping of herself and her child in accordance with a suitable standard of living. Article shall not have the effect of reducing the protection and benefits connected with maternity leave. (Article 3)

**(iv) Right to Organize and Collective Bargaining Convention, 1949 (No. 98)**

Provides guidance for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other and for measures to promote and encourage collective bargaining.

**Summary of the provisions**

Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, both at the time of entering employment and during the employment relationship. Such protection shall apply more particularly in respect of acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. (Article 1)

Workers' and employers' organizations shall be protected against interference by each other or each other's agents or members. In particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference. (Article 2)

In view of the importance of the procedural aspect in ensuring the effective application of these standards, the Convention makes it an obligation, where necessary, to establish machinery appropriate to national conditions for the purpose of ensuring respect for these two facets of the right to organize. (Article 3)

For the obligation to promote the practice and voluntary nature of collective bargaining, this Convention requires that measures appropriate to national conditions to be taken, where necessary, to encourage and promote full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. (Article 4)

Unlike Convention No. 87, which applies to workers in both the private and public sectors, without distinction, and accordingly also to public servants, this Convention does not deal with the position of public servants engaged in the administration of the State. (Article 6)

### (v) Equal Remuneration Convention, 1951 (No. 100)

Calls for equal pay for men and women for work of equal value.

**Summary of the provisions**

States having ratified the Convention shall promote so far as is consistent with the methods in operation for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. (Article 2)

The Convention shall apply to basic wages or salaries and to any additional emoluments whatsoever, payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of his or her employment. The Convention defines equal remuneration for work of equal value as remuneration established without discrimination based on sex. (Article 1)

This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. One of the means specified for assisting in giving effect to the Convention is the objective appraisal of jobs on the basis of the work to be performed. (Article 2)

The Convention provides that governments shall co-operate with employers' and workers' organizations for the purpose of giving effect to its provisions. (Article 4)

In its supervision of these instruments, the Committee of Experts on the Application of Conventions and Recommendations has recognised that the achievement of favourable conditions for equality of opportunity and treatment in employment and occupation is a continuing endeavour. Nevertheless, the road to equality has over the years been punctuated by stark examples of the need for international action against the infringement at the national level of the basic right to equality. Here, the international labour organization's **(ILO's)** standards have been of paramount importance as a rallying point.

### (vi) Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Calls for a national policy to eliminate discrimination in access to employment, training and working conditions on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment.

**Summary of the provisions**

The Convention assigns to each State which ratifies it the fundamental aim of promoting equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in respect of employment and occupation.

Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Member States having ratified this Convention undertake to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with this policy, to enact legislation and promote educational programmes which favour its acceptance and implementation in co-operation with employers' and workers' organizations. This policy shall be pursued and observed in respect of employment under the direct control of a national authority, and of vocational guidance and training, and placement services under the direction of such an authority.

### (vii) Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No.159)

The ILO Vocational Rehabilitation Employment Convention, 1983 requires that appropriate vocational rehabilitation measures to be made available to all categories of disabled persons. Focusing on the equalization of opportunities for disabled persons and their integration within the community, this convention establishes guidelines on providing vocational training and employment for all categories of disabled persons.

**Summary of the provisions**

The Convention shall apply to each Member through measures which are appropriate to national conditions and consistent with national practice. Each Member shall consider the purpose of vocational rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person's integration or reintegration into society. (Article 1)

Each Member shall, in accordance with national conditions, practice and possibilities formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. (Article 2)

The said policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of disabled persons and promoting employment opportunities for disabled persons in the open labour market. (Article 3)

The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers. (Article 4)

The representative organizations of employers and workers shall be consulted on the implementation of the said policy, including the measures to be taken to promote co-operation and co-ordination between the public and private bodies engaged in vocational rehabilitation activities. The representative organizations, of and for, disabled persons shall also be consulted. (Article 5)

Each Member shall, by laws or regulations or by any other method consistent with national conditions and practice, take such steps as may be necessary to give effect to Articles 2, 3, 4 and 5 of this Convention. (Article 6)

The competent authorities shall take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment; existing services for workers generally shall, wherever possible and appropriate, be used with necessary adaptations. (Article 7)

Measures shall be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities. (Article 8)

Each Member shall aim at ensuring the training and availability of rehabilitation counsellors and other suitably qualified staff responsible for the vocational guidance, vocational training, placement and employment of disabled persons. (Article 9)

❖ **United Nations Conventions relating to Equal Employment Opportunities**

The United Nations also gives due consideration on the issues relating to Status of Women. The most important Conventions relating to Discrimination and protection of the Political Rights of Women are as under:

**(viii) The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979**

The Convention is the out come of efforts of the UN Commission on the Status of Women. It is a single international instrument, which carries in its legislative ambit the provisions of various international instruments on women's rights as well as includes many of the recommendations of the commission adopted since the commission's inception in 1946. Thus, it unites in a single document not only the existing documents for improving rights of women but also contains new rules. To put it in brief the Women's Convention is a major break through in international human rights law as it recognizes the need to go beyond the legal documents to address factors, which will eradicate de facto inequality between men and women.[7]

By the adoption of the Women's Convention the separate concepts of "women's rights" were recast in a global perspective and a positive effort was made to integrate women's Human Rights into the main stream of Human Rights framework.[8]

**Summary of the provisions**

The Women's Convention defines discrimination as: "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field". (Article 1)

[7] Preamble to the Women's Convention

[8] Shaheen Sardar Ali "A comparative study of Convention on the Elimination of All Forms of Discrimination against Women with Islamic Law and Laws of Pakistan", (Peshawar: Shaken Publishers, 1995), 6.

In order to eliminate discrimination against women, this Convention requires the state parties to adopt such measures including changes in the constitutions of the state parties and also changes in those legislative provisions that are discriminatory against women.

Not only these changes in the national constitutions and in various legislative provisions are required but also in political, social, economic and cultural fields are concerned the state parties should take appropriate measurers including legislation for the development of women on an equal basis with men. (Article 2)

The right to stand for election to all publicly elected bodies, to hold public office and to participate in formulating government and public policy are mentioned in the Convention. However, the Women's Convention gives the right to participate in non-governmental organizations and associations concerned with the public and political life of the country. (Article 7)

The right of statehood of women irrespective of their marital status is recognized in the convention. It is the duty of the state parties to grant women equal rights with men to acquire, change or retain their nationality. Instead of depending on husband's nationality, they have been given the right to choose their own nationality. It also grants women equal rights with men with respect to the nationality of their children. (Article 9)

Discrimination in the fields of education, employment, economic and social activities is not allowed. The Women's Convention not only covers the rights of women living in urban areas but it has also taken into account the problems faced by rural women in order to raise their status and to provide better treatment to them. It is worth mentioning here that it was for the first time that an international legal instrument has dealt with the problems of rural women. (Article 10)

All appropriate measures on the basis of equality of men and women shall be taken to ensure participation of women in rural development and steps for their benefit will be taken, like access to adequate health facilities, information, counselling in family

planning and all types of formal and informal training including that relating to functional literacy shall be given. (Article 14)

The convention emphasizes the full equality of women in civil and business matters. It requires state parties to give women equal rights to enter into contracts, to administer property and to be treated equally in all stages and procedure in courts and tribunals. It further demands that all instruments aimed at restricting women's legal capacity should be declared as null and void. (Article 15)

It provides for elimination of discrimination in marriage and the family. Women play a very important role in the family life but in our part of the world they are often not a party to the contract of marriage in the real sense of the word. In order to prove the significance of women's position in the family and marriage contract, this Convention laid down that marriage and family relation are to be based on the equality of women and men with the same right to choose a spouse and enter into marriage etc. (Article 16)

### (ix) Convention on the Political Rights of Women 1953

This Convention came into force to implement the principle of equality of rights for men and women. Everyone has the right to take part in the government of his country directly or indirectly through freely chosen representatives, and has the right to equal access to public service in his country, and desiring to equalize the status of men and women in the enjoyment and exercise of political rights.

**Summary of the provisions**

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination. (Article 1)

Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. (Article 2)

Women shall be entitled to hold public office and to exercise all public functions established by national law on equal terms with men, without any discrimination. (Article 3)

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of this Convention, which is not settled by negotiation, shall at the request of anyone of the parties to the dispute be referred to the International Court of Justice for decision, unless they agree to another mode of settlement. (Article 9)

### 3.4 Equal Employment Legislation in Pakistan

Today, many laws and ordinances (issued by presidents, which have the force and effects of laws enacted by parliament) prohibit employment discrimination. Since it would be impossible to discuss all of them in a single chapter, this chapter will primarily focus on the Fundamental Rights provided in Constitution of Pakistan; Maternity Rights for Women and Special Protection for Disabled Persons provided in the country. Considerable understanding of the entire legal framework can be gained through an examination of these legislations.

#### 3.4.1 Constitution of Pakistan

The Constitution of the Islamic Republic of Pakistan, 1973 incorporates several provisions concerning labour matters which form the foundation of labour administration in the country. These include inter alia prohibition of slavery and forced labour; freedom of assembly association and speech; freedom of trade business and profession; equality of citizens; promotion of social justice and eradication of social evils; and promotion of the social and economic well-being of the people. Some of the rights provided in the Constitution, stressing on the equality in all spheres of life, are given below:

1. Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form. All forms of labour and traffic in human beings

are prohibited. No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.[9]

In ***Darshan Masih Alias Rehmatay v. the State,*** an unusual case where a telegram was received by Chief Justice of Pakistan alleging bonded labour and illegal detention by employers in Brick Kiln Industry, the matter was taken cognizance for the enforcement of fundamental rights, regarding bonded labour practices. In this context, need for legislation defining the expression forced labour with illustrations of its different forms, in such a manner so as to minimize any confusion about its real purport was emphasized by Supreme Court.[10]

In ***Gulzaran v. Amir Baksh and six others*** the petitioner, a lady, apprehended her sale by her father for a consideration of Rs.1,00,000 who was indebted to a Mushtaq Ahmed Zamindar and she having been married to a minor wanted to approach the Family Court for getting her unlawful marriage dissolved. The petitioner also apprehended her abduction by her father in collusion with the influential persons of the area and certain police officers and she approached the High Court for her protection seeking necessary restraint orders for the respondent. Articles 11 and 14 of the Constitution had prohibited slavery and trafficking in human being making their dignity inviolable. Dignity and liberty had been bestowed upon every human being by God Almighty and all the organs of the State had been charged to adopt Islamic way of life by induction of Article 2-A in the Constitution which has adopted the Objectives Resolution as its substantive part. Thus, the petition was accepted.[11]

**2.** All citizens are equal before the law and entitled to the equal protection of the law. The law also prohibits discrimination on the basis of sex alone. The law allows for the State to make special provision for the protection of women and children. [12]

The principle of "*equality before the law*" and of prohibition of discrimination is one of the essence of the rule of law and human freedom. It has been said that every

[9] Art. 11 of Constitution of Pakistan 1973
[10] PLD 1990 SC 513
[11] PLD 1997 Kar 309
[12] Art.25 of Constitution of Pakistan 1973

Republican Government is duty bound to protect all its citizens in the enjoyment of equality of rights. The formula as stated in Article 25 is a combination of the English concept of "*equality before the law*" and of the American concept of "*equal protection of the law*". Prohibition against slavery[13] and forced labour[14] denial of admission to educational institutions[15] and of access to public places[16] and discrimination in public services [17] are specific applications of the general principle of equality.

The ordinary meaning of *"discrimination"* is very inoffensive. It means *"making a distinction or difference between things; a distinction; a difference; a distinguishing mark or characteristic; the power of observing difference accurately; or of making exact distinction; discernment".*[18]

The principle of non- discrimination can be understood in a best way in the case of ***Muhammad Abbas v. Government of Punjab and others,*** in which Justice Syed Zahid Hussain states his remarks in following words "while dealing with the case of this type where the petitioner alleges discrimination, the court cannot overlook the implications thereof. Equal treatment of all similarly situated is the basic principle on which justice rests under the law if even-handed justice is not administered it can have adverse and negative effects on the society. It can cause discontentment and frustration in the social setup. There can no denial that social justice is an objective, embodied and enshrined in our constitution, the preamble and Article 2-A i-e the Objectives Resolution, ordain that principles of equality and social justice as enunciated by Islam shall be fully observed. Article 4 (right of individuals to be dealt with in accordance with law), Article 25 (equality of citizen), Article 26 (non-discrimination in respect of access to public places), Article 27 (safeguard against discrimination in services), read with principles of policy i-e Article 37 (promotion of social justice and eradication of social evils) all go to show, the great stress lay down by the constitution makers on the principles of equality. Non observance of such provisions and principles may amount to negation of constitutional

[13] Art.11 of Constitution of Pakistan 1973
[14] Art.11 of Constitution of Pakistan 1973
[15] Art.22 of Constitution of Pakistan 1973
[16] Art. 26 of Constitution of Pakistan 1973
[17] Art. 27 of Constitution of Pakistan 1973
[18] The Oxford English Dictionary, Vol. III.

mandates, dedicates of justice and rule of good governance, which should be avoided as far as possible".[19]

Clause (2) of Article 25 prohibits distinction on the basis of sex alone. However the very next Clause (3) controls the rest of Article 25 by providing that "nothing in this article shall prevent the state from enacting any special provision for the protection of women and children". In **Government *of Punjab v. Naila Begum***, it was held by the Supreme Court by the following words *"State can make any special provision under Art 25(3) for protection of women and children and fix quota of seats for women candidates, as limitation on sexual discrimination inherent in Article 25(2)".*[20]

It implies, therefore, that while the difference on the basis of sex can be created and maintained it shall be done only in those cases where it operates favourably as a protective measure for and not against women and children. The field of prohibition, of adopting sex, as criteria for making a distinction, is thereby reduced to only that category wherein sex is adopted as a standard for discriminating against females generally and against males only if it is not as a measure protective of females. Discrimination against a group or an individual implies making an adverse distinction with regard to same benefit advantage or facility. All pervasive nature of this constitutional provision is self evident. In interpreting the constitution and also in giving effect to the various legislative measures, one distinction has to be consistently kept in view and it is that classification based on reasonable considerations is permissible and not violation of the principle.[21]

In ***Fazal Jan v. Roshan Din,*** wherein an assumption has been made that *"State"* shall make special provision for the protection of women and children. The protection here does not only mean the protection of the body but also the rights. These rights include the property rights. The petitioner can be provided with legal assistance through engagement of a competent counsel. A lady, who appeared to be incapable of conducting a complicated case of inherited property herself, was ordered by Supreme Court to be provided with assistance of a competent experienced lawyer, which assistance would be

[19] PSC 2005 Lah. 671
[20] PLD 1987 SC336
[21] PLD 1990 SC 295 (p.309)

deemed to be in pursuance of fundamental right of the protection of women and children. Counsel should be able to sort out the confusion created mainly by the incapacity of the women /petitioner who as stated by her has none to help and look after her affairs. He shall be engaged at state expense.[22]

3. The Constitution envisages that if a citizen is otherwise qualified for appointment in the service of Pakistan, he cannot be refused appointment merely on the ground of his race, religion, sex, residence, or place of birth.[23]But it is open to the appointing authority to specify qualifications for recruitment to the government service and formulate condition of appointment. The provisions of this Fundamental Right are not violated if selection is made on the merits from the candidates who have been subject to same test.

The word *"discrimination"* is derived from the Latin word *"discriminare"* which means to divide, separate, and distinguish. This Article is applicable where discrimination is made against a citizen solely on the basis of sex, religion, residence, caste or place of birth. If a law is based upon several factors and the religion, race etc., of a person is only one of the factors concerned; the law would not be ultra vires.[24] However, where two persons are situated in circumstances which are exactly the similar to each other in all material particulars and yet the state takes some actions which places one of them alone under a disadvantage, the action of the state must be deemed to be discriminatory against him.[25]

4. Constitution of Pakistan also requires local Government to give special representation to, inter alia, women. [26]

5. Constitution of Pakistan also ensures full participation of women in all spheres of national life.[27]

6. The constitution requires the State to make provision for securing conditions of work; maternity benefits for working mothers, and to legislate that women and children are not to be employed in jobs unsuitable to their age or sex.[28]

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[22] PLD 1990 SC 661
[23] Art. 27 of Constitution of Pakistan 1973
[24] 1952Cr.L.Jour.23.
[25] AIR1952 Pun.143.
[26] Art. 32 of Constitution of Pakistan 1973
[27] Art. 34 of Constitution of Pakistan 1973

In ***Ghulam Ali v. Mst. Ghulam Sarwar Naqvi,*** the Court stressed the need for providing information to women regarding their inheritance rights, as recognized by Islam and enforceable through a court of law. The Court stated:

*"In the rural areas where 80% of the female population resides, the inheritance rights of the female are not protected and enforced, as Islam requires. It is a pity that while an urbanised brother who is labourer in a neighbouring mill has the protection of labour laws, his unfortunate sister is deprived of her most valuable right of inheritance"*[29]

7. The constitution makes specific reference to the social and economic well-being of the people irrespective of; inter alia, their sex in terms that clearly indicate positive intentions of the states concerning labour protection and social justice.[30]

Protection of illiterate, poor women in rural society and promotion of social justice and eradication of social evils in rural areas should be in accordance with tenets of Islam. In ***Miss Nasreen v. Fayaz Khan,*** Supreme Court emphasized the extreme urgency of taking immediate measures and initiating social uplift programmes in rural areas to ameliorate the miserable plight of the poor illiterate classes of people living there especially of their womenfolk in the light of Islamic Injunctions and invites the attention of the major Women Organizations of the country to this challenging problem and suggests various measures that can be taken in this behalf in collaboration with Local Bar Associations whose most members have live contacts with rural community, and for that reason, are fully aware of its needs and problems especially faced by its female population. The court in this connection suggests for establishment of the statutory committees comprised of representatives of Women Organizations, Local Bar Associations and persons representing education, labour, social welfare and revenue departments of the government to pin-point the evils prevailing in the rural population and actual and prospective infringement of their rights. The said evils, thus, may be attempted to be removed by the said statutory committees and such programmes may be accomplished through legislative measures.[31]

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[28] Art. 37(e) of Constitution of Pakistan 1973
[29] PLD 1990 SC1
[30] Art. 38 of Constitution of Pakistan 1973
[31] PLD 1991 SC 412

The rights, which have been categorised in our Constitution as Fundamental Rights, are such that no organ of the state, whether it be executive or legislature can act in their violation. Instances of violation of fundamental rights both in the form of executive action or a law framed by the legislature can be challenged before the High Court or the Supreme Court. The effect of these guaranteed rights is that not only existing law which wholly or partly comes into conflict with the same shall be declared void but also any state action which is opposed to these rights shall be rendered void and ineffective in the eyes of law.

The Constitution also provides for a judicial mechanism for the enforcement of fundamental rights. The High Courts under Art.199 and under certain circumstances the Supreme Court under Art.184 (3) can be moved if a certain action of the executive is believed to have violated these rights. Jurisdiction conferred on the High Court under Article 199 is known as the writ jurisdiction of the High Court. Constitutional jurisdiction (writ) is intended to foster justice and strike down orders, which are found to be in excess of authority or in absence of authority or patently in contravention of express provisions of law. Writ jurisdiction is discretionary in nature and even if the court finds that a party has a good case, it may refrain from giving him the relief, if greater harm is likely to be caused thereby than the one sought to be remedied.

### 3.4.2 Maternity Benefits for Women

The provision of maternity benefits to working women is an important condition of service/employment, the absence of which puts such women at a disadvantageous position vis-a-vis their male counterparts. The right to maternity benefits is enshrined in several international human rights instruments and ILO conventions. The Universal Declaration of Human Rights **(UDHR)** states *"motherhood and childhood are entitled to special care and assistance".*[32] The Declaration further states that Member States must ensure that everyone gets *"just and favourable condition of work".*[33] The International Covenant on Economic, Social and Cultural Rights **(ICESR)**1966 provides for special protection to be accorded to

[32] Article 25
[33] Article 23

mothers during a reasonable period before and after child birth, including paid leave or leave with adequate social security benefits.[34]

**Legislation regarding the Maternity Benefits**

The Constitution of Pakistan directs the State to ensure *"maternity benefits for women in employment"* [35] Legislation exists for implementing this important directive. Thus, under the Civil Servants Rules[36], maternity leave is admissible to a female civil servant on full pay for up to 3 months, outside the leave account. Such leave may not be granted for more than 3 times in the career of such civil servant. Such restriction, however, does not apply to a female civil servant employed in a vacation department. Maternity leave, again, may be granted in continuation of, or in combination with, any other leave, admissible to a civil servant.[37] Similarly, the West Pakistan Maternity Benefit Ordinance 1958 which applies to the whole of Pakistan provides that women employed in an establishment, whether industrial, commercial, or otherwise shall be paid wages during maternity leave for 12 weeks i.e. 6 weeks before and 6 weeks after delivery. Violation of the law is made punishable with fine. Rules have been framed for carrying out the purposes of this Ordinance.[38] The Mines Maternity Act, 1941 also provides for 12 weeks paid maternity leave.[39] The Act also prohibits the employment of or work by pregnant women in a mine during specified period before and after delivery.[40]

### 3.4.3 Special Protection for Disabled Persons

The year 1981 was declared by the United Nations General Assembly **(UNGA)** the International Year of Disabled Persons, with the theme *"full participation and equality"* and that a comprehensive World Programme of Action concerning Disabled Persons is to

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[34] Article 10
[35] Article 37(e)
[36] Made u/s 18 of the Civil Servants Act 1973
[37] Rule 13 of the Revised Leave Rules1980, ESTA Code 1989, p 703
[38] The West Pakistan Maternity Benefit Rules 1961
[39]Section 5
[40] Section 3

provide effective measures at the international and national levels for the realisation of the goals of *"full participation"* of disabled persons in social life and development.[41]

**Legislation regarding the Disabled Persons**

Until the 1981, there was no legislation in Pakistan for the persons with disabilities. It has been discussed earlier that the United Nations declared this year *"the year of Disabled Persons"*. It was the first time in the history of Pakistan, when the government realised the needs of Disabled Persons. The main legal requirements for dealing with the employment of disabled persons are contained in the Disabled Persons' (Employment and Rehabilitation) Ordinance, 1981. The requirements were very modest, but represented an example of what would now be called positive discrimination. This took in the following forms:

1. Employers of more than hundred employees had to comply with a quota of disabled persons up to 1 percent of the total staff – a figure that was generally less than the total number of registered disabled persons in the population.[42]
2. An establishment which does not employ a disabled person as required by Section 10 shall pay into the funds each month the sum of money it would have paid as salary or wages to a disabled person had he been employed.[43]
3. The Provincial Council shall arrange for the training of disabled persons in such trades or vocations as it thinks fit, and shall establish training centre in such trades or vocations and in such manner as may be prescribed by the Provincial Government.[44]
4. Any establishment which fails to pay into the Fund any sum which it is required to pay under Section 11 shall be punishable with fine which may extend to one thousand rupees and, in the case of non-payment of fine, with an additional fine which may extend to ten rupees for every day during which the payment of fine is not made.[45]

[41] Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No.159),preamble
[42] Section 10 of Ordinance
[43] Section 11 of Ordinance
[44] Section 10 of Ordinance
[45] Section 20 of Ordinance

Discrimination against a disabled person may take three forms:[46]

1. **Direct Discrimination,** i.e. where the disabled person is treated less favourably than other persons on the grounds of his or her disability, when such treatment cannot be justified by the employer.
2. **Discrimination by Failure of the Employer,** to make reasonable adjustments to working conditions and procedures to ensure that a disabled person is not substantially at a disadvantage compared with other employees.
3. **Discrimination by Victimization,** i.e. where a disabled person has brought evidence or made a complaint against an employer, and is treated less favourably on account of complaining.

The employment provisions in the Ordinance do not apply to organizations with fewer than one hundred employees, but otherwise the provisions apply to employers of every size.

## 3.5 IMPACT OF EQUAL EMPLOYMENT OPPORTUNITIES

EEO's legal framework indicates that the law can and does have a substantial influence on human resource management. The precise nature and extent of the influence will vary among organizations, making it difficult to present too many generalizations. However, there are some general points that illustrate the typical influences likely to occur or that already have occurred.

The most pervasive influence of EEO law is that the organization must examine all of its human resource policies and programmes to determine if they are having adverse impacts. When adverse impacts occur, the reason for this must be determined. This requires deciding whether the adverse impact is justifiable on ground of job-relatedness or business necessity. If the impact cannot be so justified, the courts will likely rule that the practices are discriminatory.

[46] Gerald Cole, Personnel and Human Resource Management: Equal Opportunities Policies And Practice, (New York: Continuum Publishers, 2002), 234

Thus, when a practice is having adverse impact for reasons that are not job related, the practice must be changed. This will require extensive planning of what changes are necessary and how they will be implemented. While occasionally the planning will involve only a limited aspect of human resources, the far more usual occurrence is that many, if not all, aspects of human resources will be involved.

Successfully conducted EEO programmes are likely to require that the human resource department exert an increased amount of control over line management. Increased control is necessary to ensure consistent planning and implementation of EEO policies and programmes. Moreover, the potential costs of non-compliance are so great that unusually strong control must be exerted. Part of the control will involve a constant monitoring of line management's performance in administering the EEO policies and programmes. Another more stringent form of control will require that line managers obtain approval in advance for certain actions. For example, the human resource department may require that it have final approval of all selection and promotion decisions. The overall effect of these controls will be to place tight constraints, on line managers and the amount of authority they have, to make human resource decisions by them.[47]

The essential point is that most EEO efforts are extremely complex and they require extensive planning. Usually it will be the human resource department of the organization that will be responsible for these efforts. Often such efforts require an increase in authority of, and support for, the human resource department.

[47] Heneman and Schwab. Perspectives on Personnel / Human Resource Management: Equal Employment Opportunities, (USA: Richard D. Irwin, Incorporation, 1978) ,339-40

# CHAPTER IV

# PAYMENT OF WAGES

The term "wages" has a very specific and limited meaning in economics. It means remuneration paid or payable to workers by their employer. It implies returns from employers to their employees in terms of money or money's worth. It is not necessary that wages should be paid in form of money and money only. Wages can't be called as gift.[1]

The word "wage" is compensation which workers derive from their labour. In labour and finance settings "wage" may be defined narrowly to include only cash paid for some specified quantity of labour. Wages may be contrasted with salaries as such that wages being paid at a wage rate (based on time worked) while a salary is paid periodically without reference to hours of work. Once a job description has been established, wages are often a focus, when negotiating an employment contract between employer and employee.[2]

Every worker goes for work to the employer with the intention of earning something. He offers his abilities, efforts, skills, energy to the employer and obtains something in return from the employer that is called "wages". Free service, honourary work and voluntary service do not create any question of wages. Proper determination of wages is very important to attract and maintain the workforce.

Wages can be classified in two forms such as nominal wages and real wages.

The amount paid to a worker in form of money and money only is called as ***"nominal wages"*** whereas the amount of goods and services which the labour can get besides the

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[1] R.K.Suri and T.N.Chabra, Managing Human Resource (Techniques and Practices): Salary and Wages Administration, (New Delhi: Deep & Deep Publication,1992), 268

[2] http://www.enwiki.com/wages.html

monetary wages or otherwise is called as ***"real wages"***. Subsidised canteen, free transport facility, rent free accommodation etc. also form part of real wages.[3]

## 4.1 SCOPE OF PAYMENT OF WAGES

Wages is remuneration to labour for the work done or the service rendered by it to the employers. Payment of wages is the most vital and important problem that an industrial worker is confronted with. It is also one of the most difficult areas in our present industrial relations system. The wages constitute the earning for the workman, which, in turn, determine the standard of his efficiency and consequently, the level of productivity. Wage administration is also important to the employer as it constitutes one of the principal items that enter into the cost of production of his product. The government and the community at large are also vitally concerned with this problem, because a large number of industrial disputes center round the question of wages and allowances. Therefore, evolution of a suitable wage structure and wages fixing machinery is important for the prosperity of industry, for the well-being of labour and for the economic development of the country. However, the problem of wage fixation in a modern democratic society is by far the most difficult of all employer- employee relationship. The concerned parties, namely, the employers, the workers and the consumers have seemingly conflicting interests. A delicate balance has to be struck between wages paid to the workers, the profits passed on to the shareholders, and the services rendered to the community. It cannot also be considered in isolation from the largest economic and social background prevailing in the country.[4]

Wages perform several cardinal functions in an economy; they are requital for work as a factor of production. They provide means for allocation of human resources among skills, industries, occupations and regions. Wages also help in performing the function with efficiency. Productivity linked earnings tend to increase efficiency of a worker and motivate him to contribute his best in achieving organizational goals.

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[3] T.N. Bhagoliwal, Personnel Management and Industrial Relations (Agra: Sahitya Bhawan,1987)
[4] Dr. A. M. Sarma, Industrial Relations Conceptual & Legal Framework: Wage Issues in Industrial Relations, (New Delhi: Himalaya Publishing House, 1984), 92.

Moreover, wages influence on the structure of distribution of national income. Therefore, effective wage administration assumes a great significance in an industrial economy.[5]

In short, the payment of wages is the employer's legal obligation to his or her employees. How much and in what manner, it is to be paid, is a matter of judgment or negotiation. In theory, if an employer were free to pay what he or she liked, he or she would probably pay the minimum. That's why there is a dire need of payment of wages legislation especially for fixing the minimum wages for the employees by the employer. Several countries have enacted statutory regulations regarding the minimum wages in an attempt to prevent the exploitation of low-paid workers.

## 4.2 PAYMENT OF WAGES IN ISLAM

Basic principles governing the determination and payment of wages have been enunciated in the Holy Quran and in various Hadith. The most outstanding features are given below:

1. Almighty Allah has forbidden the employment of a labourer without first fixing his wage.[6]
2. The Holy Prophet (PBUH) gave clear instructions stating *"the wages of a labourer should be paid before the sweat is dried up".*[7]
3. Islam is deadly against the practice of employing a worker and not paying him his wage after he has performed his job. A Hadith from the Holy Prophet (PBUH) is quoted below:

Hazrat Abu Hurrairah reports that the Holy Prophet (PBUH) said:

> *"That God will be the enemy of three persons on the Day of Judgment and the third person of these is the one who employs a labourer and gets full work from him but does not pay his wages."*[8]

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[5] Dr. M.L.Monga, Industrial Relations and Labour Laws in India: Protective Legislation (New Delhi: Deep & Deep Publication,1984),138-39

[6] Al-Quran, 28:27.

[7] Mishkat-ul-Misbah,Vol. II,131.

4. The concept of subsistence wage is based on the following Hadith:

*"A servant has a right of receiving food and clothing. He should be asked to do such work as matches his capacity."*[9]

It is apparent from these principles that in compensation for the normal work, such remuneration must be paid as will enable a worker to maintain a reasonable standard of living.

5. Payment, reward, or compensation in some shape is compulsorily required to be paid if work is extracted from an employee beyond his normal hours of work.[10]

Profit Sharing is also encouraged in Islam. This point is clearly brought out in a Hadith.

"Almighty Allah has assured all human beings that they would be fully compensated in the world hereafter for all the efforts they made in this world".[11]

A relevant Quranic verse is given below:

*"Then each soul shall be paid back in full what it has earned. And they shall not be wronged."*[12]

Difference in wages is permitted in the Holy Quran because of different ranks of the people. This differentiation can be interpreted to different levels for performance of different types of works. In this respect, the following Quranic verse is pertinent:

*"We distribute their living amongst them in the life of this world, And we have raised them in ranks one above the others, In consequence thereof some of them rule the others."*[13]

In view of this, Islam provides guidance for establishment of an equitable industrial relations system. Payment of remuneration in the form of wages for work done by the workers is, of course, permissible as is enunciated in the following verse:

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[8] Al-Bukhari Vol. III, p.118.
[9] Sahih Muslim Vol. V, p.94.
[10] Sahih Muslim Vol.V, pp.93-94.
[11] Al-Bukhari Vol. III, p.120.
[12] Al-Quran, 3:161.
[13] Al-Quran, 43:32.

*"Then they found in it a wall which was about to fall, then he made it stand up said he (Moses) "Hadat thou wished thou mightest have taken a wage for it".*[14]

The reference in this Quranic verse is to Hazrat Khazir who laboured to fortify a wall which was about to fall. He did this work without asking for any remuneration. So, the Prophet Mosses explained to him that he could have demanded wages for the work done if he so wished.

The principal of making suitable payment of certain work has been laid down at another place in the Holy Quran:

*"Then one of them came to him wailing modestly she said: "Surely my father calls thee in order that he may reward thee on account of thy having watered (the animals) for us".*[15]

The reference in the above Quranic verse is to Prophet Moses who had watered the animals on behalf of the two girls.

Generally an employer has an edge in term of his control over his employees whose participation in the prosperity of the organization depends only upon his whims. Almighty Allah has guided the employers to enable participation of all concerned. The Quranic verse in this respect is quoted below:

*"And God distinguishes some of you above the others in the means of livelihood. Then those who are distinguished do not give back their means of livelihood to those whom their right hands possess so that they may be equal therein. It is then that they deny the blessings of God."*[16]

Thus the Holy Quran provided guidance for worker participation centuries ago, about which, a famous scholar Rensis Likert talked in the 20th century. [17]

For the employees, Almighty Allah discouraged the act of envying others at the cost of themselves because human beings are divided into several ranks and there is a share of their earnings. The Quranic verse in this respect is stated below:

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[14] Al-Quran, 18:77.
[15] Al-Quran, 28:25.
[16] Al-Quran, 16:71.
[17] The New Ency. Britanica, Chicaga: (1975) Helen Hemingway Benton, Vol. 17, p.496.

*"And envy not by means of which God has made eminent some of you above the other; for men, there is a share out of what they earn, and for women there is a share out of what they earn; Ask God for his grace; Surely, God knows everything."*[18]

Mr. Afzal- ur- Rehman, a renowned Islamic Scholar, has explained criteria for determining wages of government servants as was customary during the Caliphate. He explains that:

"The Caliphs of the Holy Prophet (PBUH) clearly laid down the principles initiated by the Holy Prophet for fixing the wages of government servants. Many factors were taken into account while determining such wages; besides the ability of the worker, the nature of his work and his economic responsibilities were also given due consideration". Hazrat Umar, the Second Caliph, clarified this principle in some of his speeches with regard to the distribution of grants and allowances. He explicitly stated the importance of the following points in determining the amount of grants and allowances:

1. What service has a person rendered to the cause of Islam?
2. What hardship has a person undergone, or is undergoing for Islam?
3. How long a person has served Islam?
4. What are the real (actual) needs of a person?
5. What are the economic responsibilities of that person?

It is true that the terms used here refer to the early stages of Islam but a careful reading will show that they contain the basic principles which govern wages in any society as shown below:

**(a)** Allowance should be made for the time and money spent in acquiring the necessary knowledge, skill and training of trade.

**(b)** The length of service of a person must also be taken into consideration.

**(c)** Then due allowance must also be given to the nature of one's work, and the degree of physical and intellectual labour required in a trade.

[18] Al-Quran, 4:32.

(d) The extent of actual economic needs must also be given due consideration.

(e) The number of persons dependent upon the employee should also be given due consideration.

All these points were taken into consideration in determining the wages of government servants by the early caliphate. An addition of a child to the family of a government servant meant an increase in his allowances from the treasury.[19]

## 4.3 SCOPE OF WAGES LEGISLATION

The chief objective of the wages legislation is to ensure payment of wages on due date and discourage arbitrary cuts and deductions. It prescribes the enforcement machinery and lays down the penalties for contravention of the provisions. The fixation of minimum wage is of great significance for the industrial workers as it vitally affects the industrial life and health, strength and the morals of the workers. Pakistan had ratified or acceded to EQUAL REMUNERATION CONVENTION, 1951 of ILO at International level and have three main instruments dealing with wages named, Payment of Wages Act 1936, Minimum Wages Ordinance, 1961 and West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969 at domestic level.

### 4.3.1 RELEVANT INTERNATIONAL INSTRUMENTS RATIFIED OR ACCEDED TO BY PAKISTAN

Generally, ***convention*** means *"coming together"*. The senses of physical meeting of people in one place, social norm, and formal agreement, are all derived from that sense. All adopted ILO Conventions are considered international labour standards regardless of how many national governments have ratified them. The topics covered by them cover a wide range of issues, from freedom of association to health and safety at work, working conditions in the maritime sector, night work, discrimination, child labour and forced labour. International Labour Organization (ILO) introduced in 1919 radical

[19] Afzal-ur-Rehman, Economic Doctorine of Islam , vol. 2 , (Lahore: Islamic Publications Limited, 1974),253

new standards for working patterns. The object of each of these measures was to limit hours worked because long or abnormal work patterns are deemed to be hazardous to health.

The coming into force of a Convention results in a legal obligation to apply its provisions by the nations that have ratified it. Ratification of a Convention is voluntary. Conventions that have not been ratified by member states have the same legal force as Recommendations. Governments are required to submit reports detailing their compliance with the obligations of the Conventions they have ratified. Pakistan had ratified the following Conventions relating to equal remuneration for most neglected class for example women,minorites and persons with disabilities etc.

- **International Labour Organization Conventions relating to Equal Remuneration**

**(i) EQUAL REMUNERATION CONVENTION, 1951 (NO. 100)**

Calls for equal pay for men and women for work of equal value.

States having ratified the Convention shall promote and, in so far as is consistent with the methods in operation for determining rates of remuneration, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

**Summary of the provisions**

The Convention shall apply to basic wages or salaries and to any additional emoluments whatsoever, payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of his or her employment. The Convention defines equal remuneration for work of equal value as remuneration established without discrimination based on sex. (Article 1)

This principle may be applied by means of national laws or regulations, legal machinery for wage determination, collective agreements or a combination of these various means. (Article 2) One of the means specified for assisting and giving effect to the Convention is the objective appraisal of jobs on the basis of the work to be performed. (Article 3)

The Convention provides that governments shall co-operate with employers' and workers' organizations for the purpose of giving effect to its provisions. (Article 4)

In its supervision of these instruments, the Committee of Experts on the Application of Conventions and Recommendations has recognized that the achievement of favourable conditions for equality of opportunity and treatment in employment and occupation is a continuing endeavour. Nevertheless, the road to equality has over the years been punctuated by stark examples of the need for international action against the infringement of the basic right to equality at the national level. Here, the **ILO**'s standards have been of paramount importance as a rallying point.

The Government is committed to the implementation of **ILO** Convention on **Equal Remuneration Convention, 1951 (No. 100)**. Gender equality with regard to pay and wage systems is a key component of our labour policy in the field of wages.

### 4.3.2 WAGES LEGISLATION IN PAKISTAN

Pakistan's labour laws trace their origination to legislation inherited from India at the time of partition of the Indo-Pak sub-continent. The laws have evolved through a continuous process of trial to meet the socio-economic conditions such as a state of industrial development, labour force explosion, growth of trade unions and level of literacy Government's commitment to development and social welfare. To meet the above named objectives, the government of the Islamic Republic of Pakistan has introduced a number of labour policies, since its independence to mirror the shifts in governance from martial law to democratic governance.[20]

[20] www.labourunity.org/labourlaws.

#### 4.3.2.1 Relevant Provisions of Payment of Wages Act, 1936.

The chief objective of the Act is to ensure payment of wages on due date and discourage arbitrary cuts and deductions. It prescribes the enforcement machinery and lays down the penalties for contravention of the provisions. The intention of the Act can be best understood from the below quoted words of the Supreme Court of Pakistan in ***Pakistan Railways v. Shaukat Ali Hamdani*** *" Act is intended and designed to provide an inexpensive summary remedy to a worker for wages earned by him while working at a particular job or in a particular position. This remedy cannot be defeated by an employer but simpliciter denying quantum of wages claimed by a worker on plea that authority under Act had no power to decide disputed amount and that its jurisdiction is confined to an admitted amount of wages".*[21]

**Applicability of the Act:**

This Act is applicable to persons employed in industries, factories and railways or to the employee of a contractor working for a railway administration. The Provincial Governments are empowered to extend the application of the whole or part of the Act to any class of persons employed in any industrial establishment, by issuing three months' notice of their intention to do so. This does not apply to the workers whose wages exceed Rs.3000 per month.[22]

Payment of Wages Act does not apply to a commercial establishment registered as such under Shops and Establishment Ordinance (1969). The applicant filed an application alleging that he performed his duty 12 hours a day but he was not paid for 4 hours per day extra which was allowed by the Authority under the Payment of Wages Act 1936.When the applicant was examined, it was noticed that he was chokidar of the establishment which was registered under Shops and Establishment Ordinance (1969).So the order of Labour Court dismissing application filed under the Act by employee of such establishment upheld by Tribunal as unexceptionable by dismissing revision application filed to challenge order of Labour Court.[23]

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[21]NLR 1996 SC (Labour ) 44
[22] Labour Administration, Profile on Pakistan, Ed. Muinuddin Khan (Bangkok: ILO Publications,1988)
[23] 1999 TD (Labour) 389

The Act stipulates that wages to workers employed in factories and on railways are to be paid within seven days of completion of the wages period, if the number of workers employed therein is less than 1,000. In other cases, the time limit for payment of wages to the workers is 10 days. No deduction can be made from the wages of the workers excepts as specified in the Act, such as for fines, breach of contract and the cost of damage or loss incurred to the factory in any way other than an accident.

Since, the Payment of Wages Act, 1936 was designed as a protective piece of labour legislation to rescue the workers from the wickedness of the employers, its effectual enforcement and implementation must be emphasised in an industrial system where the workers have been uncompassionately and capriciously robbed of their hard earned money in the past.[24]

**Main Provisions of Payment of Wages Act, 1936**

This Act is intended and designed to provide an inexpensive summary remedy to a worker for wages earned by him while working at a particular job or in a particular position. It describes the rules and regulations to be followed when wages are to be paid. The manners in which payment of wages are to be made. Followings are the main provisions:

**1.** Employer which includes the person responsible for the supervision and the control of the industrial establishment should be responsible for the payment to the persons employed by him of all wages required to be paid under Payment of Wages Act, 1936.[25] In ***Dock Labour Board, Karachi. v. Zulekha Bai*** the petitioner was not employer of respondents' husband, but was the respondent herself. The application was filed by employee's husband but not by the employee herself before Authority. The application was declared as incompetent. The High Court concerned held that order passed by

[24] Dr. M.L.Monga, Industrial Relations and Labour Laws in India: Protective Legislation (New Delhi: Deep & Deep Publication, 1984), 140.
[25] Sec. 3 of the Payment of Wages Act, 1936

Authority against petitioner for payment of wages (gratuity) to the employee was declared to be without lawful authority.[26]

The application should be filed by the employee herself as party to the suit. Under the doctrine of "privity of contract" only parties to the contract can sue each other. The application was incompetent that's why order passed in consequence thereof is also illegal.

2. The wage-periods shall be fixed by the employer. The wage period shall not exceed one month.[27]

3. Section 5 (i) of the Act provides that wages of every person employed in any railway, factory or industrial establishment employing less than 1,000 persons shall be paid before the expiry of the seventh day. Whereas the wages of every person employed other than above mentioned shall be paid before the expiry of the tenth day. This date is counted from the 1st day of the wage period in respect of which the wages are payable. All payments of wages shall be made on a working day.[28] The violation of this provision is punishable with a fine which may extend up to five hundred rupees.

In ***Resident Editor, The Eastern Examiner, Chittagong v. Shafiq -ur- Rahman,*** the management had failed to disburse wages on 7th day of month following the month for which wages were due. Contravention of mandatory provisions of Section 5 of Payment of Wages Act 1936 make liable them for the monetary penalty. Workers were insisting to know reasons for delay in payment and midst of commotion some temporary cessation of work occurred due to such reasonable grumbling. While the workers continued to perform their full work on following day. Stoppage of work for few numbers of hours, due to non-payment of wages due, does not amount to illegal strike justifying permission for dismissal or any other punishment.[29]

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[26] PLC 1987 Kar 624
[27] Sec. 4 of the Payment of Wages Act, 1936
[28] Sec.5 of the Payment of Wages Act, 1936
[29] PLC 1971 East Pak 101

4. All wages shall be paid in current coin or currency notes or in both.[30]

In ***Nadir Khan v. State,*** The Federal Shari'at Court held that the Payment of Wages Act, 1936 is not contrary to Injunctions of Islam as coins remained in common use in almost all contracts in the time of Holy Prophet (PBUH) and during the period of Khulafai Rashideen. Furthermore, the payment of wages in current coin or currency or both was also governed by the principle of application of custom and usage.[31]

5. The wages of an employed person shall be paid to him without any kind of deductions except the deductions, which may be deducted from the wages by virtue of section 7, enlisted therein.[32] Authorized deductions from the wages under the Act are:

i. Fines
ii. Deductions
iii. Absence from duty
iv. Damage or loss
v. Housing accommodation
vi. Amenities and services supplied by the employers
vii. Recovery of advances or adjustment of over- payments of wages
viii. Income tax
ix. Deductions under order of a court
x. Provident fund
xi. Deductions for cooperative societies
xii. Insurance schemes
xiii. Deductions under war savings schemes

In case deduction is made for a fault committed by the employed persons, an opportunity to show cause has to be given to the employed persons.[33]

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[30] Sec. 6 of the Payment of Wages Act, 1936
[31] PLD 1992 FSC 390
[32] Sec. 7 of the Payment of Wages Act, 1936
[33] Sec. 10 of the Payment of Wages Act, 1936

Any payment made by the employed person to the employer or his agent, in some way or the other or in same pretext or the other shall be deemed to be a deduction from the wages for the purposes of Payment of Wages Act (IV of 1936).

In ***Muhammad Nizam-ud-Din v. Divisional Superintendent, P. W. R., Lahore,*** it was declared that deduction of wages on account of damage of goods is permissible only when damage is directly attributed to employee's neglect or default. The damage to goods in wagon was due to leakage of rain water in rainy season. Wagon was declared as fit by Train Examiner and no gazette notification or circular regarding wagon being defective was issued as required by Railway Rules. Whereas Booking Clerk reserved such a luggage at owner's risk. He had also informed appropriate authorities regarding lack of labour to put such goods under observation. Porter, in circumstances, held, was not directly responsible for damage and fine imposed on him towards such damage on account of such loss is not justified.[34]

There is another case of the Railway employee who had occupied housing accommodation provided by the employer. In ***President of Pakistan through Vice Chairman P.W. Railway Lahore v. Qutubuddin,*** a railway employee was in occupation of railway quarter. He failed to vacate quarter within due time. Railways Authorities thereupon deducted half- salary of the employee by way of penalty for remaining in unauthorized occupation of quarter. The concerned High Court held that Railway authorities are not entitled to deduct more amount than that provided in Sections 7 (2) (d) &11 of Payment of Wages Act 1936.

Similar cases of deduction of half-salary of railway employees came up before the Supreme Court. It has been pointed out in the judgment, that under Section 7 (1) of the Payment of Wages Act 1936, deduction from the wages has been allowed only for the house accommodation supplied by the employer. Under Section 11 it has been provided that such deduction shall not exceed the amount equivalent in the value of the house accommodation.[35]

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[34] PLC 1970 Lah 93
[35] PLC 1975 Kar 310

6. Fines can be deducted only in accordance with the provisions of the Act for the omissions which are specified in a list approved by the state authority and exhibited at the place of work for the purpose. However, no fine can be imposed on child labour. Further the maximum fine cannot exceed 3-1/8 percent of wages during a wage period. Before imposing it, the concerned employee must be offered an opportunity to defend himself against payment of fine. All fines and realisations thereof shall be recorded in a register. Also, no fine can be recovered in installments or after the expiry of 60 days from the day on which it was imposed.[36]

7. Authority under Section 10 is competent to grant compensation to the extent of 10 times of amount illegally deducted, while in case of *"delayed wages"* only a token sum of Rs.10 can be awarded as compensation. Cases where workmen were restrained from joining their duties would be cases of *"delayed wages"* entitling workmen to wages with token amount of Rs.10 as compensation .Grant of 10 times of wages in such cases would be unwarranted and unsustainable.[37]

There is clear line of distinction between a case covered by deduction from wages and a case which relates to delay in payment of wages. In case of deduction from wages, the authority is competent to grant compensation to the extent of 10 times of the amount illegally deducted, which in case of delayed wages, only as token a sum of Rs.10 can be awarded as compensation.

In ***Messrs Hafiz Textile Mills Ltd v. Commissioner for Workmen's Compensation & Authority,*** the respondents had claimed wages from 6th August, 1986 to 6th January 1987 for period they were not allowed to resume their duties. It was proved from evidence on record that during above period, they were restrained from joining their duties by the employer. They were entitled to their wages for the above period and these wages would fall within the scope of *"delayed wages"*.

[36] Sec. 8 of the Payment of Wages Act, 1936
[37] Sec. 10 of the Payment of Wages Act, 1936

In consequence, the petition was allowed and it was declared that the order granting compensation equal to 10 times was without lawful authority and of no legal effect.[38]

8. Different aspects of claims regarding deductions and delay in respect of wages of employees and the penalty thereof to be imposed on the employers have been discussed.

The jurisdiction conferred by the Act on the authority appears to be of limited nature, which can extend to giving of directions in regard to payment of wages or the amount deducted etc. only. In other words, the authority can grant wages which actually are, but it cannot enter into an enquiry to determine as to what the wages ought to be. An authority has no jurisdiction to go into the question of fixation of wages of the employees.[39]

Section 15 also provides for appointment of Commissioner for Workmen Compensation to decide all claims arising out of wages or non-payment of dues relating to provident fund or gratuity etc. under the law.

When the claim relates to deductions, the authority is empowered to grand compensation which may be upto ten times the amount deducted by the employer and if the amount claimed is on account of delayed wages; the authority is empowered to award compensation upto ten rupees, besides the wages claimed by the employed person.

In ***Punjab Road Transport Corporation v. Faqir Muhammad,*** the question of payment of gratuity was raised in this case. All the forums below had found that employer had illegally and on erroneous notions withheld payment of gratuity amount to its employee, who had served same for more than 26 years. All this was done for satisfying the ego of slime top notches of employer Corporation, who thought it fit to incur heavy expenses on litigation starting right from bottom upto High Court instead of paying petty amount of gratuity to its employee. Employee was retired from service on 29-12-1986 and had spent rest of his life in litigation lighting for his rights only to get a petty amount. Such state of affairs was alarming, as public money had been wasted in such a reckless manner, which

[38] NLR 1994 Lah 10
[39] Sec. 15 of the Payment of Wages Act, 1936

had resulted in closing down of employer Corporation. The impugned judgment passed by Labour Appellate Tribunal was legal, unexceptionable and did not call for interference by High Court in exercise of its jurisdiction under Article 199 of Constitution, which was discretionary and equitable. Constitutional petition was dismissed being devoid of merits.[40]

In ***Lawrencepur Woollen and Textile Mills, Ltd. v. Government of the Punjab and others***, the powers and functions of the Authority has been discussed as follows:

Authority appointed under Section 15 of Payment of Wages Act, 1936 is not required to follow definite rules with regard to procedure and evidence. *"Authority is free in the matter of deciding disputes, without there being any guidance of procedural laws as to the conduct of proceedings as well as evidence. Authority is free to hold such inquiry as may be necessary for adjudicating claims of certain classes of employees. Procedure of adjudication by the Authority is not provided by law. Authority may decide the claim by providing an opportunity of hearing to the parties, keeping in view the rules of reason, justice and fair play. Authority is empowered to exercise certain powers and to take judicial proceeding as are vested in a Civil Court under the Civil Procedure Code, 1908, but only for a very limited purpose".*[41]

In ***Habib Sugar Mills Ltd. v. Commissioner Workmen's Compensation and Authority under Payment of Wages Act, Nawabsha,*** the application for claim of unpaid full gratuity benefits was rejected. The facts of the case are as under:
The employee of the Mill was dismissed from service for misconduct. He had received amount in full and final settlement of all his dues. He filed a claim of unpaid full gratuity benefit before Commissioner Workmen's Compensation and Authority under Payment of Wages Act, 1936 to which the Mill filed its reply. Authority, on recording evidence of both the parties, fixed the case for filing of written arguments. Mill instead of filing its arguments, filed Constitutional petition challenging the jurisdiction of the Authority and maintainability of application filed by the employee. If petitioner (Mill) was aggrieved by

[40] PLC 2002 Lah 269
[41] PLD 2004 SC 416

proceedings initiated by the Authority, it should have approached to the High Court immediately on receipt of notice from Authority, but petitioner (Mill) did not do so for five years and filed Constitutional petition when the case was finally fixed for arguments. Authority had the power to decide legal questions raised by petitioner, but petitioner had waited too long to invoke the jurisdiction of High Court under Art.199 of the Constitution. Petitioner (Mill), in circumstances, had not acted in a bona fide manner for coming to the High Court. It would be just and proper for the Authority to proceed with application of employee and pass orders thereon including the legal objection taken by petitioner. Constitutional petition filed by petitioner being not bona fide was dismissed.[42]

9. Right to appeal is also granted under the Payment of Wages Act.[43] The purpose of enacting proviso regarding the appeal is very clear. It seems that Legislature intended the amount covered by an order under Section 15 of the said Act to be deposited in the Labour Court before it entertained an appeal against such an order. Such a provision cannot be allowed to be circumvented. Moreover, purpose of Article 199 of the Constitution of the Islamic Republic of Pakistan does not appear to be to nullify the effect of a legislative provision or to make ineffective a statutory provision.

Certain cases for reference have been quoted hereunder:-

In ***Manager Colony Textile Mills Limited, Multan v. Presiding Officer, Punjab Labour Court No.9 and others,*** the Authority under Payment of Wages Act 1936, after hearing arguments, accepted claim of respondent and issued direction for deposit of claimed amount within specified period. Labour Court, while accepting appeal against order of Authority, remanded case to Authority for decision afresh after giving opportunity to respondent to appear in Court as his own witness. Petitioner (employer) challenged the order of Labour Court in constitutional petition, under Article 199, before High Court. Authority had not properly scrutinized record of case and had passed order in a slipshod manner. Labour Court, in circumstances had rightly remanded case to Authority to decide same afresh after giving opportunity to respondent to appear in Court. The Authority was

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[42] PLC 2004 Kar 54

[43] Sec. 17 of the Payment of Wages Act, 1936

directed to scrutinize whole record carefully and redress grievance of the workers. Petitioner had failed to point out any material irregularity or illegality committed by Appellate Court while passing impugned order. No arbitrariness or perversity of reasoning was found in impugned order which had been passed in order to safeguard the interest of workers and fair administration of justice. Petition was dismissed being without any merits.[44]

There is another case in which it had been decided that the employers are bound to furnish a certificate of deposit, for amount disputed, accompanied by an appeal when submitting an appeal for outstanding amount otherwise the appeal may not be entertained.

In ***Haji Sheikh Noor Din & Sons through Managing Director v. Muhammad Fayyaz,*** it was held that the employers are bound to furnish a certificate of deposit, for amount disputed, accompanied by an appeal. Where the appeals were filed by employers without the certificate as required under Section.17 (1) (a) of Payment of Wages Act, 1936, hence the appeals were dismissed. Plea raised by employers was that condition of furnishing certificate with appeal was unconstitutional. Payment of Wages Act, 1936 was enacted to provide relief to workers and it was a beneficial legislation. Such legislation could not be construed otherwise, therefore, interpretation, which directly or indirectly nullified such provision of law could not sustain in the eyes of law. Constitutional petitions which were filed to defeat the provisions of Section 17 of Payment of Wages Act, 1936 were declared as incompetent. Appeals could not proceed, with which no certificate as per the requirement of Section.17 of Payment of Wages Act, 1936 was annexed. Labour Court had passed the order on the basis of law laid down by Supreme Court, which had the binding impact, therefore, did not call for any interference. No infirmity or illegality in the order passed by Labour Court having been found except non-furnishing of certificate. Thus, petition was dismissed solely on the ground of non-furnishing of certificate.[45]

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[44] PLC 2006 Lah 35
[45] PLC 2006 Lah. 623

#### 4.3.2.2 Relevant Provisions of the Minimum Wages Ordinance, 1961

Industrial labour in Pakistan was among the lowest paid in the world. The Government, therefore, made some provisions in the new labour legislation for minimum wages through Minimum Wages Ordinance, 1961.[46]

The fixation of minimum wage is of great significance for the industrial workers as it vitally affects the industrial life and health, strength and the morals of the workers. Sweating of labour is now considered as unjust and public opinion is fairly enlightened today to prevent social wrongs. Hence it is necessary to provide a sufficient living wage to the worker if we desire to maintain stability in society. Besides, minimum wage is indispensable for the maintenance of industrial peace. Moreover, if a worker is provided with a suitable wage, his efficiency will be improved which would mean increased production and consequently various industrial problems will be resolved of their own accord.

**Main Provisions of the Minimum Wages Ordinance, 1961**

The Minimum Wages Ordinance is enacted to provide for the regulation of minimum rates of wages for workers employed in certain industrial undertakings.[47] It established a Minimum Wages Board which gives recommendation to the Government in respect of minimum rates of pay.[48] Such rates have been fixed for a number of specified industries and must be paid by employers, by following the issued Government notifications.[49]In certain instances different rates have been specified for identified zones. The minimum rates are subject to regular review.[50]

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[46] The Second Five Year Plan (1960-65)
[47] Sec 1 of the Minimum Wages Ordinance, 1961
[48] Sec 3 of the Minimum Wages Ordinance, 1961
[49] Sec 5 of the Minimum Wages Ordinance, 1961
[50] Sec 7 of the Minimum Wages Ordinance, 1961

### 4.3.2.3 Relevant Provisions of West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969

The West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969 is to fix the minimum rates of wages for unskilled workers employed in certain commercial and industrial establishments wherein fifty or more persons are employed or were employed on any day during the preceding twelve months. In view of the importance of minimum wages explained above, we can summarize the objectives of minimum wages for skilled or unskilled workers as follows:

**i)** to raise the wages in industries where they are extremely low and inadequate.

**ii)** to prevent the exploitation of workers.

**iii)** to promote industrial peace by keeping the workers contented with the guarantee of a wage rate.

**Main Provisions of West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969**

Minimum wages in commercial and industrial establishments for unskilled workers are determined in the specified Schedule, but subject to the deduction for providing housing accommodation and transport charges to and from the place of work which are also determined in the specified Schedule.[51]The wages shall meet at least legal or industry minimum standards, and shall always be sufficient to meet basic need of personnel and to provide some discretionary income; and the government had increased the minimum wages of unskilled workers from Rs.3000 to Rs.4000, and old age pension from Rs1000 to Rs.1300 per month, in the last budget June 2006.[52] Any employer who contravenes any provisions of this Ordinance shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.[53]

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[51] Sec 3 of West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969
[52] National Budget 2006
[53] Sec 7 of West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969

## 4.4 IMPACT OF PAYMENT OF WAGES LEGISLATION

Available evidence regarding the general impacts of pay on organization behaviours and attitudes is reasonably clear on two points: ***First,*** pay is probably the single most important reward that an organization has to work with. **Second,** many, and perhaps, most organizations attempt to use pay for motivational purposes fail to produce the desired behaviours and often lead to high levels of pay dissatisfaction as well.[54]

High salary levels alone do not ensure a productive and motivated work force. This is evident in the auto industry where wages are among the highest in the country yet quality problems and high absenteeism persist. A critical factor, then, is not how much a company pays its workers but, more important, how the pay system is designed, communicated and managed. Often excessively high labour costs, coupled with benefits offered only because *"everybody else doing it,"* adversely affect productivity, work quality and the bottom line. Although management's desire to improve the standard of living of all company employees is understandable, excessively high labour costs can bankrupt a company. This is especially likely if, to cover its labour costs, the company cannot price its products competitively. If that happens, productivity and profits both suffer directly, and the quality of work suffers indirectly. A systematic pay structure helps ensure that each employee is paid equitably and competitively. Current data from a wage survey must then be used to maintain the company's relative position on pay. When sensible compensation policies are established every body wins, the company, the employees and their families as well.[55]

Organizations can potentially influence many types of behaviour and attitudes with pay. Specifically, it examines the potential impacts of pay on **(a)** decision to join organizations; **(b)** behaviour within organization such as performance and absenteeism levels; and **(c)** pay satisfaction and dissatisfaction and decisions to leave organization.

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[54] Heneman and Schwab. Perspectives on Personnel / Human Resource Management: Impact of Pay on Employee Behaviour and Attitude, (USA: Richard D. Irwin, Incorporation, 1978), 234-41.

[55] Wayne F. Cascio. Managing Human Resources: Impact of Pay System on Productivity, Quality of Work Life and the Bottom Line (Singapore: Mc. Graw Hill Inc.1992) ,369

There are several aspects or dimensions of pay that require consideration when investigating its impacts on these behaviours and attitudes. **First** such dimension is the magnitude of pay. Questions of pay levels for jobs, pay rates for individuals, and piece rates per unit of output all relate to pay magnitude. On the importance of wages there is general agreement. Indeed, because of the pervasive lack of market knowledge among job seekers, it is assumed that job choice depends primarily on the type of work and wage level offered by the employer. There has been a long standing debate on how job seekers establish this wage rate but there is relatively little doubt that the majority of job seekers establish minimum wage magnitude criteria which must be satisfied to make a job offer acceptable.

**Second** important dimension is the extent to which pay is contingent on behaviour of interest to the employer. For example, pay is almost completely contingent on employee performance under an individual piece rate plan; somewhat less so under a group incentive or a merit pay plan, and not at all so when pay is based on time worked. The contingency between pay and performance is generally of greatest interest, although recently interest also has been shown in pay systems that attempt to make pay contingent on work attendance.

**Third** important dimension of pay is its form. This refers to the extent to which employees receive their pay in straight wages or salaries versus receiving them in fringe benefits such as insurance payments and pension plans. Underlying all of the previous issues is the way in which a particular pay plan is administered or controlled. While several facets of administration and control are of interest, particular attention is focused on the issue of pay secrecy.[56]

It is important to bear in mind that the significance of pay depends on which of the foregoing facets of pay and which specific behaviour or attitude is being considered. Much of the confusion and controversy surrounding the impacts of pay undoubtedly resulted because of the failure to identify the specific aspects of pay that impact on particular behaviours or attitudes; and consequently on the performance of the organization.

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[56] Heneman and Schwab. Perspectives on Personnel / Human Resource Management: Impact of Pay on Employee Behaviour and Attitude, (USA: Richard D. Irwin, Incorporation, 1978), 234-41.

# CHAPTER V
# HOURS OF WORK

The "working hours" refers to the period of time that an individual spends at paid occupational labour. Unpaid labours such as housework are not considered part of the working week. Many countries regulate the work week by law, such as stipulating minimum daily rest periods, annual holidays and a maximum number of working hours per week.[1]

Working time is defined as periods when you are working at your employer's disposal and carrying out your employer's activities or duties. For example, it includes training at the workplace, time traveling to visit clients, a working lunch; it does not include travel to work or time taken to travel to an occasional meeting away from your normal workplace.[2]

The hours of work have always been a source of concern to human resources. For example, extended work hours often have compensation implications because they involve overtime payments. As another example, part-time work opportunities can alter recruiting practices. Students and homemakers may become potential employees if an organisation is willing to employ persons less than 40 hours per week.[3]

Periodically, hours of work can become especially important to human resources and to organisations because of substantial changes in hours of work that effect all or nearly the entire workforce. Such changes are occurring in some organisations at present. The purpose of this chapter is to describe these changes and to discuss their implications

[1] www.en.wikipedia
[2] www.pcs.org.uk
[3] Heneman and Schwab. Perspectives on Personnel / Human Resource Management: Hours of Work (USA: Richard D. Irwin, Incorporation, 1978) ,229

for employee's attitudes and work behaviours and consequently, its impact on the entire organization's progress.

## 5.1 SCOPE OF WORKING HOURS

Working time is a quantity that can be measured for an individual or in the aggregate, for a society. In the latter case, a 40-hour workweek would imply that employed individuals within the society, on average, worked 40 hours per week. Most often, the concern of sociologists and policy-makers focuses on the aggregate variables. If an individual works 60 hours per week, it could simply mean that he or she is enthusiastic about his or her job, not a cause for concern. However, if long workweeks become the norm in a society, these hours almost certainly are not voluntary, and it represents a drought of leisure and a threat to public health.

If the work week is too short, this represents under employment of labour and human capital. This will tend to result in lower real incomes, and a lower standard of living. Alternately, a workweek that is too long will result in stress-related health problems, on the large scale, as well as a drought of leisure. Furthermore, children are likely to receive less attention from overworked parents and children are likely to be subjectively worse. The exact ways in which excessive workweeks affect culture, public health, and education are debated, but the existence of such a danger is undisputed.[4]

Several nations have imposed limits on working time in order to combat unemployment and remove the stress among the individual workers that reveals negative effects on health and increased risk for accidents. Irregular working hours, monotonous work, long shifts, vibrations and drugs increase drowsiness and reduce alertness.

## 5.2 SCOPE OF WORKING HOURS LEGISLATION

One of the basic terms of any employment contract, whether explicit or implicit, is that the employees agree to be available for work for a specified number of hours

[4] www.answers.com/

per week. Indeed, the issue of work has always been an important one for trade unions in their negotiations with managements. Since the 1940s there has been slow but steady downward trend in the basic hours expected to be worked in a week, and on which basic pay would be awarded. Thus the five-and-half day week has given way to the five-day week and the 48-hours week has given way to the 39-hours-or-less week. Traditionally, manual workers have been expected, as a matter of course, to work longer hours than white-collar employees. This practice, like the working week has declined, as more firms have harmonized conditions of service between blue and white-collar workers. Another trend in hours of work is towards the harmonization of treatment between the sexes. Until recently, women employees were debarred either by law or by custom and practice from working similar hours to men. Now, under equal opportunities legislation there are few distinctions that can be made between the employment condition for men and women employees. Even the statutory restriction on night work for women have been established.[5]

The long working hours and the economic pressures had the negative effects on health and social life of the individuals that induce almost all countries to regulate working time. This regulation can be separated into four broad categories that help demarcate the dimensions of the debate. The ***first*** type of regulation defines the "normal" working week. This is the number of hours that workers are expected to work on a regular basis. Defining a normal work week raises questions about-work life balance, trade-offs between jobs and hours, and utilization of capital. The ***second*** type of working time regulation limits the total number of hours and controls how the hours are organised. These regulations raise questions about the point at which working time becomes excessive, the period of time within which the maximum number of hours is determined (e.g. a week, month, or year), and how flexible hours can be arranged. A ***third*** set of policies regulate the way time beyond the normal work week is compensated. The debate around overtime compensation centers on creating disincentives for employer's use of overtime and incentives for workers. Related, but often kept separate, are a ***fourth*** set of policies that regulate rest. These policies often mandate a weekly day of rest and require

[5] Gerald Cole, Personnel and Human Resource Management: Hours of Work (New York: Continuum Publishers, 2002), 240-47

breaks during the working day and a day of rest during the week. This last group of policies raises questions about the trade-offs between meeting business needs and protecting workers from accidents and injuries. The sum of these decisions creates a labour market that is more or less protective, balancing the tradeoffs between worker protection and business needs.[6]

## 5.3 HOURS OF WORK LEGISLATION

While a stipulation against excessive work hours is not one of the four core labour standards, working time is a critical aspect of working conditions. Indeed, working time was the subject of the first International Labour Organization (ILO) Convention in 1919, which defined a work week as 48 hours. In addition, nearly every country has some type of regulations regarding working time. Despite long-standing and wide-spread agreement that work hours should be limited, preventing excessive overtime is currently a pressing issue, particularly in the developing countries like Pakistan.

### 5.3.1 RELEVANT INTERNATIONAL INSTRUMENTS RATIFIED OR ACCEDED TO BY PAKISTAN

Generally, ***convention*** means "coming together". The senses of physical meeting of people in one place, social norm, and formal agreement, are all derived from that sense. All adopted ILO Conventions are considered international labour standards regardless of how many national governments have ratified them. The topics covered by them cover a wide range of issues, from freedom of association to health and safety at work, working conditions in the maritime sector, night work, discrimination, child labour and forced labour. International Labour Organisation (ILO) introduced in 1919 radical

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[6] Anne Spurgeon, Working Time: It's Impact on Safety and Health (Geneva: International Labour Office Press, 2003)

new standards for working patterns. The object of each of these measures was to limit hours worked because long or abnormal work patterns are deemed to be hazardous to health.

The coming into force of a Convention results in a legal obligation to apply its provisions by the nations that have ratified it. Ratification of a Convention is voluntary. Conventions that have not been ratified by member states have the same legal force as Recommendations. Governments are required to submit reports detailing their compliance with the obligations of the Conventions they have ratified. Pakistan had ratified the following conventions relating to hours of work,rest hours,night work for young and women etc.

❖ **International Labour Organization Conventions relating to Hours of Work**

**(i) Hours of Work (Industry) Convention, 1919 (No. 1)**

Limits the Hours of Work in Industrial Undertakings to Eight in the Day and Forty-eight in the Week

**Summary of the provisions**

The hours of work shall not exceed eight in the day and forty-eight in the week. It also states two exceptions where working hours can be extended (i) for the persons engaged in supervision or management only. (ii) for shifts employees the hours of work may be in excess of eight hours in anyone day and forty-eight hours in anyone week. (Article 2)

The limit of working hours prescribed in Article 2 may be exceeded in case of accident, actual or threatened, in case of urgent work to be done to machinery or plant (Article 3)

The limit of hours of work may also be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of

shifts, subject to the condition that the working hours shall not exceed fifty-six in the week on the average. (Article 4)

The average number of hours worked per week, over the number of weeks covered by an agreement between workers and employers' organisations concerning the daily limit of work over a longer period of time may be given the force of regulations which shall not exceed forty-eight hours. (Article 5)

The regulations shall be made for exceeding the hours of work by public authority to overcome the pressure of work in cases of permanent or temporary exceptions that may be allowed, so that establishments may deal with exceptional cases, only after consultation with the organisations of employers and workers concerned, if any such organisation exists. These regulations shall fix the maximum of additional hours in each instance, and the rate of pay for overtime shall not be less than one and one-quarter times of the regular rate. (Article 6)

In order to facilitate the enforcement of the provisions of this Convention, the periods and hours of work, including rest intervals for all classes of workers in each shift must be notified and posted in a prominent place, in the principal language, in the industrial or commercial establishment. These hours shall be so fixed that the duration of the work shall not exceed the limits prescribed by this Convention, and when so notified they shall not be changed except with such notice and in such manner as may be approved by the Government. It shall be made an offence against the law to employ any person outside the hours fixed in accordance with the provisions of this Convention. (Article 8)

In Pakistan the principle of a sixty-hour per week shall be adopted for all workers in the industries at present covered by the Factory Act,1934 administered by the Government of Pakistan, in mines, and in such branches of Railway Work as shall be specified for this purpose by the Competent Authority. Any modification of this limitation made by the

Competent Authority shall be subject to the provisions of Articles 6 and 7 of this Convention. In other respects the provisions of this Convention shall not apply to Pakistan but further provisions limiting the hours of work in Pakistan shall be considered at a future meeting of the General Conference. (Article 10)

### (ii) (Shelved) Night Work (Women) Convention, 1919 (No. 4)

Defines the condition of employment of women during the night hours in the Industrial Undertakings.

**Summary of the provisions**

The term *"night"* in this Convention signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning. (Article 2)

It purely restricts employment of women during the night in any public or private industrial undertaking, irrespective of their ages, other than an undertaking in which only members of the same family are employed. (Article 3)

It provides the exceptional cases where the women can be employed during the night in any public or private industrial undertaking. (a) in cases of *"force majeure"*, when in any undertaking, there occurs an interruption of work, which it was impossible to foresee; (b) in cases where the work has to do with raw materials or materials which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss. (Article 4)

In seasonal industrial undertakings and in all exceptional circumstances whenever demand occurred, the night period may be reduced to ten hours on sixty days of the year. (Article 6)

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day. (Article 7)

### (iii) Night Work of Young Persons (Industry) Convention, 1919 (No.6)

Describes the terms and conditions of night work of young persons employed in Industrial Undertakings.

**Summary of the provisions**

It purely restricts employment of young persons less than eighteen years of age during the night in any public or private industrial undertaking, other than an undertaking in which only family members are employed with certain exceptions as hereinafter provided for.

Young persons over the age of sixteen may be employed during the night in certain industrial undertakings on work which, by reason of the nature of the process, is required to be carried on continuously day and night. (Article 2)

The term "*night*" in this Convention signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

The period of intervals is prescribed for different industries under the followings:

In coal and lignite mines, work may be carried on in the interval between ten o'clock in the evening and five o'clock in the morning, if an interval of ordinarily fifteen hours separates two periods of work. Where night work, in the baking industry, is prohibited for all workers, the interval between nine o'clock in the evening and four o'clock in the morning may be in the baking industry. In those tropical countries in which work is suspended during the middle of the day, the night period may be shorter than eleven hours if compensatory rest is accorded during the day. (Article 3)

The young persons between the ages of sixteen and eighteen years can engage in night work in case of emergencies which could not have been controlled or foreseen. (Article 4)

The prohibition of night work for young persons may be suspended by the Government when the public interest demands it. (Article 7)

### (iv) Weekly Rest (Industry) Convention, 1921(No. 14)

Deals with the weekly rest day in Industrial Undertakings.

**Summary of the provisions**

The whole of the staff employed in any industrial undertaking, public or private, shall enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours. This period of rest shall be granted simultaneously to all employees. This period will coincide with the days already established by the traditions or customs of the country or district. (Article 2)

Each member may exempt from the above mentioned condition to the persons employed in industrial undertakings in which only the family members are to be employed. (Article 3)

Each member may authorise total or partial exceptions from the above mentioned condition with special regard being had to all proper humanitarian and economic considerations. (Article 4)

Each member shall make, as far as possible, provision for compensatory periods of rest for the suspensions or diminutions made in virtue of Article 4, except in cases where agreements or customs already provide for such periods. (Article 5)

Each member will draw up a list of the exceptions made under Articles 3 and 4 of this Convention and will communicate it to the International Labour Office and thereafter, in every second year any modifications of this list which shall have been made. (Article 6)

In order to facilitate the enforcement of the provisions of this Convention, the period of weekly rest for the whole of the staff collectively must be notified and posted in a prominent place, in the principal language, in the industrial or commercial establishment otherwise by means of a roster drawn up in accordance with the method approved by the legislation of the country. (Article 7)

### (v) (Shelved) Night Work (Women) Convention (Revised), 1934 (No. 41)

This talks about employment of women during the night with regard to the partial revision of the Convention 1919.

**Summary of the provisions**

The term *"night"* under this Convention signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning. Where there are exceptional circumstances, the Competent Authority may decide that for women employed in that particular industry or area, the interval will be between eleven o'clock in the evening and six o'clock in the morning. (Article 2)

It purely restricts employment of women during the night in any public or private industrial undertaking, irrespective of their ages other than an undertaking in which only members of the same family are employed. (Article 3)

It provides the exceptional cases where the women can be employed during the night in any public or private industrial undertaking. (a) in cases of *"force majeure"*, when in any undertaking there occurs an interruption of work which it was impossible to foresee; (b) in cases where the work has to do with raw materials or materials which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss. (Article 4)

In seasonal industrial undertakings and in all exceptional circumstances, whenever demand occurs, the night period may be reduced to ten hours on sixty days of the year. (Article 6)

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day. (Article 7)

This Convention does not apply to women holding responsible positions of management who are not ordinarily engaged in manual work. (Article 8)

### (vi) Underground Work (Women) Convention, 1935(No. 45)

Talks about the employment of women on underground work in all kinds of Mines.

**Summary of the provisions**

The term "*mine*" used under the convention includes any undertaking, whether public or private, for the extraction of any substance from the surface of the earth. (Article 1)

It purely restricts employment of women on underground work in any mine, irrespective of their ages. (Article 2)

National laws or regulations may exempt from the above prohibition to the females holding positions of management; females employed in health and welfare services; student females who spend a period of training in the underground parts of a mine; and any other females who may occasionally enter into the underground parts of a mine for the purpose of a non-manual occupation. (Article 3)

### (vii) Night Work (Women) Convention (Revised), 1948 (No.89)

Describes the terms and condition for night work of women employed in industry

**Summary of the provisions**

The term "*night*" under this Convention signifies a period of at least eleven consecutive hours, including an interval prescribed by the Competent Authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the

morning. The Competent Authority may prescribe after consultation with the employers' and workers' organisations different intervals for different areas. (Article 2)

It purely restricts employment of women during the night in any public or private industrial undertaking, irrespective of their ages other than an undertaking in which only members of the same family are employed. (Article 3)

It provides the exceptional cases where the women can be employed during the night in any public or private industrial undertaking. (a) in cases of "force majeure", when in any undertaking there occurs an interruption of work which it was impossible to foresee; (b) in cases where the work has to do with raw materials or materials which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss. (Article 4)

The prohibition of night work for women may be suspended by the Government when the public interest demands it. (Article 5)

In seasonal industrial undertakings and in all exceptional circumstances, whenever demand occurs, the night period may be reduced to ten hours on sixty days of the year. (Article 6)

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day. (Article 7)

This Convention does not apply to women holding responsible positions of managerial or technical character and women employed in health and welfare services who are not ordinarily engaged in manual work. (Article 8)

The provisions of this Convention shall apply to all territories in respect of which the Pakistan legislature has jurisdiction to apply them but subject to the modifications set forth in this Article. The term ***industrial undertaking*** includes:

a) Factories as defined in the Factories Act;

b) Mines to which the Mines Act applies. (Article 11)

**Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89)**

Protocol of 1990 to the Convention concerning Night Work of Women Employed in Industry (Revised 1948)

**Summary of the provisions**

National laws or regulations, adopted after consulting the most representative organisations of employers and workers, may provide that variations in the duration of the night period as defined in Article 2 of the Convention and exemptions from the prohibition of night work contained in Article 3 thereof may be introduced by decision of the Competent Authority (Article 1)

It shall be prohibited to apply the variations and exemptions permitted in pursuant to Article 1 above to women workers during a period before and after childbirth of at least 16 weeks, of which at least eight weeks shall be before the expected date of childbirth. This prohibition shall also apply to additional periods in respect of which a medical certificate of pregnancy is produced stating that this is necessary for the health of the mother or child (Article 2)

During the period of pregnancy and after childbirth of at least 16 weeks: a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth; the income of a woman worker concerned shall be maintained at a level sufficient for the up keeping of herself and her child in accordance with a suitable standard of living. Article shall not have the effect of reducing the protection and benefits connected with maternity leave. (Article 3)

**Night Work of Young Persons (Industry) Convention (Revised), 1948 (No 90)**

Deals with the night work of young persons employed in Industry (Revised 1948) with regard to the partial revision of the Convention 1919

**Summary of the provisions**

National laws or regulations may exempt from Convention employment on work which is not deemed to be harmful or dangerous to young persons in family undertakings in which only parents and their children or wards are employed. (Article 1)

The term *"night"* under this Convention signifies a period of at least twelve consecutive hours.

In the case of young persons less than sixteen years of age, this period shall include the interval between ten o'clock in the evening and six o'clock in the morning. Whereas for Pakistan the age limit for young persons is of more than thirteen years but is under the age of fifteen years.

In the case of young persons who have attained the age of sixteen years but are under the age of eighteen years, this period shall include an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning. Whereas for Pakistan young persons who had attained the age of fifteen years but are under the age of seventeen years.

The Competent Authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings after consultation with the employers' and workers' organisations. (Article 2)

Young persons under eighteen years of age shall not be employed or work during the night in any public or private industrial undertaking. Whereas for Pakistan age limit of young persons is prescribed under the age of seventeen years except as hereinafter provided.

Whereas for the rest of the Articles young persons mean who have attained the age of fifteen years but are under the age of seventeen years for Pakistan.

The Competent Authority may authorise with consultation of the employers' and workers' organisations, the employment in night work of young persons who have attained the age of sixteen years but are under the age of eighteen years in apprenticeship or vocational training in specified industries or occupation

Young persons employed in night work in virtue of the preceding paragraph shall be granted a rest period of at least thirteen consecutive hours between two working periods.

Where night work in the baking industry is prohibited for all workers, the interval between nine o'clock in the evening and four o'clock in the morning may, for apprenticeship or vocational training of young persons who have attained the age of sixteen years, be substituted by the Competent Authority for the interval of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning. (Article 3)

In countries where the climate renders work by day particularly trying, the night period and barred interval may be shorter than that prescribed in the above Articles for young persons under the age of seventeen years if compensatory rest is accorded during the day.

This Article provide the exception to the above mentioned Articles to the night work of young persons between the ages of sixteen and eighteen years in case of emergencies which could not have been controlled or foreseen. Whereas for Pakistan, young persons mean who had attained the age of fifteen years but are under the age of seventeen years. (Article 4)

In case of serious emergency the prohibition of night work may be suspended by the government, for young persons between the ages of sixteen and eighteen years. Whereas for Pakistan young persons mean who have attained the age of fifteen years but are under the age of seventeen years. (Article 5)

The laws or regulations giving effect to the provisions of this Convention shall:(a) make appropriate provision for ensuring that they are known to the persons concerned; (b) define the persons responsible for compliance therewith; (c) prescribe adequate penalties for any violation thereof; (d) provide for the maintenance of a system of inspection adequate to ensure effective enforcement; and (e) require every employer in a public or private industrial undertaking to keep a register, or to keep available official records, showing the names and dates of birth of all persons under eighteen years of age, but for the purpose of Pakistan young persons who are under the age of seventeen years employed by him and such other pertinent information as may be required by the Competent Authority. (Article 6)

The provision of this Convention shall apply to all territories in respect of which the Pakistan legislation has jurisdiction to apply them. Subject to the modifications mentioned as follows.

The term industrial undertaking shall include factories as defined in the Factories Act 1934; mines to which the Mines Act 1941 applies; railways and ports. (Article 9)

### 5.3.2 HOURS OF WORK LEGISLATION IN PAKISTAN

The Government of Pakistan is committed to provide workers with reasonable hours of work, which must not exceed forty eight hours per week. Workers must be provided with at least one day off in each seven-day period. In accordance with the principle of bilateralism workers and employers are encouraged to consult and negotiate arrangements that improve on these basic standards.

Overtime work is a key issue for many enterprises; due to tight deadlines imposed by buyers, and the need to accommodate hasten orders. This need must be balanced

against the right of workers to choose whether or not they wish to work overtime and their right to receive premium rates for overtime hours worked.

With a view to providing enterprises with the flexibility they require statutory limits on overtime could be stated in hours (not normally more than 12 hours per week), per month (not more than 50 hours per month) or per year (e.g. not more than 600 hours). Such work, however, must always be voluntary (unless included in a collective agreement) and paid at premium rates as prescribed by law or collective agreement.[7]

#### 5.3.2.1 Relevant Provisions of Factories Act, 1934

The Factories Act, 1934 which governs the conditions of work of industrial labour, applies to factories employing ten or more workers. The Provincial Governments are further empowered to extend the provisions of the Act, to even five workers.[8]

1. A seasonal factory is that which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or cotton jute pressing, the manufacture of coffee, indigo, rubber, sugar or tea.[9]

However, if such adult worker in a factory is engaged in work, which for technical reasons must be continuous throughout the day, the adult worker may work no more than fifty-six hours in any week.[10]

2. No adult employee can be required or permitted to work in any factory in excess of nine hours a day[11]and 48 hours a week.[12]

Where the factory is a seasonal one, an adult worker shall work no more than fifty hours in any week[13] and no more than ten hours in any day.[14]

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[7] Labour Protection Policy 2005
[8] Sec 2 (j) of the Factories Act,1934
[9] Sec 4 of the Factories Act,1934
[10] Sec 34 of the Factories Act,1934
[11] Sec 36 of the Factories Act,1934
[12] Sec 34 of the Factories Act,1934
[13]Sec 34 of the Factories Act,1934
[14] Sec 36 of the Factories Act,1934

An adult worker in a factory engaged in work which for technical reasons must be continuous throughout the day may work for fifty six hours in any week.[15]

3. No adult worker shall be allowed or required to work in a factory on Sunday, unless had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday and the manager of the factory has before that Sunday delivered a notice to the inspector of his intention to require the worker to work on Sunday and of the day which is to be substituted for the rest day.[16]

A worker disobeying such order is not guilty of misconduct and is entitled to insist on his usual rest day being Sunday in normal course. An order to work on Sunday is not sustainable in law. In ***The Glaxo Laboratories (Pakistan) Ltd., Karachi v. Muhammad Bux Memon; Glaxo Laboratories Worker's Union,*** the Glaxo Laboratories (Pakistan) Ltd., Karachi Sunday was the statutory holiday for workers. The company did not follow the strict provisions of Section 35 of the Factories Act, 1934. Contravention of strict provisions led to failure to give notice of substituted holiday to inspector. Impugned Order to work on Sunday could not be sustained in law and its disobedience could not be held to be guilty of misconduct on the part of the worker. The worker entitled to insist on his usual rest day being Sunday in normal course.[17]

Under Section 35 of the Factories Act 1934, a workman is allowed one day of the complete rest, which is irrespective of the fact whether he is daily rated or monthly rated, without having to worry about his wages for that day. The underlying idea under Section 35 of the Act is to help a workman and not to deprive him of his wages and thereby to reduce his income. The daily rated workers generally belong to a class of persons who must work everyday to earn enough to get food and clothes, however meager, for themselves and their families. They cannot afford the luxury of enjoying a holiday without earning anything for four days in a month. The law does not make any distinction between the daily rated workers and monthly paid workers.

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[15] Sec 34 of the Factories Act,1934
[16] Sec 35 of the Factories Act,1934
[17] PLD 1962 SC 60

In ***The Premier Tobacoo Co Ltd, Mardan. v. Premier Tobacoo Workers' Union,*** it was held by the learned Appellant Tribunal *"The law does not make any distinction between the daily rated workers and monthly paid workers. It was not the case of the appellant- company that in fixing the daily wages of the workmen, the company had taken into consideration the wages that these workmen will not receive for four Sundays. The daily rated workmen of the appellant company in the circumstances were entitled to wages for Sundays as well".*[18]

In ***Messrs the Glaxo Laboratories (Pakistan) Ltd., Karachi v. Glaxo Laboratories Worker's Union,*** where Muhammad Latafat was required to work overtime each Saturday till 5 p.m. and Sunday and take his rest on Friday. He was charged for willful disobedience of order, the order to take rest on Friday and work on Sunday and punished with *"discharged from service"*. The employer was not observing procedure prescribed by Section 35 of Factories Act. Contravention of this strict provision led to failure to give notice of substituted holiday to inspector office. So the disobedience of illegal order can not be made a basis of punishment against a workman. Thus, the re-instatement of Muhammad Latafat was ordered, with full benefits with effect from the date of his discharge, with the direction that the period of his absence may be treated as leave without pay.[19]

**4.** A worker who is deprived of any of the weekly holidays for which he is entitled under Section 35, he shall be allowed, as soon as circumstances permit, compensatory holidays of equal number to the holidays so lost.[20]

In ***Daily "Aftab" Newspaper, Hyderabad v. Sind Labour Court No. VI and 2 others,*** it was held that an employee is entitled cash payment in lieu of unavailed annual holidays, not for unavailed weekly holidays, if he quits employment before availing the same. Annual holidays shall not be accumulated for more than two years at the rate of 14 days per year. An employee is entitled compensatory holiday only in lieu of weekly

[18]PLC 1970 Lah 126
[19] PLC 1960 Kar 590
[20] Sec 35-A of the Factories Act,1934

holidays. In case the employee did not enjoy any weekly holiday he could have at the most claimed compensatory holidays under section 35-A. If there had been any violation of the provisions of Section 35 or 35-A of the Factories Act on the part of the employer then the employer could have been prosecuted under section 60 (B) (i) of the Factories Act. The orders of the Authority and the Appellate Court awarding cash compensation to the employee for the weekly holidays cannot be maintained. The same will be contrary to Section 35-A also. Cash compensation for such leave is not maintainable.[21]

**5.** The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.[22]

The periods of work of adult workers in a factory shall not exceed six hours a day continuously without an interval for rest of at least one hour.[23]

**6.** The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest, they shall not spread over more than ten and a half hours in any day.[24]

**7.** Where a worker in a factory works on a shift which extends beyond midnight, a holiday for a whole day shall mean in his case a period of twenty-four consecutive hours beginning when his shift ends and the hours he has worked after midnight shall be counted in the previous day.[25]

**8.** If an adult employee works in any factory in excess of nine hours a day and forty eight hours a week, he shall be entitled to receive overtime at the rate of twice his ordinary rate of pay. Where the factory is a seasonal one, if an adult worker works in excess of fifty

[21] PLC 1983 Kar.201
[22] Sec 37 of the Factories Act,1934
[23] Sec 37 of the Factories Act,1934
[24]Scc 38 of the Factories Act,1934
[25]Sec 46 of the Factories Act,1934

hours in any week and ten hours in any day, shall be entitled to receive overtime at the rate of twice his ordinary rate of pay.[26]

In ***Zafar Ali v. Municipal Corporation, Faisalabad,*** the petitioner was employed as "Beldar" in Land Branch of Municipal Corporation and working in Encroachment Branch. He had alleged that most of times he, along with other workers, remained busy in demolishing buildings and other illegal structure more than twelve hours a day. Petitioner had claimed that as he, along with other workers, had to work for more than usual time of eight hours a day, so he was entitled to payment of wages at the rate of twice his ordinary rate of pay for overtime work done by him. Provisions of Factories Act, 1934 were being applied to employees of Municipal Corporation. The employees of such Corporation fell within definition of *"workers"* as provided in Factories Act, 1934. Petitioner was entitled to payment of wages for overtime worked by him at the rate *'of twice the ordinary rate of pay'* as provided under Section 47 (1) of Factories Act, 1934.[27]

In ***Messrs Karachi Pipe Mills Ltd. v. Employees Union,*** it was held by the concerned court that the overtime wages can be paid at two different rates. In the case, work done beyond nine hours a day or forty eight hours a week wages has to be paid at double ordinary rate according to rate prescribed in Section 47 of Factories Act, 1934. In other case, where the work was done not beyond such prescribed hours, the rate of wages could be paid according to the agreement or on rates per practice under the terms and conditions of service.[28]

**9.** No adult worker shall be allowed to work in two or more factories on the same day.[29]

**10.** In addition to the 14 days of annual leave with pay,[30] the Factories Act, 1934 provides that every worker is entitled to 10 days casual leave with full pay and further 16 days sick or medical leave on half pay.[31]

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[26] Sec 47 of the Factories Act,1934
[27] PSC 1999 Lah 1427
[28] PLC 1981 Kar 19
[29] Sec 48 of the Factories Act,1934
[30] Sec 49.B of the Factories Act,1934

Casual leave is granted upon contingent situations such as sudden illness or any other urgent purpose. It should be obtained on prior application unless the urgency prevents the making of such application. As a customary practice, causal leave is approved in most cases. Sick leave, on the other hand, may be availed of on support of a medical certificate. Management should not refuse the leave asked for if it is supported by a Medical Certificate.

In ***Shahzad Babar Khan v. Punjab Agricultural Development and Supplies Corporation, Lahore,*** the employee of Punjab Agricultural Development and Supplies Corporation presented his resignation to the corporation. He claimed encashment of un-availed earned leave of 260 days after resigning. The claim was rejected on grounds that Leave Rules of Government Servants were applicable according to which accumulated leave lapses on quitting service. Employee, in circumstances, entitled to encashment of leave in terms of Standing Order 8(1) of West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 &. Section 49-B(1) and (2) of Factories Act, 1934 providing that 14 days can be accumulated in a year which can be added to un availed leave of next year totaling 28 days. The claim for encashment of full un-availed leave by the employee was held not tenable and the employee was entitled to encashment for 28 days only.[32]

**11.** In addition to the leave entitlements, every worker is entitled to enjoy all such holidays with pay on all days declared and notified by the Federal Government or Provincial Government.

If however, a worker is required to work on any festival holiday, one day's additional compensatory holiday with full pay and a substitute holiday shall be awarded.[33]

In ***Divisional Superintendent, Pakistan Railways, Lahore v. Saleem,*** the employees were required to work on all festival holidays by the employers occurring during disputed period, were not allowed substitute and compensatory pay for such

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[31] Sec 49.H of the Factories Act,1934

[32] PLC 1985 Lah 254

[33] Sec 49.I of the Factories Act,1934

festival holidays. Employees were entitled to payment of wages at twice the rate of 'ordinary pay for work performed by them on those festival holidays. Since employees had been paid only 50% of wages as extra compensation for their work on festival holidays, it was held that they were entitled to 150% of their wages in addition to their normal wages for festival holidays.[34]

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

## 5.4 IMPACT OF HOURS OF WORK LEGISLATION

The law declares that most workers should not have to work more than 48 hours a week on average. This includes any overtime. However, employee can choose to work more than 48 hours a week with his own consent. There are different rules for workers aged fewer than 18, who must not normally work more than 40 hours a week. Some people whose duty is of technical nature are not covered by these rules. For example police, army and civil protection workers including firemen and coastguards, trainee doctors and domestic servants in private houses must work an average 58 hour per week.

In general, efficiency of performance seems parallel to the circadian variation in body temperature. The disruption of circadian rhythm, combined with sleep deficit and fatigue, can lead to workplace inefficiency, particularly in the early hours of the morning. Family and marital responsibilities can be severely disrupted by long hours work. Childcare, housework, shopping, and leaving a partner alone at night can all lead to marital strain and family dysfunction. Working long hours is also correlated with a number of other negative health outcomes, such as increased smoking as a response to the stress and increased exposure to occupational hazards, such as toxic chemicals and loud noises. In sum, working long hours greatly increase many health risks.

Finally, there is evidence that irregular shift work, specifically night work, has negative impact. While this is not directly related to the number of hours that workers work, it is relevant to this discussion because the working time of organisation is influenced by the overtime. The ILO report states that night work has a number of

[34] PLC 1994 Lah 492

negative health impacts, including increased risks for mental health, cardiovascular, gastrointestinal, and reproductive disorders.

The performance of business also effects with number of working hours. Until relatively recently, much of the evidence for a performance decrement associated with long hours of work relates to some excellent studies undertaken by Vernon on munitions workers in the First World War. The studies are thorough, well designed, and clearly show that reducing hours of work by between 7 and 20 per week (down to 50-55 hours per week) resulted in an improvement in the quality and quantity of units produced.

The substantial changes have taken place in international legislation on working time. This legislation introduced specific measures relating to the scheduling of shifts and rest periods whereas on a broader scale, the International Labour Organisation (ILO) introduced in 1919 radical new standards for working patterns. The object of each of these measures was to limit hours worked because long or abnormal work patterns are deemed to be hazardous to health. The main features of the working hour's legislation are fixing of minimum daily rest period, minimum weekly rest period and paid annual leave and maximum period of 48 hours per week averaged over a 17 week period. Consequently, the working hour's legislation saves the employees from the negative effects of long working hours which not only effects social life of the person but also his personal and mental health.

## CHAPTER VI

# CONCLUSION

Human Resource Legislation is not a self generated notion as many factors got involved in theory of its evolution. Manifold injustices were identified to have been exercised towards workmen by the employer. Wickedness in respect of working hours, contractual obligations, remunerations, and employment opportunities remained far to be identified. Invoking the door of Human Resource Legislation not only enabled employer to draft a framework for upcoming outputs but also surrendered several grounds to meliorate the business performance. The HR Legislation might have an important part to play in improving profitability, sales, product quality and capital value, but there is a need to ensure that the laws are to be followed without discrimination.

Performance of services is to be acknowledged through chain usage by the people and value of produced goods. As a new born baby departing himself from instinct, starts dealing with people and become common among others, so views of society get emerge about him. So, the same theory is pertinent to be applied here. Human Resource Management is an emerging discipline and consequences thereof are yet to forth come before the society. Defeating to excessive discretion of employer and inclusion of malafide provision in the contract/ agreement between an employer and employee is no more to be predicted. Securing common interest of workers segment is to be upheld. This has generously developed the prevalent relationship between both the milestones of the commercial venue.

Human Resource Management as a new concept opens the door for Human Resource Legislation in the society. The legislative measures adopted in post-independence era in general and recent efforts like abolition of Bonded Labourers, Equal

Pay for Equal work irrespective of sex, Prohibition on the power of employer in respect of declaration of lay off, retrenchment and closures, Amendment to the Workmen's Compensation Act and Amendment of the Maternity Benefit Act, and so on, mark the willingness on the part of the State to regulate the employer-employee relations in the interest of common good. This tendency adopted by the State in progressive society marks new dimensional change in traditional human resource relations.

Most of the disputes among human resources usually arise from the dissatisfaction of the worker with their terms and conditions of employment. The human resources legislation thus becomes the wish of the society as a whole to regulate such terms and conditions and also securing some reasonable standards of livelihood for the employees.

During the contract of employment, the employees gain greater job satisfaction and are thereby more committed to the organization's goals and the organization consequently gains high performance. Job security is the sole cause, gaining which enables an employee to work with full devotion and in the best interest of an employer, a pre- requisite requisition of the position. Numerous fuzzy undertakings, while admitting to any job are no more in existent. Contract of employment has successfully surfaced the way as all the term and conditions for job are to be leveled in the contract of employment. Aspect of discrimination is also defeated through the well defined uniformity in the contract of employment for all the persons holding the same position. Thus, contractual relations involves mutual assent of employer and employee which ultimately ease in discharging respective obligations. Discrimination can occur at every stage of employment, from recruitment to education and remuneration, occupational segregation, and at time of lay-offs. Men and women tend to work in different sectors of the economy and hold different positions within the same occupational group. Women tend to be employed in a narrower range of occupations than men, and are more likely to work part-time or short-term. They also face more barriers to promotion and career development.

The number of people with disabilities, currently put at some 7-10 per cent of the world's population, is likely to grow as the population ages. The majority live in developing countries, and disability rates appear higher in rural areas than in urban areas. The most common form of discrimination is the denial of opportunities, both in the

labour market, and in education and training. Unemployment rates for people with disabilities reach 80 per cent or more in many developing countries. People with disabilities are often trapped in low-paid, unskilled and menial jobs, with little or no social protection.

> *"Eliminating discrimination at work is everybody's responsibility"*, Mr. Somavia says,*"The State has the obligation of banning discriminatory practices and establishing sound laws and institutions and policies that promote equal opportunities at work. Employers and workers organizations, individually and together, should identify and combat discriminatory practices at the workplace. Most importantly, the voices of discriminated workers and employers need to be heard, no matter where they work."*[1]

Performance management policies and practices should adhere to principles of Equal Employment Opportunity (EEO). Progress in improving the employment situation of EEO target groups should be monitored regularly against agreed standards as part of holding management accountable for implementing a fair and developmental performance management system. Attention should be given to developing members of EEO target groups into line and senior management positions, particularly where management structures are being flattened and opportunities for advancement are limited.

In the initial stages of industrialization, workers had to suffer not only from inadequacy of wages, in exorbitant delays in payment but also from arbitrary cuts in total wages in the form of fines. Deduction of two days wages for one day's absence from work was common practice. The level of wages during those days was terribly low and there was no rational relationship between the effort and reward. The irony was that these meager wages, too, were subject to the voracity of the employers and there was no mechanism available to curb their misdeeds. The appalling conditions of work and the

[1] www.ilo.org/

abject level of wages during the earlier days of industrialization gave birth to an idea of payment legislation.

Equal payment of wages legislation prohibits an employer from paying employees of one sex at a lower rate of pay or wages than that paid to the employees of the other sex who perform the same or substantially the same work. In general, equal pay provisions mandate equality of pay between male and female employees of the same employer who are performing the same or substantially similar work. The impact of legislation regarding the payment of wages is that it is a protective piece of labour legislation to rescue the workers from the wickedness of the employers, its effectual enforcement and implementation must be emphasized in a progressive system where the workers have been uncompassionately and capraciously robbed of their hard earned money in the past.

The question of fixation of minimum wages is a very difficult one. Conditions differ from place to place, industry to industry and time to time as well as from worker to worker and from sex to sex. An important principle was that the minimum wages should provide not merely for bare sustenance of life but for preservation of the efficiency of the workers by providing some measure of education, medical requirements and amenities. It should be determined by a judicious balance of different factors like human needs, family earning s strength, cost of living and prevailing wage rates for similar work.

The performance of business also effects with number of working hours. The object of each of these measures was to limit hours worked because long or abnormal work patterns are deemed to be hazardous to health. The main features of the working hour's legislation are fixing of minimum daily rest period, minimum weekly rest period and paid annual leave and maximum period of 48 hours per week averaged over a 17 week period. Consequently, the working hour's legislation saves the employees from the negative effects of long working hours which not only effects social life of the person but also his personal and mental health. When an organization's employees suffer from stress due to long hours of work, it leads to high levels of sickness and absenteeism, reduced productivity and failure to meet targets, increased accidents and error rates, increased number of internal conflicts between individuals, undesirably high rate of staff turnover. All the above mentioned circumstances influence severely on the performance of the business.

Productivity is not merely the ratio of output versus input, but that it involved, in a substantial way, the human resource. Productivity does not merely mean as rationalization or efficiency in only technical terms. Therefore, positive involvement and commitment by labour and unions were thought essential for the success of productivity activities.

The core assumption is that the organization performance can be improved through the adoption of a cluster of techniques; human resource legislation is pertinent to be taken into consideration as one of the subtle techniques. If proper legislation is enacted to claim improvement in organizational performance, working arrangements must result in the development of a sense of personal efficacy, which in turn results in working practices that positively impact on organizational performance.

The improvement and development in business performance in Pakistan has only been possible due to the adoption of latest techniques of HR management and adhering to ILO standards by adopting the necessarily conventions through rectifications and improvements in our Human Resource Legislation. With the present environment the pace of progress is likely to continue in future as well.

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## C. *USEFUL WEBSITES*

The following selection of the websites is included because of useful information sources it contains for students of human resources management. In many cases these sites are best sources for gaining up to date picture of the current UK law on employment matters. However, it is difficult to find out the related websites links regarding the legislation on human resources in Pakistan. Very few websites links are available from the Pakistan perspective.

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| *2.* | *www.enwiki.com/* | *Online Encyclopedia Wiki Encyclopedia* |
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