

**ADEQUACY OF LEGAL FRAMEWORK AND CASE STUDY OF
PROTECTION OF THE HUMAN RIGHTS OF WORKERS IN THE
INFORMAL SECTOR OF PAKISTAN**

A dissertation submitted in partial fulfillment of the requirement for the award of
degree of PhD Law

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Dedication

The thesis is dedicated to my late parents, husband and my children

Beenish Aslam Shaikh

Approval Sheet

This is to certify that we evaluated the thesis entitled “ADEQUACY OF LEGAL FRAMEWORK AND CASE STUDY OF PROTECTION OF THE HUMAN RIGHTS OF WORKERS IN THE INFORMAL SECTOR OF PAKISTAN” submitted by Ms. Beenish Aslam Shaikh, Reg.no. 43-SF/PHDLAW/F13 in partial fulfillment of the award of the degree of PhD in Law. The thesis fulfills the requirements in its core and quality for the degree award.

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Declaration

I, Beenish Aslam Shaikh, vide Registration Number 43-SF/PHDLAW/F13 hereby declare that this thesis titled, “Adequacy Of Legal Framework And Case Study Of Protection Of The Human Rights Of Workers In The Informal Sector Of Pakistan”, submitted to the Department of Law, Faculty of Shariah and Law, is my own genuine and original research work, conceived and written by me under the supervision of Prof. Dr. Farkhanda Zia Mansoor. To the best of my knowledge, this work has not been published elsewhere nor it is written by any other person. Where ever it was necessary, clear references of other’s literary works have been mentioned.

BEENISH ASLAM SHAIKH

January, 2025

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Acronyms

CDL – Child Domestic Labour

CDW – Child Domestic Work

CDWs – Child Domestic Workers

CEACR – Committee of Experts on the Application of Convention and
Recommendations

CPC – Civil Procedure Code

DWCP – Decent Work Country Programme

GDP – Gross Domestic Product

HRW – Human Rights Watch

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ILO – International Labour Organization

ILS – International Labour Standards

LFS – Labour Force Survey

MDG – Millennium Development Goals

OSH – Occupational Health and Safety

PESSI – Punjab Employee Social Security Institution

PILER – Pakistan Institute of Labour Education and Research

PPC – Pakistan Penal Code

PWF – Pakistan Workers Federation

SAARC – South Asian Association for Regional Cooperation

SDG – Sustainable Development Goals

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNCRC – United Nations Convention on the Rights of Child

UNICEF – United Nations Children’s Funds

WTO – World Trade Organization

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Abstract

The nature of domestic work is characterized by physical and emotional demands, informal and unregulated working conditions, isolation, power imbalance, exploitation, lack of social protection, and intersectional vulnerabilities. Considering the violations in the informal sector, specifically child domestic workers of Pakistan regarding international labour standards, particularly due to non-ratification of ILO Convention 189, the systematic failure that perpetuates between current Pakistani legislations and Pakistan's international commitments, this research argues that the current Pakistan's legislations fail to adequately prevent exploitation, ensure justice and protect the human rights of child domestic workers, therefore, it is desirable to protect these vulnerable workers by proposing recommendations for legislative reforms so as to bridge the gap between international standards and Pakistan's legislations. A critical examination of Pakistan's legislative framework, juxtaposed with international instruments, is undertaken to assess its efficacy in safeguarding labour rights, with a supplementary comparative analysis of Indian and Philippine legislations to distill best practices and identify areas for reform. This topic has more of a social impact but this research focuses on the legal aspects, therefore, the legislations and judicial decisions are more focused so as to analyze and determine the legal situation of domestic workers and to come into conclusion as to how violations of fundamental rights, exploitation and abuses against child domestic workers can be reduced by adopting a legal model for protection. Moreover, what treatment or mechanism should be adopted to punish the guilty employers. Last but not the least, recommendations have been proposed so that the government can make its legal policies and frame the legislation accordingly.

INTRODUCTION

Thesis Statement

Considering the violations in the informal sector specifically child domestic workers of Pakistan regarding international labour standards particularly due to non-ratification of ILO Convention Concerning Decent Work for Domestic Workers (2011) No. 189, it is desirable to protect their human rights by expansion of scope of existing international standards and through special legislation.

Statement of the Problem

The informal sector's culture of exploitation as exemplified by the exploitation of child domestic workers, are subjected to egregious violations of their fundamental rights and are forced to toil in conditions akin to modern-day slavery, inequality, social exclusion, lack of education and the like. Pakistan is also facing serious legislative and enforcement issues including lacunae in existing legal framework, abuses, discrimination, harassment and human rights' violations in the informal sector with special reference to child domestic workers of Pakistan, who are not only vulnerable and working in isolated environment, but are also exposed to multiple risks. Therefore, it is essential to take immediate action in Pakistan to extend the scope of protection to child domestic workers in accordance with existing international labour standards and their endorsement through enactment and enforcement of special national legislation that prioritizes the protection of labour rights, promotes fair labour standards, access to education, health care, social protection and justice thereby safeguarding their dignity and wellbeing.

Objectives of the Research

The arbitrary preference constitutes an egregious infringement upon the sacrosanct principles of egalitarianism, non-discrimination, and the axiomatic tenets of natural justice, universal justice, social justice and distributive justice, thereby perpetuating a paradigm of inequality and injustice. Child domestic work is rampant worldwide due to traditional practices to hire children for domestic tasks. This practice is now uncontrollable not only in developing countries but also in developed countries. Due to multiplicity of tasks of domestic work, it remains unrecognized, undervalued, undetermined, unrewarding and invisible. Most of the domestic work is done by women and children, especially child domestic workers, who are vulnerable to abuse, discrimination, and exploitation.

It is pertinent to note that poverty, social disharmony and economic deprivation are the result of economic exploitation and distribution of uneven resources by the States, as a result, it not only adversely affects national development and prosperity but also it has adverse impacts at international level in the globalization context. Recognizing the appalling conditions under which such workers are working needed specific legal protection. The International community highlighted the importance and contributions of domestic workers across the world and thereby concluded the ILO Decent Work for Domestic Workers Convention 189 (hereinafter referred as ILO Convention 189) considering already recognized International Labour Standards need further expansion in case of domestic workers' protection. This research focuses on understanding the various critical issues in the informal sectors of Pakistan whereby child domestic workers are discussed as the case study. The research explores the level of exploitation, discrimination and harassment

faced by them in workplace, their nature of work, wages, health, safety and working conditions and adequacy of the legal framework and last but not the least the limited applicability and lacunae in existing laws for the protection of domestic workers. This study is a critical examination of Pakistan's legislative framework juxtaposed with international instruments to evaluate the effectiveness and adequacy in safeguarding labour rights supplemented by a comparative analysis of Indian and Philippine legislative regimes to identify legislative gaps, discern best practices and elucidate potential avenues for legislative enhancement.

The objectives of research include:

1. To critically examine the legal frameworks governing domestic work in Pakistan and their compliance with International Labour Standards.
2. To investigate the experiences of domestic workers in the informal sector and the challenges they face in accessing their rights.
3. To analyze the effectiveness of current laws and policies in protecting domestic workers' rights and promoting their dignity and well-being.
4. To develop policy recommendations for protecting domestic workers' rights in the informal sector drawing on international best practices and human rights principles.
5. To explore the role of International Law, International Human Rights and International Labour Standards in promoting the rights of domestic workers in Pakistan.

By achieving these objectives, research will contribute to the development of more effective policies and laws for protecting domestic workers' rights and promoting their dignity and well-being.

Background

The preferential discrimination violates the principles of equality, non-discrimination, the theories of natural justice, universal justice, social justice and distributive justice, equal opportunity, and vicarious liability. The international instruments also enshrine these principles, such as Universal Declaration of Human Rights (hereinafter referred as UDHR), International Covenant on Civil and Political Rights (hereinafter referred as ICCPR), International Covenant on Economic, Social and Cultural Rights (hereinafter referred as ICESCR) and International Labour Organization (hereinafter referred as ILO) Constitution and International Labour Standards (hereinafter referred as ILS). The idea of justice and principle of equality are correlated with each other and forms the basis of every society. These are important elements of human social life. Justice requires the equal treatment of equal persons in equal or for all intents and purposes in similar circumstances.¹ The balance of rights, duties and obligations can be maintained only if principles of justice and equality are integrated in the society.² Moreover, the strength, solidarity and security of the State and its masses purely depend upon the equilibrium of rights, duties and liabilities within the State and among all the sectors of the society. This is an idealistic situation. In reality, this equilibrium is not present in any State nor can it be implemented in its true letter and spirit. The reason being there is a difference of status of individuals in every society,

¹ Edgar Bodenheimer, *Jurisprudence – The Philosophy and Method of the Law*, (Harvard University Press, Cambridge: 1962), p. 193

² Social Justice: 7 Theories of social justice explained; Available at <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830/> last visited February 10, 2017

which is a natural phenomenon, as the division of resources is dependent upon the Divine powers. Domestic workers are important members of every society in respect that the other members of the society, who are better in status of domestic workers, hire them for domestic tasks. Unfortunately, domestic workers lack legal protection as many States have not yet realized the importance of decent work and their policies are centralized to employing class only.

As stated earlier that the domestic work cannot be dealt under existing model of labour standards for workplace protection, it is for the reason that domestic work is an invisible work of informal employment being inherently complex with arduous and precarious working conditions, manifold and undefined nature of domestic work with no dimensions of working tasks and working hours, unregulated working arrangements, and heightened vulnerability to exploitation. Domestic workers are denied of their human rights along with the violation of their fundamental rights, they are easy prey of abuse, exploitation, discrimination and intersectional vulnerabilities due to lack of social and legal protection. It is generally presumed that punishing domestic workers is quite normal and natural phenomena.³

Formerly, international community didn't comprehend the importance of decent work for domestic workers and they had the understanding that the settled labour standards are applicable *mutatis mutandis* to domestic workers as well. It was presumed that all the eight core International Labour Organization Standards, i.e. the Forced Labour Convention 1930 (No. 29), the Freedom of Association and Protection

³ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asl_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, child domestic workers A handbook for Research and Action (September 1997), iii

of the Right to Organize Convention 1948 (No. 87), the Right to Organize and Collective Bargaining Convention 1949 (No. 98), the Equal Remuneration Convention 1951 (No. 100), the Abolition of Forced Labour Convention 1957 (No. 105), the Discrimination (Employment and Occupation) Convention 1958 (No. 111), the Minimum Age Convention 1937 (No. 138), and the Worst Forms of Child Labour Convention 1999 (No. 182) are equally relevant to domestic workers. Even in the presence of these International Labour Standards, the issue had not been satisfactorily controlled and in some cases it was increasing rampantly. Moreover, among child labourers worldwide, when the ratio of domestic workers drastically increased, it was felt that domestic workers should be given special regulations and legal protections both under national and international legislations.⁴ In fact, a vast majority of blatant violations are occurring in the informal sector especially to domestic workers of Pakistan. The vulnerability gets intense in case of child domestic workers as they belong to informal of the informal sector of Pakistan. The problems of such workers remained unaddressed by the judicial setup due to the lack of legal framework, unavailability of proper monitoring and the social pressures resulting in compromise or out-of-court settlements, etc. In order to deal with this phenomenon, ILO introduced groundbreaking pivotal convention in the form of Domestic Workers Convention 2011 No. 189, which addresses the complex issues surrounding domestic work and domestic labourers, thereby aims to promote the rights and well-being of domestic workers globally, mandating countries to establish fair labour standards to ensure equal treatment, safe working conditions, minimum age, equal treatment, fair compensation, freedom of association, prevent exploitation and ensure social protection to the vulnerable domestic workers.

⁴ Peggie R. Smith, "Work like any other, work like no other: establishing decent work for domestic workers", (Washington University in St Louis School of Law, Legal Studies Research Paper Series, Paper NO. 12-05-30, Vol. 15:157: May 2012), pp.192

Introduction

As stated above, child domestic workers are most vulnerable class of labourers who are employed to do unspecified domestic tasks in hazardous working conditions, beyond their potentials, with less or no remuneration, no rest of leisure time, long working hours, and are exposed to every form of exploitation. It is another name for forced or compulsory labour, child slavery or practices similar to slavery. International Labour Organization (ILO) is a specialized United Nations (hereinafter referred as UN) Agency working for protecting, promoting and regulating the internationally recognized human and labour rights, which ultimately promotes social justice. There were many ILO Conventions but the decent work agenda pushed the international community to think about the domestic workers' rights and ensure them decent working conditions for promotion of international peace, progress and prosperity. Pakistan has ratified 36 ILO Conventions so far.⁵ Unfortunately, Pakistan has not ratified ILO Convention 189 till date, yet Pakistan's labour legislations reflect the internationally recognized ILO core labour standards, which are the *grund norms* and considered as a part of customary international law. The new ILO dimensions move around the Decent Work Principle, which is also in line with Goal 8⁶ among 17 goals of Sustainable Development Goals 2030 and UN Sustainable Development Cooperation Framework 2018-2022.

⁵ Ratifications for Pakistan; Available at https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103166 last visited December 4, 2024

⁶ Transforming our World: the 2030 Agenda for Sustainable Development; Available at <https://sdgs.un.org/2030agenda> last visited March 29, 2019

We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. A world which invests in its children and in which every child grows up free from violence and exploitation. A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed. A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.

In order to curb with the existing scenario, this issue needs to be addressed on a serious note. The issue of domestic workers can never be controlled unless a specialized comprehensive legislation is passed to safeguard the informal sector workers and to ensure their protection in all the fields with proper legal setup for the regulation of affairs of the workers and the adequate redress system with heavy penalties and punishments for the culprits, both from the employer and the employee's perspective.

Research Context/Scope of Study

This research endeavors to investigate the multifaceted dimensions of exploitation, the intricate nature of work, and the inadequacies of the prevailing legal framework, which perpetuates a culture of vulnerability, particularly in the context of informal sector workers, with a specific focus on the precarious situation of domestic workers, and a special case study on the vulnerabilities of child domestic workers who belong to the informal of the informal employment sector. When this study was first proposed, Pakistan lacked specific legislation protecting domestic workers. However, during the research period, Punjab and Islamabad enacted laws safeguarding domestic workers. As a result, this research provides a comprehensive analysis of Pakistan's legislative landscape in conjunction with international human rights instruments to assess its alignment with global standards supplemented by a comparative examination of Indian and Philippine laws to identify exemplary practices, legislative gaps, and opportunities for cross-national knowledge transfer.

Literature Review

The phenomenon of child domestic work presents a complex and multifaceted challenge to the protection of fundamental rights, particularly in the context of informal sector employment. As a vulnerable subset of informal sector workers, child domestic workers occupy a precarious position, often hidden from public view and excluded from formal legal protections. In order to analyze the issue of informal sector workers, primary as well as secondary sources including a number of books, articles, journals, reports and web sources and literary available literature and resources already written by national and international authors and analysts are reviewed. The criteria used to include or exclude appropriate literature review resources include the relevance of literature to child domestic workers with more focus on interdisciplinary perspectives e.g. international law, international human rights law and international labour standards along with Pakistan specific studies and comparative literature available in comparative South-Asian legal regimes e.g. Philippines and India. The main focus of this research is the issue of informal sector workers. This research follows a sequential paradigm, beginning with a broad examination of informal sector workers, then narrowing its focus to the specific context of domestic workers, and finally concentrating on the particular issue of child domestic workers. Moving further, the theoretical framework covering child domestic workers, including non-discrimination, natural and social justice, and universal justice under Islamic law is discussed whereby the study reveals significant gaps between the theoretical principles and the practical realities faced by child domestic workers in Pakistan. With a specific focus on the Indian and Philippine legislations, this review will critically analyze the strengths and limitations of current approaches to protecting

the fundamental rights of child domestic workers, highlighting areas for reform and innovation.

The issues surrounding child labourers are multifaceted and alarming, involving exploitation, health risks, limited access to education, social isolation, and abuse. Child labourers have inherent rights, including the right to education, protection from exploitation, health and safety, fair compensation, and social protection. However, these rights are frequently violated, with child labourers being forced into labour, trafficked, denied education, subjected to abuse and violence, and lacking access to social protection, ultimately denying them their childhood, dignity, and future prospects, and highlighting the need for urgent action to protect and promote their rights. *The Child and the State in India and Pakistan*, a book written by Myron Weiner and Omar Noman⁷, is rightly addressing the issues of child labourers, their rights and the violation of their rights. Yet, the work had been done in 1995, which is much prior to ILO Convention 189 and the current challenges, though similar in theory are quite different and at times the violations are quite grave, which needs more work to be done in this regard.

In a research paper on *Wealth: Crucial but Sufficient Evidence from Pakistan on Economic Growth, Child Labour and Schooling*⁸ by Xiaohui Hou has highlighted the relationship between wealth, child labour and schooling. The paper has tried to address the issue of child labour while looking into the economic aspects. It lacks the legal aspects thereby.

⁷ Myron Weiner and Omar Noman, *The Child and the State in India and Pakistan*, (Karachi : Oxford University Press, 1995)

⁸ Xiaohui Hou, "Wealth: Crucial but Sufficient Evidence from Pakistan on Economic Growth, Child Labour and Schooling", *The World Bank*, Policy Research Working Paper, 4831, February 2009

In Pakistan, among NGOs, Society for the Protection of the Rights of the Child (SPARC) has done some work to sensitize the issue of children's rights including the child labour. Their report on The State of Pakistan's Children⁹ issued in 2009 has highlighted the issue of violation of children's rights in Pakistan as a whole. This work has been done prior to the ILO Convention 189 and needs much reformation.

Similarly, Sabur Ghayur in his article Labour Market Issues in Pakistan¹⁰ focuses primarily on labor market issues. According to him, Pakistan's labour market is plagued by numerous challenges; including unemployment, underemployment, and poor working conditions, with unemployment rates concentrated among youth, educated, and trained individuals. The labour market is characterized by a high rate of underemployment, with many workers unable to find full-time employment, and poor working conditions, including long working hours, low wages, and lack of social security benefits. This article was published in 1996, earlier to ILO Convention 189. The conditions have considerably changed by now as economic crisis has exacerbated labour market woes, underscoring the need for comprehensive policy reforms to address these pressing issues.

Gennie Gamlin, Agnes Zenaida, Camacho, Michelle Ong and Therese Haskith in their article, Is Domestic Work a Worst Form of Child Labour? The Findings of a

⁹ Society for the Protection of the Rights of the Child (SPARC), "The State of Pakistan's Children", (2009), ISBN: 978-969-8616-24-3

¹⁰ Sabur Ghayur, "Labour Market Issues in Pakistan: Unemployment, Working Conditions and Child Labour", *The Pakistan Development Review*, 35:4 (1996), 789-803

Six-Country Study of the psychosocial effects of Child Domestic Labour¹¹ have highlighted the psychosocial effects on the child domestic workers in six different jurisdictions and have highlighted the factors affecting the trend of child domestic workers while the present research is a legal study on child domestic workers.

Factors such as inadequate support systems, insufficient resources, and unrealistic expectations can lead to frustration and disillusionment, causing some children to drop out of school and seek alternative means of survival. In extreme cases, this can result in their involvement in worst forms of child labor, including hazardous work, trafficking, or exploitative situations, highlighting the need for comprehensive and well-planned interventions that address the complex needs of child laborers. A research paper on Child Labour in Pakistan: Including the Excluded; Subsidized Education and Subsidy: Tools to Combat the Worst Forms of Child Labour¹², written by Zaighum Abbas Mazhar in the Institute of Social Sciences (Netherlands), analyzed potential for transition of child labour to formal education system. The study had been done in 2008. Though the situation is not much different, yet the debate has now been reformed in the light of ILO Convention 189 and other challenges faced by Pakistani society today.

Another research paper on the Effects of Multinational Production on Wages and Working Conditions in Developing Countries¹³ by Drusilla K. Brown, Alan V.

¹¹ Gennie Gamlin, Agnes Zenaida, Camacho, Michelle Ong and Therese Haskith, "Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour", (Children's Geographies, 2013)

¹² Zaighum Abbas Mazhar, "Child Labour in Pakistan: Including the Excluded; Subsidized Education and Subsidy: Tools to Combat the Worst Forms of Child Labour", (Institute of Social Sciences (Netherlands), 2008)

¹³ Drusilla K. Brown, Alan V. Deardorff and Robert M. Stern, "Effects of Multinational Production on Wages and Working Conditions in Developing Countries", *National Bureau of Economic Research*, NBER Working Paper Series, April 2003

Deardorff and Robert M. Stern discusses the contribution of multinational corporations of developed countries in economic development by generating employment opportunities and thereby contributing towards national as well as international development. It also discusses the issue of exploitation of workers in developing countries by multinational firms by paying low remuneration of the services rendered and the workers are required to work under substandard vulnerable working conditions. The research was done in 2003 and mainly focuses on formal sector workers while the current research focuses on informal sector workers and further specifies the issue of child domestic workers. There is a need to work on the issue in this regard in the light of current globalization challenges.

Dr. Farkhanda Zia Mansoor, in her article *The WTO versus the ILO and the case of child labour*¹⁴, postulates the WTO standards in comparison with ILO standards. The social trends push the children into work into vulnerable conditions not only in developed countries but in developing countries as well. As a result of Child labour the children's fundamental rights including right to education, health, protection from economic exploitation and leisure. As a result child labour is also adverse to the UN Convention on the Rights of the Child and ILO core conventions including, Convention No. 182, Convention No. 138 and Convention No. 105. The problem of child labour cannot be eliminated unless all the stakeholders are brought on a single page. The situation in developing countries is quite vulnerable, as the children are allowed to work under hazardous working conditions due to economic deprivation, poverty and other social, cultural and economic factors. This article was written in 2004, much prior to ILO Convention 189. This article lacks the analysis of

¹⁴ Farkhanda Zia Mansoor, "The WTO versus the ILO and the case of Child Labour", *Web Journal of Current Legal Issues*, 2 Web JCLI (2004); Also available at <http://webjcli.ncl.ac.uk/2004/issue2/mansoor2.html>

child domestic workers. The work needs more elaboration in the light of ILO Convention 189.

International Labour Organization's publication, Decent Work for Domestic Workers: C 189 and R 201 at a Glance¹⁵ provide the detailed introduction of the International Labour Organization's Convention on the Decent Work for Domestic Workers, which was concluded on its 100th Session. The issue of decent work was in debate since long but it was brought on the network in March 2008, thereafter the countries started the negotiation on the issue. This is the core document providing the analysis of the ILO Convention 189. While the current research looks into the practical implementation of the Convention 189 in different jurisdictions.

The Right to Unite: A Handbook on Domestic Worker Rights across Asia¹⁶ published by Asia Pacific Forum on Women, Law and Development (APWLD) in 2010 is an appreciable piece of literary work which has rightly highlighted the legal situation of domestic workers across Asian countries and has built a case study, which posed international pressures to finalize ILO Convention 189. Many countries have now ratified ILO Convention 189 and have made laws on the subject. So the situation analysis is quite different from 2010 till now.

The International Labour Organization (ILO) Convention 189, also known as the Domestic Workers Convention, is a landmark treaty adopted in 2011 to protect the rights of domestic workers worldwide. The Convention recognizes domestic workers

¹⁵ International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011)

¹⁶ Philippa Smales, *The Right to Unite: A Handbook on Domestic Worker Rights across Asia*, (Asia Pacific Forum on Women, Law and Development (APWLD), 2010) ISBN: 978-616-90030-3-8

rights to fair terms of employment, decent working conditions, and social protection, including minimum wage, overtime pay, and paid leave. It also prohibits child labour in domestic work, forced labour, and abuse, and ensures domestic workers' freedom of association and collective bargaining rights. Furthermore, the Convention requires countries to establish mechanisms for monitoring and enforcing compliance with labor laws and regulations, and to provide support and protection for domestic workers who are victims of abuse or exploitation. By ratifying Convention 189, countries commit to promoting decent work for domestic workers and ensuring their equal treatment and protection under labor laws. Yet Pakistan has still not ratified this important piece of legislation.

Another International Labour Organization's publication, *Domestic Workers Across the World: Global and regional statistics and the extent of legal protection*¹⁷ highlights the issues of domestic workers by identifying the nature of work to be done by domestic workers, their vulnerability as their work is not only hidden but also performed in hidden premises as well. The study was conducted in 2013, there is much more needed to be explored in the current scenario.

The problem of child domestic labour is a pervasive issue in Pakistan, with thousands of children, mostly between the ages of 5 and 14, being employed in private households, often in exploitative and hazardous conditions. The elements involved in the increase of child domestic labour in Pakistan are multifaceted. Poverty and economic instability are significant factors, as families struggling to make ends meet may send their children to work as domestic laborers to supplement their

¹⁷ International Labour Organization, "Domestic Workers Across the World: Global and regional statistics and the extent of legal protection", 2013, ISBN: 978-92-2-125273-3

income. Lack of access to education, particularly in rural areas, also contributes to the problem, as children who are not in school are more likely to be employed in domestic work. Social and cultural norms, such as the perception that domestic work is a suitable occupation for children, also play a role. Additionally, the absence of effective laws and enforcement mechanisms to protect child domestic laborers, coupled with the informal nature of the industry, makes it difficult to track and address the issue. Other factors, including migration, urbanization, and the breakdown of traditional family structures, also contribute to the increase in child domestic labor in Pakistan. A research paper, titled *Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis*¹⁸ written by Sajjad Akhtar and Saadiya Razzaq postulates the problem of child domestic labour in Pakistan and the elements involved in increase of child domestic labour in a country like ours. They argue that child domestic labour often exposes children to various forms of abuse including verbal, physical and sexual exploitation. They may face harsh treatment, such as beatings and verbal reprimands as a form of punishment for perceived mistakes, slow work pace or subpar performance. This mistreatment can have severe physical and emotional consequences for the children involved. Apart from providing valuable insights into the complex issues surrounding child domestic labour in Pakistan, from a legal perspective, it has several potential shortcomings including data limitations that may not accurately reflect the current situation due to its age, methodological constraints that might have omitted primary data collection from child domestic workers, thereby limiting the depth of understanding of their experiences; a limited scope that may have focused primarily on economic and demographic aspects while neglecting critical legal considerations such as the efficacy of existing laws, policy

¹⁸ Sajjad Akhtar and Saadiya Razzaq, “Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis”, *Centre For Research On Poverty Reduction And Income Distribution (CRPRID)*, June 2005

implementation challenges, and the long-term consequences of child domestic labour on the rights and well-being of these children under international and national legal frameworks; a lack of in-depth policy impact analysis, which fails to assess the effectiveness of current laws and policies aimed at reducing child domestic labor and addressing the legal protections and remedies available to these children; and limited generalizability of the findings, which may be specific to certain regions or contexts within Pakistan thereby restricting their applicability to inform legal reforms or policy initiatives in other areas or countries with similar issues. Moreover, the previous research paper was written in 2005, much earlier than the ILO Convention 189. The present research is a legal analysis on the subject depicting the post ILO Convention 189 legal situation of child domestic workers in Pakistan.

In another article, *Exploitation of Child Domestic Labourers: The Limits of the Current law*,¹⁹ wherein Dr. Farkhanda Zia Mansoor examined the situation of child domestic labourers and legal framework for the protection of child domestic labourers and analyses shortcomings in child domestic legislation. The article was published in 2006, much prior to the adoption of ILO Convention 189. There is a need to work in the light of the new Convention and the current scenario.

Ms. Ayesha Shahid, in her book, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*²⁰, proposes that legal system cannot bring change in the society unless all the other factors are taken into consideration. She proposes that empowerment of women in informal sector

¹⁹ Farkhanda Zia Mansoor, *Exploitation of Child Domestic Labourers: The Limits of the Current law*, *International Journal of Discrimination and the Law* 8(3), March 2006

²⁰ Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

employment is necessary for bringing about change in the national social framework particularly for women domestic workers, therefore, it is important to focus on non-legal strategies along with legal framework so as to strengthen the women domestic workers. The limitation of her book is a focused study of women domestic workers and it was published before the adoption of ILO Convention 189. While this study will be purely a legal study and will focus on formulation and implementation of law and policy on child domestic workers' rights.

Another contribution by Dr. Farkhanda Zia Mansoor²¹, *Working Towards the Eradication of Child Labour: An Analysis of the Legal Framework with Case-studies of Pakistan, India, Indonesia, China, UK and USA*, a book dealing with the most important issue of child exploitation and comparative analysis of legal framework of different jurisdictions. It postulates that the main hurdles in the international trade issues, human rights enforcement and legal enforcement of core labour standards cannot be removed unless worst forms of child labour is eradicated and the fundamental rights of the child workers are protected. The International Labour Organisation (ILO) Convention No.182 on Elimination of the Worst Forms of Child Labour 1999, prescribes some tasks which are undertaken by the child labourers but actually those tasks does not fall under the category of child labour rather fall under the category of worst form of child labour. These practices are not only present equally in developing countries but developed countries as well. Further, it also explores different aspects of child labour including child domestic labour. Since, the focus of this book is on ILO Convention 182, which is representing the worst forms of child labour only while this research focuses on ILO Convention 189.

²¹ Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7

No issue can be discussed without deep analysis of Islamic law. The issue of child domestic workers can be viewed through the lens of Islamic law, which emphasizes the protection of vulnerable individuals, including children. In Islam, the rights of children are considered sacred and exploiting or harming them is considered a grave sin. The Quran and Hadith provide guidance on the treatment of children, emphasizing their care, protection, and education. Also the concept of human rights in Islam can be traced back to the inception of human life. The Prophetic period in Islam marked a significant turning point in the development of human rights concepts. The Quran and the Hadith emphasized the inherent dignity and worth of every human being, created equal and free by God. The Prophet Muhammad (S.A.W.W) taught that all humans are born free and equal, and that no one has superiority over another except by piety and good deeds. This message of equality, justice, and compassion formed the foundation of Islamic human rights discourse. Over time, Islamic scholars and jurists developed and refined these concepts, incorporating elements from pre-Islamic Arabian culture, Jewish and Christian traditions, and Greek philosophy. The resulting Islamic human rights framework emphasized the protection of life, dignity, property, and freedom of worship, as well as the promotion of social justice, equality, and compassion. This framework has continued to evolve and influence human rights discourse in Muslim-majority countries and beyond. A book, *Social Justice and Human Rights in Islam* by N.K.Singh,²² focuses on the Islamic social justice norms and the protection of human rights in Islam. The topic of this research is an emerging issue. The Islamic principles are already founded but there is a need to build the nexus of those rules and regulations with those of domestic workers rights.

²² N.K. Singh, *Social Justice and Human Rights in Islam*, (Gyan Publishing House, New Delhi), ISBN: 81-212-0592-1

In Rights of Children and Parents in Holy Quran²³, written by Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, enshrines the rights and duties *vis-à-vis* available to the children and parents in Islam. The United Nations Convention of the Rights of the Child provides the rights of the children and the international protection available to the children while the rights of the child as are enshrined in Islamic Law were available since the inception of human rights. The current research highlights this issue but as a small topic. The current research has highlighted the Islamic principles and discussed their applicability in the light of child domestic workers issue.

Child Domestic Workers: Protected workers or forgotten children? a thesis by Anna-Clara Vamborg, submitted in the Faculty of Law of Lund University.²⁴ The thesis sets out to determine whether international legislation is adequate and appropriate for the protection of children in domestic labours and how the legislation can be improved. Moreover, it researches which different approaches are advocated for regarding how to tackle the issue of child domestic labour and which are best used. The research is focusing on international legislation on domestic child labourers. The work was submitted in 2013, which was a preliminary stage of post ILO Convention 189. There is a need to work in the present scenario challenges.

Adelle Blackett in his article Regulatory Innovation on Decent Work for Domestic Workers in the Light of International Labour Organization Convention No.

²³ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", *International Journal of Pediatrics (Supplement 4)*, Vol.2, N.3-2, Serial No.8, August 2014

²⁴ Anna-Clara Vamborg, *Child Domestic Workers: Protected workers or forgotten children?, A thesis submitted in the Faculty of Law of Lund University*, 2013

189²⁵ postulates the conditions of child domestic workers in Europe, Latin America and South Africa. It highlights the history of ILO Convention 189 and the legal reforms undertaken in those discussed States. While this research will highlight the history and importance of ILO Convention 189 but will focus on Pakistan, India and Philippines jurisdictions.

Bonded Labour in the Brick Kiln Industry of Pakistan²⁶, an article by Muhammad Javaid Iqbal, highlighted only one aspect of bonded labour in brick kiln industry of Pakistan. Bonded labour is only one aspect of the informal sector workers' rights. There is much more needed to be done in this regard.

Dr. Farkhanda Zia Mansoor, in her another article, Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters²⁷ discusses the conditions of the worst forms of child labour, slavery and practices similar to slavery. It also prescribes the problem of human trafficking among child workers. It highlights the relevant provisions of international human rights instruments and the ILO Convention 182 regarding elimination of the worst forms of child labour in this regard. This is the limitation of this article. This issue needs more elaboration in the light of Convention 189.

²⁵ Adelle Blackett, "Regulatory Innovation on Domestic Work for Domestic Workers in the light of International Labour Organization Convention No. 189", *International Journal of Comparative Labour Law and Industrial Relations*, 34 No, 2 (2018), 141-148

²⁶ Muhammad Javaid Iqbal, "Bonded Labor in the Brick Kiln Industry of Pakistan", *The Lahore Journal of Economics*, 11:1, Summer 2006, 99-119

²⁷ Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

Another International Labour Organization document, Pakistan National Studies in Employment Situation²⁸ written by Iftikhar Ahmad and Nausheen Ahmad, the scantiness of Pakistan's legal system more specifically in the light of provision of rights to employees of the public sector. Yet it lacks the discussion on the issue of domestic workers.

Another research titled, Status of Labour Rights in Pakistan²⁹ written by Zeenat Hisam provides the analysis of various labour conditions in Pakistan. It also discusses the reasons for the exploitation of employees at workplace, thereby do not discuss the issue of domestic workers. Yet it focuses more on the economic aspects. The current research is purely a legal study.

The International Labour Organization's report, Islamic Republic of Pakistan Decent Work Country Programme IV is a strategic framework guiding the International Labour Organization's (ILO) activities in Pakistan from 2023 to 2027, focusing on promoting decent work opportunities, improving working conditions, and enhancing social dialogue among tripartite partners, with objectives to promote decent work, enhance social dialogue, and support sustainable development, aligning with Pakistan's national development goals and the United Nations' Sustainable Development Goals (SDGs). It is a continuation of Decent Work Country Programme III (2016 – 2020),³⁰ which was extended to 2022, had been formulated as a result of

²⁸ Iftikhar and Nausheen, "National Studies in Employment Situations and Workers Protection", (1999), ILO

²⁹ Zeenat Hisam, "Status of Labour Rights in Pakistan", *Pakistan Institute of Labour Education and Research PILER* (2015)

³⁰ International Labour Organization, Islamic Republic of Pakistan Decent Work Country Programme (2016-2020); Available at

https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 19, 2020

ILO's commitment on the Decent Work Program. The first programme was Decent Work Country Programme I (2006 – 2009) and the other one was Decent Work Country Programme II (2010 – 2015). This report highlights the development of the previous programs and proposes the agenda for the next tenure.

The Sustainable Development Goals (SDGs)³¹ provide a comprehensive framework for achieving a better future for all, with Decent Work and Economic Growth (SDG 8) playing a crucial role in promoting fair labor practices, including domestic work. Specifically, SDG 8 aims to achieve full and productive employment, decent work, and equal pay for equal work, with targets to eradicate forced labor, child labor, and modern slavery, and to promote safe and secure working environments. Domestic workers, often marginalized and excluded from labor protections, are a key focus area, with efforts to extend labor rights, social protection, and access to education and training.

In Pakistan, the issue of domestic workers has gained significant attention in recent years, with media and social media playing a crucial role in highlighting their plight. The brutal treatment of domestic workers, including physical and sexual abuse, non-payment of wages, and forced labour, has been extensively reported by local and international media outlets. An article *The Invisible Workers*³², published in *The Dawn* on June 18, 2016 has tried to highlight a few of the examples of domestic workers violation cases, which remained unaddressed by the judicial setup in Pakistan

³¹ Sustainable Development Goals (SDGs); Available at <https://sdgs.un.org/goals> last visited August 9, 2023

³² *The Invisible Workers*; Available at <https://www.dawn.com/news/1263723> last visited February 16, 2017

due to the lack of legal framework and the social pressures resulting in out-of-court settlements in a few cases.

BBC also published an article, Tayyaba abuse case shines light on Pakistan's child maids³³ in 2018, highlighting the Tayyaba abuse case exposed the dire need for legislation to protect child domestic workers, underscoring the need for legislation and enforcement to protect child domestic workers from exploitation and abuse. With a significant number of child domestic workers vulnerable to physical, emotional, and psychological abuse, it's essential to establish clear laws and policies, including minimum age requirements, safe working conditions, protection from abuse, and access to education, to eliminate child labor and ensure the safety and well-being of Pakistan's most vulnerable citizens. This article was published before the promulgation of Punjab Domestic Workers Act 2019.

The Tayyaba case³⁴ refers to a highly publicized incident in Pakistan where a 10-year-old domestic worker, Tayyaba, was brutally tortured and abused by her employers, a judge and his wife, in 2016. The case sparked widespread outrage and calls for justice. An investigation revealed that Tayyaba had been subjected to physical and emotional abuse, including being beaten, burned, and forced to work long hours without pay. The Islamabad High Court took *suo moto* notice of the case and ordered the arrest of the employers. In 2018, the court sentenced the judge's wife to a year in prison and fined her PKR 100,000 for torturing Tayyaba. The case

³³ Tayyaba abuse case shines light on Pakistan's child maids; Available at <https://www.bbc.com/news/world-asia-44397432> last visited June 6, 2019

³⁴ Raja Khurram Ali Khan V Tayyaba Bibi, 2019 YLR 98 Islamabad; See also Raja Khurram Ali Khan and 2 Others V Tayyaba Bibi and Another, PLD 2020 Supreme Court 146

highlighted the plight of child domestic workers in Pakistan and led to renewed calls for legislation to protect their rights.

Another article published in Dawn with the subject of Domestic Workers³⁵ provides a general overview of domestic workers rights issues due to non ratification of ILO Convention 189. This article does not provide legal analysis of the labour legislations only highlights the need to ratify the Convention.

The media and social media attention has prompted calls for better protection and legislation for domestic workers, including the passage of the Punjab Domestic Workers Act 2019 and Islamabad Domestic Workers Act 2022, which aims to regulate the employment of domestic workers and provide them with basic rights and protections yet these legislations are not free from lacunas, which are highlighted in this research.

Despite centuries of efforts to safeguard children's rights, the protection of minors remains a pressing global concern. Muhammad Salman and Shaukat Hussain Bhatti highlights in their article, Implicative Analysis of Child Protection Laws and U.N Convention on the rights of Child (A Case Study of Pakistan from an International perspective)³⁶ that repeated legislation aimed at ensuring child security has yielded insufficient results, and the issue persists as a dilemma worldwide. The article focuses the primary obstacles hindering the effective protection of children from deprivation, health risks, educational disparities, physical and psychological

³⁵ Domestic Workers; Available at <https://www.dawn.com/news/1824220> last visited April 6, 2024

³⁶ Muhammad Salman and Shaukat Hussain Bhatti, Implicative Analysis of Child Protection Laws and U.N Convention on the rights of Child (A Case Study of Pakistan from an International perspective), *Review of Education, Administration and Law (REAL)*, Vol. 5, (4) 2022, 665-676

abuse, sexual exploitation, and human trafficking, while taking into consideration Convention on the Rights of Child only. This research focuses on issue of child domestic workers while focusing on ILO Convention 189.

The report Enough is Enough: Child Domestic Labour by a NGO the Children Advocacy Network (CAN)³⁷ highlights the pervasive issue of child domestic labour, which affects millions of children in Pakistan. The report emphasizes that child domestic labour is a form of exploitation that denies children their fundamental rights to education, health, and protection and are often subjected to physical, emotional, and sexual abuse, who are frequently forced to work long hours in hazardous conditions. The document prescribes not more than the agenda of the NGO and lacks legal analysis of the relevant laws. While this research undertakes a legal analysis of legislations related to child domestic workers in Pakistan, examining the existing laws and regulations governing this issue, with a focus on identifying gaps, inconsistencies, and areas for improvement in the legal framework protecting child domestic workers in Pakistan.

Another report issued by a NGO, Women in Struggle for Empowerment (WISE), Domestic Workers Legal Protection Mechanisms in Pakistan³⁸, provides that domestic workers in Pakistan, particularly women, face significant challenges in accessing legal protection mechanisms. Existing laws, such as the Punjab Domestic

³⁷ Children Advocacy Network (CAN) Pakistan, Enough is Enough: Child Domestic Labour; Available at https://www.itacec.org/document/2020/7/Brochure_Child_Domestic_Labour.pdf last visited March 8, 2023

³⁸ Women in Struggle for Empowerment (WISE), Domestic Workers Legal Protection Mechanisms in Pakistan; Available at <https://www.wise.pk/webfiles/1/0/7/Domestic%20Workers%20-Legal%20Protection%20Mechanisms%20in%20Pakistan.pdf> last visited August 18, 2022

Workers Act 2019 and the Islamabad Domestic Workers Act 2022, provide some protections, including registration, minimum wages, and protection from harassment and abuse. However, gaps remain, including limited coverage, lack of implementation, and social and cultural barriers that prevent women domestic workers from accessing justice. The report highlights issues pertaining to women domestic workers specifically whereas this research focuses on child domestic workers issues.

An article written by Radhika Kapur titled Bonded Labour in India³⁹ highlights the issues of bonded labour in India and the legislations dealing with the issue of bonded labour. Moreover, the circumstances behind the existence and increase in bonded labour, at the end the recommendations to resolve the issue are highlighted. This article deals with the situation analysis of India, while the current research is a comparative study on child domestic workers of Pakistan, India and Philippines in which bonded labour is discussed as a small topic.

In India, in order to sensitize the masses regarding the issue of domestic labour rights, brochures prepared by Employment and Social Protection Task Team named Work Like Any Other, Work Like No Other highlights the issues that domestic workers face in India

In Philippines, The Domestic Workers Act is a significant step towards protecting the rights and welfare of domestic workers. The Philippines Domestic Workers Act (Republic Act No. 10361), also known as *Batas Kasambahay*, aims to

³⁹ Radhika Kapur, "Bonded Labour in India"; Available at [https://www.researchgate.net/publication/323770111 Bonded Labour in India](https://www.researchgate.net/publication/323770111_Bonded_Labour_in_India) last visited January 29, 2020

protect the welfare and rights of domestic workers. The law sets a minimum age of 15 for domestic work, requires registration of domestic workers, and mandates a minimum wage. It also provides for social benefits, and guarantees rest days, vacation leaves, and sick leaves. The law prohibits physical, emotional, or psychological abuse and establishes a grievance mechanism to resolve disputes, promoting fair treatment and protection for domestic workers in the Philippines. This law is known as the *Magna Carta* for domestic workers.

As far as present thesis dissertations in Pakistan are concerned existing research in Pakistan has primarily focused on the experiences and challenges faced by women domestic workers. One among the thesis' of Ayesha Shahid has already been quoted above, while others include the thesis done at MS level, such as Problems of Female Domestic Workers in twin-cities Rawalpindi and Islamabad by Asma Khokhar, International Islamic University Islamabad; Issues faced by female migrant domestic workers in twin cities by Ayesha Mumtaz, Quaid e Azam University Islamabad; The problems of female domestic workers by Rasheeda Bano, Quaid e Azam University Islamabad; and a BS level research project Problems of female domestic workers a case study of Islamabad by Rizwan Rauf and Huma Butt, International Islamic University Islamabad. This is a crucial area of study as women domestic workers are often vulnerable to exploitation and abuse. However, the previous researches highlight a potential research gap focusing on the need for more studies on other aspects of domestic work, such as child domestic labour, male domestic workers, or the experiences of domestic workers from diverse ethnic or regional backgrounds. This research focuses on child domestic workers by examining the legal framework surrounding child domestic workers, which is a crucial aspect of

protecting their rights and preventing exploitation. This research has identified gaps and weaknesses in existing laws and policies and informed advocacy efforts to strengthen legal protections for child domestic workers in Pakistan.

Research Gaps Identified

The research gaps in existing research on child domestic workers include the lack of nuanced and contextualized understanding of the complex, social, cultural and economic factors that contribute to the persistence of child domestic labour. Much of the existing research focuses on the legal and policy frameworks governing child labour, but neglects to explore the intricate web of relationships, norms, and practices that shape the experiences of child domestic workers.

Another important research gap is the lack of statistical data on the prevalence and experiences of child domestic workers, inadequate analysis of the impact of laws on child domestic workers and insufficient attention to the specific vulnerabilities and needs of child domestic workers, such as education, health, and protection from abuse. Many studies rely on secondary data or interviews with employers, policymakers, or other stakeholders, but fail to capture the lived experiences and agency of child domestic workers. This omission perpetuates the marginalization and silencing of child domestic workers and undermines efforts to develop effective and inclusive solutions to address their exploitation.

A further gap in the literature is the limited attention paid to the intersectional dimensions of child domestic labour including the ways in which gender, class,

ethnicity and other forms of social differences shape the experiences of child domestic workers.

Additionally, gaps in legislations include the lack of clear definitions and protections for child domestic workers, inadequate mechanisms for reporting and addressing child labour and abuse and insufficient penalties for employers who exploit child domestic workers.

Contribution to Knowledge

The legal perspective on child domestic workers in Pakistan presents a significant academic niche, warranting in-depth research and analysis. Despite the substantial number of children engaged in domestic labour in Pakistan, the existing body of research inadequately addresses the legal dimensions of this complex issue. Pakistan's existing legal framework requires critical examination to assess its efficacy in protecting child domestic workers from exploitation, abuse and hazardous working conditions. Moreover, the implementation and enforcement of these laws remain a significant challenge, highlighting the need for research that evaluates the effectiveness of legal mechanisms and identifies areas for improvement. Additionally, the intersectionality of child domestic labour with other issues such as poverty, education and human rights necessitates a comprehensive legal analysis. This research can be beneficial in informing policy reforms, contributing to the development of more effective legal protections, and ultimately enhancing the protection and promotion of the rights and well-being of child domestic workers in Pakistan. Specifically, it can help prevent and criminalize child trafficking, forced labour, and abuse, while promoting safe working conditions, fair labour practices, and access to

education and healthcare for these vulnerable children. For this purpose, this research attempts to fill the gap in existing literature by providing detailed analysis of existing laws, policies and judicial decisions related to child domestic workers. By examining the legal framework and its implementation, this research has not only identified gaps and weaknesses but also informing evidence-based solutions to address the complex issues surrounding child domestic labour. This research can also support efforts to align Pakistan's laws and policies with international standards and commitments under conventions like the UN Convention on the Rights of the Child and the ILO Conventions on child labour and more specifically ILO Convention 189. By exploring the legal perspective on child domestic workers, this research can also contribute to a better understanding of the issue, inform advocacy efforts and support the development of targeted interventions to protect and empower child domestic workers, ultimately contributing to a more just and equitable society for all children in Pakistan.

Since there are no official statistics available on the number of workers working in the informal sector, neither there are any in-depth research studies carried out on the subject of children in domestic service in Pakistan, this research gives a deep insight into the perspective on the legal framework and the treatment of child domestic workers. Moreover, the case studies related to child domestic workers have provided an in-depth examination of the failures and successes of the legal framework.

This research is providing new insights into the complexities of child domestic workers with special context to Pakistan highlighting the socio-cultural, socio-legal, economic and policy factors that contribute to this phenomenon.

As far as originality is concerned, the existing research in Pakistan has primarily focused on the challenges faced by child domestic workers. This research focuses on child domestic workers by examining the legal framework surrounding child domestic workers, which is a crucial aspect of protecting their rights and preventing exploitation. This research has identified gaps and weaknesses in existing laws and policies and informed advocacy efforts to strengthen legal protections for child domestic workers in Pakistan.

Moreover, this research is providing evidence-based recommendations for policymakers, practitioners and stakeholders to address child domestic labour and support affected children. This research will also help to develop strategies for preventing child domestic labour, protecting child domestic workers and supporting their rehabilitation and reintegration.

Research Questions

1. What is the difference between formal sector and informal sector work, with special context to slavery, forced labour, bonded labour and domestic labour in International and Pakistani Law and what kind of tasks can be assigned according to legal age, gender and ability for choosing occupation or the work? (This issue has been addressed in Chapter 1)

2. How the hidden nature of the work make the situation of domestic workers more vulnerable and what are the main causes of violations of the labour standards including hazardous work conditions and pay gap of the domestic workers? (This issue has been addressed in Chapter 1)
3. How the normative arguments of principles of natural, social and distributive justice and non-discrimination extended for formulating policy for domestic workers? How far the concept of vicarious liability is inbuilt while addressing the issue of domestic workers' rights? (This issue has been addressed in Chapter 2)
4. How the rights of domestic workers serving in the informal sector can be better protected and implemented under international law, international human rights and international labour standards? (This issue has been addressed in Chapter 3)
5. Do Pakistani laws provide appropriate and adequate protection to the domestic workers serving in the informal sector and what could be effective mechanisms or tools which can potentially reduce such violations? (This issue has been addressed in Chapters 4 and 5)

Methodology of Research

To provide a comprehensive understanding of the adequacy of the legal framework and the protection of human rights of child domestic workers in Pakistan, socio-legal research is a suitable approach. Socio-legal research on child domestic workers involves a multidisciplinary approach, combining sociological and legal perspectives to study the complex issues surrounding child domestic labour. This research examines the social, economic and cultural contexts in which child domestic workers

live and work as well as the legal frameworks and policies that govern their lives. This type of research involves a detailed analysis of existing laws, policies and judicial decisions related to child domestic workers.

This thesis focuses on exploring the lived experiences of child domestic workers in Pakistan through a critical analysis of existing literature, legal frameworks and secondary data analysis rather than relying on primary data collection through interviews. By leveraging these secondary sources, the research builds a strong theoretical framework that contextualizes the experiences of child domestic workers within the broader socio-economic and legal landscape of Pakistan. The study also critically analyzes the legal and policy gaps that contribute to the vulnerability of child domestic workers by examining the disconnection between laws and their implementation and identifying areas where policy reforms can help to better protect these children. Through a rigorous interpretation of secondary data including reports from international organizations, government agencies and non-governmental organizations, the research demonstrates a clear understanding of the lived experiences of child domestic workers, shedding light on their working conditions, challenges and coping mechanisms. By synthesizing insights from various sources, the thesis also provides a nuanced and evidence-based portrayal of the realities faced by child domestic workers in Pakistan highlighting the need for more effective legal protections and policy interventions to safeguard their rights and well-being. This approach has not only contributed to a deeper understanding of the issue but also informed advocacy efforts and policy reforms aimed at preventing child domestic labour and promoting the rights of children in Pakistan.

The ILO prioritizes eliminating child labour including child domestic work as a violation of fundamental human rights. While the ILO does not advocate for a complete ban on all domestic work by minors, it strongly condemns hazardous forms of child domestic labour and seeks to protect young domestic workers from abuse. The ILO Convention No. 189 provides guidance for decent work for domestic workers, while Convention No. 182 targets the worst forms of child labour, which can include hazardous domestic work and exploitation.

Therefore, the research method adopted for conducting this research is qualitative method for the situational analysis to give deep insight into the perspectives on the legal framework and their treatment of child domestic workers. Moreover, the case studies related to child domestic workers has provided an in-depth examination of the failures and successes of the legal framework.

This research deploys descriptive, explanatory, analytical, critical and comparative research methodologies to examine, critique and evaluate the international human rights instruments, International Labour Organization instruments and national legislations on protection of domestic workers as a whole and specifically child domestic workers by comparing it with legislations and regulations formulated by India and Philippines. By examining these instruments and standards, this research provides the extent to which Pakistan's legal framework complies with international human rights norms and standards.

This study is descriptive as detailed analysis of existing laws, policies, and judicial decisions related to informal sector workers and formal sector workers are

discussed with a special case study of child domestic workers, which can be used to develop recommendations by explaining the relationships between the legal framework, the protection of human rights, and the cases of abuse and exploitation of child domestic workers.

It is also analytical research as it is based on analysis of statutes and laws, theories, national and international instruments and scholarly work related to child domestic workers. By examining these laws, one can identify gaps and inconsistencies in the legal framework and assess their impact on the protection of child domestic workers.

It is also comparative case study in various jurisdictions including Pakistan, India and Philippines and its relevancy with the social justice theory. This can provide insights into the best practices and innovative approaches to protecting the rights of child domestic workers. By comparing Pakistan's legal framework with that of India and Philippines, this research has recommended incorporating those practices and also methods for the better implementation. This strategy provided insights into best practices and innovative approaches to protect the rights of child domestic workers and identified the areas for reform and improvement.

A theoretical analysis was also undertaken to conduct this research. For this purpose, the theories and principles of natural justice, social justice, universal justice, non-discrimination, master-servant relationships and Islamic law were applied and compared within the context of domestic workers' rights. This theoretical framework

provided a critical lens which helped to examine the complexities of domestic workers' rights and identify areas for improvement.

The methodology used in the research is a combination of primary and secondary sources to gather the data for the contextualized understanding of the legal position of child domestic workers. The methodology is based on primary sources, for getting in-depth understanding of nature and the concept of the informal sector workers rights with special focus on domestic worker's rights, with a specific focus on child domestic workers rights. The research discusses the relevant provisions of international documents including CRC, ILO Conventions most specifically ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189) and ILO Domestic Workers Recommendation (No. 210), 2011.

Besides that, secondary sources including scholarly works, books, articles, magazines, newspaper articles, unpublished documents of governments and electronic sources including web search are frequently used. By analyzing these sources, the research aims to provide a comprehensive understanding of the adequacy of the legal framework and the protection of human rights of child domestic workers in Pakistan.

Limitations of Research

It is pertinent to highlight the limitations of the research as well. While it's true that gathering precise statistics on workers in Pakistan's informal sector and children in domestic service can be challenging due to its informal nature, research studies and subject matter related to households' privacy. However, the scarcity of official data and in-depth studies on the specific topic of children in domestic service in Pakistan

and reluctance of families (of both employer and domestic employee) to share information often due to social stigma or fear of authorities as well as cultural norms that restrict access to such information, thereby making it difficult to conduct comprehensive interviews and gather accurate data.

Apart from the socio-legal issues and mostly highlighted cases of exploitation of domestic workers emerged from upper class of society. The major limitation faced by Pakistan is that it has not ratified the International Labour Organization (ILO) Convention 189 on Decent Work for Domestic Workers so far. Moreover, Pakistan has even not developed a robust national policy or strategy to address the specific challenges and vulnerabilities faced by domestic workers, which are necessary for implementing the ILO Convention's principles. The country is hindered by policy gaps and fragmentation particularly across provinces, which creates inconsistencies in laws and regulations. Furthermore, the limited focus on community engagement in policy development for domestic work exacerbates the issue.

The dynamics of a capitalist society have contributed to domestic work by fostering exploitation of labour, commodifying care work and creating a demand for cheap labour often through informal labour arrangements that leave workers without protections or rights. This system exacerbates existing social and economic inequalities making domestic workers particularly women and children more vulnerable to exploitation and mistreatment highlighting the need for better protections and regulations to ensure fair treatment and dignity for these workers. Compounding these challenges are the ongoing struggles with child labour and the informal sector, which make it even more difficult to align domestic worker rights

with international standards. As a result, Pakistan operates in a complex environment where implementing the Convention's principles and ensuring domestic workers' rights are protected poses a substantial undertaking. Pakistan has not allocated sufficient resources or established dedicated institutions to support the protection and promotion of domestic workers' rights.

In addition, since there are only two legislations in Pakistan dealing with domestic workers' rights, one is applicable in Islamabad Capital Territory and the other one is applicable in the province of Punjab and cases of violations of domestic workers mostly go unreported. Pakistan has so far not enacted legislations in Sindh, Khyber Pakhtunkhwa and Balochistan to regulate domestic work and protect domestic workers' rights. This issue has also not attracted much attention of legislators and authors in Pakistan. So the deployed research methodology is important and necessary to achieve the main objectives of this research.

Organization/Division of the Study

Chapter 1 prescribes the unrecognized, unorganized and unrewarding nature of work of the workers employed in informal sector, among them, the most vulnerable being domestic workers, the International community highlighted the importance and contributions of domestic workers across the world and thereby concluded the Decent Work for Domestic Workers Convention 189 considering the historical background of workforce, the then prevailing employment trends, and defined the domestic work as well as domestic workers accordingly. Unfortunately, Pakistan is still not a signatory to it yet its principles were adopted in Pakistani legislation, yet Pakistan is signatory

to Human Rights treaties and other ILO labour standards, which serve as a *grund norm* and considered as a part of customary international law.

Chapter 2 elucidates the theoretical framework behind the adaptation of legislations for the domestic workers, which includes the principles of natural justice, social justice, distributive justice, non-discrimination and principle of vicarious liability.

Chapter 3 provides the legal framework for the protection of domestic workers. This legal framework is backed by multiple international documents including ILO Conventions. In Pakistan, the rights are protected under Constitution of Pakistan 1973, thereafter certain labour laws are formulated.

Chapter 4 focuses that in compliance to the human rights documents, international agreements and ILO commitments, there are national legislations enforced for protection of workers in Pakistan but those limited parameters mostly concerning with formal sector, some legislations also regulate informal sector workers but domestic workers are left unprotected. Pakistan has only one provincial legislation and another legislation applicable in only Islamabad on Domestic Workers' rights, which are still not applicable in its true letter and spirit.

Chapter 5 prescribes that Pakistan lacks organized system for decent work, as a result of which numerous violations including discrimination, inequality, exploitation, forced labour, child labour, are rampant. There are many legislations dealing with the labour issues in Pakistan yet the failure to meet the challenges of

informal sector most specifically domestic workers, has made the situation more complex and exposed them to vulnerability, as a result of which many exploitation cases are now being reported, though the ratio of unreported cases is much higher.

In the end, Chapter 6 mentions the conclusions on the basis of which the proposed recommendations of the research work.

Chapter 1

DOMESTIC WORKERS

Introduction

This Chapter corresponds to the first and second research questions mentioned earlier. This Chapter defines the concept of both informal and formal sector workers' rights narrowing down the scope to domestic workers' rights, with a specific focus on child domestic workers rights. It also enunciates the concepts of slavery, bonded labour and domestic labour in International and Pakistani Law. Taking into consideration the unrecognized, unorganized and unrewarding nature of work of the workers employed in informal sector, among them, the most vulnerable being domestic workers. The International community highlighted the importance and contributions of domestic workers across the world and thereby concluded the Decent Work for Domestic Workers Convention 189 considering the historical background of workforce, the then prevailing employment trends, and defined the domestic work as well as domestic workers accordingly. Unfortunately, Pakistan is still not a signatory to ILO Convention 189 yet two legislations, Punjab Domestic Workers Act 2019 and Islamabad Capital Territory Domestic Workers Act 2022 have been promulgated in Pakistan so far. Moreover, Pakistan is a signatory to various Human Rights' treaties and conventions as well as several ILO Conventions, which serve as a *grund norm* and considered as a part of customary international law in case of protection of child domestic workers.

1.1 Informal Sector Employment

A stark dichotomy exists between the formal sector and the informal sector, while workers in the formal sector benefit from a tripartite framework of recognition, comprising international and national legislative provisions, informal sector workers operate in a legislative and regulatory gray area, thereby creating a formidable challenge. The unacknowledged status of informal sector workers, most importantly domestic workers has not only made their status vulnerable but certain social, economic and at times legal problems trigger due to exploitation of such workers⁴⁰. Such workers, though human beings and have inherited human rights, are denied of their human rights at workplace. The huge difference of ages, wages, education, health and safety standards of both formal and informal sectors is a reflection of poor labour policy of the States. Pakistan Labour Force Survey conducted by Pakistan Bureau of Statistics rightly points out that informal employment is the result of hiring workers without specified terms and conditions in legal employment.⁴¹ Nadia Tahir and Pervez Tahir have identified dual status of the informal sector employment in their article, “Informal Employment in Pakistan: Survivalist or Structuralist?” According to them, one aspect is to get self employed oneself in an informal employment in unregistered or small scale jobs; the other aspect is when one goes for

⁴⁰ Informal Economy; Available at <https://www.ilo.org/global/topics/dw4sd/themes/informal-economy/lang--en/index.htm> last visited June 22, 2022

⁴¹ Pakistan Labour Force Survey (LFS), 1999-2003, *LFS*, (Islamabad: Pakistan Bureau of Statistics); See also Pakistan Bureau of Statistics, Pakistan Employment Trends Report 2013; Available at

<http://www.pbs.gov.pk/content/pakistan-employment-trends-2013> last visited July 03, 2018, The Islamic Republic of Pakistan Decent Work Country Programme (2016-2020); Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 27, 2020

informal wage employment in an informal sector without securing their rights and liabilities through formal contracts, such as domestic workers.⁴²

The State Bank of Pakistan has highlighted that the informal sector employment is increasing in Pakistan due to increase in poverty, economic instability, inflation, lack of employment opportunities and other social and economic drawbacks. While the employment in formal sector's development is stagnant, the informal sector continues to absorb the growing workforce, often under precarious conditions.⁴³ It is easy to hire an unskilled worker with lower wages than to spend more wages on skilled workers' training and wages.⁴⁴ According to Pakistan Labour Force Survey, 67% employment is generated in informal sectors of urban areas among them 91% are unskilled workers, out of which 80% are specially women and children.⁴⁵ According to the analysis of Pakistan's Decent Work Country Programme III, among every ten persons in Pakistan, only four persons enjoy decent work facilities while six persons are at the risk of vulnerability.⁴⁶ While Pakistan's Decent Work Country Programme IV aims to promote a more just, equitable, and inclusive work culture in Pakistan.⁴⁷

⁴² Nadia Tahir and Pervez Tahir, "Informal Employment in Pakistan: Survivalist or Structuralist?", *Pakistan Journal of Implied Economics*, (Special Issue 2018), 493-517, 493

⁴³ State Bank of Pakistan, "The State of Pakistan's Economy: A cross National Analysis of the Informal Economy". *SBP*, (Karachi: Second Quarterly Report, 2012-13), 7

⁴⁴ Pakistan Labour Force Survey (LFS), 1999-2003, *LFS*, (Islamabad: Pakistan Bureau of Statistics); See also Nadia Tahir and Pervez Tahir, "Informal Employment in Pakistan: Survivalist or Structuralist?", *Pakistan Journal of Implied Economics*, (Special Issue 2018), 493-517

⁴⁵ Pakistan Labour Force Survey (LFS), 1999-2003, *LFS*, (Islamabad: Pakistan Bureau of Statistics); See also Mahmood Ahmad Bodla and Talat Afza, "Status and Prospects of the Informal Sector of Pakistan", *Pakistan Economic and Social Review*, Volume XXXV:No. 2 (Winter 1997), 153-182

⁴⁶ The Islamic Republic of Pakistan Decent Work Country Programme (2016-2020) ; Available at

https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 27, 2020

⁴⁷ Decent Work Country Programme for Pakistan (2023-27) (DWCP IV); Available at <https://www.ilo.org/publications/decent-work-country-programme-pakistan-2023%E2%80%9327-dwcp-iv> last visited January 27, 2023

1.1.1 Worker and Workman

Employees are categorized differently according to the national requirement, nature of employment contracts, job specifications, multifarious organizations, and the like. Their rights are governed by a set of human rights' regulations called Workers' Rights or Labour Rights.⁴⁸ Among the employment categories, “workers” is a specialized category, which falls under vulnerable class, therefore, special requirements of protection of their rights is required. The two terms, ‘worker’ and ‘workman’, which are generally used alternatively, are defined differently in different legislations in Pakistan. Section 2(xxxiii) of the Industrial Relations Act 2012, enshrines that a worker is a person in an establishment or organization, employed either directly or through a contractor under expressed or implied employment terms excluding those who fall under the category of employer or who is holding managerial or administrative position, for the payment or remuneration for services rendered.⁴⁹

Factories Act 1934 defines the term “worker” in a different manner. Since the legislation deals with factories, which falls under the category of formal sector employment, therefore, it provides that a worker is one who can either be hired for or not for remuneration, directly or indirectly by third party, including an agency, for cleaning machinery or a manufacturing area and any other task related to the manufacturing process. As per Factories Act, worker should be one who works or assists in manufacturing procedure and excludes all those workers who have no concern with manufacturing process.⁵⁰

⁴⁸ International Labour Organization, International Labour Organization (ILO) Resolutions Concerning International Classification of Status in Employment Adopted by the 15th International Conference of Labour Statisticians, January 1993, para 8; Available at <https://stats.oecd.org/glossary/detail.asp?ID=766> last visited July 28, 2019

⁴⁹ Section 2 (xxxiii), The Industrial Relations Act, 2012 (ACT NO. X of 2012)

⁵⁰ Section 2 (h), The Factories Act, 1934 (XXV of 1934)

To sum up, a worker is one who is bound by contractual terms provided by the employer and has no decisive power in any respect. The definition provided by Factories Act is tricky in a way that it provides that a worker can be hired without giving remuneration for the services rendered. This can result in exploitation and is also against the rules of Natural Justice.

On the other hand, the term “workman” is defined in the Workmen Compensation Act 1923 as an employee, who is neither hired for a casual employment nor hired to carry out trade or business of his employer. It also provides that a railway servant, as provided in Section 3 of the Railways Act 1890, is also a workman, provided that he is not recruited on permanent expressed or implied terms in any administrative, district or sub divisional branch of Railway⁵¹. Moreover, the employees of Special Forces (navy, military or air force) are excluded from its ambit.⁵²

While discussing the status of workmen, the Supreme Court of Pakistan decided in a case that the factor to be determined while deciding the status of a workman is not his designation or post in fact the nature of the job or work assigned to him will decide whether he is a workman or not.⁵³

Employment is a relationship between an employer and an employee, which is governed by contractual terms, either written or implied.⁵⁴ According to The Standing

⁵¹ Railways Act 1890, Schedule II

⁵² The Workmen’s Compensation Act, 1923 (VIII of 1923), Section 2 (n)

⁵³ Mahmood Hussain Larik v. Muslim Commercial Bank Ltd, 2009 SCMR 857, 878

⁵⁴ Employment Agreement (Pakistan); Available at

<https://www.documatica-forms.com/pakistan/employment-agreement/more-info.php>

visited July 12, 2019

last

Orders Ordinance 1968, it is mandatory that all the terms, conditions and requirements of employment should be disclosed by the employer to his employees before execution of the contract. In the essence, the employment contract should contain mutually agreed terms and conditions between employer and employee.⁵⁵ The employment contracts may cover permanent, regular and temporary employments, yet there are some exceptions whereby the rights of the employees are not properly communicated or protected, such as self-employed workers, workers relying on piece rate wages (most importantly dependent workers and domestic workers) and workers in a trilateral kind of relationships.⁵⁶

An International Labour Organization document, Pakistan National Studies in Employment Situation⁵⁷ written by Iftikhar Ahmad and Nausheen Ahmad, highlights the scantiness of Pakistan's legal system more specifically in the light of provision of rights to employees of the public sector. They have prescribed the following division of workmen:

⁵⁵ Umar Farooq, "How to Hire Employees in Pakistan", (2018); Available at <https://content.pk/pakistan/how-to-hire-employees-in-pakistan/> last visited July 12, 2019; See also Iftikhar Ahmad and Nausheen Ahmad, "National Studies in Employment Situations and Workers Protection", ILO; Available at

http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205373 last visited April 23, 2018

⁵⁶ Iftikhar Ahmad and Nausheen Ahmad, "National Studies in Employment Situations and Workers Protection", ILO; Available at

http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205373 last visited April 23, 2018; See also Umar Farooq, "How to Hire Employees in Pakistan", (2018) ; Available at <https://content.pk/pakistan/how-to-hire-employees-in-pakistan/> last visited July 12, 2019

⁵⁷ Iftikhar and Nausheen, "National Studies in Employment Situations and Workers Protection", (1999), ILO; Available at

http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205373 last visited April 23, 2018

1.1.1.1. Self Employed/Sole Proprietorship: As the name suggests, it is a situation whereby a person employs himself in any trade or business and does not work for any employer for wages or salary, and is solely responsible for all profits, losses and risks of the business.⁵⁸

1.1.1.2. Piece-rate Work: Piece-rate work resembles self employment but technically it is different. Piece-rate workers, as the name suggests, are paid according to the amount of work produced rather than the efforts and time spent at workplace. It is also called Payment by Results System⁵⁹ or Own-account Workers.⁶⁰ This category constitutes the most vulnerable class of workers working in an informal economy.⁶¹ Such workers include a considerable amount of female workers, freelancers and independent contractors, whereby they are hired by the employer usually on fewer amounts of wages, and even no pay if no work is done. Therefore, the minimum wage protection is usually disregarded in such cases.⁶²

⁵⁸ Iftikhar Ahmad and Nausheen Ahmad, “National Studies in Employment Situations and Workers Protection”, ILO; Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205373 last visited April 23, 2018; See also Umar Farooq, “How to Hire Employees in Pakistan”, (2018); Available at <https://content.pk/pakistan/how-to-hire-employees-in-pakistan/> last visited July 12, 2019

⁵⁹ Piece-Rate Pay; Available at <https://www.tutor2u.net/business/reference/piece-rate-pay> last visited July 20, 2019

⁶⁰ Ahmad, Nigar, “Women Home Based piece-rate workers: A Study,” in Ghayur, Sabur, ed., *The Informal Sector of Pakistan: Problem and Prospects*, (Islamabad: Friedrich Ebert Stiftung, 1993) 63-65

⁶¹ Piece-rate pay; Available at https://www.ilo.org/global/topics/wages/minimum-wages/definition/WCMS_439067/lang--en/index.htm last visited July 20, 2019

⁶² Ahmad, Nigar, “Women Home Based piece-rate workers: A Study,” in Ghayur, Sabur, ed., *The Informal Sector of Pakistan: Problem and Prospects*, (Islamabad: Friedrich Ebert Stiftung, 1993) 63-65

1.1.1.3. Triangular Employment Situation/Home-based Workers: Triangular Employment situation existed in between 1950s and 1970s. But nowadays these activities are rampant and are popularly known as Home-based Workers. It is a tri-partite relationship consisting of the employer who acts as an agent, the employee, and the controlling party who controls the employee. The employees are hired by third parties who act as intermediaries or contractors. This kind of relationship existed in labour industry dealing with contract labour, irregular labour and temporary labour.⁶³

1.2 Classification of Workmen

According to the Schedule of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, the categories of workmen are mentioned below:⁶⁴

⁶³ Iftikhar Ahmad and Nausheen Ahmad, “National Studies in Employment Situations and Workers Protection”, ILO; Available at http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205373 last visited April 23, 2018

⁶⁴ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (VI of 1968), Section 2(g)

1.2.1 Permanent Workman: As the name suggests, a permanent worker is hired for a permanent work, meaning thereby the employee is hired for at least nine months' time period and with three months probation period. The important thing is that all kinds of breaks due to illness, emergency, casual leave, lockout or strike, and shutdown of the organization due to some reason etc are inclusive of this probation phase. The category of permanent workmen also includes a *badli*, if he is appointed for a continuous period of three months or more.⁶⁵

1.2.2 Probationer: Probationer is one who works on probation or trial basis before becoming permanent. It acts as a training period for such employee.⁶⁶ When workmen are hired against a permanent post, they have to pass a trial period of probation for three months. Moreover, whenever the employee is promoted to the next cadre, once again he has to go through the probationary period.⁶⁷

1.2.3 Badlis: These workmen act as replacement to the permanent workers who work in their place in their absence. They may be hired as permanent or temporary basis.⁶⁸

⁶⁵ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (VI of 1968), Section 1(b)

⁶⁶ Probationer; Available at <https://www.lexico.com/definition/probationer> last visited July 20, 2019

⁶⁷ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (VI of 1968), Section 1(c)

⁶⁸ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (VI of 1968), Section 1(d)

1.2.4 Temporary Workman: As the name denotes, a temporary workman is hired for a task or job of temporary nature. This temporary task is likely to get finished in not more than nine months.⁶⁹

1.2.5 Apprentices: Apprentices are those workmen who are under training under a proper mechanism of apprenticeship offered by any organization.⁷⁰ They are regulated by Apprenticeship Ordinance 1962.⁷¹

1.2.6 Contract Worker: When a workman is hired on contractual basis and the terms, conditions and requirements of his employment are not regulated by any law but by virtue of the contract, which would form the basis of such contractual relationship, he is known as contract employee. Generally piece-rate workers fall under this category.⁷²

1.3 Domestic Work

Prior to delving into the specifics of domestic workers, it is essential to establish a foundational understanding of the scope of tasks to be performed by the domestic workers. The task of delineating the job responsibilities of domestic workers is, as previously stated, a complicated matter. Due to diversity and undefined nature of tasks of the domestic workers, the regulation of domestic workers is a challenge!

1(e) ⁶⁹ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, Section

⁷⁰ The Apprenticeship Ordinance, 1962 (LVI OF 1962), Section 2(a)

1(f) ⁷¹ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, Section

1(g) ⁷² The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, Section

Domestic Work or household chores are generally not considered as an activity or task, which someone exerts or uses physical or mental strength to do some function, due to which the nature or intensity or the number of tasks to be done remain unrecognized. The multitasking nature of domestic work includes a lot of household works, which can neither be counted nor be determined by virtue of time and intensity. From washing and cleaning to chopping and cooking, from wiping and arranging the house to folding and ironing clothes, from gardening to baby-sitting, from guarding the house, to washing cars and driving and the list goes on. There are so many tiny tasks, which are unnoticed. It is generally presumed that the domestic work is the easiest and is a protected work to be performed under the shelter and without going through difficult working conditions. Unfortunately, the reality is much bitter and an eye-opener. Most of the work is hidden, undervalued, unpaid, unregulated and remains unaccountable.

As the domestic work cannot be specifically defined and acknowledged, therefore, it falls under the ambit of informal work. It is conducted in atomized private workplaces also includes forced labour particularly forced child labour, human trafficking and even slavery. Domestic workers either stay at the premises of their workplace, called live-in workers, or visits the workplace daily, called live-out workers. Similarly, they may be hired for full-time basis or part-time basis. They may be hired by a single employer or multiple employers. They may be assigned different tasks by every employer. Domestic workers usually work as maids, housekeepers, gardeners, guards, cleaners, sweepers, cooks, baby-sitters etc.⁷³

⁷³ The Islamic Republic of Pakistan Decent Work Country Programme (2016-2020) ; Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 27, 2020

Domestic work, according to Article 1 of the ILO Convention Concerning Decent Work for Domestic Workers (No. 189), refers to works performed within the premises of the workplace or works performed for the employer, while the person who is occupied or employed to do such domestic work refers to a domestic worker.⁷⁴ This definition fails to delineate the specific tasks encompassed within the rubric of domestic work, instead adopting a more general classification based on the work's relationship to household matters, notably highlighting the egregious practice of subjecting children to excessive domestic labour.⁷⁵ The tasks assigned are hidden and nature of tasks to be undertaken is undefined, leaving behind the *lacunae* in the legislation and ultimately leaving the domestic workers in the vicious circle of vulnerability. There is a huge list of tasks which are done in the house and thus, remains unseen and unsung for which their compensation is not commensurate with their contributions.⁷⁶

It is pertinent to note that there is a distinction between domestic work and homework. Domestic work is regulated under ILO Concerning Decent Work for Domestic Workers (No. 189), 2011 while homework (home-based) is regulated under ILO Homework Convention (No. 177), 1996. Homework is a work carried on by the

⁷⁴ Article 1(a), ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189), 2011; See also International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011); M. Black, child domestic workers A handbook for Research and Action (September 1997), iii; and Who are Domestic Workers?; Available at

http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017

⁷⁵ International Labour Organization, Child Domestic Workers; Available at <http://www.ilo.org/public/english/standards/ipec/action/36actaga/domestic.htm> last visited July 10, 2018

⁷⁶ Crawford, Sheena and Poulsen, Birgitte, "Thematic Evaluation On IPEC Interventions: Child Domestic Workers, Draft 1", (Geneva: 12 December 2000), 8-9

person at his own home while domestic work, as is discussed above, is conducted at workplace.⁷⁷

ILO Concerning Decent Work for Domestic Workers (No. 189) is a continuation to the UN Convention on the Rights of Child, 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, and ILO Worst forms of Child Labour Convention (No. 182) 1999. Although existing international standards implicitly cover domestic workers, the need to establish explicit guidelines for decent living and working conditions necessitated the development of specific standards. The International Labour Organization's (ILO) Convention No. 189 and Recommendation No. 201 adopted in 2011 provide a framework for protecting domestic workers' rights establishing standards for fair treatment, safe working conditions and social protection.⁷⁸ ILO Convention 189 is a binding agreement on the States ratifying it. ILO Recommendation 201 provides the guidance for the Member States ratifying ILO Convention 189 to implement Decent Work policy in their state and strengthen their legal regime.⁷⁹

Yet ILO Convention 189 specifically mentions that any other protection, which is mentioned in any international instrument also protects the rights of the domestic workers, which is not mentioned in ILO Convention 189 or the protection

⁷⁷ International Labour Organization, "Hazardous Child Domestic Work", International Labour Organization: 2007); Available at <http://www.ilo.org/ipecinfo/product/viewProduct.do?productId=4044> last visited July 26, 2019; See also International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011)

⁷⁸ Communication strategy for child domestic labour; Available at https://www.itacec.org/ita_old/Communication%20Strategy/home.htm last visited June 1, 2018

⁷⁹ International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011); See also International Labour Organization, "Decent Work for Domestic Workers: Convention 189, Recommendation 201", (International Labour Organization: 2011)

provided there is higher protection than that which is provided under ILO Convention 189, the higher protection will be available to the domestic workers and enforceability of ILO Convention 189 will not bar that higher protection.⁸⁰

There is a justification for the restriction of domestic work to private households in ILO Convention 189 so as to differentiate it with the domestic workers with the International Standard Industrial Classification (ISIC). The activities, which apparently seem to be the activities of household, can also be undertaken at commercial sector at state level no matter the employer is an individual, association of persons, companies or corporations.⁸¹

While the legislations of Pakistan, Punjab Domestic Workers Act 2019⁸² and Islamabad Capital Territory Domestic Workers Act 2022⁸³ enshrine that any work that takes place within or for the household, including childcare, old-age care, sick care, or natal/post-natal care, and other related matters. It provides that any work which is undertaken by the domestic worker in a place within the premises of the employer or for the employer is a domestic work and also includes babysitting, nursing old and sick people or taking care of pregnant women or *post-partem* care and the similar domestic tasks. However, this definition may not encompass all forms of domestic work, such as gardening or maintenance work.

⁸⁰ Article 19, ILO Convention Concerning Decent Work for Domestic Workers (No. 189), 2011; See also International Labour Organization, “Decent Work for Domestic Workers: C 189 and R 201 at a Glance”, (International Labour Organization: 2011)

⁸¹ Definition of class 9500, Division 95, Activities of private households as employers of domestic staff, Revision 3.1, International Standard Industrial Classification (ISIC); Available at <http://unstats.un.org/unsd/cr/registry/regcs.asp?CI=17&Lg=1&Co=9500> last visited February 24, 2017

⁸² Punjab Domestic Workers Act 2019, Section 2(g)

⁸³ Islamabad Capital Territory Domestic Workers Act 2022, Section 2(g)

To sum up, the gaps in these definitions include Lack of clarity on scope in a way that the definitions may not clearly outline what types of works are included or excluded from the purview of domestic work. Moreover, the definitions has a limited coverage in a way that the definitions do not cover all types of domestic workers such as those working in informal settings or those employed by employment agencies. Last but not the lease, the definitions do not provide a clear distinction between domestic work and other forms of informal or care work. These gaps can lead to confusion and inconsistencies in the implementation of the laws, potentially leaving some domestic workers without adequate protection or benefits.

So it can be said that domestic work is not an occupation, rather it is an employment contract because these occupations can also be performed by the professionals or in commercial and industrial setup. The above definition states that the employer is an individual so it excludes the service providers dealing with the provision of domestic workers.

1.4 Domestic Workers

ILO Domestic Workers Convention 189 instead of defining domestic worker postulates the procedure to recognize a worker as a domestic worker. A formal employment contract should be established between the employer or their designated household representative and the domestic worker. This contract outlines the terms and conditions of employment ensuring a clear understanding of roles, responsibilities and expectations between both parties.⁸⁴ It is an extensive definition as it includes

⁸⁴ Article 1(b), ILO Convention Concerning Decent Work for Domestic Workers (No. 189), 2011; See also International Labour Organization, “Decent Work for Domestic Workers: C 189 and R 201 at a Glance”, (International Labour Organization: 2011); M. Black, child domestic workers A

live-in and live-out workers, migrant workers, and part-time workers as well. The word ‘occasionally’ has been added deliberately in the definition of domestic worker so as to include even those workers who work on daily basis or having temporary job under the domain of domestic workers.⁸⁵ But, there is a limitation of this definition of domestic worker as well, the person who irregularly or periodically performs domestic work and has not adopted domestic work as an occupation does not fall under the ambit of a domestic worker.⁸⁶

If the workload and types of work conducted by the domestic workers are observed then it can be said that there are two types of domestic workers: personal attendants and non-personal attendants. The personal attendants directly supervise children or old or sick persons while the non-personal attendants look after the household chores. It is generally observed that the non-personal attendants unconsciously perform the duties of personal attendants as well.⁸⁷

There is another aspect of domestic workers, that is, the issue of non-resident child domestic workers. These are those unprivileged children who accompany their

handbook for Research and Action (September 1997), iii; and Who are Domestic Workers? ; Available at

http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017

⁸⁵ International Labour Office (ILO), “Decent work for domestic workers”, (Report V(1), International Labour Conference, 100th Session, Geneva: 2011); See also International Labour Organization, “Decent Work for Domestic Workers: C 189 and R 201 at a Glance”, (International Labour Organization: 2011)

⁸⁶ Article 1(c), ILO Convention Concerning Decent Work for Domestic Workers (No. 189), 2011; See also International Labour Organization, “Decent Work for Domestic Workers: C 189 and R 201 at a Glance”, (International Labour Organization: 2011); M. Black, child domestic workers A handbook for Research and Action (September 1997), iii; and Who are Domestic Workers? ; Available at

http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017

⁸⁷ Domestic Workers across the World: Global and Regional Statistics and the extent of legal protection; Available at

https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf last visited December 1, 2018

parents when they go out for work. The problem gets worse in case of those areas where there are no proper day care centers for the children. Obviously in case of domestic workers, there are no day care center facilities available at the household of the employer. Given that domestic workers are predominantly women and children, a significant concern arises when female domestic workers bring their children to work with them. These children are engaged in some tasks without any remuneration at the employer's home so as to give assistance to their mother. In effect these children become an indirect extension of the workforce often exposed to labour-like conditions without formal recognition or protection. At times, these children are given a small amount of left-over food item or a very small amount of money for the work done by them. These children stay at the premises of the employer with their parent for long working hours and without assistance and even without food and water. They are more exposed to humiliation, as the social trend does not allow such children to come with their parents as it is considered as a hurdle or disturbance in the tasks performed by the parent. At times these children are not allowed to come inside the premises of employer and are required to stay outside till the time their parent works inside the premises. Most of the live-out domestic workers work in multiple places and such children have to face such humiliating attitudes by various people. These practices by the workers' parents deprive their own children from schooling and expect that their children will get some left-over food from their employer so as to reduce their expenses for food supplies to the child, which causes adversely affects on the health of the children. These children feel socially discriminated, economically exploited and exposed to physical, psychological and even sexual abuse. Later on, these children

start to indulge themselves in some kind of crime e.g. picking pockets or things from the employer's home to get away with their frustration.⁸⁸

The legislations of Pakistan, Islamabad Capital Territory Domestic Workers Act 2022⁸⁹ and Punjab Domestic Workers Act 2019⁹⁰ prescribe that any person who is employed by an employer to perform domestic work in a household is a domestic worker. These legislations enshrine that domestic worker is one who renders the services in the household of the employer. However, this definition may not adequately address the complexities of domestic work arrangements. Unlike ILO Convention 189, it does not cover the provision of employment relationship or not. It merely mentions the delivery of services.

To sum up, the gaps in these definitions include the exclusion of specific groups in a way that the definitions do not explicitly include or exclude specific groups such as live-in workers, part-time or temporary workers, migrant workers, and workers employed by third-party agencies. Moreover, there is lack of clarity on employment status in the definitions as those do not clearly establish the employment status of domestic workers ultimately leading to confusion about their rights and entitlements. Furthermore, the definitions do not provide a clear distinction between domestic workers and other types of workers such as those working as household workers, workers working in informal or care work settings. Last but not the least, the definitions do not fully account for the domestic work arrangements which can impact the vulnerability and exploitation of domestic workers.

⁸⁸ Sajjad Akhtar and Saadiya Razzaq, "Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis", *Centre For Research On Poverty Reduction And Income Distribution (CRPRID)*, June 2005

⁸⁹ Islamabad Capital Territory Domestic Workers Act 2022, Section 2(h)

⁹⁰ Punjab Domestic Workers Act 2019, Section 2(h)

In all over the world, different approaches are adopted so as to collect the statistical data related to domestic workers:⁹¹

1. Task-based approach:

This approach is generally adopted so as to identify as per the nature of occupation adopted by the domestic worker. The tasks assigned to them are classified and indentified on the basis of international standards used for classifying occupations. This is not a successful approach in cases of domestic workers as the tasks assigned are hidden and undefined in nature, therefore, the strict criteria of standardization could not be applied in their case.

2. Status-in-Employment approach

This approach is only adopted in Latin America. Yet practically this approach cannot be applied the reason being the status of employment of domestic workers is an unidentified issue, therefore, this is not a successful approach.

3. Household-roster approach

This approach is adopted in Philippines' Labour Force Survey to identify the tasks assigned to live-in domestic workers and their relationship with their employer. This approach cannot be applied in case of live-out

⁹¹ International Labour Organization, "Domestic Workers Across the World: Global and regional statistics and the extent of legal protection", 2013, ISBN: 978-92-2-125273-3

workers because they do not maintain the nature of relationship which exists between employer and live-in domestic workers.

4. Industry-based approach

This approach is best suited and practical approach towards the collection of data related to the domestic workers. It works in an organized manner and takes into consideration all the factors which identify the domestic work and the number of domestic workers working in the market setup.

Among other issues of recognition and contractual and legal protection, domestic workers are no or low-paid employees, stressful working day with no intervals or rest days during long working hours, or even no rest day in case of illness, no proper food or clothes specially in case of live-in workers, at times they don't even get time to eat food due to heavy workload, restrictions on family meet-ups and at times are exposed to physical, mental, psychological and even sexual abuse. The nature of cases of exploitation of domestic workers even differs with change of sex, race and caste.⁹²

As stated earlier, private homes are not secured place to work specially for children, who are more prone to physical, mental and sexual exploitation and even killing.⁹³ Their health and safety remains at stake all the time. Once the child domestic

⁹² Who are Domestic Workers?; Available at http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017; See also Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asia_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, child domestic workers A handbook for Research and Action (September 1997), iii

⁹³ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asia_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, child domestic workers A handbook for Research and Action (September

workers enter the premises of workplace, they are out of sight and no one can perceive their condition as their lives are in total control on their employers. These children work in exploitative circumstances and are at high risk of vulnerability. Exploitation takes place behind the walls of the workplace premises, at times even unnoticeable by the nearby community. Even if the exploitation is not of grave nature, and as the exploitation remains undisclosed due to lack of public scrutiny and social pressures, it leads to grave consequences.⁹⁴

Before ILO Convention 189, ILO advocated that a dedicated convention for domestic workers will imperative to address the unique challenges and vulnerabilities faced by this marginalized group as domestic workers cover substantial proportion among the worldwide workforce in informal employment, yet their worldwide status and dignity is still considered as most vulnerable. Their workplace is private households, employment being non-contractual in nature meaning thereby working without clear terms, conditions and requirements of employment, remains unregistered with the government authorities, thereby excluded from the scope of social security, protection and labour legislation. At that time, there were at least 67 million domestic workers worldwide among them only twenty per cent were men, the other eighty percent workers were women and children, the number kept on

1997),iii ; The Islamic Republic of Pakistan Decent Work Country Programme (2016-2020); Available at

https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 27, 2020; and Who are Domestic Workers?; Available at

http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017

⁹⁴ Communication strategy for child domestic labour; Available at

https://www.itacec.org/ita_old/Communication%20Strategy/home.htm last visited June 1, 2018

increasing rampantly due to poverty and poor economic conditions of not only developed but also developing countries.⁹⁵

Pursuant to the ILO database, among the labour workforce, 52.6 million people work as domestic workers, among them only 17% are men, women forms the major part of the domestic workers. Since there are no concrete laws for the protecting the domestic workers, they do not enjoy benefits of employment. More than one-third children were engaged as domestic workers in 2012.⁹⁶

According to the ILO Report, World Employment and Social Outlook Trends 2017, among the vulnerable forms of the employment, domestic workers are the most vulnerable as they have no job security, no contribution to social protection schemes, no freedom of association and at times no fundamental rights. There is no considerable change in their status since years most probably in Southern Asia and sub-Saharan Africa⁹⁷.

A recent ILO scoping study, Child Labour in Domestic Work in Pakistan, globally, an estimated 7.2 million children, comprising 4.4 million girls outnumbering 2.8 million boys, are trapped in domestic work. Pakistan's Child Labour Survey (1996) revealed that 3.3 million children between 5 and 14 years old were engaged in

⁹⁵ Who are Domestic Workers?; Available at http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017; See also Domestic Workers in Pakistan; Available at <http://www.paycheck.pk/main/labour-laws/domestic-workers-in-pakistan> last visited February 7, 2017

⁹⁶ Promoting Decent Work for Domestic Workers: ILO in Action; Available at http://www.ilo.org/global/topics/domestic-workers/publications/WCMS_315042/lang--en/index.htm last visited February 20, 2017

⁹⁷ International Labour Organization, World Employment and Social Outlook – Trends 2017; Available at http://www.ilo.org/global/research/global-reports/weso/2017/WCMS_540899/lang--en/index.htm last visited February 24, 2017

child labour, with around 8% being forced into domestic work. Alarming, this number has escalated to an estimated 12 million children in child labour by 2016. Despite a lack of up-to-date statistics on child labour in domestic work is unavailable at national and sub-national levels, anecdotal accounts reveal that child labour in domestic work persists nationwide, with girls being more frequently affected than boys.⁹⁸

In the light of above discussion, it can be construed that domestic workers fall under the category of most vulnerable class of informal workers. Historically, domestic workers are the oldest form of workforce in the world yet still an unprotected class of the society, among them the most vulnerable are women and children. As stated in Chapter 2, there is a relationship of Master and Servant in the domestic work relationship and not that of employer and employee. At times, the vulnerability of domestic worker shows the existence of slavery and forced labour in this relationship as well.⁹⁹

Nowadays, it has become a tradition of urban societies of both developed and developing countries to hire a domestic worker for house chores. It is considered as a high status symbol throughout the world to have domestic workers working at home.¹⁰⁰ It is an easy way to get the house chores done without putting in employer's own efforts. At times, the domestic workers, particularly women and children are

⁹⁸ International Labour Organization, *Child Labour in Domestic Work in Pakistan – A Scoping Study* (2022); Available at

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_851153.pdf last visited January 13, 2023

⁹⁹ Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010); See also P. Ragurham, *Coping Strategies of Domestic Workers: A Study of Three Settlements in Delhi Metropolitan Region*, India, (New Castle Upon Tyne, PhD thesis: 1993)

¹⁰⁰ International Labour Organization, “Domestic Workers Across the World: Global and regional statistics and the extent of legal protection”, 2013, ISBN: 978-92-2-125273-3

being transported to far away areas to work there as domestic workers, called migrant domestic workers. Most of the time, such transportation is illegal in nature, e.g., involves human trafficking of women and children particularly young girls, who are mostly subjected to sexual violence.¹⁰¹

It is a trend in rural, least developed and backwards areas of Pakistan to send their young children to far away urban areas to serve as domestic servants. The parents of those children take such steps due to economic deprivation, poverty and lack of basic necessities. It is easy for them to send their young ones to high class society of urban areas, where they get handsome remuneration, which may seem attractive to them, but the remuneration is quite less as compared to urban nomenclature. Most of the times, the deprived parents leave their adolescents for domestic work. Unfortunately, there is more demand of adolescent domestic workers in urban areas of Pakistan. The trend is that the parents leave the child at the workplace for food and shelter, take the advance salary of half year or one year, then neither contact the child nor visit the child during that time period.¹⁰²

Such children are usually not allowed to go back to their home for vacations. After the lapse of the time, the parents visit the employer's house, take money and

¹⁰¹ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asl_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, child domestic workers A handbook for Research and Action (September 1997), iii ; and Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

¹⁰² Outrage in Pakistan over abuse of child domestic workers; Available at <https://www.theguardian.com/global-development/2019/aug/13/trauma-child-domestic-workers-pakistan> last visited February 7, 2020; See also In Pakistan, addressing the root causes of child labour; Available at https://www.unicef.org/policyanalysis/pakistan_68289.html last visited May 25, 2018; See also, The reality of young domestic workers; Available at <https://www.thelancet.com/action/showPdf?pii=S2352-4642%2819%2930393-1> last visited May 25, 2018

that vicious circle continues. In some cases, good employers allow the child domestic workers to go back to their homes for vacations or to keep contact with their parents, but this is very rare. They are subjected to every kind of abuse and exploitation, being deprived of even basic necessities. As a result of this exploitation, such children are either killed by their employers, or the children commit some kind of crime in the house of employer and run away. This is a very horrific situation but unfortunately it is prevailing in Pakistan, where there is no legal protection available to the domestic workers except a limited and malfunctioning protection through legislations of Punjab and Islamabad, as the law is still not effectively enforced so far. But there are some organizations, like UNICEF, which has started the project to improve the conditions of multi-sectoral community of cotton generating areas of Pakistan, which is a deprived rural area, to provide schooling to children and vocational training to men, women and children so as to learn the means of decent earning.¹⁰³ Similarly ILO's recent project under Asia Regional Child Labour (ARC) aims to reduce children's vulnerability to child labour and protect them from exploitation.¹⁰⁴

These practices are not only exploitation and violation of fundamental rights of domestic workers but also are against the Islamic Injunctions. Islamic Law and Islamic customs and norms have always negated the class difference and have focused on the protection and equality of all classes of person in the society.¹⁰⁵ These class

¹⁰³ In Pakistan, addressing the root causes of child labour; Available at https://www.unicef.org/policyanalysis/pakistan_68289.html last visited May 25, 2018; See also, The reality of young domestic workers; Available at <https://www.thelancet.com/action/showPdf?pii=S2352-4642%2819%2930393-1> last visited May 25, 2018

¹⁰⁴ International Labour Organization, Child Labour in Domestic Work in Pakistan – A Scoping Study (2022); Available at https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_851153.pdf last visited January 13, 2023

¹⁰⁵ Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

differences and attitudes towards domestic labourers as a whole and child domestic labourers specifically are also against the principle of Islamic concept of Universal Justice (the theoretical framework has been explained in detail in Chapter 2).

1.5 Domestic Workers and Pakistani Legal Regime

As stated above, the situation regarding the protection measures for domestic workers rights is alarming in Pakistan. Pakistan has still not ratified the ILO Convention 189. It was remarked by the Honourable Supreme Court of Pakistan in Human Right Case No. 29388-K of 2013 that if Pakistan is not a signatory to Domestic Workers Convention 2011 but they do fall under the ambit of any other Convention protecting Human Rights and those can be followed as a *grund norm* for meeting the ends of justice.¹⁰⁶

A landmark step in the domain on domestic workers rights is the foundation of Domestic Workers Union laid by Pakistan Workers Federation (PWF). This Federation is the first federation on its kind in Pakistan. Pakistan Workers Federation has been registered by the Office of Registrar Trade Unions working under the Department of Labour Punjab. Pakistan Workers Federation has been registered under Punjab Industrial Relations Act (2010). Pakistan Worker's Federation has been registered on 20th December, 2014 as the result of the ILO project on Promoting Gender Equality for Decent Employment. The purpose is to give training to women domestic workers regarding implementation of worker's rights in Pakistan, give them

¹⁰⁶ Human Right Case No. 29388-K of 2013, PLD 2014 SC 305; See also Subay Khan V Secretary, Labour, Government of the Punjab, W.P. No. 48872 of 2017

trainings, improve their skills, educate them about their rights and duties, and provide a legal forum for the redressal of their grievances.¹⁰⁷

Not only wealthy upper class is hiring domestic workers but also all those who can afford a domestic worker. This is the very reason and obstacle in strict legislation on domestic workers and even compliance of child labour laws.¹⁰⁸ Moving further, after Eighteenth Amendment, labour is now a subject of concurrent list whereby both Federal and Provincial Governments can legislate on it.¹⁰⁹ The government cannot bring a uniform policy for the domestic workers. The provinces have preferences according to their own political affiliations. These problems have put the domestic workers into more vulnerable situation.

The detailed analysis of national legislations on Domestic Workers is stated in Section 4.3.5 of this research.

In recent years, some cases of violation against domestic workers were highlighted in the social media in Punjab, as a result of which, Punjab Domestic Workers Act 2019 has been made and some cases have been reported as well. On the other hand, a law was introduced for Islamabad Capital Territory in 2013, Domestic Workers (Employment Rights) Act 2013, but it lapsed and remained un-debated in the

¹⁰⁷ First Domestic Workers' Trade Union registered in Pakistan; Available at https://www.ilo.org/islamabad/info/public/pr/WCMS_338484/lang--en/index.htm last visited September 9, 2017

¹⁰⁸ Outrage in Pakistan over abuse of child domestic workers; Available at <https://www.theguardian.com/global-development/2019/aug/13/trauma-child-domestic-workers-pakistan> last visited February 7, 2020

¹⁰⁹ National Labour Law Profile: Islamic Republic of Pakistan; Available at https://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158916/lang--en/index.htm#:~:text=Under%20the%20Constitution%20labour%20is,the%20Federal%20and%20Provincial%20Governments last visited May 17, 2022

National Assembly. Later on laws were introduced simultaneously in 2016 and 2019, Domestic Workers (Employment Rights) Act 2016, and Islamabad Capital Territory Domestic Workers Act 2019, but those laws had the same fate of 2013 law. Due to surge in cases of exploitation of domestic workers in Punjab, the Honourable Lahore High Court issued an Order¹¹⁰, on the basis of which Punjab Domestic Workers Act 2019 has been promulgated so as to protect the fundamental rights of domestic workers. Later on, after promulgation of Punjab Domestic Workers Act 2019, Islamabad Capital Territory Domestic Workers Act 2022 was finally promulgated. But due to degraded and poor status of the domestic workers, complexity of litigation procedures and political influences, most of the cases remain unnoticed. Most of the domestic workers in Pakistan are from minorities who fall under deprived class of the society.

Another legislation in Pakistan, the Protection against Harassment of Women at the Workplace Act, 2010, which is a law dealing with harassment issues against women employed in any working sector. The term ‘employee’ as per this legislation now includes domestic workers as well in the domain of protection against sexual harassment.¹¹¹ Since the area of the research is child domestic workers, this law is not discussed in detail in this research.

The Constitution of Pakistan, a fundamental law of the State, does not specifically ensure the adequate protection to the legitimate interests of the workers in the informal sector in Articles 3 and 11. The failure to implement uniform labour and

¹¹⁰ Subay Khan vs. Secretary Labour Government of Punjab and Others, W.P. No. 48872 of 2017

¹¹¹ Protection against Harassment of Women at the Workplace Act, 2010, Section 2(f); see also International Labour Organization, “Domestic Workers Across the World: Global and regional statistics and the extent of legal protection”, 2013, ISBN: 978-92-2-125273-3

education policy has also aggravated the problem unless the legal protection does not change the social mindset. This vulnerable section of the society would remain vulnerable in the presence of economic disparities and social disharmony.

1.6 Protection or Exploitation – Contemporary Situation of Domestic Workers

However, domestic workers form an integral part of informal sector workers yet still contribute substantially to every society's economy, mostly hired by middle and upper class of the society. Despite the fact that there is a substantial strength and contribution of domestic workers, there exists numerous problems e.g. hidden work, discrimination, determination of minimum wages and working hours, protection of their fundamental rights, promotion of decent work, provision of social justice, gaps in legal protection. Since the cases of domestic workers exploitation started to report and it became difficult to promote decent work for the domestic workers thereby meeting the goals of ILO Declaration on Fundamental Principles and Rights to Work and the ILO Declaration on Social Justice for a Fair Globalization.¹¹² International community realized the issue and adopted ILO Convention Concerning Decent Work for Domestic Workers (No. 189) 2011, which provides global standards for domestic workers. ILO Convention No. 189 is in continuance and extension of already recognized ILO standards. Recommendation 201 further strengthens the Convention on Domestic Workers by recommending not only the mechanisms to combat domestic workers' exploitation but also recommends mechanisms to eliminate domestic workers' violations.¹¹³

¹¹² Preamble, ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189)

¹¹³ Child labour and domestic work; Available at [https://www.ilo.org/ipe/areas/Childdomesticlabour/lang-en/index.htm#:~:text=How%20many%20children%20are%20there,all%20child%20domestic%20workers\)%3B](https://www.ilo.org/ipe/areas/Childdomesticlabour/lang-en/index.htm#:~:text=How%20many%20children%20are%20there,all%20child%20domestic%20workers)%3B) last visited February 21, 2019

This research focuses on the rights of child domestic workers, but as stated earlier, domestic work is now considered as modern-day slavery, therefore, first of all there is a need to understand the concept of slavery whereby one human being was owned by another. Since the domestic workers are vulnerable, most of the time their status resembles slavery.¹¹⁴ Legally speaking, the status of slaves was like that of the property or chattel, they were not considered as born free subjects of the society, and were denied of their basic fundamental rights, including the right to basic necessities and even right to life, which were ordinarily enjoyed by free persons.¹¹⁵

According to ILO, around 21 million people including children, women and even men around the world are engaged as slaves.¹¹⁶ Even in the modern era, forced or compulsory labour, bonded labour or even domestic labour is not less than slavery as the workers work for with little or no remuneration, work in exploitative working environment, work at the complete control of their employers, and are exposed to vulnerability.

There are many distinguishing characteristics of slavery from other human rights violations. The test to determine whether slavery exists or not is perceived that there is mental or physical threat of forced labour, or the labourers are owned or controlled, physically or virtually, by the employer, or dehumanized treatment or the

¹¹⁴ Freedom 101; Available at <https://www.freedomunited.org/freedom-university/domestic-slavery/> last visited May 23, 2022

¹¹⁵ Slavery, Encyclopedia Britannica; Available at <http://www.britannica.com/EBchecked/topic/548305/slavery> last visited on December 14, 2013

¹¹⁶ What is Modern Slavery; Available at http://www.antislavery.org/english/slavery_today/what_is_modern_slavery.aspx last visited on December 14, 2018

restrictions on their freedom of movement or the trade of labourers.¹¹⁷ This fact has been recognized by Anti-Slavery International and the 2022 Global Estimates of Modern Slavery further prescribes that domestic workers, their circumstances and conditions of work during the Covid-19 pandemic exposed them to increased vulnerability, exploitation and harassment similar to domestic slavery.¹¹⁸

Now there is a need to look into the various international instruments to combat slavery. Under International Law, the concept of slavery went through different transformation phases to abolish slavery worldwide. The first international instrument was the Brussels Conference Act of 1890, whereby the States agreed to do all possible intended efforts and take relevant measures to end the trafficking in African slaves. The Brussels Act was supplemented and revised by the Allied Powers of the First World War as the Convention of Saint-Germain-en-Laye 1919 ensuring that the States would adopt measures to completely restrain from activities leading to slavery in all its forms. It also obliged the States to eradicate the slave trade by land and sea.¹¹⁹

A Temporary Slavery Commission was appointed by the Council of the League of Nations in June 1924. The Convention, which was named as Convention to Suppress the Slave Trade and Slavery 1926, came into force on 9 March 1927, later amended by the Protocol, thereafter the amended Convention entered into force on 7

¹¹⁷ Freedom 101; Available at <https://www.freedomunited.org/freedom-university/domestic-slavery/> last visited May 23, 2022

¹¹⁸ What is Domestic Slavery?; Available at <https://www.antislavery.org/slavery-today/domestic-work-and-slavery/> last visited March 18, 2023

¹¹⁹ Slavery Convention, 1926; Available at http://portal.unesco.org/culture/en/files/38440/12815475701Slavery_Convention_%281926%29.pdf/Slavery%2BConvention%2B%281926%29.pdf last visited on December 13, 2018

July 1955. Its main objective was to prevent conditions developing from forced labour into conditions analogous to slavery.¹²⁰ According to the Convention, slavery reflects the status or condition of a person whereby he can exercise the right of ownership and not the right of employer over the other person.¹²¹

Another initiative was the Convention Concerning Forced or Compulsory Labour 1930 (No. 29), which came into force on 1 May 1932, is one of the eight Core Labour Standards provided by International Labour Organisation. According to the Convention, forced labour includes every kind of work or service, which is specified by any person, for which the doer has not voluntarily offered his services and is always under the pressure of the penalty.¹²²

Besides the fact that United Nations Charter¹²³ reaffirmed as in League of Nations that human dignity and respect is the basic norm of mankind. The concept was further strengthened in Universal Declaration of Human Rights¹²⁴, which provided specifically that slavery and servitudes of all forms shall be withheld and slave trade in any form shall be prohibited¹²⁵.

All these initiatives failed to abolish slavery as a whole in all the parts of the world. In order to overcome the problem, international community joined hands together once again to formulate two important Conventions; The United Nations

¹²⁰Slavery Convention, 1926; Available at http://portal.unesco.org/culture/en/files/38440/12815475701Slavery_Convention_%281926%29.pdf/Slavery%2BConvention%2B%281926%29.pdf last visited on December 13, 2018

¹²¹ Convention to Suppress the Slave Trade and Slavery 1926, Article 1(1)

¹²² Convention Concerning Forced or Compulsory Labour, 1930, Article 2

¹²³ Charter of the United Nations, The Preamble

¹²⁴ Universal Declaration of Human Rights, 1948, The Preamble

¹²⁵ Universal Declaration of Human Rights, 1948, Article 4

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956¹²⁶, which came into force on 30 April 1957; and Abolition of Forced Labour Convention (No. 105), which came into force on 7 January 1959¹²⁷.

Article 7(a) of The United Nations 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery adopted the same definition of slavery from the Slavery Convention of 1926. It extends to the state whereby ownership can be exercised on the status or condition of a person and a person upon whom such condition or status imposed is known as a slave.¹²⁸

Moreover, Article 7(c) of the Convention provides extensive interpretation of the term slave trade which includes every act whereby a person is the captured, acquired or sold with the purpose of placing him into slavery or acts done in order to acquire, disposal or transportation of the slave with an intention of selling or exchanging him by whatsoever manner.¹²⁹

Moreover, Abolition of Forced Labour Convention 1957 (No.105) declares that the Members States of ILO has undertaken to suppress and ensure not to use forced or compulsory labour in any form.¹³⁰

¹²⁶ Pakistan is a signatory to the Convention (7 September 1956) and ratified on 3 May 1960.

¹²⁷ Pakistan ratified the Convention on 15 February 1960.

¹²⁸ The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, Article 7(a)

¹²⁹ The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956, Article 7(c)

¹³⁰ Abolition of Forced Labour Convention 1957 (No.105), Article 1

Ann Jordan¹³¹ prescribes that unlike slavery, forced labour is generally not a permanent condition and it lasts for a limited time period. The employee works under the coercion, violence or threat of violence. In most cases, the identity documents of the labourer remain in custody of employer. Unlike slavery, the employer cannot exercise rights of ownership over the employee or employee's dependents. Yet in extreme forms, forced labour can result into disastrous or deadly conditions. In most cases, the terms of employment are not clear and there may be no or less remuneration. In order to determine whether forced labour exists or not, the test is to check restrictions on freedom of movement and physical and psychological violence on the labourer.

Interestingly, there is no United Nation's Convention prohibiting forced labour but International Covenant on Civil and Political Rights (ICCPR) prohibits forced or compulsory labour.¹³² ILO Forced Labour Convention (No. 29) enshrines that all works or services rendered, not done voluntarily, demanded from any person under the threat of any penalty including physical violence, confinement or denial of rights, falls under the category of forced or compulsory labour.¹³³ Yet there are certain exceptions whereby the forced labour is allowed, for instance, in case of military service, or if services are performed as a civic obligation of citizens, or services rendered in case of emergency.¹³⁴ Later on, another Convention was constituted to

¹³¹ Ann Jordan, "Slavery, Forced Labour, Debt Bondage and Human Trafficking: From Conceptual Confusion to Targetted Solutions", *Program on Human Trafficking and Forced Labor, Center for Human Rights & Humanitarian Law*, Issue Paper no. 2, February 2011, 3-4

¹³² International Covenant on Civil and Political Rights (ICCPR), Article 8.3

¹³³ Forced Labour Convention (No. 29), Article 2.1

¹³⁴ Forced Labour Convention (No. 29), Article 2.2

abolish forced labour, Abolition of Forced Labour Convention 1957 (No.105) prohibiting forced labour for whatsoever political, social or economic reasons.¹³⁵

The above provisions make it obligatory on the States to abolish the forced labour and slavery in all forms from their legal system so as to reach the idealistic position but the practical scenario is totally different. The slavery still exists yet it has been named differently, such as sex trafficking, bonded labour (also in cases of migrant workers), forced child labour, child soldiering, child sex trafficking, and migrant workers and domestic workers. It is pertinent to note that children are more vulnerable to these situations. This is why two ILO Conventions specifically deal with the child labour issues, ILO Convention No. 138 and ILO Convention 182.

It is quite evident that bonded labour is another form of slavery whereby the contract is between the bonded labourers and the creditor in a way that they themselves and at times their families too have to work compulsorily with the creditor or for the creditor to repay debts and they cannot exercise any right to work at the creditor's workplace or cannot even go and find another employment at some other place. They are not only forced but negative connotations are used to ensure that they stay bonded, under surveillance or falsely imprisoned with the employer. One of the major factors behind bonded labour is poverty, cultural and social malpractices.¹³⁶

Therefore, it can be said that it is a system whereby a person is obliged to work under slavery due to economic deprivation and poverty, which results into the

¹³⁵ Abolition of Forced Labour Convention 1957 (No.105), Article 1

¹³⁶ Bonded Labour; Available at

http://www.antislavery.org/english/slavery_today/bonded_labour.aspx last visited on December 14, 2018; See also Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

contract of work for himself and his family members howlowsoever. The contractual terms and conditions of the employment are as such that the debtor agrees with the creditor to provide labour or services to the creditor in consideration for the advance received by him or even by any of his family members. They are required to work for a specific or unspecific period of time either for nominal or no remuneration. Under this agreement, the debtor's rights are abridged in a way that he has no right to live as a free man, no right against illegal imprisonment, no right to change employment, no freedom of movement and association and last but not the least, no economic rights over the fruits of his labour.

According to ILO, only in the Asia-Pacific region, there are approximately 12 million people engaged in forced labour. The majority of such engaged people falls under the category of debt bondage.¹³⁷

1.7 The Role of Laws in controlling the Child Labour in Domestic Work

According to UNICEF and ILO, every work done by children do not fall under the category of child labour. There is a difference between child labour and child work. If the overall development of the child is not affected by the work, it is not a child labour rather it falls under the category of child work. The important check is the affect on overall development including physical, mental, social, psychological development of the child.¹³⁸ It may include assisting any family member in household

¹³⁷ Bonded Labour; Available at http://www.antislavery.org/english/slavery_today/bonded_labour.aspx last visited on December 14, 2018

¹³⁸ International Labour Organization, Child Labour in Domestic Work in Pakistan – A Scoping Study (2022); Available at https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-islamabad/documents/publication/wcms_851153.pdf last visited January 13, 2023; See also What is Child Labour; Available at <http://www.ilo.org/ipecc/facts/lang--en/index.htm> last visited December 15, 2016

tasks or working in vacations or timings when school is off. Such work is at times more beneficial and productive to the child as he is exposed to a different exposure and they get training and necessary skills for their future lives as well. Such tasks will help in overall development of the child.¹³⁹

The term child labour is in itself quite technical as it is not defined in any international instrument or by any legislation worldwide. As per the general understanding of the term child labour, it means that if the children, who are under-aged, are working beyond their potential or capacity, depriving them from their childhood and basic rights, and is hazardous to their overall development, compromising on their dignity, socially or morally harmful for the children, or affects or takes away an opportunity to get basic education, or work side by side with schooling thereby affecting their education and health.¹⁴⁰

The test to determine such form of labour is to observe the child's age, tasks to be performed, working hours, remuneration, working conditions and the like. The answers may vary in different jurisdictions and even within jurisdiction of the same

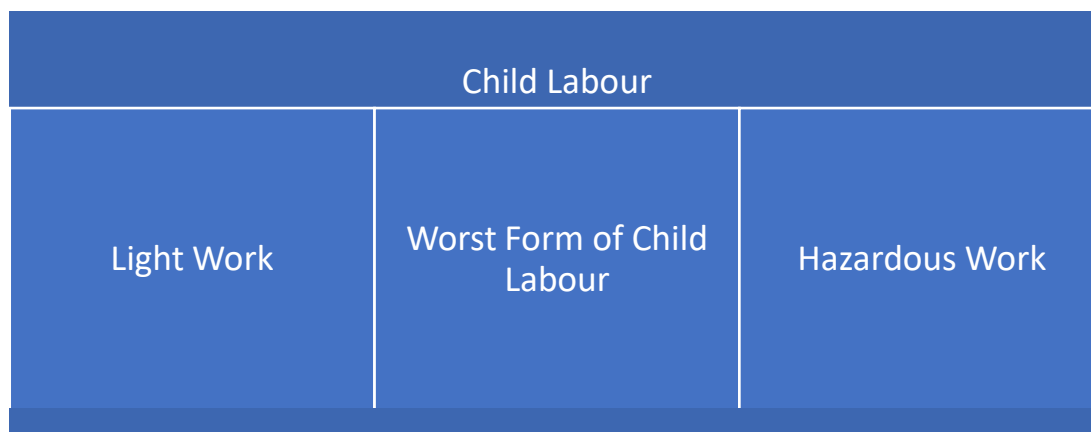
¹³⁹ Child Labour and Pakistan; Available at <http://www.paycheck.pk/main/labour-laws/fair-treatment/child-labour> last visited December 14, 2016; See also What is Child Labour; Available at

<http://www.ilo.org/ipec/facts/lang--en/index.htm> last visited December 15, 2016

¹⁴⁰ Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, "Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour", (Children's Geographies, 2013)

Also Available at: <file:///C:/Users/user/Downloads/finalpublishedversion.pdf> last visited January 23, 2020; See also What is Child Labour; Available at <http://www.ilo.org/ipec/facts/lang--en/index.htm> last visited December 15, 2016

state.¹⁴¹



1.7.1 Light Work

Article 7 of the Minimum Age Convention No. 138 allows national laws to permit light work for children as young as 13 for developed countries or 12 for developing countries in countries with countries whose economic and educational sectors are insufficiently developed. The work done by children in developing countries may be called as child work but in developed countries, it may fall under the category of child labour.¹⁴²

1.7.2 Worst Form of Child Labour

The term child labour was further interpreted and extended through ILO Worst Forms of Child Labour Convention (No. 182) and named the extreme situations as worst form of child labour. It includes the illegal trafficking, sale, debt bondage, forced or compulsory labour, serfdom, slavery and practices

¹⁴¹ What is Child Labour; Available at <http://www.ilo.org/ipec/facts/lang--en/index.htm> last visited December 15, 2016

¹⁴² Asif Khan, Implementing Laws Against Child Labor: A Case Study of Pakistan (August 3, 2011). Available at SSRN: <https://ssrn.com/abstract=1904268> or <http://dx.doi.org/10.2139/ssrn.1904268>; See also What is Child Labour; Available at <http://www.ilo.org/ipec/facts/lang--en/index.htm> last visited December 15, 2016

similar to slavery, child pornography, child prostitution, smuggling, compulsory hiring of children for armed conflicts and the like. All these activities are not only adversely affect the health and overall development of the children but are also immoral and illegal in nature.¹⁴³

1.7.3 Hazardous Labour

Since the definition of worst form of child labour in ILO Convention 182 was general and needed more clarification, therefore, ILO issued Recommendation No. 190 so as to meet the requirement. It enshrines that if the work to which children are exposed results in physical, psychological and sexual abuse, or they are expected to work under water, at dangerous heights, underground or in locked up spaces. In such situations, the working conditions are extremely difficult or at times hazardous as these children are expected to handle dangerous machines, utensils and tools thereby exposing them to dangerous and unhealthy environment, dangerous chemical materials, extreme temperatures, explosions, vibrations, noise levels, equipments, processes and for which they have no vocational training and beyond their potential in long working hours. In some jobs, they are even expected to manually handle or transfer heavy loads.¹⁴⁴ All these activities can be characterized as hazardous labour.

Therefore, ILO obliged the Member States to promulgate national laws or regulations after the consultation with all the stakeholders including the

¹⁴³ ILO Worst Forms of Child Labour Convention (No. 182), Article 3; See also Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

¹⁴⁴ Worst Forms of Child Labour Recommendation, 1999 (No. 190), Paragraph 3, Part II

workers' and employers' organizations concerned in this behalf and limit the authorized age of the child for employment or work not below the 16 years of age on condition that the employer would guarantee to provide all relevant information, knowledge and instructions or vocational training according to the nature of work and provide the protection of health, safety and morals to the children concerned.¹⁴⁵ In this Recommendation, the age of the children has been raised from 15 to 16. This Recommendation later incorporated in the ILO Convention No. 182.¹⁴⁶ According to the ILO database, all the 187 ILO Member States have ratified the ILO Convention 182 till November 19, 2020.¹⁴⁷ This shows the importance of the Convention that the States are prone to adopt these measures.

1.7.4 Child Domestic Labour as a form of Child Labour

There are two dimensions whereby the researchers have categorized the child domestic labour. One view is that among other forms of child labour, child domestic labour is the safest mode of child employment as children are not exposed to open market challenges, children are supposed to work under protected environment, and they live under home environment with limited exposure to number of people and limited tasks assigned at the home of the employer.¹⁴⁸

¹⁴⁵ Worst Forms of Child Labour Recommendation, 1999 (No. 190), Paragraph 4, Part II

¹⁴⁶ ILO Worst Forms of Child Labour Convention (No. 182), Article 4

¹⁴⁷ Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Date of entry into force: 19 Nov 2000; Available at

https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 last visited December 1, 2020

¹⁴⁸ K. Graunke, "Just Like One of the Family: Domestic Violence Paradigms and Combating On-the-Job Violence Against Household Workers in the United States" (Michigan Journal of Gender and Labor 9: 2003), 131–205; See also N. Klocker, "Negotiating Change: Working with Children and their Employers to Transform Child Domestic Work in Iringa, Tanzania", (Children's Geographies 9 (2): 2011), 205–220; M. Bourdillon, "Children as Domestic Employees: Problems and Promises",

The other view holds that the domestic work is the most exploitative form of child labour. The positive points held by the proponents of the domestic work are taken as negative points by the opponents. They argue that domestic work is the undefined in nature and holds many hidden tasks, which remains unrecognized and unnoticed. When children are supposed to stay in home environment, it is a private premises with no public scrutiny. Even the neighbour at times could not perceive the environment of the house. The religious, privacy, cultural and social norms are also a hurdle to detect the condition of domestic workers.¹⁴⁹ In such a situation, the situation of domestic workers becomes more exposed to exploitation. No one can adjudge the violation of rights of domestic workers in that case. The qualitative analysis of different organizations also reveal that domestic workers face comparatively more exploitative environment and physical, mental, moral, sexual and psychological abuses, thereby affecting the overall well being and development of children.¹⁵⁰ In a state like Pakistan, it is even more challenging

(Journal of children and poverty 15 (1): 2009), 1–18; D. Garnier, and E. Benefice, “Habitual Physical Activity of Senegalese Adolescent Girls under Different Working Conditions, as Assessed by a Questionnaire and Movement Registration”, (Annals Human Biology 28 (1): 2001), 79–97; and Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, “Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour”, (Children’s Geographies, 2013)

¹⁴⁹ Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 146

¹⁵⁰ J. Blagbrough, “They Respect their Animals More’. Voices of Child Domestic Workers”, (London: AntiSlavery International: 2008); Camacho, “Family, Child Labour and Migration: Child Domestic Workers in Metro Manila”, (Childhood 6 (1): 1999), 57–73; M. Jacquemin, “Children’s Domestic Work in Abidjan, Cote de Ivoire. The Petites Bonnes have the Floor” (Childhood 11 (3): 2004), 383–397; M. Bourdillon, “Child Domestic Workers in Zimbabwe. In Working to be Someone: Child Focused Research and Practice with Working Children”, (edited by Hungerland, B., M. Liebel, B. Milne, and A. Wihstutz, 55–65. London, Jessica Kingsley: 2010); L. A. Benvengnú, A. Gastal Fassa, L. Augusto Faccini, D. H. Wegman, and M. M. Dall’Agnol, “Work and Behavioral Problems in Children and Adolescents”, (International Journal of Epidemiology 34 (6): 2005), 1417–1424; N. O. Bwibo, and P. Onyango, “Final Report of the Child Labour and Health Research”, (Nairobi, University of Nairobi: 1987); Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, “Is

as there is no proper legal protection and enforcement for regulating the working hours, working conditions and minimum wages and the like.¹⁵¹

In 2005, The Committee on the Rights of the Child also allowed as an exception, certain developing countries to engage child domestic workers in the safest mode of domestic work and in no way in hazardous activities, so as to combat with the poverty and economic deprivation of those states.¹⁵² Most of child domestic workers belong to the poor and deprived background, are orphans or belong to single-parent families.¹⁵³ The class difference in certain jurisdictions also contributes to this trend. The inequities in the societies due to unfair distribution of assets cause huge class differences, forces the families to involve their children in child labour.¹⁵⁴ Another problem is that in certain jurisdictions like Togo, Brazil, Ecuador, Colombia, Thailand, South Africa, India and Pakistan, it is a cultural practice to involve child domestic workers.¹⁵⁵ Otherwise, the States are bound under ILO Convention 182 and

Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour”, (Children’s Geographies, 2013)

¹⁵¹ The Society for the Protection of the Rights of the Child (SPARC), “Pakistan: The State of Domestic Child Labour” (Conference Report); Available at

<http://acr.hrschool.org/mainfile.php/0146/214/> last visited May 11, 2019

¹⁵² Committee on the Rights of the Child Forty-first Session Geneva, January 9-27, 2006, General Comment No. 7; Available at

<http://www.ohchr.org/english/bodies/crc/comments.htm> last visited February 18, 2020

¹⁵³ International Labour Organization, Child Domestic Workers; Available at <http://www.ilo.org/public/english/standards/ipec/action/36actaga/domestic.htm> last visited July 10, 2018

¹⁵⁴ The Society for the Protection of the Rights of the Child (SPARC), “Pakistan: The State of Domestic Child Labour” (Conference Report); Available at

<http://acr.hrschool.org/mainfile.php/0146/214/> last visited May 11, 2019

¹⁵⁵ International Labour Organization, Child Domestic Workers; Available at <http://www.ilo.org/public/english/standards/ipec/action/36actaga/domestic.htm> last visited July 10, 2018; See also Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 146

Convention on the Rights of Child in this regard to identify and eradicate the worst forms of child labour.¹⁵⁶

Child workers are protected under International Law, among them the famous is United Nations Convention on the Rights of the Child, 1989, which is ratified by all the States of the World except United States,¹⁵⁷ which makes the States jointly and severally liable for the protection of children from forced and compulsory labour.¹⁵⁸ As stated earlier, children in developing countries may be allowed to work under the doctrine of necessity, it also becomes forced labour.¹⁵⁹

There is another side of the picture too. There are extreme circumstances whereby the children are being locked up, not allowed to keep contact with their families, exposed to hazardous working conditions, required to work in illnesses, left for begging, not given food, water and clothes. Whether these kinds of works *de facto* fall under the category of worst form of child labour as per ILO Convention 182? According to UNICEF, if the child works more than specified minimum hours, it falls under the category of Worst forms of Child Labour.¹⁶⁰

¹⁵⁶ Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 146

¹⁵⁷ Convention on the Rights of the Child; Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en last visited February 19, 2018

¹⁵⁸ United Nations Convention on the Rights of the Child 1989, Article 6(2)

¹⁵⁹ ILO Declaration on Fundamental Principles and Rights and Elimination of All Forms of Forced and Compulsory Labour; Available at http://www.ilo.org/dyn/declaris/DECLARATIONWEBstatic_jump?var_language=EN&var_pagename=ISSUESFORCEDLABOUR last visited September 4, 2019

¹⁶⁰ Child Labour; Available at

The global community unanimously intended to work for the eradication of worst form of child labour, therefore, it once again gathered together and urged for the eradication and quick action plan for the eradication of worst forms of child labour present in the form of bonded labour and serfdom.¹⁶¹ For this purpose, the International community gathered in 1999 for the adoption of ILO Convention on the Eradication of the Worst Forms of Child Labour (No. 182), while the ILO Minimum Age Convention (No. 138) forms the basis of this newly formulated protection for the eradication of child labour.¹⁶² On June 17, 1999, the international community finally adopted the Convention No. 182 while focusing more on the eradication of economic exploitation of children and worst form of child labour.¹⁶³

Prof. Dr. Farkhanda Zia Mansoor, in her book, “Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA”, while addressing the issue of worst forms of child labour and most specifically, worst forms of child labour, throws light on the importance of this landmark treaty, ILO Convention 182. This Convention protects the workers particularly the child

http://www.unicef.org/protection/index_childlabour.html last visited December 15, 2016; See also Farkhanda Zia Mansoor, “Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters”, *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

¹⁶¹ ILO, Child Labour: Targeting the Intolerable 1996; Available at

<http://www.ilo.org/public/english/bureau/inf/pr/2000/36.htm> last visited February 7, 2018

¹⁶² J Blagbrough, “Eliminating the Worst Forms of Child Labour – A New International Standard”, (The International Journal of Children’s Rights: 1997), 124; See also Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 108-109

¹⁶³ Ibid.

labourers,¹⁶⁴ who are most vulnerable. It also obliges the States to take effective and rapid measures so as to prohibit and eradicate the worst forms of child labour.¹⁶⁵ For this purpose, the States are required to plan and implement plans so as to effectively monitor, enforce, prevent, remove systematically, rehabilitate and socially integrate the child workers. The States are also obliged to provide social assistance for the rehabilitation of such child workers and for this purpose States are allowed to use preventive sanctions including penal sanctions. The States should also focus on the education of such children and try to eradicate the worst forms of child work within their jurisdictions. Among the child domestic workers, who are vulnerable, the involvement of young girls for domestic work becomes quite critical and alarming. The States are now obliged under this Convention to take effective measures in this regard.¹⁶⁶ This protection can be extended to child domestic workers as well.¹⁶⁷

According to the observations of International Programme on the Elimination of Child Labour (IPEC) and International Labour Office, the kind of work which adversely affects the living of children and adversely proportional to their moral, social, mental and physical wellbeing, it will be construed as hazardous form of work and will be called Hazardous Child Labour.¹⁶⁸

¹⁶⁴ Worst Forms of Child Labour Convention, 1999 (No. 182), Article 2

¹⁶⁵ Ibid., Article 1

¹⁶⁶ Worst Forms of Child Labour Convention, 1999 (No. 182), Article 7

¹⁶⁷ Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 109-110

¹⁶⁸ International Programme on the Elimination of Child Labour (IPEC) and International Labour Office, *Ending Child Labour in Domestic Work, and Protecting Young Workers from Abusive Working Conditions*, (Geneva: International Labour Office, 2013), Also cited in Gennie Gamlin, Agnes

This leads to another debate as to what is the difference between Worst Form of Child Labour and Hazardous Child Labour? Many research scholars have contributed in this debate. The summary of the debate is that Worst form of Child Labour is the extreme form of circumstances whereby the child is engaged, such as child pornography, child prostitution, forceful recruitment in armed forces or any kind of illegal activity, which is not allowed or accepted in any form. This is also suggested by ILO Convention on Worst forms of Child Labour 182. The task of delineating the job responsibilities in hazardous child labour is a complicated matter. First of all, no international norms or instruments define the terminology, hazardous form of child labour. Secondly, as stated above, the distinction between child labour and child work varies from jurisdiction to jurisdiction. Similarly, the determination of hazardous child labour also varies from jurisdiction to jurisdiction.

This dilemma of theory and factual situation further leads to another debate whether child domestic work be declared as worst form of child labour or not?¹⁶⁹ The close insight of Article 3 of the ILO Convention 182 does not

Zenaida Camacho, Michelle Ong, and Therese Haskith, "Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour", (Children's Geographies, 2013); Also Available at: <file:///C:/Users/user/Downloads/finalpublishedversion.pdf> last visited January 23, 2020

¹⁶⁹ Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, "Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour", (Children's Geographies, 2013); Also Available at: <file:///C:/Users/user/Downloads/finalpublishedversion.pdf> last visited January 23, 2020; See also J. Boyden, B. Ling, and W. Myers, "What Works for Working Children", (Sweden: UNICEF/Radda Barnen, 1998); B. White, "Defining the Intolerable: Global Standards, Child Welfare and Cultural Relativism." (Childhood 6 (1): 1999), 133–144; M. Bourdillon, B. White, and W. Myers, "Reassessing Minimum Age Standards for Children's Work", (International Journal of Sociology and Social Policy 29 (3–4): 2009), 106–117; J. Gamlin, and M. E. Pastor, "Child Labour in Latin America: Theory, Policy, Practice", (International Journal of Sociology and Social Policy 29 (3–4): 2009), 118–129; and M. Bourdillon, D. Levinson, and W. Myers, "The Rights and Wrongs of Child Work", (New Brunswick, NJ: Rutgers University Press, 2011)

directly prescribes anything about child domestic workers, yet the interpretation of Article 3(d) of ILO Convention 182 can indirectly bring the child domestic workers under the ambit of ILO Convention 182, whereby it mentions about the nature of those works, undertaken by the children, and there is a likelihood that those works will harm the safety, health and morals of the child workers.¹⁷⁰

Therefore, the child domestic workers, if working under exploitative working conditions and slavery-like conditions fall under the category of Worst Form of Child Labour.¹⁷¹ Under this notion, ILO highlighted the issue of child domestic workers on World Day Against Child Labour, which is celebrated on June 12 every year,¹⁷² to bring the child domestic workers under the domain of protection.¹⁷³

Among the proponents of this theory, Bourdillon along with White and Myers¹⁷⁴ argue that child domestic work should be declared as worst form of child labour on urgent basis.¹⁷⁵ Jacquemin¹⁷⁶, Black¹⁷⁷ and Blackbrough¹⁷⁸

¹⁷⁰ Farkhanda Zia Mansoor, “Exploitation of Child Domestic Labourers: The Limits of the Current Law”, (International Journal of Discrimination and the Law, 2006), 168-189; See also Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7, 145

¹⁷¹ International Labour Organization, World Day Against Child Labour; Available at http://www.ilo.org/public/english/standards/ipecc/publ/download/cdl_2004_helpinghands_en.pdf last visited June 5, 2018

¹⁷² World Day Against Child Labour, June 12; Available at <https://www.un.org/en/observances/world-day-against-child-labour/background> last visited June 12, 2020

¹⁷³ International Labour Organization, World Day Against Child Labour; Available at http://www.ilo.org/public/english/standards/ipecc/publ/download/cdl_2004_helpinghands_en.pdf last visited June 5, 2018

¹⁷⁴ M. Bourdillon, B. White, and W. Myers, “Reassessing Minimum Age Standards for Children’s Work”, (International Journal of Sociology and Social Policy 29 (3–4): 2009), 106–117

¹⁷⁵ See also Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, “Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the

have strict view regarding child domestic work, they believe that it leads to exploitative and disastrous conditions, so it should be declared as Slavery.¹⁷⁹ On the other hand, Bourdillon¹⁸⁰ holds another view also, he along with Levinson and Myers¹⁸¹ opposes this theory stating that if child domestic work be declared as worst form of child labour, it would have worst consequences and would be discriminatory, unjust and biased as the children, who do light work in favourable healthy working conditions, which does not affect their standard, schooling or their development in all the sectors of life, it would mean that they their favourable working conditions would be declared as worst form of child labour. Such child work in some jurisdictions is a child labour in some jurisdictions and may be a worst form of child labour in other jurisdictions. If child domestic labour be banned and this flexibility is removed altogether worldwide, it would lead to another debate of economic deprivation or economic sanction on the developing or least developed States.

Mostly children who are working as domestic workers are the subject matter of human trafficking as well. They are being transported to other areas and even other countries without specifying clear terms and conditions and

psychosocial effects of Child Domestic Labour”, (Children’s Geographies, 2013); Also Available at: <file:///C:/Users/user/Downloads/finalpublishedversion.pdf> last visited January 23, 2020

¹⁷⁶ M. Jacquemin, “Children’s Domestic Work in Abidjan, Cote de Ivoire. The Petites Bonnes have the Floor”, (Childhood 11 (3): 2004), 383–397

¹⁷⁷ M. Black, “Child Domestic Workers: A Handbook on Good Practice in Programme Interventions”, London: Anti-Slavery International (Report): 2005)

¹⁷⁸ J. Blagbrough, “They Respect their Animals More. Voices of Child Domestic Workers”, (London: AntiSlavery International: 2008)

¹⁷⁹ See also Gennie Gamlin, Agnes Zenaida Camacho, Michelle Ong, and Therese Haskith, “Is Domestic Work a Worst Form of Child Labour? The Findings of a Six-Country Study of the psychosocial effects of Child Domestic Labour”, (Children’s Geographies, 2013); Also Available at: <file:///C:/Users/user/Downloads/finalpublishedversion.pdf> last visited January 23, 2020

¹⁸⁰ M. Bourdillon, B. White, and W. Myers, “Reassessing Minimum Age Standards for Children’s Work”, (International Journal of Sociology and Social Policy 29 (3–4): 2009), 106–117

¹⁸¹ M. Bourdillon, D. Levinson, and W. Myers, “The Rights and Wrongs of Child Work”, (New Brunswick, NJ: Rutgers University Press, 2011)

most of the time their family members does not know the whereabouts of their child nor they are allowed to contact him. Such a situation adds to vulnerability of domestic workers as they are isolated and are on the disposal of their masters. They are exposed to high risk of exploitation, violation and abuse. At times they are exposed to hazardous working conditions and subject to not only physical but also sexual exploitation and psychological abuse by the masters. They are also easy prey for debt bondage. Since those children are under aged they have no consciousness about the other area or the country, unaware of language, cultural practices and norms. They do not enjoy legal rights because of their insecure legal status, therefore, they cannot approach the law enforcement agencies for the enforcement of their rights or redressal of their grievances.¹⁸²

If any of the above situations exist, then it falls under the category of worst form of child labour. In order to curb this issue, International community joined hands together and agreed to constitute Worst Forms of Child Labour Convention.¹⁸³ This situation is applicable *mutatis mutandis* to the domestic workers as well.

What however does make child domestic labour truly a worst form of labour is that in many cases, very young children are at the complete mercy of their employers, with little or no contact with their families and no one to turn

¹⁸² Domestic Workers across the World: Global and Regional Statistics and the extent of legal protection; Available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf

¹⁸³ Society for the Protection of the Rights of the Child, "The State of Pakistan's Children", (2009), pp. 179

to in case of abuse or maltreatment. There is no shortage of incidents where young domestic servants have been victims of extreme abuse at the hands of their employers, and in some cases with tragic results.¹⁸⁴

Some of the household chores that child domestic workers are expected to do include cleaning and washing with harmful chemicals, dealing with gas and electric equipments, chopping, cooking, boiling, ironing, etc.¹⁸⁵ Apparently, these tasks may not seem difficult or hazardous as these tasks are generally performed by children at home and as per ILO, these fall under the category of child work. But the situation gets worse when the child is hired to render these services and he has no opportunity to go to school. Moreover, such children are expected to work for long hours. Such tasks become difficult and at time hazardous when they are done in stress and fatigue and with the fear of punishment.

Since the domestic workers contribute significantly to the world's economy, therefore, their economic rights need to be protected. Unfortunately, there exists multiple issues contribute towards their non-protection including minimum wages and hidden nature of work makes them vulnerable to discrimination. Their special nature of work demands special working conditions so that they may enjoy their rights fully.¹⁸⁶ In order to address these issues, international community once again gathered, and after numerous

¹⁸⁴ Society for the Protection of the Rights of the Child, "The State of Pakistan's Children", (2009), pp. 180

¹⁸⁵ Society for the Protection of the Child, "The State of Pakistan's Children", (2009), pp. 179-180

¹⁸⁶ ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189), Preamble

consultations and recommendations Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) was agreed upon, which came into force on 5 September 2013¹⁸⁷.

The rights protected in the Convention No. 189 and the Recommendation 201 on Decent Work for Domestic Workers was agreed with the objective of improving the working and living conditions of domestic workers worldwide¹⁸⁸ and relates to issues like, working conditions, working hours, minimum wages, rest hours, protection of fundamental rights and security.

The states are also obliged to take preventive measures against violence and protection in cases of violence. The states should also fix the same minimum age for all kinds of employments. The terms and conditions of employment should be settled prior to the commencement of services so as to make transparency in procedure. Moreover, they are not required to reside at the workplace, or to stay at their residence during their leave. The new standards provided in the Convention 189 have added domestic work to the domain of the labour and has acknowledged the worth of domestic work by looking into social and economic aspects as well. As stated earlier, most of the domestic workers are women, so these new standards are also a significant

¹⁸⁷ Landmark treaty for domestic workers comes into force; Available at http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_220793/lang--en/index.htm last visited December 17, 2016

¹⁸⁸ ILO 189 and Recommendation 210; Available at http://www.ilo.org/travail/areasofwork/WCMS_190450/lang--en/index.htm last visited February 7, 2017

effort to pave new rights and protections for work in the way of gender equality.

The Convention No. 189 also obliged the Member States to make effective efforts to guarantee the promotion and protection of not only the ILO fundamental principles but also domestic worker's rights at work particularly child domestic workers and protect them from every kind of exploitation and abuse.¹⁸⁹

Pakistan has ratified 36 ILO Conventions so far, which includes all the eight fundamental conventions.¹⁹⁰ Regardless of the fact that Pakistan has ratified numerous international and ILO instruments and has made various labour legislations in the country, the situation of labourers is still vulnerable. Pakistan has still failed to comply with the ILO standards in their true letter and spirit. As stated earlier, the absence of a unified national policy and above-mentioned provincial legislations for domestic workers in Pakistan, coupled with a lack of strong political will and limited government capacity to implement and enforce regulations, poses significant challenges; furthermore, inadequate community engagement in policy development and the predominantly informal nature of domestic work exacerbate the vulnerability of its workforce, often comprising women and children, making it difficult to protect their rights and implement effective regulations. In this respect, ILO has initiated a new agenda Promoting Decent Work, as a result of which

¹⁸⁹ ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189), Article 3

¹⁹⁰ Ratifications for Pakistan; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103166 last visited March 2017

Pakistan has made four programmes so far. After the review of the Decent Work Country Programme II (2010-2015), Pakistan Decent Country Programme III, which was initially was from 2016 to 2020 but later extended to 2022 so as to meet the requirements of UN Sustainable Development Cooperation Framework (2018-2022),¹⁹¹ ILO observed that Pakistan still needs to focus on the promotion of the rural work, promotion of job opportunities for the youth and the vulnerable class, needs to strengthen the ILO Standards through social dialogue, and extension of social protection schemes.¹⁹² The prevailing Pakistan Decent Country Programme IV (2023-27) focus areas of the programme encompass employment creation, social protection initiatives, adherence to international labour standards, and the promotion of occupational safety and health across the country.¹⁹³

Despite the pressing needs to regularize this informal sector of the society, Pakistan has not ratified the ILO Convention No. 189 so far. If Pakistan had ratified ILO Convention No. 189, domestic workers were in the position to enforce their rights under Article 7 of the Convention, which postulates that there should be clear terms and conditions of the employment contract and it should be enforceable in every legal manner. They would have been in a better position and their human rights would have been protected.

¹⁹¹ Areas of Work; Available at <https://www.ilo.org/islamabad/areasofwork/lang--en/index.htm> last visited October 18, 2020

¹⁹² Areas of Work; Available at <https://www.ilo.org/islamabad/areasofwork/lang--en/index.htm> last visited October 18, 2020

¹⁹³ Decent Work Country Programme for Pakistan (2023-27); Available at <https://www.ilo.org/publications/decent-work-country-programme-pakistan-2023%E2%80%9327-dwcp-iv> last visited November 1, 2023

This Convention clearly prescribes the extent of rights of the domestic workers.¹⁹⁴

The ratification of ILO Convention 189 would have positive impact on the status of Pakistan as a whole. It would not only protect the domestic workers but would also be beneficial to Pakistan's economy as a whole. It is generally presumed that the better GDP countries have smaller informal sectors. It means that the domestic workers shift to better employment places with better legal position, human rights, security and protection. They find the space in formal sector employment schemes. So the number of domestic workers decreases, resulting in overall social and economic development of the country, which is reflected in GDP as well and it gets better ranking in Human Rights Index and Amnesty International. Pakistan needs to strive hard for achieving the better position. It can replicate the model of other developing countries, for example, Philippines, which has implemented the law for the protection of domestic workers and it is called as "*Magna Carta* for Household Workers".¹⁹⁵

1.7.5 Child Domestic Work – Prohibition or Needs Protection?

International labour laws protect children from exploitation and abuse in domestic labour by prohibiting hazardous work, regulating light work and providing specific protections for domestic workers. These laws aim to

¹⁹⁴ Basic Rights for Pakistan's Domestic Workers: A Signature Away; Available at <http://labourwatchpakistan.com/basic-rights-for-pakistans-domestic-workers-a-signature-away/> last visited February 8, 2017

¹⁹⁵ Basic Rights for Pakistan's Domestic Workers: A Signature Away; Available at <http://labourwatchpakistan.com/basic-rights-for-pakistans-domestic-workers-a-signature-away/> last visited February 8, 2017

balance protecting children's rights with allowing them to engage in safe, non-exploitative work that doesn't harm their development. Overall, international labour laws provide a framework for protecting children's rights in domestic labour. By ratifying and implementing these Conventions, countries can ensure that children are protected from exploitation and abuse and that they have access to education, health and other opportunities that are essential for their development.

As stated above, there is complexity of child domestic work laws, which are governed by various international labour standards and national legislations. According to the ILO Convention No. 138, the minimum age for admission to employment or work should not be less than 15 years and for hazardous work it should be 18 years. This Convention sets a global standard for protecting children from exploitation and ensuring their safety and well-being. The countries ratifying Convention are required to implement laws and policies that prohibit child labour and protect childrens' rights.

The ILO Convention No. 182 further emphasizes the need to protect children from hazardous and exploitative work. The countries ratifying Convention are required to take immediate action to prohibit and eliminate the worst forms of child labour. In the context of domestic work, this means that children under the age of 18 should not be engaged in work that is hazardous or exploitative and their rights should be protected.

The ILO Convention No. 189 on Domestic Workers provides specific guidance on protecting the rights of domestic workers including children. This Convention requires countries to take measures to ensure that domestic workers including children are protected from abuse, harassment and exploitation. It also requires countries to provide domestic workers with fair working conditions including reasonable working hours, rest periods and fair wages. The countries ratifying Convention are required to implement laws and policies that protect the rights of domestic workers and ensure their safety and well-being.

In terms of light work, the ILO Conventions allow for children to engage in light work that is not hazardous or exploitative. Children may be engaged in light domestic work provided that their rights are protected and they work in safe conditions. The Conventions also recognize that some forms of light work can be beneficial for children's development. This includes ensuring that they receive fair wages, work reasonable hours and have access to education and healthcare.

The protection of rights for children engaged in domestic work is crucial to prevent exploitation and ensure their well-being. Countries should implement laws and policies that protect the rights of domestic workers including children and ensure that they work in safe conditions. This includes providing access to education, healthcare and social protection as well as ensuring that children are not subjected to abuse, harassment or exploitation.

Conclusion

The workers are generally categorized as formal sector workers and informal sector workers. This area is replete with complexities and subtleties, rendering it a hazardous and sensitive terrain to traverse. As this research is dealing with informal sector workers' rights, the research specification has been narrowed down to child domestic workers. Domestic workers are a separate and specialized branch of workers, who work in private households and their working conditions are different from that of other workers working in various occupations. Due to their different nature of work, there are two types of domestic workers i.e. live-in and live-out domestic workers. The vulnerability, exploitation, discrimination and harassment are uncountable in case of child domestic workers. Due to the vulnerability and poor working conditions of domestic workers worldwide, the international community has started considering domestic workers similar to domestic slaves. There are many international instruments, which time to time brought protection to slaves, workers and most importantly child labourers, which have been discussed in detail in this chapter. Realizing the importance of domestic workers', the importance of their contributions and worth of their work, the international community gathered together to conclude ILO Domestic Workers Convention, which is a beneficial addition to the ILO fundamental rights of workers. Yet Pakistan has not ratified the Convention as yet, even then those principles were adopted as *grund* norms.

Chapter 2

THEORETICAL PERSPECTIVE

Introduction

This chapter corresponds to third research question. This chapter articulates the theoretical framework that underlies the adaptation of legislation for domestic workers, emphasizing the interplay between natural justice, social justice, distributive justice, non-discrimination, and vicarious liability in promoting fair and equitable treatment. In order to formulate a policy or regulations regarding any issue, it should be supported by a theoretical foundation. A theoretical framework provides a context for understanding the research problem, questions, and objectives. It will help to situate the study within the broader literature and theoretical debates on the protection of domestic workers.

2.1 Principles of Natural Justice

It is an old principle that the justice should not only be done but it should show the impact of justice in the society.¹⁹⁶ In the term natural justice, the adjective ‘natural’ has qualified the noun ‘justice’, the term is used in reference to the rule of law rather than natural law, yet it is believed that such legal principles are derived from the natural law.¹⁹⁷ These principles are not outcome of the divine power rather they originated from the necessity of judicial thinking and norms of fairness.¹⁹⁸ It can be said that Natural Justice is the foundation of most common natural rules, which are

¹⁹⁶ Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 731

¹⁹⁷ Peter Curzon, *Jurisprudence Lecture Notes*, (2nd Edition, Cavendish Publishing, 1998), 262

¹⁹⁸ Principles of Natural Justice; Available at <https://www.linkedin.com/pulse/principles-natural-justice-dr-g-p-naik> last visited September 17, 2019

based on law of humanity and does not require any statutory justification for their existence.¹⁹⁹

Since the rules of natural justice are not codified anywhere rather they are flexible rules and vary according to the circumstances of the case. Yet they form the baseline for the procedural laws and regulations, which are developed by the judiciary, which every individual of the society is bound to follow while taking any decision affecting the civil rights of the private individuals and to ensure delivery of justice.²⁰⁰ Rules of natural justice are the guard against any blatant discrimination against civil rights of the society. They prevent them from the injustices caused by the unfair decisions of the authorities.²⁰¹ In a nutshell, rules of natural justice do not supplant law but supplement it.²⁰² They are not embodied rules yet their purpose is to secure justice and to prevent miscarriage of justice.

The two basic principles of natural justice²⁰³, *Nemo judex in causa sua* (no one should be judge in his own cause)²⁰⁴ and *Audi alteram partem* (no one should be condemned unheard)²⁰⁵ act as a *grund* norm for every legal process and legislation making.

¹⁹⁹ Peter Curzon, *Jurisprudence Lecture Notes*, (2nd Edition, Cavendish Publishing, 1998), 262

²⁰⁰ Peter Chishika, “Rule of Natural Justice in Employment Law: A Comparative Analysis”, (LLM, dissertation, Robert Gordon University Aberdeen, 2016), 11

²⁰¹ Principles of Natural Justice; Available at <https://www.linkedin.com/pulse/principles-natural-justice-dr-g-p-naik> last visited September 17, 2019

²⁰² A.K. Kraipak Vs. Union of India, AIR SC 150

²⁰³ Peter Chishika, “Rule of Natural Justice in Employment Law: A Comparative Analysis”, 15

²⁰⁴ Law Times Journal, “*Nemo judex in causa sua*” ; Available at <http://lawtimesjournal.in/nemo-judex-in-causa-sua/>, last accessed July 29, 2019

²⁰⁵ Legal Dictionary, “*Audi alteram Partem*”; Available at

<https://legal-dictionary.thefreedictionary.com/audi+alteram+partem>, last visited July 29, 2019

Nemo judex in causa sua is also known as ‘Doctrine of Bias’. It enshrines that an individual cannot be a judge his own case or any matter in which he has any interest, meaning thereby the judge should be just, equitable, impartial, unbiased and free from arbitrariness, unfairness and prejudice.²⁰⁶ The justice requires that the judge should not be an interested party in the case or have any personal biasness towards any party or relationship with any party. This is an important element while considering the merits of justice. The justice delivered should be seen by others as it is enshrined in the maxim “Not only must Justice be done; it must also be seen to be done”.²⁰⁷

On the other hand, *Audi alteram partem* enshrines that no person should be punished without giving him an opportunity of being heard. It is not only a requirement of justice but also a right of every person, who is being adjudged, to grant him an equitable time to defend his case and provide evidences thereupon.²⁰⁸

The Principle of Natural Justice has significant role in employment relationships. The contractual relationships are always governed by natural justice principles. The concept of equity and fairness is the baseline of every contract, and has more significance in cases on inquiries, disciplinary actions, and all other decisions made by the employer. The employee should be given an equal and reasonable chance to provide explanation against every inquiry, disciplinary action or

²⁰⁶ Peter Chishika, “Rule of Natural Justice in Employment Law: A Comparative Analysis”, 19

²⁰⁷ Maureen Mulholland, Brian Pullan, R. A. Melikan, *Judicial Tribunals in England and Europe, 1200-1700: The Trials in History*, (Manchester University Press 2003); Available at <http://www.jstor.org/stable/j.ctt155jbq3>, last visited August 20, 2019

²⁰⁸ Peter Chishika, “Rule of Natural Justice in Employment Law: A Comparative Analysis”, 16

should have a right to challenge every wrong decision made by the authority. It also provides that no disciplinary action can be taken against the employee without providing him an opportunity of being heard. It means that the employee is priorly informed about the charges and allegations to be taken in an inquiry or an action taken against him. Thereafter, he must be given a reasonable opportunity to present his case and defend his stance and prove his innocence. If he fails to prove his innocence, provided all reasonable opportunity is granted by the employer, the employer holds a right to take necessary disciplinary action against him.²⁰⁹

Therefore, domestic workers also cannot be disassociated from these grounded principles. When these two principles are applied in domestic labour rights, it enshrines that it is the duty of the employer to act fairly, justly and in good faith as he takes decisions pertaining to domestic labourers and should not take unfair or arbitrary decisions, which adversely affects the rights of domestic labourers. On the other hand, domestic workers are given equal right to prove their stance in case of any discrepancy with the employer.

The Court of Ireland held in *Mooney Vs An Post* that the rule *Nemo judex in causa sua* is applied in cases of employment issues as the employer is fully authorized to take all the decisions regarding its employees. While the rule *Audi alteram partem* is equally applied as the rights and liabilities of both the parties are governed by the employment contract so the interests of both the parties should be taken into

²⁰⁹ Dr G P Naik, “Principles of Natural Justice”, 9th September, 2015; Available at <https://www.linkedin.com/pulse/principles-natural-justice-dr-g-p-naik>, last visited August 20, 2019

account.²¹⁰ It was held by the Supreme Court of Pakistan that the Principle of Natural Justice is the core element in every judicial process and no judgment can be passed unless the principle is followed in its true spirit.²¹¹

While applying the Principle of Natural Justice in employment issues, the following minimum standards need to be followed:

- a. **Right to Notice:** The employee should be intimated in a proper form priorly about the allegations or actions against him.
- b. **Right to Representation:** The employee should be given an opportunity to present his case and defend his stance.
- c. **Right to a Fair Hearing:** The employee should be given a chance to present his case in an unbiased person. If it is presented to the employer directly, the employer should act without biasness and unfairness.
- d. **Judgment:** All the facts and circumstances of the case must be taken together in order to decide the case.²¹²

From the above discussion, it can be construed that the Principle of Natural Justice provides more protection to the aggrieved party by ensuring fair opportunity to defend the case. If this principle be applied in its true letter and spirit, it would help to meet the ends of justice.²¹³

²¹⁰ Mooney V An Post, 1998 4 IR 288; Available at <https://employmentrightsireland.com/tag/natural-justice/> last visited September 17, 2019

²¹¹ Sindh High Court Bar Association v. Federation of Pakistan, PLD 2011 SC 671

²¹² "Fair Procedures and Natural Justice, (2017), 1; Available at <https://www.hse.ie/eng/about/qavd/protected-disclosures/incident-management-framework/fair-procedures-and-natural-justice-guidance.pdf> last visited August 20, 2019

²¹³ Dr G P Naik, "Principles of Natural Justice", 9th September, 2015; Available at

The Principle of Natural Justice is the universal law and every law or process should be abided by this principle unless it is specifically barred in any exceptional situation.²¹⁴ The Principle of Natural Justice extends to exploitation in all sorts of employment situations including domestic labour. If this principle is disregarded in any case, the rule of fairness is compromised and the ends of justice can never be met.²¹⁵

The protection of domestic labourers is based on the principles of natural justice, equity and good conscience as the relationship is based on contractual obligations, though expressly or impliedly. It means that the principles of fairness, equity and reasonability should be observed by the parties. In case of any mistake caused by the employee, the employer should provide an opportunity to hear the employee's defense so he may prove himself innocent and rebut the charges against him. The employer should decide the case after the examination of all the facts and circumstances of the case and the defense provided by the employee so as to meet the standards of justice.

The principles of natural justice are the foundation for the fundamental rights, therefore, have more worth than fundamental rights.²¹⁶ It means that if fundamental rights do not provide protection to human beings, they can get protection by virtue of

2019 <https://www.linkedin.com/pulse/principles-natural-justice-dr-g-p-naik> last visited August 20,

²¹⁴ Abdus Saboor Khan v. Karachi University, PLD 1966 SC 536, 538-539

²¹⁵ Chief Commissioner, Karachi v. Mrs. Dina Sohrab Katrak, PLD 1959 SC 45, 46-50

²¹⁶ Muhammad Amir Munir, *Public Interest Litigation in the Supreme Court of Pakistan: Powers under enabling Article 184(3) of the Constitution of Pakistan 1973*, (Islamabad: Federal Judicial Academy, 2007), 54

natural justice principles.²¹⁷ In *Faridsons V Government of Pakistan*, the Honourable Supreme Court decided that the principle of natural justice i.e., no person should be condemned unheard is an established principle, even though it is not mentioned in the law, this principle would be applicable in its true letter and spirit.²¹⁸

As stated earlier, Pakistan has not ratified the ILO Convention on Domestic Workers but the absence of ratification does not restrict the legislators in Pakistan to make laws on the given subject. The Constitutional authenticity, which the legislature derives from the Article 4 of the Constitution to act in accordance with law, embodies the principle of natural justice. It states that it is an inalienable right of every individual to be treated in accordance with law.²¹⁹ Even if the law is not present or is inconsistent with the Constitution, the principles of natural justice would prevail. The violation of these principles would amount to the violation of the principle of access to justice and the Article 4 of the Constitution, which is based on the principle of due process of law.

Another important fundamental right in the Constitution of Pakistan enshrining the rules of natural justice is the right to fair trial.²²⁰ Right to fair trial and due process of law are the two classic rules of the administration of justice. Due process of law cannot be ensured if the fair trial is not conducted in its full letter and spirit.

²¹⁷ *Faridsons Ltd Karachi and another V Government of Pakistan*, through its Secretary, Ministry of Commerce, Karachi and another, PLD 1961 SC 537; See also Muhammad Amir Munir, *Public Interest Litigation in the Supreme Court of Pakistan: Powers under enabling Article 184(3) of the Constitution of Pakistan 1973*, (Islamabad: Federal Judicial Academy, 2007), 54

²¹⁸ *Faridsons Ltd Karachi and another V Government of Pakistan*, through its Secretary, Ministry of Commerce, Karachi and another, PLD 1961 SC 537

²¹⁹ Article 4, The Constitution of the Islamic Republic of Pakistan, 1973

²²⁰ Article 10-A, The Constitution of the Islamic Republic of Pakistan, 1973

It is a settled principle of statutory construction that the statutory provisions must be read intended to act in accordance with the rules of natural justice.²²¹ Previously it was presumed that the principles of natural justice are deemed to be incorporated in each and every statute unless the legislation expressly excludes them. It should also be taken into account that the person against whom the principle is invoked must have a vested right to defend, if in case the statute does not provide such right, principles of natural justice cannot be invoked in that case.²²² Now the Courts have established that the legislatures are well aware of the rules of natural justice, therefore, if any rule or a statute is contrary to the rules of natural justice, the rules of natural justice would prevail²²³ and no adverse action can be taken against the person without providing him an opportunity of being heard.²²⁴

In Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan, the Supreme Court provided the list of instances whereby the rule of *Audi Alteram Partem* cannot be applied. It enshrines that if the statute provides wide discretionary powers to the authorities, or *expression unius est exclusion alterius* (express mention of one thing implies exclusion of another)²²⁵ is involved, or the instances are such that hearing cannot be conducted or there is a possibility of unfairness or a matter of protection of fundamental rights or the doctrine of necessity requires it not to follow the principle of *Audi Alteram Partem*. The case further mentions that while applying the principle *Audi Alteram Partem*, the principle *Nemo inauditus condemnari debet contumax* (No

²²¹ Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 206

²²² Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan, PLD 2010 SC 483, 497-498

²²³ Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 205

²²⁴ Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan, PLD 2010 SC 483, 497-498

²²⁵ FindLaw Legal Dictionary, “*expression unius est exclusion alterius*”; Available at <https://dictionary.findlaw.com/definition/expressio-unius-est-exclusio-alterius.html> last August 20, 2019

man ought to be condemned unheard, unless he be contumacious) should also be considered. If the person concerned is willfully disobedient, then the principle of *Audi Alteram Partem* can be avoided. Moreover, if the person against whom the decision is made, acts illegally or gains illegal benefits malafidely by implementing decision, the competent authority has the power to rescind, cancel or withdraw the decision without granting opportunity of being heard.²²⁶

Moreover, the doctrine *nemo inauditus condemnare debet contumax* (no man should be condemned unheard unless he be contumacious)²²⁷ also enshrines that an individual loses his right of defense if he does not plead in the right forum of adjudication or is involved in any illegal activity or getting unfair advantage by deliberately prolonging the proceedings in any way or avoiding arrest, search or seizure. There is a presumption of law that the Principle of Natural Justice is universal in nature and are grounded in every legislation even though it is not specifically expressed in any provision.²²⁸

2.2 Principles of Social Justice, Non-Discrimination and Distributive Justice

The theory that all human beings are equal and are entitled to equal rights and privileges is an important aspect of human rights but practically inequalities exist among the human beings with respect to state, classes, resources and opportunities. No doubt, inequalities are the most obvious fact of human life but it is not an identification of qualitative or quantitative differences between them. Such a

²²⁶ Justice Khurshid Anwar Bhinder Vs. Federation of Pakistan, PLD 2010 SC 483, 497-498

²²⁷ Legal Dictionary, “nemo inauditus condemnari debet”; Available at <https://legal-dictionary.thefreedictionary.com/Nemo+inauditus+condemnari+debet> last visited August 20, 2019

²²⁸ Justice Khurshid Anwar Bahinder v. Fedearction of Pakistan, PLD 2010 SC 483, 497-498

condition exists when such differences actually or potentially cause one to dominate others. Social inequality is more difficult to examine or even define than any other kind of inequality.

The idea of social justice is the concept whereby the people are allowed to live their lives in the conditions, which are ensuring equality in social life without endangering their social lives i.e., equal treatment of equal persons in equal or essentially equal circumstances. Social justice is the other name for equality and equity establishing the just and fair relations between individuals and the society by avoiding conflicting interests and harmonizing inter-relations by just and equitable distribution of wealth, equal opportunities and protection and preservation of social privileges. Basic to human rights is the principle of dignity of mankind, non-discrimination, equality and liberties.

In the Roman-Greek tradition, Cicero elaborated the concept of social justice declaring that men are born free and demand justice, and that right is based, not upon man's opinion, but upon nature. According to Cicero, the state is a moral community in which the individuals are connected with the relationship between the law and the state. He called the state as "the affair of the people". He argued that the state cannot survive on crippled conditions in fact the mutual rights and obligations bind individuals together.²²⁹

²²⁹ Marcus Tullius Cicero, *Cicero's Orations*, Translated by Charles Duke Yonge (Dover Publications Inc., Mineola, New York: 2018); See also Social Justice: 7 theories of social justice explained; Available at <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830/> last visited February 10, 2017

Plato believed in the universal standard of ethical conduct and proposed the idea of universal truths and suggested people to work for the common good. Aristotle believed that universal human rights are the base for the states and the law and an individual is the subject of the whole universe. Aquinas believed that human alone has an ultimate value and has ultimately human rights. Hobbes argued that the state as an equity is obliged to protect individuals and defend their natural rights to life and security. Locke²³⁰ and Rousseau²³¹ further extended the role of the state to secure the individual's right to property, political representation and equality before the law. Grotius was the first to conceive the international law and argued the protection to the citizens of the world as a whole.²³²

According to Plato²³³, there are different types of men in the society who live together to satisfy their own needs and *vice versa*. They are distinguishable according to the functions they perform so as to make their identity distinguishable and collectively they are a society. In Plato's view, in every society there exist a class system and every one performs his duties according to the requirements of that society, this division is called social justice.²³⁴ He argued that members of each class must do their own work without interfering in other people's work. Everyone is assigned a different duty and one should perform his duty diligently or without

²³⁰ John Locke, *Second Treatise of Government*, Edited by Peter Laslett, (Cambridge Texts in the History of Political Thoughts)

²³¹ Jean-Jacques Rousseau, *The Social Contract*, (Swan Sonnenschein & Co., London: 1895)

²³² Muhammad Abdul Basit, *"Human Rights"* (Rawalpindi: Federal Law House, 2015), 49

²³³ Plato, *The Republic*, Translated by Allan Bloom (Paperback, Third Edition)

²³⁴ Social Justice: 7 theories of social justice explained; Available at <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830> last visited February 10, 2017

intermingling in any irrelevant activity or creating hurdles in any other person's duties.²³⁵

According to Aristotle, distributive justice was primarily used by the legislators for the distribution of duties, rights, honours and goods among different classes of society according to the principle of proportionate equality. The standard for the measurement of equality is the worthiness and merit which differs in different social systems i.e., unequal persons will get unequal things and equal persons will get equal things.²³⁶

Unlike Plato, Aristotle postulates that the justice is either distributive or corrective and is inherent in morality, scientific insight and has a constitutional base. The principle of equality differs in both distributive and corrective justice. In distributive justice, relative and proportionate approach is taken into account based on natural differences with respect to mental and physical endowments of men, while in corrective justice the measurement of equality depends upon the computation of losses suffered and the restoration of gains illegally made.²³⁷

Previously there was an influential theory of utilitarianism by David Hume and Jeremy Bentham. The core idea was that there are sound political arrangements when they are organized so as aim to maximize human satisfaction or happiness of the greatest number of persons and was fundamentally egalitarian in structure that

²³⁵ Edgar Bodenheimer, *Jurisprudence – The Philosophy and Method of the Law*, (Harvard University Press, Cambridge: 1962), 179

²³⁶ Edgar Bodenheimer, *Jurisprudence – The Philosophy and Method of the Law*, (Harvard University Press, Cambridge: 1962), 180

²³⁷ Edgar Bodenheimer, *Jurisprudence – The Philosophy and Method of the Law*, (Harvard University Press, Cambridge: 1962), 180-181

everybody to count for one, nobody for more than one. John Rawls and Robert Nozick gave anti-utilitarianism theories to develop the principles of justice. They argued that utilitarianism has failed to provide a secure foundation for human rights.²³⁸

Rawl's Theory of Justice, who called justice as fairness and rejected utilitarianism as a suitable foundation of justice and provided three principles: the equal maximum liberty principle subject to reasonable restrictions; the principle of equality subject to reasonable restrictions; and the principle of equal opportunity and the elimination of all forms of exploitation.²³⁹

So it is clear that the economic distribution and distribution of opportunities are the core elements of distribution of material goods and services. It is evident from the theory of John Rawls whereby he created a connection between Difference Principle with a principle of equality of opportunity.

John Rawl's theory of Strict Egalitarianism postulates that equal opportunity, equality of outcome and or strict social equality are correlated with each other. It means that every person gets equal moral respect, rights, treatment and economic opportunities.²⁴⁰ Rawl believed that everyone is equal and God has created everyone equal, so everyone should get equal rights and equal opportunities.²⁴¹ It further

²³⁸ Distributive Justice; Available at <https://plato.stanford.edu/entries/justice-distributive/> last visited December 19, 2018

²³⁹ M. D. A. Freeman, *Lloyd's Introduction to Jurisprudence* (Pakistan: National Book Foundation, 2001), 523-524

²⁴⁰ Distributive Justice; Available at <https://plato.stanford.edu/entries/justice-distributive/> last visited December 19, 2018

²⁴¹ Egalitarianism; Available at <https://plato.stanford.edu/entries/egalitarianism/> last visited December 19, 2018

prescribes that if all these principles work together and there is a guarantee that there is a perfect model of equal opportunity at all levels of society, only then the justification of inequality would be considered. Obviously, this is an idealistic situation, which cannot be practically implemented because there is a difference of social trends, factors and countries' own choices and concerns.²⁴²

In response to the John Rawl's theory, Ronald Dworkin gave his theory of Resource Egalitarianism. He also prescribed distinction between ambitions and endowments. According to him endowments are natural and no one has control over it while ambitions are real and shows one's choices and what one gets from the result of those choices. On the other hand, Dworkin agrees with Rawls that natural inequalities are the result of distribution of nature itself and no one has control over them nor there is any moral justification. Yet Difference Principle does not deliver its objectives, as it is not possible to recognize who deserves what, why and how much social privileges to lead a reasonable life. He also mentioned that Difference principle loses its sanctity in comparison with economic distributions. He also mentioned that in the beginning there are equal resources by the end, economic benefits vary according to the needs and choices of the people.²⁴³

There should be equality without any discrimination. The rights are always linked with the corresponding duties. Discrimination refers to the situation whereby the persons are treated differently with biased or impartial behaviors rather than on

²⁴² Distributive Justice; Available at <https://plato.stanford.edu/entries/justice-distributive/> last visited December 19, 2018

²⁴³ Distributive Justice; Available at <https://plato.stanford.edu/entries/justice-distributive/> last visited December 19, 2018

merit.²⁴⁴ The preferential discrimination violates the principles of non-discrimination and the theory of social justice, which is an integration and balance of society through duties and responsibilities of every class of society according to the nomenclature of their job²⁴⁵.

Discrimination is the source of inequality. Discrimination is any action or omission, which denies to individuals belonging to a certain social group equality of treatment. The right of equality is the rule of law that postulates that there is no discrimination or partiality among the born free human beings, who have an inherent right of equality in dignity and rights, and entitled to equal protection of law and justice. Prejudice and discrimination exist when dislike or hatred is based on the fact that the disliked person belongs to a particular social circle, group or category, e.g. domestic workers. Discrimination has legal relevance when it consists of acts or omissions which deny or violate legal rights of the person belonging to a disliked discriminated group.

The Constitution of Pakistan 1973 provides protection for the elimination of all forms of exploitation. It further focuses on the fundamental principle of law, from each according to his ability to each according to his work.²⁴⁶ It further protects the persons from every kind of discrimination and ensures equal protection of law and equality before law.²⁴⁷ The Constitution also prohibits slavery, forced labour and

²⁴⁴ Amna Abbas, Usman Jillani and Zinnia Kakakhel, “Good Decision-Making under Pakistani Law”, Research Society of International Law, (2018),43

²⁴⁵ Social Justice: 7 theories of social justice explained; Available at <http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830/> last visited February 10, 2017

²⁴⁶ The Constitution of Islamic Republic of Pakistan, 1973, Article 3

²⁴⁷ The Constitution of Islamic Republic of Pakistan, 1973, Articles 4 and 25

human trafficking.²⁴⁸ It also provides that every person has a right to choose trade, business, profession and association of his own choice.²⁴⁹ The Constitution also states some non-binding principles that make sure employees are provided a just and humane environment for working. It also protects women and children from working in inappropriate environments regarding their gender and age. Similarly it provides female workers with other benefits like maternity leaves and allowances.²⁵⁰

As per Pakistani law, depriving an individual to enjoy equal rights as granted to his fellow members is a case of discrimination. In every case of discrimination, there lies an element of biasness and injustice to be proved by material evidence.²⁵¹ If the affected party can produce evidence and witnesses for the treatment of discrimination, the court will hold the employer/management guilty. The employees must know importance of producing evidence. Without evidence and witnesses, no Court or Authority will be able to punish an employer organization merely on the basis of verbal assertions. Also, there is a difference between discrimination and favoritism. For discrimination, elements of arbitrariness, doubt and vacillation must be present in an act done by discretion of the Authority. Even these elements must be proven with evidence; only then this discretion will be equivalent to discrimination.²⁵²

According to Article 25 of the Constitution, every individual has a right of equality and prohibits discrimination. Where Authorities are entrusted with power to make decisions in different matters and situations, it is important for Authorities to

²⁴⁸ The Constitution of Islamic Republic of Pakistan, 1973, Article 11

²⁴⁹ The Constitution of Islamic Republic of Pakistan, 1973, Article 17 and 18

²⁵⁰ The Constitution of Islamic Republic of Pakistan, 1973, Article 35 and 37

²⁵¹ *Shaid Rahim v. Board of Trustees of Karachi*, 2015 PLC (C.S.) 1235, 1241

²⁵² *Shaid Rahim v. Board of Trustees of Karachi*, 2015 PLC (C.S.) 1235, 1241

take every decision in an unbiased and impartial manner. The Authorities must produce their decisions keeping in mind the Principle of non-discrimination. Every decision must be transparent and judicious. It should be free from any ambiguity, arbitrariness, and dubious elements.²⁵³ Individuals following in one category must be treated equally or else the verdict by the Authority can be deemed unreasonable, biased and arbitrary. However, classifying or differentiating individuals on legitimate basis is legal; here the different basis of classifications must be reasonable and sound. Any of the classification must not be capricious or arbitrary and not go against the merit or the general rules of justice and fairness.²⁵⁴

Domestic workers are the result of unequal class structure of the society failing to comply with the social justice principles. They are the suppressed and underprivileged class of the society working for their survival and satisfaction of their necessities. They not only earn for their livelihood but also help to raise the lifestyle of the employers and ultimately contribute to per capita income of the country by creating employment. Though, such employment is not considered as employment in the strict sense of the word. Despite their contributions and socio-economic differences, they are still not considered as employees as compared to other workers working in other sectors of the society depending upon the tasks and privileges they have under their contract of employment. This disparity is due to discrimination, lack of legal protection, hidden nature of work, harsh terms of employment, with physical, mental and at times sexual abuses and labour exploitation.

²⁵³ Messrs. Uzma Construction Co. v. Navid H. Malik, 2015 SCMR 642, 654

²⁵⁴ Muhammad Azram v. National Institute of Health, 2015 PLC (C.S.) 537, 546

2.3 Principle of Master and Servant (Vicarious Liability)

The Principle of Master and Servant is derived from the Rule of Master and Slave. As the slave was entrusted to the master and he had no personality of his own, the master was held responsible for the torts of the servant. Secondly, in order to comply with the public policy, there should be someone to pay for the damages caused by the servants as they themselves have no financial worth to pay for the same while master is in a better position. Thirdly, the rules of *respondeat superior* (let the master answer) and *quifacit per alium facit per se* (the authorized acts of the servant are equated with the acts of the master) are applicable.²⁵⁵

Since 19th Century, slavery was abolished in various jurisdictions, as a result of which a global consensus on the abolishment of slavery so as to protect the rights of workers belongs to whatsoever class. In Common law and Civil law judicial system, the concept of Master and Servant is renamed as Employer and Employee relationship, which means that it is considered as a legal contractual relationship.²⁵⁶ The application of the concept is quite disappointing. Mere changing the name of the relationship without changing its form and practical implications is a failed practice. In Pakistan, the concept of Master and Servant is still prevalent without any judicial or legal transformation. Though the superior judiciary of Pakistan has mentioned in numerous judicial decisions that application of the Principle of Master and Servant is contradictory to the Islamic law and the fundamental rights guaranteed under the Constitution of Pakistan 1973. On the other hand, the Courts have decided *vice versa*.

²⁵⁵ Ratanlal and Dirajlal, *The Law of Torts*, (LexisNexis Butterworths Wadhwa, Nagpur, 26th Edition: 2010), 154

²⁵⁶ Syed Ali Naveed Arshad, "Master and Servant", *Courting the Law*, March 1, 2016; Available at <http://courtingthelaw.com/2016/03/01/commentary/master-servant/> last visited August 27, 2019

The judicial decisions seem to be in favour of the employer rather than employee even in the extreme cases of employment exploitation.²⁵⁷

As followed by Western jurisdictions, it is important to look into the core concept of Master and Servant relationship. A servant is engaged in a service contract, therefore, it becomes a legal relationship and it should be regulated by legal principles. By virtue of this Rule, the master is responsible for the acts of its servant provided that the servant has worked under the *vires* of his granted authority. In other words, the master is vicariously liable for the acts of his servant. Vicarious liability is a concept associated with the principle of agency, since the master can exercise control over the servant and is also responsible for the acts of the servant unless the servant deviates from the directions of the master or does any act fraudulently.²⁵⁸ A master cannot only give directions to the servant but also can give directions to control the manner in which the work is to be conducted.²⁵⁹ It should be made clear that such control means scrutiny and not to be used as a tool of exploitation of servants.

Lord Thankerton, in *Short V.J. and W. Handerson Ltd.*, provided four guidelines for the determination of contract of service: the master's authority or power to select his servant; remuneration of services; the right of the master to control the

²⁵⁷ Syed Ali Naveed Arshad, "Master & Servant", *Courting the Law*, 1st March, 2016; Available at

<http://courtingthelaw.com/2016/03/01/commentary/master-servant/> last visited July 27, 2019

²⁵⁸ Vicarious Liability; Available at

<https://www.investopedia.com/terms/v/vicarious-liability.asp#:~:text=Vicarious%20liability%20is%20a%20situation,own%20share%20of%20the%20liability> Last visited August 27, 2019

²⁵⁹ Master-Servant Rule Law and Legal Definition; Available at

<https://definitions.uslegal.com/m/master-servant-rule/> last visited August 27, 2019

manner of doing work; and the right of the master to suspend or dismiss from service.²⁶⁰

As stated earlier, the Master and Servant Principle is also followed in Pakistan without any considerable statutory alteration yet certain judicial interpretations have been made so far. In most of the organizations, the employer is the solemn authority, enjoying his position like a Master while setting terms and conditions for his employees himself especially in whatever the way the employer desires.

In a Pakistan's recent judicial decision, the rule of Master and Servant was once again debated and it was further interpreted in a way that the nature of relationship suggests that the master cannot only exercise his authority over the servant but can also give instructions, guidelines or even can order regarding time, place, nature and manner of work to be undertaken.²⁶¹ In another case, it was decided that the Master and Servant relationship is an extension of the Contract of Agency, though, it is an employment relationship yet the master can exercise actual or constructive control over the servant.²⁶² Yet this authority should not extend to control the life of the servant in any manner.²⁶³ Also, the organizations, where employment contracts are governed by law, the principle of Master and Servant in employment relationship will not hold valid.²⁶⁴ The workers, who are not protected by the labour laws, they are, therefore, not regulated by any law or regulation of the State, yet they cannot even approach the Court of Law for the redressal of their grievances due to

²⁶⁰ Short V.J. and W. Handerson Ltd. (1946) 62 TLR 427 (HL), 420

²⁶¹ Kamran Ahmad v. WAPDA, 2014 PLC (C.S.) 332

²⁶² Mst. Rani v. Pakistan International Airline Corporation, 2017 PLC (C.S.) Note 11

²⁶³ Khalil Mughal v. Pakistan International Airline Corporation, 2018 PLC (C.S.) Note 34

²⁶⁴ Zahir Ullah V Chairman, WAPDA, 2000 SCMR 826, 827

lack of jurisdiction of the Courts in that regard. Even the writ jurisdiction of High Court cannot be invoked.²⁶⁵ They cannot even sue for damages on account of violation of contract of service.

A lot of employees are terminated by adopting unfair and biased justifications. Due to lack of judicial forum, they can only file a case as a regular civil or a criminal case subject to availability of evidence (which is also impossible as the documents are kept in confidentiality by every organization). The employee does not only suffer a loss but are not even compensated, their concerns are not heard by any judicial authority, ultimately they have to go through a disgrace and miserable conditions.²⁶⁶

The Principle of Master and Servant is now an accepted principle and has broad interpretation in the Courts of Pakistan. When the statutes (of semi-government organizations) provide the terms and conditions of appointment of employees, the employers are bound to follow those rules. Even the employees cannot initiate the legal proceedings against the organizations, the rules of organization so provides, if they do so, the employer can take disciplinary action against the employee.²⁶⁷ The Constitution of Pakistan 1973 does not restrict the organizations to make rules or by-laws for their internal affairs, therefore, in such a case, the principle of Master and Servant holds valid.²⁶⁸ Yet the employees working in government organizations can approach the Court of competent jurisdiction for the redressal of their grievances.²⁶⁹

²⁶⁵ Aurangzeb V Messrs. Gool Bano, 2001 SCMR 909, 911

²⁶⁶ Syed Ali Naveed Arshad, "Master & Servant", *Courting the Law*, 1st March, 2016

²⁶⁷ Kamran Ahmad V WAPDA, 2014 PLC (C.S.) 332, 349-351

²⁶⁸ Pakistan Defense Officers Housing Authority V Lt. Col. Junaid Ahmad, 2013 SCMR 1707, 1742

²⁶⁹ Liaquat Ali, Principal Technician PCSIR Laboratories V Chairman PSCIR, PLJ 2013 Peshawar 174, 176

In case of domestic workers, the employer is responsible for the acts of the workers working under the prescribed instructions of the master. Domestic workers are generally terminated by adopting unfair and biased justifications, and even without notice. Yet, the critical analysis of the relationship shows that the prevalent trend of employment relationship of domestic workers does not fall under master and servant, yet it still falls in the category of master and slave. In that case, if the employer commits any harm to the servant, how he should be made liable for that harm? In that case, the defense of *volenti non fit injuria* (consented wrong has no remedy) can also not be implemented as the domestic workers, most of the time, don't expose themselves to hazardous conditions voluntarily. They are forced by their masters to do so. In such a situation, the master should not only be made vicariously liable for the acts of the servant but also responsible to the servant also in case of any injury caused to him during the course of employment. Similarly there are situations where domestic workers pose harm to their masters. In this situation, domestic workers cannot be sued due to lack of legal protection. In such a situation, domestic workers are being penalized by their masters personally; thereby they become the victims of physical, psychological and even sexual abuse.

2.4 Islamic Theory of Universal Justice²⁷⁰

Forced labour has historically manifested in various forms including slavery, bonded labour and exploitation based on caste or debt. Vulnerable individuals, such as orphans, are often trapped in such systems due to usurious debts passed down through

²⁷⁰ Beenish Aslam Shaikh and Prof. Dr. Farkhanda Zia Mansoor, "The Protection of Child Domestic Workers: An Islamic Perspective" *AL ASAR Islamic Research Journal* Vol. 3 No. 2, 2023, Available at

<https://alasar.com.pk/ojs3308/index.php/alasar/article/view/115> last visited April 30, 2023

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generations. Both Allah and Holy Prophet (ﷺ) have strictly prohibited usury and exploitation of all its forms (2:275²⁷¹ and 4:10²⁷²).

Rights and justice are most important principles for the foundation of any society. Allah Almighty has focused on justice in all the matters of human life and conduct. Islamic principles provide strong integrating force between the man and the society. Islam focuses on dignity, freedom and equality of men before Allah thereby protecting men from injustices caused by oppression of any class of society. Social justice in any society is the condition in which masses are allowed to live their lives freely and nothing is endangered to human life.

In Islam, a mechanism for emancipation was established through a contract known as *Mukataba* (مكاتبة), where a slave could negotiate with their master to gain freedom in exchange for a specified payment over a set period. This contract allowed slaves, referred to as *mukatabs*, a pathway to autonomy. The Quran encourages granting freedom to those in bondage who seek it through a deed of emancipation provided they show potential for good. It also advises giving them a share of the wealth (24:33)²⁷³. The Holy Prophet (ﷺ) also emphasized compassion in such

²⁷¹ Al Quran (2:275)

“And for those who devour interest, they behave as the one whom Satan has confounded with his touch. Seized in his state they say: ‘Buying and selling is but a kind of interest’, even though Allah has made buying and selling lawful, and interest unlawful. Hence, He who receives that admonition from his Lord, and then gives up (dealing in interest), may keep his precious gains, and it will be for Allah to judge him. As for those who revert to it, they are the people of the Fire, and in it shall they abide”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 62

²⁷² Al Quran (4:10)

“Behold, those who wrong fully devour the properties of orphans only fill their bellies with fire. Soon they will burn in the Blazing fire”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 104

²⁷³ Al Quran (24:33)

arrangements advising masters not to impose undue hardship on the slave. Additionally, if a master partially freed a slave but couldn't afford to free the rest the Holy Prophet (ﷺ) instructed that the slave should work to pay the remaining amount without facing excessive burden. If the master was financially capable, they were required to pay the outstanding amount to fully liberate the slave.²⁷⁴ This guidance underscores Islam's emphasis on fairness and humane treatment, even in complex transactions like manumission.

Moreover, the concept of Welfare State in Islam provides principles so that the mankind can fashion their lives according to the principles of social behaviour revealed by Allah Almighty (12:40)²⁷⁵ while the Western concept of State is the relationship between the man and the State and man with man. In an Islamic State, the whole power rests with Allah Almighty while the people are His representatives (7:54)²⁷⁶ and seek guidance from Allah's Commandments (17:80).²⁷⁷

“Let those who cannot afford to marry keep themselves chaste until Allah enriches them out of His Bounty. And write out a deed of manumission for such of your slaves that desire their freedom in lieu of payment – if you see any good in them – and give them out of the wealth that Allah has given you. And do not compel you slave-girls to prostitution for the sake of the benefit of worldly life while they desire to remain chaste. And if anyone compels them to prostitution, Allah will be Most Pardoning, Most merciful (to them) after their subjection to such compulsion”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 530

²⁷⁴ Ibn Majah:2527

²⁷⁵ Al Quran (12:40)

“Those whom you serve beside Him are merely idle names that you and your fathers have fabricated, without Allah sending down any sanction for them. All authority to govern rests only with Allah. Allah has commanded that you serve none but Him. This is the Right Way of life, though most people are altogether unaware”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 347

²⁷⁶ Al Quran (7:54)

“Surely your Lord is none other than Allah, Who created the heavens and the earth in six days, and then ascended His throne, Who causes the night to cover the day and then the day swiftly pursues the night, Who created the sun and the moon and the stars making them all subservient to His command. Bless is Allah, the Lord of the whole Universe”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 227

²⁷⁷ Al Quran (17:80)

In an Islamic Welfare State there is a balance of power in all the sects of society. The Holy Quran provides that the integration and balance of society through duties and responsibilities of kings (rulers), warriors and labourers, as per their respective qualities²⁷⁸ is only possible if every person realizes his rights and duties in the society (4:36).²⁷⁹ Islam is the greatest proponent of the principle of equality before law. As is enshrined in the Holy Quran in Surah Hujurat, whereby Allah Almighty encourages piety and righteousness among the Believers (49:13).²⁸⁰

Islam acknowledges absolute equality, justice and partiality among all men without discrimination yet the fruits of the labour may vary. The Holy Prophet (ﷺ) underscored the significance of treating workers with kindness and respect highlighting labour rights as a crucial aspect of his teachings even in His last moments. In Islam, equality does not postulate equality in wealth because it is divinely ordained.²⁸¹ Yet there is no discrimination with respect to dignity of labour or

“And pray: “My Lord! Cause me to enter wherever it be, with Truth, and cause me to exit, wherever it be, with Truth, and support me with authority from Yourself””.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 429

²⁷⁸ Social Justice: 7 theories of social justice explained; Available at

<http://www.yourarticlelibrary.com/economics/social-justice-7-theories-of-social-justice-explained/39830/> last visited December 7, 2018

²⁷⁹ Al Quran (4:36)

“Serve Allah and ascribe no partner to Him. Do good to your parents, to near of kin, to orphans, and to the needy, and to the neighbor who is of kin and to the neighbor who is a stranger, and to the companion by your side, and to the wayfarer, and to those whom your right hands possess. Allah does not love the arrogant and the boastful”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 114-115

²⁸⁰ Al-Quran 49:13

“Human beings, We created you all from a male and a female, and made you into nations and tribes so that you may know one another. Verily the noblest of you in the sight of Allah is the most God-fearing of you. Surely Allah is All-Knowing, All-Aware”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 768

²⁸¹ N.K. Singh, *Social Justice and Human Rights in Islam*, (Gyan Publishing House, New Delhi), ISBN: 81-212-0592-1, 90

the rights, duties, responsibilities and obligations among the employers and the employees. They do not vary with the class or any other factors.²⁸²

Allah Almighty has ordained the principle of non-discrimination in Surah An Nisa in the Holy Quran (4:1).²⁸³ Allah has emphasized on respect of mutual rights among the humans, and this is the basis for social life. In this verse, childcare is emphasized as a sacred responsibility, with parents' duties towards their children being considered a divine obligation to Allah. The principle of non-discrimination is also enshrined in Surah Al Ahzab (33:35)²⁸⁴ whereby Allah Almighty has said that the reward for the Believers is same regardless of the sexes and status. The reward of forgiveness is for the righteous people who fear Allah and lead their lives according to the teachings ordained by Allah Almighty. The Holy Prophet (ﷺ) also emphasized the importance of Prayer, Zakat and kindness to those under one's care He reiterated these teachings until the end of His life.²⁸⁵

²⁸² Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

²⁸³ Al-Quran 4:1

“O people! Fear your Lord Who created you from a single being and out of it created its mate; and out of the two spread many men and women. Fear Allah in Whose name you plead for rights, and heed the ties of kinship. Surely, Allah is ever watchful over you”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 101

²⁸⁴ Al Quran (33:35)

“Surely men who submit (to Allah) and women who submit (to Allah), the men who have faith and the women who have faith, the men who are obedient and the women who are obedient, the men who are truthful and the women who are truthful; the men who are steadfast, and the women who are steadfast, the men who humble themselves (to Allah) and the women who humble themselves (to Allah), the men who give alms and the women who give alms, the men who fast and the women who fast, the men who guard their chastity and the women who guard their chastity, the men who remember Allah much and the women who remember Allah much; for them has Allah prepared forgiveness and a mighty reward”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 624-625

²⁸⁵ Adab al Mufrad:156

The human rights in Islam are ordained by Allah Almighty and the subjects have to accept, recognize and enforced the rights guaranteed by Allah Almighty without any amendments. The roles of the genders are not only different but unique as well. Their skills and functions are different but their rights, as human beings, are equal, as is mentioned in the Holy Quran in Surah Al An'am (6:151).²⁸⁶ In the same Surah, Allah Almighty has symbolized stars as the sign of His blessings and mercy for those who are at righteous path and whom Allah Almighty has given knowledge to identify those signs (6:97).²⁸⁷

The Holy Quran has also laid down the concept of dignity of man as “Indeed, We honoured the progeny of Adam, and bore them across land and sea and provided

²⁸⁶ Al Quran (6:151)

“Say to them, (O Muhammad): “Come, let me recite what your Lord has forbidden:

- i. That you associate nothing with Him;
- ii. And do good to your parents;
- iii. And do not slay your children out of fear of poverty. We provide you and will likewise provide them with sustenance;
- iv. And do not even draw near to things shameful – be they open or secret;
- v. And do not slay the soul sanctioned by Allah except in just cause; this He has enjoined upon you so that you may understand;
- vi. And do not even draw near to the property of the orphan in his minority except in the best manner;
- vii. And give full measures and weight with justice, We do not burden anyone beyond his capacity;
- viii. When you speak, be just, even though it concerns a near of kin
- ix. And fulfill the covenant of Allah. That is what He has enjoined upon you so that you may take heed;
- x. This is My Way – that which is Straight; follow it, the, and do not follow other paths lest they scatter you from His Path. This is what He has enjoined upon you, so that you may beware”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 214-215

²⁸⁷ Al Quran (6:97)

“It is He Who has made for you the stars that you may follow the right direction in the darkness of the land and the sea. We have indeed spelled out Signs for the people who have knowledge”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 202

them with good things for their sustenance, and exalted them above many of Our creatures” (17:70).²⁸⁸

The preferential discrimination violates the principles of equality, non-discrimination, the theory of social justice and distributive justice. The idea of justice is closely connected with the problem of equality in human social life. Workers have the right to be protected from tasks especially physical ones that exceed their abilities. This principle condemns exploitation including child labour, bonded labour and excessive work hours. Justice requires the equal treatment of equal person in equal or essentially similar circumstances²⁸⁹ but children need special care and special human rights being the special subjects of the society.²⁹⁰ As Allah Almighty in Holy Quran in Surah *Bani Isra'il* (17:23-24)²⁹¹ has stressed the people to be good and wise to their parents and those who are old and feeble, and similarly to those who are young, needy or destitute (17:29-30).²⁹² In Islam, parents are entrusted with the significant responsibility of nurturing and educating their children ensuring their well-being in both this world and the hereafter. Parents are not only responsible for their own well-

²⁸⁸ Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 428

²⁸⁹ Edgar Bodenheimer, *Jurisprudence – The Philosophy and Method of the Law*, (Harvard University Press, Cambridge: 1962), p. 193

²⁹⁰ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, “Rights of Children and Parents in Holy Quran”, *International Journal of Pediatrics* (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

²⁹¹ Al Quran (17:23-24)

“Be good to your parents; and should both or any one of them attain old age with you, do not say to them even “fie” neither chide them, but speak to them with respect”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 419

²⁹² Al Quran (17:29-30)

“And when you must turn away from them – (that is, from the destitute, the near of kin, the needy, and the wayfarer) in pursuit of God’s Mercy which you expect to receive, then speak to them kindly. Do not keep your hand fastened to your neck nor outspread it, altogether outspread, for you will be left sitting rebuked, destitute”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 419-420

being but also for ensuring the safety and well-being of their children. This includes protecting children from work that could harm their health or hinder their education. The Quran emphasizes protecting children from harm, guiding them towards righteousness and shielding them from negative influences (66:6).²⁹³ The Quran also highlights the sacrifices of parenthood particularly mother's sacrifices in raising a child noting the difficulties she endures (31:14).²⁹⁴ The Quran also acknowledges the mother's hardships as she bears and delivers her child with great suffering (46:15).²⁹⁵ The Quran also notes that men feel contented by their women and children (3:14)²⁹⁶, therefore, it is also highlighted in the Hadith that the most valuable gift a father can give his children is a good upbringing particularly teaching them good manners.²⁹⁷

In Islamic law, child custody is governed by distinct principles prioritizing the child's welfare and best interests. Even when parents separate, both are responsible

²⁹³ Al Quran (66:6)

"Believers, guard yourselves and you kindred against the Fire whose fuel is human beings and stones, a Fire held in the charge of fierce and stern angels who never disobey what He has commanded them, and always do what they are bidden".

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 873

²⁹⁴ Al Quran (31:14)

"We enjoyed upon man to be dutiful to his parents. His mother bore him in weakness upon weakness, and his weaning lasted two years. (We, therefore, enjoyed upon him): "Give thanks to Me and to your parents. To Me is your ultimate return" "

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 610

²⁹⁵ Al Quran (46:15)

"We have enjoyed man to be kind to his parents. In pain did his mother bear him and in pain she gave birth to him. The carrying of the child to his weaning is a period of 30 months. And when he is grown to his full maturity and reaches the age of forty, he prays: 'My Lord, dispose me that I may give thanks for the bounty that You have bestowed upon me and my parents, and dispose me that I may do righteous deeds that would please You, and also make my descendants righteous. I repent to You, and I am one of those who surrender themselves to You'."

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 741

²⁹⁶ Al Quran (3:14)

"People are naturally tempted by the lure of women, children, treasure of gold and silver, horses of mark, cattle and plantation. These are the enjoyment in the life of this world; but with Allah lies a goodly abode to return to".

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 69-70

²⁹⁷ Tirmidhi:1952

for caring for their child ensuring the child remains attended to at all times. Custody, known as “*Hizanat*” can be granted to the mother, father or a close relative depending on the child’s needs. The mother typically has primary custody rights for young children, with custody of sons usually extending until seven years of age and daughters until puberty. However, courts often extend the mother’s custody beyond these ages if deemed beneficial for the child. A person can be disqualified from custody if they fail to fulfill obligations towards the child, lead an indecent life, or engage in harmful activities like forcing the child into labour. In such cases, custody may be granted to another suitable relative. The Holy Prophet (ﷺ) taught that everyone is a guardian and is accountable for those under their care.²⁹⁸ Furthermore, Muslim society has a collective responsibility to support children unable to receive maintenance from their parents or relatives with those having the means obligated to provide assistance (107:1-7).²⁹⁹ The Holy Prophet (ﷺ) emphasized the importance of kindness towards children and respect for elders, warning that those who fail to do so are not among his followers.³⁰⁰ The Holy Prophet (ﷺ) also taught that showing mercy and kindness to others is essential as Allah will not show mercy to those who do not show mercy to others.³⁰¹ The Holy Prophet (ﷺ) always demonstrated exceptional kindness and patience as Hazrat Anas (RA) reported that he served Him for ten years without ever being scolded or criticized, not even with a slight word of impatience.³⁰²

²⁹⁸ Sahih Bukhari:893

²⁹⁹ Al Quran (107:1-7)

“Did you see him who gives the lie to the Reward and Punishment of the Hereafter? Such is the one who repulses the orphans away, and urges not the feeding of the needy. Woe, then, to those who pray, but are heedless in their Prayers, those who do good (in order) to be seen, and deny the people the articles of common necessity”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 974

³⁰⁰ Sunan Abi Dawud:4943

³⁰¹ Al-Adab Al-Mufrad:370

³⁰² Sahih Bukhari:6038

Allah Almighty has always focused on the equality and justice. The Holy Prophet (ﷺ) emphasized that seeking knowledge is a duty incumbent upon every Muslim, male and female,³⁰³ which means that there is equality of rights of males and females in Islam. The Quran highlights the significance of knowledge noting that those with understanding and insight have a deeper reverence for Allah (35:28).³⁰⁴ The Quran poses a rhetorical question implying that those with knowledge and those without cannot be equal emphasizing the value of education and insight (39:9).³⁰⁵ The Holy Prophet (ﷺ) emphasized the importance of caregivers' responsibilities stating that it is a grave sin to neglect those one is supposed to provide for highlighting the duty to ensure children's well-being and education.³⁰⁶

The basis of justice mentioned in Surah Al Maidah (5:8)³⁰⁷ whereby Allah Almighty has provided the bottom line that hatred of people among themselves should never deviate them from justice. It means that those people who fear Allah would never act unjustly with anybody, as this is the virtue of righteous and blessed people. The responsibility for managing a minor's property and their custody can fall to

³⁰³ Sunan Ibn Majah:224

³⁰⁴ Al Quran (35:28)

“And human beings too, and beasts, and cattle – diverse are there hues. From among His servants, it is only those who know that fear Allah. Verily Allah is Most Mighty, Most Forgiving”.

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 644

³⁰⁵ Al Quran (39:9)

“Is such a person (preferable or he) who is obedient, and prostrates himself in the watches of the night, stands(in Prayer), is fearful of the Hereafter, and looks forward to the mercy of His Lord? Ask them ‘Are those who know equal to those who don’t know?’ Only those endowed with understanding take head.”

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 675

³⁰⁶ Sunan Abi Dawud:1692

³⁰⁷ Al Quran (5:8)

“Believers! Be upright bearers of witness for Allah, and do not let the enmity of any people move you to deviate from justice. Act justly, that is nearer to God-fearing. And fear Allah. Surely Allah is well aware of what you do”

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*,(United Kingdom: The Islamic Foundation, 2011), 156

different individuals. If a father or grandfather hasn't appointed an executor, the court can appoint someone to oversee the minor's property. The Quran emphasizes the importance of protecting and managing the property of orphans with diligence and care (4:5-10).³⁰⁸ Holy Quran also protects the human beings from the acts of sexual exploitation (24:30-31).³⁰⁹ Allah Almighty has promised to pay reward to such righteous people who follow Allah's Commandments without any reservation (4:13).³¹⁰

When considering children's engagement in work, utmost care must be taken in selecting the type of work ensuring it does not pose any risk to their physical

³⁰⁸ Al Quran (4:5-10)

"Do not entrust your properties - which Allah has made a means of support for you - to the weak of understanding, but maintain and clothe them out of it, and say to them a kind word of admonition. Test the orphans until they reach the age of marriage, and then if you find them mature of mind hand over to them their property, and do not eat it up by either spending extravagantly or in haste, fearing that they would grow up (and claim it). If the guardian of the orphan is rich let him abstain entirely (from his ward's property); and if he is poor, let him partake of it in a fair measure. When you hand over their property to them let there be witnesses on their behalf. Allah is sufficient to take account (of your deeds). Just as there is a share for men in what their parents and kinsfolk leave behind, so there is a share for women in what their parents and kinsfolk leave behind - be it little or much a share ordained (by Allah). And if other near of kin, orphans and needy are present at the time of division of inheritance give them something of it and speak to them kindly. And those who would have been fearful on account of their helpless offspring they may have behind them, let them fear Allah and say what is right. Behold, those who wrongfully devour the properties of orphans only fill their bellies with fire. Soon they will burn in the Blazing Flame".

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 102-104

³⁰⁹ Al Quran (24:30-31)

"(O Prophet), enjoin believing men to cast down their looks and guard their private parts. This is purer for them. Surely Allah is well aware of all what they do. And enjoin believing men to cast down their looks and guard their private parts and not reveal their adornment except that which is revealed of itself, and to draw their veils over their bosoms, and not to reveal their adornment save to their husbands, or of their own sons, or the sons of their husbands, or their brothers, or the sons of their brothers, or the sons of their sisters, or women with whom they associate, or those that they are in their bondage, or the male attendants in their service free of sexual interest, or boys that are yet unaware of the illicit matters pertaining to women. Nor they should stamp their feet on the ground in such manner that their hidden ornament becomes revealed. Believers, turn together, all of you, to Allah in repentance that you may attain true success".

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 529-530

³¹⁰ Al Quran (4:13)

"These are the bounds set by Allah. Allah will make him who obeys Allah and His Messenger enter the Gardens beneath which river flow. He will abide there forever. That is the mighty triumph"

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 106-107

health, safety, moral well-being or overall development. The task assigned should align with the child's capabilities and it is crucial to recognize that overburdening them would be detrimental. This principle is echoed in the Quran, which emphasizes the importance of capacity and underscores that individuals should not be obligated beyond their endurance, a concept that extends to all aspects of life including religious obligations. Consequently, it is imperative that children are not compelled to undertake work that exceeds their capacity as this would contravene the fundamental principle that no soul should be burdened beyond what it can bear, as articulated in the Quranic teachings (2:286).³¹¹ The Holy Prophet (ﷺ) also instructed that when commanded to do something one should do as much as they are able to do.³¹²

The Quran highlights the qualities of a good employer through the conversation between Hazrat Musa (AS) and Hazrat Shuaib (AS) emphasizing fairness and consideration. It suggests that workers should be treated with kindness, not forced into excessive labour and allowed to work under reasonable conditions (28:27).³¹³ The Holy Prophet (ﷺ) emphasized fair treatment, stating that workers should be provided for and not overburdened beyond their strength.³¹⁴ The Holy Prophet (ﷺ) warned that Allah will oppose those who exploit workers specifically

³¹¹ Al Quran (2:286)

“Allah does not lay a responsibility on anyone beyond his capacity. In his favour shall be whatever good each one does, and against him whatever evil he does. (Believers! Pray thus to your Lord): ‘Our Lord! Take us not to task if we forget or commit mistakes. Our Lord! Lay not on us a burden such as You laid on those gone before us. Our Lord! Lay not on us burdens which we do not have the power to bear. And overlook our faults, and forgive us, and have mercy upon us. You are our Guardian; so grant us victory against the unbelieving folk’.”

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 66

³¹² Sahih Bukhari:7288

³¹³ Al Quran (28:27)

“Her father said to Moses: ‘I want to marry one of these two daughters of mine to you if you serve me for eight years. But if you complete ten years, that will be of your own accord (but not an obligation). I do not intend to treat you harshly. If Allah wills, you will find me an upright man’.”

Translation by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 577

³¹⁴ Adab al Mufrad:192-193

mentioning three types: the treacherous, those who sell free people into slavery and employers who fail to pay workers their rightful wages after utilizing their labour.³¹⁵ The Holy Prophet (ﷺ) cautioned the infringers who exploit workers that He will advocate against those who wronged with them, withheld their rights, overburden them or take from them without consent on the Day of Judgment.³¹⁶ In another tradition, the Holy Prophet (ﷺ) warned those who exploit others through forced labour including child labour and hazardous working conditions will face severe consequences on the Day of Judgment stating that Allah will reciprocate the hardship they imposed on others.³¹⁷

The Holy Prophet (ﷺ) while emphasizing the importance of treating workers with kindness and respect, reminded employers that those who work for them are their brethren entrusted to their care by Allah. He advised that workers should be provided with food and clothing similar to what the employers have for themselves highlighting the principle of fairness and equality. Moreover, the Holy Prophet (ﷺ) cautioned against overburdening workers with tasks beyond their capacity emphasizing the need for compassion and understanding. If such situations arise, employers are encouraged to offer assistance ensuring that the workload remains manageable and that workers are treated with dignity. This guidance underscores the values of empathy, justice and mutual respect in the employer-worker relationship.³¹⁸

The other most important legal documents on human rights are the *Sulh Hadaibiah* and *Khutba Hajja tul wida*. These documents have laid down the

³¹⁵ Sahih Bukhari:2227

³¹⁶ Sunan Abi Dawud:3052

³¹⁷ Sahih Bukhari:7152

³¹⁸ Sahih Bukhari:2545

foundation of respect and dignity of human life, equality, social justice, distributive justice, non-discrimination, have valued natural legal rights of a person in the society and strongly struggled for human welfare. The Holy Prophet (ﷺ) also emphasized in *Khutba Hajja tul wida* the importance of prayer and treating workers with kindness and fairness urging his followers to fear Allah in their dealings with those under their care.³¹⁹

In Islam, domestic workers are also entitled to equal protection and dignity under the law reflecting the faith's emphasis on justice, kindness and compassion. They have the right to fair treatment including timely payment of wages, reasonable working hours and adequate rest periods as well as protection from physical, verbal, psychological and sexual abuse. Islam's framework for childcare and protection explicitly prohibits and condemns all forms of child labour including forced, bonded, domestic and all forms of hazardous work as well as exploitation through trafficking, war, prostitution, pornography and illicit activities. The Prophet (ﷺ) emphasized that children should not be burdened with earning a living clearly condemning child labour and exploitation.³²⁰ By upholding these principles, Islamic societies can ensure that domestic workers particularly child domestic workers belonging to any class, creed, culture, religion or gender are treated with dignity and respect in line with Islamic values of compassion, empathy and justice as enshrined in the Holy Quran and Sunnah.

³¹⁹ Musnad Ahmad:585

³²⁰ Muwatta Malik:42

Conclusion

The principles of Natural Justice, Social Justice, Distributive Justice, Universal Justice and Non-discrimination are core elements of every law of the world. Even if these principles are not prescribed in employment contracts or labour laws, these principles are *grund norm* and are impliedly present in every legislation and contractual relationship. Though certain exceptions of the principle of Natural Justice are there, which have already been discussed in this chapter. The domestic workers are protected under the principles of natural justice, social justice, distributive justice and non-discrimination, even though the domestic workers are exploited. Since the employment contracts of the domestic workers are unwritten, they are also protected under the principle of master and servant. If these principles are applied in their true letter and spirit in the Master and Servant relationship, it will curb the emerging social problems of domestic workers as well. Over and above, Islamic Law holds the human dignity at priority and the *haqooq ul ibaad* are respected and protected in the most dignified manner, therefore, the domestic workers have same rights under Islamic Law.

Chapter 3

LEGAL FRAMEWORK FOR THE PROTECTION OF DOMESTIC WORKERS UNDER INTERNATIONAL LAW

Introduction

This chapter corresponds to fourth research question. It provides the legal framework for the protection of domestic workers. This legal framework provides a comprehensive foundation for safeguarding the rights of domestic workers, drawing upon a robust corpus of international and national laws. Internationally, it is supported by key international instruments such as the International Labour Organization (ILO) Conventions, including Convention 189 on Decent Work for Domestic Workers.

3.1 International Documents

The relationship between the State and its subjects is created by virtue of human rights among them *inter se* and protected by virtue of legal and constitutional mechanisms. International instruments also mention the concept of social justice and the principle of non-discrimination.

No doubt, Islam sets higher standards than those mentioned in International Human Rights instruments yet International instruments, such as UN Charter, UDHR, ICCPR, ICESCR, ILO Constitution and ILO Conventions also mention the concept of equality, social justice and the principle of non-discrimination.

At International level, human rights have evolved from various sources and strengthened by the United Nations (hereinafter referred as UN), International Labour

Organization (ILO) and International Committee for the Red Cross (hereinafter referred as ICRC). After Second World War, United Nations was made and UN Charter was signed by the States, the main purpose of which was to achieve international cooperation by respecting human life and dignity, universal respect and protection of fundamental rights and fundamental freedoms of human beings, social justice, maintenance of international peace and security, and principle non-discrimination. For the betterment of the whole community, the states were then required not only to respect those fundamental rights but also create favorable conditions so as to provide justice and implement peace in the world.³²¹ UN Charter also prescribes the principle of non-discrimination whereby the States are required to make every possible effort for the promotion and encouragement of respect for fundamental rights and freedoms of human beings without discrimination of any kind.³²²

3.1.1. Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) 1948, though professes human rights but fails to define the term ‘human rights’, yet it recognizes the that every human has an inherent dignity and equal and inalienable rights, which forms the foundation of peace, justice and freedom in the world.³²³ It further states the principle of social justice by declaring that all human beings are born free and have equal dignity and rights.³²⁴ Moving further, it states the principle of non-discrimination, which is an extension of UN Charter as well, that everyone is entitled to all the rights

³²¹ The Universal Declaration of Human Rights, 1948, Preamble

³²² The Universal Declaration of Human Rights, 1948, Article 1

³²³ The Universal Declaration of Human Rights, 1948, Preamble

³²⁴ The Universal Declaration of Human Rights, 1948, Article 1

and freedoms without discrimination in any respect, race, creed and culture, nationality, thoughts, gender, language, social, financial or political status.³²⁵

3.1.2 International Covenants in 1966 as International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)

The UDHR was further bifurcated on the basis of subjects into two International Covenants in 1966 as International Covenant on Civil and Political Rights (hereinafter referred as ICCPR) and International Covenant on Economic, Social and Cultural Rights (hereinafter referred as ICESCR). Both the Covenants requires the states to ensure protection, respect and fulfillment of citizen rights so as their masses from violation of human rights, and states should also adopt the appropriate legislative and administrative measures and refrain from illegal or arbitrary actions.³²⁶

3.1.3 Regional Documents

On the basis of UDHR regional instruments in Europe, America and Africa were also made all contributing additional grounds, interpretations, and applications. The non-discrimination rule was further specified in International Convention on the Elimination of All Forms of Racial Discrimination 1965 (hereinafter referred as ICERD) and the Convention on the Elimination of Discrimination against Women 1981 (hereinafter referred as CEDAW) and UN Convention on the Rights of Persons with Disabilities 2008 (hereinafter referred as CRPD).

³²⁵ The Universal Declaration of Human Rights, 1948, Article 2

³²⁶ International Covenants in 1966 as International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2

The American Declaration on Human Rights imposes a duty on the states to protect its people's fundamental rights³²⁷ including right to life,³²⁸ humane treatment,³²⁹ personal liberty³³⁰ and right to Freedom of Movement and Residence.³³¹

3.2 United Nations Convention on the Rights of Child (UNCRC) 1989

Declaration of the Rights of Child 1923 was agreed between the States, which incorporated the principles enshrined in League of Nation 1919 and forced the basis for Universal Declaration of Human Rights 1948 as well. The Universal Declaration of Human Rights covers the human rights of children too. Later on the Declaration for the Rights of the Child 1923 formed the baseline for the United Nations Convention on the Rights of the Child 1989 (hereinafter referred as UNCRC).³³²

Among the legal protections provided under the International Law, The Convention on the Rights of the Child is most famous. This was the first Convention, which provided the protection to the children worldwide under one sheltered document.

The United Nation's Convention on the Rights of the Child is the legal and binding instrument, which prescribes the protection and preservation of rights of

³²⁷ American Declaration of Human Rights, Article 1

³²⁸ American Declaration of Human Rights, Article 4

³²⁹ American Declaration of Human Rights, Article 5

³³⁰ American Declaration of Human Rights, Article 7

³³¹ American Declaration of Human Rights, Article 22

³³² Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at:

[https://www.researchgate.net/publication/267392183 Rights of Children and Parents in Holy Quran](https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran) last visited July 18, 2018

children from every kind of violation of rights, exploitation and abuse, and protect them from every kind of discrimination at every level.³³³

This Convention is one of the fundamental Conventions, which provides non-negotiable principles and obligations. This Convention postulates 4 core principles; non-discrimination, respecting welfare of the child, protecting children's human rights, and expression of social thought.³³⁴

This Convention poses the duty on the parents to provide proper guidance and supervision to their children.³³⁵ It means that the parents and the legal guardians are responsible to provide not only the basic necessities but also support and guide them for the better development and in the best interest of the child.³³⁶ Moreover, the children are more vulnerable to sexual exploitation particularly the female child workers.³³⁷ The CRC protects the children from sexual abuse and exploitation.³³⁸ In

³³³ Every Child has the right to survival, protection and education; Available at <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child#:~:text=The%20United%20Nations%20Convention%20on,their%20race%2C%20religion%20or%20abilities> last visited December 27, 2018; See also Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at:

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

³³⁴ The Convention on the Rights of Child; Available at <https://www.acyp.nsw.gov.au/about/the-convention-on-the-rights-of-the-child> last visited December 27, 2018; See also Convention on the Rights of the Child, United Nations Human Rights, Available at:

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> last visited December 27, 2018; Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at:

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

³³⁵ Convention on the Rights of the Child, 1989, Article 5

³³⁶ Convention on the Rights of the Child, 1989, Articles 18(1) and 27(2)

³³⁷ Committee on the Rights of the Child Forty-first Session Geneva, January 9-27, 2006, General Comment No. 7; Available at

<http://www.ohchr.org/english/bodies/crc/comments.htm> last visited February 18, 2020

case of any unnatural or illegal incident with the children, the States are obliged to formulate the policies or if required, file their case, depending on the situation, and should also work for the physical and psychological rehabilitation of such children.³³⁹ It also focuses on the education of the children.³⁴⁰

The children are also protected against economic exploitation³⁴¹ under CRC. The children should not be involved in any work which affects their overall wellbeing. It also obliges the States to take effective administrative, legislative, educational and social measures to protect the children from every kind of abuse, exploitation, negligence, and maltreatment.³⁴² The Convention also obliges the States to determine the minimum age of the child for work and fix the punishments, penalties and sanctions in case of breach.

3.3 International Labour Organization (ILO)

The International Labour Organization was founded in 1919, in the wake of a destructive World War I. After the downfall of League of Nations, International Labour Organization is its sole survival as a part of Treaty of Versailles, has provided enlightened platform for the freedom, equality, advancement of social justice, security of human dignity by protecting and preserving the human rights of labourers. The ILO became the first specialized agency of the UN in 1946.³⁴³ The objective of creation of ILO is to promote social justice by resolving economic conflicts of interests of all the stakeholders from governments to employers and the workers through proper dialogue

³³⁸ Convention on the Rights of the Child, 1989, Article 34

³³⁹ Convention on the Rights of the Child, 1989, Article 36

³⁴⁰ Convention on the Rights of the Child, 1989, Article 28

³⁴¹ Convention on the Rights of the Child, 1989, Article 32

³⁴² Convention on the Rights of the Child, 1989, Article 19

³⁴³ About the ILO; Available at

<https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> last visited March 9, 2020

procedures and mutual cooperation by making laws, rules, regulations and policies for their mutual benefit.³⁴⁴ ILO reaffirms all the international fundamental human rights documents including UDHR, ICCPR and ICESCR. To date, ILO has adopted 191 Conventions providing and protecting the basic rights of labourers and promoting social justice.³⁴⁵

ILO gives an equal opportunity to all the stakeholders of the labor management including the governments, employers and workers so as to make sure that the recommendations of the concerned partners are clearly reflected in rules and regulations on labour reforms, policies and programs.

The Preamble of the ILO Constitution corroborates the principle of social justice.³⁴⁶ The interpretation of Preamble provides that ILO was formed on the basis of principle of social justice in economical terms, because labour has direct impact on the economical conditions and improving overall GDP of the State. The Preamble has dual aspects; firstly, it provides that social justice is the core element in promotion of international peace; secondly, the social justice is a universal concept, if it is adopted by States, it will have positive impact on other States also and *vice versa*.³⁴⁷

³⁴⁴ The Islamic Republic of Pakistan Decent Work Country Programme, 2016-2020; Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited October 15, 2019; See also ILO in Pakistan; Available at

<http://www.ilo.int/islamabad/aboutus/lang--en/index.htm> last visited September 18, 2019

³⁴⁵ Conventions; Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12000:9249162611481:::P12000_INSTRUMENT_SORT:4 last visited October 15, 2019

³⁴⁶ Constitution of the International Labour Organization, 1919, Preamble

³⁴⁷ Brian Langille, Re-reading the Preamble to the 1919 ILO Constitution in Light of Recent Data on FDI and Worker Rights; Available at https://www.researchgate.net/publication/294499242_Re-reading_the_Preamble_to_the_1919_ILO_Constitution_in_Light_of_Recent_Data_on_FDI_and_Worker_Rights last visited October 15, 2019

In ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), the Members recognized the ILO Declaration on Social Justice for a Fair Globalization reconfirmed in its Preamble, the importance of the fundamental rights of workers and elimination of all forms of exploitation against workers from forced or compulsory labour and child labour.

Pakistan is a member of ILO since October 31, 1947³⁴⁸ and has ratified 36 ILO Conventions so far including all eight core Conventions, such as Forced Labour Convention 1930 (No 29), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), Equal Remuneration Convention 1951 (No.100), Abolition of Forced Labour Convention 1957 (No.105) and the Minimum Age Convention 1973 (No. 138).³⁴⁹ Pakistan has shown its commitment towards these Conventions and has implemented numerous labour laws and has established labour Courts as well but the main problems includes the inadequacy of punitive measures, lack of enforcement authorities posing problems in implementation of these laws and regulations and unawareness of the legal protection available in the country. Unfortunately, despite the pressing needs to regularize this informal sector, particularly domestic workers of the society, Pakistan has not ratified the ILO Convention No. 189 so far. If ILO Convention No. 189 were ratified by Pakistan, vulnerable status of the domestic workers would have been in a better condition and they could have claimed their rights under the Convention. Article 7 of the Convention stipulates that domestic workers are entitled to receive comprehensive

³⁴⁸ Pakistan; Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:103166 last visited October 15, 2019

³⁴⁹ Ratifications for Pakistan; Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103166 last visited October 15, 2019

information and education about their employment contract, including all relevant terms, conditions, legal rights and legal obligations.³⁵⁰ Article 13 provides the right to healthy and safe working environment of the domestic workers environment.³⁵¹

3.3.1 International Labour Organization Conventions

Following are some important ILO Conventions:

3.3.1.1 International Labour Organization's Unemployment Convention (No. 2), 1919

The member states are required reports and statistical records of unemployment to ILO after every 3 months, yet states can also make some modifications after the adaptation of the Convention.³⁵² The states will make respective committees comprising of employers for this purpose, which will share their individual data at the national level, thereafter will be shared with ILO so that any person working on the same cadre in another state gets the same benefits and privileges under the same nature of employment according to Article 5(1)(b)³⁵³

³⁵⁰ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 7; See also Basic Rights for Pakistan's Domestic Workers: A Signature Away; Available at <http://labourwatchpakistan.com/basic-rights-for-pakistans-domestic-workers-a-signature-away/> last visited February 8, 2017

³⁵¹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 13; See also Basic Rights for Pakistan's Domestic Workers: A Signature Away; Available at <http://labourwatchpakistan.com/basic-rights-for-pakistans-domestic-workers-a-signature-away/> last visited February 8, 2017

³⁵² International Labour Organization's Unemployment Convention (No. 2), 1919, Article 5(1)(b)

³⁵³ International Labour Organization's Unemployment Convention (No. 2), 1919; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C002 last visited February 2, 2019

3.3.1.2 International Labour Organization's Forced Labour Convention (No. 29), 1930

It is an obligation on the Member States to take all necessary measures to eradicate forced and compulsory labour and to impose heavy penalties for the defaulters. This principle has been incorporated in the Constitution of Pakistan under Article 11.³⁵⁴

3.3.1.3 International Labour Organization's Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948

Under Article 3(2) of the Convention, all the labourers have full right to participate, join or establish labour organizations or confederations without intervention of public authorities with a lawful object (Article 11).³⁵⁵

3.3.1.4 International Labour Organization's Right to Organize and Collective Bargaining Convention (No. 98), 1949

Workers have a right to join trade unions so as to have voluntary negotiations with the employer. This right is not applicable to public servants.³⁵⁶

³⁵⁴ International Labour Organization's Forced Labour Convention (No. 29), 1930; Available at

https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/documents/genericdocument/wcms_346435.pdf last visited February 2, 2019

³⁵⁵ International Labour Organization's Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232 last visited February 2, 2019

³⁵⁶ International Labour Organization's Right to Organize and Collective Bargaining Convention (No. 98), 1949; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098 last visited February 2, 2019

3.3.1.5 International Labour Organization's Abolition of Forced Labour Convention (No.105), 1957

This Member States have been forbidden to use and mobilize labour for economic development.³⁵⁷

3.3.1.6 International Labour Organization's Discrimination (Employment and Occupation) Convention (No. 111), 1958

This Convention is one of the important ILO Conventions, which have highlighted the issue of discrimination, which is also the principle of natural justice. It provides that there shall be no discrimination in the employment procedures on the basis of sex, age, race or creed, religion, nationality, political affiliation, or the like so as to ensure equal opportunity for all.³⁵⁸

3.3.1.7 International Labour Organization's Employment Policy Convention (No. 122), 1964

Every person, without any discrimination or prejudice, has a right to choose employment of his choice. Article 2 of the Convention provides its wider scope which extends to every individual of the world so as to utilize and enhance his skills. This Convention is also known as Employment Policy Convention.³⁵⁹

³⁵⁷ International Labour Organization's Abolition of Forced Labour Convention (No.105), 1957; Available at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 last visited February 2, 2019

³⁵⁸ International Labour Organization's Discrimination (Employment and Occupation) Convention (No. 111), 1958; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111 last visited February 2, 2019

³⁵⁹ International Labour Organization's Employment Policy Convention (No. 122), 1964; Available at

3.3.1.8 International Labour Organization's Minimum Age Convention (No. 138), 1973

This Convention is a landmark treaty with an objective to abolish child labour from its roots. Article 1 provides that the minimum age for employment shall not be less than the age of completion of compulsory schooling and 15 years. Article 3(1) prescribes that in case of endangered work, which adversely affects the health and safety, the age limit will be 18 years. Article 5(3) specifies the categories where minimum age applies; the Director ILO can further extend the scope of application of these categories. While Article 7(2) prescribes that a child aging 13 to 15 years can be employed in light works, provided that his health and schooling are not affected.³⁶⁰

3.3.1.9 International Labour Organization's Termination of Employment Convention (No. 158), 1982

This Convention provides the rules of termination of employment. Its scope covers all working people except those working on contract, *ad hoc* or on temporary basis. Every person is protected in the employment and cannot be terminated unless he acts contrary to the employer's objectives or any justifiable reason of termination.³⁶¹

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD
E:C122 last visited February 2, 2019

³⁶⁰ International Labour Organization's Minimum Age Convention (No. 138), 1973; Available at

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD
E:C138 last visited February 2, 2019

³⁶¹ International Labour Organization's Termination of Employment Convention (No. 158), 1982; Available at

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_COD
E:C158 last visited February 2, 2019

3.3.1.10 International Labour Organization's Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159), 1983

The rights of the disabled persons are protected under this Convention. Every employer is required to provide a fixed quota for the disabled persons. Every state is also required to formulate a national policy ensuring equal opportunity for women and disabled persons.³⁶²

3.3.1.11 International Labour Organization's Indigenous and Tribal Peoples Convention (No. 169), 1989

Under this Convention, every state is responsible to take concerned action for the protection of tribes and indigenous people, who do not enjoy all fundamental rights regardless of the fact that they deserve those rights.³⁶³

3.3.1.12 International Labour Organization's Convention on the Worst Forms of Child Labour (No. 198), 1999

The Convention calls for immediate and effective action to eliminate the worst forms of child labour, including slavery, forced labour, trafficking, child soldiers, prostitution and hazardous work that threatens children's health, safety or morals. Defining a child as anyone under 18, it emphasizes international cooperation to drive social and economic development, eradicate

³⁶² International Labour Organization's Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159), 1983; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100::NO:12100:P12100_ILO_CODE:C159:NO last visited February 2, 2019

³⁶³ International Labour Organization's Indigenous and Tribal Peoples Convention (No. 169), 1989; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 last visited February 2, 2019

poverty and ensure universal education ultimately safeguarding children's rights and futures.

3.3.1.13 International Labour Organization's Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189) and International Labour Organization's Domestic Workers Recommendation (No. 210), 2011

ILO Convention No. 189 and the Recommendation 201 on Decent Work for Domestic Workers protect the human rights of domestic workers by preventing discrimination, exploitation and abuse. These instruments are comprehensive in nature and not left to judicial interpretation, that is to say, it is a *de facto* inclusion but not *de jure* inclusion. These instruments have paved the way of inclusion of domestic workers under the labour law regime. The two instruments were adopted by ILO on June 16, 2011, since then this date has been declared to be celebrated as International Domestic Workers' Day.³⁶⁴

The Preamble of the ILO Convention concerning Decent Work for Domestic Workers, 2011 (herein after mentioned as Convention 189) recognized the global principles for domestic workers and confirmed the ILO Labour standards to promote decent work for all. This Convention legalized the status of domestic workers like other workers and placed them under the ambit of labour laws. This is a piecemeal step taken by ILO, whose purpose was not the reaffirmation of fundamental principles and rights to work, but to realize the status of domestic workers. Pakistan has not ratified the Convention so far.

³⁶⁴ Adelle Blackett, "Regulatory Innovation on Domestic Work for Domestic Workers in the light of International Labour Organization Convention No. 189", *International Journal of Comparative Labour Law and Industrial Relations*, 34 No, 2 (2018), 141-148, 142

As mentioned earlier, domestic workers comprise a considerable part of the worldwide workforce of informal sector even then they fall under the category of vulnerable workers especially in case of child domestic workers or forced labour. Their nature of work remains undefined and unidentified domestic work, without clear terms and conditions of employment, their rights being violated, and are exposed to exploitation.³⁶⁵

Under this Convention, the term domestic work has been defined in general terms (as already explained in Chapter 1). Any domestic work done in or for a house is called domestic work. This general explanation refers to all kinds of domestic or household works. As domestic workers are often required to perform a wide range of tasks, these various responsibilities would fall within the scope of their employment. Moreover, the workers who are who are engaged in such domestic work are called domestic workers. The Convention prescribes the scope of the domestic work under employment relationship, therefore, acknowledging the importance of entitlement of the domestic workers' rights. Yet, those workers are not entitled for their rights under this Convention, who are engaged in the domestic work occasionally or sporadically.³⁶⁶

³⁶⁵ Who are Domestic Workers?; Available at http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017; See also Domestic Workers in Pakistan; Available at <http://www.paycheck.pk/main/labour-laws/domestic-workers-in-pakistan> last visited February 7, 2017

³⁶⁶ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 1

The Convention requires the Member States to make sure that the fundamental rights of domestic workers are preserved and protected and to take all the possible steps in this respect.³⁶⁷

The Convention guarantees same basic rights to the domestic workers as those available to other workers, including freedom of association³⁶⁸, elimination of forced labour³⁶⁹, abolition of child labour³⁷⁰, elimination of discrimination,³⁷¹ weekly days off, limits to hours of work, minimum wage coverage, overtime compensation, social security, and clear information on the terms and conditions of employment. Under the new worldwide standards of protection, the Convention ratifying States are obliged to bring their laws in consistency with the new standards and to guarantee human rights to domestic workers; provide maximum protection to them from all sorts of discrimination, violence and physical, psychological, mental and sexual abuse; to regulate private employment agencies that recruit and employ domestic workers and last but not the least, to prevent child labor in domestic work.³⁷²

³⁶⁷ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 2

³⁶⁸ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 3; See also Domestic Workers Recommendation (No. 201) 2011, Para 2

³⁶⁹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 3; See also Domestic Workers Recommendation (No. 201) 2011, Para 26(2)

³⁷⁰ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Articles 3 and 4; See also Domestic Workers Recommendation (No. 201) 2011, Para 5

³⁷¹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Articles 3 and 11; see also Domestic Workers Recommendation (No. 201) 2011, Para 3

³⁷² Human Rights Watch, “The ILO Domestic Workers Convention, New Standards to fight Discrimination, Exploitation and Abuse”; Available at

https://www.hrw.org/sites/default/files/related_material/2013ilo_dw_convention_brochure.pdf
last visited December 10, 2018

3.3.1.13.1 Recommendation Concerning Decent Work for Domestic Workers 201

The ILO Convention No. 189 is a binding instrument on those parties who ratify the Convention as per International Law. The status of Recommendation 201 is *adversus*. It is only a recommendation thus having a non-binding status. It provides for the policies to be adopted by the Member States for strengthening the protection of domestic workers by ensuring them better and organized working conditions with safe and healthy environment.³⁷³ This Recommendation should be considered in conjunction with ILO Convention No. 189.³⁷⁴

3.3.1.13.2 International Labour Organization's Declaration on Fundamental Principles and Rights at Work 1998

International Labour Organization's fundamental principles include the elimination of child labour, forced and compulsory labour. The fundamental principles also emphasis to provide right of collective bargaining and freedom of association without discriminating among any class of society regarding occupation and employment.³⁷⁵ ILO Convention 189 also postulates the

³⁷³ Human Rights Watch, "The ILO Domestic Workers Convention: New Standards to Fight Discrimination, Exploitation and Abuse"; Available at: <https://www.hrw.org/topic/womens-rights/domestic-workers> last visited March 11, 2018; See also International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011); International Labour Organization, "Decent Work for Domestic Workers: Convention 189, Recommendation 201", (International Labour Organization: 2011); and International Labour Office (ILO), "Decent work for domestic workers", (Report V(1), International Labour Conference, 100th Session, Geneva: 2011)

³⁷⁴ Domestic Workers Recommendation (No. 201) 2011, Para 1

³⁷⁵ Fundamental Principles and Rights at Work; Available at https://www.ilo.org/global/topics/domestic-workers/WCMS_615041/lang-en/index.htm last visited February 28, 2018

obligation on the Member States to abide by these Fundamental principles while considering the rights of domestic workers.³⁷⁶

3.3.1.13.3 Rights Protected Under International Labour Organization's Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189) and Domestic Workers Recommendation (No. 201) 2011

The Preamble of the ILO Convention 189 provides that the human rights protected under Universal Declaration of Human Rights³⁷⁷ and other Human Rights treaties and conventions should be respected and further provides that the human rights of domestic workers.³⁷⁸ The Members of the Convention are supposed to set a minimum age limit for the domestic workers in the light of Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and in cases where the age is below 18 they should ensure that they are not deprived of compulsory education, and opportunities to participate in further education or vocational training.³⁷⁹

Each Member shall make possible efforts to make sure that domestic workers enjoy effectual protection against all forms of abuse, violence, harassment, exploitation and violence,³⁸⁰ enjoy fair contractual terms and conditions of employment as well as decent and civilized working conditions

³⁷⁶ International Labour Organization's Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189), Article 3(2); See also International Labour Organization, "Decent Work for Domestic Workers: C 189 and R 201 at a Glance", (International Labour Organization: 2011)

³⁷⁷ Universal Declaration of Human Rights, Article 23 to Article 25

³⁷⁸ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Preamble

³⁷⁹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Articles 3 and 4; See also Domestic Workers Recommendation (No. 201) 2011, Para 5

³⁸⁰ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 5; See also Domestic Workers Recommendation (No. 201) 2011, Para 7

and, if they reside within the household of the employer, they deserve decent living conditions³⁸¹ with protection of their privacy.³⁸²

The domestic workers should have full information about the contractual terms and conditions of the employment in a suitable, comprehensible, appropriate and verifiable manner. It is preferable that the contractual terms and conditions are specified in black and white in compliance with collective agreements, national laws and regulations. They should be fully informed about the employer, work place, duration, nature of work to be performed, remuneration, working hours, annual paid leaves along with weekly and daily rest hours, provision of basic necessities like food, water, accommodation, probation and terms of employment and termination, in fact all sort of basic information, which he is entitled to be informed as a domestic worker.³⁸³

The national legislations and regulations of the Member States should protect the rights of migrant workers. A written job agreement or job offer or appointment letter specifying the terms and conditions of the employment and job description should be shared with the migrant worker before migrating. The Member States should assist and cooperate with each other for protection

³⁸¹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 6; See also Domestic Workers Recommendation (No. 201) 2011, Para 17

³⁸² Article 6 and 17(3), ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011; See also Para 3(a), 17(a) and 24, Domestic Workers Recommendation (No. 201) 2011

³⁸³ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 7; See also Domestic Workers Recommendation (No. 201) 2011, Para 6

of rights of migrant workers and clearly specify the terms and conditions of repatriation.³⁸⁴

Each Member State should also make sure that the domestic workers are not forced to live in the house or stay there during leaves, rest and leisure time. It should also be make sure that the domestic workers are allowed to keep their important documents including passport and identity records.³⁸⁵

While considering the special nature of domestic work, domestic workers should be treated equally in every respect including working hours, compensation of overtime, rest and leisure periods, and specified paid annual leaves according with collective agreements, national laws and regulations. At least one-day weekly rest should be given off to the domestic workers. The time in which domestic workers are required to remain at the work place shall be regarded as the working hours.³⁸⁶

Each Member should make sure that all the domestic workers are treated equally without any discrimination of sex in all aspects in case of minimum wage coverage.³⁸⁷

³⁸⁴ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 8; See also Domestic Workers Recommendation (No. 201) 2011, Para 20(2), 21, 22 and 23

³⁸⁵ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 9; See also Domestic Workers Recommendation (No. 201) 2011, Para 17 and 18

³⁸⁶ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 10; See also Domestic Workers Recommendation (No. 201) 2011, Para 8, 9, 10, 11, 12 and 13

³⁸⁷ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 11; See also Domestic Workers Recommendation (No. 201) 2011, Para 14, 15, 16 and 20(3)

Domestic workers should be given remuneration in the form of wages paid in cash regularly after every month but in case if there is any special law, which prescribes any other means e.g. payment through banking channel or non-banking financial institutions, it can and should be followed with the consent of concerned domestic worker. It is equally possible that if the collective agreements, arbitration awards, national laws or regulations prescribe otherwise, then the payment of wages can be made partially in cash and partially in kind but it should be fair and reasonable.³⁸⁸

Every domestic worker has a right to healthy, secured and protected working environment. The employer should take all reasonable steps to ensure occupational safety and health (hereinafter referred as OSH) of domestic workers according to the nature of employment as are provided by national legislations, regulations and practices.³⁸⁹

Each Member shall also ensure the social security including maternity protection of the domestic workers, which may be applied progressively, as it is available to other workers, in accordance to national laws and regulations.³⁹⁰

Each Member shall provide protection against abusive and volatile practices exercised by private employment agencies against domestic workers, including migrant domestic workers, in accordance with national legislations,

³⁸⁸ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 12; See also Domestic Workers Recommendation (No. 201) 2011, Para 14, 15, 16 and 20(3)

³⁸⁹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 13; See also Domestic Workers Recommendation (No. 201) 2011, Para 4 and 9

³⁹⁰ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 14; See also Domestic Workers Recommendation (No. 201) 2011, Para 20 and 26(2)

regulations and practice. In such a case, an organized mechanism should be made available for investigating complaints, alleged abuses and fraudulent practices and thereby establishing the obligations of agencies. There should be penalties imposed against those agencies for the violations against domestic workers' rights. Such recruitments from other countries are a mode of promoting bilateral, regional or multilateral cooperation between the States so effective measures should be adopted to prevent abuses and fraudulent practices in recruitment, employment and placement of domestic workers. Moreover, it should also be ensured that the recruitment fees, charged by the private employment agencies, are the liability of the employer and not the employee so that amount should not be deducted from the wages of domestic workers.³⁹¹

Each of the Member shall ensure that every domestic worker or his representative, like other workers, has the effective access to courts, tribunals or dispute settlement mechanisms for effective and expeditious redressal of their dispute or any other matter which they need to bring in front of any machinery of justice.³⁹²

While taking into concern the special nature of domestic work, each Member shall establish an effective and readily accessible dispute settlement mechanism in compliance with the national legislations and regulations.

³⁹¹ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 15; See also Domestic Workers Recommendation (No. 201) 2011, Para 23 and 26(2)

³⁹² ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 16; See also Domestic Workers Recommendation (No. 201) 2011, Para 7, 19(b), 21 and 24

Moreover, measures should be adopted for workload, labour inspection, enforcement, penalties in accordance to national laws and regulations.³⁹³

3.4 Children and Work in International Labour Law

Children have rights not only as human beings but also as special members of the society who need special care and special circumstances to live and survive in the society.³⁹⁴ Child labour is no doubt the violation of rights of the child.³⁹⁵ Apparently child domestic work seems to be child labour,³⁹⁶ the following discussion would reveal the facts pertaining to child domestic labour.

The child labour is not only present in developed countries but exists in developing countries as well. The issue of child labour in Asia is more complicating in a way that the cultural trends of South-Asian countries postulates that the children are supposed to give return to their parents for the support the parents extended to the children during their childhood. The situation is based on give and take policy. It seems to be an exchanging transaction and not seen with respect to rights, duties and responsibilities of both the parents and children. The poverty, social and economic

³⁹³ ILO Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 17; See also Domestic Workers Recommendation (No. 201) 2011, Para 7, 19(b), 21 and 24

³⁹⁴ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

³⁹⁵ Asif Khan, Implementing Laws Against Child Labor: A Case Study of Pakistan (August 3, 2011). Available at SSRN:

<https://ssrn.com/abstract=1904268> or <http://dx.doi.org/10.2139/ssrn.1904268> last visited October 27, 2019

³⁹⁶ Child Labour in Domestic Work; Available at <https://stopchildlabor.org/?p=3643> last visited June 01, 2018; See also Child Labour and Domestic Work; Available at

[https://www.ilo.org/ipec/areas/Childdomesticlabour/lang-en/index.htm#:~:text=How%20many%20children%20are%20there,all%20child%20domestic%20workers\)%3B](https://www.ilo.org/ipec/areas/Childdomesticlabour/lang-en/index.htm#:~:text=How%20many%20children%20are%20there,all%20child%20domestic%20workers)%3B) last visited December 15, 2017

deprivation of the masses have also contributed to this trend.³⁹⁷ However, there are also limitations to this aspect. There is no statistical data as to show the accurate number of child domestic workers working in Asia but the situation can be analyzed through observations of prevailing different social and cultural trends.³⁹⁸ The data analysis of child domestic workers in Pakistan is not available, while if the situation analysis of other countries of Asia, for instance India and Philippines are observed, it would come to know that the situation of child domestic workers was vulnerable.³⁹⁹ On the other hand, the country like United States have around 2.2 million child domestic workers, more than 90% of them are women and children.⁴⁰⁰

ILO Convention No. 138 (Minimum Age Convention) and ILO Convention 182 (Worst forms of Child Labour), when read together, postulate three activities which should be declared as child labour and should be banned. These activities include: any work which is performed by a child under the prescribed minimum age, any activity in which a child is involved and considered as hazardous work, and all

³⁹⁷ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, "Child domestic workers: A handbook for Research and Action", (September 1997), iii

³⁹⁸ Crawford, Sheena and Poulsen, Birgitte; Thematic Evaluation On IPEC Interventions: Child Domestic Workers; Draft 1 (Geneva: 12 December 2000; Annex 3 Experiences from IPEC Philippines), 2; See also Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019

³⁹⁹ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also Crawford, Sheena and Poulsen, Birgitte; Thematic Evaluation On IPEC Interventions: Child Domestic Workers; Draft 1 (Geneva: 12 December 2000; Annex 3 Experiences from IPEC Philippines), 2

⁴⁰⁰ Julia Wolfe, Jori Kandra, Lora Engdahl, and Heidi Shierholz, "Domestic Work Chart Book: A comprehensive look at the demographics, wages, benefits, and poverty rates of the professionals who care for our family members and clean our homes", (May 14, 2020) ; Available at <https://www.epi.org/publication/domestic-workers-chartbook-a-comprehensive-look-at-the-demographics-wages-benefits-and-poverty-rates-of-the-professionals-who-care-for-our-family-members-and-clean-our-homes/> last visited September 2, 2020; See also Vanessa May, Domestic Workers in U.S. History; Available at <https://doi.org/10.1093/acrefore/9780199329175.013.431>

the acts which are declared as worst form of child labour as per international instruments.⁴⁰¹

Bharati Pflug postulates that if ILO Convention No. 29 (Forced Labour), ILO Convention No. 138 (Minimum Age Convention) and ILO Convention No. 182 (Worst forms of Child Labour), which are supplementary Conventions and does not abrogate each other. When these Conventions are read together with United Nation's Convention on the Rights of the Child 1989, they provide the detailed list of activities, which can be included under Worst Form of Child Labour. It provides that worst form of child labour means that if a child is engaged in work in conditions similar to debt bondage or is sold; works for no or less remuneration; works without observing minimum age or works in long working hours; supposed to work in hard conditions; is exposed to violation, exploitation and abuse; or the work hazardously affects the overall wellbeing and development of the child. All these conditions exist in case of child domestic work, therefore, it may be included under the ambit of worst form of child labour.⁴⁰²

As stated earlier, the child domestic workers are bound to do household tasks, which seems not hazardous under normal circumstances yet due to child's young age, undertaken in a state of stress, fatigue, long working hours, less appetite and disturbed

⁴⁰¹ Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019; See also M. Black, "Child domestic workers: A handbook for Research and Action", (September 1997), iii; Farkhanda Zia Mansoor, *Working towards the Eradication of Child Labour? An analysis of the legal framework with case studies of Pakistan, India, Indonesia, China, UK and USA*, (CMP Publishing, 2011), ISBN 10: 1 907174 11 7, ISBN 13: 978 1 907174 11 7; and Farkhanda Zia Mansoor, "The WTO versus the ILO and the case of Child Labour", Web Journal of Current Legal Issues, 2 Web JCLI (2004); Also available at:

<http://webjcli.ncl.ac.uk/2004/issue2/mansoor2.html> last visited July 18, 2018

⁴⁰² Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019

sleep and fear of punishment, those tasks become hazardous, which include cleaning, cooking, serving food, chopping vegetables, using stove, lighting fires, dealing with gas and electrical appliances, handling disinfectants, cleaning with chemicals like toilet cleaners, washing dishes and clothes, ironing clothes, etc.⁴⁰³ The situation gets more worsened when there is little or no contact of children with their families and no reaction from their parents or guardians in case of abuse or maltreatment. There are numerous incidents where young domestic servants have been victimized not only physically but also sexually, and in certain cases, resulted into the death of the children.⁴⁰⁴

The rights protected in the ILO Convention 189 relates to daily as well as weekly rest hours, entitlement to minimum wage and to choice of the place of residence during working days as well as in rest days. The states should also take preventive measures against violence and protection in cases of violence. The states should also fix the minimum age, which is consistent with the minimum age in case of other types of employment. The terms and conditions of employment should be agreed upon prior to the commencement of services so as to make transparency in procedure. Moreover, they are not required to reside at the workplace, or to stay at their residence during their leave.

It is clear from the above discussion that if the child below 16 years of age is engaged in domestic tasks under hazardous conditions, it also falls under the category

⁴⁰³ Peggie R. Smith, “Work like any other, work like no other: establishing decent work for domestic workers”, (Washington University in St Louis School of Law, Legal Studies Research Paper Series, Paper NO. 12-05-30, Vol. 15:157: May 2012)

⁴⁰⁴ Crawford, Sheena and Poulsen, Birgitte, “Thematic Evaluation On IPEC Interventions: Child Domestic Workers, Draft 1”, (Geneva: 12 December 2000)

of “worst form of child domestic labour”. Such engagement may be through child trafficking, debt bondage or other practices similar to slavery.⁴⁰⁵

There is already a disparity in the international law regarding the age of the child. According to Article 1 of CRC⁴⁰⁶ the child is a person below 18 years of age but if there is any other law stating less age of majority than 18 years of age that would be applicable for that specific legislation only.⁴⁰⁷ Article 2.4 of Minimum Age Convention (No. 138)⁴⁰⁸ provides that for the sake of developed countries the person, who is below 15 years of age (13 years for light work), is a child and minimum age for hazardous work is 18 years (16 years under strict circumstances). While in case of developing countries the minimum age is 14 years (12 years for light work). Similarly Article 2 of Worst forms of Child Labour Convention⁴⁰⁹ prescribes that a child is one who is below 18 years of age. It is very astonishing that the other phases of human life are not defined in any international instrument, such as young, adolescence or teenage.⁴¹⁰

⁴⁰⁵ Farkhanda Zia Mansoor, Exploitation of Child Domestic Labourers: The Limits of the Current law”, *International Journal of Discrimination and the Law* 8(3), March 2006; See also Bharati Pflug, An overview of child domestic workers in Asia; Available at file:///C:/Users/user/Downloads/2002_asi_cdl_ReportRegionalAsia_en.pdf last visited August 29, 2019

⁴⁰⁶ Convention on the Rights of Child, Article 1

⁴⁰⁷ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, “Rights of Children and Parents in Holy Quran”, *International Journal of Pediatrics* (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

⁴⁰⁸ ILO Minimum Age Convention, 1973 (No. 138), Article 2.4

⁴⁰⁹ ILO Worst Forms of Child Labour Convention, 1999 (No. 182), Article 2

⁴¹⁰ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, “Rights of Children and Parents in Holy Quran”, *International Journal of Pediatrics* (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

ILO Convention No. 189 also prescribes for special treatment to the child domestic workers, as being vulnerable class. Pursuant to this Convention, children under the age of 18 years as per ILO Convention No, 182 and above the minimum age of employment i.e. 14 years as per ILO Convention No. 138 should not be employed, if there is likelihood that such employment would adversely affect their compulsory education or creates hurdles in opportunities for further education or vocational training.⁴¹¹ This clause is actually a whole in the protection mechanism awarded to domestic workers in ILO Convention 182. The conditions mentioned there in are vague and can be easily compromised as there are no accountability measures to examine whether the child domestic workers in between 14 years of age and 18 years of age have been deprived of their education or not. Moreover, the methods of collecting statistical data, as mentioned above, are not free from defects. Such relaxation on the part of ILO Convention 189 was awarded while taking into consideration the concerns of the developing countries, but without having strict scrutiny mechanisms, such relaxation has become more dangerous as illegal recruitment of domestic workers would be dragged into the umbrella of this clause.

Moreover, ILO Recommendation 201 prescribes that the Member States should provide effective measures through national legislations and regulations on domestic workers, so as to identify the reasons of employing child domestic workers, specifically those child domestic workers who are above 14 years of age and under 18 years of age. Such measures include limiting the working hours by ensuring adequate rest and leisure hours, education and training, time for social life, prohibition of night

⁴¹¹ ILO Convention No. 189, Article 4

work, any work adversely affecting the physical or psychological health of the child, and monitoring of working and living conditions of child domestic workers.⁴¹²

Conclusion

Domestic workers are the vulnerable class of persons, whose rights are now internationally protected under various international documents including UDHR, ICCPR, ICESCR, CRC and various ILO Labour standards. Despite various international standards and instruments, international community realized the importance of domestic workers' rights and finally agreed upon the ILO Convention 189. This Convention, along with other labour rights ILO Conventions, if applied in their true letter and spirit, provide full protection to the domestic workers. The Constitution of Pakistan 1973 also provides the protection of persons from slavery, discrimination and all sorts of exploitation and ensures dignity and equality. Yet, Pakistan is not signatory to ILO Convention 189 so far. The failure to recognize such an important Convention has lead to various legal issues.

⁴¹² ILO Recommendation 201, Para 5(2)

Chapter 4

ANALYSIS OF THE IMPLEMENTATION OF NATIONAL LAWS CONCERNING DOMESTIC CHILD LABOUR

Introduction

This chapter corresponds to fifth research question. In compliance to the international instruments on human rights and ILO commitments, Constitution of Pakistan 1973 enshrines fundamental rights that also apply to domestic workers, while certain national legislations have been enacted and enforced to provide specific protections and safeguards for the protection of workers in Pakistan but those limited parameters mostly concern with formal sector, some legislations also regulate informal sector workers but domestic workers are left unprotected and unheard. It was unless the renowned Tayyaba's case that this topic attracted the attention of the legislators. As a result, Pakistan has enacted two legislations on Domestic Workers' rights so far. The Islamabad Capital Territory Domestic Workers Act, 2022, and the Punjab Domestic Workers Act, 2019, are landmark legislations aimed at safeguarding domestic workers' rights in Pakistan by establishing standards for employment conditions, social security, and protection against harassment and abuse. However, despite their enactment, these laws are not being fully enforced, leaving domestic workers exposed to exploitation, harassment and abuse leaving domestic workers vulnerable. The practical enforcement of these legislations in the courts of law is provided in the next chapter. The scope of this chapter is restricted to concerned legislations only.

4.1 Constitutional Protection for Domestic Workers in Pakistan

Objectives Resolution 1949, as incorporated in the Preamble of the Constitution of Islamic Republic of Pakistan 1973 and as is made operational under Article 2A of the Constitution enshrines the principles of social justice, distributive justice and non-discrimination. The fundamental rights and the directive principles of State policy aim to achieve Islamic norms of social justice, equity, democracy, and tolerance.

Article 2A postulates the Islamic principles of human rights, freedom, equality, democracy, tolerance and social, economic and political justice shall be fully observed. Protection and advancement of said principles was an integral objective and an essential feature of the Constitution.⁴¹³ Article 2A mandated that the State shall guarantee fundamental rights, and enable the Muslims to live their lives in individual and collective spheres according to the Islamic Injunctions, teachings and requirements.⁴¹⁴ Islam guarantees fundamental rights to all the subjects of the society, which is enshrined in all the Constitutions of Pakistan as well and incorporated as Objectives Resolution and then made enforceable through Article 2A of the Constitution of Pakistan 1973, while the practical situation of domestic workers in Pakistan is embarrassing. The fundamental rights of domestic workers are not respected, the dignity of labour is not uphold, the requirement of equality and equity is not met and justice is not provided to them.⁴¹⁵ Article 2A when read with Article 29 of the Constitution of Pakistan 1973 postulates the principle of social justice. It

⁴¹³ The Constitution of Islamic Republic of Pakistan, 1973, Article 2A; See also Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

⁴¹⁴ The Constitution of Islamic Republic of Pakistan, 1973, Article 2A; See also Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 179; and Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

⁴¹⁵ Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

provides that it is the duty of the State to ensure the social as well as economic well being of the masses by providing decent work facilities and sufficient means of livelihood.⁴¹⁶

Article 3 calls upon the State of Pakistan to ensure the elimination of all kinds of exploitation.⁴¹⁷ The phrase mentioned in this Article, all forms of exploitation, is a very wide term and it is a multi-layered phenomenon that exists in variety of forms and in multiple setups.⁴¹⁸ It postulates physical, mental and psychological exploitation, sexual exploitation, labour exploitation, domestic servitude, forced marriage, forced criminality, organ harvesting and the like.⁴¹⁹

Article 11 of the Constitution of Pakistan 1973 provides safeguards to employees against the discrimination and exploitation whereby declaring slavery, forced labour and human trafficking illegal. Article 11 of the Constitution of Pakistan 1973 claims that slavery is non-existent in Pakistan and it is not only forbidden by law but also no law shall permit or facilitate its introduction into Pakistan in any form. It further prohibits forced labour and human trafficking as well.⁴²⁰ It further prescribes that child labour i.e. employment of children below 14 years of age in worst forms e.g. in factories or mine or any other hazardous employment is not allowed. Article 11 also provides protection against compulsory service of cruel nature or incompatible

⁴¹⁶ Corruption in Rental Power Plants Case, 2012 SCMR 773

⁴¹⁷ The Constitution of Islamic Republic of Pakistan, 1973, Article 3

⁴¹⁸ Forms of Exploitation; Available at

<https://www.kok-gegen-menschenhandel.de/en/human-trafficking/forms-of-exploitation> last visited June 22, 2022

⁴¹⁹ Types of Exploitation; Available at

<https://www.stopthetraffik.org/what-is-human-trafficking/types-of-exploitation/> last visited June 22, 2022

⁴²⁰ The Constitution of Islamic Republic of Pakistan, 1973, Article 11

with human dignity.⁴²¹ So indirectly child domestic workers fall under this clause though the practical situation prevailing in Pakistan is *vice versa*.

Moving further, right against discrimination is a fundamental right guaranteed under the Constitution of Pakistan whereby every citizen has a right for the equal treatment before law⁴²² and entitlement to get equal protection of law,⁴²³ dignity of human life should be maintained and liberty of life and honour must be guaranteed.⁴²⁴ Article 25 provides the Rule of Law and prohibits, curtails and restricts the law enforcement and *ultra vires* powers exercised with unfettered discretion. This Article also casts a duty on the State to enforce only those legislations, which are in harmony with this Article, without any exceptions. Similarly, Article 14 protects the persons from discriminatory legislations and hostile treatment.⁴²⁵

The Constitution of Pakistan 1973 not only provides protection of fundamental rights but also the principles of policy subject to the available resources⁴²⁶, the State *inter alia* is bound to promote observance of the Islamic moral standards;⁴²⁷ make provision for securing just and humane conditions of work, ensuring that women and children are not employed under conditions not suitable for their age, gender, physical abilities and should also ensure maternity benefits to women;⁴²⁸ secure the wellbeing of the people *inter alia* by raising their standard of living and ensuring equitable adjustment of rights between employers and employees;⁴²⁹ provide for all citizens,

⁴²¹ The Constitution of the Islamic Republic of Pakistan 1973, Article 11(3)

⁴²² The Constitution of Islamic Republic of Pakistan, 1973, Article 25

⁴²³ The Constitution of Islamic Republic of Pakistan, 1973, Article 4

⁴²⁴ The Constitution of Islamic Republic of Pakistan, 1973, Articles 9 and 14

⁴²⁵ State of W.B. V Anwar Ali Sarkar, AIR 1952 SC 75

⁴²⁶ The Constitution of Islamic Republic of Pakistan, 1973, Article 29(b)

⁴²⁷ The Constitution of Islamic Republic of Pakistan, 1973, Article 31(2)

⁴²⁸ The Constitution of Islamic Republic of Pakistan, 1973, Article 37(c)

⁴²⁹ The Constitution of Islamic Republic of Pakistan, 1973, Article 38(a)

within available resources, facilities for work and adequate livelihood with all reasonable rest and leisure⁴³⁰, provide for all persons, in the service of Pakistan or otherwise, social security by compulsory social insurance or other means⁴³¹ and provide basic necessities of the life for all citizens as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment⁴³². These principles are backed by the principles of an Islamic state.

Islamic Welfare State should take all steps for its subjects to live their lives according to Islamic norms and in obedience to Allah Almighty. The State is also bound to educate its masses according to Islamic teachings thereby establishing a system having collective benefits so as to eradicate evil and to promote virtue and goodness⁴³³.

It is an obligation of the Islamic State to establish such a society wherein social, political and economic justice is guaranteed and it is free from discrimination, violations, abuses and exploitation. Article 37 of the Constitution postulates the principle of social justice and thereby imposes duty on State to make possible efforts to eradicate social evils.⁴³⁴ Article 38 of the Constitution provides the principle that the State should protect the welfare of the people living in Pakistan by raising their living standards. It shall also make sure an equitable regulation of employment rights. Within the available sources of the country, the State shall generate working facilities, decent livelihood and diminish discrepancy in income and earnings of individuals.

⁴³⁰ The Constitution of Islamic Republic of Pakistan, 1973, Article 38(b)

⁴³¹ The Constitution of Islamic Republic of Pakistan, 1973, Article 38 (c)

⁴³² The Constitution of Islamic Republic of Pakistan, 1973, Article 38(d)

⁴³³ The Constitution of Islamic Republic of Pakistan, 1973, Article 31

⁴³⁴ The Constitution of Islamic Republic of Pakistan, 1973, Article 37

The above discussion shows that the Constitution of Pakistan 1973 protects the rights of domestic workers in the same manner the rights of other persons of the State are protected. But the practical situation is quite horrific. They are not only denied fundamental rights but also the gaps in enforcement and implementation hinder the effectiveness of two significant laws; the Islamabad Capital Territory Domestic Workers Act, 2022 and the Punjab Domestic Workers Act 2019; leaving domestic workers vulnerable. The vulnerable situation of domestic workers does not prevail only in Pakistan but is also similar in other jurisdictions as well.

Technically speaking, children being the most vulnerable subjects of the society, enjoy two types of human rights. One, all those human rights who as are granted and available to every human being of the world, second those special rights which are available to children because of their special status in the society being the future of every society.⁴³⁵ Sir William Blackstone has highlighted three rights of the children, which he believes that these rights should be available to every child of the world: right to education, right to protection, and right to maintenance.⁴³⁶

In contrast to Pakistan's Constitutional protections, Philippines have much greater protections with respect to domestic workers. Philippines have an organized mechanism for collecting the data of recruitment of domestic workers which is much

⁴³⁵ Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at:

https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

⁴³⁶ Sir William Blackstone, *Blackstone's Commentaries on the Laws of England, Book One*, (Chapter Sixteen) (1765-1769), 434; See also Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Ghulam Hasan Khodaei, "Rights of Children and Parents in Holy Quran", International Journal of Pediatrics (Supplement 4), Vol.2, N.3-2, Serial No.8, August 2014; Also available at: https://www.researchgate.net/publication/267392183_Rights_of_Children_and_Parents_in_Holy_Quran last visited July 18, 2018

easier for them to establish the rights of domestic workers and provide them legal protection.⁴³⁷ Philippines is the second State after Uruguay who ratified ILO Convention 189 on priority basis.⁴³⁸

The Constitution of Philippines provides that the State shall make efforts to implement social order on just and equitable terms, without which the State cannot prosper or the independence of the nation cannot be ensured. It also helps in bringing overall social change in the society by promoting full employment thereby resulting in decreasing poverty and increasing standard of living of the masses.⁴³⁹ The Constitution of Philippines also imposes the duty on the State to ensure the promotion of welfare of the labourers by protecting the rights of the labourers.⁴⁴⁰

Whereas under the Constitution of India, like Pakistan, the employment of children less than fourteen years of age has been declared illegal and it is not allowed to engage any child in any kind of employment.⁴⁴¹ Moreover the Constitution of India has declared human trafficking and forced labour prohibited.⁴⁴² Moving further, the Principles of State's policy of India postulates that the workers would not be employed under minimum age and beyond their physical capacities and which is hazardous to the health even if there is any economic necessity.⁴⁴³ It is also the duty of the State to provide just, humane and equitable working conditions and ensure

⁴³⁷ Ayesha Shahid, *Silent Voices, Untold Stories Women Domestic Workers in Pakistan and their Struggle for Empowerment*, Oxford University Press (2010)

⁴³⁸ Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189) ; Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO last visited June 12, 2020

⁴³⁹ The 1987 Constitution of the Republic of Philippines, Section 9, Article II

⁴⁴⁰ The 1987 Constitution of the Republic of Philippines, Section 18, Article II

⁴⁴¹ Constitution of India, Article 24

⁴⁴² Constitution of India, Article 23

⁴⁴³ Constitution of India, Article 38(e)

maternity benefits to women.⁴⁴⁴ Moreover, children's childhood should be prevented by every means and they should be provided with the basic facilities and rights according to their age.⁴⁴⁵ The government should provide free and compulsory education to all children aged under fourteen years of the State,⁴⁴⁶ meaning thereby preventing child domestic labour.

4.1.1 Elimination of Exploitation

Article 3 imposes a duty on the State to eliminate all forms of exploitation and the gradually fulfill the fundamental principle, from each according to his ability, to each according to his work.⁴⁴⁷ This principle is a modified version of the socialist principle 'from each according to his ability, to each according to his needs'.⁴⁴⁸

Unfortunately, domestic workers most importantly full-time domestic workers are at the will of their employers, they face extreme sort of physical, mental, psychological and even financial and sexual exploitation at workplace. It has been decided by the Supreme Court of Pakistan that the eligible person is required to be engaged in the employment and there should be a surety that he should not be a subject of exploitation in any manner whatsoever.⁴⁴⁹

⁴⁴⁴ Constitution of India, Article 42

⁴⁴⁵ Constitution of India, Article 38(f)

⁴⁴⁶ Constitution of India, Article 45

⁴⁴⁷ The Constitution of Islamic Republic of Pakistan, 1973, Article 3; See also Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 192; and Rights and Constitutional Fundamental Rights in Pakistan; Available at <http://www.zklawassociates.com/wp-content/uploads/2012/03/Rights.pdf> last visited on December 13, 2018

⁴⁴⁸ Ikram Bari and 524 others V NBP, 2005 SCMR 100; See also Rights and Constitutional Fundamental Rights in Pakistan; Available at <http://www.zklawassociates.com/wp-content/uploads/2012/03/Rights.pdf> last visited on December 13, 2018

⁴⁴⁹ All Pakistan Newspaper Society V Federation, PLD 2010 SC 1

4.1.2 Protection of Law

Article 4 is also known as the Due process of Law.⁴⁵⁰ Right of access to justice and due process are two important fundamentals of judicial and administrative processes thereby also in line with the principles of natural justice.⁴⁵¹ This Article enshrines the principles of equality before law and equal protection of law. It prescribes the supremacy of the law and declares an absolute right of every citizen not only the enjoyment of the protection of law but also the right be treated in accordance with law.⁴⁵² The basis of child domestic labour can be founded on the basis of these cross cutting principles.

Every person is required to work in good faith and should not take any action, which is contradictory to life, liberty, body, reputation or property of any person without any lawful authority. No person shall be compelled to do what he is required by law to do or abstain from doing what he was required by law not to do.⁴⁵³

Article 4, when read with Article 25, make it clear that the deviation from law has not to be countenanced. This is an assurance to the people of Pakistan that they shall be treated in accordance with law. No one is above the law and everyone is bound by the provisions of the Constitution of Pakistan.⁴⁵⁴ It protects the citizens from discriminatory or arbitrary laws and action taken by the public authorities and restricts

⁴⁵⁰ Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 195

⁴⁵¹ Watan Party V Federation of Pakistan, PLD 2012 SC 292; See also Mazhar Ilyas Nagi, *The Constitution of the Islamic Republic of Pakistan 1973*, (Pakistan: Imran Law Book House, Volume I, 2013), 193

⁴⁵² The Constitution of Islamic Republic of Pakistan, 1973, Article 4

⁴⁵³ The Constitution of Islamic Republic of Pakistan, 1973, Article 4

⁴⁵⁴ Mohtarma Benazir Bhutto & Another V Federation of Pakistan, PLD 2010 FSC 229

such actions even in case of emergency.⁴⁵⁵ This rule is *mutatis mutandis* applicable to domestic workers as well.

When the powers are conferred on any authority to exercise discretion, such discretion should be exercised in contrast with the principles of natural justice and the principle of non-discrimination *qua* reasonable classification should be followed.⁴⁵⁶ Therefore, the workers employed in informal sector should not be treated in an illegal, arbitrary or void manner.

4.1.3 Right to Life

Right to life means all the facets of human existence including right to livelihood, right to food, water, decent environment, education, medical care, shelter, right to acquire, hold and dispose off property, right to acquire suitable accommodation, which could not hang on the fancies of individuals in authority, and includes all those aspects of life which are significant to make one's life meaningful, complete and worth-living.⁴⁵⁷ Most importantly, these are inherent rights and guaranteed under Articles 3, 4, 9, 14 and 25 of the Constitution, as every person is born free and there should not be any exploitation nor the guaranteed rights could not be taken back or waived off even by the State.⁴⁵⁸ Rights are unconditional and equally available to all human beings, without discrimination yet reasonable classification is allowed⁴⁵⁹ but

⁴⁵⁵ Shaukat Ali Mian V Federation of Pakistan 1999 CLC 607 Lahore

⁴⁵⁶ Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta V Dr. Zahida Kakar and 43 Others, 2005 SCMR 642

⁴⁵⁷ Chief Justice of Pakistan, Mr. Justice Iftikhar Muhammad Chaudhry V The President of Pakistan through the Secretary and others, PLD 2010 SC 61; See also Suo Moto Case 2009, PLD 2011 SC 619; Shehla Zia V Wapda, PLD 1994 693; All Pakistan Newspaper Society V Federation of Pakistan, PLD 2006 SC 394; Bank of Punjab V Haris Steel, PLD 2010 SC 1109; and Arshad Mehmood and others V Government of Punjab through Secretary, PLD 2005 SC 193

⁴⁵⁸ Attiya Bibi V Federation, 2001 SCMR 1161

⁴⁵⁹ Abdul Rahim and 2 others V Messrs United Bank Limited of Pakistan, PLD 1997 Kar. 62

not in case of right to life, there may be restrictions imposed by the State.⁴⁶⁰ These rights are universally accepted and are present in the form of treaties, customary law, general principles and other sources of international law.⁴⁶¹

Domestic workers are the vulnerable class of the society, who are being deprived of even basic rights enshrined under right to life. In the worst form of exploitation, they are also physically harassed in the form of beating, punishments, non provision of food, proper place and time for rest. They can be even sexually harassed or in extreme cases, killed by their employers even for minor mistakes. They are being burdened over and above their physical capacities or body mass. As mentioned earlier, there is a rule of law that right person should be engaged in the right job without any exploitation⁴⁶² but in case of domestic workers, such rule has always been avoided.

4.1.4 Abolition of Slavery

As stated earlier, there are many distinguishing characteristics of slavery from other human rights violations. The test to determine whether slavery exists or not is perceive that there is mental or physical threat of forced labour, or the labourers are owned or controlled, physically or virtually, by the employer, or dehumanized treatment or the restrictions on their freedom of movement or the trade of labourers.

Another important fundamental right discussed in the Constitution of Pakistan is abolition of slavery. Slavery had been rampant in Sub-Continent. One of the

⁴⁶⁰ Gopalan V The State of Madras, AIR 1950 SC 27

⁴⁶¹ What are Human Rights?; Available at

<https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> last accessed February

5, 2019

⁴⁶² All Pakistan Newspaper Society V Federation, PLD 2012 SC 1

reasons was that the needy members of the lower class used to sell themselves or their children into slavery in order to obtain a bare subsistence. Yet the treatment of slaves, domestic and agricultural, varied in different parts of the country. *Colliers Encyclopedia* prescribes that slavery is a condition whereby a class of powerless, degraded and humiliated persons whose rights are denied since their birth. It is an ancient but universal concept which has prevalent in every stage of social development.⁴⁶³ It emerged and persistently existed from the use of force whereby the masters had an ultimate and unrestricted power to punish their slaves physically even brutally. The slave's human rights are denied and works under the command and control of the master, having no will, choice or decision of their own.⁴⁶⁴

As stated above, Article 11 of the Constitution of Pakistan 1973 provides safeguards to employees against the discrimination and exploitation whereby declaring slavery, forced labour and human trafficking illegal. Article 11 of the Constitution of Pakistan 1973 is corresponding to Universal Declaration of Human Rights 1948,⁴⁶⁵ International Covenant on Civil and Political Rights (ICCPR) 1966,⁴⁶⁶ thirteenth Amendment of United States Constitution, and the Constitution of India.⁴⁶⁷ Article 11 also prohibits child labour i.e. employment below 14 years of age. Here a discrepancy exists between this provision and international conventions, including the UNCRC and ILO Convention 182, which specify 18 years as the minimum age for child labour. The important issue arises whether the criterion mentioned in the Constitution of Pakistan 1973 compatible with the international commitments?

⁴⁶³ Lauren S. Bahr, *Collier's Encyclopedia*, Vol. 21 (New York: Macmillan Education Company, 1992), s.v. slavery, 71

⁴⁶⁴ Lauren S. Bahr, *Collier's Encyclopedia*, Vol. 21 (New York: Macmillan Education Company, 1992), s.v. slavery, 72

⁴⁶⁵ Universal Declaration of Human Rights, Article 4

⁴⁶⁶ International Covenant on Civil and Political Rights 1966, Article 8

⁴⁶⁷ Constitution of India, Article 23

Pakistan has ratified United Nations Convention on the Rights of Child on 12 November, 1990⁴⁶⁸, ILO Convention No. 182 (related to the worst forms of child labour) on 11 October 2001⁴⁶⁹ and ILO Convention No. 138 (related to minimum age for employment) on 6 July, 2006.⁴⁷⁰ Pakistan's lawmakers, however, have followed only ILO Convention 138 in this regard, which sets the minimum age at 14 years.

Article 11, when read with Article 14 of the Constitution prescribes the prohibition of slavery and human trafficking making the privacy of human beings inviolable. Human dignity has always been made sacred by Allah Almighty as prescribed in the Holy Quran (17:70).⁴⁷¹ Dignity and liberty has been granted by Allah Almighty. The State is bound to follow the principles of policy while drafting any law or implementing any policy⁴⁷² and shall provide all possible facilities to adopt Islamic way of life⁴⁷³ by incorporation of Article 2A and making Objectives Resolution a substantive part of the Constitution.⁴⁷⁴ It is important to highlight that overtime, even compulsory over time work mandated by employment agreement is not forced labour.⁴⁷⁵ But if the remuneration for the exaction of services or labour is less than minimum wages, then it will be considered as forced labour.

⁴⁶⁸ The Child Rights Convention, in your language; Available at http://www.unicef.org/pakistan/media_6667.htm last visited on December 15, 2018

⁴⁶⁹ Ratifications for Pakistan; Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103166 last visited on December 15, 2018

⁴⁷⁰ Ratifications for Pakistan; Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103166 last visited on December 15, 2018

⁴⁷¹ Al Quran (17:70)

“Indeed, We honoured the progeny of Adam, and bore them across land and sea and provided them with good things for their sustenance, and exalted them above many of Our creatures.”

Translated by Zafar Ishaq Ansari, *Towards Understanding the Quran, Abridged Version of Tafheem al-Quran*, (United Kingdom: The Islamic Foundation, 2011), 428

⁴⁷² The Constitution of Islamic Republic of Pakistan, 1973, Article 30

⁴⁷³ The Constitution of Islamic Republic of Pakistan, 1973, Article 31

⁴⁷⁴ Mst. Gulzaran V Amir Bakhsh and 6 others, PLD 1997 Kar. 309

⁴⁷⁵ Dalmia Cement Ltd. V Dalmia Cement Workers' Union and Others, PLD 1958 SC 153,

The landmark case of Article 11 of the Constitution of Pakistan 1973 is the case of *Darshan Masih*,⁴⁷⁶ which is a Public Interest Litigation, the direct jurisdiction of the Supreme Court was invoked under Article 184(3) of the Constitution of Pakistan 1973. The Supreme Court took the cognizance of the case as it was public interest litigation. It was a matter of public importance and the enforcement of fundamental rights under the Constitution of Pakistan 1973 was required. The Supreme Court released the detainees of the bonded labour and gave directions so as to legislate on the matter at the earliest. As a result of this case, Bonded Labour (Abolition) Act 1992 was promulgated, which abolished the forced labour and bonded labour system⁴⁷⁷ and all the bonded labourers by then were released from the debt bondage.⁴⁷⁸

The contemporary situation of domestic workers bears a striking resemblance to debt bondage, characterized by forced labour, manipulation, restricted freedom and exploitation, leaving them vulnerable to abuse, often with little to no control over their working conditions or wages, frequently involving the retention of their identity documents or wages and with limited avenues for escape or redress.

⁴⁷⁶ *Darshan Masih V State*, PLD 1990 SC 513; See also Iftikhar Ahmad and Nausheen Ahmad, National Studies in Employment Situations and Workers Protection; Available at https://ilo.org/ifpdial/areas-of-work/labour-law/WCMS_205373/lang--en/index.htm last visited September 30, 2019; and Farkhanda Zia Mansoor, “Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters”, *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

⁴⁷⁷ Bonded Labour (Abolition) Act 1992, Section 4

⁴⁷⁸ Bonded Labour (Abolition) Act 1992, Section 6

4.1.5 Right to Equality

Equality is difficult to comprehend as it prescribes an ideal situation where there is no arbitrariness, discrimination or impartiality and everyone gets speedy and accessible justice. In International Law, UN Charter and UDHR oblige the Member States to provide, encourage and ensure the respect for fundamental human rights and freedoms.⁴⁷⁹ Later on, the principles were incorporated in International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on the Elimination of All Forms of Racial Discrimination, Covenant on the Elimination of All Forms of Discrimination Against Women, Slavery Convention, Convention on the Prevention and Punishment of the Crime of Genocide, International Convention on the Suppression and Punishment of the Crime of Apartheid, and Discrimination (Employment and Discrimination) Convention.

Article 25 of the Constitution of Pakistan 1973, which is corresponding to Universal Declaration of Human Rights⁴⁸⁰ and the Convention on the Rights of the Child,⁴⁸¹ prescribes two major concepts: equality before law and equal protection of law. Moreover, it imposes a duty on the State to ensure that the laws enacted in Pakistan, specially pertaining to women and children, being vulnerable class of society, shall be abided by these principles. The Honourable Supreme Court of Pakistan that the word “State” as mentioned in Article 25(3) shall be interpreted

⁴⁷⁹ United Nations Charter 1945, Preamble; and Universal Declaration of Human Rights 1948, Preamble

⁴⁸⁰ Universal Declaration of Human Rights 1948, Article 7

⁴⁸¹ Convention on the Rights of the Child 1989, Article 2

according to Article 7 and does not include judiciary. Yet in a peculiar context, the term would include judicial functionaries.⁴⁸²

The phrases “equality before law” and “equal protection of law” are combination of English concept of equality before law and American concept of equal protection of law. The term “equality before law” has been adopted from the Constitution of Eire and that of West Germany. The Constitution makers of the then Sub-Continent adopted this term used by Dicey as one of the three aspects of rule of law⁴⁸³, which was later adopted by US Constitution by virtue of Fourteenth Amendment.⁴⁸⁴ The concept, which was introduced by Dicey, has been changed drastically due to diversity of the powers of the courts, delegation of judicial powers to the departmental agencies and establishment of departmental tribunals.

The other expression “equal protection of law” cannot be precisely defined as it varies from jurisdiction to jurisdiction. In general terms of the law, it can be construed that all persons should be treated alike and no person or class of persons shall be deprived of the same protection of law enjoyed by other persons in similar circumstances, both in terms of privileges conferred and liabilities imposed.⁴⁸⁵ Equal protection of unequal is as bad as unequal treatment of equals. All persons do not have the same status or equality in all respects.⁴⁸⁶ There is a misconception regarding equal protection of law that all the legislations must be general in character with

⁴⁸² Mst. Fazal Jan V Rosha Din, PLD 1990 SC 661

⁴⁸³ A. V. Dicey and E. C. S. Wade, *Introduction to the Study of the Law of the Constitution*, (UK:Macmillan & Co. Ltd, June 1939), 202

⁴⁸⁴ 14th Amendment; Available at <https://www.history.com/topics/black-history/fourteenth-amendment> last visited December 13, 2018

⁴⁸⁵ Safdar Jamil V Vice Chancellor, 2011 CLC 116

⁴⁸⁶ All India Sainik Schools Employees Association V Sainik Schools Society, AIR 1989, Supreme Court 88, 92

worldwide application.⁴⁸⁷ The “equal protection” clause does not prohibit discrimination with respect to circumstances that are different. There may be special legislation for different subjects but this discrimination must be reasonable and not arbitrary or capricious while taking into consideration the public interests.⁴⁸⁸

As mentioned earlier, domestic workers often face significant challenges in enjoying this right due to their vulnerable position, lack of recognition, and limited access to legal protections. These domestic workers are not fully protected by labour laws, and their rights to equality are often compromised. The Constitution of Pakistan no doubt guarantees equality before the law and prohibits discrimination on various grounds but domestic workers often face difficulties in accessing justice and asserting their rights.

4.1.6 Right of Education

The situation analysis in Pakistan regarding children education is endemic. The right of education had never been inserted in the Constitution of Pakistan for the acknowledgement as a fundamental right until 18th Amendment in 2010 in which Article 25A has been incorporated.⁴⁸⁹ The failure to realize the importance of this very clause in the fundamental law of the State has lead to many social injustices. Article 25A of the Constitution of Pakistan 1973 when read with Article 29 of the Constitution of Pakistan 1973 postulates the duty of the State to make sure that education is being provided to all children aged from five to sixteen years.⁴⁹⁰ Article 29(2) of the Constitution of Pakistan 1973 stipulates that the implementation of

⁴⁸⁷ Kedar Nath Bajoria V West Bengal, AIR 1953 SC 404, 406

⁴⁸⁸ Gulf Ry V Ellis (1897) 165, US 150

⁴⁸⁹ The Constitution of Islamic Republic of Pakistan, 1973, Article 25A

⁴⁹⁰ Liaqat Hussain and others V Federation of Pakistan through Secretary, Planning and Development Division, Islamabad and others, PLD 2012 SC 224

Principles of Policy is conditional upon the availability of resources, effectively allowing the government to prioritize resource allocation over policy implementation. The right of compulsory education is available to all children aging between five to sixteen years without any discrimination.⁴⁹¹ The compulsory education up to sixteen years of age to all the children means that there should be ban on child labour and ultimately child domestic labour would also be discouraged.

By virtue of Eighteenth Amendment, education is now a provincial subject but it does not mean that it is not the responsibility of the Federal government; in this regard both Federal and Provincial governments have equal responsibility towards this constitutional imposed duty.⁴⁹² The limited availability of resources has forced governments to de-prioritize education, resulting in budget cuts, shortage of schools, classrooms, and educational resources, particularly in disadvantaged areas, exacerbating existing inequalities in access to quality education resulting in an increase in number of child domestic workers.

The critical analysis of the provision shows that the Article is not free from defects and ambiguities. The issue still arises that whether this Article means the compulsory secondary education, or it is qualified only up to the age of the child, which is disputed in a way that it fails to account for the diverse needs of children, particularly those who may require additional support or have been denied education due to socio-economic factors or who may have been forced into child labour or child marriage, perpetuating cycles of poverty and inequality, and neglecting vocational skills, ultimately hindering Pakistan's ability to produce a skilled and competitive

⁴⁹¹ Students Of Government Girls College, Kuchlak V Government Of Balochistan through Secretary Education, Quetta, 2012 CLC 168 (Balouchistan)

⁴⁹² Liaqat Hussain V Federation of Pakistan, 2013 SCMR 54

workforce thereby limiting their opportunities for secondary education. Moreover, under Article 25-A of the Constitution of Pakistan 1973, no time frame is specified for availability of means of free and compulsory education but is subject to availability of resources under Article 29 of the Constitution of Pakistan 1973.

Even before the recognition of right to education, Principles of Policy provided in Article 37(b)⁴⁹³ of the Constitution of Pakistan, imposes a duty on the State to remove illiteracy and to promote compulsory secondary education in minimum possible period. The provision does provide that compulsory secondary education be provided yet timeframe is not mentioned as how long it would take to make it possible for the availability of the said facility. The word ‘minimum’ is vague and without a deadline, the provision seems to be useless.

Moving further, Article 37(c) of the Constitution of Pakistan imposes a duty on the State to make sure that merit should be observed in providing technical and professional education, to be equally accessible to every person in the society. This provision is also vague in a sense that it says ‘easily accessible’. How it would be made accessible, the answer is nowhere.

4.1.7 Just and Humane Working Conditions

Article 37(e) imposes a duty on the State to ensure the just and humane conditions of work, specially children and women, who belongs to the vulnerable class of the society, should not be employed in vocations not according to their age or sex, and ensure the maternity benefits for working women. The State of Pakistan has made many laws on labour issues, yet no law is comprehensively and exclusively dealing

⁴⁹³ The Constitution of Islamic Republic of Pakistan, 1973, Article 37(b)

with child labour rights issues except The Punjab Restriction on Employment of Children Act 2016, The Sindh Prohibition of Employment of Children Act 2017, The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 and The Employment of Children Act 1991 (applicable in Balochistan and Islamabad), but these legislations are not free from defects, moreover, these were drafted much prior than ILO Convention 189 and there is no amendment in the legislation so far regarding domestic workers rights.

4.1.8 Social Security

The Constitution of Pakistan imposes another duty on the State to provide social security by means of compulsory social insurance or any other means to all the working persons employed in services of Pakistan.⁴⁹⁴ This provision is not free from lacunas. The phrase ‘other means’ is ambiguous and open to various interpretations. The fundamental law of the State does not provide which means would be adopted for the sake of protection. Also the vague provision opens a debate whether those who are working in private organizations, other non-governmental organizations and most importantly unregistered organizations are covered under this provision? Last but not the least, this provision does not cover labourers, women working in home industries and children, all these classes being most vulnerable.

4.1.9 Availability of Resources

There is a constraint in implementation of the State’s policies is Article 29(2)⁴⁹⁵ of the Constitution, which states that policies would only be implemented if the required

⁴⁹⁴ The Constitution of Islamic Republic of Pakistan, 1973, Article 38(c)

⁴⁹⁵ The Constitution of Pakistan, 1973, Article 29(2)

resources would be available. Yet, no timeframe is mentioned as to make the resources available for the implementation of the policy.

4.2 Pakistani Legislations on Child Labour Issues in Formal Sector

Some Pakistani laws, which deal with the child labour related issues, directly or indirectly, both in formal and informal sector are: The Children (Pledging of Labour) Act 1933, The Factories Act 1934, The West Pakistan Shops and Establishments Ordinance 1969, The Punjab Restriction on Employment of Children Act 2016, The Sindh Prohibition of Employment of Children Act 2017, The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 and The Employment of Children Act 1991 (applicable in Balochistan and Islamabad), The Bonded Labour System Abolition Act 1992, and The Punjab Compulsory Primary Education Act 1994. Since there are numerous laws dealing with the issue of child labour and child protection issues. This section will mention only a few legislations, which has directly or indirectly connection with the scope of the research and fall within the territory of Islamabad and Punjab only.

According to Mines Act, 1923⁴⁹⁶ a child is a person who is below 15 years of age. The Children (Pledging of Labour) Act⁴⁹⁷ provides that a child is a person below 15 years of age. The Factories Act⁴⁹⁸ enumerates that a child is a person below 15 years of age. The West Pakistan Shops and Establishments Ordinance⁴⁹⁹ provide that a child is a person below 14 years of age. The Punjab Restriction on Employment of

⁴⁹⁶ The Mines Act, 1923, Section 3(c)

⁴⁹⁷ The Children (Pledging of Labour) Act, 1933, Section 2

⁴⁹⁸ The Factories Act, 1934, Section 2(c)

⁴⁹⁹ The West Pakistan Shops and Establishments Ordinance, 1969, Section 2(c)

Children Act 2016⁵⁰⁰ provides that a child is a person below 15 years of age. The Sindh Prohibition of Employment of Children Act 2017⁵⁰¹ provides that a child is a person below 14 years of age. The Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015⁵⁰² provide that a child is a person below 14 years of age and The Employment of Children Act 1991⁵⁰³ (applicable in Baluchistan and Islamabad) provide that a child is a person below 14 years of age.

The discrepancy in definitions of a child's age may result in jurisdictional conflicts and challenges in enforcing laws related to child labour, potentially undermining Article 2A of the Constitution, which ensures the supremacy of the Constitution and the rule of law. It also creates loopholes for employers to exploit child laborers, undermining Article 11 of the Constitution, which prohibits slavery, forced labor, and child labour. It also leads to confusion and inconsistent application of laws, potentially violating Article 25 of the Constitution, which guarantees equality before the law. This discrepancy is contradiction of Article 35 of the Constitution, which ensures the protection of the rights of children. Last but not the least, it violates Article 38 of the Constitution, which ensures the promotion of social and economic well-being.

⁵⁰⁰ The Punjab Restriction on Employment of Children Act 2016, Section 2(c)

⁵⁰¹ The Sindh Prohibition of Employment of Children Act 2017, Section 2(b)

⁵⁰² The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015, Section 2(b)

⁵⁰³ The Employment of Children Act 1991 (applicable in Balochistan and Islamabad), Section

4.2.1 Punjab Compulsory Primary Education Act 1994

Since education is now a provincial subject as per Constitution of Pakistan 1973, all provinces have full autonomy to legislate on the issue. The Punjab⁵⁰⁴ Compulsory Primary Education Act 1994⁵⁰⁵ provides that the child's minimum school starting age should not be less than 5 years and more than 10 years. The minimum age as provided by the Constitution is also 5 years. Yet the same argument that what if a child above 10 years of age wants to acquire education? Whether his rights be protected?

4.2.2 Free and Compulsory Education Act 2012

Free and Compulsory Education Act 2012 is applicable in Islamabad Capital Territory only.⁵⁰⁶ The definition of child in the legislation is a bit elaborative. It includes male and female children, even those having special needs, falling in between five years to sixteen years of age.⁵⁰⁷ This provision has qualified the sexes of the children, thereby barring transgender from the ambit of the right of education.

In comparison to the Pakistan's legislations, Punjab Compulsory Primary Education Act 1994 and Free and Compulsory Education Act 2012, the Labour Code⁵⁰⁸ and the Civil Code⁵⁰⁹ of Philippines postulates that if the domestic worker is under the age of eighteen year, it is the duty of the employer to provide him with basic facility to get education. The school fees can be adjusted from the remuneration of the services rendered. Moreover, Philippines Republic Act provides special protection to the children discrimination, exploitation and abuses. It imposes the duty on the

⁵⁰⁴ In Pakistan, education, in particular education is a provincial subject under the constitution, so the relevant laws are required to be introduced by the provincial governments.

⁵⁰⁵ The Punjab Compulsory Primary Education Act, 1994, Section 2(a)

⁵⁰⁶ Free and Compulsory Education Act, 2012, Section 1(2)

⁵⁰⁷ Free and Compulsory Education Act, 2012, Section 2(c)

⁵⁰⁸ Philippines Labour Code, Article 146

⁵⁰⁹ Philippines Civil Code, Article 1691

education department of the State to provide informal vocational training and education to those children who could not avail the facility of school education.⁵¹⁰ There is another law, Philippines Child and Youth Welfare Code, which protects the rights of the children so as to assure their welfare.⁵¹¹ Free Public Secondary Education Act provides right to get free secondary education to children⁵¹² and Providing Assistance to Teachers and Students Act provides the government assistance to the deprived teachers and students in eliminating the hurdles in getting education by providing all necessary required items for getting education.⁵¹³

Whereas in India, National Charter for Children submits to the requirements of the Constitution of India regarding provision for free and compulsory education to the children and to make sure that all the measures are taken for the provision of this right.⁵¹⁴

4.2.3 Factories Act 1934

The Factories Act 1934 has a whole chapter dealing with the employment of children in factories.⁵¹⁵ A child in this Act has been defined as a person below 15 years of age.⁵¹⁶ In later provision, it provides that children under fourteen years of age are not permitted to work in any factory.⁵¹⁷ Children who intend to work in factories are required to furnish a fitness certificate on the condition that such certificate is granted to them by a certified surgeon stating that the child has attained fourteen years of age

⁵¹⁰ Philippines Republic Act No. 7610, Article III, Section 18

⁵¹¹ Philippines Child and Youth Welfare Code 1977

⁵¹² Free Public Secondary Education Act 1988

⁵¹³ Providing Assistance to Students and Teachers Act No. 6728

⁵¹⁴ Indian National Charter for Children 2003

⁵¹⁵ Factories Act 1934, Chapter V, Sections 50 through 59-A

⁵¹⁶ Factories Act 1934, Section 2(c)

⁵¹⁷ Factories Act 1934, Section 50

and has attained physical fitness to bear the burden of the work.⁵¹⁸ The Act also puts restrictions on the working hours of children.⁵¹⁹

4.2.4 Miners Act 1923

The Miners Act 1923 also has a section dealing with the employment of children in mines. No child below fifteen years of age⁵²⁰ shall be allowed to work in a mine or be allowed to be present in any part of a mine which is below ground.⁵²¹ A young person below the age of 17 years is not permitted to work inside mine unless a certificate of fitness is issued by the medical practitioner. The certificate should be in the custody of the manager of a mine and the youngster should carry a token as a proof that he has been granted a certificate.⁵²² The Act also puts some restrictions on the working hours of the persons below 15 years of age. The hours of work should be fixed in such a way as to allow a rest of at least 12 consecutive hours.⁵²³

4.2.5 Bonded Labour System (Abolition) Act 1992

Bonded labour is one of the most obvious forms of slavery, practices similar to slavery and worst form of child labour whereby bonded labourers are forced to work to pay back their debts, in most of the cases they are unaware whether they actually owe to the employer or not, but employer tells them they owe, and they, along with their families, are bound to work only with that employer and not allowed to work for anywhere else. Use of force, restricted movement and strict surveillance is applied to them including every kind of exploitation to make them stay with the employer. Due

⁵¹⁸ Factories Act 1934, Section 52

⁵¹⁹ Factories Act 1934, Section 54

⁵²⁰ Miners Act, 1923, Section 3(c)

⁵²¹ Miners Act, 1923, Section 26

⁵²² Miners Act, 1923, Section 26A

⁵²³ Miners Act, 1923, Section 26B

to poverty and the threats of force or violence bound them to stay with their employers, thereby their status changes from employee to servant or slave in grave cases.⁵²⁴

UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery defines Debt Bondage (Bonded Labour) as the status or condition whereby security in the form of pledge is created in the favour of the creditor, who is generally the employer, against the security in the form of personal services of the debtor himself, who is the employee, or even his family. In case of debt bondage, the assessment of those services is under-valued so as to prolong the debt and the nature of services and in this way the debt never comes to an end. In some cases, the debts are renewed and the amount of debt is multiplied many times resulting in extension of debt bondage.⁵²⁵ Debt Bondage is not slavery but a practice similar to slavery as there is an unending debt and the debtor is indulged in such a way that the debt bondage inherits from generation to generation.⁵²⁶

Therefore, it can be said that it is a system whereby a person is compelled to work under practice similar to slavery due to social and economic deprivation and poverty, which results into the contract of work for himself and his family members

⁵²⁴ Bonded Labour; Available at http://www.antislavery.org/english/slavery_today/bonded_labour.aspx last visited on December 14, 2018; See also Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195; and Muhammad Javaid Iqbal, "Bonded Labor in the Brick Kiln Industry of Pakistan", *The Lahore Journal of Economics*, 11:1, Summer 2006, 99-119

⁵²⁵ UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery, Article 1

⁵²⁶ Ann Jordan, "Slavery, Forced Labour, Debt Bondage and Human Trafficking: From Conceptual Confusion to Targetted Solutions", *Program on Human Trafficking and Forced Labor, Center for Human Rights & Humanitarian Law*, Issue Paper no. 2, February 2011, 6; See also Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

howlowsoever.⁵²⁷ The terms and conditions of the debt bondage contract are as such that the debtor has no option but to agree with the creditor to provide labour or services of his own or family members in consideration for the loan received by him or any of his family members for a specified or unspecified period of time against a nominal remuneration of the services rendered or at times for no remuneration. Under this agreement, the debtor's human rights are violated in a way that his right to life, right against illegal imprisonment, right to business or profession, freedom of movement and association and economic rights so as to enjoy the fruits of his labour are infringed absolutely.

In Pakistan, bonded labour system is the outcome of existing class structure, extreme poverty, illiteracy, over population, unemployment and under employment, economic crisis, and social and economic inequalities resulting from concentration of wealth within few hands. Due to these reasons, the labourers are forced by the circumstances and for sustainable reasons to take debts. Also, due to complicated procedural methods and high mark-ups by banking sectors regarding mortgage of the property, they prefer to take debts from private money lenders. They could not pay debts due to poor conditions and the outcome is debt bondage, which passes on from generations to generations. Due to economic concentration and unequal distribution of wealth, the system of debt bondage continues. This is the worst form of exploitation.

The problem of bonded labour in Pakistan cannot be discussed without referring to the case of Iqbal Masih, who used to work in carpet industry and wanted to liberate the slaves in Pakistan but unfortunately was assassinated as a punishment

⁵²⁷ Farkhanda Zia Mansoor, "Tackling Child Trafficking & Bonded Labour in Human and Labour Rights Parameters", *Hertfordshire Law Journal* 4(2), 48-62, ISSN 1479-4195

for raising his voice against feudal landlords. Bonded Labour Abolition Act is the follow up of the directions of Supreme Court of Pakistan in the leading case by father of Iqbal Masih, in *Darshan Masih V State*.⁵²⁸ This was the first public interest litigation in Pakistan. Many fruitful recommendations were given by the Worthy Court, yet the Executive has still failed to overcome the problem and to protect the interests of the labourers in Pakistan.

The Pakistan's Federal Government has enacted Bonded Labour System (Abolition) Act 1992 with the objective to abolish bonded labour system and to protect and prevent economic and physical exploitation of the labourers. The law attempts to provide exhaustive definition of bonded labour.⁵²⁹

4.2.6 The Punjab Prohibition of Child Labour at Brick Kilns Act 2016

This special legislation was made to prohibit and regulate child labour in brick kilns in Punjab, as the nature of work in brick kilns is not only hazardous to the health of the children but also worst of child labour.⁵³⁰ It has adopted the definition of bonded labourer from the Bonded Labour System (Abolition) Act 1992⁵³¹ while the child has been defined as a person below the fourteen years of age.⁵³²

⁵²⁸ *Darshan Masih V State*, PLD 1990 SC 513; See also Muhammad Javaid Iqbal, "Bonded Labor in the Brick Kiln Industry of Pakistan", *The Lahore Journal of Economics*, 11:1, Summer 2006, 99-119

⁵²⁹ The Bonded Labour System (Abolition) Act, 1992, Section 2(e)

⁵³⁰ The Punjab Prohibition of Child Labour at Brick Kilns Act 2016, Preamble

⁵³¹ The Punjab Prohibition of Child Labour at Brick Kilns Act 2016, Section 2(c)

⁵³² The Punjab Prohibition of Child Labour at Brick Kilns Act 2016, Section 2(e)

4.2.7 Punjab Restriction on Employment of Children Act 2016

Punjab Restriction on Employment of Children Act 2016 defines a child as a person below fifteen years of age⁵³³ and adolescents between the age of fifteen years and eighteen years.⁵³⁴ Moreover, the legislation defines the term hazardous work, which does not cover all the aspects as are prescribed by International documents. It is restricted to the health, safety and morals of the child.⁵³⁵ Moreover, it completely prohibits the employers to engage children in any kind of work. Only adolescents can be engaged in any kind of work or in any occupation or process which is not hazardous or injurious to their health involving toxic substances, heavy machinery, manufacturing, mining and construction, to safeguard their health, safety, and well-being, ensuring their protection from exploitation.⁵³⁶ Section 5 of the Act prescribes that adolescents are permitted to work up to three hours a day, and if work exceeds three hours, a one-hour break is mandatory, with total daily work hours capped at seven hours. Section 6 of the Act prescribes whole one day a week off day for the adolescent. Moving further Section 11 prescribes that if an occupier who employs or allows a child to work in his establishment shall be liable for 7 days to 6 months imprisonment and a fine starting from Rs. 10,000 up to Rs. 50,000. This piece of legislation is silent on the issue of household workers and domestic workers.

4.3 Pakistani Legislations on Child Labour Issues in Informal Sector

It is more than astonishing that the service structure of labourers is nowhere defined. The setback is much aggravated in informal sector particularly those workers who work as domestic servants, which is much more difficult to apprehend. The situation

⁵³³ Punjab Restriction on Employment of Children Act 2016, Section 2(c)

⁵³⁴ Punjab Restriction on Employment of Children Act 2016, Section 2(a)

⁵³⁵ Punjab Restriction on Employment of Children Act 2016, Section 2(i)

⁵³⁶ Punjab Restriction on Employment of Children Act 2016, Section 3

gets worsened in case of child domestic workers. They usually work on daily wages criterion, the reason being wage amount is less in daily wages and without contractual obligations. The provision of basic amenities such as paid leave, leave encashment, schooling for children, accommodation, medical facilities, and transportation is often neglected, and even subsidized options are not made available to labourers.⁵³⁷ Labourers suffer from hunger and exhaustion as they are compelled to work without food or breaks, violating their fundamental right to basic sustenance during work. The combination of lengthy working hours and overtime has heightened labourers' vulnerability, as the overtime compensation they receive being woefully inadequate. In case of informal workers, danger allowances are not paid and safety precautions are not observed as they are not provided safety equipments by their employers. In most cases, untrained staff deals with heavy technical machinery. Furthermore, Pakistan's laws not only fail to clarify the minimum age for child labour but also neglect to establish a maximum age limit for hiring labourers, despite the fact that elderly and frail individuals are unsuitable for physically demanding labour jobs. Last but not the least, when laws have provided that child labourers can be hired yet no policy has been made so far that the employers should also try to give some basic education to the children, being a fundamental right of every child, nor the vocational trainings are given to them. These children are usually exposed to hazardous conditions, which at times even result into the permanent disability or the death of the children.

4.3.1 Provincial Employees Social Security Ordinance 1965

Provincial Employees Social Security Ordinance 1965 is the first legislation, which at least tried to define domestic servants, though this law was practically not

⁵³⁷ The Payment of Wages Act, 1936, Section 2(vi)

implemented in its true letter and spirit. It defines domestic servant as any person who is rendering services in any house for any remuneration, whether in cash or in kind, for whole-time.⁵³⁸ The law exclusively applies to full-time domestic workers, excluding part-time workers, and fails to provide a clear differentiate between the rights and protections afforded to live-in and live-out domestic workers. Section 20 of the Ordinance prescribes that employer is required to contribute to Social Security in the name of the employee(s), thereby the contribution will not be deducted from the wages of the employee, at the rate of 6% of the wages declared by the government from time to time. It is pertinent to note here that this Ordinance defines the terms employee and domestic servant separately. The legislators have only added the definition of domestic servant but didn't add the phrase domestic servant in any other provision except Section 55-A, leaving behind the objective of adding an additional term in the definition clause. Whereas Section 55-A requires an employer of the domestic worker to provide full medical care to the domestic worker at employer's own cost for the time period domestic worker is employed with the employer.⁵³⁹ However, there is no method of inspection provided in this law to verify as to whether an employer is complying with this requirement or not.

4.3.2 The Punjab Minimum Wages Act 2019

By virtue of The Punjab Minimum Wages Act 2019, Minimum Wages Ordinance 1961 has been consolidated in this new legislation.⁵⁴⁰ Previously, domestic workers were included under the definition of workers under Minimum Wages Ordinance

⁵³⁸ Provincial Employees Social Security Ordinance 1965, Section 2(7-a)

⁵³⁹ Provincial Employees Social Security Ordinance 1965, Section 55-A.; See also Sindh Employee's Social Security Act 2016, Section 59

⁵⁴⁰ The Punjab Minimum Wages Act 2019, Preamble

1961⁵⁴¹ but have been omitted in the definition of worker under The Punjab Minimum Wages Act 2019.⁵⁴²

4.3.3 The Employment of Children Act 1991

Section 3 of Employment of Children Act 1991, prohibits the employment of children in occupations and processes deemed hazardous, ensuring their protection from exploitation and harm. Previously, this legislation was regulating the formal sector of employment. In 2020, Child Domestic Labour has been incorporated in the Part I of the Employment of Children Act 1991 prescribing list of occupations whereby children should not be employed, thereby making this legislation regulating informal sector as well.⁵⁴³ Moreover, if there are educational facilities available for the child worker within the work premises, which are recognized by the Government, and the work is not adversely affecting his overall development, then he may be allowed to do work.

This provision is authorizing the Government to recognize any act of employment, which is conducted by the child's family or educational institution, legal. The exemption on this part has made the purpose of the whole law, useless. There is also a silent message inbuilt in The Employment of Children Act 1991 that bonded labour can be allowed in the stated circumstances.

The Employment of Children Act 1991 defines child as a person below 14 years of age and an adolescent as a person below 18 years of age (the definitions of child and adolescent in this act and penalties override these provisions mentioned in

⁵⁴¹ Minimum Wages Act 1961, Section 2(9)

⁵⁴² The Punjab Minimum Wages Act 2019, Section 2(1)(t)

⁵⁴³ Substituted vide S.R.O. 650(1)/2020, Islamabad, July 30, 2020

The Mines Act 1923, The Factories Act, 1934 and The Shops and Establishments Ordinance, 1969)⁵⁴⁴. The dilemma in Pakistan is that the Constitution of Pakistan in the 18th amendment has raised the minimum age from 14 years to 16 years in Article 25(A) while it is stated 14 in Article 11. All labour laws mention 14 years as minimum age of the child. Article 25(A) of the Constitution provides that it is the state's responsibility to provide compulsory education to all children between 5 to 16 years of age, which means that a child below 16 years of age is not allowed to work. It was more preferable and practical approach if the limit of compulsory education was imposed instead of giving the age limit in the Constitution.

Part 3 of The Employment of Children Act permits employment of children provided that better and convenient working conditions are ensured. The working hours limit is also prescribed, which is seven with a break of at least one-hour after three hours of continuous work, also they are prohibited to work between 7pm and 8am. Moreover children should not be engaged in overtime work, and are entitled to at least one off day per week. The child is also not allowed to take up two jobs simultaneously. It is mandatory for all those establishments in which children are employed to notify the government about the nature of work, conform to health and safety, standards and ensure clean and hazardous free working conditions of child labourers.⁵⁴⁵

Part 4 of the 1991 Act prescribes that in case of breach of any provision of the Act the employer is liable for imprisonment for a period extending to one year and a fine of up to Rs 20,000. These penalties are comparatively more severe than those

⁵⁴⁴ The Employment of Children Act 1991, Sections 14, 15 and 19

⁵⁴⁵ The Employment of Children Act 1991, Section 13; See also The Employment of Children Rules, 1995, Rules 6 through 13

provided earlier child labour legislations, yet they are still inadequate when we consider the impact on the overall development of the child. Moreover, these penalties are not enforceable against family members and unregistered establishments.

It is pertinent to note that the manufacturing units with less than 10 employees do not fall within the definition of factories and, therefore, do not fall under the ambit of Factories Act. The Employment Act of 1991 is a comparatively better solution to reduce the number of child labourers working in hazardous occupations, even if a small number of child labourers are hired. Yet household workers are still unprotected and so as domestic workers.

4.3.4 Employment of Children Rules 1995

The Employment of Children Rules 1995 are formulated under Section 18 of The Employment of Children Act, 1991 whereby the Government may, by notification in the Official Gazette, make rules for carrying into effect the provisions of this Act. Rule 4 obliges the employer to hire a certified surgeon to issue the certificate for age⁵⁴⁶ and fitness for the children to be employed so as to see whether the child is physically fit to bear the heavy exertion of labour⁵⁴⁷. The similar kind of provision was earlier incorporated in the previous laws relating to the issue of child labour. This provision is not free from lacunas. Rather it has decreased the age of the child from 14 to 12, where Rule 4(2) says that if the child has completed 12 years of age but not reached 14 years of age. Rule 4(1) states that if the child or his parents or occupier wishes to engage child in labour. Everything has been left to the wishes and whims, without considering the effect on child's education and overall development.

⁵⁴⁶ The Employment of Children Rules 1995, Rule 15

⁵⁴⁷ The Employment of Children Rules 1995, Rule 4

Moreover, once they are hired, no medical tests are conducted during service so as to see their health conditions.

4.3.5 Legislations on Domestic Workers

As mentioned earlier, informal sector work especially domestic work remains undetermined, undervalued and invisible. Majority of domestic workers are women and children, who are most vulnerable to discrimination, abuse, violation and exploitation in respect of working conditions, working hours, minimum age and wage, and the like. Also recognizing the appalling conditions under which such workers are working needs specific legal protection. The better protection to those workers could be offered by supplementing the general standards coupled with specific legislation at domestic level. Since international labour standards are only applicable to the informal sector. Therefore, those standards were extended to that branch of the informal sector for the workers serving in the domestic work so as to offer them protection against violation of their human rights.

All sort of economic exploitation leads towards poverty, social disharmony and economic deprivation not only at national level but has adverse impacts at international level as well in the globalization context. ILO action in Pakistan is trying to make Pakistan to adopt national policy on decent work, which will also be complementary to the ILO objectives. As a result of which, Pakistan has incorporated Decent Work Objectives in National Plans of Action for Decent Work (hereinafter referred as NPADW). So far, Pakistan has implemented three Decent Work Country Programmes from 2006-2009, 2010 to 2015, 2016-2020 (which has been extended to 2022 so as to bring in line with UN Sustainable Development Cooperation

Framework 2018-2022)⁵⁴⁸ while fourth Decent Work Country Programme for Pakistan IV (2023-27) (hereinafter referred as DWCP IV) is effective, so as to meet the International Labour Standards (ILS) and Sustainable Development Goals (SDG Goal No. 8.7⁵⁴⁹ and 16.2⁵⁵⁰).⁵⁵¹ Goal 8.7 refers to emphasize the need for swift and decisive measures to eradicate forced labour, end modern slavery and human trafficking, and eliminate the worst forms of child labour, aiming to abolish child labour in all its forms by 2025. While Goal 16.2 emphasizes the need to eradicate all forms of child abuse, exploitation, trafficking, violence, and torture ensuring children's safety, dignity, and human rights are protected and respected. Currently, Pakistan is non-compliant to Decent Work Agenda. Decent Work deficits fall in all the four factors meaning thereby the rights at work are denied, having no sustainable employment, social protection and social dialogue is not appreciated.⁵⁵²

The Constitution of Pakistan 1973, the fundamental law of the State, do not ensure the adequate protection to the legitimate interests of the workers in the informal sector. The workers of formal sector enjoy legal protection as well as constitutional protection. Since the workers of informal sector do not fall under the category of labourers nor under the Service of Pakistan nor the laws are strong enough

⁵⁴⁸ Areas of Work; Available at

<https://www.ilo.org/islamabad/areasofwork/lang--en/index.htm> last visited October 17, 2020

⁵⁴⁹ Sustainable Development Goal, 8.7

Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all

Available at <https://sdgs.un.org/goals/goal8> last visited March 11, 2023

⁵⁵⁰ Sustainable Development Goal, 16.2

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Available at <https://sdgs.un.org/goals/goal16> last visited March 11, 2023

⁵⁵¹ Decent Work in Pakistan; Available at

<https://www.ilo.org/islamabad/country/lang--en/index.htm> last visited October 15, 2019

⁵⁵² The Islamic Republic of Pakistan Decent Work Country Programme 2016-2020; Available at

https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited March 27, 2019

to protect their rights, therefore, they are mostly subject to vulnerability. ILO has observed that in Pakistan, out of every 10 employees, 6 employees lack decent working conditions and fall under the category of vulnerable employment, which means that there are no formal employment arrangements or legal contracts are made, leaving the employees to work in indecent or difficult working conditions, without any social or legal security, low wages, and the denial of human rights.⁵⁵³

The failure to implement uniform education policy has also aggravated the problem. Unless the legal protection does not change the social mindset, this vulnerable section of the society would remain vulnerable in the presence of economic disparities and social disharmony.

The Domestic Workers (Employment Rights) Act 2013, was the first kind of legislation in Pakistan to change the face of the informal economy. This law was primarily introduced in the Senate in 2013 as Domestic Workers (Employment Rights) Act, 2013, but could not be debated. Later on in 2016, it was reintroduced as Domestic Workers (Employment Rights) Act 2016, and even passed in the Senate yet it could not be enacted by the National Assembly.⁵⁵⁴ Rather than enforcing Domestic Workers (Employment Rights) Act 2016, the Government of Pakistan had made an amendment in The Employment of Children Act 1991 in 2020, wherein Child

⁵⁵³ ILO: Decent Work Country Programme: ILO Country Office for Pakistan (2010-2015); Available at <http://www.ilo.org/public/english/bureau/program/dwcp/download/pakistan2020-2015.pdf> ; See also The Islamic Republic of Pakistan Decent Work Country Programme 2016-2020; Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited March 27, 2019

⁵⁵⁴ Subay Khan V Secretary, Labour, Government of the Punjab, W.P. No. 48872 of 2017

domestic work is declared as an occupation prohibited by law⁵⁵⁵, as stated earlier there are certain enforcement issues are involved.

Whilst the Tayyaba case was unfolding, played a pivotal role in driving social change in the treatment and protection of domestic workers in Pakistan, it also exposed the alarming vulnerability of this workforce. The widespread media coverage of the case, which involved a young girl subjected to severe abuse and exploitation as a domestic worker, sparked outrage and calls for reform. As a result, there has been a growing movement to recognize the rights of domestic workers, regulate their employment, prevent child labour, and provide support and resources for victims of abuse and exploitation, ultimately prompting efforts to improve their rights and protections.⁵⁵⁶ In the meantime, Punjab provincial government promulgated its legislation on domestic workers, called The Punjab Domestic Workers Act 2019, while another law for domestic workers was introduced in Islamabad, called Islamabad Capital Territory Domestic Workers Act 2019, which was once again not enforced but later in 2022, Islamabad Capital Territory Domestic Workers Act was finally promulgated. As stated above, by virtue of devolution of powers under Eighteenth Amendment of the Constitution, labour laws are now become a provincial subject. Unfortunately other provinces except Punjab could not legislate on the issue of domestic workers so far. Expansion of idea enshrined in the Islamabad and Punjab Acts could offer blanket protection to the workers in the rest of Pakistan.

In the earlier proposed legislations, the proposed age of the workers was not less than 14 years and not more than 60 years of age regardless of their sexes. But in

⁵⁵⁵ Substituted vide S.R.O. 650(1)/2020, Islamabad, July 30, 2020

⁵⁵⁶ Tayyaba abuse case shines light on Pakistan's child maids; Available at <https://www.bbc.com/news/world-asia-44397432> last visited June 17, 2018

Punjab Domestic Workers Act 2019, the child workers under the age of fifteen years are totally prohibited to work while children ranging in between 15 years and 18 years can be engaged in light domestic work. On the other hand, in Islamabad Capital Territory Domestic Workers Act 2022, only prohibition of the child domestic workers under the age of sixteen years to work is mentioned.

4.3.5.1 Analysis of Punjab Domestic Workers Act 2019 and Islamabad Capital Territory Domestic Workers Act 2022

As stated earlier, domestic work, according to Article 1 of the Concerning Decent Work for Domestic Workers (No. 189), 2011, refers to works performed within the premises of the workplace or works performed for the employer, while the person who is occupied or employed to do such domestic work refers to a domestic worker.⁵⁵⁷ This definition does not define the tasks undertaken as domestic work. It generally categorizes the nature of work as a domestic work, if it relates to household. The tasks assigned are hidden and nature of tasks to be undertaken is undefined, leaving behind the *lacunae* in the legislation and ultimately leaving the domestic workers in the vicious circle of vulnerability. There is a huge list of tasks which are done in house and thus, remain hidden, unnoticed and unrecognized for which they are not even paid equitably.⁵⁵⁸

⁵⁵⁷ ILO Convention Concerning Decent Work for Domestic Workers (Domestic Workers Convention No. 189), 2011, Article 1(b); See also International Labour Organization, “Decent Work for Domestic Workers: C 189 and R 201 at a Glance”, (International Labour Organization: 2011); and M. Black, child domestic workers A handbook for Research and Action (September 1997), iii; and Who are Domestic Workers?; Available at http://www.ilo.org/global/docs/WCMS_209773/lang--en/index.htm last visited February 7, 2017

⁵⁵⁸ Crawford, Sheena and Poulsen, Birgitte, “Thematic Evaluation On IPEC Interventions: Child Domestic Workers, Draft 1”, (Geneva: 12 December 2000), 8-9

According to Child Right Movement, there are 8.5 million domestic workers across Pakistan among them six million are children, who are not more than the age of 11 years.⁵⁵⁹ The protection of the child domestic workers is in line with international instruments. For instance, the United Nation's Convention on the Rights of the Child protects the children from economic exploitation.⁵⁶⁰ Even if any sector of the society is excluded from the ambit of Convention No. 138, it would still be obliged to protect the children from economic exploitation under the Convention on the Rights of the Child.⁵⁶¹ Moreover ILO Recommendation 146 postulates that if children under eighteen years of age are employed by any employer, child children should be given reasonable supervision.⁵⁶²

As mentioned above, previously, the theoretical framework provided that The Provincial Employees Social Security Ordinance 1965, under Section 55-A covers medical treatment of domestic servants and stipulates that every employer of a domestic servant shall be liable to provide medical treatment at his own cost. The Minimum Wages Act 1961 includes domestic work in its definition of worker.⁵⁶³ But since the promulgation of this law, the government had failed to notify the minimum wages for domestic workers despite directions issued by the Supreme Court in *Subay Khan V Federation of Pakistan and 2 others*. In this case, the Honourable Supreme Court of Pakistan remarked that since the domestic workers are being unduly discriminated and are not regulated by any law in Pakistan, thereby directed the Government to take up the issue of domestic servants and provide the guidelines for

⁵⁵⁹ 12.5 Million children in Pakistan are involved in labour," *Dawn, Business and Finance Weekly*, July 23, 2018; Available at

<https://www.dawn.com/news/1264451> last accessed January 9, 2019

⁵⁶⁰ United Nation's Convention on the Rights of the Child 1989, Article 32(1)

⁵⁶¹ United Nation's Convention on the Rights of the Child 1989, Article 32(2)(c)

⁵⁶² ILO Minimum Age Recommendation 1973 (No. 146), Paragraph 12(1)

⁵⁶³ Minimum Wages Act 1961, Section 2(9)

the legislation and policy on minimum wages for domestic workers.⁵⁶⁴ Therefore, the application for Contempt of Court was forwarded to the Supreme Court for non-compliance of the decision by the Government, which was converted into the Writ Petition by the Court as the issue involves a matter of public importance. During the pendency of the case, The Punjab Domestic Workers Act 2019 was enacted⁵⁶⁵ and the government also started to notify minimum wages for the domestic workers. It was the first landmark legislation, which changed the face of the informal economy.

The Punjab Domestic Workers Act 2019⁵⁶⁶ provides umbrella protection to the domestic workers who were working as modern slaves earlier, but law is not free from lacunae and has created some serious legal gaps. Later on, after series of failures, finally Islamabad Capital Territory Domestic Workers Act 2022 was also promulgated.⁵⁶⁷

The detailed analysis of definition of domestic work under both Punjab Domestic Workers Act 2019⁵⁶⁸ and Islamabad Capital Territory Domestic Workers Act 2022⁵⁶⁹ is already discussed in detail in Chapter 1.

As compared to ILO Convention 189 and Recommendation 201⁵⁷⁰ the child should not be employed less than eighteen years of age. But as Pakistan is not a

⁵⁶⁴ Subay Khan V Federation of Pakistan and 2 others, W.P. No. 7870 of 2015; See also Subay Khan V Secretary, Labour, Government of the Punjab, W.P. No. 48872 of 2017

⁵⁶⁵ Subay Khan V Secretary, Labour, Government of the Punjab, W.P. No. 48872 of 2017

⁵⁶⁶ Promulgated on January 25, 2019; Punjab Domestic Workers Act 2019, Section 1(3)

⁵⁶⁷ Promulgated on October 24, 2022; Islamabad Capital Territory Domestic Workers Act 2022, Section 1(3)

⁵⁶⁸ Punjab Domestic Workers Act 2019, Section 2(g)

⁵⁶⁹ Islamabad Capital Territory Domestic Workers Act 2022, Section 2(g)

⁵⁷⁰ International Labour Organization's Convention on the Decent Work for Domestic Workers (No. 189) 2011, Article 4; See also International Labour Organization's Domestic Workers Recommendation (No. 210), 2011, Paras 5(1) and 5(2)

signatory to this Convention, but it is signatory to the ILO Conventions 138 and 182, whereby the child less than fourteen years of age should not be employed in any way. Therefore, both Punjab Domestic Workers Act 2019⁵⁷¹ and Islamabad Capital Territory Domestic Workers Act 2022⁵⁷² prohibit the employment of children as domestic workers less than fifteen years of age. While the Punjab Domestic Workers Act 2019 further provides that a child above age of fifteen years can be engaged for light work and on part time basis whereas child under the age of fifteen cannot be engaged in any capacity so as to prevent any adverse impact on his education.⁵⁷³ Whereas light work means the work which does not negatively impact the health, security and education of the child.⁵⁷⁴

No doubt that these laws ensure certain social security and wage related rights to the domestic servants along with prohibition on employment of children under the age of 15. Nevertheless, the practical situation is quite different, even children under 15 years of age are being employed as domestic workers.⁵⁷⁵ There are many incidents reported on social and print media narrating the incidents of torture, exploitation, physical assault of innocent child workers at the hands of the cruel employers.⁵⁷⁶

4.3.5.1.1 Fundamental Principles and Rights at Work

The fundamental principles and rights at work, as specified by ILO Convention

⁵⁷¹ Punjab Domestic Workers Act 2019, Section 3

⁵⁷² Islamabad Capital Territory Domestic Workers Act 2022, Section 3

⁵⁷³ The Punjab Domestic Workers Act, 2019, Proviso of Section 3

⁵⁷⁴ The Punjab Domestic Workers Act, 2019, Explanation of Section 3

⁵⁷⁵ Call for addressing lacunae in Punjab Domestic Workers Act; Available at <https://www.dawn.com/news/1461105> last visited March 3, 2019

⁵⁷⁶ 12.5 Million children in Pakistan are involved in labour,” *Dawn, Business and Finance Weekly*, July 23, 2018; Available at <https://www.dawn.com/news/1264451> last accessed January 9, 2019

189,⁵⁷⁷ are also specified in the Punjab Domestic Servants Act 2019 and Islamabad Domestic Workers Act 2022. As far as elimination of child labour⁵⁷⁸ is concerned, it is specified in Section 3 of both the legislations, as mentioned above. The other two important principles, elimination of bonded labour and forced and compulsory labour⁵⁷⁹ and elimination of discrimination,⁵⁸⁰ both are specified in Sections 4(1) and 4(2) of Punjab while Sections 4(a) and 4(b) of Islamabad's legislation. Apart from fundamental principles, the principle of elimination of discrimination is also enshrined in Article 11 of ILO Convention 189.⁵⁸¹ It means that the intention of the Member States was to focus on the issue of discrimination and the States should be obliged to make possible efforts to eliminate discrimination of every kind while employing domestic workers.

4.3.5.1.2 Rights of Domestic Workers

Apart from fundamental principles, some other rights are also protected under both the legislations, Punjab Domestic Workers Act 2019 and Islamabad Capital Territory Domestic Workers Act 2022. A key feature of both legislations is the recognition of domestic workers' dignity, as evidenced by the requirement to refer to them as 'workers' instead of 'servants', a change that acknowledges their labour rights and humanity.⁵⁸² Moreover, these legislations require the employers to provide dignified

⁵⁷⁷ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 3(2)

⁵⁷⁸ Punjab Domestic Workers Act 2019, Section 3; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 3

⁵⁷⁹ Punjab Domestic Workers Act 2019, Section 4(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 4(1)

⁵⁸⁰ Punjab Domestic Workers Act 2019, Section 4(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 4(2)

⁵⁸¹ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 11

⁵⁸² The Punjab Domestic Workers Act, 2019, Section 4(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 4(c)

working conditions to the domestic workers.⁵⁸³ The social security benefits, as are provided by ILO Convention 189 as well,⁵⁸⁴ are provided by these legislations to the domestic workers including the medical care of the domestic worker in case of sickness and injury.⁵⁸⁵ There is an additional protection provided in Punjab Domestic Workers Act whereby the domestic worker and his dependents are entitled to medical benefits in case of injury and pension schemes as provided under Punjab Employees Social Security Ordinance 1965 and its supplementary rules.⁵⁸⁶

The employment of domestic workers is founded on a contractual agreement. In contrast to the widespread practice of relying on oral understandings, Punjab and Islamabad legislations require that these contracts be formulized in writing. This requirement seeks to promote transparency, accountability, and the protection of domestic workers' rights. This formalization establishing mutual obligations, protecting workers' rights, and preventing potential disputes between the employer and the domestic worker are enshrined in ILO Convention 189 and both the Punjab and Islamabad legislations stating that the terms and conditions of the contract should be in black and white stated in fair and transparent manner and should be communicated to the domestic worker in an understandable language.⁵⁸⁷ The job description of the domestic worker should also be communicated in clear terms in the appointment letter so as to avoid future discrepancies and protect the domestic

⁵⁸³ The Punjab Domestic Workers Act, 2019, Section 4(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 4(e)

⁵⁸⁴ International Labour Organization's Domestic Workers Recommendation (No. 210), 2011, Paras 20 and 26(2)

⁵⁸⁵ The Punjab Domestic Workers Act, 2019, Section 4(6); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 4(c)

⁵⁸⁶ The Punjab Domestic Workers Act, 2019, Section 4(6)

⁵⁸⁷ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Articles 6 and 7; See also The Punjab Domestic Workers Act, 2019, Section 5(1); and Islamabad Capital Territory Domestic Workers Act 2022, Section 5(1)

workers from exploitation.⁵⁸⁸ The domestic workers' job description should be defined clearly in appointment letter and they shouldn't be required to do any work other than mentioned in their contract.⁵⁸⁹ Moreover, the working hours should not exceed in any manner beyond eight working hours in a day⁵⁹⁰ and forty eight hours in a week, meaning thereby a full day off during a week.⁵⁹¹ Any extra time spent on the workplace would be considered as over time. The total working hours including over time should not exceed fifty six hours in a week.⁵⁹² If the domestic worker be assigned any extra task to perform or required to spend extra time on workplace, the willingness of domestic worker is required in this regard, and there should be extra payment of that extra task over and above the agreed salary.⁵⁹³ So both Pakistan's legislations do not provide any provision regarding protection against exploitation, harassment, abuse and violence, which is enshrined in ILO Convention 189 and Recommendation 201.⁵⁹⁴

The domestic workers are also entitled to rest and off days and holidays during festivals under both the legislations. The minimum of twenty four hours leave should be given to the domestic worker within a week.⁵⁹⁵ There would be eight annual sick leaves. If the domestic worker does not avail the leave such leave will be carried

⁵⁸⁸ The Punjab Domestic Workers Act, 2019, Section 5(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(4)

⁵⁸⁹ The Punjab Domestic Workers Act, 2019, Section 5(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(4)

⁵⁹⁰ The Punjab Domestic Workers Act, 2019, Section 5(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(5)

⁵⁹¹ The Punjab Domestic Workers Act, 2019, Section 5(6); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(6)

⁵⁹² The Punjab Domestic Workers Act, 2019, Section 5(6); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(6)

⁵⁹³ The Punjab Domestic Workers Act, 2019, Sections 5(5) and 4(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 5(5) and 4(4)

⁵⁹⁴ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 5; See also International Labour Organization's Domestic Workers Recommendation (No. 210), Para 7

⁵⁹⁵ The Punjab Domestic Workers Act, 2019, Section 6(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 6(1)

forward and accumulated to next year, but total number of leaves should not exceed sixteen leaves in any year.⁵⁹⁶ Moreover, the domestic workers will also be awarded ten holidays on account of festivals according to the religion and norms of the domestic workers in the beginning of the year, priorly agreed at the time of agreement of employment between them so as to avoid future discrepancies.⁵⁹⁷

As far as remuneration of domestic workers is concerned, the ILO Convention 189 and Recommendation 201 prescribe that adequate wages should be given to the domestic workers against their services rendered in money, if national legislation allows it can be paid in kind or both, which can be calculated in terms of money but it does not include the money which is paid to the service providing agencies working for hiring and employment of domestic workers on the employer's behalf.⁵⁹⁸ In Punjab and Islamabad legislations, the wages will construe anything which can be calculated in terms of money. It means that it covers both cash and in kind.⁵⁹⁹ As stated earlier, the terms of payment in kind is subject to exploitation of domestic workers. Moreover, both the legislations provide that the minimum wages, which are specified by the Government, would also be applicable to the domestic workers and in no case the wages of domestic workers should be less than the minimum wages notified by the Government in this regard.⁶⁰⁰ Moreover, the wages during leaves and

⁵⁹⁶ The Punjab Domestic Workers Act, 2019, Section 6(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 6(2)

⁵⁹⁷ The Punjab Domestic Workers Act, 2019, Section 6(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 6(3)

⁵⁹⁸ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Articles 12(1), 12(2) and 15; See also International Labour Organization's Domestic Workers Recommendation (No. 210), Paras 14, 15, 20(3), 23 and 26(2)

⁵⁹⁹ The Punjab Domestic Workers Act, 2019, Section 2(r); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 2(s)

⁶⁰⁰ The Punjab Domestic Workers Act, 2019, Section 8(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 8(1)

over time allowance should also be same as are specified by the Government.⁶⁰¹

Recommendation 201 provides that the women domestic workers are entitled to maternity leaves and benefits.⁶⁰² Unfortunately, under both the Punjab and Islamabad legislations, the maternity leave, which is otherwise in other legislations is for one hundred eighty days (first delivery), one hundred twenty days (second delivery) and ninety days (third delivery), it is limited to only six weeks (42 days) but they are entitled to the agreed wages in that leave time period.⁶⁰³

If any domestic worker waives any right, which is guaranteed under both the legislations, it would be presumed that such waiver would have no validity and the domestic worker has been forced to waive the right or it is an attempt to deprive him from such right.⁶⁰⁴

4.3.5.1.3 Duties of Employers

As per ILO Convention 189 and both the Pakistan's legislations, the employer is duty bound to enter into a contract of employment with the domestic worker in black and white thereby disclosing all the terms and conditions to the domestic servant.⁶⁰⁵ As per both Punjab and Islamabad legislations, employers are mandated to issue appointment letter containing essential information about domestic workers, including

⁶⁰¹ The Punjab Domestic Workers Act, 2019, Section 16(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 16(5)

⁶⁰² International Labour Organization's Domestic Workers Recommendation (No. 210), Paras 20 and 26(2)

⁶⁰³ The Punjab Domestic Workers Act, 2019, Sections 6(4) and 9; See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 6(4) and 9

⁶⁰⁴ The Punjab Domestic Workers Act, 2019, Section 15; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 15

⁶⁰⁵ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Articles 6 and 7; See also The Punjab Domestic Workers Act, 2019, Section 5(1); and Islamabad Capital Territory Domestic Workers Act 2022, Section 5(1)

employment contracts and payment history to the Inspector concerned in case of Punjab and Commissioner Office in case of Islamabad, moreover the employer can keep a copy of domestic workers' identification documents as well.⁶⁰⁶ Furthermore, both the Acts imposed the duty on the then employers, who already engaged domestic workers, when these laws were promulgated, to draft the employment letters and intimate to the Inspector or Commissioner Officer concerned, as the case may be, about the hiring and identification of domestic worker within sixty days of the promulgation of the concerned legislation.⁶⁰⁷ The employer should also disclose the job description to the domestic worker clearly in the contract.⁶⁰⁸ The employer cannot assign any task beyond the agreed working hours, not exceeding eight hours, and if he requires the domestic worker to work beyond the agreed working hours or any extra work not designated in job description, the employer will pay extra remuneration over and above the agreed wages.⁶⁰⁹

ILO Convention 189, Recommendation 201 and both Pakistan's legislations provide that the employer is also bound to provide occupational safety and health standards to the domestic workers.⁶¹⁰ Recommendation 201 and both the legislations further provide that the employer is also bound to provide medical examination facilities by the registered medical practitioner to the domestic worker so as to diagnose any contagious disease or to check the medical fitness or pregnancy in case

⁶⁰⁶ The Punjab Domestic Workers Act, 2019, Section 5(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(2)

⁶⁰⁷ The Punjab Domestic Workers Act, 2019, Section 5(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(3)

⁶⁰⁸ The Punjab Domestic Workers Act, 2019, Section 5(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(4)

⁶⁰⁹ The Punjab Domestic Workers Act, 2019, Sections 5(5) and 4(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 5(5) and 4(d)

⁶¹⁰ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 13; See also International Labour Organization's Domestic Workers Recommendation (No. 210), 2011, Paras 19 and 4; The Punjab Domestic Workers Act, 2019, Section 4(5); and Islamabad Capital Territory Domestic Workers Act 2022, Section 4(e)

of women domestic workers so that they may be assigned tasks accordingly, and also provide vaccinations, if required. All the expenses pertaining to medical examination or vaccination are to be borne by the employer and not to be charged from the wages of the employee.⁶¹¹ As stated earlier, in Punjab, the dependents of domestic workers are entitled to free medical care only in case of injury.⁶¹²

As far as wages are concerned, the employer is bound to pay the domestic workers, wages which have been specified by the Government⁶¹³ and not less than that rate.⁶¹⁴ The employer is bound to pay full wages by the end of the month not exceeding five days over the due time period.⁶¹⁵ The employer is also bound to pay earned wages to the domestic workers during time of leave⁶¹⁶ and at the time of termination.⁶¹⁷

As far as accommodation is concerned, ILO Convention 189 and both the Punjab and Islamabad legislations prescribe that the employer is bound to provide accommodation and decent living conditions to live-in workers but he cannot bound

⁶¹¹ International Labour Organization's Domestic Workers Recommendation (No. 210), 2011, Paras 20 and 26(2); See also The Punjab Domestic Workers Act, 2019, Section 11; and Islamabad Capital Territory Domestic Workers Act 2022, Section 11

⁶¹² The Punjab Domestic Workers Act, 2019, Section 4(6)

⁶¹³ The Punjab Domestic Workers Act, 2019, Sections 8(1) and 16(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 8(1) and 16(5)

⁶¹⁴ The Punjab Domestic Workers Act, 2019, Sections 19(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 19(1)

⁶¹⁵ The Punjab Domestic Workers Act, 2019, Sections 18(1) and 16(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 18(1) and 16(4)

⁶¹⁶ The Punjab Domestic Workers Act, 2019, Section 7(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 7(2)

⁶¹⁷ The Punjab Domestic Workers Act, 2019, Section 18(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 18(3)

the domestic worker to stay in the household premises, it would be on free will of the domestic worker.⁶¹⁸

As far as termination of domestic worker is concerned, the domestic worker will be given one month prior notice by the employer and he will be given the remuneration of the services rendered for that time period.⁶¹⁹ Similarly, the employer is required to give reasonable notice to the domestic workers in case of termination.

As stated above, the employer, if desires, may keep the copy of the identification documents of the domestic worker including identity card, pass port etc. for security reasons only, as long as the domestic worker is employed with him, but nothing can be kept as a security.⁶²⁰ But at the time of termination, the employer is bound to return the documents or any personal property of the domestic worker to him or his dependents.⁶²¹

4.3.5.1.4 Minimum Wages Board

The Board specified under both the Punjab and Islamabad legislations is the Minimum Wages Board, which is to be established under Minimum Wages Ordinance 1961.⁶²² More interestingly, Minimum Wages Ordinance 1961 has been replaced in Punjab by Minimum Wages Act 2019, yet Punjab Domestic Workers Act 2019 still

⁶¹⁸ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 9(a); See also The Punjab Domestic Workers Act, 2019, Section 10; and Islamabad Capital Territory Domestic Workers Act 2022, Section 10

⁶¹⁹ The Punjab Domestic Workers Act, 2019, Section 13; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 13

⁶²⁰ The Punjab Domestic Workers Act, 2019, Section 5(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 5(2)

⁶²¹ The Punjab Domestic Workers Act, 2019, Section 14; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 14

⁶²² The Punjab Domestic Workers Act, 2019, Section 2(d); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 2(e)

mention of 1961 Ordinance.⁶²³ This Board was assigned the power to recommend minimum wages, working hours, overtime, rest hours, paid holidays and hold any inquiry against the guilty party.⁶²⁴ In both jurisdictions, notification of minimum wages is being notified by Punjab Labour and Human Resource Department and Directorate of Industries and Labour Welfare Islamabad on the recommendation of Minimum Wages Board of the respective jurisdictions. Yet the current minimum wages declared by the Government of Punjab for domestic workers is Rs. 37,000 per month (approx Rs. 1423 per day for 26 working days and Rs. 178 per hour)⁶²⁵ while in Islamabad there is no notification for fixation of minimum wages for domestic workers. The notification prescribing minimum wages of unskilled, juvenile and adolescent workers working full time in industrial/commercial establishments of Islamabad⁶²⁶ as well as unskilled workers (no mention of juvenile and adolescent workers) working part time in Islamabad⁶²⁷ as Rs. 37000 per month (approx Rs. 1423 per day for 26 working days). These notifications have deliberately excluded domestic workers, even through interpretation if we consider domestic workers as unskilled workers, which is not the right interpretation though, the child labourer and child domestic workers do not fall in the purview of this notification. The notification of minimum wages of Punjab Labour and Human Resource Department is appreciable in a way that it safeguards the rights of those domestic workers who are already paid more than the declared minimum wages, the employer will not reduce the amount of wages to minimum wages. Moreover, the said notification also protects the right to equal pay of female domestic workers with that of male domestic workers. Moreover,

⁶²³ The Punjab Minimum Wages Act 2019; Available at <http://punjablaws.gov.pk/laws/2750.html> last visited March 12, 2020

⁶²⁴ The Punjab Domestic Workers Act, 2019, Sections 16 and 17; See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 16 and 17

⁶²⁵ Vide No. SO(L&P)MW/2024 dated September 6, 2024

⁶²⁶ Vide ADLW8(20)-ICT/2024-225 dated August 8, 2024

⁶²⁷ Vide ADLW8(20)-ICT/2024-226 dated August 8, 2024

ILO Convention 189 and both the Punjab and Islamabad legislations also prescribe that there would be no discrimination as regards to the remuneration of domestic workers on the basis of gender, performing the equal work with equal tendencies and equal contributions.⁶²⁸ Both the legislations also prescribe that the wages declared by the government should be paid to the domestic workers by the fifth day of every month or after the expiry of last previous wages period.⁶²⁹ Furthermore, domestic workers must receive their wages at least once a month, with payment due no later than the last day of the month.⁶³⁰ Moreover, wages should be paid in the prevailing currency⁶³¹ and on working days.⁶³² It further stipulates that domestic workers have a right to get paid leaves, as specified under Section 6(1) through Section 6(3) of both the Punjab and Islamabad legislations including eight days sick leave with full wages per annum and if not availed may be carried forward but cannot be availed for more than sixteen days at one time.⁶³³ In case of sick leave exceeding four days time period, full wages earned by him by then shall be paid to the domestic worker.⁶³⁴ In case of termination, the domestic worker should be paid the wages earned within two days of terminating the domestic worker.⁶³⁵

⁶²⁸ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 12(1) and 12(2); See also The Punjab Domestic Workers Act, 2019, Section 8(2); and Islamabad Capital Territory Domestic Workers Act 2022, Section 8(2)

⁶²⁹ The Punjab Domestic Workers Act, 2019, Sections 18(1) and 16(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Sections 18(1) and 16(4)

⁶³⁰ The Punjab Domestic Workers Act, 2019, Section 18(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 18(2)

⁶³¹ The Punjab Domestic Workers Act, 2019, Section 18(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 18(5)

⁶³² The Punjab Domestic Workers Act, 2019, Section 18(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 18(4)

⁶³³ The Punjab Domestic Workers Act, 2019, Section 7(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 7(1)

⁶³⁴ The Punjab Domestic Workers Act, 2019, Section 7(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 7(2)

⁶³⁵ The Punjab Domestic Workers Act, 2019, Section 18(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 18(3)

4.3.5.1.5 Domestic Workers Welfare Fund

In order to provide social security and social protection to the domestic workers, a Governing Body in the name of Domestic Workers Welfare Fund had to be established by the Government, which couldn't be established as yet. The Fund will be accountable for administering financial funds designated to provide social security and protection programs for domestic workers.⁶³⁶ It will be operated under Provincial Employees' Social Security Ordinance 1965⁶³⁷ and the incomes generated by the Fund will be exempted from income tax under Income Tax Ordinance 2001.⁶³⁸

4.3.5.1.6 Registration of Employers and Domestic Workers

The domestic workers are required get themselves registered with the Governing Body so as to get the benefits from the Fund. The Governing Body will issue an identity card having registration number of that domestic worker, renewable after every three years.⁶³⁹ On the other hand, the employers are also required to get themselves registered with the Governing Body so as to keep the record of the employers employing domestic workers.⁶⁴⁰ For this purpose, the Labour and Human Resource Department has developed a Registration Form, in which the registration of domestic workers and employers is to be duly submitted to the department.⁶⁴¹ Moreover an android App, Domestic Workers Registration, has also been made by the

⁶³⁶ The Punjab Domestic Workers Act, 2019, Section 22; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 22

⁶³⁷ The Punjab Domestic Workers Act, 2019, Section 23; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 23; and International Labour Organization's Domestic Workers Recommendation (No. 210), 2011, Paras 20 and 26(2)

⁶³⁸ The Punjab Domestic Workers Act, 2019, Section 30; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 30

⁶³⁹ The Punjab Domestic Workers Act, 2019, Section 20; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 20

⁶⁴⁰ The Punjab Domestic Workers Act, 2019, Section 21; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 21

⁶⁴¹ Domestic Workers and Employers Registration Form; Available at <https://labour.punjab.gov.pk/domestic-workers-registration-form> last visited February 19, 2020

Punjab Employees Social Security Institution to meet the required purpose.⁶⁴² There are two more mobile apps, *Talash* and *Tasdeeq*, made by the Police authorities so as to verify the criminal record of the domestic workers through their national identification card number. The initiatives have been taken by the government but the problem lies at the compliance side due to unawareness of the masses and unacceptability of the new procedures under the law. Moreover, there are certain domestic workers' employment agencies working in major cities of Pakistan, who provide both live-in and live-out domestic workers to the citizens but the security of the domestic workers is not guaranteed by these agencies and the domestic workers are paid less wages as compared to the government notified minimum wages. As highlighted earlier, the ILO agrees that Pakistan's government does not possess reliable data on this issue, thereby limiting the ability to empirically verify these apprehensions.

4.3.5.1.7 Dispute Resolution Committees and Appellate Authorities

As per the requirements of ILO Recommendation 201⁶⁴³ and UDHR,⁶⁴⁴ there should be dispute resolution mechanism for resolving the disputes arising between the employer and the domestic workers. The Government should form a Dispute Resolution Committee and notify in the Official Gazette.⁶⁴⁵ The Punjab Domestic Workers Act 2019 prescribes that the head of the lowest tier of the local government i.e. the Union *Nazim* would head the Dispute Resolution Committee.⁶⁴⁶ The principles

⁶⁴² Domestic Worker Registration; Available at

<https://pessi.punjab.gov.pk/domestic-worker-registration> last visited March 10, 2022

⁶⁴³ International Labour Organization's Domestic Workers Recommendation (No. 210), Para 7

⁶⁴⁴ Universal Declaration of Human Rights 1948, Article 10

⁶⁴⁵ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 17(1); See also The Punjab Domestic Workers Act, 2019, Section 25(1); and Islamabad Capital Territory Domestic Workers Act 2022, Section 25(1)

⁶⁴⁶ The Punjab Domestic Workers Act, 2019, Section 25(2)

of natural justice would be abided by in order to decide the case between the parties through an Award provided that the matter is brought in front of the Committee within thirty days of the occurrence of the incident.⁶⁴⁷ The aggrieved party of the Award can file an Appeal with the Appellate Authority, appointed by the Government in every District, within thirty days of the pronouncement of the Award.⁶⁴⁸ The Appellate Authority would also comply with the rules of justice, and can revert, modify or confirm the Award thereby.⁶⁴⁹ The Dispute Resolution Committee and the Appellate Authority will serve as Civil Court⁶⁵⁰ and will decide the case by observing the provisions of Civil Procedure Code 1908.⁶⁵¹ Under the Islamabad Domestic Workers Act 2022, the Dispute Resolution Committee and Appellate Authority have not only been conferred the powers of a Civil Court, exercising powers under the Civil Procedure Code 1908, but can also enforce attendance, examine witnesses, and produce documents or any matter ancillary thereto.⁶⁵²

Under both the Punjab and Islamabad legislations, the Government is also required to notify the Labour Inspectors, who will be public servants under Pakistan Penal Code 1860.⁶⁵³ These Labour Inspectors would have power to inspect the house of the employer on receiving the complaint from the domestic worker through proper

⁶⁴⁷ The Punjab Domestic Workers Act, 2019, Section 25(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 25(3)

⁶⁴⁸ The Punjab Domestic Workers Act, 2019, Section 25(4) and 26(1); and Islamabad Capital Territory Domestic Workers Act 2022, Section 25(4) and 26(1)

⁶⁴⁹ The Punjab Domestic Workers Act, 2019, Section 26(2); and Islamabad Capital Territory Domestic Workers Act 2022, Section 26(2)

⁶⁵⁰ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 16 and 17(2); and International Labour Organization's Domestic Workers Recommendation (No. 210), Para 7, 19(b) and 21

⁶⁵¹ The Punjab Domestic Workers Act, 2019, Section 27; and Islamabad Capital Territory Domestic Workers Act 2022, Section 27

⁶⁵² Islamabad Capital Territory Domestic Workers Act 2022, Section 25

⁶⁵³ The Punjab Domestic Workers Act, 2019, Section 27; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 27; and International Labour Organization's Domestic Workers Recommendation (No. 210), Para 24

channel via Dispute Resolution Committee.⁶⁵⁴ If the circumstances of the case are as such that it requires criminal proceedings, the Labour Inspectors will file the case in the Court of competent jurisdiction through the Public Prosecutor.⁶⁵⁵ The Magistrate would have the jurisdiction to take cognizance of the case referred by the Public Prosecutor.⁶⁵⁶ The rules have been drafted but compliance from the Labour Inspectors' side is missing.

4.3.5.1.8 Contingent Situations

If in case of any accident, which results in any injury or death of the domestic worker, or it is difficult to resume the duties within forty eight hours, the employer is bound to intimate to the concerned authorities within such time on the prescribed form.⁶⁵⁷

4.3.5.1.9 Penalties

In case of dispute whereby the employer refuses to return of personal belongings or the identity documents of the domestic worker, the aggrieved domestic worker will file the complaint in the Dispute Resolution Committee made under Section 23 of both Punjab and Islamabad legislations, who will apply the rule of *Audi Alteram Partem* and thereafter, if the employer is found guilty, would announce an Award against the employer directing him to return the disputed property to the aggrieved.⁶⁵⁸

In case of failure in compliance with the Award, the employer would be convicted

⁶⁵⁴ The Punjab Domestic Workers Act, 2019, Section 36(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 36(1)

⁶⁵⁵ The Punjab Domestic Workers Act, 2019, Section 36(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 36(2)

⁶⁵⁶ The Punjab Domestic Workers Act, 2019, Section 34; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 34

⁶⁵⁷ The Punjab Domestic Workers Act, 2019, Section 12; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 12

⁶⁵⁸ The Punjab Domestic Workers Act, 2019, Section 14(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 14(1)

before the Magistrate and fine up to ten thousand rupees may be inflicted and order for the restoration of the disputed property.⁶⁵⁹

If the employer fails to give minimum wages to the domestic worker, the case will be referred to the Magistrate of First Class, who will decide the case according to the requirements of justice. In this clause, it is not mentioned who will refer the case to Magistrate, it be directly by the aggrieved party, or through Labour Inspector or through the Dispute Resolution Committee. If in case, the employer is found guilty the Magistrate will impose the fine up to ten thousand rupees and can also require the employer to pay the unpaid amount of remuneration of the domestic servant.⁶⁶⁰ The recovery will be made in accordance with Minimum Wages Ordinance 1961 (which is now Minimum Wages Act 2019 in case of Punjab).⁶⁶¹ The Magistrate will scrutinize the application forwarded by the domestic worker regarding the non-payment of minimum wages by the employer. If the Magistrate finds that the employer is not guilty and the complaint is false and frivolous, the Magistrate will reject the application and may also fine the domestic worker up to five thousand rupees.⁶⁶² The aggrieved party may file an appeal within thirty days of the pronouncement of the decision before the Labour Court made under Punjab Industrial Relations Act 2010.⁶⁶³ The verdict of the Appeal would be final.⁶⁶⁴

⁶⁵⁹ The Punjab Domestic Workers Act, 2019, Section 14(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 14(2)

⁶⁶⁰ The Punjab Domestic Workers Act, 2019, Section 19(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 19(2)

⁶⁶¹ The Punjab Domestic Workers Act, 2019, Section 19(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 19(3)

⁶⁶² The Punjab Domestic Workers Act, 2019, Section 19(4); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 19(4)

⁶⁶³ The Punjab Domestic Workers Act, 2019, Section 19(5); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 19(5)

⁶⁶⁴ The Punjab Domestic Workers Act, 2019, Section 19(6); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 19(6)

If the employer fails to comply with any of the provisions of the legislation, he shall be fined up to five thousand rupees for the first offence, if there are any subsequent offences, the fine would be doubled i.e. up to ten thousand rupees.⁶⁶⁵ If the employer employs any child domestic worker who is under the twelve years of age, he shall be imprisoned up to one month. But if the child domestic worker less than fifteen years age is hired, the employer shall be fined minimum of ten thousand rupees and maximum of fifty thousand rupees.⁶⁶⁶ Both the Punjab and Islamabad legislations state that in the absence of any evidence to the contrary, it shall be presumed that a child is a domestic worker if (s)he is found to be working in a private household with his parent(s), unless proven otherwise. This presumption can help shift the burden of proof in favor of the domestic worker, making it easier for them to claim their rights under the Act.⁶⁶⁷

If an employer is required to produce any evidence and he fails to do so or the employer creates hurdles in the inspection conducted by Labour Inspectors, he shall be fined up to ten thousand rupees.⁶⁶⁸

The punitive measures adopted by both the legislations are quite less. The imposed fines are very low. Lack of enforcement and weak punitive measures would defeat the purpose of the protection of domestic workers and legislation making on the subject as a whole.

⁶⁶⁵ The Punjab Domestic Workers Act, 2019, Section 31(1); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 29(1)

⁶⁶⁶ The Punjab Domestic Workers Act, 2019, Section 31(2); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 29(2)

⁶⁶⁷ The Punjab Domestic Workers Act, 2019, Section 32; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 30

⁶⁶⁸ The Punjab Domestic Workers Act, 2019, Section 31(3); See also Islamabad Capital Territory Domestic Workers Act 2022, Section 29(3)

4.3.6 Protection of children under Pakistan Penal Code 1860

The laws entailing punishment for exposing the children to risks during employment are specified to the hazardous work in factories, establishments and shops whereas the domestic work is not considered to be part of such legislations. The laws focus on the nature of the work but not on the overall ambiance and treatment given to the child as worker by the employer. The Labour Law is also devoid of provisions as to penalize the improper and harsh treatment given to the children employed at the workplace.

When children are the subject of labour, they are the most vulnerable. The reason being they are mentally and physically immature and one can easily exercise his influence or use coercive threats to suppress the child's personality traits. The children are more easily targeted and can be an object of violence. When it comes to domestic workers, since domestic workers are considered as nearly as slaves, they can be physically, mentally and sexually targeted. Before the Punjab Domestic Workers Act 2019 and Islamabad Domestic Workers Act 2022, the violations against domestic workers in Pakistan either remained unreported, or if they were reported, the only remedy was under Criminal Law.

Section 328-A of Pakistan Penal Code 1898 (hereinafter referred as PPC) provides that the person who intentionally or willfully harms, abducts, abandons, ill-treats or commits any kind of cruel behavior with a child in a way that his mental, physical and psychological health is adversely affected, he is deemed to have committed cruelty with the child. The purpose is to protect the child from violence and maltreatment. Here, the words 'intentionally' and 'willfully' are questionable, as the intentional willful conduct needs to be proved with circumstantial evidences,

which can be fraudulently amended or concealed, on the other hand, there are no parameters to judge intention of the person. However, PPC provides that the culprit would be punished with the imprisonment of term for minimum one year and maximum three years, or a fine minimum twenty five thousand rupees and maximum fifty thousand rupees, or both.⁶⁶⁹ The nature of crime is heinous while the prescribed punishment is quite less.

Since children workers are at the disposal of their employers, they are easy target of sexual abuse also. As mentioned above, the lack of legislation has posed multiple problems in this regard. Yet PPC mentions about the punishment of sexual abuses against these children. Section 377-A, the punishment of which is prescribed in Section 377-B, prescribes that whosoever employs, uses, seduces, forces, induces, entices, persuades, coerce or engages a child, less than eighteen years of age into any kind of sexual activity, including fondling, stroking, caressing, exhibitionism, voyeurism, obscene or sexually explicit conduct or simulation of such conduct is considered as if that person has committed sexual abuse, whether done independently or in conjunction with other acts.⁶⁷⁰ Section 377-B prescribes the punishment for the guilty person, an imprisonment which may extend to seven years or a fine for maximum five hundred thousand rupees or both.⁶⁷¹

As it can easily be construed from our social trends that the children, who are being full-time employed in different workplaces, are generally abandoned by their parents and are not even contacted by them in any way. The only concern of their

⁶⁶⁹ Pakistan Penal Code, 1860, Section 328-A

⁶⁷⁰ Pakistan Penal Code, 1860, Section 377-A; See also Muhammad Abdul Basit, *The Pakistan Penal Code*, (Rawalpindi: Federal Law House, April 2019), 594

⁶⁷¹ Pakistan Penal Code, 1860, Section 377-B

parents is the remuneration, which is also very less as compared to even those domestic workers who work on part-time basis. Yet Section 328 of PPC provides that the parents should not intentionally abandon or desert their child/children in tender years i.e. under twelve years of age so as to expose them to hazardous working conditions.⁶⁷² This section is tricky in nature. It says that there should be an intention to abandon the child. Mere abandoning is not an offence. There are no parameters in law to determine the intention of the person. What if the parents never contact the child or visit him or take him to home for some days on account of leaves? Isn't it considered as intentional abandonment?

4.3.7 Lacunae in the Legislative Framework of Punjab Domestic Workers Act 2019 and Islamabad Domestic Workers Act 2022

The definition of domestic work falls short by not specifying the particular tasks involved in domestic work. Instead, it broadly categorizes domestic labour as household-related activities, highlighting the exploitative practice of children being forced into prolonged domestic servitude. Moving further, key gaps in the definition of domestic worker include the exclusion of specific groups, such as live-in workers, part-time or temporary workers, migrant workers, and workers employed by third-party agencies. Additionally, the definition lacks clarity on employment status, potentially leading to confusion about rights and entitlements. Furthermore, it fails to provide a clear distinction between domestic workers and other types of workers, such as those in informal or care work settings. Lastly, the definition does not fully account for the power dynamics at play in domestic work arrangements, which can impact the vulnerability and exploitation of domestic workers. The discrepancy in definitions of

⁶⁷² Pakistan Penal Code, 1860, Section 328

a child's age may also result in jurisdictional conflicts and challenges in enforcing laws related to child domestic workers. The maximum age of domestic workers is also not defined in order to protect elderly and frail workers from exploitation and ensure their safety and well-being. Fundamental principles and rights to work are mentioned in both the legislations but does not include the right of freedom of association.

As stated earlier, in Pakistan, under the Punjab Domestic Workers Act 2019 and Islamabad Capital Territory Domestic Workers Act 2022, it is compulsory for both employer and employee to enter into a written contract of employment, specifying the clear terms and conditions of employment. The law outlines the rights and liabilities of workers and employers, but notably omits provisions safeguarding against exploitation; harassment; abuse; violence; and discrimination on the basis of ethnicity, marital status, etc. as mandated by ILO Convention 189 and Recommendation 201. The legislations are also silent on the issue of employment agencies responsible for recruiting, screening, and verifying the qualifications and backgrounds of domestic workers. Although some employment agencies in Pakistan provide domestic workers, the absence of legislation and regulations governing their operations is a significant concern. Specifically, there is a lack of oversight in matching workers with suitable employers, facilitating contract negotiations, arranging placements, and ensuring the well-being and safety of domestic workers during and after their service while also complying with relevant labor laws and standards. The legislations are also silent on the issue of child domestic workers and failed to define the parameters under which child domestic workers can be employed. The division of light work, worst form of child labour and hazardous work should be clearly defined in order to create a balance between the tasks assigned and overall

development of the children. Moreover, the legislations are also silent on the issue of provision of compulsory education and less working hours for the child domestic workers.

ILO Convention 189 further provides that the employer cannot force the domestic worker to live in the accommodation provided by the employer⁶⁷³ and are free to keep their identification documents in their own custody.⁶⁷⁴ This provision is not available in both of the Pakistan's legislations. Rather in most of the live-in domestic workers' cases, the original identification documents are kept by the employer and if the domestic worker be child, the original identification documents of the parents of the child concerned are kept by the employer. Recommendation 201 further postulates that the employer should provide food, medical facilities and privacy at the employer's provided accommodation. He should also provide reasonable notice to the domestic worker for evacuating the employer's provided by the employer in case of termination of services so that he may find another accommodation, this provision is also not available in both Punjab and Islamabad legislations.⁶⁷⁵

Moreover, the medical facility is provided to the domestic workers unlike Punjab Domestic Workers Act 2019, Islamabad Domestic Workers Act 2022 does not provide medical cover to the dependents of the domestic workers. Similarly legislations are also silent on the issue of conducting medical tests prior to the

⁶⁷³ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 9(b)

⁶⁷⁴ International Labour Organization's Decent Work for Domestic Workers Convention (No. 189) 2011, Article 9(c)

⁶⁷⁵ International Labour Organization's Domestic Workers Recommendation (No. 210), Paras 3, 17 and 18

appointment in order to save the households from physical, mental and medical disabilities including diseases like hepatitis, AIDS, tuberculosis and the like. The maternity leaves granted to women are comparatively less i.e. forty two days as compared to other civil servants, private organizations or even labourers, one hundred and eight days in case of first child, one hundred and twenty days in case of second child and ninety days in case of third child.⁶⁷⁶

Both the legislations provide that the minimum wages are to be determined by the government. The mode of payment of wages can be in cash or in kind. Payment of wages in kind can have severe consequences, including exploitation, lack of financial autonomy, difficulty in measuring wages, limited access to credit, inability to pay taxes, and dependence on the employer. This can lead to a cycle of debt and poverty, as workers may be forced to accept goods or services of lower value than their cash wage, making it challenging to manage their finances, access basic necessities, and enjoy a decent standard of living. As stated earlier, Punjab Domestic Workers Act 2019 mentions Minimum Wages Act 1961 wherever it intend to refer to the issue but in reality that legislation has been replaced by Minimum Wages Act 2019. Moving further, the government has failed to notify minimum wages of domestic workers in Islamabad Capital Territory under Islamabad Domestic Workers Act 2022 as yet. These legislations are also silent on the issue of social security, health insurance and other employment benefits e.g. pension and gratuity of the domestic workers.

The government is also bound to make possible efforts to ensure rights of domestic workers under Punjab and Islamabad legislations. Also, the government

⁶⁷⁶ The Maternity and Paternity Leave Act 2020, Section 3

would make rules and procedures for the formulation and regulation of Domestic Worker's Welfare Fund, Dispute Resolution Committees and Appellate Authorities. Also, the powers of the Dispute Resolution Committee have equivalence to the Civil Courts as per Civil Procedure Code, yet the criminal matters are not under the ambit of the Committee. The criminal cases, including non-payment of minimum wages, which is a civil matter, the cases are required to be referred to the Court of Magistrate. The law is silent the issue who will report to the Magistrate; the domestic worker, the Labour Inspector, Dispute Resolution Committee; or Magistrate can take cognizance of the case himself. Though, domestic work is a branch of labour laws, yet neither the special courts are formulated nor the domestic workers are allowed to approach any court of law for civil matters including the civil courts except through Dispute Settlement Committee, which is not functional in its true letter and spirit. The Dispute Resolution Committees and Appellate Authorities are not judicial bodies but vested with a few powers of Civil Courts, therefore, the dispute resolution under those authorities would in itself be questionable. Only appeals against the matters of minimum wages can be filed in Labour Courts. Similarly Labour Inspectors for domestic workers are not notified so far. The Labour Inspectors can only inspect the matter on receiving the complaint, they cannot collect evidence as both the laws are silent on this issue, they have no power to hold unexpected visits during normal circumstances so as to see the condition of domestic workers but in no way they should be allowed to enter the premises except in case of serious complaints. Moreover, Labour Inspectors are not given any power to search the households on the complaint of the employer of domestic worker.

According to Recommendation 201, the government should conduct capacity-building campaigns to educate domestic workers and employers about legislations, protections provided, their rights and duties, complaint mechanisms, dispute settlement mechanisms and assistance to the victims of the dispute. However, such initiatives are noticeably absent. The Punjab and Islamabad legislations also provide that in case of contingencies, the authority should be notified in such form and time as may be prescribed. The forty eight hours time period has been prescribed but to whom it is to be notified and in which form it is to be notified is ambiguous. Furthermore, the existing laws fail to provide protection for domestic workers during socio-economic crises, as experienced in the COVID-19 pandemic and its subsequent global economic downturn.

If in case of any accident, which results in any injury or death of the domestic worker, or it is difficult to resume the duties within forty eight hours, the employer is bound to intimate to the concerned authorities within such time on the prescribed form.⁶⁷⁷ The legislations does not provide which authority will be informed, whether it be the Inspector/Commissioner of the area concerned, the Minimum Wages Board, Domestic Workers Welfare Fund or Dispute Resolution Committee. Moreover, the time frame is also not mentioned that what would be the limitation time period for taking action by such incident. Also, the prescribed form does not specify in which form (written, oral, telephonic) the incident has to be reported nor any specified form has been introduced so far by the Government for the intimation of such incidents. Most importantly, none of the legislations mention about the medical cover of the domestic worker during such accidental conditions.

⁶⁷⁷ The Punjab Domestic Workers Act, 2019, Section 12; See also Islamabad Capital Territory Domestic Workers Act 2022, Section 12

In ILO Convention 189, Recommendation 201, Punjab Domestic Workers Act 2019 and Islamabad Capital Territory Act 2022, none of these legislations provide the situations arising in case of contingencies. Covid-19 pandemic has pushed the world's economy into slump. There is no protection for the workers of any class in case of such crisis in any international instrument. The people worldwide terminated all the domestic workers from their household service so as to make themselves safe in quarantine. The domestic workers already belonged to vulnerable class of the society due to poverty and other economic deprivations, the Covid-19 outbreak pushed them into more serious conditions thereby adding to their vulnerability. The ILO and UNICEF also shared their concerns on the havoc of post pandemic situations particularly on child labour. The rise in poverty graph has pushed the families to engage their children into workforce for their subsistence.⁶⁷⁸

Similar reservations were raised by United Nations as well. Since domestic workers already face poverty and economic deprivation and the employers terminated them because they were also ultimately getting financially down, the domestic workers were pushed to work outside the safe premises for their sustainable livelihood and exposed themselves to the risk of Covid-19. There was no other option left otherwise they would have breathed their last breath.⁶⁷⁹

⁶⁷⁸ Covid-19 may push many millions more children into child labour – ILO and UNICEF; Available at

<https://www.unicef.org/pakistan/press-releases/covid-19-may-push-millions-more-children-child-labour-ilo-and-unicef> last visited July 18, 2020

⁶⁷⁹ UN urges protection of domestic workers' rights during Covid-19 pandemic; Available at <https://www.un.org/en/un-urges-protection-domestic-workers%E2%80%99-rights-during-covid-19-pandemic> last visited July 18, 2020

UNICEF collected the data from Pakistan to analyze how Covid-19 has affected the lives of people of Pakistan. According to the findings of UNICEF, the women became more vulnerable and were restricted to their homes due to the lockdown situation, thereby overburdening them with house chores and getting into anxiety. The women were not only overburdened with the house chores but also have to look after the sick and other family members, and also the home schooling of children became much more challengeable task especially for women. The domestic workers were also expelled from the service due to fear of spread of corona virus, so women had to do much more work beyond their physical capabilities.⁶⁸⁰

A notable distinction between the Islamabad and Punjab legislation is the inclusion of a provision in the former that imposes both civil and criminal liabilities for violations of child domestic workers rights. However, this provision is vague and lack specific penalties and implementation procedures. Moreover, the imposed fines in both the legislations for violation of the provisions of the impugned legislations are also inadequate. The offences as well as the punishments in criminal cases are also not extensively defined anywhere in Punjab and Islamabad legislations. The available remedy in case of criminal matters is prescribed under Sections 328-A, 377A and 377B of the Pakistan Penal Code. Even now, the reported incidents by Child Protection Bureau are taken cognizance under Pakistan Penal Code rather than these two legislations.

⁶⁸⁰ Collecting behavioural Insights into Covid-19 in Pakistan; Available at <https://blogs.unicef.org/blog/collecting-behavioral-insights-covid-19-pakistan/> last visited December 10, 2020

4.4 Domestic Workers' Union

A landmark step in the domain on domestic workers rights is the foundation of Domestic Workers' Union laid by Pakistan Workers Federation (PWF). This Federation is the first federation on its kind in Pakistan. Pakistan Workers Federation has been registered by the Office of Registrar Trade Unions working under the Department of Labour in Punjab. Pakistan Workers Federation has been registered under Punjab Industrial Relations Act (2010). Pakistan Worker's Federation has been registered on 20th December, 2014 as the result of the International Labour Organization's project on Promoting Gender Equality for Decent Employment. The purpose is to give training to women domestic workers regarding implementation of worker's rights in Pakistan, give them trainings, improve their skills, educate them about their rights and duties, and provide a legal forum for the redressal of their grievances.⁶⁸¹ But it still lacks practical implementation in its true letter and spirit.

4.5 Contemporary Practices in India and Philippines

As stated earlier, Article 23 of the Constitution of India prohibits the slavery, bonded labour and practices similar to slavery. While Article 24 stipulates that children under 14 years of age should not be involved in any kind of hazardous employment including mines and factories. Like Pakistani legislations, this provision is contradictory to ILO Convention 182 but in alignment with ILO Convention 138, whereby the age of the child is fixed as 15 years of age. Moving further, Article 39 clauses (e) and (f) obliges the State to make its policy against forced labour and the rights of the children, their dignity, childhood, youth, be protected against exploitation or moral and material abandonment. Moreover, the State is also obliged under Article

⁶⁸¹ First Domestic Workers' Trade Union registered in Pakistan; Available at https://www.ilo.org/islamabad/info/public/pr/WCMS_338484/lang--en/index.htm last visited September 9, 2017

45 to provide free and compulsory education to children less than 14 years of age, and Article 15(3) postulates that the State should make special laws for the protection of women and children. All these provision protect the child workers in India.⁶⁸² The Constitution of India also recognizes the right to life (Article 21), right to work and education (Article 41). It also obliges the State to create just and humane conditions of work (Article 42) and living wages (Article 43).

In India, there is no specific law on domestic workers but their general laws have been amended so as to include domestic workers in their scope. The Factories Act 1948 of India also prescribes the age of the child for employment as 14 years of age in factories where work is being conducted through electronic devices and the number of employees is less than 10 or less than 20 in those factories where electronic devices are not used. This has resulted in another problem. The factory owners break up their setup in such a way that they fall under the category whereby they are legalized to hire children in factories work. This leads to more exploitation of children. While the Minimum Wages Act 1948 prescribes that the normal working hours of children employed less than 14 years of age should not be more than four and a half hours. Another legislation the Apprentices Act 1961 dealing with apprentices also prescribes the age of the children apprentices as 14 years of age and also prescribes the rights of apprentices and the normal working hours for apprentices.

Another legislation dealing with informal sector, The Shops and Establishments Act 1961 also prescribes the hours of work but the option is left to the

⁶⁸² M Badiwala, "Child Labour Inquiry, Child Labour in India: Causes, Governmental Policies and the Role of Education"; Available at <http://www.geocities.com/CollegePark/Library/9175/inquiry1.htm> last visited June 4, 2018; Also available at http://www.karmayog.org/childlabour/childlabour_17897.htm last visited June 4, 2018

states to determine the minimum age of children to be employed in informal sector, which is barbaric in a way that the states, which are less developed including Assam, Gujarat, Karnataka, Rajasthan, and West Bengal have assigned the age of children as 12 years of age for children workers while the other states including Kamil Nadu, Uttar Pradesh and Andhra Pradesh have assigned 14 years of age for the children workers.⁶⁸³

Under the Child Pledging of Labour Act 1933, the children are barred to be hired in any kind of contractual employment relationship. Moreover, under Bonded Labour Abolition Act 1976, debt labourer is one who is bound to work under the conditions of bonded debt (Section 2(f)(g)), the debt bondage has been abolished (Section 4), therefore, all those contracts, customs, traditions or any instrument by virtue of which any bonded labour was engaged has become null and void. The Child Labour Prohibition and Regulation Act 1986 also prohibits to employ children under 14 years of age.

In India, Minimum of Wages Act⁶⁸⁴ postulates the minimum wages, working hours and physical fitness for children working under fifteen years of age. Moreover, Child Labour Prohibition and Regulation Act provides that a child should not be engaged for more than six hours a day and should not be employed to any task after 7 p.m. to 8 a.m. with at least one rest day during a week, and also provides punishments for non-compliance.⁶⁸⁵ The Sexual Harassment of Women at Workplace Act 2013 also includes domestic workers in the definition of the term employee.

⁶⁸³ T Udaya Lakshmi, "Child Labour and Law in India: A Post Independence Scenario", 3(1) ICFAI Journal of Employment Law (2005), 45

⁶⁸⁴ Indian Minimum of Wages Act 1948

⁶⁸⁵ Child Labour Prohibition and Regulation Act 1986

While in Philippines, there is a Labour Code of Philippines, which is a consolidated Code regulating labour practices in all over Philippines. It prescribes the rules for working hours, daily wages, retirement pay, thirteenth month pay, holiday pay rest and leisure time, maternity leaves, labour unions, and protection against sexual exploitation. It also protects the employees specially those working in private employment relationships from undue expulsion. The employees can only be terminated if there is a fair and justifiable reason (Article 282 to 284). The Code also restricts the illegal strikes by the employees and those employees who are involved in any illegal strike can be terminated. This Code also covers the domestic workers as it protects the labourers working in every class regardless of any discrimination. The discrimination in the Code defines wide areas including gender, age, marital status, HIV, Hepatitis, ethnicity, mental health, tuberculosis, and many more. In this way, the Code protects the employees on not only the basis of discrimination in general terms but also specific terms in a way that physical, mental or medical disability does not bar any person from being employed in whatsoever manner. In case of discrimination, the employees can not only get damages but can also reinstatement and full wages.⁶⁸⁶

Moreover, in Philippines, *Batas Kahambahay* (Domestic Workers Act)⁶⁸⁷ has been introduced, which provides the protection of domestic workers in a way that strict contractual obligations are required to be in black and white and registered with the governmental organizations,⁶⁸⁸ whereby the employing agencies are to be held

⁶⁸⁶ Philippines Employment Law & Labour Laws and Regulations; Available at <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/philippines> last visited March 30, 2021

⁶⁸⁷ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361)

⁶⁸⁸ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 11 and 13

responsible with the employers in case of any default by the employer.⁶⁸⁹ Yet there is a limitation of the law as it does not cover those domestic workers who work on occasional or periodical basis.⁶⁹⁰ The minimum wages are also specifically mentioned in the legislation.⁶⁹¹ Moreover, social security, health insurance and other employment benefits of the domestic workers are also protected.⁶⁹² Child domestic workers below the age of fifteen years are also prevented from employment.⁶⁹³ The employers have a strict obligation to protect the rights and provide basic necessities to the domestic workers⁶⁹⁴ and not to be engaged in any kind of exploitation against the domestic workers.⁶⁹⁵ In case of exploitation of workers, the local government departments will take cognizance of the case and not only will rescue the domestic worker but also provide him assistance in dispute settlement.⁶⁹⁶

The detailed analysis of the Philippines Protection and Welfare of Domestic Workers (Republic Act 10361), which is also called the Domestic Workers Act or Batas Kasambahay is as under:

Article I, Section 3 of the Domestic Workers Act applies to individuals engaged in domestic work within an employer-employee relationship, including those

⁶⁸⁹ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 36

⁶⁹⁰ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 3

⁶⁹¹ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Sections 24 through 28

⁶⁹² Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 30

⁶⁹³ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 16

⁶⁹⁴ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Sections 4 through 9

⁶⁹⁵ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 31

⁶⁹⁶ Philippines Act instituting Policies for the Protection And Welfare of Domestic Workers (Republic Act 10361), Section 37 and 38

undertaking various tasks such as household chores, childcare, cooks, gardeners, and laundry services. The Act's scope extends to both live-in and live-out domestic workers. Notably, the legislation excludes individuals who perform domestic work intermittently or sporadically as opposed to those who do so as a regular occupation. Furthermore, children placed in foster care arrangements are exempt from the Act's provisions provided they have access to education and receive allowances to support their educational pursuits.

This definition is not free from criticism. This may leave certain domestic workers vulnerable to exclusion or exploitation. For instance, as criticized the definition of domestic work earlier in Chapter 1, the exclusion of individuals who perform domestic work occasionally or sporadically could be problematic, as it may not account for workers who are employed on a part-time or flexible basis. Additionally, the exemption for children in foster care arrangements may raise concerns about potential exploitation or mistreatment particularly if the foster care arrangement is not adequately regulated or monitored. Furthermore, the definition's reliance on an employer-employee relationship may not capture the complexities of informal or unregistered domestic work arrangements, potentially leaving these workers without protection under the law.

Article II, Section 5 mandates the employers of domestic workers are required to treat them with fairness and respect refraining from any form of abuse or exploitation. Article II, Section 5 entitles the domestic workers for basic necessities, including three nutritious meals per day, decent sleeping quarters and adequate rest. Article II, Section 6 prescribe that employers must provide medical assistance to

domestic workers in the event of illness or injury. Furthermore, employers are expected to respect domestic workers' right to privacy (Article II, Section 7) and facilitate access to external communication, ensuring their overall well-being and dignity (Article II, Section 8).

Furthermore, domestic workers are entitled to pursue education and training and employers are obligated to adjust their work schedules accordingly to facilitate access to these opportunities (Article II, Section 9).

The law regulates domestic worker recruitment, prohibiting agencies, intermediaries and employers from charging domestic workers recruitment expenses or deployment expenses (Article III, Section 13). Moreover, Private Employment Agencies (PEAs) are held jointly and severally liable with employers for ensuring domestic workers receive all wages, benefits and entitlements (Article VI, Section 36).

Before commencing employment, the employers and domestic workers are required to execute a written contract in a mutually understandable language. The contract will be drawn up in three original copies, distributed as follows: one for the domestic worker, one for the employer, and one for registration with the local barangay office (Article III, Section 11).

The wages shall not be less than P2,500 per month for those employed in the National Capital Region, P2,000 for those employed in chartered cities and municipalities, and P1,500 for those employed in other municipalities. As of January

4, 2025, domestic workers in the National Capital Region (NCR) are entitled to a monthly minimum wage of PHP 7,000. This rate may vary depending on the location and type of employment. It's worth noting that minimum wage rates can differ across regions and industries in the Philippines. The Regional Tripartite Wages and Productivity Board (RTWPB) determines wage rates based on factors like cost of living, regional economic performance, and consultations with labor and business sectors (Article IV, Section 24).

Domestic workers with at least one month of service are entitled to receive a 13th-month pay, which should be no less than 1/12th of their total basic salary earned in a year. (Article IV, Section 25)

Employers are prohibited from requiring domestic workers to make deposits or pay for damages/losses to household items. Deductions for such losses cannot be made without the worker's consent (Article III, Section 14). Employers are strictly prohibited from subjecting domestic workers to debt bondage, a practice where workers are coerced to work to pay off debts or loans, often under exploitative conditions. This protection ensures that domestic workers are not exploited through forced labour in exchange for debt repayment (Article III, Section 15).

Employers are prohibited from withholding domestic workers' wages, directly or indirectly. Moreover, employers are prohibited from forcing domestic workers to buy goods or services from them or any other specific person, ensuring workers' freedom of choice in managing their wages (Article IV, Section 27). If a domestic worker leaves without a valid reason, they may forfeit unpaid salary for up to 15 days.

Additionally, employers are barred from coercing domestic workers into relinquishing any part of their wages through force, intimidation, threats or other means. (Article IV, Section 28).

Employers must provide domestic workers with a pay slip on each payday detailing the amount paid and any deductions made. Employers are required to keep copies of these pay slips with themselves for three years (Article IV, Section 26).

Domestic workers are entitled to a minimum of 8 hours of rest each day (Article IV, Section 20). Domestic workers are entitled to at least 24 consecutive hours of rest per week, with the employer and worker agreeing in writing on the schedule. The employer must respect the worker's preference for the rest day if it's based on religious grounds. The worker and employer can also mutually agree on alternative arrangements, such as offsetting absences, waiving rest days for extra pay, accumulating up to 5 rest days or other similar agreements. (Article IV, Section 21)

After one year of service, domestic workers are entitled to 5 days of paid annual service incentive leave. Unused leave cannot be carried over to the next year or converted to cash (Article IV, Section 29).

Domestic workers with at least one month of service are covered by Social Security System (SSS), the Philippine Health Insurance Corporation (PhilHealth), and the Home Development Mutual Fund or Pag-IBIG entitling them to benefits as per law. Employers shoulder premium payments except for workers earning

P5,000/month or more who contribute their share. Domestic workers are entitled to all benefits under existing laws (Article IV, Section 30).

The law prohibits employing anyone below 15 as a domestic worker, ensuring children below 15 are protected from exploitation and can focus on education and well-being. Children aged 15 and above who are legally defined as working children have specific rights including entitlement to minimum wage and benefits under the law, such as access to social security and health insurance. They're also protected under Republic Act No. 7610, which safeguards children against abuse, exploitation and discrimination ensuring working children have special protections for their safety and well-being. Employers who violate these rights or exploit working children face serious consequences including stiffer penalties with convictions resulting in a penalty one degree higher than normal and are barred from hiring children in the future, preventing them from exploiting children again and ensuring compliance with the law to protect children's welfare (Article III, Section 16).

The contract between a domestic worker and employer can only be terminated before its expiration date for specific reasons outlined in Sections 33 and 34 of this Act. If a domestic worker is unfairly dismissed, they are entitled to receive their earned compensation plus an indemnity equivalent to 15 days of work.

If a domestic worker leaves without a valid reason, the employer can forfeit any unpaid salary equivalent to up to 15 days of work. Additionally, if the termination occurs within six months of employment, the employer may recover deployment costs from the domestic worker. In cases where the employment duration is not specified

either party can terminate the agreement with five days' notice. The employer and domestic worker can also mutually agree to terminate the contract in writing (Article V, Section 32).

A domestic worker can terminate their employment contract before its expiration date for several valid reasons, including verbal or emotional abuse, inhuman treatment or physical abuse by the employer or household member; if the employer commits a crime against the domestic worker; violation of the employment contract terms or labor standards; if there's a disease that poses a health risk to the domestic worker, employer, or household members; or other similar causes that render the continuation of employment unreasonable or unsafe for the domestic worker (Article V, Section 33).

Similarly, an employer can also terminate a domestic worker's contract before its expiration date for specific reasons including misconduct or disobedience related to work, gross or habitual neglect of duties, breach of trust, committing a crime against the employer or their family, violating the employment contract or labor standards, having a disease that poses a health risk to themselves, the employer, or household members, or other similar causes that justify termination, ensuring that the grounds for termination are valid and justifiable (Article V, Section 34).

Abused or exploited domestic workers will be immediately rescued by social welfare officers from the DSWD or local government, in coordination with barangay officials. The Department of Social Welfare and Development (DSWD), the Department of Interior and Local Government (DILG) will develop a standard

procedure for rescue, rehabilitation, and potential job placement, in collaboration with Department of Labor and Employment (DOLE) (Article IV, Section 31).

The Department of Labor and Employment (DOLE) will work with the Department of the Interior and Local Government (DILG), Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), and Pag-IBIG to implement an ongoing information campaign on this law's provisions at both national and local levels, starting right after its enactment (Article VIII, Section 38).

Labor disputes will be directed to the relevant Department of Labor and Employment (DOLE) Regional Office, which will attempt to resolve them through conciliation and mediation before making a decision. Meanwhile, ordinary crimes or offenses under the Revised Penal Code or special laws will be filed in regular courts. (Article VII, Section 37)

4.6 Whether the criterion mentioned in the Constitution of Pakistan and Pakistani Legislations compatible with best practices?

Indian and the Philippines were likely chosen for this research due to their similar socio-economic contexts, prevalence of child domestic workers and existing legislative frameworks regulating domestic work. These countries share cultural and regional dynamics such as poverty, income inequality, unequal distribution of wealth and migration, which contribute to child domestic labour making their experiences relevant for comparative analysis. India despite lacking specific domestic legislation for domestic workers, has extended certain benefits to domestic workers in various labour laws and initiatives that provide a degree of protection to these workers.

Additionally, some Indian states have introduced certain rules and regulations to safeguard domestic workers' rights. This paradox of lacking specific legislation yet providing relatively better protection makes India an intriguing case study.

In contrast, the Philippines has taken a more direct approach by enacting the Magna Carta for domestic workers in 2013. This law specifically addresses the rights and welfare of domestic workers, providing a comprehensive framework for their protection. The Magna Carta ensures fair labour standards, social security benefits and protection from abuse and exploitation. By examining the Philippines' experience with this landmark legislation, this research is giving valuable insights into the effectiveness of specific laws in protecting domestic workers' rights. The Philippines' approach serves a model for other countries including Pakistan to consider while developing laws and policies for domestic workers.

4.6.1 India

Like Pakistan, the disparity in age of the child in different legislations also exists in India. For instance, the Constitution of India prescribes the age of the child for compulsory education be fourteen years of age, The Child Marriage Restraint Act 1929 prescribes the age of the male child being under twenty one years of age and of the female child under eighteen years of age, the Children's Act 1960 prescribes the age of the male child being sixteen years of age and of the female child being eighteen years of age, the Bombay Children's Act prescribes the age of the child being under sixteen years of age, the Child Labour Prohibition and Regulation Act of 1986 prescribes the age of the child being under fourteen years of age while the Children

Pledging of Labour Act of 1933 prescribes the age of the child under fifteen years of age. Even there is disparity in age of the child from state to state.⁶⁹⁷

Since Pakistan and India remained united for centuries, the social and cultural setup resembles a lot. The joint family structure in both the States has increased the demands for domestic workers, most preferably women and children for domestic work. In India, there is a law, Child Labour (Prohibition and Regulation) Act, 1986, for regulating child labour issues,⁶⁹⁸ which originally didn't cover the domestic workers under its ambit. Later on, in 1999, an amendment was introduced in which the government servants were barred from employing any child in any kind of work.⁶⁹⁹ So this legislation indirectly includes domestic workers as well. This law was enacted much prior to ILO Convention 189. It shows Indian commitment and seriousness on the issue of domestic workers' rights. But there is other side of the picture too. Indian specific law for the protection of domestic workers is still pending.

Comparing the two countries' labour laws reveal differences in approach. India's laws are more flexible with recent reforms aimed at promoting ease of doing business, while Pakistan's laws are more stringent focusing on protecting workers' rights. Comparatively, in India, the registration of domestic workers is much effective and it offers social security benefits like healthcare, insurance and pension to

⁶⁹⁷ UNICEF, Working Paper on Legislative Reform on Child Domestic Labour: A Gender Analysis, Legislative Reform Initiative Paper Series; Available at https://www.unicef.org/Leg_Reform_on_Child_Domestic_Labour.pdf last visited June 16, 2020

⁶⁹⁸ Bridget Anderson, "Doing the Dirty Work? The Global Politics of Domestic Labour", (Zed books, London, New York: 2000); See also Chandramouli, Kodandarama, "Women Domestic Workers in India: An Analysis", International Journal of Innovative Technology and Exploring Engineering (IJITEE), ISSN: 2278-3075, Volume 8, Issue 1: November 2018)

⁶⁹⁹ UNICEF, Working Paper on Legislative Reform on Child Domestic Labour: A Gender Analysis, Legislative Reform Initiative Paper Series; Available at https://www.unicef.org/Leg_Reform_on_Child_Domestic_Labour.pdf last visited June 16, 2020

domestic workers. While in Pakistan, Domestic Workers Welfare Fund could not established so far to provide social security benefits to domestic workers. A significant number of domestic workers in Pakistan, particularly women and children, work without contracts, protection or social security. Many domestic workers in Pakistan lack proper identification and documentation further hindering their access to legal and social protections. Unlike Pakistan, many Indian states including Tamil Nadu, Maharashtra and Kerala have also implemented their own policies and initiatives to protect domestic workers. Unlike Pakistan, Indian Ministry of Labour and Employment has drafted a National policy in 2019 to regulate placement agencies ensuring minimum wages, provide social security and protect domestic workers from abuse. While in Pakistan, the legislators could not legislate on the issue in other provinces except Punjab and Islamabad. Even in these two jurisdictions, enforcement is quite weak leaving numerous domestic workers vulnerable to exploitation, abuse, torture and even murder.

Unlike Pakistan, India also has Skill Certification Programs to enhance the employability and working conditions of domestic workers. Since 2021, there is a registration portal e-shram to register unorganized workers. As far as minimum wages of domestic workers is concerned, presently the minimum wage in India is Rs. 4737 per month. If we convert it into current Pakistan-Indian currency difference, it is Rs. 15725.59 Pakistani rupee, which is quite obvious much lower than Pakistan's notified minimum wage i.e. Rs. 37000. However, both countries struggle with enforcing labour laws particularly in the informal sector where many domestic workers are employed. Pakistan's labour laws primarily focus on the formal sector leaving informal sector workers vulnerable to exploitation. In contrast, India's laws attempt to

cover all workers including those in the informal sector. Even then the domestic workers are not organized and there are no labour unions for domestic workers or organizations working for the interests of the domestic workers.⁷⁰⁰ In February 2025, the Supreme Court of India has taken notice of this gap and directed the Union Government to consider enacting a law to safeguard domestic workers' rights focusing on fair wages, regulated working hours, social security benefits and protection against exploitation. For this purpose, Supreme Court directed four ministries; labour, social justice, women and child development and law and justice to create joint committee to make legislation.

4.6.2 The Philippines

The Philippines has realized the importance of domestic workers working in an informal sector of the society and is the second country which ratified the ILO Convention 189. It has taken remarkable step in their national protection of domestic workers in the country. It has introduced a legislation called Domestic Workers (Republic Act 10361) to regulate domestic workers as an obligation to the ratification of ILO Convention 189.⁷⁰¹ Philippines had introduced *Kasambahay* (domestic workers) Program in 2004 for the protection of the rights of the domestic workers and most specifically to protect the rights of the child domestic workers in the country. They recognized domestic workers as invisible engine of the society and as a result a remarkable document for the protection of fundamental rights of their domestic workers was introduced, known as Magna Carta for *Kasambahay* (Domestic

⁷⁰⁰ Shrayana Bhattacharya and Shalini Sinha, "Domestic Workers in India: Background and Issues", International Labour Organization, (Geneva, Switzerland: 2009) See also Chandramouli, Kodandarama, "Women Domestic Workers in India: An Analysis", International Journal of Innovative Technology and Exploring Engineering (IJITEE), ISSN: 2278-3075, Volume 8, Issue 1: November 2018)

⁷⁰¹ Philippines enact new law protecting domestic workers; Available at <http://www.gov.ph/2013/01/18/republic-act-no-10361/> last visited September 19, 2020

Workers) 2005.⁷⁰² The Philippines Domestic Workers Act has also modified the Part III, Articles 141-1520 of the Labour Code of the Philippines.⁷⁰³

The Philippines' laws regarding domestic workers offer more comprehensive protection as compared to the laws in Pakistan. The Philippines' law provides a more robust framework for addressing issues like wages, working hours, rest periods, social security and termination of employment. In contrast, Pakistan's legislations lack the same level of detail and enforcement especially concerning wages and working conditions. Unlike Pakistan, Philippines' law provides specific provisions for contract formation, payment of wages only in cash, protection against debt bondage and protection at the time of termination of employment including just causes for both the employer and employee and compensation in case of unjust dismissal.

The Philippines' law emphasizes more on protection against abuse, exploitation and discrimination. Moreover, the law includes mechanisms for monitoring, compliance and addressing violations. While in Pakistan, particularly women and children are most vulnerable to abuse, violence and exploitation due to lack of legal protection and enforcement. Unlike Pakistan, the process of registration of domestic workers is more effective and transparent ensuring accountability of both employer and employee.

⁷⁰² Kasambahay (domestic worker) program: working together towards a Magna Carta for Filipino domestic workers; Available at <https://www.odi.org/publications/2775-kasambahay-domestic-worker-program-working-together-towards-magna-carta-filipino-domestic-workers> last visited September 19, 2020

⁷⁰³ Magna Carta for Kasambahay 2005; Available at https://www.ilo.org/manila/projects/WCMS_126008/lang--en/index.htm last visited September 19, 2020

In both the jurisdictions, a large portion of domestic work falls under the informal sector making it difficult to track and regulate. But the problem gets worse in a state like Pakistan where its legislation is largely symbolic and lacks effective enforcement. As far as minimum wage is concerned, like India and Philippines, wages are less than Pakistan when converted into Pakistan's currency is Rs. 35468.35 per month.

4.7 Challenges faced by Pakistan

As stated earlier, Pakistan's International Labour Organization's Decent Work Country Programme (DWCP) III (2016 – 2020),⁷⁰⁴ which was extended to 2022, was brought in line with United Nations Sustainable Development Framework (2018-22).⁷⁰⁵ The current International Labour Organization's Decent Work Country Programme (DWCP) IV (2023-27) programme is also connected to the 2030 Agenda for Sustainable Development Goals. The eighth (8th) Sustainable Development Goal, which is Decent Work and Economic Development, is directly related to the issue of domestic workers.⁷⁰⁶

According to the report of Decent Work Country Work III, the following are the observations for Pakistan's present condition of decent work:⁷⁰⁷

⁷⁰⁴ The Islamic Republic of Pakistan Decent Work Country Programme 2016-2020; Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited March 27, 2019

⁷⁰⁵ ILO in Pakistan; Available at <https://www.ilo.org/islamabad/country/lang--en/index.htm> last visited September 28, 2020

⁷⁰⁶ Decent Work and the 2030 Agenda for Sustainable Development; Available at <https://www.ilo.org/global/topics/sdg-2030/lang--en/index.htm> last visited September 28, 2020

⁷⁰⁷ The Islamic Republic of Pakistan Decent Work Country Programme 2016-2020; Available at https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_562091.pdf last visited March 27, 2019

1. Sixty percent of employees working as labour class are deprived of decent working conditions.
2. There is a rapid increase in labour force in Pakistan. As compared to the population increase, the labour force is rising at much higher pace. Yet the employment opportunities, at the other hand, are not enough so as to meet the emerging need of employment in Pakistan.
3. The other challenges faced by working class include the fear of unemployment, lack of employment securities, poverty, more dependence on informal sector employment, and gender biasness (i.e. young girls with good personalities are preferred over people with merit). The youth is the most affected sector in this regard.
4. Since labour is the part of provincial legislative list, therefore, the provinces have autonomy to decide labour policies and create employment opportunities accordingly. In order to get the fruitful results and rise in GDP, there is a need of national labour policy.
5. Generally, the private sector is encouraged to come forth and invest in the country so as to generate employment opportunities and contribute in GDP of the country. Yet, the practical situation is rather discouraging. The government's economic and tax policies regarding entrepreneurs and business development pose a negative effect on the private sector development.

6. Women belong to the vulnerable sector of the society. They are not provided with the equal opportunities (with respect to men) to get proper education, vocational training or other professional skills development. The social trend of the country like Pakistan poses that there are division of opportunities with respect to the gender. Certain tasks are meant to be done by only females. They are generally given jobs where they have more public interaction so as to attract the clients. Since they lack professional skills, they are generally not given managerial or higher administrative jobs. If a few preferential women get those jobs due their higher education, the male dominated mindset creates problems and hurdles for them and they try very hard to take that position from the female colleague. The less female participation on higher ranks with more contribution in labour poses a negative impact of Pakistan and less international recognition.
7. Most of the informal sector employees work in rural areas, where they not only lack decent work opportunities but have to work in most vulnerable and insecure environment. They lack of protection through legislations and improper enforcement of labour policies add to their vulnerability. They are required to work under the control of their employer because of disparity in their social status and ranking. There is no social security or social recognition of such workers.
8. The problem of child labour and bonded labour is still endemic in Pakistan. It exists both in formal as well as informal sector yet there is no national statistical data to analyze the ratio of child labour and bonded labour in Pakistan. Even the conditions of forced or compulsory labour, worst form of

child labour and hazardous child labour could not be properly assessed. One of the reasons remains the influence of upper class of the society and political affiliations and interests of that upper class.

9. Most of the child workers are working in agricultural sector or are unpaid family workers. Among those child workers, the majority workers are young girls. The female child domestic workers are most vulnerable class of workers who are easy victims of sexual exploitation.
10. The freedom of association and collective bargaining is not exercised in Pakistan in its true letter and spirit. Article 17 of the Constitution of Pakistan 1973 guarantees the right to freedom of association but Section 3(a) of Industrial Relations Act 2012 prescribes that a worker can be a part of only one trade association at a time. 3(b) of the Industrial Relations Act 2012 prescribes that if he intends to be a part of another association, he is required to choose one association. On the other hand, Section 3(d) of the Industrial Relations Act 2012 prescribes that an employer can take affiliations from multiple national and international associations.⁷⁰⁸ Such provisions discourage the workers to form their associations. Women representation is already less and they are mostly affected by such restrictions.
11. There are already observations on the conditions of workers in respect of inequalities and discrimination among the workers, forced and compulsory labour and child labour by International Labour Organization's Fundamental Principles and Rights to Work and International Labour Organization's

⁷⁰⁸ See also Punjab Industrial Relations Act 2010, Sections 3(i) and 3(ii); Sindh Industrial Relations Act 2016, Sections 3(i) and 3(ii); Khyber Pakhtunkhwa Industrial Relations Act 2010, Sections 3(i) and 3(ii); and Balochistan Industrial Relations Act 2010, Sections 3(a) and 3(b)

Committee of Experts on the Application of Conventions and Recommendations (CEACR).

12. The current labour legislations in Pakistan lack harmony. They are not only complex but also lacks coverage to all the sectors of the labour class. Since all provinces have their own labour laws, there are certain area in which all the provinces have not legislated on the issue. Moreover, there are some areas in which provinces have legislated but there is no uniformity of laws. There is a disagreement of laws between federal and provinces and provinces *inter se*.
13. Not only in respect of legislation, the enforcement of such legislations is another complicating issue. The lack of recognition of worker's rights and lack of legal sanctions for the culprit employers have aggravated the vulnerability of workers in Pakistan.
14. The minimum wage requirements are not considered in Pakistan. Minimum wages are not even applied on the employees of formal sector. In such a situation, the employees of informal sector, who forms the majority of the labour force, are exploited.
15. Occupational Health and Safety (OSH) Standards are not observed in any of the working sector of Pakistan especially in informal sector. The workers are exposed to work under hazardous working conditions.
16. There is no effective mechanism for the inspection of Occupational Health and Safety Standards in Pakistan. International Labour Organization's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has already observed the deficiencies in the system in this regard.

17. All the employers do not provide social security to their employees. Only a few workers get the social security protection while others are left unprotected and are exposed to old age survival challenges or lack of pensions after retirement.
18. Labour migration always contributes to the constructive growth of any economy and poses positive impact on national development. In Pakistan, due to lack of protective measure and weak labour policies, the issues of migrant workers is rampant. The private sector and illegal agents are working for transporting the workers from one area to another, leaving behind a lot of legal issues. The workers, being illegal migrants, cannot claim their rights and protection and are exposed to hazardous conditions thereby.
19. While drafting the labour policies, all the stakeholders including employers' and employees' organizations are not consulted, resulting in unfavourable and inadequate labour policies. Pakistan Institute of Labour Education and Research (PILER) have observed that despite the above-mentioned drawbacks, the aggrieved employees and employers raised their voices on different forums including social media and civil society organizations. The legal assistance was provided to the formal sector workers and informal sector workers' complaints were addressed at the local government level.

The case of Tayyaba Bibi changed unveiled the vulnerability of domestic workers in Pakistan. The Tayyaba abuse case exposed the dire need for legislation to protect child domestic workers, prompting the enactment of laws in Punjab and Islamabad to safeguard their rights and prevent exploitation, including minimum age

requirements, safe working conditions, protection from abuse, and access to education, to eliminate child labor and ensure the safety and well-being of Pakistan's most vulnerable citizens. Now many cases are being reported via social sector. A few case laws initiated by domestic workers, who form the considerable part of the informal sector workers, have been discussed in Chapter 6 of this research.

While considering the above-mentioned observations of Decent Work Country Programme III with the Sustainable Development Goals, Pakistan has agreed to the following commitments:⁷⁰⁹

1. Elimination of poverty in all the spheres
2. Eliminating hunger by providing good security for the provision of nutritional food
3. Promotion of viable agricultural strategies
4. Guaranteed educational facilities for every member of the society
5. Long term planning for the continued provision of educational facilities
6. Provision of equal opportunities for all sexes
7. Empowerment of females of the society
8. Promotion of decent work in all sectors of society
9. Generating employment opportunities and assistance in economic growth of the country
10. Elimination of inequalities in every sphere
11. Creation of equilibrium in production and consumption patterns
12. Promotion of just, equitable and peaceful environment

⁷⁰⁹ United Nations, Sustainable Development Goals: 17 goals to transform our world” ; Available at <http://un.org/sustainabledevelopment> last visited April 24, 2020

13. Strengthen the measures to meet the sustainable development worldwide

Along with the above commitments, Pakistan has following commitments with the South-Asian Association for Regional Cooperation (SAARC):⁷¹⁰

1. The promotion of research and development, food securities, provision of nutritional food and introduction of technological support in agricultural sector
2. Elimination of illiteracy and provision of education in all sectors, revision of curriculum, introduction of effective teaching strategies and evaluation mechanism, ensuring technical support
3. Promotion of vocational trainings
4. Creation and promotion of self employment opportunities for all members of the society
5. Adoption of measures to combat human trafficking and exploitation of workers in all sectors
6. Protection of vulnerable class of society
7. Promoting effective policy for migrant workers from South Asia and addressing the issues of migrant workers thereby
8. Ensuring good governance and participation of stakeholders at all levels

⁷¹⁰ South Asian Association for Regional Cooperation, “Kathmandu Declaration, Heads of State or Government Eighteenth Meeting” (Kathmandu: February 26-27, 2014) ; Available at <http://www.saarc-sec.org/userfiles/Summit%20Declarations/Kathmandu-18thSummit26-27Nov2013.pdf> last visited April 24, 2020

9. Promotion of rule of law, transparency and accountability

Conclusion

In Pakistan, no doubt the laws are available, however, due to limited coverage mostly to the formal sector, the workers in the informal sector are left unprotected. Labour legislations were drafted to give protection to the workers, who are most vulnerable class of the society. It apparently seems that the legislations provide the economic protection by promoting the circulation of wealth rather than concentration of wealth in the hands of the owners. Yet practically, the wealth is transferred from owners to the governmental sectors, leaving the labour class vulnerable. The legislations can also not be implemented as they themselves provide provisions for hiring the child labourers and also the definition of a child is different in various instruments, therefore, fails in the basic objectives of the concept. This situation has increased the insecurities of the labour class and has pushed them to engage their children for their subsistence.

There is no blanket legislation on the protection of informal sector workers in Pakistan. The laws did not provide adequate punitive measures if the rights of the workers are violated or if they are involved in worst forms. The distinction of child labour and worst forms of child labour in itself is also disputed.

The issue of informal sector workers is the socio-legal problem. The existing legislations might become effective and according to the changing needs and environment by virtue of amendments. The problem can never be controlled unless a specialized comprehensive legislation is passed to safeguard the informal sector

workers and to ensure their protection in all the fields with proper legal setup for the regulation of affairs of the workers and the adequate redressal system and heavy penalties and punishments for the culprits, both from the employer and the employee's perspective. Though, without a considerable change in the economic environment, social change is also not possible. Without the change in the social mindset and sensitization of the issue of child labour, nothing can be done, as they are not aware that they are the victims of violation and there exists a mechanism for the redressal of their grievances.

While observing the best practices whereby Indian jurisdiction where there is no specific law but regulating the issue with general labour laws and Philippines which promulgated special law on the issue, it is concluded that the Philippines Magna Carta for domestic workers serves as a model for protecting the rights of domestic workers providing a comprehensive framework that includes provisions on minimum wage, working hours and social security benefits recognizing their valuable contributions and vulnerability to exploitation. In contrast, India lacks a specific law for domestic workers relying on general labour laws. Now India has also realized that its general laws fail to address domestic workers unique needs leading to exploitation and marginalization. Pakistan has made two specific laws in two jurisdictions, yet in other three provinces the reliance is on general labour laws. Even the specific laws are limited in scope and have multiple lacunae. So both India and Pakistan can learn from the Philippines' experiences and enact similar laws to promote social justice and dignity for domestic workers, regulating their employment, protecting their rights and promoting their welfare, ultimately contributing to a more just and equitable society.

Chapter 5

CASE LAWS ON IMPLEMENTATION OF NATIONAL LAWS CONCERNING DOMESTIC CHILD LABOUR IN PAKISTAN

Introduction

This chapter is the continuation of previous chapter and corresponds to fifth research question. This chapter reflects the implementation of laws of Pakistan on the subject. Pakistan lacks organized system for decent work, as a result of which numerous violations including discrimination, inequality, exploitation, forced labour, child labour, are rampant. There are many legislations dealing with the labour issues in Pakistan yet the failure to meet the challenges of informal sector most specifically domestic workers, has made the situation more complex and exposed them to vulnerability, as a result of which many exploitation cases are now being reported, though the ratio of unreported cases is much higher.

5.1 Situation Analysis in Pakistan

Critically speaking, domestic workers rights impliedly may fall under the category of already existing laws prohibiting the employment of the child labour but technically these do not cover domestic work in its true letter and spirit. Child domestic labour is not considered as the subject-matter of child labour domain.⁷¹¹ This is why numerous cases of violence leading to emotional, verbal and physical harm to the child workers working in domestic have been reported in last few years, mostly through social media campaigns.⁷¹²

⁷¹¹ Communication strategy for child domestic labour; Available at https://www.itacec.org/ita_old/Communication%20Strategy/home.htm last visited June 1, 2018

⁷¹² Outrage in Pakistan over abuse of child domestic workers; Available at

As stated earlier in Chapter 4, Pakistan has not ratified ILO Convention concerning Decent Work for Domestic Workers 2011 so far. But the Honourable Supreme Court of Pakistan has decided that even though Pakistan does not ratify any Convention, it does not mean that Pakistan is not bound by International commitments on human rights as well as the guarantees awarded in the Constitution of Pakistan.⁷¹³ It means that the national courts can rely on the rights granted under any Convention and follow those as *grund norms* to meet the ends of justice.

In Pakistan, there is only one legislation at the provincial level regarding Domestic Workers Rights. The presence of no accountability measures on account of child domestic labour in other provinces has also contributed to the failure of effective implementation of Punjab Domestic Workers Act 2019 and the exploitation of child domestic workers would be continued without any scrutiny and barriers.⁷¹⁴ This is why there is a huge list of unreported cases. Theoretically speaking, domestic workers, being citizens of Pakistan, can bring their claim under civil or criminal law. Since the domestic workers have different nature of work as compared to general category workers and degraded status in society, by bringing their claim under general law, they cannot even strongly argue their claims. Generally cases of violation of rights of domestic workers are not reported at all only a handful cases where there was a sheer abuse or physical or sexual violence have been reported so far. According

<https://www.theguardian.com/global-development/2019/aug/13/trauma-child-domestic-workers-pakistan> last visited February 7, 2020

⁷¹³ In the Matter of Human Rights Case No. 29388-K of 2013, PLD 2014 SC 305

⁷¹⁴ Outrage in Pakistan over abuse of child domestic workers; Available at <https://www.theguardian.com/global-development/2019/aug/13/trauma-child-domestic-workers-pakistan> last visited February 7, 2020

to the Labour Force Survey, 73% of Pakistan's economy is based on informal sector, yet it still lacks legislative protection.⁷¹⁵

Beside physical assault and hurt at the hands of the masters, the domestic servants have to face cumbersome criminal proceedings in the cases of theft at workplace. The first and foremost suspicion of theft is laid upon the servant despite being honest and truthful person, being considered as custodian of the house and everything contained therein, the masters rests its suspicion on domestic servants. Police also consider it vital to investigate the servants and such interrogations most of the time leads to harassment, humiliation and confinement in lock ups of these poor servants at the hands of the police department.

Due to bulk of cases our judicial system disposes off the case at much slower pace, such frivolous cases should be turned down at their very onset. The poor person like domestic servant when falsely implicated in such cases, not only lose their self esteem but such cases create a barrier in their livelihood. As police verification of the domestic servant and registration of his name with local police station is the practice and pendency of criminal trial would never let the accused earn livelihood through respectable and legitimate means.

Various cases are emerging but are at the disposal of media reporting or in a few cases only FIR has been lodged but no further step has been taken so far. In the absence of law, such cases can never be decided on merit. Also, only reported cases of violation of workers can be prosecuted. Mostly cases are resolved in out of court

⁷¹⁵ Basic Rights for Pakistan's Domestic Workers: A Signature Away; Available at <http://labourwatchpakistan.com/basic-rights-for-pakistans-domestic-workers-a-signature-away/> last visited December 8, 2018

settlements or in many cases undue influence or coercion is exercised to suppress the issue.

5.2 Abdul Qayyum V State

This case is not related to child domestic workers but this case has been added in this research to justify the points as to how domestic workers are exploited by their employers.

In Abdul Qayyum V State, the Honourable Lahore High Court admitted the servant namely Abdul Qayyum to ad-interim bail.⁷¹⁶

The brief facts of the case are that the servant named Abdul Qayyum was serving at the house of Brigadier (R) Nisar Ali for more than five years. Rs. 2 Millions were stolen from the bag of wife of the Complainant. The Complainant reported to the area police that the domestic servant has stolen the amount. First Information Report No. 65/2016 was lodged against the house servant on 17.01.2016.

The servant was handed over to police custody forthwith wherein he remained in the lockup for next few days. One of the investigating officer deemed it appropriate to subject the accused servant to Polygraph/Forensic Psychological Truth Verification Examination. It was found that the said accused person is truthful and honest person who has no nexus with the allegation of theft.

⁷¹⁶ Abdul Qayyum V State, 2018 PCr. L.J Note 45 Lahore

Upon receiving the report, the Honourable Lahore High Court granted bail to the accused person but even then the Court required him to submit security bonds worth Rs. 100,000 which is quite exorbitant for a poor person.

Instead of acquittal and dismissal of the case, the accused person Abdul Qayyum was plunged in to further investigation and trial by the Court.

There was no incriminating material on the record which could on the face of it connect the accused with the alleged crime of theft, the real victim (wife of complainant) from whose bag the money was stolen did not join the investigation and recorded her statement for four months in the case, the polygraph report declared the accused innocent. Despite all this supporting circumstances the case was not shut down and was proceeded with.

5.3 Tayyaba Case

The recent famous case of Tayabba, in which Honourable Supreme Court took an action on the media hype created on social media through pictures of the victim Tayyaba, a ten-years old girl, working at house of Mr. Khurram Ali Khan and Mrs. Maheen Zafar in Islamabad, she was brutally beaten and was seriously injured. As a result of which an out-of-Court compromise took place between the heirs of victim and the accused on January 2, 2017 thereafter the victim was handed over to the parents. On January 4, 2017, the Apex Court took a *suo moto* action under the notion that no compromise can be made in case of violation of fundamental rights. On January 11, 2017 the legality of the compromise was also challenged in the Honourable Court. The CJP referred the case to Islamabad High Court and directed

the police to investigate the matter and also scrutinize the process of compromise and also inspect the internal trafficking of child workers.

5.3.1 State V Maheen Zafar and another, PLJ 2018 Cr. C. 664

The allegations leveled against the owners/master/accused person were under Sections 506, 328-A, 201, 337-A(i), 337-F(i), 342, 34, P.P.C.⁷¹⁷ The brief facts of the case are that Tayyaba who was around 10 years of age, her father Muhammad Azam transporting her from Faisalabad to Islamabad for work and handed her over to Ms. Nadira Bibi in August 2016. She sent the child to Ms. Sehrish (sister in law of Khurram Ali Khan) and ultimately the child was sent to the house of Mr. Khurram Ali Khan against Rs. 18000/- in October 2016 against six months' remuneration.

Tayyaba, who was a domestic servant, was hurt, burnt, neglected, abandoned and locked up by her masters. The child was even denied basic necessities of life for her survival, which was contradictory to right to life and was not allowed to exercise any kind of freedom of movement. When Tayyaba used to complete her assigned tasks, accused used to confine her in a room without food and water. Tayyaba had to baby sit the baby boy of the accused and was also exposed to the hazardous objects such as sharp knives, cutlery, fire and stove, and toxic materials at the accused's house. The accused generally used to stay outside even in the late night hours while Tayyaba used to stay in the confined room without any food and water. The neighbours of the accused also informed the same facts and told the police that they used to hear noise of shouting and beating the child.

⁷¹⁷ State V Maheen Zafar and another, PLJ 2018 Cr. C. 664

F.I.R. was lodged against the accused at the Police Station Industrial Area, Islamabad. The child was taken in to custody and was presented before the Assistant Commissioner, who recorded the initial statement of Tayyaba, thereafter sent her under the safe custody of Child Protection Bureau. The medical examination of the victim was conducted. The medico-legal report prescribed that the victim was presented in a state of shock with various marks of injuries and burns on her body. The witnesses of prosecution also reported the same position of the child. She was assaulted by the accused that she would not disclose anything to anybody otherwise she will face dire consequences.

In the beginning of the legal proceedings, Mrs. Maheen Zafar, co-accused, was alleged to have caused burns and injuries on the body of the victim but the victim was under psychological pressure at that time, rebutted the allegation and told the Court in cross examination that she fell from stairs and sustained injuries. Moreover, she told that Court that she herself burnt her hand as she was trying to turn on the stove without supervision of the accused. Tayyaba's statements casted serious doubts in the case as there was no eye witness to the incidents. But the Court accepted the evidences in the form of pictures took at the time of recovery of the child, presented in the Court by the neighbours under the doctrine of *res gestae* and connected those with the allegations posed by the prosecution.

Both the accused were further convicted under Section 201 PPC and were imprisoned for one year simple imprisonment and fine amounting to Rs. 50,000/- on both.

Though it was a case of domestic workers' rights particularly child domestic workers, who are more vulnerable and most of the time subject-matter of domestic workers. Since the case was decided under the provisions of PPC, it does not highlight the issue of rights of the child domestic workers. The Court verdict also lacks any discussion regarding the international commitments of Pakistan on the minimum age and wage employment of children. Nor it highlighted the need to legislate on the concerned issue.

5.3.2 Raja Khurram Ali Khan V Tayyaba Bibi, 2019 YLR 98 Islamabad

The decision of the Single Bench against the former ADSJ Raja Khurram Ali Khan and Maheen Zafar, was challenged the judgment passed by Honourable Single Bench of Islamabad High Court dated 17.04.2018 under Section 411 Code of Criminal Procedure 1898 before the two-member Division Bench (DB) of Islamabad High Court whereby The DB not only dismissed the appeal but also increased their imprisonment from one year to three years, and fine was enhanced to Rs. 500,000. Moreover, Moreover Mrs. Maheen Zafar was convicted under Section 337 A (i) and 337-F (i) and was liable to pay daman of Rs. 500,000/- to Tayyaba.⁷¹⁸

5.3.3 Raja Khurram Ali Khan and another V. Tayyaba Bibi and another, Crl. Appeal No. 154 of 2018

The DB observed that the it is the failure of the criminal justice system to protect the most vulnerable class of society and its biasness for the privileged class is alarming on the sanctity of the rule of law.⁷¹⁹ The Honourable DB dilated the facts of the case and remarked that the child was under age and was not fit subject-matter for the

⁷¹⁸ Raja Khurram Ali Khan V Tayyaba Bibi, 2019 YLR 98 Islamabad

⁷¹⁹ Raja Khurram Ali Khan and another V. Tayyaba Bibi and another, Crl. Appeal No. 154 of 2018

employment relationship, also the agreed wages were against the prescribed minimum wages. It further prescribed that the Protocol to Prevent, Suppress and Punishing Trafficking in Persons Especially Women and Children and United Nations Convention against Transnational Organized Crime adopted on 15.11.2000 enshrines that the trafficking in persons prescribes transportation, recruitment and harboring or delivery of a child, below 18 years of age, for any purpose including exploitation for gaining benefit, cruel, inhumane, degrading treatment to a child, which even includes making the children sit or stand separately at public places while their masters are dining out.⁷²⁰

The Honourable DB also explained the definition of the slavery mentioned in Black's Law Dictionary that it is a situation whereby a person's life and services are subject to the will of the other and also lacks freedom of action and is fully controlled by the will of another person.

The Court held that the case of Tayyaba is not different from the case of human trafficking, as she has been transported for employment at the house of Raja Khurram Ali Khan. Apparently she was a domestic servant but in reality she was not less than a slave whereby she had no freedom of action and liberty and she was exposed to exploitation including physical harm and psychological plight.

The Honourable DB has further interpreted Section 328-A of PPC. Any act or omission, in which *mens rea* is existing and it is likely to cause potential physical or psychological harm to the child, would be criminally liable. Actual physical harm

⁷²⁰ United Nations Convention against the Organized Crime, Section 3(A) & (C)

may or may not happen but if there is a likelihood that physical harm may be caused, it would be liable. So, existence of *Mens Rea* means that the person had consciousness that his acts and omissions may cause potential damage to the child. On the other hand, the plea of unawareness would not be considered as ignorance of law is not excuse. It means that he was criminally negligent and did not care that his acts or omissions would put the child at risk.

The Honourable Court has also referred the Quranic verse whereby Allah Almighty has strictly asked not to kill your child out of fear of hunger. Therefore, the Honourable DB, like Single Bench, has also not highlighted the issue of child domestic labour, which has now become so rampant in the society like ours where poverty and inflation rate is quite high and employment opportunities and wages rates are low and it's impossible for one bread earner to take care of his family. Secondly, the prevailing trend to have child domestic workers is increasing. Accepting child as domestic worker is no doubt an exploitation and it exposes the child to potential harm, therefore, it falls under Section 328-A PPC.

The judgment has also highlighted various social evils to which the children, being vulnerable class of the society, are exposed to inhumane, degrading, disrespect and cruel treatment by the other members of the society including the masters. In this case, the accused were convicted, imprisoned and fined but the father of the victim, who transported her to Islamabad and Ms. Nadira Bibi, the one who delivered the child to Ms. Sehrish and thereafter to the accused were not held liable. It is a general trend of our society whereby children from slum areas or poor villages are transported to other cities for earning money. They visit once in a year and take the advance

salary, which is also very nominal, and then go back to their hometown. The same was done in Tayabba's case. Unfortunately, the children are considered as tool for earning livelihood even through child beggary. Being Muslims, our objective was more children, more contribution to the Muslim Ummah, now the trend is more children, more earning hands. Tayyaba along with many other children are exposed to such risks and openly denied the basic human right including basic necessities, education, protection, dignity and wellbeing.

5.3.4 Raja Khurram Ali Khan and 2 Others V Tayyaba Bibi and Another, PLD 2020 Supreme Court 146

Raja Khurram Ali Khan and Mst. Maheen Zafar filed the criminal appeal before the Supreme Court of Pakistan against the judgment passed by the Division Bench of Islamabad High Court,⁷²¹ Islamabad on 11.06.2018.

The Honourable Supreme Court modified the judgment passed by the Honourable DB to the extent that the enhancement of sentence from one year simple imprisonment to three years has been set aside being passed without legal jurisdiction. Moving further the Honourable Supreme Court also showed disappointment on the judgment passed by the Single Judge as there was sufficient evidence on record which proved the cruelty and exploitation on the child so the punishment should have been enhanced then. While the sentence under Section 201 PPC was maintained. Moving further, the quantum of punishment under Section 328-A has to be finally decided in another criminal appeal No. 121/2018 filed by the prosecution against the judgment dated 11.06.2018.

⁷²¹ Raja Khurram Ali Khan and 2 Others V Tayyaba Bibi and Another, PLD 2020 Supreme Court 146

The Honourable Court dilated upon various legal aspects of Section 328-A of PPC which are of paramount significance.

5.4 Nasira V Judicial Magistrate and 5 others⁷²²

Fourteen years old, Pumy Muskan, who was a Christian by faith, was employed as domestic servant in a household of a Muslim family. Her father was imprisoned in the jail and her mother was also a domestic worker. After few months, her mother visited the house where she left Pumy Muskan to work, surprisingly she was told that Pumy Muskan has been shifted to the master's sister's house and Pumy has renounced Christianity and accepted Islam, therefore, she wants to discontinue any sort of connection with her Christian family.

Pumy Muskan's mother lodged an FIR against the masters alleging that they had denied her access to her daughter. When the case was brought before the Court of Magistrate, since Pumy didn't want to go to her mother but she was a minor, so the Court ordered that Pumy Muskan to be handed over to the Petitioner (mother of Pumy) or Dar-ul-Amman.

She requested the Court to send her to Dar-ul-Amman. The Petitioner requested the Superintendent of Darul-Amman to permit her to see her daughter, but she was not allowed under the notion that the Court had handed over the custody of Pumy to Dar-ul-Amman. On 08.07.2019, the Magistrate ordered to release Pumy from Darul-Amman and hand over the custody to the masters.

⁷²² Nasira V Judicial Magistrate and 5 others, PLD 2020 Lahore 489; See also 2019 LHC 4414

Thereafter, the mother filed a Writ Petition under Article 199 of the Constitution of Pakistan, 1973 before the Honorable Lahore High Court for the custody of the minor. The Petition was strongly opposed by the owners on the pretext that they had not coerced or induced the girl to embrace Islam, she has accepted Islam by her free will and learnt some verses of Holy Quran on her own desire. In such circumstances, it is quite obvious that if the minor be handed over to her own family, it would be a serious threat to her life.

The *amicus curiae* to the court argued that Pumy is a minor and is employed against the provisions of Punjab Domestic Workers Act, 2019, as there is prohibition on employment of any child below age of 15 in domestic work. Moreover, the minor's conversion to Islam is not a sufficient ground to deprive her mother from her custody.

The Court held that right to religion is fundamental right recognized in International Conventions and instruments⁷²³ which the State of Pakistan has ratified from time to time and incorporated in its own Constitution as well.⁷²⁴

Yet the main controversy in this case was whether the non-Muslim parents can take custody of a Muslim child and whether the conversion relinquishes the right of non-Muslim parents to have lawful custody of the minor. The Honourable Court held that the Pumy Muskan being minor cannot be kept in Darul Amman at her own will

⁷²³ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Article 9; See also International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5; American Convention on Human Rights (1969), Article 12; African Charter on Human and Peoples. Rights (1981), Article 8; Universal Islamic Declaration on Human Rights (1981), and Arab Charter on Human Rights (1994)

⁷²⁴ The Constitution of the Islamic Republic of Pakistan, 1973, Article 18

nor can be left in the place of employment for which she is not the legal subject-matter. Her mother, though non-Muslim, being the real and lawful guardian to the person of the minor is entitled to hold her custody. The Court further held that the employment of the Pummy Muskan, being a minor, is invalid and in violation of Section 3 of Punjab Domestic Servants Act, 2019. Therefore, the Court held that the masters have no blood relation with the minor therefore, fall under prohibited degree and should release the child immediately and hand over the custody to the minor to the mother.

There are two dimensions of this case, forced conversion and custody of the minor child to non-Muslim parents. It was proved that the conversion was not forced but handing over the custody of the Muslim minor to a non-Muslim mother, without ensuring protection of the minor in the hands of non-Muslim relatives is quite alarming. Secondly, the Court has specifically dealt this case as a case of custody of the minor but has not decided against the masters as to why they had employed a minor child as domestic worker.

Conclusion

Due to lack of legislation on Domestic Workers and presence of only one provincial legislation in Punjab and one legislation in Islamabad Capital Territory, the problem arises when the cases are reported. There is no option except to resort to Section 328-A PPC, which deals with the cases against cruelty of the child generally and not specifically for violations against domestic workers. Various cases are emerging but are at the disposal of media reporting or in a few cases only FIR has been lodged but no further step has been taken so far. In the absence of law, such cases can never be

decided on merit. Also, only reported cases of violation of workers can be prosecuted. Mostly cases are resolved in out of court settlements or in many cases undue influence or coercion is exercised to suppress the issue.

Chapter 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

This study has critically examined the rights of child domestic workers in Pakistan focusing on the implementation of the Islamabad Capital Territory Domestic Workers Act 2022 and the Punjab Domestic Workers Act 2019 with their comparison with International legal instruments, best practices and constitutional framework. Despite legislative progress domestic workers continue to face exploitation and abuse due to inadequate enforcement while the situation gets worse in case of child domestic workers. This research has highlighted challenges such as weak enforcement mechanisms, low registration rates, limited awareness and the informal nature of domestic work, all of which exacerbate their vulnerability.

The research has made its foundation on the basis of five research questions. The first research question highlights the distinction between formal and informal sector work is crucial in understanding the vulnerabilities of workers particularly in contexts like slavery, forced labour, bonded labour and domestic labour under international and Pakistani laws. This research has examined the legal frameworks governing these sectors and determining the appropriate tasks that can be assigned based on age, gender and ability while ensuring the protection of workers' rights in choosing their occupation or work. For achieving this purpose, Chapter 1 has highlighted that domestic workers are a separate and specialized branch of workers, who need special working conditions due to special nature of work. The international community realized the importance of their contributions and worth of their work,

thereby gathered together to conclude ILO Domestic Workers Convention 189, which is a beneficial addition to the ILO fundamental rights of workers. Yet Pakistan has not ratified the Convention as yet, even then those principles serve as *grund* norms.

The second research question highlights the hidden nature of domestic work often taking place within private homes results in increased vulnerability of domestic workers to exploitation and abuse. Key factors contributing to labour standard violations include lack of oversight, hazardous working conditions and significant pay disparities, all of which exacerbate their precarious situation. The informal sector, particularly domestic workers, faces extreme vulnerability due to the hidden, undetermined, unrecognized, unorganized, undervalued and unrewarding nature of their work, leaving them severely exploited and marginalized. The poverty, economic deprivation and denial of fundamental rights to the domestic workers contribute more to the vulnerability of domestic workers. The International community highlighted the importance and contributions of domestic workers across the world and realized to provide decent work to the domestic workers worldwide. The international community, therefore, concluded the ILO Decent Work for Domestic Workers Convention 189 considering the historical background of workforce, the then prevailing employment trends and defined the domestic work as well as domestic workers accordingly. Although Pakistan has not ratified the Domestic Workers Convention, however, it is a signatory to several international human rights treaties and ILO Conventions which provide a framework for protecting domestic workers' rights.

The third research question highlights the principles of natural, social and distributive justice along with non-discrimination, inform policy formulation for domestic workers by emphasizing fairness, equal treatment and protection from exploitation. These principles advocate for domestic workers' rights to fair wages, safe working conditions and legal protections. Natural justice ensures domestic workers receive fair treatment including transparent contracts and due process in disputes. Social justice promotes equality and aims to eradicate exploitation, unsafe working conditions and unfair labour practices. Distributive justice focuses on fair distribution of resources advocating for decent wages, benefits and social security. Non-discrimination guarantees equal treatment regardless of race, gender or nationality protecting domestic workers from bias and ensuring access to rights and opportunities. By integrating these principles, policies can provide domestic workers with protections such as fair wages, safe work environments, legal recourse for abuse, and equal access to social protections ultimately promoting their dignity and well-being. These principles guide the development of laws and policies that recognize domestic workers' rights and address the unique challenges they face in the informal sector. Moreover, the Master and Servant rule is applicable on the relationship between the domestic servants. Now the modification of the rule of Master and Servant internationally suggests that the relationship is that of employer and employee, unfortunately the relationship of domestic workers can still be called as Master and Servant and at times even under modern slavery or forced labour. The International agreements form the basis of the legal framework protecting domestic workers under the doctrine of non-discrimination and natural, social and universal justice. These principles are also in alignment with the principles of Islamic Law. Islamic law provides a framework for protecting the rights of domestic workers by

emphasizing fairness, justice and compassion with key principles that promote fair treatment, protection from abuse and fulfillment of contractual obligations. Employers are encouraged to treat domestic workers with kindness and respect providing fair wages, reasonable working hours and adequate rest periods while strictly prohibiting physical and emotional abuse. Domestic workers have the right to seek redress if their rights are violated. By applying the principles of Islamic law, the dignity and well-being of domestic workers can be promoted ensuring they are treated with fairness and respect. Additionally, Islamic law recognizes the importance of contracts and emphasizes the need for clear agreements between employers and domestic workers outlining terms and conditions of employment, wages and benefits. Overall, Islamic law provides a moral and legal framework for protecting the rights of domestic workers promoting a just and equitable treatment in the workplace.

For this purpose, Chapter 2 discussed this theoretical framework covering the domain of protection of domestic workers. It includes the principles of Natural Justice, Social Justice, Distributive Justice and Non-discrimination are core fundamentals of every law of the world. Even if these principles are not prescribed in employment contracts or labour laws, these principles are *grund norm* and are impliedly present in every legislation and contractual relationship. The domestic workers are protected under the principles of natural justice, social justice, distributive justice and non-discrimination, even then the domestic workers are exploited. Theoretically, they are also protected under the principle of master and servant. If these principles are applied in their true letter and spirit in the formulation of legal framework and its enforcement, it will curb the emerging socio-legal problems of domestic workers as well. Over and above, Islamic Law holds the human dignity at

priority and the *haqooq ul ibaad* are respected and protected in the most dignified manner, therefore, the domestic workers enjoy equal rights under Islamic Law as well.

The fourth research question highlights that the rights of domestic workers in the informal sector can be better protected and implemented through the ratification and enforcement of international labour standards such as the ILO Convention 189 which sets forth minimum standards for decent work. Strengthening national labour laws to cover informal sector workers, enhancing awareness and education on labour rights and establishing effective enforcement mechanisms like labour inspections are crucial steps. This research is conducted in the context of exploring the international and national instruments, contemporary practices and case studies on the subject of informal sector workers, considering domestic workers as a special case study. The research discusses the nature of work conducted by the domestic workers and the conditions of work whereby domestic workers conduct their employment tasks. Mainly, tasks are conducted in the private premises of the employer, where violations occurring against the domestic worker cannot be adjudged in its true letter and spirit. The lack of legal protection, as is in the case in Pakistan, exposes the domestic workers to extreme form of exploitation, hazardous conditions of work and insecurities.

The domestic workers are forced by their own economic and financial conditions to work and earn for their own and their families' subsistence. This research has also discussed the present legal framework in Pakistan for the protection of workers in formal and as well as in informal sector. As it was in the case of

international instruments and ILO Standards, labour protection standards were already available but due to the vulnerability of domestic workers, their special nature of work and special nature of contractual obligations, it was important to control the exploitations and violations against them and protect them against those exploitations and violations, therefore, new standards were introduced in the form of ILO Convention 189.

For this purpose, Chapter 3 has provided the legal framework protecting the domestic workers at international level. International labour conventions provide a framework for protecting labour rights globally. Although these conventions do not exclusively focus on domestic workers, they offer indirect protections. However, recognizing the unique vulnerabilities of domestic workers, the International Labour Organization adopted Convention 189 in 2011, specifically aiming to provide comprehensive protection for domestic workers' rights worldwide. This Convention, along with other labour rights ILO Conventions, if applied in their true letter and spirit, provides full protection to the domestic workers. The Constitution of Pakistan 1973 also provides the protection of persons from slavery, discrimination and all sorts of exploitation. Despite being a member of the International Labour Organization (ILO), Pakistan has not ratified Convention 189, which establishes international labour standards for domestic workers. Although Pakistan has ratified 36 other ILO conventions, its non-ratification of Convention 189 raises concerns about the protection of domestic workers' rights in the country. Moreover, the new ILO dimensions move around the Decent Work Principle, which is also in line with Sustainable Development Goals and UN Sustainable Development Cooperation Framework and Decent Work Country Programme.

The fifth research question highlights whether Pakistani laws sufficiently protect domestic workers in the informal sector and the measures that can prevent their exploitation. In Pakistan, despite the existence of labour laws, a significant gap persists in their implementation and coverage. The current legal framework predominantly caters to the formal sector, leaving a vast majority of workers in the informal sector, including domestic workers, without adequate protection. This limited scope not only deprives informal sector workers of their basic rights but also exposes them to exploitation and abuse. As a result, these workers remain vulnerable and marginalized, highlighting the need for comprehensive labour law reforms that extend coverage to all workers, regardless of their employment status. Labour legislations were drafted to give protection to the workers, who are most vulnerable class of the society. It apparently seems that the legislations provide the economic protection by promoting the circulation of wealth rather than concentration of wealth in the hands of the owners. Yet practically, the wealth is transferred from owners to the governmental sectors, leaving the labour class vulnerable. The legislations can also not be implemented as they themselves provide provisions for hiring the child labourers and also the definition of a child is different in various instruments, therefore, fails in the basic objectives of the concept. This situation has increased the insecurities of the labour class and has pushed them to engage their children for their subsistence.

There is no specific blanket legislation on the protection of informal sector workers in Pakistan. The laws did not provide adequate punitive measures if the rights

of the workers are violated or if they are involved in worst forms. The distinction of forced labour, hazardous and worst forms of child labour in itself is overlapping.

The issue of informal sector workers is the socio-legal problem. The existing legislations might become effective and according to the changing needs and environment by virtue of amendments. The problem can never be controlled unless a specialized comprehensive legislation is passed to safeguard the informal sector workers and to ensure their protection in all the fields with proper legal setup for the regulation of affairs of the workers and the adequate redressal system and heavy penalties and punishments for the culprits, both from the employer and the employee's perspective. Though, without a considerable change in the economic environment, social change is also not possible. Without the change in the social mindset and sensitization of the issue of child labour, nothing can be done, as they are not aware that they are the victims of violation and there exists a mechanism for the redressal of their grievances.

In Pakistan, labour is a provincial subject by virtue of Eighteenth Amendment of the Constitution of Pakistan 1973. In Pakistan, domestic workers are among the most vulnerable class of society facing not only survival issues but also exploitation of every kind. Pakistan also needed a special legislation specifically for the protection of domestic workers rights in order to protect them from exploitation. The provinces are autonomous to make their own laws on the subject of domestic labour rights. Yet there are numerous factors, which contribute in vulnerability of domestic workers including the lack of political interest in case of the protection of domestic workers rights. There is only one provincial legislation in Pakistan, Punjab Domestic Workers

Rights Act 2019. This Act would not had been introduced unless the Supreme Court had not forced the government to legislate on the issue by virtue of *Subay Khan V Federation of Pakistan and 2 others*, W.P. No. 7870 of 2015 and the contempt filed for the enforcement of 2015 writ petition, which was converted into the writ petition being the issue of public importance, *Subay Khan V Secretary, Labour, Government of the Punjab*, W.P. No. 48872 of 2017. Numerous cases of domestic workers violations on media and social media were highlighted on the basis of which the Supreme Court directed the government of Pakistan to legislate into the matter. But the other provinces have not legislated on the issue. There is no legislation in any other province protecting the rights of domestic workers, which contributes to the failure of implementation of the Punjab Act. The other legislation protecting the domestic workers in Pakistan is Islamabad Domestic Workers Act 2022, which is almost same as the Punjab Act with slight changes only.

For this purpose, Chapter 4 has prescribed that Pakistan has enacted two key laws to protect domestic workers rights; the Islamabad Capital Territory Domestic Workers Act, 2022, and the Punjab Domestic Workers Act, 2019. However, despite their enactment, these laws are not free from legislative gaps, which have resulted in issues in full enforcement of these legislations, leaving domestic workers unprotected and vulnerable. Dispute Resolution Committee formed under these laws has been vested limited power of the Civil Court while criminal matters including exploitation do not fall under the domain on that Committee. There is no option except to resort to Section 328-A PPC, which deals with the cases against cruelty of the child generally and not specifically for violations against child domestic workers. Numerous cases of exploitation and abuse of child domestic workers have surfaced, primarily due to

media coverage and social media pressure. However, in most instances, the cases stall after the initial reporting, with few resulting in the registration of First Information Reports (FIRs). Even in these cases, investigations rarely progress, and perpetrators often go unpunished. Coerced compromises between the victims' families and the accused are common, undermining access to justice for the vulnerable child domestic workers. The absence of specific legislation governing child domestic workers in Pakistan significantly hinders the fair adjudication of cases involving their exploitation and abuse. Without a comprehensive legal framework, such cases cannot be decided on merit, perpetuating a culture of impunity and further vulnerableizing this already marginalized group.

Reported cases of child domestic workers in Pakistan are discussed in Chapter 5. Media reported cases of child domestic workers in Pakistan are alarming and deserving of attention. According to various studies and media reports, domestic workers, particularly children and women, face widespread exploitation, abuse, and violence. Many cases involve physical and sexual abuse, non-payment of wages, and confinement. Despite some reports being documented by media and human rights organizations, the vast majority of cases remain unreported due to fear, shame, and lack of access to justice. The absence of comprehensive legislation and effective enforcement mechanisms exacerbates the vulnerability of domestic workers in Pakistan. The Tayyaba abuse case highlights the plight of child maids in Pakistan, underscoring the need for legislation and enforcement to protect child domestic workers from exploitation and abuse. With a significant number of child domestic workers vulnerable to physical, emotional, and psychological abuse, it's essential to establish clear laws and policies, including minimum age requirements, safe working

conditions, protection from abuse, and access to education, to eliminate child labor and ensure the safety and well-being of Pakistan's most vulnerable citizens.

To effectively combat the prevailing situation, the issue of domestic workers, particularly child domestic workers, necessitates urgent and serious attention. It demands a concerted effort from policymakers, lawmakers, civil society, and stakeholders to recognize and protect the rights of domestic workers, ensuring their safety, dignity, and well-being. The absence of comprehensive legislation and effective enforcement mechanisms exacerbates the vulnerability of domestic workers in Pakistan. The issue of child domestic workers can never be controlled unless a specialized comprehensive legislation is passed to safeguard the informal sector workers and to ensure their protection in all the fields with proper legal setup for the regulation of affairs of the workers and the adequate redressal system and heavy penalties and punishments for the culprits, both from the employer and the employee's perspective.

6.2 Recommendations

Child domestic labour is real and there is a need to combat this very issue to resolve the growing social evils in the society. In the light of above research, the proposed legislative reforms are as follows:

6.2.1 Ratification of ILO Convention 189

Pakistan should ratify ILO Convention 189 to strengthen labour rights for domestic workers ensuring fair treatment, safe working conditions and protection from exploitation. Ratification would establish minimum working conditions including rest

periods, leaves, fair wages and provide access to social security benefits, healthcare and education. Although Pakistan has ratified 36 ILO conventions it has not yet ratified Convention 189 initiating the ratification process and implementing policies to enforce its standards would significantly improve protections for domestic workers.

6.2.2 Constitutional Amendment

It is recommended that Article 11 of the Constitution of Pakistan 1973 be amended to explicitly include domestic workers within the scope of protection against forced labor, slavery, and human trafficking. Furthermore, the age of a child should be increased from 14 to 18 years to align with international standards and ensure that all children are protected from exploitative labour practices. No child shall be employed in any occupation or a vocation before the age of 16 years in order to make it align with Article 25A right to education. Children between the ages of 16 and 18 may be engaged in light work that does not interfere with their education or harm their physical, mental, or moral well-being. This should be made an exceptional rule in exceptional circumstances; wherever the child's parents are earning enough for the family's subsistence then the child in no way should be allowed to work.

6.2.3 Proposed Amendments in Punjab Domestic Workers Act 2019 and Islamabad Domestic Workers Act 2022

6.2.3.1 Clear Definition of Domestic Work and Domestic Worker

Adding the phrase 'including but not limited to' to the definitions of 'domestic work' and 'domestic worker' can make the definitions more comprehensive and inclusive. This phrase indicates that the listed examples are not exhaustive, and other types of

work or workers may also be considered domestic work or domestic workers. This can help to avoid ambiguity and confusion, prevent loopholes and exclusions, ensure that the definitions are flexible and adaptable to changing circumstances. By adding this phrase, the definitions can become more robust and effective in protecting the rights of domestic workers.

Proposed definition of domestic work:

Domestic work refers to any work performed in a private household or residence, including but not limited to household chores, such as cleaning, cooking, and laundry; care giving for children, elderly, or disabled individuals; maintenance and repair of the household and its premises; gardening and other outdoor household tasks; driving or chauffeuring for the household members; and managing the household and its staff (if applicable).

Proposed definition of domestic worker:

A ‘domestic worker’ is any individual, regardless of age, sex, caste, ethnicity, marital status or nationality, who performs domestic work for a household or private residence, including but not limited to live-in workers who reside in the household; live-out workers who commute to the household; part-time or full-time workers; workers employed directly by the household or through an agency; and workers performing domestic work as their primary occupation.

6.2.3.2 Age of Child Domestic Workers

The Punjab legislation provides the age of child to be below 15 years and Islamabad legislation provides 16 years of age. As constitutional amendment proposed above,

these legislations should also be brought in harmony with the prescribed age of child to work as domestic worker. Moreover, the job structure of domestic workers should be assigned likewise civil servants i.e. from 18 years to 60 years of age.

6.2.3.3 Compulsory Education

The Constitutional protection of compulsory education to children should be ensured and no child should be deprived of education and employed as domestic worker in any household. In the Punjab and Islamabad legislations, strict punitive measures should be prescribed for violators, including both parents or guardians who permit their child to engage in domestic work and employers who hire child domestic workers.

The mechanism should be introduced so as to start negotiations with the parents of existing child domestic workers so that they should take their children back to their homes and engage them in schooling rather than in earning. The government should give incentive to those parents who will take back their children to home. Their schooling should be made free so that their parents should not force them to work again. Those parents, who will not oblige the government's orders to take back their children to home, should be punished so that people are deterred from not obeying the government's orders. Moreover, the government should set forth harsh punishments for the parents who will send their children for domestic work and the employers who will employ such children. But all this is not possible except effective legislation-making.

6.2.3.4 Capacity Building Campaigns

Both the Punjab and Islamabad legislations should contain the provision of capacity building campaigns for the domestic workers and employers about the legislations, protections, rights and obligations of both the parties concerned, complaint mechanisms, dispute settlement mechanisms and assistance to the victims of the dispute. To raise awareness about the rights and dignity of domestic workers, it is recommended that a multi-faceted approach be adopted, including introducing a special chapter on domestic workers rights and responsibilities in school curriculum books; utilizing Friday congregations in mosques to promote awareness and respect; launching media campaigns across print, electronic, and social media platforms; organizing community-based programs and events to encourage community involvement; and promote a culture of respect, empathy, and understanding for domestic workers.

6.2.3.5 Contractual Obligations

The present Punjab and Islamabad legislations lack contractual provisions protecting workers from exploitation, harassment, abuse, and violence, contrary to ILO Convention 189 and Recommendation 201. To ensure that the rights of domestic workers are protected, it is essential to make these terms mandatory in the contract, including indemnity clauses. This would provide a clear understanding of the employer's and employee's responsibilities and obligations, and offer recourse in case of any violations or disputes.

6.2.3.6 Registration of Domestic Workers

In Pakistan, there is a dire need to make significant efforts to register each and every domestic worker and collect the statistical data for accurate calculation of the number of domestic workers both live-in, live-out or migrant workers; age patterns of domestic workers; to check the nature of tasks assigned to them; the wages granted to them; nature of exploitation they suffered or number of reported or unreported cases of exploitation; working hours and conditions; access to social security benefits and healthcare; education and skill levels; geographic distribution and migration patterns. The government should start the registration of the domestic workers at the earliest. The local government and organizations at Districts and Divisions level should be engaged in assistance of such process or the labour inspectors can be given the task to collect the data from door to door in order to cope up the vulnerable condition of domestic workers. Moreover, this data can also be collected through online registration forms or mobile Apps. The Punjab government in collaboration with Punjab Employee Social Security Institution (hereinafter referred as PESSI) has introduced a mobile app, named as Domestic Worker Registration but the masses are not sensitized to use the app nor has the government taken potential steps to encourage employers to register their domestic workers. No such step has been taken so far in Islamabad.

Moreover, already existed two Apps *Talash* and *Tasdeeq*, made by the Police Department, only contain the criminal record of the domestic workers, the domain of these apps can also be extended for registration of domestic workers. These two apps do not prescribe the details of family members of the criminal domestic workers. The

record of the family members of domestic workers would also help in maintaining security of the households.

The registration process for domestic workers should commence without delay. Furthermore, existing legislations should be harmonized with international instruments to ensure compliance with global standards. It is also imperative that other provinces enact legislation on this issue as soon as possible. The absence of legislation in other provinces is currently hindering the effective implementation of existing laws in Punjab and Islamabad, emphasizing the need for a unified national approach to protecting the rights of domestic workers. Given the time-consuming nature of the legislative process, it is recommended that the registration process for domestic workers commence immediately, pending the enactment of comprehensive legislation, to ensure some level of protection and accountability. For accomplishment of this purpose, the government should take serious steps to introduce Domestic Workers Registration app in all provinces as well as in Islamabad and can add other features including filing of complaint, reporting of abuse or any matter ancillary thereto domestic workers. Along with mobile Apps, toll-free numbers should also be allocated and circulated among masses for immediate reporting of violence, abuse or exploitation.

6.2.3.7 Mode of Payment of Wages

The Punjab and Islamabad legislations permit payment of wages to domestic workers in cash or in kind. However, this provision is problematic as the value of payment in kind is subjective and open to interpretation, potentially allowing employers to exploit

this ambiguity. To ensure transparency and fairness, it is recommended that wages be paid in cash only, eliminating the risk of inconsistent or unfair compensation.

6.2.3.8 Minimum Wages

Wherever in Punjab legislation, Minimum Wages Ordinance 1961 is referred, it is to be replaced by Minimum Wages Act 2019.

The minimum wages should also be notified in Islamabad as are notified in Punjab province.

The government's prescribed minimum wages for domestic workers are based on a daily rate, assuming employment in a single household. However, this does not reflect the reality for live-out domestic workers, who often work in multiple households. Currently, their wages are unregulated and vary greatly depending on the locality and financial status of the residents. To address this disparity, the government notification should also establish minimum wages for live-out domestic workers, providing them with a fair and standardized remuneration structure.

6.2.3.9 Enhancement of Maternity Leaves

The maternity leaves permitted by the Punjab and Islamabad legislations is 42 days whereas in case of civil services or private organizations, the permitted maternity leaves are 180 days in case of first child, 120 days in case of second child and 90 days in case of third child. Therefore, under the rule of non-discrimination, the maternity leave should be revised accordingly.

6.2.3.10 Medical Tests prior to Appointment

In Punjab, medical facilities to domestic workers' dependents only in case of injury are available but not in case of sickness or otherwise. While in Islamabad no such provision is available. Both the Punjab and Islamabad legislations should prescribe medical cover for the domestic workers and the dependents of live-in domestic workers and also a provision for conducting medical tests prior to the appointment in order to save the households from physical, mental and medical disabilities including diseases like hepatitis, AIDS, tuberculosis and the like, especially in case of live-in workers and those handling kitchen tasks. However, medical examination, vaccination and inoculation during service are already ensured by these legislations.

6.2.3.11 Job perquisites

Both the Punjab and Islamabad legislations should provide social security, health insurance and other employment benefits including provident fund and pension schemes as available to formal sector employees. Like Punjab, Islamabad legislation should also provide a provision for pension.

6.2.3.12 Reasonable Notice before Leaving Job

The Punjab and Islamabad legislations should provide a provision obliging the domestic worker to provide reasonable notice to the employer about the intention to leave the job.

6.2.3.13 Special Committee for Child Domestic Workers

The Punjab and Islamabad legislations should mandate the government to make an administrative body in every Union Council, which should be comprised up of

lawyers, doctors, psychiatrists and rehabilitators so that if they get the complaint or information about the exploitation of the child domestic worker, they should handle the situation tactfully by understanding the psychological condition of the child, medically examine the affected child immediately without going into further procedures, and immediately get the FIR registered. Moreover, the law enforcement agencies should be given special powers to take immediate action as and when they receive the complaint of domestic worker's violation, they should take cognizance of the complaint at priority basis. The child and his parents should be given free legal assistance, the cost of which should be borne by the government. Most importantly, ensure the security of child and his parents and keep them in safe custody so that no undue influence of coercion can be exercised on them by the employer.

6.2.3.14 Dispute Settlement Committee

Both the Punjab and Islamabad legislations provide that the Dispute Settlement Committee has limited powers of the Civil Courts. It means that criminal cases are out of the ambit of their powers. For this purpose, the domestic workers must refer the case to the Magistrate. On the other hand, non-payment of minimum wages, which is a civil matter, can be referred to Magistrate. The law should provide proper parameters and mechanisms in this regard. The existing division between civil and criminal matters, coupled with lenient punishments, has undermined the effectiveness of the law. To strengthen deterrence, a robust mechanism should be established, and penalties should be increased to include enhanced imprisonment and pecuniary fines, thereby ensuring that the legislation serves as a credible deterrent against violations.

6.2.3.15 Contingent Situations

Both the Punjab and Islamabad legislations are unclear on the ground of reporting of contingent situations. Both the legislations provide that in case of contingencies, the authority should be informed without stating which authority would take cognizance of the case in such a situation. The authority should be clearly prescribed in the relevant provision of the legislations.

6.2.3.16 Violation of Child Labour Laws

The Islamabad legislation includes a provision that is absent in the Punjab legislation, stating that in cases of child labour law violations, both civil and criminal liabilities will be imposed. However, this provision is vague and lacks clarity on the specific penalties and procedures for implementation. To strengthen enforcement, this provision should be revised to explicitly outline the consequences of non-compliance, including specific fines, imprisonment terms, and other penalties.

6.2.4 The Way Forward

Labour has been made provincial subject after Eighteenth Amendment. This has complicated the issue of labourers all over Pakistan. Either all the provinces do not legislate on the same issue, or do not implement the laws in the true letter and spirit. A comprehensive policy cannot be introduced in this way. The labourers are the backbone of every economy. There is no uniform policy in Pakistan. The provinces have their own political objectives and are least interested in legislation of violations against labourers. The political influence, political interference and at times conflict of interest of political leaders in labour sector should be minimized through effective

legislation by banning those political leaders who have conflict of interests should not be a part of policy-making processes.

This research study has a specific focus on child domestic workers, which is also its primary limitation. The researcher has tried to explore the different dimensions of child domestic labour, yet there is a room open for further research in the topic as it is a very vast subject and the current scenario of Pakistan, where either the cases of violations of domestic workers are not reported or if they get the attention, it is through print media and social media. Yet no effective and concrete steps have been taken for the legislation making in all the provinces so far and the reported cases do not get the serious attention, the reason being class difference of the domestic workers and involvement of influential people as accused. Moreover, there is also a need for more studies on other aspects of domestic work, such as male domestic workers or domestic workers from diverse ethnic or regional backgrounds or migrant domestic workers.

Till the time the legislation for domestic workers is not made effective, the domestic workers can be brought under the protection by a single temporary amendment that all the labour legislations, wherever the worker is present, it would mean domestic worker as well. In the meantime, the government should immediately ratify the ILO Convention 189; start legislating on the issue as the priority matter in provinces where there is no legislation on domestic workers; make effective amendments in existing Punjab and Islamabad legislations and make every possible effort to enforce these legislations in their true letter and spirit.

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