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Invisible Workers: Case of Home- Based Women Workers in Pakistan

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Summary

Home based work is considered as work with low economic value and low waged. The Home base work is also preserved to be a principal way to earn a living for women. The traditional home based works for instance thread making, weaving, dairying, basket making etc., were such kind of work which carried out at home, still exists particularly in developing countries. Since a huge number of home base workers are women, the work performed by them is further undervalued. Furthermore, it is also categorized as a contributory economic activity and is underestimated.

The studies show that in Pakistan, a large number of women engaged in home base work. The ILO's country director points out that, Pakistan is considered to be a one of the Asian countries that have huge number of women involved in home-based work. According to Labour Force Survey 2008-9, in Pakistan there are more than 10 million women engaged in home base work in different industries.

The home based women contribute a major share in economy but, these women do not have any legal and social protection and even these workers are out of scope of labour legislation of Pakistan. The Industrial Relation Ordinance 2002 (IRO 2002) (interim IRA 2008) and Factories Act 1934 does not recognizes as home base workers as 'workers' and some of the provisions of these laws hinders to fundamental labour rights which is violation of international labour standards. Consequently, these home base workers do not have right to freedom of association for collective bargain. Therefore, they do not have any access to social security benefit, they have to work long hours for low remunerations and have no safety and health standards at their work places.

The home based workers should be recognized as workers. It is state's responsibility to protect and respect all of workers including home base workers and the government of Pakistan must fulfill its obligation as according to international human and labour rights instruments.

Dedication

To my deceased Parents, Maj. (Retd) M. Razza Shah and Farrukh Raza who are not with me in this world but their blessing will be always with me.

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Abbreviations

CEACR	Committee of Experts on the Application of Convention and Recommendation
CRC	Convention on the Rights of the Child
HBW	Home Based Worker
HBWW	Home based Women Worker
HRCP	Human Rights Commission of Pakistan
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ILO	International Labour Organization
IRO	Industrial Relation Ordinance
IRA	Industrial Relations Act
NGO	Non-Governmental Organization
PILER	Pakistan Institute of Labour Education and Research
PILDAT	Pakistan Institute of Legislative Development And Transparency
SAARC	South Asian Association for Regional Cooperation
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 Introduction

“Razia Khatoon, 36, crouches over a huge wooden frame, her eyes squinting in the dimly lit room inside a squatter settlement in Orangi town in Karachi, Pakistan’s largest city. She deftly stitches one bead after another to embellish a semi-finished embroidered woman’s dress, stretched over the frame. She says she has no time for "small talk" as the "order" has to be delivered within the day. "If we don’t finish this by the evening, we may not get another order," declares Khatoon. While she feels fortunate that she can still earn, the domestic demand for goods such as the dresses she makes has shrunk considerably, as everyone is reeling from the impact of a sharp rise in the prices of essential commodities since Pakistan’s economy took a hit five less than five years ago. The mother of 10 children, adds that there are too many like her who would jump at the chance to take over her job if she showed even the slightest sign of vacillation. "We work 10 to 12 hours daily, and it takes us three days to finish one piece," she explains. She earns 700 to 1,500 rupees (8.3 to 17.8 U.S. dollars) a piece depending on the intricacy of the pattern. Khatoon has been at it for the past 18 years..... Khatoon is all too familiar with such a situation. Her six older children, now out of school, help her with her work."We were doing all right and, by God’s grace, were able to send the kids to school and give them three square meals a day. Life was good," says Nasir Sabir, Khatoon’s husband. "But last year, we had to pull our children out of school," says Sabir, who helps his wife, among others, by bringing in orders, taking them back, and getting the needed supplies. "The price of food items has skyrocketed and broken our backs. What is the poor to do? Feed the children or send them to school?" asks a frustrated Sabir.”¹

The above situation is only one example of millions of home base workers in Pakistan. This study is about labor rights, law, empowerment and access to justice for home based women workers in Pakistan. Neither there are

¹ Zofeen Ebrahim, Pakistan: Home-based workers struggle to climb out of poverty, jan 25, 2010. Available at website <http://ipsnews.net/news.asp?idnews=50089> last visited 05.19.2010

reliable official statistics available on the number of women working in this informal employment sector; nor there are in-depth research studies carried out on the subject of home based women workers and labour rights in Pakistan. Therefore this study attempts to fill the gap in existing literature by providing information about fundamental labour rights of women home based workers and furthermore the information about the profile, nature, working and living conditions of women workers, who are involved in it . It provides a starting point towards an understanding of the situation of women, working at home for their survival, by listening to their voices and making them ‘visible’ as a labour force; because it has been said that these women belong to poor families and they have to work and earn something in order to survive.²

By using feminist legal perspectives and women empowerment theory the present study questions the effectiveness of labour legislations as a tool for empowering home based women workers in their struggle to attain their fundamental human and labour rights and against exploitative treatment. This is an opportunity to make these women workers visible and find out their hard lives while working at home.

The present study also presents the nature of home base work, dynamics of ‘employer-employee relations’, the complexities of legislations and its impacts on status of workers as well. The study finally argues that in the presence of existing formal labor legislations, home based women workers cannot be empowered. Therefore for an effective implementation of law it is equally pertinent to look into international human right legal framework as well, so that strategies to implement and obtain ‘decent work’ can be made possible for these women.

Home based work is perceived as work with less economic value and low waged all over the world. Home base work is considered to be a mean of earning for women and its roots can be traced back from history for instance thread making, weaving, dairying, basket making were such kind of work

² Social Protection of Home workers, ILO Geneva p. 10

which carried out at home; since a large number of home base workers are women, the work performed by them is further undervalued. Furthermore, it is also categorized as a supplementary economic activity and is underestimated.

The home-based work is not only evident in the developing countries but it exists in developed countries as well.³ The studies show that in Pakistan, a large number of women are engaged in home base work. The ILO's country director points out that, Pakistan is considered to be one of the Asian countries that have huge number of women involved in home-based work.⁴ These women workers are growing with a fast pace due to expansion of industry through the process of globalization and the search for cheap labor. According to rough estimates there are over 100 million home-based workers in the world and among them over 50 million home-based workers in South Asia; most of them around 80 per cent are women.⁵

According to Labour Force Survey 2008-9, in Pakistan more than 10 million women are engaged in home base work in different sectors.⁶ The ILO's report states that, out of all labor force 80 per cent is involved in informal sector in Pakistan; among that a huge proportion approximately 50 per cent are women; among these working women around 80 per cent are home based women workers, which is a huge proportion.⁷ The home based women contribute a major share in economy but, these women do not have any legal and social protection and even these workers are out of scope of labour legislation of Pakistan; and are not recognized as 'workers' according to labour laws of Pakistan.⁸ In this regard these home base workers do not have access to social security benefit, they have to work long hours and have no safety and health standards in their work places.

³ ILO, *Home Work*: Fifth item on the agenda, Report V (2). International Labour Conference, 82nd session, 1995, p 11-12

⁴ Women employment concerns and working conditions, Pakistan, ILO (WEC-PK) p. iii

⁵ Donna L. Doane, *Living in Background: Home based Women Workers and Poverty Persistence*, 2007, HomeNet South East Asia p.4

⁶ Pakistan Labor Force Survey, Ministry of Labor and men power, 2007-8, p. 7

⁷ Women Employment concerns and Working Conditions, Pakistan,(WEC-PK)ILO, p. ix

⁸ Women Employment concerns and Working Conditions Pakistan (WEC-PK) ILO, p. iii

There had been various labour policies framed in Pakistan previously in 1955, 1959, 1969 and 1972. In the latest 2002 labor policy the government promulgated Industrial Relation Ordinance (IRO 2002) .The workers and trade unions had high expectations on that labour policy since it was considered to be that laws would be extended to informal sector and to attain the equality between men and women as well.⁹ Although, the policy points out that a huge amount of women are engaged in home base work, however these workers are not yet covered by labour legislations.¹⁰ The workers and their organizations found more restrictions on freedom of association and collective bargaining; and the Industrial Relations Ordinance (IRO) 2002, made things worse; afterwards the present government repealed IRO 2002 and adopted interim IRA 2008 that was supposed to be replace by another IRA in April 2010.

This study not only highlights the current issues and problems of home base workers in Pakistan but also presents an over view of national labour laws and to what extent it protects the home base workers. The major labour laws the Industrial Relations (Ordinance 2002) and IRA 2008, the Factories Act 1934 and which defines the ‘*worker*’ and establish relationship between employer and workers. The IRO regulates workers and employers relationship and it also gives the workers and employer’s right to form trade unions. The application of these laws varies according to the type of ‘workplace’ and the ‘number of workers employed’.¹¹ For instance the Factories Ordinance 1934 is applicable where ten or more workers are employed. Similarly the Provincial Employees Social Security Ordinance 1965 applicable to those establishments with 10 or more workers and the Employees Old Age Benefits Act 1976 also covers establishments with 10 or more workers. The reported cases describe the difficulties which are frequently experienced by the courts in determining the number of workers employed in a particular establishment given the fly-by-night tactics being

⁹ Khan, Shah Rukh Rafi, et el, Hazardous Home Base Sub-contracted Work, Oxford 2005, p 31

¹⁰ Ibid

¹¹ Iftikhar Ahmad et el, National Studies in Employment Situations and Workers Protection, ILO Geneva p. 15

used by employers.¹² In this regard the, number test is applicable not with reference to all workers, in an establishment but only to those who undertake manual, unskilled or clerical work and it excludes those employed in a supervisory or managerial capacity and the contract labour is excluded in most of the cases as well.¹³

Since 1919, the International Labour Organization has developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.¹⁴ Since independence Pakistan is member of the ILO and has ratified 36 ILO conventions including 8 fundamental conventions known as core labor standards (CLS).¹⁵ The ILO is concerned with the rights of all workers, irrespective of where they work. This was reinforced in 1998 when the International Labor Conference unanimously adopted the ILO Declaration on Fundamental Principles on Rights at Work and its Follow-Up. The Declaration on fundamental principle and rights at work constitutes a mutual obligation between member States and the ILO as well. The declaration and principles apply to all workers, regardless of employment relationship or of status of employment and the states parties are obliged to take effective measures to promote, respect and protect the fundamental rights of workers. According to ILO, all those who work are considered as workers and have rights at work particularly freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles and rights at work have developed from the ILO Constitution and have been expressed and developed in the eight ILO Conventions deemed fundamental by the international community and the

¹² Ibid.

¹³ Ibid.

¹⁴ http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Introduction/lang-en/index.htm, last visited 15-05-2010

¹⁵ http://www.ilo.org/asia/countries/lang-en/WCMS_DOC_ASI_CNT_PAK_EN/index.htm last visited 15-05-2010

International Labour Organization, which are recognized as Core Labour Standards (CLS).

Purpose of the Study

The purpose of the study is to explore and identify the rights of home based women workers in Pakistan. The study will also attempt to know the profile, nature, working and living conditions of women workers, who are involved in it. However it is important to note that the core aim of this study is not only to describe the current issues and problems of home base workers in Pakistan but also to present an over view of national labour laws and to what extent it protects the home base workers. Furthermore present study also intends to make these home based women workers visible as a labour force.

Delimitations

The home base work is a diverse term and it covers a wide variety of workers. The home base workers exist all over the world. The term home base workers, is commonly used in South Asian countries. However in most of the industrial countries the term home work is used which is one of the categories of home base workers. Where ever I have used the term home base workers it includes the home workers as well and where I have used home workers it only refers to specific category of home base workers.

Home base work is considered to be women's work; however children and persons with disabilities and skilled professional are also involved in it; but the main focus of this study will be women who are engaged in home base work in the manufacturing industries in Pakistan.

Contribution of the Study: (Research Area)

Already there have been some studies, surveys and reports carried out on the issue home base women workers primarily with social and economic perspectives in Pakistan; however no research has been done on the subject

of home based women workers from labor and human rights perspectives in the country. Therefore this study is an attempt to fill the gap in existing literature by providing information from human and labour rights perspective.

As it is evident from the purpose of the present study that it contributes through providing information about labour laws and status of women home based workers as well as their working and living conditions in Pakistan. As mentioned earlier that there are more than 10 million women who are engaged in home base work in different sectors in the country;¹⁶ this study further adds by explaining the current issues and problems of these 10 million workers. It provides a starting point towards an understanding of the situation of women working at home for their survival, by listening to their ‘voices’ and making them ‘visible’ as a workers force; because it has been said that these women belong to poor families and they have to work and earn something in order to survive.¹⁷

Methodology

In order to investigate the study I have applied a qualitative research approach. The contents of the thesis has been sketched in consultation with the primary source such as ILO conventions, other international human rights instruments and existing legal sources at national level. More over the study depicts from accessible and obtainable research journals, articles, survey and reports relevant there to and finally relevant news reports are secondary sources which apply to present study.

Structure of the Study

This study has been divided into 5 parts. After this first introductory part, chapter 2 of the thesis will give an over view of Home based workers. In this part I will explore the conceptual and definitional issues, its nature and

¹⁶ Pakistan Labor Force Survey, Ministry of Labour and manpower, 2007-8, p. 7

¹⁷ Social Protection of Home workers, ILO Geneva 1991, p.10

characteristics. Who are engaged in home base work and also their inclusion and reorganization in national laws around the world.

The subsequent part (3) will explore the situation of home based women workers in Pakistan. The scope of Pakistan's labor laws whether the Pakistan's labor laws recognize the home base workers and are these workers protected by Pakistan' labor laws. In this part I will also include some of the observations made by different committees of international organizations to analyze international human rights instruments ratified by Pakistan and responsibility of the state.

The part (4) will look into the relevant international and national human rights framework for protection of home base women workers. Which international and national instruments are relevant and how far these can be implemented to protect the home base women workers and the observations of relevant Human Rights Committees on reports submitted by Pakistan.

Finally part (5) will present conclusion of the study. It will also include some recommendations to empower and protect women home base workers through legislations and policy based strategies accompanied by awareness raising programs.

Conceptual Framework

2.1 Home Base work

The home-based work is regarded as a traditional and/or declining form of goods production worldwide, and is also considered that it is associated with the early periods of the industrial revolution, not in the age of modernization. However, home-based work not only exists but has also expanded to continents and centuries, in this contemporary world. In the contemporary world when there is rapid decline of the formal sector, large proportions of workers lost their jobs and were pushed into informal sector, and the major portion of informal work is home-based work. The oldest forms of work, which was done at home, such as weaving and spinning; now a day's some of the latest forms of work associated with telecommunications and computer technology, are increasing and taking place outside of a central work place. In fact, Home-based work is growing due to the process of globalization, industrial growth and to search a low-cost labor market. However, the protection and quality of employment for workers remains poor, and with very low income returns, subcontracting in industries such as garments, footwear, toys, plastics and electronics, is taking place on an international scale. Referring to home-based workers, Renana Jhabvala¹⁸ points out that, "In today's international marketplace, it is not uncommon for a single garment or electronic device to be a compilation of the efforts of workers on two or three continents, most of whom are not even aware of each other's existence."¹⁹

2.1.1 Nature of Home-Based Work

In past times, skilled and low skilled work in manufacturing and production of goods was included in home-based work only. However, in recent years a

¹⁸ Renana Jhabvala, has worked with the Self Employed Women's Association (SEWA) since 1977 currently she is president of Home net south asia, which is active organization for protection of home base women workers.

¹⁹ Renana Jhabvala and Jane Tate, Out of shadows, ILO Geneva 1996, p. 6

new sector or forms of home based work i.e. the information technology and high skilled professional also joined the category of home based work. Presently a variety of work, from different forms of home based work, is included in the category; the workers engaged in manufacturing and/or production, weaving, sewing, carpet making, basket making, embroidery, and packing sectors are considered as low skilled; often they get very low wages and do physically hard works. The low skilled works exist in both developed and developing countries; however, number of such workers is increasing in developing countries.

Some of the home base workers engaged in personal services, beautician and barber, shoe repair, laundry, dress making and designing, lodging and catering, etc.

There is a new form of home based work which includes clerical and professional work. The workers involved in clerical and professional work are mostly well paid, and they are regarded as highly skilled workers. The examples of clerical and professional work are typing, data processing, telemarketing, accounting, call centre telephones tax accounting, legal advising, medical, engineering, design consulting, computer programming, writing, architectural. Skilled professions and workers involved in telecommunication are increasing in developed countries.

In most of the countries these home based highly skilled and tele workers are generally offer their services and expertise in formal business sector. If these works have agreement and if employer make rules that how and when the work should be done then they would have the status of employee.²⁰ If these workers do not have any kind of agreement with their employer, then they are considered as a self-employed or free lance worker. The freelance or self employed, highly skilled or tele worker hold copy rights if the work they produce is of a literary or artistic nature.²¹

2.1.2 Home base workers in informal economy

²⁰ Ursula Huws and Sara Podro, *Employment of homeworkers: Examples of good practice*, ILO, Geneva 1995, p 3.

²¹ Ibid p 5.

In most of the developing countries home based workers belong to the informal workers which sell or produce goods from their home. These workers are least visible and majority of them are women who work as garments makers; embroiderers; Incense sticks rollers; cigarette-rollers; paper bag makers, kite makers, hair band makers, food processors and others. These least visible workers are not only confined to developing countries these workers exist in developed countries as well.²²

These home base workers are engaged in the informal economy because, “*they are not recognized or protected under the legal and regulatory framework*”²³. As the ILO’s report on decent work states the, “*Workers may also be informal because current labor legislation does not cover or has not been applied to their “non-regular” or atypical employment status.*”²⁴ The report on men and women in informal economy states that, these workers live and work in “*high degree of vulnerability.*” Because they are not recognized under the law, therefore they receive very little or no legal and social protection. Home based workers are often unable to enforce contracts nor do they have security to property rights. These workers are rarely able to “*organize for effective representation*” and they have “*little or no voice to make their work recognized and protected as well.*”²⁵ They have limited access to public infrastructure and benefits. They are excluded from the social and economic benefits in this regard they have to rely on informal economy and have to face exploitative institutional arrangements, whether, for information, markets, credits, training or social security. These workers are highly dependent on the attitudes of the public authorities and the strategies of the large formal enterprises as well. They have low income and irregular employment which makes their income more irregular.

According to rough estimates there are over 100 million home-based workers in the world and among them over 50 million home-based workers

²² Women and Men in Informal Economy: A Statistical Picture, ILO Geneva, 2002 p9

²³ *ILO: Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002, p 28

²⁴ *Ibid*

²⁵ *Ibid* p 3

in South Asia; most of them around 80 per cent are women.²⁶ These are considered as informal workers and involved in informal economy.²⁷ According to ILO's women's employment concerns and working condition²⁸ "in Pakistan, out of the total working population, 80 per cent has been engaged in the informal sector of economy and out of those, 50 per cent are women. Among the working women in the informal sector, around 80 per cent are home based workers, which make a huge proportion of economy of Pakistan. These home based women workers usually belong to the poor, lower or lower middle income background and form various age and possess very little or no education at all have no social protection."

2.1.3 Home based work-A Global Scenario

According to a recent study²⁹ in seven countries, the home based workers represent between 10 to 25 per cent of the nonagricultural work force, in Guatemala 26 per cent, India 16 per cent, Kenya 15 per cent, Mexico 17 per cent, Philippines 14 percent, Tunisia 11 per cent and Venezuela 18 per cent. The vast majority of home based workers are women all over the world. It further points out that, in European countries Germany, Greece Ireland Italy and the Netherlands women home worker's proportion is 85 per cent. In footwear and clothing industry of Argentina, home based women workers participation is 85 per cent. In South Asia 80 per cent of 50 million home based workers are women. In India 90 percent of bidi (cigarette) rollers are women.³⁰ In Pakistan according to ILO's report on women employment concerns and working conditions, out of all labor force 80 per cent has been involved in informal sector among that a large number (approximately 50 per cent) are women; and women engaged in home based work are around 80 per cent, which is a huge proportion.³¹

²⁶ Donna L. Doane, *Living in Background: Home based Women Workers and Poverty Persistence*, Home Net South Asia, November 2007, p 4

²⁷ Women Employment Concerns and Working Conditions in Pakistan, ILO (WEC-PK) 2010, p ix

²⁸ Ibid p ix

²⁹ Women and Men in Informal Economy: A statistical Picture, ILO Geneva, 2002, p 48.

³⁰ Ibid

³¹ Women Employment Concerns and Working Conditions, Pakistan (WEC-PK)ILO p. ix

2.1.4 The advantages for home workers

There are some advantages to being stay at home and work at home without any supervision. It also provides an opportunity to most of the women to earn while being at home. However, most women work at home because it is the only way for them to earn something and contribute to their family income. Often home base women workers can attend their childcare or contribute other family responsibilities even they can have a chance to engage in other work and earn more from that work. In this regard, there can be a possibility to earn more than full time workers. Home work also gives the job opportunity to persons with disabilities. These can be some of the advantages for home workers; however these workers are facing more problems than opportunities.

2.2 Home based Workers-Definition

The term “home-based workers” refers to a category of workers who are involved in the informal and unorganized sector; furthermore who works in his or her home or in other premises of his or her choice other than workplace of the employer. The ILO has defined this term as:

“the term ‘home-based worker’ is used to refer to the general category of workers who carry out remunerative work within their homes or in the surrounding grounds. It does not refer to either unpaid housework or paid domestic work. Within the general category of home-based workers, there are two basic types of workers: those who work on their own (the self-employed) and those who work for others (mainly as industrial outworkers). The term “home worker” is used to refer to a sub-set of home-based workers: namely, industrial out workers who carry out paid work from their home.”³²

The ILO has further pointed out that:

³² Women and Men in Informal Economy: A statistical Picture, ILO Geneva, 2002, p 44.

“It is important to distinguish, both conceptually and statistically, between the following two categories (and related terms):

Home-based workers: all those who carry out market work at home or in adjacent grounds or premises whether as self-employed or as paid workers.

Home workers: those home-based workers who carry out paid work for firms/businesses or their intermediaries, typically on a piece-rate basis.”³³

In this regard the term home-based worker is very wide and broad that it encompasses the “home workers” as well.

2.1.2 Definition in India

The Indian Ministry of Labour, has defined home base workers as “home Based Workers are those who are engaged in the production of goods or services for an employer or contractor in an arrangement whereby the work is carried out at the place of the workers’ own choice, often the workers own home.”

After a long struggle by All India Trade Union Congress (AITUC), in 1966 the Beedi and Cigar Workers (Condition of Employment) Act was promulgated in India. This Act was special law for the beedi rollers and it specifically recognizes the home base workers as workers; and it regulates the conditions of services of workers engaged in beedi rolling. The section 2 (f) of the Act defines workers as, the, ‘employee’ means a person employed directly or through any agency, whether for wages or not, in any establishment (or godown) to do any work, skilled, manual or clerical and includes,

(i) any labour who is given raw material by an employer or a contractor for being made into beedi or cigar or both at home (hereinafter referred to in this act as ‘homeworker’), and

³³Women and Men in Informal Economy: A statistical Picture, ILO Geneva, 2002, p 44

(ii) any person not employed by an employer or contractor but working with the permission of, or under agreement with, the employer or contractor, or both.³⁴

After that, the Beedi Workers Welfare Fund Act 1976 was enacted. In which, a number of schemes for the welfare of beedi workers are being executed, including health, maternity benefits, group insurance, education, recreation, housing assistance etc.³⁵

2.2.1 ILO Convention No.177, the Home Work Convention

In 1996, the ILO adopted the Convention on Home Work (C.177) along with the Recommendation (R. 184) on Home Work. The Article 1 of the ILO's convention No.177 defines home workers as under,

(a) the term [home work] means work carried out by a person, to be referred to as a home worker,

(i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who

provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker

under national laws, regulations or court decisions;

(b) persons with employee status do not become home workers within the meaning of this

Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

³⁴ S. 2 (f) the Beedi and Cigar Workers (condition of employment) Act 1966

³⁵ <http://labour.nic.in/dglw/homeworker.html>

*(c) the term [employer] means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.*³⁶

The Home Work Convention (C 177) is an international regulatory and specific framework which addresses the home workers equally to other wage earners; in this regard it provides equal status to a set of home based workers to other works as well. So far, only seven countries Albania, Argentina, Bosnia and Herzegovina, Bulgaria, Finland, Ireland, and Netherlands, have ratified the convention on homework. Pakistan has not ratified the Homework convention yet.

2.3 Categories of Home base workers

The home base workers can be divided into two main categories of workers: piece-rate workers and the own account or self employed workers. It is important to distinguish between these two types of home workers.

2.3.1 Piece-rate worker

The piece rate workers are the workers who do work for an employer, contractor, sub-contractor, agent or middleman, or they can be self employed, on their own. All of those workers who carry out work at home or in adjacent premises, whether as self-employed or as a paid worker and receive work from employer contractor sub-contractor or agent of an employer or firms and are paid according to work they have done, or paid as the number of goods they produce, are known as piece-rate workers. The piece- workers get the raw material from the contractor some time they buy these raw materials and arrange tools or equipments. These workers make products at home and deliver those products or goods to the same person. These workers do not have any direct contact with the market for the goods they produce. Often, the raw material they get from contractor or agent of

³⁶ ILO' Article 1, (C.177)The Home Work Convention

factories are not enough or some time they have to buy some material to produce goods. For instance, workers in garment industry have to use their own funds to purchase thread and if the price of thread went up then these workers have to face cost problem. Some of the employers or contractors give loan to these workers for tools and equipments, as a result employer or contractor cut the cost of tools and equipments from earning of the workers. In this regard these workers have to bear more expenses on equipments as well as on maintenance and the employers spend nothing.

2.3.2 Own- account workers

Own account workers are another category of home based workers these workers are generally in direct contact with the market. They buy their own raw materials and sell that in finished products or goods. These workers do not have capacity to buy a large quantity of raw materials which make that expensive, that's why the cost of goods they produce is higher. In this case the terms of earning are not much better than piece-rate workers. These workers face competition with the much powerful business and with formal industries. Most of these workers do not have access to credits. Some time these workers too, are dependent on agent middleman or contractor to sell their products.

2.4 Who are Home base workers

2.4.1 Home base women workers

Women represent the majority of workers in several categories of informal work: notably, part-time work, temporary work, and homework.³⁷ It is clear from the statistics that generally a greater proportion of the female workers than of the male workers are involved in the informal economy specifically in home base work. By its definition home based work is regarded as

³⁷ Women and Men in the Informal Economy: A Statistical Picture, ILO Geneva, 2002, p53

women's work.³⁸ Women are involved in home-based work due to their family responsibilities and they also have weaker position in the labor market mostly in developing countries. Often these women belong to poor families and they have to work and earn something in order to survive.³⁹

According to ILO's Conditions of Work Digest,⁴⁰ there is higher proportion of women than men, who are involved in home-based work. In Europe women's participation in home work vary from 90 to 95 per cent in Germany, Greece, Ireland, Italy and Netherlands. In France almost 84 per cent, 75 per cent in Spain and in United Kingdom almost 70 per cent are women. According to 1988 survey in Japan 93.5 per cent home workers were women. In clothing industries of Australia 95 per cent were women and in local industries of USSR 86 per cent of home workers were women.⁴¹ In the developing countries a greater participation of women are involved in home based work like in clothing industry in Brazil among 2.5 million majority of them are women. In India 90 per cent of beedi (cigarette) rollers are women.⁴² In Pakistan women participation is 92 per cent in home based work.⁴³

2.4.2 Child labor engaged in Home base work

According to ILO's report on Decent work and informal economy, the estimated 211 million working children in the world between the ages of 5 and 14 years, at least 111 million are involved in hazardous and exploitative work and Asia has the largest proportion of working children.⁴⁴

The Child labor also exists in home-based work whether subcontracted, piece-rate work or in manufacturing sectors;⁴⁵ and the presence of child

³⁸ Renana Jhabvala and Jane Tate Out of shadows ILO Geneva 1996, p. 4

³⁹ Social Protection of Home workers, ILO Geneva 1991, p. 10

⁴⁰ Conditions of Work Digest, Home Work Volume 8, 2/1989 ILO Geneva, pp.7-9

⁴¹ Ibid

⁴² Men and Women in Informal Economy: A Statistical Picture ILO Geneva, 2002 p 48

⁴³ Khan, Shah Rukh Rafi, et el, Hazardous Home Base Sub-contracted Work, Oxford 2005 p12

⁴⁴ ILO: Decent Work and Informal Economy, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002, p. 25

⁴⁵ Ibid

labor in home based work cannot be ignored. Often, these children work as family workers and the young girls assist or accompany the mothers in a hazardous work environment.⁴⁶ Mostly, these children are involved in work due to poverty and when a family is headed by female. However, the lack of regulation for home base workers is one of the reasons for child employment in home base work. These child workers neither receive benefits nor are paid directly and also they are not calculated in national statistics as workers.

2.4.2 Persons with Disabilities

Often the persons with disabilities have no option or choice to perform work at home or in sheltered workshops, if the work is offered and permissible to them. According to ILO, few countries accord them preferential treatment under home work legislation.⁴⁷ In the eastern European countries, especially, they are often organized into co-operatives. In USSR 35.2 percent of home workers in local industries are disabled among them 67 per cent are women and in Poland well over a quarter of a million home workers are organized under the Invalids' Co-operative Movement. To prevent isolation and to facilitate distribution of work, some of the countries such as Belgium, France and the United States have established sheltered workshops for disabled home workers.

2.4.3 Highly Skilled and Tele workers

The home working currently embraces an extraordinary diversity of occupations, in recent years a new sector or form of home-based work i.e. the information technology and high skilled professional are often evident as well. The tele workers are including from low-skilled manual workers to senior executive and professional staff, who are engage in telecommunication industries.⁴⁸ The high skilled professional for instance

⁴⁶ <<http://actrav.itcilo.org/english/library/socdiag/v07401.htm>> last visited 19-05-2010

⁴⁷ Social protection of home workers, ILO Geneva 1991, p 10

⁴⁸ Ursula Huws and Sara Podro, *Employment of homeworkers: Examples of good practice*, ILO Geneva 1995, p. 1

engineers, law advisors, doctors are also engaged in home work and these highly skilled professional provide their services from their homes.⁴⁹

2.5 Legal protection of HBW's at national level

The home-based work is not only evident in the developing countries but is obvious in developed countries as well; and these home based workers can be found in all of the regions of the world.⁵⁰ According to a study conducted by ILO, in Denmark, Malta and Sweden the provision relating to home work are included to varying extent in general labor legislations, however home workers may be, specifically excluded from some of the provisions for example hours of work, paid annual leave and health and safety. In Chile home workers are excluded from the scope of provisions of hours of work if they work without supervision. In another category of countries home workers have been included in scope of national labor code either by considering them regular workers Australia (New South Wales) Canada and France, or by considering their employment relationship as an employment contract like Brazil Colombia, Finland, Haiti.⁵¹ In some of the developed countries legislations for home work, dates back from the early decades of 20th century for instance in Norway from 1918, and in the Netherlands from 1933. However, some of the countries like Hungary, Russian Federation and Switzerland all have adopted homework Act in 1981.⁵² Home base workers have been included within the scope of labour legislations in a number of countries, either by considering them regular worker or by including these workers in existing labor laws. However, some of the countries like in Pakistan home base workers are not included in labor laws nor they have social protection.⁵³ According to Pakistan labor laws if worker have employment status in any establishment then he or she would be considered as a worker. In this regard home based workers have been excluded from the

⁴⁹ Social protection of home workers, ILO Geneva 1991, p. 11

⁵⁰ ILO, *Home Work: Fifth item on the agenda*, Report V (2). International Labour Conference, 82nd session, 1995, p 8

⁵¹ Ibid, p 28

⁵² Ibid, p 28

⁵³ Women employment concerns and working conditions, Pakistan, ILO 2010 (WEC-PK) p. iii

definition of worker in labor legislations and they do not have even fundamental labor rights.

HBW situation in Pakistan

3.1 Labour in Pakistan-an Overview

Pakistan is a primarily agricultural country and 75 per cent population resides in the rural areas 25 per cent population lives in the urban areas. The living standards of a huge proportion of population are poor and unattractive. On the time of independence in 1947, the population of the country was 40 million, which increased to 163.67 million by the year 2008-9, as estimated by the economic survey of Pakistan.⁵⁴ The total labor force is estimated at 51.78 million in which female labor has increased in year 2008-09 than previous year, female participation is 10.96 million.⁵⁵ In informal sector currently 17.66 million labour is engaged and among them 16.77 million is self-employed. However, the largest increase in employment status from 12.29 million in 2006-7 to 14.2 million in 2007-08 has taken place for unpaid family workers and majority of the labor exist in rural areas.⁵⁶ According to Labor Force Survey in Pakistan 2007-8, the employment in informal sector has increased from 72 per cent in 2006-07 to 73 per cent in 2007-08.⁵⁷ According to ILO women employment concerns and working conditions, out of all labor force 80 per cent has been involve in informal sector among that a huge proportion approximately 50 per cent are women; among these working women around 80 per cent are home based women workers, which is a huge proportion.⁵⁸ In Pakistan so many industries are involve in international supply chains with multinational companies for instance sports goods and leather industries in Sialkot; in which a huge proportion of home base workers are involved and among them majority of proportion is women. Labour laws do not cover these home workers. They face so many problems and are subject of exploitation.

⁵⁴ Economic Survey of Pakistan, 2008-9, Ministry of Finance Pakistan, available at, http://www.finance.gov.pk/finance_survery_chapter.aspx?id=21

⁵⁵ Ibid p183

⁵⁶ Ibid p 186

⁵⁷ Labor Force Survey, Pakistan, 2007-8, pp 7-11 and 14

⁵⁸ Women Employment concerns and Working Conditions, Pakistan, ILO (WEC-PK-ILO) p ix

The Constitution of Pakistan guarantees Human rights as well as labour rights. The labour laws provide these rights only to a limited work force in the country. According to constitution of Pakistan the labor is included in “*concurrent list of the constitution*” which is considered to be federal as well as provincial subject. It means that it is responsibility of both federal and provincial governments as well to protect the workers without any kind of distinction what so ever.

3.2 Kinds of work HBW perform in Pakistan

Both skilled and low skilled work in manufacturing and production of goods is included in home-based work. However in recent years a new sector or form of home-based work i.e. the information technology and high skilled professional are often involved as well. In Pakistan at present the home based women workers participate in a variety of work in different industries. A huge proportion of these women are piece-rate workers. These women are involve in the manufacturing and production, weaving, sewing, football making, incense sticks making, carpet making, prawn shelling, basket making, embroidery, handicrafts, bangle making, dates cleaning, and packing; and most of these women produce goods for branded multinational companies.⁵⁹ Some of the products these women produce are part of the export for example carpets, incense sticks and prawns.⁶⁰ These women workers involve in this sector often considered as low skilled often they get very low wages and they do physically hard works.

3.2.1 HBWW in Football industry- an example

Pakistan is the largest producer and exporter of match grade footballs in the world and it shares 80 per cent of total production. Each year, the football industry earns Pk. Rupees 3 billion in foreign exchange. In 1994 World Cup

⁵⁹ Women Employment concerns and Working Conditions, Pakistan, ILO (WEC-PK-ILO) p 4

⁶⁰ Khan, Shah Rukh Rafi, et el, Hazardous Home Base Sub-contracted Work, Oxford 2005, p 53

Pakistan has exported 34.6 million footballs. The process of football stitching is done completely on contract basis. The factories hand over unfinished material to the contractors. These contractors further distribute that material to workers at home and in the small worker shops. The wages depends on quality of finished product and are paid on piece rate bases between Rs. 18 to 35 per piece; an average family earns Rupees 150 to 250 by producing 6 to 7 balls per day and a single worker earn Rs.75 to 100 per day. The workers have to re-done the poor quality of work on their own. In stitching centers men's proportion is higher, as participation of women is only 2 per cent in stitching centers.

In 1997 a report published by Save the Children, estimated on the basis of a survey that women workers engaged in football stitching is 58 per cent. However, the later survey conducted by Save the Children estimated that women participation is 34 per cent. The Human Rights Commission of Pakistan (HRCP) estimates that 20 to 25 per cent of children are engaged in it as well; and the report also suggest that the proportion of female child between the age group 7 to 13 years is 13.6 per cent that is higher than boys only 2 per cent, of the same age group.⁶¹

3.3 Labor Laws and home based workers

The problem of millions of Home Based Workers is crucial in context of their inclusion in existing labor laws of Pakistan. They are not even considered as '*worker*' in labor laws.⁶² As a result they cannot make trade union or organize themselves for collective bargaining and for protection of their rights, even these home base workers have no right to file any complaint in labour court for any kind of dispute with their employer or contractor. Consequently, the home base workers have no cover under any social security schemes including health, education, pension, old age benefits and even they do not have other social and legal benefits provided to the formal sector workers covered under labor law. These workers use

⁶¹ Manjul Bajaj, Invisible workers, visible contribution, A study of home based women workers in five sectors across South Asia, 1999

⁶² Women employment concerns and working conditions, Pakistan, ILO (WEC-PK) p. iii

their home as factory and work place as well and produce goods. These workers shared their effective role in the country's economy from which employers taken benefits.

3.3.1 Definition of worker and HBWW

Pakistan has inherited its labor laws from India at the time of partition in 1947. The labor legislation has developed through a continuous process of trial to meet the social and economic conditions of the state. The government of Pakistan has introduced a number of labor laws since its independence. However, the main labor laws have remained same with some of minor amendments. At this time the Industrial Relations Ordinance 2002 (after that the interim law IRA 2008,⁶³ which is promulgated by the present government with minor amendments) and factories Act 1934 are the main labor laws can be use for the definition of 'worker'. The IRA 2008 gives these workers the right to freedom of association or to form trade union. In these laws the definition of worker is limited which render home base workers outside of the scope of labor legislations, as it defines that, 'person who is not falling within the definition of employer and who is employed in the establishment or industry for remuneration or reward'. The Human Rights Commission of Pakistan has pointed out in its recent report published in 2010 that the, *"Home based women workers did not receive any protection or coverage from law as they did not fall under definition of workers in the Factories Act 1934, Payment of Wages Act 1936, Industrial Relations Ordinance or the Maternity Benefits Ordinance 1958. The labour policy 2002 recognized home-based working women for the first time, taking into account the fact that domestic working women were not covered by any labour welfare organization. This was despite the fact that home-*

⁶³ According to Najia Asad Hashmi working for Pakistan Workers Federation (PWF) that, *in the IRO 2002, the trade union organization expected improvements in the workers' rights situation at the time the Industrial Relations Ordinance 2002 was being enacted. But their hopes were dashed to the ground when the Ordinance 2002 was promulgated. The workers found more restrictions on freedom of association and collective bargaining; and the new law has made things worse after that present government had announce interim IRO 2008 which will be remain enforced till the April 2010.'*

based women workers annually contributed an estimated \$4 billion worth of foreign exchange to the national economy.”⁶⁴

In this regard the ILO’s Committee of Experts on Application of Conventions and Recommendation (CEACR) has asked the government of Pakistan, “to take the necessary measures in order to ensure that the new legislation guarantees the abovementioned categories of employees the right to form and join organizations to defend their own social and occupational interests. The Committee further requests the Government to indicate that *whether self-employed workers enjoy the rights afforded by the Convention*”.⁶⁵

3.3.2 HBWs: work place, number of workers and worker-employer relationship

A huge proportion of workers including piece-rate, home base workers in the smaller enterprises are also excluded from legal protection due to the ‘*number of workers employed in that establishment*’ and the definition of ‘*places of work*’. The Factories Act, 1934 is implemented only when there are ‘*ten or more workers permanently work*’.⁶⁶ The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 is implemented where fifty or more workers participate in an industry and at least twenty workers in a commercial firm. The employers allegedly, avoid the applicability of labor laws by registering a number of small business and workers rather than a single large unit, even where workers are employed on the same work place. In this case, the employer use temporary and contract labor as well, to avoid the terms of this legislation by staying within the limits specified by labor law. The Provincial Employees Social Security Ordinance 1965 applies to notified establishments with ten or more

⁶⁴ Human Rights Commission of Pakistan, Annual Report 2010, p 228

⁶⁵ CEACR: Individual Observations concerning Freedom of Association and Protection of the Right to Organise Convention 1948 (C. No 87),country Pakistan, ILO, 2010

⁶⁶ Ss (j) Factories Act, 1934, Pakistan

workers.⁶⁷ The Employees Old Age Benefits Act 1976 covers establishments with ten or more workers as well. Consequently, the home base workers are excluded from application of other labor legislations as well as relating to hours of work, weekly rest, overtime, annual leave and etc; and they are not entitled to pension or social security benefits.⁶⁸

The Article 17 of the constitution of Pakistan guarantees the rights to freedom of association and right to form trade unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality. However, the scope of labor laws extends to only ‘workmen’ who are employed in establishment. As the IRO states that “*the workers shall, without distinction whatsoever, have the right to form and subject to the constitution or rules of a trade union, join any trade union of their own choice within the industry they employed in.*”⁶⁹ Therefore those workers who have a direct ‘relationship’ with an employer and present at the ‘work place’ are considered to be workers according to labor laws; and only these workers could make a case for enforcement of their rights and even they either look to their contractor or the company for implementation of their fundamental labor rights. In this regard the home base workers are not recognized as workers according to labor laws.⁷⁰ Thus labor laws do not cover home base workers simply because these workers cannot prove contractual relationship with the employer.

The definition and number of workers, issue of workplace and the issue of employee employer relationship hinders home base workers to form trade union. In this regard they do not have their fundamental rights at work; and these workers cannot form and/or join any trade union as well, for collective bargain. As the ILO’s report on decent work points out that, “*In many countries, labour legislation is designed to protect “employees” rather than*

⁶⁷ Iftikhar Ahmad et al, National Studies in Employment Situations and Workers Protection p. 15

⁶⁸ Iftikhar Ahmad et al, National Studies in Employment Situations and Workers Protection p. 11

⁶⁹ S. 3 (a) Industrial Relations Ordinance, 2002

⁷⁰ Women employment concerns and working conditions, Pakistan, ILO (WEC-PK) p. iii

“workers” and to apply only where there are clear employer-employee relationships.”⁷¹

3.4. Problems of Hbw’s

The nature of problems faced by home-based workers and home workers are quite different. However, both home base workers and home workers are typically lack bargaining power and have to provide their own social protection.

3.4.1 Low wages

The majority of home based workers receive very low wages.⁷² Often, the piece-rate workers are forced by circumstances to work for low remuneration and without secure contracts or fringe benefits and to cover the cost for production specifically equipment, space and utility costs. The home base workers are extremely low paid because the Minimum Wages Laws are not applicable to home based workers.⁷³ The main reason of low wages of piece-rate workers is their vulnerable conditions which lead them to accept the work. A great number of home workers are women in developing countries and poverty force them to work for low wages for their economic survival.⁷⁴ Often they do not have bargaining power, they are fearful of asking for higher wages because they do not want to risk losing the work, due to fear that there might be other who would have been willing to do the work for the rates offered.⁷⁵ The existence of the agents, contractors, middleman and intermediaries is one of the factors for low level of wages. The own-account, self-employed home base workers have limited or no access to credit schemes and often these workers face high competition with the powerful business markets. However, both own-

⁷¹ *ILO: Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002., p 28

⁷² *Understanding labour issues in Pakistan*, PILDAT 2009, p 08

⁷³ Iftikhar Ahmad et al, *National Studies in Employment Situations and Workers Protection* p. 11

⁷⁴ *Women and Men in the Informal Economy: A Statistical Picture* ILO Geneva, 2002 p 14

⁷⁵ *Social protection of home workers*, ILO Geneva, 1990, p 19

account and piece-rate workers face exploitation and often have limited social benefits.

3.4.2 Social security

There are varieties of social security schemes in different countries of the world. In the developed countries most of these workers covered by the social security law provided by the state even if the enterprise do not allow them. However in the developing countries home base workers are usually excluded from the scope of any social security schemes. In this regard situation of home base women workers is worse in Pakistan, because the Provincial Employees Social Security Ordinance 1965 applies only to notified establishments with ten or more workers.⁷⁶ The Employees Old Age Benefits Act 1976 covers establishments with ten or more workers as well.

The CEACR has observed this situation and stated that “with regard to the employment status of men and women, the Committee notes from data established for 2001-02 and 2007-08, that the percentages of women being employees and own-account workers significantly decreased, combined with a gradual increase of women in the category of unpaid family workers (from 46.9 to 65 per cent). Women remain concentrated in unskilled elementary occupations or skilled agricultural work. In this context, the Committee notes the observations made by the Pakistan Workers Federation (PWF) in their communication dated 21 September 2008, stressing the need for measures to enable women to move from the informal to the formal economy, including through extending social security and minimum wages, and training and education for rural women.”⁷⁷

3.4.3 Health and safety

⁷⁶ Iftikhar Ahmad et al, National Studies in Employment Situations and Workers Protection p. 15

⁷⁷ ILO, CEACR: Individual Observations concerning Discrimination (Employment and Occupation) convention, 1958 (No.111) Pakistan, 2010

Often home based workers are involved in hazardous work;⁷⁸ and the use of machinery or chemicals makes certain industries more dangerous. In most countries special laws are silent on occupational risks associated with home base work and their prevention. In Pakistan, there is not any specific prohibition with regard to undertaking work at home which could endanger the worker's safety and health and to their family member living with them or the public at large; for instance the case of workers manufacturing fireworks products at home.⁷⁹ Many industries use solvents, varnishes, paints, inflammable and toxic chemicals these are all hazardous especially in the absence of adequate instructions and training to use these. To use and improve this situation there is need to proper monitoring and inspections.

3.4.4 Hours of work

The duration of work and time is specific problem in home based work. Sometimes, it seems benefit to home workers to work at home and control the allocation of time between family life and leisure. However, home base workers, often have to work for long and irregular hours to earn an adequate income. They also have to work for a long time in a peak season; in this regard they got pressure and stress to complete orders on time and they are not protected by national labour legislations.

3.4.5 Employer employee relationship

According to traditional labor laws, the employee employer relationship is established when a worker performs work in person under the direct supervision of the employer and the terms and conditions of work are specified in advance. Home work is atypical kind or work which is not usual criteria of the employment for this reason problems relating to the nature of the employment status may simply arise between the employer and the

⁷⁸ Understanding labour issues in Pakistan, PILDAT 2009, p 09

⁷⁹ Iftikhar Ahmad et al, National Studies in Employment Situations and Workers Protection p. 11

home worker.⁸⁰ The employee and employer status between the home worker and the employer is crucial to determine whether legislation is applicable or not to the home worker, particularly in a country where there is no specific legislation for home workers.⁸¹

3.4.6 Child Labor

The lack of labor legislation for home based work is also a reason that a high proportion of child labor is employed in this area. The studies show that in future more women and children will be employed in home based work. For instance a research conducted by the Pakistan Institute of Labour Education and Research (PILER) indicates the use of female child labor (5% of the sample in the age group 10-15) mainly in the garment industry.⁸² The study further mentions that, it is estimated that this number will grow with women working at the home.⁸³ The Human Rights Commission of Pakistan (HRCP) has maintained in its recent report that the “children working in homes, factories, restaurants and other places were a common sight. Sectors where children worked in hazardous conditions included surgical instruments manufacturing, glass bangles production, tanneries, coal mines, deep-sea picking, gas/petrol stations, domestic work, carpet weaving and brick kilns.”⁸⁴

⁸⁰ ILO: *Home work: fifth item on the agenda*, Report V (1), International Labour Conference, 82nd session 1995, ILO, Geneva p 29

⁸¹ Social protection of home workers, ILO Geneva p 32, available at <http://books.google.com/books?id=-7xgb-jDhhwC&printsec=frontcover&dq=protection+of+homeworkers&cd=4#v=onepage&q&f=false>

⁸² Iftikhar Ahmad et al, National Studies in Employment Situations and Workers Protection pp. 11

⁸³ Ibid

⁸⁴ Human Rights Commission of Pakistan Annual Report 2010, p 229

4. International and National Legal Framework

4.1 UNITED NATIONS CONVENTIONS

Pakistan is member to United Nations and the UN has adopted the Universal Declaration on Human Rights and other human rights conventions such as ICESCR, CEDAW, and CRC. These instruments give the considerable support to all workers, men as well as women.

4.1.1 UDHR

The UN has adopted Universal Declaration on Human Rights in 1948. The UDHR is a fundamental instrument which defines the meanings of human rights and fundamental freedoms. The Article 23 of UDHR gives considerable legal support to all of workers including Home based workers.

The article 23 of the UDHR refers to all of the workers and states that,

1. *Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and to join trade unions for the protection of his interests.*⁸⁵

⁸⁵ Article 23, Universal Declaration of Human Rights

The article 24 of UDHR also provide to all of the workers that,

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.⁸⁶

Although not legally binding, these two provisions have to apply to all of the workers and all of the states members to UN have to implement and take measures according to these provisions.

4.1.2 International Covenant on Civil and Political Rights

The right to freedom of association and right to form or join trade union are the workers fundamental rights and these rights are assured by the International Covenant on Civil and Political Rights. Although Pakistan has not ratified ICCPR; however, most of its provisions are universally recognized as part of customary international law. Therefore all States have to implement and have to take measures according to rights guaranteed by the provisions of ICCPR. Furthermore, some of these rights are preserved in ILO's Conventions to which Pakistan is a party. For instance Pakistan ratified the ILO, Freedom of Association and Protection of the Right to Organize Convention (No. 87) in 1951, and Right to Organize and Collective Bargaining Convention (No. 98) in 1952.

4.1.3 International Covenant on Economic Social and Cultural Rights

Pakistan has ratified and is party to ICESCR. The Preamble of ICESCR⁸⁷ stresses the '*equal and inalienable rights of all*' and it further added that "*conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.*"⁸⁸ The Committee on ESCR in its General Comment (GC) No. 20 on principle of

⁸⁶ Article 24 Ibid

⁸⁷ International Covenant on Economic Social and Cultural Rights

⁸⁸ Preamble of ICESCR

non-discrimination categorically recognizes the rights of ‘everyone’ to the various Covenant rights such as, inter alia, the right to work, just and favorable conditions of work, trade union freedoms, social security, an adequate standard of living, health and education and participation in cultural life.⁸⁹ The committee further define that, “*Article 3 requires States to undertake to ensure the equal right of men and women to enjoy the Covenant rights and Article 7 includes the “right to equal remuneration for work of equal value” and “equal opportunity for everyone to be promoted” in employment.*”⁹⁰

The Committee on Economic Social and Cultural Rights in 2005, in its General Comments (GC No.18) on Article 6 ‘right to work’ has defined that ‘*right to work*’ includes all form of work, whether ‘*independent or dependant wage-paid works.*’⁹¹ The Committee further added that the “work as specified in article 6 (right to work) of the Covenant must be decent work. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.”⁹²

The Committee further mentions that the, “*States parties must take the requisite measures, legislative or otherwise, to reduce to the fullest extent possible the number of workers outside the formal economy, workers who as a result of that situation have no protection.*”⁹³

While defining Article 8 (right to form trade unions) the committee said that, “*Articles 6, 7 and 8 of the Covenant are interdependent. The characterization of work as decent presupposes that it respects the fundamental rights of the worker.*”

⁸⁹ UN Committee on CESCR, Forty-second session, Geneva 2009, General Comment No 20, para 3

⁹⁰ Ibid para 4

⁹¹ UN Committee on CESCR, Thirty-fifth session, Geneva 2005, General Comment No. 18 para 6

⁹² Ibid para 7

⁹³ Ibid Para 8

4.1.4 Convention on Elimination of Discrimination against Women

The Article 11 of the UN Convention on Elimination of Discrimination against Women (CEDAW) give considerable legal support to women workers and protects their rights mentioned there with. The convention also oblige the states parties to take appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

While observing the report submitted by Pakistan the Committee on Elimination of Discrimination against Women has pointed out that “A number of factors may be responsible for the relatively low female labour force participation rate. Many women prefer to remain at home as homemakers rather than join the work force. Many may be prevented from working by family or spouses or other factors such as the need to take care of.”⁹⁴ While the Committee has observed that, “if a firm has more than 10 employees then it is bound by the same laws, which apply to the public sector in terms of pay and benefits. These laws do not for the moment cover the informal or the agricultural sector,” and “in the private sector the relevant laws are implemented in those establishments which have the requisite number of employees to come within the ambit of these laws.”⁹⁵

The Committee observed that, “unfortunately most employees in such companies and industries are ‘*contract workers*’ and ‘*piece rate workers*’ and can be relieved of their positions quite easily.”⁹⁶

The Committee further added that “generally in such situations a pregnant woman worker herself seeks to terminate her employment as she approaches term. She is not likely to get any maternity benefits etc. Once she is again

⁹⁴ UN *Committee on CEDAW*, observation on report submitted by Pakistan 2005, p. 79

⁹⁵ *Ibid* p. 71

⁹⁶ *Ibid*

able to join the workforce, she can approach her former employer and possibly be rehired if there exists a vacancy and if she was good worker.”⁹⁷ The committee asked the government that the, “protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary”⁹⁸

4.1.5 Convention on the Rights of the Child

The article 32 of the Convention on the Rights of the child clearly states that the, “states parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.” And the “states parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) provide for a minimum age or minimum ages for admission to employment; (b) provide for appropriate regulation of the hours and conditions of employment; (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.”⁹⁹

The UN Committee while observing the report on CRC, submitted by Pakistan points out that, “the prevalence of child labour is extremely high and has increased in recent years due to growing poverty; (c) Despite legislation prohibiting slavery and all forms of forced labour, including bonded labour, and the 2001 National Policy and Plan of Action, bonded and forced labour continue to occur in many industries and the informal sector, affecting the poorest and most vulnerable children; (d) The ineffectiveness of labour inspection machinery reduces the likelihood of

⁹⁷ UN *Committee on CEDAW*, observation on report submitted by Pakistan 2005, p. 74

⁹⁸ *Ibid* p.73

⁹⁹ Article 32 of the Convention on the Rights of The Child

investigations of reports of child labour, making unlikely prosecution, conviction, or punishment for the exploitation of children in bonded labour; and (e) There are insufficient programs to identify and protect victims of forced labour, particularly bonded labour, and child labour in the informal sector including domestic work.”¹⁰⁰ The committee asked the government to “conduct a survey to assess the prevalence of child labour, and Strengthen the labour inspectorate and provide the labour inspectors with all the necessary support, including child labour expertise, with a view to enabling them to monitor effectively at the State and local levels the implementation of labour law standards and to receive, investigate and address complaints of alleged violations.”¹⁰¹

4.2 ILO’S CONVENTIONS

Pakistan is member of International Labour Organization since 1947 and has ratified eight ILO Core Labour Conventions along with other ILO’s conventions and recommendations on labour rights. Here are the relevant ILO’s instruments with the observations of relevant committees, to sport home base workers. But first it is important to discuss the Fundamental Principles on Right at Work adopted by ILO in 1998.

4.2.1 Declaration on Fundamental Principles and Rights at work

The ILO, since it’s founding in 1919, has been concerned with the rights of all workers, irrespective of where they work. This was reinforced in 1998 when the International Labor Conference unanimously adopted the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up. The Declaration on Fundamental Principle and Rights at Work constitutes a mutual obligation between member States and the ILO as well.

¹⁰⁰ UN *Committee on CRC*, concluding observations, consideration of report submitted by Pakistan 2009, para 88

¹⁰¹ *Ibid* para 90

The declaration and principles applies to all workers,¹⁰² regardless of employment relationship or of status of employment.

According to ILO, all those who work are considered as workers and have rights at work particularly freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles and rights at work have developed from the ILO Constitution and have been expressed and developed in the eight ILO Conventions deemed fundamental by the international community and the International Labour Organization, which are recognized as Core Labour Standards (CLS).

4.2.2 Freedom of association and the right to Collective Bargaining

The two fundamental Conventions dealing with freedom of association are the *Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*, and the *Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*.

The first Convention i.e. Freedom of Association and Protection to Organize guarantees the right, freely exercised, of workers and employers, without distinction what so ever, to organize for furthering and defending their interests. This convention establishes an ‘enabling’ right that empowers workers to address their any kind of problems.

The second convention of organize for collective bargain protects workers and employers who are exercising the right to organize, forbids any kind of interference in workers and employers organizations and voluntary promotes for bargain collectively.

¹⁰² ILO: *Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002, p 41

Pakistan has ratified the ILO's Convention 87 Freedom of Association and Protection of the Right to Organize in 1951. The Article 2 of the C. 87 ensures the worker's and employer's right to form or join the organization according to their own choice. The right to Freedom of Association and form trade unions is also ensured in Article 17 of the Constitution of Pakistan as "every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law". The interim IRA 2008 (Industrial Relation Ordinance 2002) is major law dealing with labour in Pakistan. The IRA 2008 (IRO 2002) address only industrial workers and those producing goods and services and present at the work place, which systematically exclude home base workers among others from the ambit of IRA 2008 (IRO 2002). The home base workers are denied to form trade union to and Collective Bargaining under IRO.

The ILO's Conference Committee has observed on the Right to Freedom of Association and Right to Organise for Collective Bargaining in Pakistan that "the law of 2002 on industrial relations did not conform to ILO Conventions Nos 87 and 98."¹⁰³ And it further pointed out that, "the new law prohibited the forming of independent trade unions and deprived more than 70 per cent of the total labour force in Pakistan of the right to collective bargaining, in flagrant violation of ILO Conventions Nos 87 and 98, which Pakistan had ratified. It was regrettable that a clear and detailed analysis of the new interim law did not appear in the report of the Committee of Experts."¹⁰⁴ The committee further added that, "the draft legislation of 2008 contained other restrictions on freedom of association. For instance, the draft law allowed employers to enter into individual contracts with workers, bypassing trade unions and thus diminishing their ability to bargain collectively."¹⁰⁵

To respect for the principle of freedom of association is fundamental principle to the ILO and its member states. The principle is enshrined in the

¹⁰³ ILCCR (individual observation), 98th session, Examination of individual case concerning C. 87 1948, Country Pakistan, ILO, 2009

¹⁰⁴ Ibid

¹⁰⁵ Ibid

ILO Constitution as well, and the states which are member of the ILO are obliged to respect it.

The Freedom of association is considered the most fundamental of labor standards. The Asian Development Bank (ADB) defines that, “even prior to the 1998 *Declaration on Fundamental Principles and Rights of Work*, this standard as defined in ILO conventions 87 and 98, was thought vital enough that all member states could be subject to complaints on the principle they embodied, regardless of ratification status.”¹⁰⁶

Therefore, there must not be any kind of doubt that, under the ILO Constitution, the ILO Declaration on Fundamental Principles and Rights at Work and the Core Labor Standards (CLS) workers who are involved in home based work whether he is self-employed, own- account or piece- rate, have the right to form trade unions or organizations.

The Director-General of the International Labour Office in his 1991 report pointed out that: “*it is only through forming and joining organizations of their own choosing that those employed in the informal sector will be able to generate sufficient pressure to bring about the necessary changes in policies, attitudes and procedures that hamper the development of the sector and the improvement of working conditions in it*”.¹⁰⁷

The supervisory bodies of ILO have confirmed this right in their several observations and reports. The CEACR has demanded that measures be taken to guarantee this right for the workers in countries where legislation denies the right to organize in the informal economy. In that case, measures be taken, particularly when a country’s legislation does not recognize workers participate in informal economy in which home based workers including self- employed workers belong to, as a ‘worker’ or some kind of regulations require prior authorization or restricts to form an organization.¹⁰⁸

The International Labor Conference (ILC) in its session 81 1994, has also confirmed that, “*There are numerous other categories of workers who are*

¹⁰⁶ Core Labour Standards Handbook, ADB, 2006, p 50

¹⁰⁷ ILO: *The dilemma of the informal sector*, Report of the Director-General, International Labour Conference, 78th Session, Geneva, 1991, p. 39.

¹⁰⁸ ILO: *Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002, p. 41

denied the right to form trade unions, either because they are excluded from the scope of labour legislations or because the legislations expressly denies them the right to organize. In particular, the committee has noted that this is often the case of domestic staff, persons working at home or in family workshops, workers in informal sector, persons working in charitable institutions, seafarers and workers in export processing zones. Since, however, convention No 87 does not exclude any of these categories, they should all be covered by the guarantees it affords and should have the right to establish and join occupational organizations. The committee has requested those countries whose legislation denies the right to organize to one or more of the above- mentioned categories to take the necessary measures to ensure that they be accorded this right.”¹⁰⁹

4.2.3 Equal Remuneration Convention, 1951

(No. 100)

In 2001, Pakistan has ratified the ILO’s C. 100, the Convention on Equal Remuneration Convention 1951. Since then the CEACR has been highlighting the importance for legislation in accordance with the Convention (C. 100).¹¹⁰ The C. 100 obliges states parties to pursue a policy of equal remuneration for men and women. The provisions of C.100 apply to all workers and the national legislation should ensure that the ‘*equal remuneration principle*’ applies to all aspects of remuneration, as defined in Article 1 and 2 of the Convention.

The CEACR observed that wage rates for categories of work predominately performed by women are not set at lower levels than the rates for male-dominated work in Pakistan.¹¹¹ On enacting equal remuneration law in Pakistan, the CEACR has asked that the “provisions intended to give effect to the Convention should give full expression to the principle of equal

¹⁰⁹ ILO: freedom of association and collective bargaining, International Labour Conference, 81st session, ILO Geneva 1994, p. 29

¹¹⁰ *Report of the Committee of Expert on the Application of Convention and Recommendation*, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 100 p 444

¹¹¹ *Ibid* p 445

remuneration for men and women for work of equal value. In particular, the provisions should not be limited to providing equal remuneration for “equal”, the “same” or “similar” work, but should also provide for equal remuneration for men and women for work that is of an entirely different nature, but which is nevertheless of equal value.”¹¹²

4.2.4 Discrimination (Employment and Occupation) Convention, (C.111) 1958

In 1961 Pakistan has ratified the ILO’s (C.111), the Convention on Discrimination (Employment and Occupation) convention 1958. The Convention obliges the states parties to ensure a national policy and laws aimed at promoting equality of opportunity and eliminating all forms of discrimination in employment and occupation on the bases of race, colour, sex, religion, political opinion, national extraction or social origin. According to ILO’s report on decent work the term ‘*employment and occupation*’ is not limited to the formal economy but it also includes the self-employed and independent workers.¹¹³

The Committee (CEACR), on observing report submitted by Pakistan, has pointed out on the equality of opportunity and treatment of men and women that “according to the Labour Force Survey 2007/2008, the labour force participation rate (refined) was 69.5 per cent for men and 19.6 per cent for women, whereas the corresponding figures for 2001–02 were 70.3 per cent for men and 14.4 per cent for women. While welcoming the progress made with regard to women’s participation in the labour force, the Committee observes that the gender differential, as regards labour force participation,

¹¹² *Report of the Committee of Expert on the Application of Convention and Recommendation*, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 100 p 444

¹¹³ ILO: *Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002,p 43

continues to be high.”¹¹⁴The Committee also pointed out that, “women’s participation rate increased in rural areas, whereas it actually decreased in urban areas. With regard to the employment status of men and women, the Committee notes from data established for 2001–02 and 2007–08, that the percentages of women being employees and own-account workers significantly decreased, combined with a gradual increase of women in the category of unpaid family workers (from 46.9 to 65 per cent). Women remain concentrated in unskilled elementary occupations or skilled agricultural work. In this context, the Committee notes the observations made by the Pakistan Workers Federation (PWF) in their communication dated 21 September 2008, stressing the need for measures to enable women to move from the informal to the formal economy, including through extending social security and minimum wages, and training and education for rural women.”¹¹⁵

The ILO’s Committee of Expert in its direct request 2010, has asked the Pakistan’s government to “provide information on the measures taken to provide labour protection to women in the informal economy. In reply, the Government generally refers to the 2009 Labour Protection Policy, which aims at extending protection to workers in the informal economy, the self-employed, contract workers, seasonal workers and home workers. The Committee requests the Government to provide information on the specific measures taken to enhance the protection of these workers, many of whom are women, and to indicate whether any consideration is being given to ratifying the Home Work Convention, 1996 (No. 177).”¹¹⁶

4.2.5 Child Labour and Minimum Age Conventions

¹¹⁴ *Report of the Committee of Expert on the Application of Convention and Recommendation*, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 111

¹¹⁵ *Report of the Committee of Expert on the Application of Convention and Recommendation*, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 111, p 446

¹¹⁶ ILO: *CEACR*, Individual direct Request concerning Discrimination (Employment and Occupation) Convention 1958, country Pakistan, submitted 2010, ILO

Pakistan has ratified the ILO's convention on the Minimum Age (industry) Convention (Revised) 1973 (C59) which fixes a minimum age for industrial employment along with other, Minimum Age Convention 1973 (C 138) and the Worst Form of Child Labour (C 182) which prohibits the child labour in hazardous work. The Constitution of Pakistan also states that no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment. In 1991 Pakistan has repealed the Employment of children Act 1938 and promulgated Employment of Children Act (ECA) 1991 to combat child labour. It prohibits employment of children under 15 from engaging in work involving specified processes that are dangerous or hazardous to the health of workers. The procedures are also established for implementation and enforcement of the ECA 1991, such as the requirement that all employers should maintain a register of particulars regarding the employment of any children under the age of fifteen.

The ILO's report on decent work states that, "even today, child labour continues to be a serious problem in many developing countries. Children have traditionally been expected to help out in farming and family enterprises as part of their socialization. Schools are often inadequate and too expensive for those below the poverty line. Abject poverty forces parents to expect their children to contribute to family survival."¹¹⁷

According to annual report published by the Human Rights Commission of Pakistan, "the prevailing financial crisis could push an increasing number of children, mainly girls, into labour force as poverty would leave no option for indigent families but to withdraw their children from school. Child labour is common in private homes, brick kilns, carpet manufacturing, workshops, restaurants and farms."¹¹⁸

The ILO's Committee of Experts points out in its report that the, "ITUC's indication that 1.2 million children were reported to work in the carpet

¹¹⁷ *ILO: Decent Work and Informal Economy*, Report VI, International Labour Conference, 90th Session, ILO Geneva, 2002, p 42

¹¹⁸ *Human Rights Commission of Pakistan*, Annual Report, 2010 p 228

industry, which is a hazardous industry. It had noted that the Pakistan Carpet Manufacturers “and Exporters” Association (PCMEA) and ILO–IPEC launched in 1998 a project to combat child labour in the carpet industry which had, so far, contributed to the withdrawal of 13,000 carpet-weaving children (83 per cent of whom were girls) from hazardous working conditions. The Committee had noted that, according to the March 2007 Technical Progress Report for the second phase of the ILO–IPEC project to combat child labour in the carpet industry, a baseline survey on child labour in the carpet weaving industry in the province of Sindh has been completed. According to this survey, there are over 25,752 carpet weaving households in the Sindh province with an estimated 33,735 carpet weaving children, out of which 24,023 are estimated to be below 14 years of age and 9,712 are between 14 and 18 years of age. The Committee had noted with *interest* that 11,933 children (8,776 girls and 3,157 boys) have been withdrawn from carpet weaving and enrolled in non-formal education.”¹¹⁹ While the Committee further states about the children working in surgical instrument industry on “the ITUC’s indication that children constitute about 15 per cent of the workforce in the surgical instruments industry, which is one of the most hazardous industries. The Committee had also noted that the ILO–IPEC, with the assistance of the Italian social partners and the Surgical Instruments Manufacturer’s Association of Pakistan, launched in 2000, a project to combat hazardous and exploitative child labour in surgical instruments manufacturing through prevention, withdrawal and rehabilitation. Under its direct action programmes, 1,496 children employed in surgical instruments production workshops had received non-formal education and pre-vocational training. The Committee had noted that this project had been extended up to 2006 to cover a larger number of children. It notes that, according to the progress report for the second phase of the ILO–IPEC project of January 2005 to May 2006, 2,033 children working in the surgical instruments industry received non-formal education through their placement in non-formal education centres or non-formal education

¹¹⁹ *Report of the Committee of Expert on the Application of Convention and Recommendation, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 182, p. 344*

cells with mobile teaching systems. The Committee had noted with *interest* that, of these children, 633 were mainstreamed from the non-formal education centres to neighboring schools, thereby withdrawn completely from work, while 137 children have left the surgical trade due to other project interventions.”¹²⁰

The Committee (CEACR) suggests the government to pursue its efforts to rehabilitate children under 18 years of age who undertake hazardous work in the carpet weaving industry and in surgical instruments industry and the government provide information on the results achieved.¹²¹

4.2.6 Labour Inspection Convention, 1947 (No. 81)

In 1953 Pakistan has ratified the ILO’s C.81 the Labour Inspection Convention 1947. The Article 1 of the Convention obliges the ratifying state that “each member of the International Labour Organization for which this convention is in force shall maintain a system of labour inspection in industrial workplace”.¹²²

The Committee (CEACR) has point out concerning the application of the Labour Inspection Convention, 1947 (No. 81) in Pakistan, that “the measures taken by the Government in cooperation with ILO–IPEC to reinforce labour inspection so as to efficiently combat child labour. The Committee had noted, however, the ITUC’s indications that the number of inspectors is insufficient, that they lack training and are reported to be open to corruption. The ITUC had added that inspections do not take place in undertakings employing less than ten employees, where most child labour occurs. The Committee notes the indication of the PWF, according to which the Government of Pakistan should take more effective measures to monitor the use of child labour in the informal sector with the cooperation of the

¹²⁰ *Report of the Committee of Expert on the Application of Convention and Recommendation, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 182, p 345*

¹²¹ Ibid

¹²² Article 1 of the Convention 81

“Independent Labour Inspection Machinery”. Furthermore, in communications sent to the Office with the Government’s report under Convention No. 81, the PWF indicated that the governments of the two largest provinces of the country, namely Sindh and Punjab, have no system for supervising the application of the legislation. According to the PWF, these governments apply a policy of not inspecting a business for one year following its establishment. The PWF, in a communication of May 2007, further indicated that in the two abovementioned provinces, inspectors may not enter a workplace without prior permission from the employer or prior notice on the employer. The Committee also noted that, in its communication of 21 September 2008, the PWF observed that the Employment of Children Act of 1991 needs to be implemented more effectively. In this regard, the PWF indicated that it held a bilateral dialogue with the Federal Minister and the provincial governments to enforce the provisions of this Act through an effective labour inspection mechanism.”¹²³ This above mention situation leads the violation of the Convention 81 which obliges the state parties to maintain system of labour inspection in industrial work place and which would examine the legal provision concerning the condition of work, protection of workers, their wages, safety, health and welfare, employment of children during their work.¹²⁴

4.3 The Kathmandu Declaration: South Asian Regional Instrument

In, October 2000, this South Asian regional policy meeting was arraigned by the United Nations Development Fund for Women (UNIFEM), the international alliance of home-based workers (HomeNet), the international network WIEGO and all of the stake holders, in Kathmandu, Nepal. The government officials from Bangladesh, India, Nepal, Pakistan and Sri Lanka have also represented their government and discussed the numbers and

¹²³ *Report of the Committee of Expert on the Application of Convention and Recommendation, Report III (Part 1A), International Labour Conference 99th Session 2010, general observation, Convention No 81, p 526*

¹²⁴ Articles 1, 2 and 3 (1) of the Convention 81

conditions of home-based workers, particularly women, in their countries and the provisions of the ILO's Convention and Recommendation on Homework. At that occasion they had drafted a joint declaration known as Kathmandu Declaration and submitted that to the Secretary General of SAARC¹²⁵ for circulation to the concern governments.¹²⁶

The Kathmandu Declaration promote the labour rights of the home based workers including right to organize, minimum remuneration, occupational health and safety, statutory social protection, maternity, child-care, skill development and literacy programmes. The declaration stresses the states to adopt the ILO's Homework Convention C177. It also emphasizes the governments to formulate Nation Policy and Plan of Action in consultation with the all stake holders. The declaration also suggests to governments to gather the statistics and data regarding the workers engaged in informal economy particularly Home based workers.

4.4 The Constitution of Pakistan and Fundamental Rights

The 1973 Constitution of Pakistan contains a wide range of human rights and labour rights provisions. The Articles 8 to Article 28 of the Constitution of offers the Fundamental Rights to all of the citizens, women as well as men, and all people temporarily or permanently in Pakistan. Article 11 of the Constitution prohibits all forms of slavery, forced and child labour and it categorically states that no child shall be engaged in hazardous employment; Article 17 ensures the fundamental right to the freedom of association and the right to form trade union; Article 18 provides the right to entre upon any lawful profession or occupation to all of the citizens; Article 25 ensures the equality before the law and prohibits discrimination on the grounds of sex alone.

¹²⁵ *South Asian Association for Regional Cooperation*

¹²⁶ Martha Alter et al. *Supporting Workers in the Informal Economy: A Policy Framework*, ILO Geneva, 2002, p 36

The Article 37 obliges the states that it should promote '*social justice*' and the state should take special measures to promote the economic interests of the backward classes and areas and it also obliges the government to make provision for securing '*just and humane conditions*' of work, ensuring that children and women are not employed in occupations unsuited to their age or sex, and for maternity benefits for women in employment. The Article 38 obliges the state to take measures to '*promote social and economic*' well being of the people.

Conclusion

The purpose of this study was to examine to what extent Pakistan labour legislations protects the rights of home based workers and to what extent labour laws are effective to provide fundamental labour rights to home based women workers in Pakistan. The research findings contributed a wealth of information on and insight into the issues and problems of these workers and human rights of women workers. It also provides the understanding of labour and administrative initiatives taken by the government of Pakistan on fundamental labour rights.

In the final part, I would like to briefly point out the outcome of my study so that a conclusion could be drawn, and some of the recommendations could be made.

Findings

The findings of this study can be divided into two categories; main findings; and specific findings.

In the category of main findings, it is clearly evident that the main labour laws which define the workers and give fundamental labour rights to workers, specifically the Industrial Relation Ordinance and Factories Act 1934 along with labour legislations are insufficient to provide all of the workers and particularly home base workers, their labour rights, even these labour laws restrict, confine or hinder workers fundamental labour rights. The labour policies and administrative measures taken to ensure rights of workers exclude home based women workers which constitute huge number of work force in Pakistan and have a significant role in country's economy.

The main findings are pointed out as under:

- The IRA 2008 (IRO 2002) is an interim law which recognize only employee and it does not recognize workers. In this regard more

than 73 per cent work force remains outside of scope of the IRA 2008 (IRO 2002).

- Some of the provisions of the factories Act 1934 systematically, favor employers and establishments, and some of the categories of workers stay outside of the ambit of the Factories Act. In this regard these workers are deprived of their labour rights.
- The labour rights and working conditions of the home-based workers are not regulated by any law or existing labour regulation. The legal and social protection, social security coverage, minimum wages, provision of safety and health services and also other social benefits are not extended to the informal sector, including the home-based sector. Therefore, these workers specifically home based women workers are unable to access the services, facilities, rights and benefits, including a fair remuneration according to national laws.

Suggestions on main Findings

- Pakistan is member of UN and ILO, and has ratified human and labour rights instrument, the government is oblige to ensure and take measures according to international human rights and international labour rights instruments. It is violation of the UN and ILO's instruments by not providing legal protection to home based workers. The government must ensure the fundamental rights of all workers particularly home based workers.
- The government must define the home-based workers as a special category of workers that includes everyone working within their home or any other premises of his or her choice but excluding the premises of the employers or contractor's workplace. It should cover a person who is self-employed or does piece rate, own account or contract work, which results in a product or services as specified by the employer or contractor or who so ever hire them.

Moreover, the specific findings of the study are that:

- The fundamental rights specifically right to freedom of association to bargain collectively is most essential, the IRA 2008 (IRO 2002) has not been quite effective and it restricts the home based workers right to trade union directly, indirectly and systematically. This is the violation of international labour rights and national constitutional provision.
- Despite the relevant constitutional provisions and international commitment to protect, promote and to fulfill human rights, Pakistan has not been able to address the issues relating to human rights basis of labour relations.
- The study shows that the provisions of Factories Act 1934 also hindered the right to trade union to home base workers for bargain collectively and for protection of their interests.
- The study also indicates that there is a lack of effective labour inspections mechanism to combat and eradicate ‘child labour’ and, ‘health and safety’ issues relating to home base work and there is a need to develop and take immediate legislative measures especially in the two provinces i.e. Punjab and Sindh. There is also need to take administrative and legislative measures to eradicate corruption in the labour inspection system for better implementation of labour laws.
- The study points out that there is discrimination on the basis of employment and occupation, there are huge number of women engaged in the home base work and the government did has not taken legal and administrative measures to protect these workers.
- The study indicates that, poverty is one of main factor which leads the families including women and children to engaging in informal economy and particularly work at home. In this situation these

workers work more than their physical capacity and earn less, or earn just for their survival.

Suggestion on specific findings

- Despite the suggestions of ILO's committee CEACR and adopting of the Katmandu Declaration Pakistan has not ratified the ILO's convention C. 177 the Home work convention. Pakistan should ratify the ILO's convention C. 177 and implement Recommendation R 184. And take legislative measures to ensure the rights of the home based workers.
- Pakistan is member of ILO' and has ratified it's all eights of Core Labour Standards, however Pakistan must have to ratify ILO's other labour conventions and recommendations which provide the labour rights to all of the categories of workers particularly home base workers. In this regard, Pakistan must implement ILO's Employment relationship Recommendations R. 198.
- The government must legislate or amend existing labor laws according to international human and labour rights conventions and must 'fulfill' its duty as according to international human and labour rights conventions.
- Study also shows that often Pakistan could not submit repot or Pakistan's repots due was not submitted on time before the relevant UN and ILO's committees, being a member of UN and ILO Pakistan is oblige to submit its reports on time. Pakistan must have to give consideration on this issue as well.

Recommendations

The study also indicates that some of the NGO's and trade unions are involve to highlight the problems of these workers particularly women worker by rising their voices in Pakistan and across the world. These

organizations are sporting and organizing these workers and putting pressure on government to recognize them as workers.

The study indicates that the huge numbers of children particularly female children are involved in home base work as an unpaid family helpers. Moreover, it is clearly evident that women and girls in poor households suffer an excessive share of the burden of poverty. One of the main reasons of their deprivation is lack of legal protection, including restricted mobility, lack of education and training, lower access to or ownership of resources and assets, and limited access to credit and social services. Consequently Pakistani women have less participation in decision making in all spheres of life from family to state. To cope with this situation women home workers should be recognized as workers. They must be valued as producers of goods and there is need to increase their skill development, training, improve technologies, and provide direct access to credit schemes and the market. These workers should also be adequately seen in national statistics and recognized as workers in the labour laws of the country for their social, economic and legal protection.

The study also indicates that, the markets are rapidly changing due to the process of globalization and there are new opportunities as a result of trade liberalization. The employers' take benefits of these home based workers because these workers provide cheap labour in international supply chain. For instance, women home-based workers engage in footballs in Pakistan. The home based workers are not able to reach these markets because they are excluded, isolated, immobile and do not have appropriate market information or have a limited or less access to credit schemes.

The government is oblige to protect and mainstream home based workers in national policies and programmes in order to attain greater human security including economic security to meet basic needs and to deal with risks and vulnerabilities, while still ensuring their visibility and participation.

Furthermore, the state's mechanisms which monitor the working conditions and provide workers their rights need revamping and strengthening to protect the rights of the workers. To cope with incompetence of government machinery and the ineffectiveness or inadequateness of the legislative and administrative measures, a comprehensive strategy, a plan of action and a comprehensive, short and long term policy is needed to protect the rights of all of the workers in Pakistan. Thereby, the following tentative suggestions and recommendations are to be offered for the legal and social protection of the home based workers in the country:

- Economic and social strategies, plans and policies should be developed for the well being of the home based women workers.
- Measures should be taken for the increase of wages, and minimum wages should be set for the home base workers as well.
- The social benefits, social security schemes, health and medical converge; pension benefits or old age benefits and so on should be provided.
- Access should be granted to the micro credits schemes, or special micro credit schemes should be launched for the home based workers.
- The free vocational and technical education should be provided for skill development, to the home base workers to enhance their skills.
- The compulsory, free and quality education system should be provided to the children of home based workers especially to girls. It is important to combat child labour.
- The awareness raising campaigns and capacity building projects should be launched to improve the social and economic well being of the home based women workers.
- Mechanism of Corporate Social Responsibility should be developed.

Final Remarks

Pakistan is a democratic state; unfortunately long terms of regimes of dictators have violated the constitution of Pakistan and infringe fundamental human rights as well as try to convert democracy into 'theocracy'. Now there is democratic government and it is need to strengthen the democracy in country. Thereby, here are some of the suggestions as under:

- The government should amend existing laws in accordance with human rights provision mention in the Constitution of Pakistan.
- The Pakistan's constitution guarantees the human rights to all of the individuals living permanently or temporarily in Pakistan, government should adopt policies and take legislative as well as administrative measures to provide human rights to all of the individuals.
- The Pakistan's constitution guarantees the 'social justice', (it is also a main theme of ILO) which directs and obliges the government to adopt plan and policies to promote social justice.
- The constitution also guarantees the democracy in Pakistan, the prevalence of social justice is important to strengthen the democracy.
- To attain the standards of 'equality' and 'equal treatment' among individuals living in Pakistan it is also important that government should take legislative and administrative measures, to promote equality and eradicate discriminatory provisions, in existing laws
- Pakistan is member of UN and ILO these organizations have adopted so many international human rights instruments Pakistan has already ratify some of the important international human rights instruments. However, Pakistan did not ratify some of the important instruments. Pakistan is democratic state; its constitution guarantees the human rights and social justice to all individuals, to

strengthening the democracy, prevalence of the social justice and equality, and to protect the human and labour rights it is important for Pakistan to, ratify Human Rights Conventions, particularly the International Covenant on Civil and Political Rights ICCPR.

Bibliography

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