Assessing the Impact of Labour Policy of 1972 on Industrial Relations in Pakistan

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Good governance plays a vital role in uplifting and ameliorating the livelihood, lifestyle and life standard of citizens. But, unfortunately, it has been one of the biggest concerns in Pakistan since its inception. The interrupted democratic system, lack of accountability, corruption, and absence of rule of law have been major hurdles in the way of good governance in Pakistan. In addition to them, incompetent politicians and bureaucracy, unfair recruitment system, and an absence of accountability across the board have affected the efficient service delivery to the masses. Pakistan cannot fulfil its aspirations of future with this plight. Therefore, Pakistan has to take some concrete steps in order to ensure political stability, transparency, fast public service delivery, and responsiveness in its state institutions. For this, it must control the scourge of corruption, abuse of power, unfairness in its institutions by devising a proper mechanism of transparency and accountability.

Introduction

The genesis of a labour policy lies in the fact that the government has to derive its approach and vision encompassing harmonious industrial relations. All the future actions of the government i.e. judicial, administrative and legislative depend on the labour policy. So, from the dawn of emancipation from colonial clutches in 1947, six labour policies have been tried i.e. 1955, 1959, 1969, 1972, 2002 and 2010. In post independence era, the nascent state of Pakistan remained without any formal labour policy for about eight years. Like other limps of the government, the domain of labour had to depend on the piece work already undertaken its predecessor British Government in India. Actually, the Government of India had already taken up a programme, as a result of that initiative; a five years strategy was devised to ameliorate the status of the workers after soliciting the approval of relevant bodies in Pakistan. So, the first Labour Policy of 1955 remained a dead letter and could not bring about envisioned out come due to, inter alia, political instability in the country.

Constitutional Perspectives

Under chapter-II of the constitution of 1956, the labour was guaranteed the equality before law and was held to be treated fairly in terms of equality and protection of law[1]. Moreover, no individual was to be treated detrimentally to his life and liberty but in accordance with law.[2] Right of speech and expression was also acknowledged to be the fundamental right of the workers subject to those reasonable restrictions which might be prescribed by framing law under the garb of security of Pakistan, friendly relation with other countries, public order, decency and morality[3]. The state was also entitled to impose restriction on such right under the premise of contempting the court, defaming or inciting to offence[4]. Likewise, citizens (including workers) had a right of assemblage in a peaceful manner without arms[5]. However, as per policy, the state reserved the power to impose restrictions by enacting law under the garb of public order[6]. More importantly, the late constitution also guaranteed the freedom to associate by forming associations and trade unions but under such restrictions which might be prescribed, by framing law, in the interest of public order or morality[7]. The slavery and forced labour in any form was totally proscribed[8]. The state, however, reserved the authority to demand compulsory services from any citizen in public interest[9].

The Constitution of 1962

Like its predecessor, the constitution of 1962 also assured various initiatives for the uplift of the workers. Albeit, at the time of commencement, fundamental rights were not provided in it, but as a result in the wake of an amendment, the same were incorporated in the constitution. The principle of equality was retained under the new constitutional arrangements[10]. Freedom of expression was also ensured but the areas of restrictions to be imposed by law were broadened[11]. For instance, the areas like prevention of commission of offence, grant of privilege, in proper cases, to a particular proceeding and protection of persons against any attack on their reputation were missing in previous constitution[12]. The right of assemblage of the citizens, peacefully and without arms, and freedom to form association or trade union was also included as fundamental right[13]. But, like freedom of expression, the area of a restriction was expended by including therein the security of Pakistan, prevention of commission of offence, decency, morality and protection of persons in respect of their health or property[14]. Although, the fundamental rights could find place onto the constitution at a later stage but the initiative seemed as if had been bogged in as it happened to enhance the list of fundamental rights. Protection against forced labour was retained as fundamental right of the citizens but besides allowing it in the public interest, it was also permitted as a punishment for an offence against the state[15].

In chapter-III of the constitution of 1956, policy of the state was stated as a symbol of futuristic strategy. Although these principles, unlike fundamental rights, cannot be enforced in any court of law but as stated earlier, they depict the vision of the state as to different social issues. In the said constitution, principles of state policy encompassing the labour were as under;

Under Article 28 of the constitution of 1956, the state undertook to ensure enabling working condition to the workers specifically, to ensure that the children and the female were not engaged in a profession which would not commensurate to their sex and age. Moreover, as a state policy, the state had to concentrate on ensuring maternity benefits to the female workers. Similarly, the state had pledged to create employment opportunities by way of industrial development.

Under Article 29 of the late constitution, the state policy was to secure the well being of the people by; (a) free of discrimination based on creed, care or caste; by elevating the standard of living of an ordinary man; by discouraging the accumulation sources and resources in few hands and by guaranteeing equitable adjustment of rights amongst the employees, employers and the tenants. The state was obliged to extend to entire citizenry, within the size of the sources, opportunities of employment, decent livelihood and proper leisure and rest. The state also took upon to extend social security to entire workforce both in public or private sector by way of social insurance or any other way.

In Pakistan, the constitutional landscape appears to be tight fisted in making any expressing provision encompassing the various aspects of proletariat class. A careful perusal of the constitution reveals that general provisions have been made in this regard. For instance, state has to ensure prompt elimination of any form of exploitation from the society and systematic accomplishment of the principle of payment from each according to his affordability, to each according to his work[16]. Similarly, forced labour in any shape has been proscribed and children below the age of sixteen year would not be employed in any factory, mine or other dangerous profession[17].

As a mark of futuristic, promotion of educational and economical interests, making arrangements for just and decent conditions of work, guaranteeing that chaps and females are not engaged in employments unmatched to their sex or age and availability of maternity advantages for the female workers during their employment have been regarded to be the constitutional features of the state policy[18]. On the same pattern, the state has set as its policy to ensure the furtherance of social and economic uplift of its masses by securing their well being, by elevating their style of living, by discouraging the accumulation of capital.

In Pakistan, almost all the labour policies have been situational in nature. Principally, they have been in quest of welfare of the proletariats and maintenance of industrial peace. In the ensuing narration, successes and failures of the rulers shall be weighed in the light of rhetorics and initiatives taken as a result of the policy. However, before embarking upon the dogmatic synthesis of various aspects of the policy, it is expedient to lay down the salient points of the said policy. The policy, *inter alia*, emphasized on the following points; (a) commencement of group incentive scheme, (b) establishment of National Industrial Relations Commission, (c) promotion of legitimate unionism (d) seeking help all the stake holders, (e) protection from victimization and dealing with the instances of unfair labour practices on part of either of the parties, and (f) linkage of wages with the prices.

Being a main stream political party, it was incumbent upon the Pakistan People's Party to materialize its rhetoric and to what extent it had succeeded? This can be gauged from a narration made by the Government while announcing new Labour Policy in 2002. It was frankly confessed by the then government that the labour policy of 1972 entailed labour reforms of far reaching consequences on legislative frontier[19]. Specifically, "Labour Laws (Amendment) Ordinance (XI of 1972)", "Industrial Relations (Amendment) Ordinance (KLVIII, 1972)", and "Industrial Relations (Amendment) Act XXIX of 1973" brought about revolutionary changes on the legislative frontiers. So, in coming sections of this paper, some principal laws encompassing various aspects of the workers in Pakistan shall be focused in the light of the rhetorics made in the labour policy. As a first step, the impact of labour policy on the "Industrial and Commercial Employment (Standing Orders) Ordinance, 1968", a pre-partition enactment, shall be examined.

Status of a badly worker, who hitherto had carried no weight, had been enhanced through an amendment[20] by including him in the category of the permanent worker provided he had rendered a continuous service of three moths or one hundred and eighty three days in any span of twelve consecutive months. Similarly, the inclusion of apprentice in the inventory of workers turned out to be a panacea and brought about solace for the apprentices[21]. Added to the above was another blessing in the form of insertion of Standing Order No. 2-A which made it obligatory for the employer of every industrial and commercial establishment to an appointment, promotion or the transfer order in writing incorporating therein, clearly, all conditionalities attached with the service of the worker[22]. Moreover, it was owing to a pledge made in the labour policy that the workers of industrial and commercial establishments were held to be entitled to, with pay, certain categories of holidays[23]. Besides these benevolent legislative initiatives, insertion of Standing Orders No. 10-A[24], 10-B[25] and 10-C[26] are considered to be the most revolutionary outcome of the labour policy.

Standing Order 10-A was introduced with the urge to yield more production by tagging certain incentives, in the form of extra wages, extra wages with leave or only with leave, with the scheme. However, the applicability of the Standing Order was confined to only the Industrial Establishments recruiting minimally fifty workers. The motive behind the introduction of Standing Order 10-B was to ensure security to the worker against the oddities which didn't come within the purview of the Workmen's Compensation Act, 1923. The initiative, practically, had overburdened the employer by obligating that not only the employer had to get all the permanent workers compulsorily insured but had to bear all the administrative expenses and amount of premium as well[27]. In case of failure to do so, the employer would be responsible to pay, in even of his demise, to the heirs of the deceased worker and in case he sustains injury, to the worker, such amount of compensation as would have been paid by the insurance organization had the worker been insured[28]. It is equally relevant to mention that Standing Order 10-B (4) was inserted in 1974[29]. It should not lose sight that the benefit of Standing

Order 10-B was confined to only permanent workers. Unfortunately, rest of the categories of the workers could not get the benefit of the initiative.

Conferment of profit bonus was another benevolence that was bestowed upon the workers as a result of the undertaking executed in the labour policy. As a concomitant of legislative refurbishment, Standing Order 10-C[30] was incorporated which obliged the employers to share the profit of establishment with the workers, within three months of the end of year[31], in consonance with the yardstick and extent provided under the said Standing Order. Notwithstanding the receipt of any other bonus, it was also reiterated that the workers would be entitled to receive the profit bonus in line with the scale chalked out under the said standing order. Addition of Standing Order 11-A was another startling step which curtailed the powers of the employers as to the closure of the whole establishment or termination of employment of more than 50% of the workers without prior permission of the Labour Court[32].

Unlike previous legislative arrangements, the explanation to the said Standing Order extended the scope of word closure of establishment by adding that the term included the laying off of the workmen beyond the period of fourteen days if the layoff was the result of closure of establishment[33]. The insertion of Standing Order 11-A can be safely termed as an efficacious measure on the part of Government as the same has provided a safety valve against the fanciful closures and capricious terminations by the employers. The labour Court has nothing to do except to scrutinize the excuses resorted to by the employers for the closure of establishment of termination of employment of more than 50% of the workforce.

Next in queue was the substitution of Standing Order 12. Before venturing upon the detailed examination of the Standing Order, it is relevant to say that almost four years after its promulgation; the Standing Order No.12 was completely substituted for the original[34] and thereafter, went through lot amendments in 1973 and 1974. For instance, in case of termination, removal, retrenchment, discharge or dismissal the aggrieved could take action as envisaged under section 25-A of the Industrial Relations Ordinance, 1969[35]. Originally, the amount of gratuity to be paid such worker was to be paid equal to 'fifteen' days wages for every completed year of his employment but as a result of amendment that was substituted by 'twenty'[36]. Similarly, prior to amendment such wages were to be computed based on the wages earned by the said worker during last three months of his service but as a result of amendment, that was reduced to the wages earned by such worker during the last month of his service[37]. Addition of clauses 8 and 9 to the Standing Order No.12 could be termed as the most benevolent initiative in post policy era whereby, in case of death of a worker, his dependents were held to be entitled to receive gratuity in accordance with clause 6 of the Order and all the disputes pertaining to the deposit/ payment or disbursement of gratuity would be adjudicated upon by the Commissioner of Compensation[38].

Furthermore, by the insertion of a proviso to Standing Order 14, status of seasonal workers, to be terminated in one season, was secured by obliging the employers to give preference to such workers over the fresh recruitments in ensuing season[39]

provided that such workers would joint their duties within ten days of the resumption of work. The position of the workers working in seasonal factories was further galvanized by adding another proviso to the Standing Order No.14[40]. So, by virtue of new arrangements, the employer was enjoined upon to issue a notice to the retrenched worker, his on last known address as to the fact of resumption of work in the factory, maximumly ten days before the start of work. In case, such worker responded positively, within specified period, he would be given preference for recruitment. Another fascinating feature of the policy was the insertion of special provision relating to workers associated with the construction industry. Thus, in case of retrenchment of a worker associated with construction industry, the contractor/ employer was obliged to give preference in employment to such worker against new project provided that the work was undertaken within one year of his retrenchment or discharge[41]. Countervailing advantage accruing to such worker was the continuation of service if such re-employment was made within one month of the retrenchment or discharge but no payment for such interruption was to be made to the worker[42]. Similarly, as a result of pledges demonstrated in the labour policy, three amendments were incorporated in Stating Order No.15 which basically encompassed various aspects of disciplinary proceedings to be initiated against any delinquent worker. In Standing Order No.15 (4), before making any dismissal orders against the accused worker, it was made incumbent upon the employer to inform the said worker of alleged misconduct within one month of such misconduct or within one month of such misconduct coming in the notice of the employer[43]. Addition of proviso to Standing Order No. 15(4) may be reckoned of immense assistance and benefit of the worker who has to face an inquiry under this Standing Order. As majority of the workers in an establishment happen to be uneducated and thus are unable to understand the intricacies of the law, therefore, in this quagmire situation, the accused worker may seek the assistance of any of his fellow workers. Such arrangement, it is submitted, may infuse not only confidence in the worker but will be essentially efficacious in eroding sense of any apprehension.

Similarly, the concept of *sine die* suspension of the accused worker was also countermanded by an amendment in Standing Order No.15 (5). As per new arrangements, maximum period of total suspension would not be more than four weeks unless the case was *sub judice* before any of the legal fora[44]. Obviously, the avowed object behind the amendment was to whittle down the pains and miseries through which the accused worker had to pass as a result of protracted suspensions. Lastly, Standing Orders No.17[45] and 18[46] were omitted by virtue of two amendments in 1972.

Promulgation of Employees' Old-Age Benefits Act, 1976 coupled with Employees' Old-Age Rules, 1976, The Employees Old-Age Benefits (Contributions) Rules, 1976, Employees Old-Age Benefits (Registration of Employers and Injured Persons) Rules, 1976, Employees Old-Age Benefits (Audit and Accounts) Rules, 1977,Employees Old-Age Benefits (Board of Trustees) Rules, 1977, Employees Old-Age Benefits (Investment) Rules, 1979, Employees'

Old-Age Benefits (General) Regulations, 1980 and Employees' Old-Age Benefits (Payment of Invalidity Allowance) Regulations, 1981, Employees Old-Age Benefits (Determination of Complaints, Questions and Disputes) Regulations, 1980, Employees Old-Age Benefits (Determination of Wages for Computation of Contribution) Regulations, 1980 may be reckoned as another hallmark of the policy. It is equally important to mention that, till date, the Act has been excessively amended to make it more exhaustive, benevolent and efficacious for the workers and in order to carry on the purposes of the Act, the promulgation of rules can aptly be said to be a sincere step on the part of the Government. The notion of "welfare state", contemplated in the constitution, could only be materialized if the state could make timely interventions in the society to provide assistance to the have-nots[47]. This could be manifested by providing free education, social insurance to the laid off workers and pension to the superannuated[48]. Promulgation and periodic refurbishment of the enactment pertaining to the Employee Old-Age Benefits seems to be in line with the rhetoric made by the architect of the labour policy and in tone, as well, with the constitution of 1973. The Act not only dreamt up various types of pensions[49] but also ensured robust arrangements for the safety of the amount contributed by the employer and the employee. In case of default, the amount is to be recovered by making recourse to some prescribed coercive measures envisaged for the recovery of arrears of land revenue[50]. Similarly, non-payment of required amount, withholding of any contribution and concealment of any information would entail legal consequences in the form of imprisonment or fine or both[51].

Coming of the family of natural rights and having originated from the soil of Germany in 1883, the right to social security is an integral part of almost all international instruments. The International Labour Organisation, it is submitted, has been instrumental in devising such instruments[52]. Being cognizant of its importance, Pakistan has not only ratified the conventions pertaining to the social security but also reiterated her pledges in the Labour Policy to take initiatives for bringing its indigenous legislation in consonance with the bench marks set out in the instruments. The appreciable aspect of the episode was that the Policy under discussion was announced by a Government led by Pakistan People's Party, which had assumed the power under the guise of socialistic agenda presumably a pro-labour agenda.

Further, in compliance with the provisions of the Workers Welfare Fund Ordinance, 1971[53], Workers' Welfare Fund Rules were framed. Employees Cost of Living (Relief) Act 1973, Employees Cost of Living (Relief) (Amendment) Act, 1977, Newspaper Employees (Conditions of Service) Act, 1973 can be quoted as measures in line with the pledges made by the government in the labour policy.

As a concomitant of ministerial rhetoric manifested in the labour policy, the process of legislative refurbishment remained in vogue in the post policy era. Being the sixth most populated country in the world[54], agriculture sector accommodates the major portion of the total workforce in Pakistan. According to survey reports, in the fiscal year 2014-15, this sector accommodated 42% of the

entire workforce engaged in informal sector. But, unfortunately, the labourers engaged in this segment of the economy had been deprived of the blanket coverage of almost all labour laws in the country. Likewise, a reasonable chunk of the labour earns its livelihood by being engaged in domestic service but unfortunately, no attention could be focused on the amelioration of such workers as well.

Albeit, the Industrial Relations Ordinance, 1969 was enacted before the announcement of policy but, as a result of generous promises made in the policy, a chain of amendments was introduced in the Ordinance. Notwithstanding the promulgation of the Ordinance in an unconstitutional era, the same had been held to be a valid piece of legislation under the garb of necessity[55]. In this context, Labour Laws (Amendment) Ordinance, (IX of1972), Industrial Relations (Amendment) Ordinance, (KLVIII of 1972), Industrial Relations (Amendment) Act (XXIX of 1972), Act XXIX of 1973, Act XVI of 1976, Act XI of 1976, Labour Laws (Amendment) Ordinance (IX of 1977), Industrial Relations (First Amendment) Ordinance, 1979, Industrial Relations (Second Amendment) Ordinance, 1979 have been instrumental in refurbishing the Ordinance. Admittedly, various sections of the Ordinance were amended to bring it in line with the ratified conventions but, it should not lose sight, at the same time some initiatives were taken which not only retarded the pace of harmonious industrial relations but eroded the confidence of the workers as well. For instance, introduction of the concept of collective bargaining units was viewed by the workers as an attempt to discourage unionism at branch level. Similarly, by inserting section 3-A, the formation of trade unions in the establishment of Pakistan International Airlines Corporations was outlawed[56]. Above all, imposition of Martial Law in 1977 added insult to the injuries by proscribing the open public meetings and gathering, except the religious congregations and marriage processions, without written permission of the Martial Law Administrator concerned and omission would entail penalty in the form of rigorous imprisonment upto 7 years, fine and/or whipping not exceeding to stripes[57]. Similarly, all activities pertaining to trade unions including strikes and lock-outs were banned and the employers were directed neither to make recourse to lock out nor retrenchment, lay off nor victimization of the workers vide an order issued by the Martial Law authorities in Punjab[58]. Further, the Order, enjoined upon the workers to carry on the work with full zeal and dedication and any deviation from the prescribed course would entail disciplinary action[59]. Likewise, in Sindh, all the activities pertaining to trade unions, hoisting of flags of political parties and use of loud speakers except for Azan and Juma Khutba were banned and guilty was to be prosecuted under the Martial Law[60].

It is equally benefitting to examine the legislative changes brought about in the Industrial Relations Ordinance, 1969 as a result of labour policy. It is important due to a couple of reasons; firstly, it would be helpful in dispelling the doubts which had arisen that the Ordinance was child brain of dictators and secondly, it would be instrumental in gauging the successes and achievements as to the rhetorics made in the policy. As a result of amendment, dual membership was

proscribed[61]. As a prerequisite of for registration, clauses IV-a, iv-b were added whereby it was enjoined upon the applicant union to mention in its application the name of the establishment, group of establishment of the industry in which the trade was formed[62]. Three years later, another amendment was introduced which obligated the applicant union to mention detail of entire workforce employed in the establishment[63]. Similarly, such union was also obligated to give full description of the unions already registered in the establishment, group of establishments or the industry[64]. Likewise, the legal provisions relating to constitution of the trade union were also refurbished by making therein certain amendments. For Instance, it was binding to mention the number of person forming the Executive Body of the union which would not exceed the limit fixed by framing rules and the union could accommodate only twenty five percent from the outside[65]. Resultantly, by the addition of clauses j, k and l, every applicant union was obliged to mention in its constitution the manner of election of its office holders and the term for which the office bearers were entitled to hold offices; the procedure to be followed for showing want of confidence in any of its office bearers and the intervals within which the meetings of the bodies were to be held[66]. However, minimally, every registered union was bound to convene the meeting of General Body once in a year and the Executive Body once after every three months[67].

The provision, unequivocally, spoke of the accountability of the union leaders. It is a matter of common observation that after getting themselves elected, the union leaders frequently, either become figureheads or try to misuse their status. Resultantly, the issues relating to the workers remain unsettled. So, the provisions relating to convening meetings of the bodies and possibility of showing want of trust in any of the office bearers seem to be a pragmatic step towards making the works powerful. In 1976, by way of another amendment, sub-section 2 was added to the section 6 whereby the membership a union was confined to the persons who were actually employed or engaged in the establishment in which the union was formed[68]. Likewise, in case of existence of two or more registered trade unions in the establishment, the new applicant would not be entitled to registration unless it showed that it had one-fifth of entire workforce of the establishment as its members[69]. Although, the assertion of the provisions was not taken by the workers with an open heart and paved the way to dismay and reservations but, in reality, it turned out to be instrumental in purging the rank and file of the outsiders professional who had been, in order to grind their own axe, exploiting the workers. Similarly, the restriction of showing one-fifth of total workforce as its members proved to be a potent tool in preventing the mushroom growth of the unions.

After the enforcement of the Ordinance in 1969, it was soon realized that the time line prescribed for the finalization of registration process by the Registrar was cutting across the object behind the promulgation of the Ordinance. So, in order to make it acceptable to all stake holders, various amendments were introduced in the Industrial Relations Ordinance, 1969. For instance, in case the Registrar was satisfied that the applicant union had complied with all legal requirements, he would be obliged to grant certificate of registration within fifteen days instead of

sixty days from the date of receipt of application[70]. In case the application was returned with objections and the aggrieved union had resubmitted it after removing the objections, the Registrar was obliged to issue certificate of registration within three days of the date of removing the objections[71]. Initially, no remedy was available in case the disposal of application was delayed beyond the prescribed period. It was owing to an amendment in 1973 that in case of delayed disposal or Registrar's reluctance to issue certificate of registration, the aggrieved party was entitled to lodge an appeal before the Labour Court[72].

As stated earlier that the Industrial Relations Ordinance, 1969 was promulgated during Martial law era but as a result of high exhortations and fascinating promises made by the civilian government in its labour policy, it had to amend the Ordinance to purge it of its dictatorial flavors. As a sequel of this move, every registered union was obliged to communicate to the Registrar, within fifteen days, every amendment in the constitution and change in its office bearers[73]. The Registrar had to examine if the alleged amendment or change in office bearers was within the legislative ambit or not?[74] In case, the amendment or change in office bearers was found to be contrary to the law or the constitution of the union, the same was liable to be set aside by the registrar[75]. However, in case of dispute as to change in office bearers or the union was aggrieved by decision of the Registrar as to amendment in the constitution; it would be entitled to lodge an appeal before appellate forum which would decide the issue within a period of seven days of the receipt of appeal asking the Registrar either to accept the change in office bearers or the change in the constitution or direct him to hold fresh elections[76]. Insertion of these provisions turned out to be panacea for maintaining coherence between the union and Registrar's office.

Victimization of the workers by the employers was another area of acute concern. The employers, in order to discourage the workers to take part in the activities of the unions, used to make recourse to various tactics including the transfers or dismissals of the workers, diluting thereby the strength of the workers. As a corollary of ramification, adequate protection was extended to the officers of the trade unions by inserting section 8-A in the Ordinance. As a result of new arrangements, no employer could transfer, dismiss, discharge or otherwise punish the officers of a trade union without obtaining previous authorisation of the Registrar during the pendency of application provided that the union had conveyed the names of its office bearers to the employer[77]. The provision not only inculcated sense of protection in the workers but equally turned out to be instrumental in furthering healthy unionism in the country. Similarly, provisions relating to the cancellation of registration were also revamped by inserting that the registration of a trade union was liable to be cancelled if such union was registered in contravention of the provisions of the Industrial Relations Ordinance, 1969[78]. It is noteworthy that at the time of enforcement of the Ordinance, there was only one forum to be invoked for the cancellation of registration but as a result of an amendment in 1975, the Registrar of the Trade Unions, after holding such inquiry

as he would consider necessary, was also authorised to cancel the registration if such union was found to be dissolved or ceased to exist[79].

Originally, in case of cancellation of its registration, the aggrieved union could have filed its appeal before the Labour Appellate Tribunal, but as a result of an amendment in 1975, the appellate powers were devolved on the labour court as well. So, in case the order of cancellation was passed by the Registrar, the aggrieved union could have filed the appeal before the Labour Court[80]. The amendment, it is submitted, happened to serve a couple of purposes; firstly, it lessened the workload of the Tribunal and secondly, it provided another forum to the workers for the redressal of their grievances. Registrar of the Trade Union occupies a very pivotal place in labour administration; therefore, efforts were also made to reinforce this position. For instance, at the time of enforcement of the Ordinance, the provisions encompassing the Registrar had a narrow ambit but in the wake of an amendment in 1975, the circle of his powers was broadened. Initially, the Registrar was authorised to lodge complaint only against a delinquent Union but after the amendment, he could lodge or authorise a person to file a complaint against a trade union, employer, worker or other person not only for the commission of unfair labour practice but also for any violation of the law and utilizing the finances in violation of its constitution[81]. As a sequel of move for the refurbishment, the Registrar was conferred with more powers by inserting a new clause under section 13 of the Ordinance. The Registrar, by virtue of the amendment, was authorised not only to examine the accounts and record of all registered trade unions but also to initiate inquiry or investigation, as per his whim and caprice, either himself or through any subordinate officer[82].

Lord Acton has aptly coined that the "power tends to corrupt and absolute power corrupts absolutely". The quote is equally applicable in the world of work. Albeit, on small scale, but the rift for power between the employer and the workers can be seen from small unit to a huge enterprise. Sometimes, it springs as a skirmish and escalates to such an alarming degree that either the employer has to close down the establishment or the union has to observe the strike. In Pakistan, the legislature was cognizant of salty effects of such odd situation, therefore, at the very outset, as a precautionary measure, it had made pragmatic arrangements in all legislations pertaining to industrial relations and outlawed certain acts, on the part of either of them, by declaring them to be unfair labour practices. Under the first law[83], the ambit of the acts and omissions constituting the unfair labour practices on the part of either of the parties was miserably narrow but under the succeeding legislation on Industrial Relations in 1968 and 1969, albeit the same was widened but the acts and omissions constituting unfair labour practices under the preceding law were totally discarded and a new inventory of the actions forming unfair labour practices was evolved. Undoubtedly, the new arrangements were efficacious for the furtherance of trade unionism in the country but the subsequent amendments incorporated as a result of labour policy had sufficiently purged the law, relating to unfair labour practices, of the impurities which might have hindered the flourishment of healthy trade unionism in the country. For instance, in 1973, by

way of an amendment, transferring a worker or threaten to transfer a worker on account of his being associated with trade union or otherwise engaged in activities for the promotion of unionism, was declared to be an "unfair labour practices on the part of employers"[84]. In next couple of years, however, the law relating to unfair labour practices witnessed massive improvisation by the substitution of clause (f). So, after the substitution of the said clause any deviation from the prescribed mode of procuring a settlement was declared to be "unfair labour practice on the part of employer"[85]. Similarly, closure of the entire establishment in disregard of the law[86] and commencement, continuation, instigation or incitement to participate in or expend or supply finances or otherwise reinforce an illegal lock lout was also included in the list of "unfair labour practice on the part of employer"[87].

The law relating to "unfair labour practices on the part of workers" was also treated with similar gravity by making additions and substitutions. For instance, Section 16(1) was substituted by adding that none of the workers, their agents or trade union would be indulged in certain activities[88]. For instance, originally, workers, unions of their agents were prohibited from carrying on certain activities but as an outcome of an amendment, the ambit of potential offenders was curtailed to workers, unions or other persons[89]. Similarly inducement or intimidation to prohibit a person from seeking or ceasing to seek the membership or officership of a trade union was declared to be "unfair labour practice on the part of workmen"[90]. As a sequel of ramification, clause 16 (1) (d) (e) were completely substituted enlarging, thus, the scope of tactics of use of power against the employer for soliciting any demand from the employer[91]. By virtue of clause (e), persuasion for the commencement or continuation of an illegal strike, instigation or inciting others to resort to or sponsoring or otherwise acting for the promotion or assistance of an "illegal strike" or "go-slow" was declared to be an offence on the part of workmen[92]. Explanatory words at the end of clause (e) drew a convincing distinction between strike and go-slow. So *en masse* impact of the replacement was that the legislative arrangement as to unfair labour practices turned out to be exhaustive in the sense that any attempt to make use of force against the employer or the fellow workers for the said motives to solicit the envisaged outcome would entail penal consequences.

Although, the institution of Collective Bargaining Agent had found space onto the statute in 1969 but till the announcement of labour policy in 1972, serious reservation, from different factions of the society, had emerged as a token of resentment. The emergence of such reservations was imminent as the concept of collective bargaining agent was alien to the Pakistani labour jurisprudence. So, the new government had ample time to give due space to the aspirations of the stake holders in the new policy. The magnitude of resentment can be measured from the fact that, in 1970, the government had to substitute the whole provisions relating to Collective Bargaining Agent followed by plethora of amendments to bring it in line with the indigenous requirements. At the outset, in substituted section, in event of only one registered union, showing statutory strength of one third of entire

workforce was deemed to be the collective Bargaining Agent for the establishment. As a result of amendment, firstly, however, such trade union is enjoined upon to lodge a formal application for its certification as Collective Bargaining Agent[93]. Secondly, prior to the amendment either a registered trade union having requisite qualifications or the employer could file a formal request for the ascertainment of the Collective Bargaining Agent but in post amendment scenario, the Government had also been given an option to ask for the certification of the Collective Bargaining Agent[94]. Thirdly, at the time its promulgation, no time period was prescribed by the Ordinance within which balloting for the certification of Collective Bargaining Agent was to be held.

The omission gave the space to unfathomable discretion which resulted in the form of pendency of applications and ultimately paved the way to chaos and frustration amongst the workers. So, as a result of an amendment, the period for the determination of Collective Bargaining Agent was prescribed to be fifteen days[95]. The amended provision, it is submitted, proved to be a potent initiative in eroding the miseries spectacled by the stake holders. Similarly, in case of an establishment with its branches stretched over more than one town, the Registrar of the Trade Unions was authorised to hold secret balloting within period of thirty days from the receipt of request[96]. At the outset of its enforcement, the Industrial Relations Ordinance, 1969 didn't extend to the workers in seasonal factories for the determination of Collective Bargaining Agent or balloting was arranged in such factories in a season in which majority of the workers would have been retrenched. Such practice was deemed to be the defiance of not only fundamental rights of the workers guaranteed under the constitution but also violation of the Convention of the International Labour Organization. The question of eligibility of a worker working in a seasonal factory was also addressed by adding a proviso. It was laid down that in calculating the period of three months, the period spent by such worker in the last season shall also be counted[97]. Albeit, the introduction of Collective Bargaining Agent was deemed to be panacea for prompt representation of the workers but the procedure of its determination through secret balloting was alarmingly riddled. For instance, after the counting, the union which would receive the highest votes would be declared to be the Collective Bargaining Agent. However, no union would be entitled to be declared so unless such union would get not less than one third of the total number of workers recruited in that establishment[98].

In case none of the contesting unions could get required majority, the law was silent on that issue. In the wake of labour policy of the 1972, the legal void was overcome by adding a couple of provisos[99]. As per new arrangements, in case no union could get required majority in initial contest, further poll would be arranged between those contesting unions which had secured highest number of votes in initial contest and resultantly, the union securing majority of votes in later poll would be declared to be the Collective Bargaining Agent for the establishment[100]. Furthermore, in case of tie in the second poll, the balloting would be held between till one of them would get majority of the votes[101]. Prima facie, the legislative

move seemed to be a hoax and infused rancorous through rank and file but eventually proved to be instrumental in purging the industrial landscape of petty pressure groups and paved the way only to the vibrant unions. The idea of walk over was brought onto the statute, first time, in the wake of Labour Policy of 1972. In case none or neither of the unions turned out to be willing to participate in secret balloting except the applicant, the Registrar would certify the applicant union to be the Collective Bargaining Agent for the organisation[102]. Another hallmark of this era, *inter alia*, was the demarcation of boundary line between the issues which could and couldn't be the subject of bargaining between the employer and the collective bargaining agent. So, by amending sub-section 12 it was ordained that the Collective Bargaining Agent would be entitled to be engaged in collective bargaining only in connection with the issues relating to employment, non-employment, terms of employment, or conditions of work but would not venture upon the issues relating to enforcement of any right already available to the Collective Bargaining Agent or any worker under any enactment, excluding the Industrial Relations Ordinance, 1969, any award or settlement. Novelty of the bifurcation into industrial dispute and individual dispute entailed that only industrial disputes could become the subject of negotiations. Individual disputes, *ab initio*, would only be adjudicated by competent fora. Being cognizant of his preoccupations, the legislature authorised the Registrar to delegate in writing any of his functions under section 22 of the Ordinance to any of his subordinate officers[103].

Since the dawn of her inception, Pakistan had two types of trade unions i.e. industry wise trade union and local union/union at plant level. But, unfortunately, contrary to the institutional inhibition, it kept on maintaining the labour court as trial court for all purposes for more than a couple of decades. It was not until 1969 that a separate body under the rubric 'National Industrial Relations Commission' was provided to address the issues of the industry wise trade unions.

Another startling development under the law was the introduction of the idea of Collective Bargaining Unit[104]. Underlying urge was to discourage the mushroom growth of unions at branch level and let the union at unit level to anchor the issues of the workers. For this purpose, a union, federation of unions or the government was authorised to lodge an application to the Commission and the Commission, after satisfying its self as to the exigency of the situation and subject to the requirements laid down under section 22EE, may order as many collective bargaining units as it likes[105].

Furtherance of Industrial democracy was another hallmark of the policy and it was, perhaps, owing to this aspect of the pledge that the Government had taken appreciable steps for ensuring workers' participation at almost all levels of the administration in the establishment. In this context, provisions pertaining to Shop Stewards to act as bridge between labour and management[106], workers' participation in management[107] and joint management board[108] were true reflections of government's commitment to the cause.

Till 1972, in Pakistan, no distinction had ever been demonstrated between the individual disputes and the industrial disputes. So, it was owing to the labour policy that a major shift was manifested in the Industrial Relations Ordinance, 1969. Interestingly, in both cases, the Collective Bargaining Agent had the *locus standi* to anchor the dispute which proved to be instrumental in furthering the harmonious industrial relations in the country[109]. At the very outset, no locus standi was extended to the Collective Bargaining Agent to espouse the cause of the aggrieved worker, however, in 1976 an aggrieved worker was held to be entitled to bring his grievance in the knowledge of his employer, *inter alia*, through the agency of Collective bargaining Agent[110]. On the other side, although, an exhaustive procedure for the espousal, resolution and adjudication of dispute of interest was also provided under the law but the same was thought to be of inhibitory nature and as a result of pledges made in the labour policy, the same was pledged to be consistent with ground realities by incorporating various amendments in the Ordinance. For instance, the legal provision relating to negotiations for the resolution of an industrial dispute was completely substituted in 1972[111] and further revamped in 1973[112] and 1977[113]. In contrast to the original provisions, the substituting provisions turned out to be more elaborative and innovative arrangement. The original provisions could address only a situation where there was an apprehension of emergence of an industrial dispute but the substituting law, besides addressing the likelihood of an industrial dispute, also targeted the situation of actual emergence of an industrial dispute. Originally, the fact of apprehension of an industrial dispute was to be communicated only to the other party, but in post amendment scenario, the fact of likelihood of emergence of an industrial dispute or actual emergence of an industrial dispute, besides communicating to the other party, is to be communicated to the Works Council as well. It is relevant to highlight that establishment of Works Councils was another institutional arrangement for the establishment of harmonious relationships between the parties. In order to facilitate the process of resolution of industrial disputes, the period of seven days was enhanced to ten days with the relaxation that the parties would be competent to enhance the period as per their mutual understanding. In case of, however, unsuccessful negotiations, party raising the industrial dispute was entitled to, within seven days of the failure of negotiations, issue a notice of industrial action on the other party.

In such a turbulent situation, the conciliator had to play a very pivotal role for the resolution of controversy. Although, the idea of conciliator had already found place onto the statute, and the Provincial Government had the authority to appoint as many conciliators as it liked but with the emergence of National Industrial Relations Commission, the authority to appoint a conciliator in case to cases to be adjudicated and determined by the national Industrial Relations Commission was bestowed upon the Federal Government[114]. Similarly, the period specified for the service of notice of strike or lockout was also curtailed from twenty one days to fourteen days[115]. Some aspects of the proceedings before the conciliator were also revamped by adding more teeth to the process of conciliation. For instance,

originally, the conciliator had no authority to affect the presence of either of the parties in person but as result of an amendment, the conciliator was authorised to call either of them by issuing a notice in prescribed manner and it was obligatory for them to come and attend the proceedings[116]. In case, however, the parties fail in bringing about a settlement in stipulated time, they might continue the proceedings as per their agreement[117]. In Pakistan, the Industrial dispute could be resolved in a triad manner i.e. by bilateral negotiations, by conciliation and by arbitration. Undoubtedly, the provisions relating to arbitration had found place onto the statute since the dawn of its promulgation but no time frame was provided within which the arbitrator had to submit the award. The omission was likely to pave the way to the possibilities of inordinate delays in the finalization of the industrial disputes. So, in order to avoid the snare of unnecessary delays, the arbitrator was obligated to render his award within thirty days of the reference or within such extended period as would be settled between the parties[118].

Strikes and lockouts are incredibly strong weapons in the hands of workers and the employers. Such tools are put into action to exert more pressure on the counterpart. Thus, the fear of economic loses or apprehension of losing job compels the parities to embark upon a meaningful dialogue. So, in this context, it can be safely inferred that after the end of bilateral dialogue in the Works Council and service of notice of industrial action, the chances of success of conciliation increase manifold as the parties are fully cognizant of the fact that in case of failure they will have to face strike or lockout. Although, the law relating to strike and lock out was almost same as was enunciated in preceding enactments, but the inclusion of section 46-A turned out to be a panacea in the sense that a statutory check was put on unwanted strikes and lock outs[119]. Thus, the Government had the right to order an inquiry in case an illegal strike or lockout was ongoing in any establishment and in the event of finding the strike or lockout illegal would initiate proceedings in the labour Court and the delinquent party had to face penal consequences[120]. Similarly, removal of fixed assets by the employer, during the currency of illegal lockout or legal strike, was rendered to be an offence[121] entailing the penalty of imprisonment or fine or both[122]. However, under certain exigencies, the Labour Court could allow removal of such assets subject such conditions as the Court deemed expedient[123]. As a necessary part of the promises set out in the Policy, the penal provisions were also rigorously revamped. Establishment of wage Commission, in post policy era, for the fixation of rates of wages and determination of other terms and conditions of service of the workers associated with banking industry and workers from other walks of life was another laudable initiative taken by the Government.

Albeit the idea of labour judiciary had made inroad in Pakistani labour jurisprudence since the dawn of independence in 1947 but, in line with the changing ground realities, the provisions relating to labour judiciary underwent rigorous overhauling in post Policy period. For instance, establishment of labour court with reference to industry and class of cases[124], appointment of judge of Labour Court[125], relaxation of qualification in respect of its judge in Baluchistan[126]

and omission of sub-sections 6 and 7 could be quoted as meticulous steps towards the betterment of industrial relations in Pakistan. Likewise, the ambit of jurisdiction of Labour Court was also enhanced by extending it to the trial of offences under the West Pakistan Industrial and Commercial Employment (Standing orders) ordinance, 1968[127] and conferring upon it the powers of Magistrate of the first class, having powers under section 30 of the Code of Criminal Procedure, 1898[128]. Another hallmark of the post Policy era was the addition of section 36(5) whereby the withdrawal of any sub-judice matter in the Labour Court as a result of amicable resolution was made subject to approval of the Labour Court[129]. As to the awards or decisions of the labour Court, it was

Conclusion

As the labour Policy was announced at a time when the country was surrounded by chaos and anarchy, therefore, like other limps of the society, industrial arena was also marred by some unpleasant events. In this state of affairs, the announcement of labor policy was likely to fetch far reaching consequences. Undoubtedly, some circles had shown their concerns as to the success of the policy, but subsequent refurbishments, turned out to be instrumental in eroding all apprehensions. The Government did succeed not only in materializing its rhetorics but also brought the legislative and institutional arrangements in consonance with the international instruments. Although, there dawned an era of participative management on industrial horizons in Pakistan but the grey areas like unorganized labour, female workers and child workers remained victim to traditional paucity. The policy could be termed as a potent tool for strengthening industrial relations in organized sector of economy but ignoring the unorganized segment of the labour was not justified by any stretch of imagination. So, the vision, will and passion demonstrated at the time of policy under consideration could have been followed as model in the years to come but, unfortunately, imposition of successive prolonged Martial Laws and lack of will and passion on the part of political elites turned out to be stumbling block in the road to amelioration of the proletariat class in Pakistan.

Notes and References

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[4] Abid
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[36] Section 6(h)(i)(a) of the Industrial Relations(Amendment) Act, XXIII of 1973
[37] Section 6(h)(ii)(a) of the Industrial Relations (Amendment) Act, XXIII of 1973
[38] Section 6 (h)(iii) of the Industrial Relations (Amendment) Act, XXIII of 1973
[39] Section 2 and First Schedule of Labour Laws (Amendment) Ordinance, IX of 1972

[40] Section 3 of the Industrial and Commercial Employment (Standing Orders) (Amendment) Act, XLVIII of 1974
[41] Standing Order No.14-A was added by the Industrial and Commercial Employment (Standing Orders) (Amendment) Act, XXIII o 1973
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[62] Clause Vi-a was added vide section 3 of Act XXIX of 1973
[63] Section 2 of the Act XI of 1976
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[67] Ibid
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[72] Section 5 (c)(i) of the Industrial Relations (Amendment) Act XXIX of 1973
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[77] Section 8-A was added vide section 6 of the Act XXIX of 1973
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[79] Ibid, section 4(b)
[80] Section 5 of the Act XVI of 1975

[81] Section 6 of the Act XIV of 1975
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[84] The words were added vide section 9 of the Act XXIX of 1973
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[98] Section 9(e) of the Industrial Relations Ordinance, 1969
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[100] Proviso was added to section 9 vide Section 10 (c) of the Act XVI of 1975
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[102] Section 9(a) was added vide section 10(d) of the Act XVI of 1975
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[106] Section 23-A was added vide Ordinance, IX of 1972
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