

## **'Situation and Scope' of Existing Labour Laws to Address the Issues of Home-Based Women Workers in Pakistan**

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### **Abstract**

The theme of this study focuses on the exclusion of home-based women workers from the existing legal framework of the country. An overview of national labour laws has been presented in the present study. It also highlights the ineffectiveness and complicated nature of labour laws and flaws in its implementation mechanism. The paper also addresses the need for harmonizing the national labour laws with the international legal framework which provides protection to the home-based women workers. The core objective of the paper is to make home-based women workers visible as labour force and also to highlight their exploitative treatment from labour and human rights perspective.

### **Keywords**

Home-based Women Workers, Labour Laws, International Legal Framework, Visible, Labour Force.

### **Introduction**

Home-based work is not a new phenomenon. Since ages, the people had been conducting home-based economic activities throughout the world. Home-based work cannot be viewed as only a production sector, rather it covers a range of “industries”, categories of “trades”, dynamic “occupations” and diversified “activity statuses” (Sudarshan & Sinha, 2011). Pakistan is one of those countries where home-based remunerative work is carried out on a large scale (Lari & Zaman, 2013). However, reliable statistics and accurate data on home-based women workers are not available. Pakistan Economic Survey (2009) estimates 8.52 million home-based women labourers in Pakistan, representing 70% of the country's total labour force. Recent wave of globalization, cost effectiveness considerations on the part of manufacturers and lack of formal employment opportunities have given a tremendous increase to outsourcing work to home-based workers, mostly consisted of women, and their work setting is mostly their home (Unni & Scaria, 2009). Roughly, more than 100 million home-based workers are working within the confines of their homes in the whole world. In South Asia alone, more than 50 million home-based workers are present and out of these, approximately 80% are women (HNSA, 2013). In Pakistan, mostly the women are employed in informal sector and, in 2008, the women constituted 71.7% of the total labour force of the country (Saigol, 2011).

The home-based work has a significant contribution in the country's economy as it has become a major source of providing earning opportunities to the poor and less privileged segments of the society. This requires the attention of the policy makers and all the state forces to address the resultant changes in economic trends, family dynamics, gender patterns, local resource utilization and indigenous mode of production. These home-based women workers are not only engaged in producing traditional art and craft based items like embroidery, sewing, dyeing; but also engaged in producing export based and fast moving consumer goods (FMCGs) and manufacturing products for multinational companies, such as carpet weaving, soccer stitching, garment making (Lari & Zaman, 2013). Despite of the fact that they are major contributors in the national economy, they are not considered as 'labourers'. They remain invisible in national statistics and public discourse, undervalued in value chain and labour markets, unacknowledged in policy making and legal frameworks (ILO, 2010; Saigol, 2011; HNSA, 2013).

Besides the reasons identified by Hassan & Azman (2014), such as, illiteracy, lack of awareness and access to various provisions, limited skill set, low wage work involvement; the poverty and socio-culturally embedded gender discrimination were found to be the major reasons of women's increased participation in home-based work in South Asian countries (Bajaj, 1999; Doane, 2007; Mehrota & Biggeri, 2002; Sudarshan & Jhabvala, 2006). Higher level of poverty and more involvement of children in home-based economic activities at early ages were also reported in a research conducted by Homenet Pakistan (2011). These home-based women workers are extremely vulnerable to numerous risks, such as, exploitation of middlemen or work providers, unhygienic living and unhealthy working conditions, social exclusion and barred mobility (Hassan, 2014). Table 1, as given below, depicts the different types of social exclusion women face due to gendered ideology of work and patriarchal mindset of the society.

### ***Table 1 Types of Social Exclusion***

Depending on the general level of development of a society, the following dimensions are of most relevance:

- exclusion from goods and services (this usually means having no access to certain commodity markets, where the consumer goods typical for a concrete society are provided, but it may also mean exclusion from a basic right to livelihood);
- labor market exclusion, which has material and immaterial aspects;
- exclusion from land, a specific aspect of social exclusion in developing countries;

- exclusion from security, which covers material and physical security;
- exclusion from human rights, which may mean the real access to the legal system as well as political rights (to participate in the exercise of state power, freedom of association, freedom from discrimination) and social rights.

*Source:* Badelt (1999)

In the South Asian cultural context, the informal labour force mainly consists of women and girl child, due to the social acceptance for females to work within the surroundings of their homes, instead of going in market places, which restricts them to access the markets for purchasing raw materials, selling their goods, having access to credits and interacting with their counterparts. Furthermore, they are not protected by human rights, social security and legal provisions and are kept outside the development mainstream of the society.

This study examines the available legal frameworks and provisions for home-based women workers, their legal rights allocated by Constitution of the country, Labour Laws and commitments made by Pakistan in various International Covenants and ILO Conventions. This article is based on the researcher's five year intensive field work experiences while investigating the phenomenon of home-based women workers, applying both quantitative and qualitative research approaches, conducting in-depth interviews, taking case studies, interacting with the officials of the various NGOs working for the rights of home-based women workers. Moreover, the contents of the study has been sketched while consulting the national and international legal frameworks on labour and human right instruments as the primary source and reviewing the relevant literature in forms of articles, survey reports and policy documents as secondary sources. In addition, the opinion of legal advisors on the issue were also sought to get the broader perspective of the phenomenon under study. The study findings depict the complete lack of awareness among home-based women workers about their legal rights and lack of access to available social protection provisions. The flaws in existing laws and their outreach to the home-based women workers have been discussed and the applicability of the available legal provisions for women workers has been expounded as policy implications.

### **Fundamental Rights in the Constitution of Pakistan**

The prohibition of discrimination on the grounds of gender alone and the equality before the law have been provided in Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The Article 34 of the Constitution declares 'full participation of women in national life'. The Article 37 mainly relates to the rights of

women and children, endorses 'social justice' and the financial interests of the diffident classes and areas. The Article also provides maternity benefits for women workers. The child labour, forced work, hazardous jobs and slavery have been prohibited according to Article 11. The fundamental rights to form trade union and to join any lawful occupation or profession are ensured in Article 17 and 18, respectively. The Article 38, subsection 'e' obliges that the state shall provide all citizens with social insurance and social security measures and shall make available fundamental necessities of life, like housing, clothing, education, food and medical facilities to all the people without any bias, who are permanently or temporarily incapable of earning their living due to unemployment, sickness or frailty and shall reduce difference in the earnings and income of the people.

### **Limitations of the Labour Laws in Pakistan**

The existing labour laws in Pakistan, 72 in all, relates to the six major groups; social safety nets/social security, employment and service conditions, wage/remunerations, Industrial relations, HRD and TVET competence and occupational safety & health. These laws have tended to disregard informal and agriculture sector by refuting legal protections, failing to execute existing laws, evading instituting inspection teams to check for compliance or refusing to reject the traditional gendered perception of labour to include women (Lari & Zaman, 2013).

The labour laws, specifically related to women workers, include maternity leave and pay protection during maternity leave, child care center, dedicated sanitary arrangements at work places, protection against hazards, restricted work hours, provisions of nurses by the employers and simultaneous leave for husband and wife. In Labour Laws, the women are provided specific laws keeping in view their peculiar needs.

The Constitution of Pakistan and Labour Laws provide a broad coverage to 'workers' in general and also includes women registered in organized and formal sector. Despite of all these defined fundamental rights and legal provisions, no law provides any cover to home-based women workers in Pakistan (Saigol, 2011). The labour laws' applicability is limited to 'workers' or 'employees' as defined in different enactments. The home-based women workers neither fall under any category of 'workers' nor their work settings as 'establishment' as defined in these rules such as in Factories Act 1934 and in Payment of Wages Act 1936, therefore, they remain out of all the legal provisions. The Minimum Wages Ordinance 1961 and the Maternity Benefits Act 1958 provide a cover to factory based piece-rate workers but the home-based workers are not covered under these laws.

## **International Legal Framework**

Pakistan is a member of United Nations (UN) since 1947. The UN has adopted Universal Declaration of Human Rights and other numerous conventions, like CEDAW, ICESCR; to provide fundamental rights, decent standards of living and working, equal earning opportunities and considerable support to all workers.

### **Universal Declaration on Human Rights (UDHR)**

In 1948, the United Nations adopted UDHR. The UDHR's Article 23 and Article 24 provide significant legal support to all of the workers including home-based workers as well, such as, favorable work conditions, protection against unemployment, just remuneration, means of social protection, rest and leisure, limited working hours and periodic holidays with pay.

### **International Covenant on Economic, Social and Cultural Rights (ICESCR)**

Pakistan is party to ICESCR as it has ratified this covenant. This Covenant stresses the “*equal and inalienable rights of all*” and lays emphasis that “*conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights*”.

### **Convention on Elimination of Discrimination Against Women (CEDAW)**

CEDAW's Article 11 provides comprehensive legal support to working women to protect their rights. The convention makes the states parties responsible for taking adequate measures for the enforcement of laws and implementation of human rights to guarantee the progression and development of women on the basis of equality with men.

### **International Labour Organization's (ILO) Conventions**

Since 1947, Pakistan is the member of ILO and has endorsed 34 ILO Labour Conventions. The relevant ILO's instruments which support home-based workers are given below:

- Freedom of Association, 1948 and the Right to Collective Bargaining, 1949 (No. 87 & No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. C111)
- Labour Inspection Convention, 1947 (No. 81)

## **Home Work Convention 1996 (C 177)**

Pakistan has ratified 34 ILO Conventions but still has not ratified the Home Work Convention C177 (ILO, 1996). The home-based workers were considered as a part of the work force in ILO Home Work Convention 177 (1996). The Article 4 of this Convention makes state parties responsible for the equality of treatment for the home workers in accordance with other workers, like, minimum wage rate, maternity benefits, right for occupational safety, prohibition of child labour and provision of social security measures.

## **Applicability of Existing Legal Provisions for Home-Based Women Workers**

The development of possible strategic path to bring changes in the status-quo of the poor conditions of home-based women workers through devising the constructive course of action within the existing laws and its implementation is not an easy and simple task. The procurement of any major legislative change to improve the conditions of home-based women workers is a herculean task as it may encounter the employer's hostility, union's resistance and the interpretation of volumes of laws. However, the existing realities of the home-based women workers, such as their dependence, unorganized, invisible, easily replaceable status, with minimal skills require legislative protection to ensure their inclusion and recognition in the labour force mainstream.

Legislative process and legislative possibilities, their repercussions on home-based women workers in terms of acceptance and enforcement, need to be viewed with great care, caution and concern, as they may adversely affect them. Two major areas can be identified while considering the possible options to provide legislative protection to home-based women workers: firstly, inclusion of home-based women workers in the existing labour laws and legal framework, secondly, distinctive/specific laws focusing on the particular issues of home-based women workers. The following existing labour laws can be interpreted, placed and practiced to benefit home-based women workers.

## **Payment of Wages Act 1936**

The applicability of the Payment of Wages Act 1936 can be extended to home-based women workers. It was found during field study that home-based women labourers are usually concentrated in the form of clusters, based on “niche based specialty” or “specific skill based activity” within a particular geographical area. Home-based work is carried out as a “group activity” to help and to socialize with one another, within the premises of their homes or in the neighbourhoods, which can be included in the definition of employer's establishment. This “premises” sometimes is also decided by middleman's choice. The home-based women workers

are neither considered “employed” nor their premises as “establishments” and are, therefore, not covered within the meaning of this Act. However, the broader definition and the wider perspective of the Act can be used to benefit the home-based women workers.

### **W.P. Shops & Establishment Act 1969**

The basic provisions of this Act include mode of wage payments, leaves and holidays, termination and work hours. The general nature of the Act can be beneficial for the inclusion of economically engaged home-based women as “workers” and their work settings as “establishments”.

### **Industrial Relations Ordinance (IRO) 1969**

This Ordinance deals with the unionised activity for the settlement of conflicting situations between the workers and the employers. The home-based workers can be brought within the purview of the Ordinance considering them as “workmen” and the given definition of the term “industry” in IRO can include the economic activities carried out by them. They, therefore, can join any trade union and can also form their own unions to improve their bargaining position against exploitative situations. Although, during the present study, not a single woman worker was found to be member of any trade union which adversely affect their position. Consequently, they have no voice against any harassment, gender discrimination and trade exploitation. This law needs more interpretation in case of home-based women workers, as they involve hidden employer-worker relationship and belong to unorganized informal sector.

### **Minimum Wage Ordinance 1961**

This Ordinance can be interpreted and extended to home-based women workers as they are engaged in even export-based industry for 12 to 14 hours per day as “workers”. The remunerations, they receive are the real “wages”. In the present study, it was found that home-based women workers are the most flexible and easily replaceable work force on meager wages and does not have any say against exploitation of middleman and contractors. Women home-based workers reported highly deduction rates and delayed payments as the exploitative tactics. However, a great deal of caution is required in the implementation of this Ordinance as it may leave a negative impact of the “hiring intentions” of the employers as their easily available worker's status on low wages is the major attraction for the employer.

### **Maternity Benefits Ordinance 1958**

Women constitute the major proportion of the home-based work and can be largely benefitted by the application of this Ordinance. Although, labourers working in organized set-ups like factory based workers are covered within the jurisdiction of



this Ordinance, irrespective of the fact whether they are actually benefitted or not. However, according to legal opinion, amendment in this Ordinance would be required for its application to home-based women workers. During the field study, it was found that home-based women workers have to work during their pregnancy due to their poor circumstances and dependency on the home-based work as only source of income for them. The long hours sittings and the tedious manual labour leaves adverse effect on the health of home-based women workers. The incidents of abortion and still births were also reported by women labourers. The protection by the maternity benefits Ordinance would be very beneficial and most relevant for them.

### **Labour Policy 2010**

The Labour policy framework 2010 emphasizes social justice and equality. In accordance with ILO Convention 100, it reinforces equal amount of wages for equal value of work. The policy provides the right of unionization, but the fragmented and scattered home-based women workers facing strong socio-cultural barriers cannot be benefitted from the existence of any union. The Labour Policy 2010 acknowledges the problems of this largest constituent of informal economy. The objectives of proposed policy for home-based workers are; provision of social protection measures, increase in women's incomes and economic viability and provision of a political framework through which women's demands and concerns can be articulated (Labour Policy, 2010). But, like other legal provisions and policies, this policy also awaits execution and practical implementation, so that the home-based women workers are actually benefitted from this policy (Saigol, 2011).

### **Conclusion**

In Pakistan, the rapidly growing informal sector, with increasingly harsh working conditions, calls for immediate attention of the policy makers. The increasing unemployment, coupled with high population growth rate, depicts that more labour force will fall into the informal workforce. The plethora of national legislations and international declarations, conventions, covenants, agreements and treaties speak for the rights of workers, like access to social security, work safety and health arrangements, payment of minimum wages, decent work, social protection provisions, skill development, productive and remunerative work, maternity benefits and old age benefits. All these legislations need to be implemented, as now these tend to embellish glossy pieces of paper lying on grimy shelves. The national legislative framework, labour laws, policies, plans and programmes can ameliorate the home-based women workers and seek social protection for them, who are susceptible in a highly capricious new world.



## Policy Implications

This is a well established fact that the issues of home-based women workers can be best resolved by providing legislative cover to them. The policy implications on the basis of study findings are given below:

- The home-based women workers should be registered as workers so that they can be brought into the ambit of formal definition of “workers” as given in the legal instruments.
- There is a need to create a strong advocacy for the ratification of C177.
- The problems of home-based women workers should be mainstreamed by revising the country's existing labour policies and through relevant enactments and effective legislations, to provide a supportive mechanism to them.
- The consultative approach should be used while lobbying for the legal rights of home-based women workers with the Federal and Provincial Governments, Ministry of Human Rights, Ministry of Labour and Man-Power, Ministry of Women Development, trade unions and the social activists.
- The whole labour code would have to be designed to find out the possibilities for the inclusion of home based women workers in terms of interpretation, addition, extension and amendments in the existing legal framework. This would enable the labour directorate to check the employer's exploitative practices. This would further enable the workers to join the trade unions and to form their own associations to exert pressure, to improve their working conditions. In presence of unions and worker's associations, the implementation of the laws would also be effective.
- There is a dire need to sensitize the national consciousness on the magnitude of home-based women workers in the country, their issues and to form strategies to uplift this less privileged segment of the society.

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