

QUALITY OF LABOUR LEGISLATION BY OUTGOING LEGISLATURES

MAY 2018

1 INTRODUCTION

Pakistan has inherited and introduced a good number of labour laws. While 130 federal and provincial laws cover labour issues in one way or the other, more than 80 laws - federal and provincial combined - specifically govern the subject of labour. Some pieces of legislation have become obsolete and infructuous, therefore, warranting repeal, while many others need to evolve to keep pace with the changing realities of labour in the modern day workforce arena. With little to no pressure from any quarter, efforts on the part of the National and Provincial Assemblies to upgrade or consolidate this set of fragmented laws are virtually non-existent.

The 18th amendment (the “18th Amendment”) to the Constitution of Pakistan 1973, passed in 2010, devolved the subject of labour to provinces. Consequently, as many as 72 laws have been introduced and passed by the Provincial Assemblies. A total of 55 of these laws more or less replicate previous federal legislations while 17 new laws- three in Punjab, eight in KP and six in Sindh - have been enacted. Generally, the provinces are adopting the older legislations with minor amendments to the extent of updating levels of fines and/or extension of definitions.

Nevertheless, eight long years down the road since the 18th amendment was passed, the provinces have not adopted all the required federal legislations. Provinces are at different stages in terms of their pace of adoption. For instance, Balochistan has not adopted the majority of the laws. Although the other three provinces have adopted the fundamental laws, inter-provincial disparities within laws have not been fully addressed.

Due to a lack of inter-provincial coordination on the subject, the provincial amendments to laws have also created geographical disparities in terms of dealing with labour issues. Devolution has created a unique problem for the applicability of labour laws in a particular place or situation. For example, Khyber Pakhtunkhwa (KP) has its own version of Factories Act, 1934 (KP Factories Act, 2013) that is applicable in the province, however, Balochistan has not yet adopted it, thus, the old federal law is still applicable in the latter region.

Labour laws also lack absolute compliance with international instruments that are ratified. International Labour Organization's convention on Equal Remuneration (C-100), Discrimination (Employment and Occupation) Convention (C-111), Convention on Labour Inspection (C-180) and Convention on Elimination of all Forms of Discrimination Against Women is also largely neglected. Global best practice in labour legislation follows the principle of clear division into four streams that include terms of services and conditions, occupational safety and health, industrial relations and social security. Contrary to global best practices, Pakistani federation and provinces have multiple laws governing each stream. For example, at least six different laws deal with the terms of services and conditions for workers employed in industrial or commercial establishments. Moreover, laws dealing with minimum wages and payment of wages also cross the terms of services and conditions for workers. Multiple laws dealing with the same subject within labour governance not only make it complicated for a lay man, but also give room to inter and intra law contradictions.

In the absence of any parliamentary guidance on minimum standards in labour legislation, lack of an inter-provincial coordination mechanism has resulted in grave inconsistencies in labour legislation in the country.

The Parliament neither provided any minimum standards to the provinces while devolving the subject of labour nor did it make any effort to update obsolete laws for its own jurisdiction in the post-devolution regime, while compliance with ratified conventions remain a serious oversight as well.

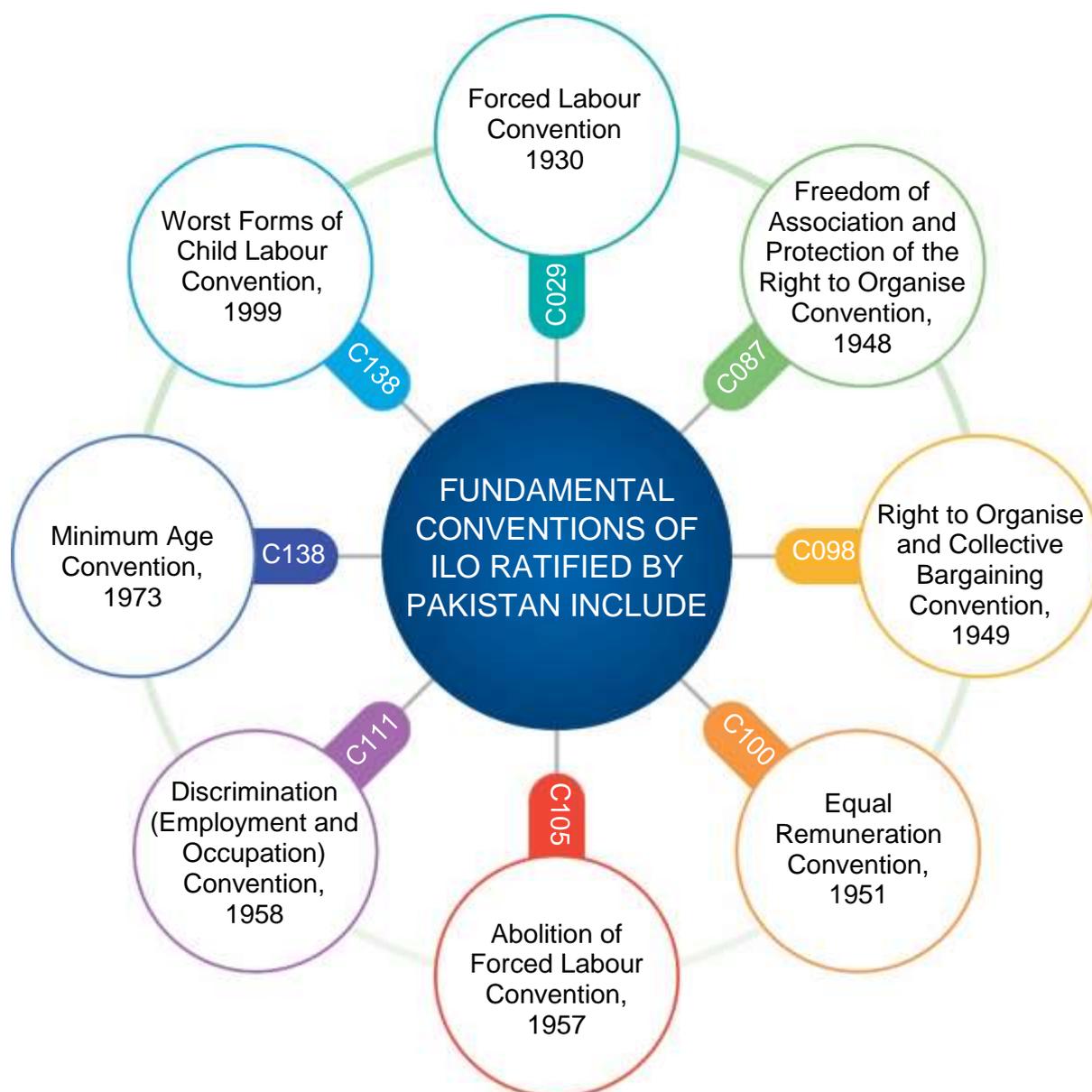
In this context, this report aims to examine the quality of labour statutes that have been enacted by the National and Provincial Assemblies during their current terms from 2013 - April 2018.

2 METHODOLOGY

The parameters used to assess the quality of provincial and national legislations on labour issues include the International Labour conventions¹ of the International Labour Organisation (ILO) that are ratified by Pakistan. Moreover, laws were assessed against provisions related to women's participation in employment and measures that need to be taken into account by Pakistani governments in accordance with Article 11 of the Convention on Elimination of all forms of Discrimination against Women (CEDAW).²

¹ Pakistan has ratified 8 out of 8 Fundamental Conventions of ILO, 2 out of 4 conventions regarding governance of Labour including the Labour Inspection Convention C 081 and 27 technical conventions. Out of a total of 32 conventions that were ratified by Pakistan, 26 are in force.

² Article 11 of CEDAW is concerned with equal participation of women in employment, equal opportunities of promotion and other benefits, including maternity protection and related benefits.



To assess the quality of legislation, the provincial and national legislations on labour are categorized as four major types:

i	New Laws	The laws drafted and passed by Assemblies and relevant departments during their current terms
ii	Amendments	Amendments to existing labour laws passed during the current terms of Assemblies
iii	Adopted as it is	The federal laws adopted as provincial laws during the current term with minor changes in language
iv	Adopted with no substantial changes	Laws adopted with few changes that are of no consequence in terms of structural or legislative governance of labour issues

3 WACTION ASSESSMENT OF LABOUR LEGISLATIONS BY PAKISTANI LEGISLATURES (2013-2018)

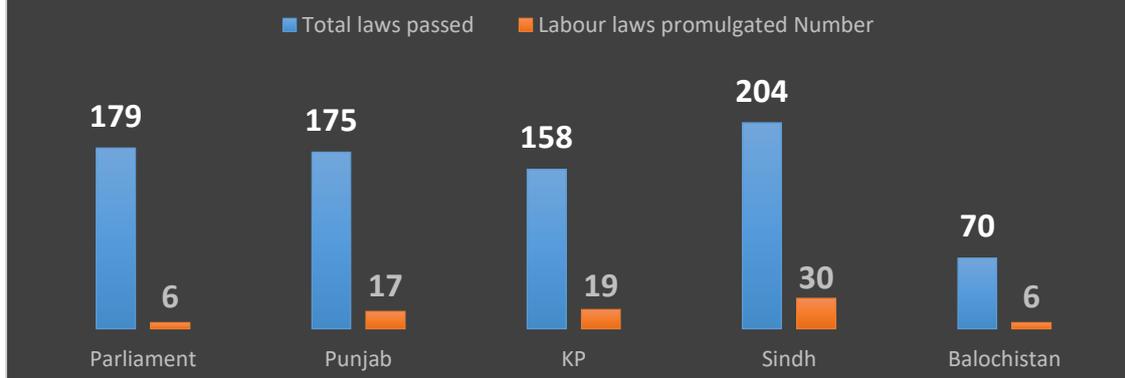
3.1 Statistical analysis of labour legislations

In their current terms, Pakistani legislatures have attempted to pick up pace in terms of completing the devolution of labour issues to provinces. All the legislatures passed a total of 78 labour legislations that constitute 10 per cent of the total legislative business that resulted into laws. However, regional disparities ran high. One in every seven legislations passed by Sindh Assembly pertained to labour while KP remained a close competitor with one in every eight laws getting assent related to labour. Almost 10% of the total legislation in Punjab was concerned with labour while Balochistan remained the slowest; passing only 6 labour legislations. The Parliament also passed six legislations on labour issues.

TABLE 1 No. of Legislation passed by Parliament and Provincial Assemblies on labour 2013-18

	 National	 Punjab	 Khyber Pakhtunkhwa	 Sindh	 Balochistan
Total Number of Legislation Passed	179	175	158	204	70
Number of Legislations related to Labour	6	17	19	30	6
Percentage	3 %	10 %	12 %	15%	9%

Comparison: No. of Total laws promulgated and No. of Labour laws promulgated (2013-2018)



3.1.1 The Parliament

Labour governance issues of employment sectors, including industrial, private and agricultural, were not seen on the National Assembly's legislative agenda. Of the six laws passed by the National assembly, 5 are concerned with the perks and privileges of employees working in various Federal Government offices.

The focus of the statutes enacted by the National Assembly remains on the employees of the Federal Government, only.

The law on the Minimum Wages of (unskilled) Workers, 2015 is the only statute promulgated in the National Assembly's current term that deals with workers from employment sectors other than the public sector.

TABLE 2 labour laws passed by parliament 2013-18

S No.	Name of Law
1	The Federal Employees Benevolent Fund and Group Insurance (First Amendment) Act, 2013
2	The Federal Employees Benevolent Fund and Group Insurance (Second Amendment) Act, 2013
3	The Minimum Wages for Unskilled Workers (Amendment) Act, 2015
4	The Senate Secretariat Services Act, 2017
5	The Federal Employees Benevolent Fund and Group Insurance (Amendment) Act, 2017
6	The National Assembly Secretariat Employees Act, 2018

RECOMMENDATIONS

- Parliament must undertake a comprehensive review of labour laws in the light of constitutional provisions and International standards and draft federal guidelines as minimum legislation standards for provincial legislation on labour governance;
- Parliament should bring relevant amendments to update the outdated laws for their applicability on ICT;
- Labour legislation need to undergo structural changes, laws that are dealing with similar subjects within the labour governance should be updated and merged, while obsolete laws need to be repealed.
- The parliament must also deliberate on introducing fresh set of legislations to make labour governance effective, efficient and compliant with international standards by bringing labour laws under the ambit of four main streams; Terms of Services and Conditions, Industrial Relations, Social Security and Occupational Safety and Health.

3.1.2 Provincial Assemblies

The Provincial Assemblies passed an impressive number (72) of labour legislations in the past five years. The devolution requirements prompted Provincial Assemblies to introduce mass-scale legislation of labour issues, however, the quality of these legislations was compromised. In most cases, the Assemblies adopted existing federal legislations without updating and consolidating them. Table 3 presents insight into the nature of legislations passed by Provincial Assemblies.

TABLE 3 Provincial laws by nature of legislation

Categories of Changes	Total laws passed	New laws	Amendments in the existing law	Adopted as it is	Adopted laws with no substantial change		Labour laws promulgated	
					Number	%	Number	%
Punjab	175	3	14	0	0	0%	17	10%
KP	158	8	5	0	6	32%	19	12%
Sindh	204	6	11	1	12	40%	30	15%
Balochistan	70	0	3	0	3	50%	6	9%

82%) of the labour laws in Punjab have been amendments to the existing laws. Sindh assembly has adopted 40% labour laws from pre-devolution federal legislations with no substantive changes. For Balochistan, the figure is even higher (50%).

Up to one-third of the KP Assembly's labour legislation is mere adoption of pre-existing federal laws. In Balochistan, it is notable that many of the proposed basic labour laws still await promulgation.

Moreover, Balochistan remains the only province to have not proposed any fresh or original legislation related to labour. On the other hand, Punjab, KP and Sindh have respectively passed 3, 8, and 6 altogether new laws, the details of which are provided in Table 4.

TABLE 4 Fresh labour legislations by provinces

Province	Name of new law
Punjab	The Punjab Fair Representation of Women Act, 2014
	The Punjab Prohibition of Child Labour at Brick Kilns Act, 2016
	The Punjab Restriction on Employment of Children Act, 2016
KP	The Khyber Pakhtunkhwa Tibb and Homeopathic Employees Regularization of Services Act, 2014
	The Khyber Pakhtunkhwa Journalist Welfare Endowment Act, 2014
	The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014
	The Khyber Pakhtunkhwa Appointment of Law officers Act, 2014
	The Khyber Pakhtunkhwa Appointment of GAVI Employees Act, 2016
	The Khyber Pakhtunkhwa Planning & Monitoring Cell, Irrigation Employees (Regularization of Services) Act, 2017
	The Khyber Pakhtunkhwa Regularization of Services of Teaching Assistants as Lecturers Act, 2017
	The Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018
Sindh	The Sindh Sacked Employees' (Reinstatement) Act, 2016
	The Sindh Occupational Safety and Health Act, 2017
	The Sindh Regularization of Teachers appointed on Contract Basis Act, 2018
	The Sindh Regularization Of Veterinary Doctors Appointed On Contract Basis Act, 2018
	The Sindh Fair Representation Of Women Act, 2018
	The Sindh Maternity Benefits Act, 2018

3.2

Compliance of provincial laws with international law vis-à-vis women workers' rights

Pakistan has not ratified the Maternity Protection Convention C-183, however there are legislations (federal and provincial) that deal with maternity issues.

Provincial legislations do not effectively comply with international conventions pertaining to the rights of women workers. One of the indicators for labour laws to be effective with respect to gender representation is their ability to capture the best practices established internationally. Moreover, Pakistan's international commitments should guide many legislative processes. Pakistan is signatory to the ILO's convention C-100 on equal remuneration, and Discrimination (Employment and Occupation) Convention

C-111. Article 11 of CEDAW is also one guiding principle that should guide the legislation making in Pakistan. Following section comprehensively outlines major gaps in labour laws related to special provisions on women workers' rights:

3.2.1 Compliance with Equal Remuneration Convention C-100 & Discrimination (Employment & Occupation) Convention C-111

except Sindh Payment of Wages Act 2015, no province has included even a single clause on equal remuneration or in compliance with Discrimination (Employment and Occupation) Convention C-111.

As mentioned earlier, Pakistan is signatory to the equal remuneration convention C100 of ILO and Discrimination (Employment and Occupation) Convention C-111, however, While Sindh Assembly has added a section on non-discrimination to the Sindh Payment of Wages Act, 2015, it does not mention that the pay scale for both men and women would be equal. Instead, it outlines a general set of characteristics (including sex) on the basis of which discrimination is prohibited, thus, giving room for exploitation resulting in pay gap.

TABLE 5 Number of clauses reflecting compliance with C-100 & C-111

Province	Equal Remuneration (ILO C100)		Discrimination (Employment & Occupation) Convention C-111
Punjab	0		0
Sindh	1	Equal Remuneration protection in The Sindh Payment of Wages Act, 2015	0
KP	0		0
Balochistan	0		0

3.2.2 Compliance with Maternity Protection Convention C-183

The Khyber Pakhtunkhwa Maternity Benefits (Amendment) Bill, 2015 has added a provision that ensures one month arduous work relaxation to pregnant women which can be availed six weeks prior to delivery and six weeks after the delivery.

Punjab’s Maternity Benefits (Amendment) Act, 2015 ticks the criteria for addressing ILO’s convention C183 on maternity protection, however, the legislation does not effectively penalize offences under the law. The fines are randomly updated and the increase is unsubstantial, hence, leaving room for ineffective implementation.

TABLE 6 Provincial Labour Laws’ Compliance with Maternity Protection Convention C-183

Province	Maternity Protection (ILO C183)	
Punjab	1	Maternity protection in The Punjab Maternity Benefits (Amendment) Act, 2015
Sindh	2	Maternity protection in The Sindh Shops and Commercial Establishment Act, 2015
		Maternity protection in The Sindh Maternity Benefits Act, 2018
KP	1	Maternity protection clause in The Khyber Pakhtunkhwa Maternity Benefits (Amendment) Act, 2015
Balochistan	0	

3.2.3 Compliance with Provision in Article 11 of CEDAW

Of all the labour laws passed by each province, only three laws of Punjab, four laws of Sindh and KP each, and one law of Balochistan address some women’s rights, as outlined in Article 11 of CEDAW, concerning equal opportunities in employment, service conditions and maternity protection.

In this regard, the Punjab Shops and Establishments (Amendment) Act, 2013 specifically refers to the provision of daycare rooms for children at establishments where more than 25 women are employed. The problem with restricting the number of women is that it excludes other small and medium sized establishments which employ less than 25 women. Similarly, under the Punjab Fair Representation of Women Act, 2014, 66 laws have been amended to ensure representation of women in decision-making bodies. While this does not directly impact the economic activities of women, it ensures the participation of women in the decision-making processes of various organisations.

There is no standard for specifying the penalty amount in each adopted laws across the provinces.

Balochistan's sole law that takes into account Article 11 of CEDAW with respect to women's protection is The Balochistan Harassment of Women at Workplace Act, 2015. While the law builds on the existing federal document, it introduces two major changes. Firstly, a helpline is established for women under the Women's Department and, secondly, it states that the Ombudsperson should preferably be a woman.

Of the four laws that take into account Article 11 of CEDAW, the Khyber Pakhtunkhwa Shops and Establishment Act, 2015 refers to a 'facility' at establishments for preschool and infirm children. However, it is loosely defined, leaving the constitution of an appropriate facility open to interpretation. Moreover, it is difficult for parents to bring their children to such facilities, since the rules for day care centers are not formulated in accordance with the law, nor are adequate facilities available. Such as it is difficult for working mothers to bring children to day care if a day care supervisor is not available (a provision that is made in rules of the laws in Punjab, for instance, but not in other provinces). The law mandates the provision of separate washroom that can accommodate more than five women workers, but it is discriminatory in terms of the working hours for women as it restricts women from working after 7PM.

It is noteworthy that laws on similar themes across the provinces and within the provinces are in contradiction to each other. For example, the number of women workers for which the facility of day care is to be available is different than the Shops & Establishment Acts of KP and Punjab.

The issue of day care centers at establishments is randomly addressed in the provinces.

TABLE 7 Provincial Laws' Compliance with CEDAW's Article 11

Province	Equal opportunities in employment and service conditions, maternity protection (CEDAW Article 11)	
Punjab	3	Job security for women and equal opportunities in The Punjab Shops and Establishments (Amendment) Act, 2013
		Job security for women and equal opportunities in The Punjab Fair Representation of Women Act, 2014
		Maternity Protection Convention in The Punjab Maternity Benefits (Amendment) Act, 2015
Sindh	4	Maternity benefits in The Sindh Employees' Social Security Act, 2016
		Job security for women and equal opportunities in The Sindh Payment of Wages Act, 2015
		Job security for women and equal opportunities in The Sindh Fair Representation of Women Act, 2018
		Maternity benefits in The Sindh Maternity Benefits Act, 2018
KP	4	Job security for women and equal opportunities in The Khyber Pakhtunkhwa Regulation of Lady Health Workers Program and Employees (Regularization and Standardization) Act, 2014

Province	Equal opportunities in employment and service conditions, maternity protection (CEDAW Article 11)	
		Maternity benefits in The Khyber Pakhtunkhwa Maternity Benefits (Amendment) Act, 2015
		Job security for women and equal opportunities in The Khyber Pakhtunkhwa Shops and Establishment Act, 2015
		Job security for women and equal opportunities in The Khyber Pakhtunkhwa Protection against Harassment of Women at the workplaces (Amendment) Act, 2018
Balochistan	1	Job security for women and equal opportunities in The Balochistan Harassment of Women at Workplace Act, 2015

RECOMMENDATIONS

- Provincial Assemblies need deliberations to introduce comprehensive inclusion of provisions around ILO conventions C-100 and C-111 so that sex-based discrimination related to remuneration and employment can be addressed;
- Provincial Assemblies need to amend the maternity laws to bring them in line with international standards and deliberations should take place to extend the maternity leave from 12 weeks to at least 24 weeks;
- In order to fully comply with CEDAW's Article 11 Provincial Government must introduce comprehensive reforms around provisions of day care centres, separate washrooms, nursing breaks and flexible timings for women workers as well as extension in the duration of maternity leave.

3.3 Labour Inspection

The laws do not include provisions for centralized inspection mechanisms, frequency of inspection, consolidated areas of inspection and consolidated Terms of Reference for inspectors.

Effective implementation of labour laws is not possible without an effective labour inspection system in place. The labour laws enacted during the Assemblies' current terms do not adequately comply with ILO Labour Inspection Convention. Similarly, there is variation in the powers accorded to inspectors in different laws that contradict each other. Such inconsistencies should be removed.

The expectation of laws from labour inspector varies, for example, in the Boilers and Pressure Vessels Laws; in all provinces, inspector's responsibilities are technical and involve ensuring the proper functioning of machinery. However, other laws, such as those related to shops and establishments, the inspector's responsibilities involve monitoring compliance with various laws. Inspectors responsibilities are also not consolidated while no define structure of labour inspection exists.

RECOMMENDATIONS

The government should centrally address labour inspection issues in compliance with the relevant ILO Convention by consolidating the responsibilities of labour inspector, areas of labour inspection and drafting comprehensive labour inspection policy and legislation.

TABLE 8 Provincial Labour laws enacted by current Assemblies having provisions related to labour inspection

Province	ILO Convention	Name of Corresponding law
Punjab	C081 Labour Inspection Convention	The Punjab Boilers and Pressure Vessels (Amendment) Act, 2013
		The Punjab Payment of Wages (Amendment) Act, 2013
		The Punjab Prohibition of Child Labour at Brick Kilns Act, 2016
		The Punjab Boilers and Pressure Vessels (Amendment) Act, 2017
		The Provincial Employees Social Security (Amendment) Act, 2013
		The Punjab Workmen's Compensation (Amendment) Act, 2013
		The Punjab Minimum Wages for Unskilled Workers (Amendment) Act, 2013
		The Punjab Shops and Establishments (Amendment) Act, 2013

Province	ILO Convention	Name of Corresponding law
		The Punjab Industrial Relations (Amendment) Act, 2014
		The Punjab Maternity Benefits (Amendment) Act, 2015
		The Punjab Restriction on Employment of Children Act, 2016
Sindh		The Sindh Factories Act, 2015
		The Sindh Workers' Compensation Act, 2015
		The Sindh Employees' Social Security Act, 2016
		The Sindh Minimum Wages Act, 2015
		The Sindh Factories Act, 2015
		The Sindh Terms of Employment (Standing Orders) Act, 2015
		The Sindh Shops and Commercial Establishment Act, 2015
		The Sindh Bonded Labor System (abolition) Act, 2015
		The Sindh Prohibition of Employment of Children Act, 2017
		The Sindh Payment of Wages Act, 2015
		The Sindh Occupational Safety and Health Act, 2017
KP		The Khyber Pakhtunkhwa Boilers and Pressure Vessels Act, 2016
	The Khyber Pakhtunkhwa Bonded Labour System (Abolition) Act, 2015	
	The Khyber Pakhtunkhwa Shops and Establishment Act, 2015	
Balochistan	The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015	
	The Balochistan Boiler and Pressure Vessels Act, 2015	

3.3 Laws in Contravention of International Conventions

TABLE 9 KP Labour law in contradiction to international standard of minimum age

Contradiction and outlining contradiction w.r.t the laws

The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015

The Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 is in contradiction to itself, the federal laws, and to the ILO convention.

Nature of contradiction

The law is contradictory to ILO Minimum Age, and Federal Law as this law allows children above 12 years of age to work.

The analysis of the law has indicated lack of uniform standard related to compliance with ILO Minimum Age Convention C-138. The definition of child in the convention clearly states that anyone who has not completed fourteen years is a child, following which the employment of children has been made illegal across the board. Yet, the law allows a child above 12 years of age to work under compelling circumstances.

RECOMMENDATIONS

This Contradiction from the law should be removed and law should be made compliant with international standard of minimum age of employment of children and domestic laws on Prohibition of employment of children.