

PROTECTING PAKISTANI LABORERS POST-EIGHTEENTH
AMENDMENT: RECOGNIZING RIGHTS AFTER THE
DEVOLUTION OF POWER

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I. Introduction

Pakistan’s labor laws have traditionally been characterized as progressive.¹ Pakistan’s workers are protected first and foremost by articles in their Constitu-

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¹ See, e.g., Andrew K. Stutzman, *Our Eroding Industrial Base: U.S. Labor Laws Compared with Labor Laws of Less Developed Nations in Light of the Global Economy*, 12 *DICK. J. INT’L L.* 135, 161-62 (1993) (arguing Pakistan has had comprehensive labor protections for over fifty years in comparison to other developing countries). Pakistan’s willingness to ratify progressive labor laws is admirable especially in light of Pakistan’s strong emphasis on industrialization since Independence in 1947. See ZAFAR

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tion.² Pakistan has also enacted more than 70 labor laws and nearly 90 rules and regulations under these laws since its Independence from Britain and Partition from India in 1947.³ Pakistan is also a Member State of the International Labor Organization (ILO), which requires its members to monitor and enforce certain labor rights.⁴

Despite the apparent progressiveness of Pakistan's labor laws, the country's short history shows that adequate labor rights have not actually been afforded to workers.⁵ Only in more recent years, under President Asif Ali Zardari, have workers regained many of the rights that were taken away by previous administrations.⁶ Labor legislation had seemed to have stabilized; however, that changed with the passage of the Eighteenth Amendment in 2010, which shifted many legislative subjects, including labor law, from joint national and provincial authority to the provinces exclusively.⁷ Prior to this Amendment, labor law was listed in the "Concurrent Legislative List" (CLL)⁸ and therefore could be regu-

SHAHEED, *THE LABOUR MOVEMENT IN PAKISTAN: ORGANIZATION AND LEADERSHIP IN KARACHI IN THE 1970s* 17 (Oxford Univ. Press 2007) ("To assert that [the Government of Pakistan] was obsessed with the idea of industrialization would not be an overstatement."). However, enforcement against private employers and reach of these laws have been problematic. See, e.g., Yaroslau Kryvoi, *Why European Union Trade Sanctions do not Work*, 17 *MINN. J. INT'L L.* 209, 236-41 (2008) (unlike other developing countries, Pakistan's federal government does not actually suppress workers but is culpable for not acting to stop suppression by private employers) and TAZNEED JAVED, *PAK. INST. OF LEG. DEV. AND TRANSPARENCY, UNDERSTANDING LABOUR ISSUES IN PAKISTAN* 7 (2009), [http://www.pildat.org/Publications/publication/LabourIssue/Understanding LabourIssuesinPakistanDec2009.pdf](http://www.pildat.org/Publications/publication/LabourIssue/Understanding%20LabourIssuesinPakistanDec2009.pdf) (last visited Oct. 11, 2011) [hereinafter PILDAT, UNDERSTANDING LABOUR ISSUES] (A vast majority of Pakistani workers—more than 75 percent—are not protected by the labor laws of Pakistan because they are employed in the "informal sectors" such as agriculture and seasonal work); see also IFTIKHAR AHMAD & NAUSHEEN AHMAD, *PAKISTAN: NATIONAL STUDIES IN EMPLOYMENT SITUATIONS AND WORKERS PROTECTION* 15-16 (ILO), <http://www.ilo.org/public/english/dialogue/ifpdial/downloads/wpnr/pakistan.pdf> (last visited Oct. 11, 2011) (discussing the rise in contract labor, piece-rate workers and other methods of employing staff that are cheaper). Unemployment has also plagued Pakistan. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACTBOOK: PAKISTAN*, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html> (last visited Oct. 11, 2011) (Unemployment rate is above 15%).

² See discussion *infra* Part IV.A (discussing Articles 17(1), 18(a) and 37(e) as bases for protection of workers).

³ See Sabur Ghayur, *International Trade Union Confederation-Asia Pacific, Freedom of Association and Right to Organize and Bargain Collectively: Current Situation and Recommendations for Labor Law Reforms in Pakistan* 4 (2010), available at <http://ituc-ap.org/ituc/live/binaries/document/labour-law-reform-pakistan-study-revised-feb-201.pdf> [hereinafter Ghayur, *Freedom of Association*] ("[T]he number of labour legislations (acts and ordinances) are more than 70. There are also 89 "rules and regulations" made under these enactments, on the book of statutes.").

⁴ ILO, *NATIONAL LABOUR LAW PROFILE: ISLAMIC REPUBLIC OF PAKISTAN*, available at <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/pak.htm> (last visited October 11, 2011) (Pakistan joined the ILO in 1947 and has ratified 34 ILO Conventions as of 2004). No additional ILO Conventions have been adopted since then.

⁵ See discussion *infra* Part II (discussing the labor policies of Pakistan's past presidents).

⁶ See discussion *infra* Part III.A (discussing the Industrial Relations Act of 2008 that restored many of the rights taken away by previous administrations).

⁷ See discussion *infra* Part III.B (discussing the industrial relations acts of the four provinces).

⁸ Pakistan's Constitution consisted of two such lists: the Federal Legislative List and the Concurrent Legislative List. Items in the first list could only be legislated upon by the federal government. Items in the second list could be regulated by both the federal government and the provinces. Affairs not listed in either list were "residuary powers" reserved for the provinces. By abolishing the concurrent legislative list, all of the affairs fell under the exclusive authority of the provinces as "residuary powers." See

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lated by both the federal government and the individual provinces.⁹ But the Eighteenth Amendment abolished the CLL, thereby allowing the provinces to have sole authority over labor laws.¹⁰

Although President Zardari had repealed many of the anti-labor laws,¹¹ the aftermath of the Eighteenth Amendment has been that the resulting provincial labor laws have largely been anti-labor.¹² The necessary action to protect Pakistani laborers is twofold. First, courts must recognize that they still have jurisdiction to enforce rights given to laborers under the Constitution and must add a “bite” to the articles that protect them.¹³ This would be in stark contrast to the past, which shows the constitutional protections afforded to workers have been only empty promises because Pakistan’s past presidents freely passed anti-labor laws despite being in clear contravention of the Constitution.¹⁴ Second, the federal government must recognize that the amendment has not stripped it of its power to implement rights guaranteed by the ILO Conventions the country has ratified.¹⁵ This is because only the federal government is a Member State of the ILO, not the individual provinces.¹⁶ Unless these two steps are taken, laborers will have no protection against the anti-labor legislation passed by a province.¹⁷

generally PAK. CONST., FOURTH SCHEDULE, *available at* <http://www.pakistani.org/pakistan/constitution/schedules/schedule4.html> (providing Federal Legislative List and the now-repealed Concurrent Legislative List). Items 26 and 27 stated: (26) welfare of labour, conditions of labour, provident funds, employer liability and workmen’s compensation, health, insurance including invalidity pensions, and old age pensions; (27) trade unions, industrial and labour disputes. *Id.*

⁹ Pakistan is comprised of four provinces—Balochistan, Sindh, Punjab, and Khyber Pakhtunkhwa—one federal capital territory—Islamabad—and a group of federally administered tribal areas.

¹⁰ *Id.* In addition to labor and employment, the Eighteenth Amendment also gave the provinces exclusive authority over: education, health, population, environment, tourism, print media, culture and archaeology, just to name a few. *Id.* The Eighteenth Amendment is seen as one of the largest deconcentrations of power in Pakistan since the ratification of the Constitution of 1973 and will undoubtedly result in drastic changes in Pakistan. *See, e.g.,* Colin Cookman, *The 18th Amendment and Pakistan’s Political Transitions*, CENTER FOR AM. PROGRESS (April 19, 2010), http://www.americanprogress.org/issues/2010/04/Pakistan_political_transitions.html (The Eighteenth Amendment, in its aggregate, limits the powers of the president, increases the power of the parliament and prime minister, and devolves power to the provinces); Report: Conference on Labour Rights as Citizens Rights: Realising Constitutional Reforms, p.1 (May 27-28, 2011), *available at* <http://www.humanrights.asia/opinions/columns/pdf/AHRC-ETC-025-2011-01.pdf> (the Eighteenth Amendment modifies more than 100 sections of the 280-section Constitution and is considered a “rewriting of the social contract between the citizens and the state”).

¹¹ *See* discussion *infra* Part III (discussing President Zardari’s passage of the Industrial Relations Act of 2008 and the repeal of harmful legislation passed by previous administrations).

¹² *See* discussion *infra* Part III.B (discussing the industrial relations acts of the four provinces).

¹³ *See* discussion *infra* Part IV.A (arguing Pakistani courts must give a “bite” to those articles that protect workers to counteract anti-labor legislation being passed by provinces).

¹⁴ *See* discussion *infra* Part IV.A (providing a critical analysis of Pakistan’s history of labor legislation).

¹⁵ *See* discussion *infra* Parts IV.B, IV.C (arguing Pakistani courts have jurisdiction to enforce the Constitution and the federal government has jurisdiction to implement ILO Conventions).

¹⁶ *See* discussion *infra* Part IV.C (Pakistan is a member-state, not the provinces).

¹⁷ *See* discussion *infra* Part IV.B, IV.C (arguing otherwise, workers have no recourse against harsh policies enacted by provinces).

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Part II provides a brief history of labor rights in Pakistan until 2008—highlighting laws that were continuously altered in Pakistan’s short history.¹⁸ Part II also provides a brief overview of Pakistan’s constitutional framework.¹⁹ Part III then discusses the labor policies implemented by current-President Asif Ali Zardari.²⁰ A discussion of the Eighteenth Amendment and the subsequent provincial industrial relations acts follows.²¹ Part IV critically analyzes Pakistan’s history to show the anti-labor legislations passed by some of Pakistan’s past leaders were in clear contravention of rights guaranteed by the Constitution.²² Nonetheless, these laws were never struck down by courts, but only changed when a new president came to power.²³ Pakistani courts must change course and enforce these rights to protect workers in the future.²⁴ Part IV further argues the Pakistani courts still have jurisdiction to enforce rights guaranteed to laborers by the Constitution.²⁵ Finally, Part IV argues that the courts and the federal government also has jurisdiction to implement rights guaranteed by the ILO Conventions it has ratified.²⁶ Part V concludes.²⁷

II. Background

Developments in labor law in Pakistan can be categorized into two time frames: (1) pre-Independence and (2) post-Independence.²⁸ Subpart A discusses workers’ rights pre-Independence—the laws and ordinances that were adopted from Britain at the time of Independence in 1947.²⁹ Subpart B discusses the development of labor law post-Independence up to 2008 when General Pervez Musharraf resigned as president of Pakistan.³⁰

¹⁸ See discussion *infra* Parts II.A, II.B (providing history of labor legislation in Pakistan).

¹⁹ See discussion *infra* Part II.C (providing overview of legislative lists in the Pakistani Constitution).

²⁰ See discussion *infra* Part III (providing overview of the Industrial Relations Act of 2008 and other initiatives that repealed anti-labor legislation by previous administrations).

²¹ See discussion *infra* Parts III.A, III.B (discussing the Eighteenth Amendment’s devolution of power and the industrial relations acts of the four provinces).

²² See discussion *infra* Part IV.A (discussing laws that were continuously amended throughout Pakistan’s history).

²³ See discussion *infra* Part IV.A (arguing otherwise, workers will have no recourse against anti-labor legislation passed by a province. Most of the provinces have also abolished the agency that monitors labor conditions).

²⁴ See discussion *infra* Part IV.A (arguing Articles 17(1), 18(a) and 37(e) must be enforceable in courts to be effective).

²⁵ See discussion *infra* Part IV.B (legislation passed by the provinces have largely been anti-labor and seemingly in contravention of articles in the Constitution that would seemingly protect workers).

²⁶ See discussion *infra* Part IV.C (arguing ILO cannot enforce its Conventions against the provinces because only the federal government is a signatory of the ILO).

²⁷ See discussion *infra* Part V (briefly reiterating the importance of retaining jurisdiction and providing “bite” to the articles in the Constitution that protect workers’ rights).

²⁸ The pre-Independence period is discussed in its entirety but the post-Independence period is divided into subsections corresponding to those leaders in Pakistan who had a substantial impact on labor rights in Pakistan.

²⁹ See discussion *infra* Part II.A (discussing the four laws adopted from Britain that formed the backbone of Pakistani labor law).

³⁰ See discussion *infra* Part II.B (discussing labor law under various leaders of Pakistan).

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A. Labor and Employer Relations Pre-Independence

Pakistan's labor laws originated from the British system at Independence in 1947.³¹ The laws before Independence were favorable to British trade and were passed to control the market thereby foreclosing competition by Indian businesses.³² The Employers and Workmen Dispute Act of 1860, for example, was passed to protect British industry from Indian competition.³³ In that period, what now would be called early trade unions were formed as workers' aid organizations out of concern for inhumane working conditions.³⁴ These groups were loosely organized and mobilized primarily to better conditions at the workplace but did not formally represent workers in any capacity.³⁵ Prior to World War I, the British government in India repressed any collective labor actions and confronted labor agitation with violence.³⁶

It was only after World War I that labor unrest reached a boiling point leading to numerous strikes in subsequent years.³⁷ Through the war and its immediate aftermath, employers had amassed huge profits due to the doubling of prices.³⁸

³¹ SHAHEED, *supra* note 1, at 83 ("After Independence, Pakistan not only adopted all the existing labour laws in force in India but also the more general government attitude of active intervention in industrial relations."); *see also* IFTIKHAR AHMAD, *LABOUR AND EMPLOYMENT LAW: A PROFILE ON PAKISTAN* 1, http://www.wageindicator.org/main/documents/Labour_and_Employment_Law-A_Profile_on_Pakistan.pdf (last visited Oct. 11, 2011) (mentioning various laws that were adopted from Britain and India at the time of Independence in 1947). The British had ruled the Indian subcontinent for a period of nearly 200 years. *Id.*

³² ALI AMJAD, *LABOUR LEGISLATION AND TRADE UNIONS IN INDIA AND PAKISTAN* 4 (Oxford Univ. Press 2001) ("The governing object [for the East India Company's presence] was not the hunt for a market for British manufactures but the endeavour to secure a supply of the products of India and East Indies which found a ready market in England and Europe and could yield a rich profit . . .").

³³ The Employers and Workmen Dispute Act of 1860 empowered Magistrates to dispose of disputes related to wages in some public sectors. P.R.N. SINHA ET. AL., *INDUSTRIAL RELATIONS, TRADE UNIONS, AND LABOUR LEGISLATION* 363 (Pearson Ed. 2006). The Act made breach of contract by an employee a criminal offense. *Id.* But there was no penalty if an employer breached its employment contract. AHMAD, *supra* note 31, at 1. The Act was repealed in 1932 although its use ceased many years before that. SINHA, *supra* note 33, at 363.

³⁴ These early trade unions were established by philanthropists and social reformers but had no real effect other than acknowledging workers' plight. *See* CHRISTOPHER CANDLAND, *LABOR, DEMOCRATIZATION AND DEVELOPMENT IN INDIA AND PAKISTAN* 18 (Routledge 2007). The British, even in the early-twentieth century, refused Indians the right to organize but encouraged the political representation of labor. *Id.* at 21. These representatives served in Provincial Legislative Councils, albeit only as advisors. *Id.*

³⁵ These early organizations included the Amalgamated Society of Railway Servants of India and Burma, the Printers' Union and the Kamagar Hitvardhak Sabha (Workers Welfare Union). *Id.* at 18.

³⁶ For example, workers gathered to protest the trial of social reformer Bal Ganagadhar Tilak who was being tried on the basis of his writings. *Id.* At its peak, the protest involved 20,000 workers who closed down factories and took to the streets. *Id.* Police arrested strikers who were later given six-year jail sentences. *Id.* at 19.

³⁷ SHAHEED, *supra* note 1, at 69. The two largest labor unions that arose in the 1920s were the Girmi Kamgar Union (GKU), which was a union for mill workers, and the Bombay Textile Labour Union (BTLU). CANDLAND, *supra* note 34, at 19. The two organizations operated quite differently; the BTLU was started by labor welfare leaders and was seen as more moderate in its operation. SHAHEED, *supra* note 1, at 72-73. In contrast, the GKU was led by communists and was more radical in its approach. *Id.*; *see also* CANDLAND; *supra* note 34, at 19.

³⁸ SHAHEED, *supra* note 1, at 69.

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However, this increase in profits was not accompanied by a rise in wages for workers.³⁹ A series of strikes took place between 1918 and 1920 and these strikes reached their peak in the winter of 1921.⁴⁰

Labor and employment laws were subsequently passed to appease laborers.⁴¹ The labor laws that survived Independence from Britain and Partition from India were: (1) the Trade Union Act of 1926; (2) the Factories Act of 1934; (3) the Industrial Employment Act of 1946; and (4) the Industrial Disputes Act (IDA) of 1947.⁴² The Trade Union Act permitted workers to form and register unions that could represent workers' interests.⁴³ Prior to this Act, unions were deemed an "illegal conspiracy" and were banned.⁴⁴ The Factories Act of 1934 allowed government inspectors to monitor labor conditions in workplaces to ensure compliance with all applicable laws.⁴⁵ The Industrial Employment Act defined procedures for recruitment, termination, disciplinary action and conditions for

³⁹ *Id.*

⁴⁰ *Id.* This period of labor militancy is said to have given birth to the modern labor movement in India. *Id.* This period also coincided with a rise in the nationalist movement in which the Indian National Congress began shifting its position from a willingness to cooperate with colonial authorities to that of peaceful non-cooperation and protests. *Id.*

⁴¹ *Id.* Some of the more notable employment laws passed in the years between World War I and World War II were the Mines Act of 1923 and the Workmen Compensation Act of 1923. AHMAD, *supra* note 31, at 2. The Mines Act set the minimum hours of work for workers in mines to 48 hours a week. LABOUR UNITY, LABOUR LAWS PAKISTAN, available at <http://www.labourunity.org/laws.htm> (last visited October 11, 2011). The Workmen Compensation Act made employers liable for employee injuries that occurred in the course of employment. See ARCHIVE INSIDE, THE WORKMEN'S COMPENSATION ACT, 1923, available at <http://archiveinside.com/2010/02/13/the-employees-old-age-benefits-act-1976/> (last visited October 11, 2011). Many of these employment laws also persisted beyond Independence, albeit with slight modifications. CANDLAND, *supra* note 34, at 27.

⁴² AHMAD, *supra* note 31, at 2. In total, these laws were seen as progressive for their time because they allowed trade union activities in all sectors except the armed forces and the police. *Id.* The covered sectors were afforded the powers to collectively bargain and call strikes. *Id.*

⁴³ ILO, Labour Administration: Profile on Pakistan 19 (Muinuddin Khan ed., ILO Press 1988).

⁴⁴ CANDLAND, *supra* note 34, at 21 (providing story of B.P. Wadia, who was charged with illegal conspiracy when he attempted to establish the Madras Labour Union in 1919). Despite their legalization, unions in Pakistan were weak and few in number at the time of Independence in 1947. RASHID AMJAD & KHALID MAHMOOD, INDUSTRIAL RELATIONS AND THE POLITICAL PROCESS IN PAKISTAN 1947-1977, 3 (Int'l Inst. For Labour Studies 1982). There were no more than 75 registered unions in all of Pakistan, compared to more than 1,000 in India. *Id.* These unions had a total membership of fewer than 150,000 workers. *Id.* They also faced two major problems: (1) many of these unions were merely branches of larger unions in India and had no identity of their own; and (2) many of the early leaders of these unions were Hindu and therefore moved to India at the time of Partition, thereby depriving these unions of strong and experienced leadership. *Id.* at 4. In the four years after Independence, however, Pakistan trade unions flourished; by 1951, 209 unions had organized a total of nearly 400,000 workers. CANDLAND, *supra* note 34, at 36.

⁴⁵ The Factories Act required that measures be taken to ensure safety in the design, construction, maintenance, testing, and inspection of machinery, tools, and equipment. Asna Afzal, *Pakistan, the WTO, and Labor Reform*, 29 B.C. INT'L & COMP. L. REV. 107, 114 (2006) (citing Factories Act). It also required the provinces to appoint inspectors who would ensure employers were complying with these standards. FACTORIES ACT, §§ 10-13 (1934) (mandating appointment of inspectors), available at <http://www.pakistanlaw.net/pakistan-law/business-law/factories-act-1934/>. It contained many provisions concerning employment law. For example, it established a maximum work day and week, allowed for vacation, sick and "casual leave" days, and required that children between the age of 14-18 who are to be employed first receive a certificate of fitness. LABOUR UNITY, *supra* note 41. The Factories Act was applicable to factories employing 10 or more workers. FACTORIES ACT, § 5(1).

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work and welfare.⁴⁶ The IDA of 1947 established the administrative machinery for the settlement of labor disputes and laid down deadlines if the aggrieved party wished to engage in consultation and arbitration.⁴⁷ It also prohibited strikes and lockouts when conciliation was pending but allowed them even in public utility sectors⁴⁸ but only if conciliation efforts had failed.⁴⁹ But before a strike or lock-out could be called, the government could exercise its option of filing an application for adjudication which allowed the government to settle the dispute.⁵⁰ If the court accepted the request, the government had jurisdiction over the dispute for three months, during which time, strikes and lock-outs were prohibited.⁵¹ If no resolution was reached during this period, the parties were free to strike or lock-out.⁵² This process was mandatory for public utilities but optional for other sectors.⁵³ These four laws became the backbone for Pakistan's labor laws after Independence.⁵⁴

B. Pakistani Labor Law Post-Independence to 2008

Pakistan gained Independence from Britain and Partitioned itself from India in 1947.⁵⁵ Pakistan's labor laws since Independence have largely been determined by its leaders and thus varied greatly from administration to administration.⁵⁶

⁴⁶ CANDLAND, *supra* note 34, at 21. This Act compelled workers and employers to collectively bargain because it required representatives from both sides to exchange draft proposals of these conditions to create a satisfactory employment contract. *Id.*

⁴⁷ *Id.* at 20. The preamble of the Industrial Disputes Act of 1947 (IDA) described the purpose of the Act to be investigative in nature and promote settlements of industrial disputes. AMJAD, *supra* note 32, at 57. It allowed the government to refer labor-management disputes to a conciliation officer whose sole duty was to promote a settlement. SHAHEED, *supra* note 1, at 88. If no settlement was reached within fourteen days, the government could then refer the dispute to the Board of Conciliation or a tribunal empowered to make a binding resolution that would remain in effect for one year. SHAHEED, *supra* note 1, at 88; AHMAD, *supra* note 31, at 5-6. It also prohibited strikes during conciliation proceedings and for a certain number of days after a decision was rendered or during the one-year period where the solution had been handed down by a tribunal. *Id.*

⁴⁸ Public Utilities included: (1) any railway services; (2) postal, telegraph and telephone communications; (3) industries supplying power or water; (4) public conservancy and sanitation systems; (5) defense establishments; (6) naval dockyards; (7) services to maintain certain ports; (8) mechanically propelled transport; and (9) Pakistan Security Printing Press. SHAHEED, *supra* note 1, at 252.

⁴⁹ SHAHEED, *supra* note 1, at 88. Adequate notice (deemed to be two weeks) also had to be given. *Id.* An amendment to the Industrial Disputes Act in 1956 would later make this notice requirement mandatory for all establishments with twenty or more workers. *Id.*

⁵⁰ AMJAD, *supra* note 32, at 72.

⁵¹ SHAHEED, *supra* note 1, at 254.

⁵² See *id.*

⁵³ G.K. Sharma, *Labour Movement in India: Its Past and Present* 110 (Sterling Publishers 1971).

⁵⁴ Christopher Candland, *The Cost of Incorporation: Labor Institutions, Industrial Restructuring, and New Trade Union Strategies in India and Pakistan*, in *THE POLITICS OF LABOR IN A GLOBAL AGE 70* (Oxford Univ. Press 2001); see also AHMAD, *supra* note 31, at 2.

⁵⁵ Initially, Pakistan was comprised of both East and West Pakistan. However, East Pakistan seceded in 1971 to become Bangladesh. The former West Pakistan became the current Pakistan. See INDIA PAKISTAN TRADE UNIT, *BANGLADESH*, available at http://www.iptu.co.uk/content/bangladesh_employment_law.asp for a summary of labor law in Bangladesh.

⁵⁶ To be more accurate, it is actually the Pakistani National Assembly that passes legislation. But Pakistan has a very poor system of checks and balances and consequently, Pakistan leaders had full

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Subpart One discusses the regressive policies implemented under the military dictator General Ayub Khan.⁵⁷ Subpart Two discusses the expansion of rights by the interim government of General Yahya Khan.⁵⁸ Subpart Three discusses the broadening of workers' rights afforded by the democratically elected Zulfikar Ali Bhutto.⁵⁹ Subpart Four discusses the repressive labor policies of General Zia ul-Haq.⁶⁰ Subpart Five describes the regressive changes made by General Pervez Musharraf.⁶¹

1. Labor Law under General Ayub Khan (1958-1969)

General Ayub Khan ("A. Khan") assumed power in October 1958.⁶² His administration was hailed for its economic development, albeit this occurred largely at the expense of the working class.⁶³ One of his first steps in office was to replace the IDA of 1947 with the Industrial Disputes Ordinance (IDO) of 1959.⁶⁴ The IDO of 1959 expanded the definition of public utility to include more sectors, such as textiles and sugar, even though they had little or no connection to public utilities.⁶⁵ By doing so, the law made strikes nearly impossible in almost

compliance from the National Assembly to pass the laws and constitutional amendments they desired. See Furqan Mohammed, *Exploring Power Politics and Constitutional Subversions in Pakistan: A Political and Constitutional Assessment of Instability in Pakistan*, 7 LOY. U. CHI. INT'L L. REV. 229, 240-42 (2010) (arguing leaders used threats and intimidation, with great success, to pass the laws they desired). Cf. discussion *infra* Part II.B.3 (discussing the expansion of labor rights under President Z. Bhutto) with Part II.B.4 (discussing the repression of labor rights under General Zia ul-Haq).

⁵⁷ See discussion *infra* Part II.B.1 (discussing the regressive labor policies of General Ayub Khan such as the IDO of 1959, the Trade Unions Act of 1968 and the IDA of 1968).

⁵⁸ See discussion *infra* Part II.B.2 (discussing the broader labor policies of General Yahya Khan such as the IRO of 1969).

⁵⁹ See discussion *infra* Part II.B.3 (discussing the more expansive policies of Z. Bhutto such as the Labour Policy of 1972 and the creation of the NIRC).

⁶⁰ See discussion *infra* Part II.B.4 (discussing the repressive policies of General Zia ul-Haq such as the ban on inspections, strikes, demonstrations).

⁶¹ See discussion *infra* Part II.B.5 (discussing the regressive policies of General Pervez Musharraf such as the IRO of 2002 and the Removal from Services Ordinance of 2000).

⁶² YASMEEN NIAZ MOHIUDDIN, PAKISTAN: A GLOBAL STUDIES HANDBOOK 164 (ABC-CLIO Press 2007). General A. Khan rose to leadership through a coup in which he ousted the "inefficient and rascally" politicians who had held power. *Id.* He immediately invoked martial law and made himself president of Pakistan. *Id.*

⁶³ *Id.* ("The Ayub era is often known as the golden era of economic development in Pakistan. But his policies also led to sharp inter-regional and interpersonal inequities in income distribution and in concentration of wealth and power . . ."). This period, due to the economic growth, was coined the "Decade of Development" for Pakistan. See, e.g., SHAHEED, *supra* note 1, at 251 and PAKISTAN PAEDIA, THE DECADE OF DEVELOPMENT: AYUB'S 10 YEARS, available at http://www.pakistanpaedia.com/hist/pak_years/pak_hist2.htm (last visited Oct. 11, 2011).

⁶⁴ AMJAD, *supra* note 32, at 72 ("The [IDO of 1959] . . . followed the structural pattern of the [IDA of 1947] but fundamentally changed the underlying policy of the legislation and also curtailed drastically the rights in respect of collective bargaining and the formation of trade unions.").

⁶⁵ See SHAHEED, *supra* note 1, at 252 (textiles, sugar, cement, oils, and technical equipment were all now deemed "public utilities," among many other industries). The provincial and central governments were also empowered to declare the following industries "public utilities" for periods up to six months in emergency scenarios: (1) transportation (other than railway); (2) food and beverage producers; and (3) the State Bank of Pakistan and other scheduled banks. *Id.*; see also AMJAD & MAHMOOD, *supra* note 44, at 13.

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every industry—public and private—because it required unions to undergo the mandatory arbitration procedures laid out in the IDA of 1947.⁶⁶ Unlike the IDA of 1947, which allowed only an aggrieved party to decide if it would proceed with consultation and arbitration, the IDO of 1959 allowed either party to file for arbitration proceedings.⁶⁷ The Ordinance also resulted in unfair treatment of unions because it required an application for adjudication of the dispute to pro-employer industrial courts—a new creation of the IDO of 1959.⁶⁸ In contrast, under the IDA of 1947, the application for adjudication was filed with the district courts, which were seen as more neutral decision-makers.⁶⁹ Finally, whereas the IDA of 1947 capped a court’s jurisdiction at three months, the IDO of 1959 removed this cap, thereby allowing legal battles to drag on for years.⁷⁰ Being a labor union representative was also problematic because they received no immunity from termination of employment.⁷¹

Anti-labor legislation was also passed in the 1960s, most of it, curtailing the rights of workers.⁷² The Trade Unions Act of 1968 allowed management to debar any trade union representative for any reason it deemed fit.⁷³ A revised Industrial Disputes Act of 1968 added a clause allowing the federal or provincial government to prohibit a strike in any industry if it was deemed to be in the “public interest.”⁷⁴

General A. Khan lauded the economic achievements of the country in the past ten years—the time he had been in office.⁷⁵ This period was labeled the “Decade of Development” by his administration and General A. Khan held numerous events throughout the year in celebration.⁷⁶ This turned out to be the last straw

⁶⁶ SHAHEED, *supra* note 1, at 252. General A. Khan did not explicitly ban strikes in the country because he did not want to openly contravene the ILO Convention granting the right to strike. *Id.* He therefore listed them as public utilities which made it nearly impossible to strike. *Id.*

⁶⁷ MUINUDDIN KHAN, *LABOUR ADMINISTRATION: PROFILE ON PAKISTAN 13* (ILO 1990) (“Employers were allowed to refer industrial disputes for adjudication, even though they were raised by workers.”); see discussion *supra* notes 47-54 and accompanying text (describing the arbitration system imposed by the IDA of 1947).

⁶⁸ SHAHEED, *supra* note 1, at 252. The industrial courts were designed to be tripartite with a chairman and two members—one representing employers and the other representing employees—who were to advise the chairman. *Id.* at 255. These advisors were appointed by either the provincial or federal government. *Id.* Only labor leaders who were pro-employer were typically appointed, thereby tainting the process. *Id.*

⁶⁹ See *id.*

⁷⁰ AHMAD, *supra* note 31, at 2 (“[T]he compulsory adjudication system [led to workers] going from one court to another court for years in the quest for justice.”). GHAYUR, *FREEDOM OF ASSOCIATION*, *supra* note 3, at 6.

⁷¹ GHAYUR, *FREEDOM OF ASSOCIATION*, *supra* note 3, at 6.

⁷² There was some positive employment legislation passed, however. Most notable of these laws was the Minimum Wages Ordinance of 1961 which authorized the creation of a Board that could fix the minimum wages for unskilled workers who had no other act regulating their income. AMJAD, *supra* note 32, at 127. The Board could also make recommendations for other classes of workers. *Id.*

⁷³ GHAYUR, *FREEDOM OF ASSOCIATION*, *supra* note 3, at 6-7.

⁷⁴ AMJAD, *supra* note 32, at 37.

⁷⁵ SHAHEED, *supra* note 1, at 251.

⁷⁶ *Id.*

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for the working class, which, in conjunction with students and the unemployed, began protesting against his repressive policies.⁷⁷ These mass protests ultimately led to the resignation of General A. Khan on March 25, 1969.⁷⁸

2. *Labor Laws under General Yahya Khan (1969-1971)*

Upon the resignation of General Ayub Khan, the reins of power were handed to General Yahya Khan (“Y. Khan”), who led an interim government until the nation’s first-ever general elections could be held in 1971.⁷⁹ Noting the manner of the previous regime’s downfall, General Y. Khan acknowledged that workers had not received a “fair deal” under the previous administration.⁸⁰ He therefore passed the Industrial Relations Ordinance of 1969.⁸¹ The primary features of the Ordinance were: (1) the unfettered right of association for workers and employers; (2) the restoration of the right to strike and lockout after the failure of bilateral negotiations and conciliation efforts without requiring further appeal to courts;⁸² (3) the introduction of a system of voluntary arbitration; and (4) the protection of union leaders from adverse action during periods of trade union registration and bargaining.⁸³ The “public interest” clause was omitted.⁸⁴ Labour appellate courts were created to handle appeals from industrial courts in a speedy manner.⁸⁵

⁷⁷ SHAHEED, *supra* note 1, at 262 (“Workers joined students and unemployed elements in all major cities of West and East Pakistan in a protest movement that started in the autumn of 1968 and continued until February 1969, forcing Ayub Khan to finally withdraw from Pakistani politics.”); *see also* AMJAD, *supra* note 32, at 77.

⁷⁸ *See* Ata Rabbani, *Ayub Khan’s Blunders*, NATION (April 14, 2011) available at <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Opinions/Columns/14-Apr-2011/Ayub-Khans-blunders/1> (“[General A. Khan] admitted his rejection by the people and announced that he was resigning.”).

⁷⁹ MOHIUDDIN, *supra* note 62, at 172; AMJAD, *supra* note 32, at 77.

⁸⁰ General Y. Khan passed the Labour Policy of 1968 which began with the following sentiment:

The government recognizes that the worker had not had a fair deal in the past. In a period of growing prosperity and rapidly increasing production, the worker’s real income and living conditions have remained static and in many cases have even deteriorated.

AMJAD, *supra* note 32, at 78.

⁸¹ *Id.* at 36.

⁸² The government did retain the power to prohibit strikes in eight public utility services: ports, hospitals, fire-fighting services, security services, railways and airways, postal and telephone services, and any system of public conservancy or sanitation and the generation or supply of electricity, gas or water to the public. *Id.* at 37.

⁸³ *Id.* at 36-37. Under General A. Khan, no such protections were rendered. *See* discussion *supra* note 71 and accompanying text.

⁸⁴ *Id.* at 37. The “public interest” clause had been added by General A. Khan in the IDO of 1968 and allowed the government to ban strikes in any sector it deemed to be in the “public interest.” *See* discussion *supra* note 74 and accompanying text.

⁸⁵ *Id.* Labor disputes in Pakistan are initially filed with industrial courts. Prior to the establishment of labor appellate courts, appeals from these courts had to be made to the Pakistani High Courts. *Id.* There are five Pakistani High Courts in total—one in each province and one in the federal capital.

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3. *Labor Law under Prime Minister Zulfikar Ali Bhutto (1971-1977)*

Zulfikar Ali Bhutto's ("Z. Bhutto") Pakistan People's Party won the election of 1971⁸⁶ and entered office with wide support by workers and the unemployed.⁸⁷ Bhutto passed his Comprehensive Labour Policy on February 10, 1972.⁸⁸ The most notable features of the policy, as they pertained to labor rights, included: (1) every order of termination of an employee had to be in writing and given to the worker; (2) labour courts would make decisions within 30 days for matters pending before them; and (3) a National Industrial Relations Commission (NIRC) was established.⁸⁹ Arguably the most significant reform was the creation of the NIRC.⁹⁰ It was empowered to: (1) adjudicate industrial disputes in which a union was a party; and (2) punish and prevent unfair labor practices.⁹¹

Z. Bhutto also passed the Services Tribunal Act of 1973, which required government employees to seek redress in specially appointed tribunals with appeals to the Pakistani High Court.⁹² Despite some anti-labour measurements,⁹³ Z.

⁸⁶ Z. Bhutto's presidency is also said by many to signal Pakistan's modern history that followed East Pakistan secession to become Bangladesh with West Pakistan becoming Pakistan. AMERICAN INSTITUTE OF PAKISTAN STUDIES, CONTEMPORARY PROBLEMS OF PAKISTAN 176 (J. Henry Korson ed., Westview Press 1993) [hereinafter PAKISTAN STUDIES] (civil war broke out between East and West Pakistan over issues related to how the states would be governed, and climaxed when the Awami League, a political party from East Pakistan, won a majority of seats in the National Assembly).

⁸⁷ Bhutto's Inauguration Speech noted his support from the working class by stating:

Our electoral success was made possible because the toiling masses, particularly peasants and labourers, co-operated with the Pakistan People's Party. We cannot forget their kindness.

CANDLAND, *supra* note 34, at 45. One of his first moves upon taking office was to release all labor activists who had been imprisoned by the previous administration, thereby restoring labor leadership. SHAHEED, *supra* note 1, at 273.

⁸⁸ See generally SABUR GHAYUR, EVOLUTION OF THE INDUSTRIAL RELATIONS SYSTEM IN PAKISTAN 13 (ILO 2009), http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_123344.pdf [hereinafter GHAYUR, EVOLUTION] (providing overview of salient points of new Labour Policy).

⁸⁹ See *id.* at 13 (listing these benefits among others in Z. Bhutto's 22-point Policy). Another important feature of the policy was to increase wages and provide for fringe benefits for workers. *Id.* To that extent, the minimum wage, originally established by General Y. Khan, was raised. *Id.* Workers were also allowed to share in five percent of the employer's profits, up from 2.5% under General Y. Khan. *Id.* Annual bonuses also became compulsory. *Id.* Minimum standards were also established for life insurance and medical benefits. *Id.* These benefits, in total, added more than 22 percent to the earnings of workers in 1972-73. AMJAD & MAHMOOD, *supra* note 44, at 24.

⁹⁰ AMJAD & MAHMOOD, *supra* note 44, at 41.

⁹¹ *Id.* The NIRC was a federal agency that operated inside the provinces as well. It is similar to the NLRB in the U.S. in both form and function.

⁹² Although this Act did not seem problematic initially, it eventually made the process of seeking redress for government employees lengthier. See *NA Repeals Removal from Service Ordinance 2000*, DAILY TIMES (Jan. 27, 2010), http://www.dailytimes.com.pk/default.asp?page=2010%5C01%5C27%5Cstory_27-1-2010_pg7_1 (noting litigation was lengthier and more cumbersome since appeals had to be made to the Pakistani High Courts as opposed to labor courts).

⁹³ For example, the Services Tribunal Act of 1973 would become a huge impediment for federal employees who sought redress for wrongful termination. See discussion *infra* note 130 and accompanying text (discussing the impact of the Services Tribunal Act in conjunction with the Removal from Services Ordinance of 2000). Also, people were unhappy with the government's verbal support for union rights but its inability to protect workers when they exercised their right to strike. See LABOUR EDUCATION FOUNDATION, PAKISTAN LABOUR MOVEMENT 4, <http://www.lef.org.pk/images/Study%20Final%20Draft.pdf> (last visited Oct. 25, 2011). This soured relations between the PPP and the workers. *Id.*

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Bhutto's term in office was largely regarded as the benchmark for positive labor reform in Pakistan.⁹⁴

4. Labor Law under General Zia ul-Haq (1977-1985)

Z. Bhutto's government lasted until 1977 when nation-wide allegations of rigged elections and corruption prompted Chief of Army Staff Mohammed Zia ul-Haq ("Zia") to arrest political party leaders, including Z. Bhutto, suspend the Constitution, and declare martial law.⁹⁵ Zia then appointed himself president.⁹⁶ Workers' rights were substantially curtailed under General Zia.⁹⁷ Inspections that were allowed under the Factories Act of 1934 were largely discontinued⁹⁸ and he outright banned strikes and demonstrations.⁹⁹ Trade union activities in a number of public and private enterprises were also banned.¹⁰⁰ If a dispute did break out in the private sectors, Zia's favoritism towards employers was clear.¹⁰¹

⁹⁴ See, e.g., PAKISTAN LABOUR POLICY 2010, PREFACE (2010), available at <http://www.ilo.org/dyn/travail/docs/995/Government%20of%20Pakistan%20Labour%20Policy%202010.pdf> ("Of all the previous policies, the Labour Policy of 1972 taken out by [Z. Bhutto] was the most progressive one, which reformed the labour laws and set out new benchmarks . . .") and *Cabinet Meets: Okays Labour Policy; RS 7000 Fixed as Minimum Pay*, PAK. TIMES (Aug. 31, 2011), <http://pakistantimes.net/pt/detail.php?newsId=10784> ("The [L]abour [P]olicy [of 2010] . . . reflects the policies and vision of [Z. Bhutto] who had set out new benchmarks for dignity of the labour in line with his progressive thinking.").

⁹⁵ PAKISTAN STUDIES, *supra* note 86, at 177. See generally HAMID KHAN, CONSTITUTIONAL AND POLITICAL HISTORY OF PAKISTAN 339-56 (Oxford Univ. Press 2001) (providing historical account of Z. Bhutto's trial and execution for alleged murder). In more recent months, a decision has been made to reopen the case and determine whether Z. Bhutto had actually received a fair trial. See Amna Lone, *ZAB Case: Revisiting History is Necessary*, EXPRESS TRIB. BLOG (April 21, 2011) (it was well-documented in the years following Z. Bhutto's execution that the judges who convicted him were not impartial).

⁹⁶ PAKISTAN STUDIES, *supra* note 86, at 179-80.

⁹⁷ See, e.g., CANDLAND, *supra* note 34, at 46-47 (discussing the actions taken by General Zia's martial law regime) and Pakistan Institute of Labour Education and Research, *Pakistan: PILER Welcomes Amendment in Services Tribunal Act and Repeal of Removal from Services Order*, SOUTH ASIA CITIZENS WEB (March 7, 2010), available at <http://www.sacw.net/article1369.html> [hereinafter *PILER, Amendments*] (discussing the various laws passed during Zia's regime that were only recently repealed). Zia's advice to the working class made his pro-employer notions perfectly clear. He stated:

It is not for the employers to provide roti (bread), kapda (clothes) aur (and) makaan (homes). It was for God Almighty who is the provider of livelihood to his people. Trust in God and He will bestow upon you an abundance of good things in life.

Omar Yousaf, *The (not-so) Islamic Land Reforms in Pakistan*, BORDERLINE GREEN (Sept. 12, 2010), <http://www.borderlinegreen.com/2010/09/12/the-not-so-islamic-land-reforms-in-pakistan/>.

⁹⁸ *PILER, Amendments*, *supra* note 97.

⁹⁹ CANDLAND, *supra* note 34, at 46 (this outright ban lasted from July 1977 to August 1985).

¹⁰⁰ *Id.* These limitations were applicable to public and private hospitals, educational institutions and a number of public sectors including printing, television and the national airlines. *Id.*

¹⁰¹ *Id.* at 46-47. General Zia had assured industrialists that all protests and strikes would be suppressed immediately. ABDUS SATTAR GHAZALI, ISLAMIC PAKISTAN: ILLUSIONS & REALITY, Ch. 8, p. 1 (National Book Club 1996), available at <http://www.ghazali.net/book1/content.htm> (last visited Oct. 11, 2011). In one notable instance, a strike organized after a dispute over bonuses was quelled by government forces firing upon the strikers, killing 14 workers. *Id.* at 47.

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In the subsequent years before General Pervez Musharraf took office, no substantial labor legislation was introduced, although many of the bans and restrictions imposed by General Zia were lifted.¹⁰²

5. *Labor Law under General Pervez Musharraf (1999-2007)*

General Pervez Musharraf was initially appointed Chief of Army Staff in 1998.¹⁰³ However, he led a bloodless coup in October 1999 and declared martial law.¹⁰⁴ Eventually, he was voted into the presidency by an emergency national referendum.¹⁰⁵ While General Musharraf was known for various accomplishments,¹⁰⁶ furthering workers' rights was generally not one of them.¹⁰⁷ He first amended the IRO of 1969 with the Industrial Relations Ordinance of 2002.¹⁰⁸ This law allowed the government to exclude particular classes of workers from the protections contained in the IRO provided it was in the "public interest."¹⁰⁹ It also removed the powerful deterrent of imprisonment that was possible in the IRO of 1969 against employers who engaged in serious labor violations; employ-

¹⁰² General Zia died in an airplane crash in August 1988, the cause of which remains a mystery. VEENA KUKREJA, CONTEMPORARY PAKISTAN: POLITICAL PROCESSES, CONFLICTS AND CRISES 225 (Sage Publications 2003); Elaine Scolino, *Zia Crash: Two Views*, N.Y. TIMES (Oct. 19, 1988), <http://www.nytimes.com/1988/10/19/world/zia-crash-two-views.html> (the two theories on how the plane crashed are mechanical failure and Soviet conspiracy). Upon taking office in late-1988, Benazir Bhutto, daughter of Z. Bhutto, removed many of the restrictions that had been imposed on unions by General Zia. CANDLAND, *supra* note 34, at 47. However, no government before Musharraf took office in 1999 was able to pass any type of comprehensive labor policy. *Id.* at 47-48 ("Since 1980, the government of Pakistan has been unable to formulate a labour policy, despite numerous promises by each of the several governments in power . . ."). This was largely due to the instability of these governments. See IFTIKHAR H. MALIK, THE HISTORY OF PAKISTAN 175 (Greenwood Press 2008) (Benazir Bhutto and Nawaz Sharif were both chosen twice for office but would be removed before they finished a term; there were also three interim governments in place during this time period); see also Furqan Mohammed, *Exploring Power Politics and Constitutional Subversions in Pakistan: A Political and Constitutional Assessment of Instability in Pakistan*, 7 LOY. U. CHI. INT'L L. REV. 229, 235-237 (2010) (arguing "power politics" and ease of removal of elected officials resulted in unstable governments in the 1990s).

¹⁰³ Sara Louise Kras, *Major World Leaders: Pervez Musharraf* 51 (Chelsea House Publishers 2003).

¹⁰⁴ KHAN, *supra* note 95, at 486.

¹⁰⁵ *Id.* at 495. Musharraf's ascent to power was illegal under the Constitution. He moved quickly to pass the Seventeenth Amendment which would authorize his ascent to power. See *Musharraf Plans to Bolster His Power*, CNN (June 27, 2002), <http://edition.cnn.com/2002/WORLD/asiapcf/south/06/26/pakistan.presidency/index.html>

¹⁰⁶ See generally MALIK, *supra* note 102, at 206-07. One view of Musharraf was that he was gradually democratizing a country that had otherwise been beset with several destabilizing factors. *Id.* at 206. He brought new confidence in the Pakistani economy and took steps to normalize relations with India. *Id.*

¹⁰⁷ Musharraf did, however, expand labor rights in one respect—it extended the right to organize and join trade unions to those employed in a supervisory capacity. GHAYUR, *EVOLUTION*, *supra* note 88, at 18. These individuals were previously excluded from the definition of "workman." *Id.*

¹⁰⁸ Zeenat Hisam, *Pakistan Institute of Labour Education and Research, Denial and Discrimination: Labour Rights in Pakistan* 19 (2007), <http://www.piler.org.pk/labourestatusreport.pdf> (last visited Oct. 11, 2011) [hereinafter PILER, Denial and Discrimination].

¹⁰⁹ INDUSTRIAL RELATIONS ORDINANCE 2002, § 1(4), available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/62636/65260/E02PAK01.htm> [hereinafter IRO 2002]; PILER, DENIAL AND DISCRIMINATION, *supra* note 108, at 8. This was adopted from General A. Khan who had a similar provision in his IDO of 1969. See discussion *supra* note 74.

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ers were now only subject to fines.¹¹⁰ In the case of wrongful terminations, even if a worker was triumphant in court, he or she was only entitled to back-pay; employers were not required to reinstate wrongfully terminated employees.¹¹¹ This encouraged employers to simply terminate employees with little consequence.¹¹²

The IRO of 2002 also abolished labour appellate courts in Pakistan and required that all appeals be made to the Pakistani High Courts—courts that were already severely backlogged.¹¹³ Section 3(d) of the IRO of 2002 also required that all collective bargaining units affiliate with a federation at the national level that was already registered with the NIRC within two months of being declared a collective bargaining agent (CBA).¹¹⁴ General Musharraf also passed the Removal from Services Ordinances of 2000, which allowed the government to remove government employees from employment for any reason.¹¹⁵ General Musharraf remained in office until 2008, when his attempt to control the judiciary sparked a “Lawyers’ Movement” that led to his resignation.¹¹⁶

¹¹⁰ PILDAT, UNDERSTANDING LABOUR ISSUES, *supra* note 1, at 13 (most trade union leaders consider fines an inadequate deterrent against violation of labor rights).

¹¹¹ IRO 2002, § 46(5); PILER, DENIAL AND DISCRIMINATION, *supra* note 108, at 18.

¹¹² See PILER, DENIAL AND DISCRIMINATION, *supra* note 108, at 18.

¹¹³ IRO 2002, § 80(2)(d) (requiring immediate transfer of all cases currently pending in labour appellate courts to Pakistani High Courts); *Id.* § 48 (discussing powers of High Courts in labor disputes); see also USAID, PAKISTAN’S AGENDA FOR ACTION: INTERIM REPORT 16 (2008), available at <http://www.usaid.gov/pk/downloads/eg/BCLI.pdf> (“[Labor] dispute resolution institutions . . . do little to resolve disputes and serve mostly as tactical distractions . . . between the parties. . . . [T]he whole process [of appeals] takes years—eight to 12-year waits for a decision are common.”).

¹¹⁴ IRO 2002, § 3(d). As one writer has expressed, this provision is a “classic example of how to make the way to hell appear paved with good intentions.” Ali Amjad, *Industrial Law Perverted*, DAWN ARCHIVES (Nov. 18, 2002), <http://archives.dawn.com/2002/11/18/ebr19.htm>. This was an indirect way to lower the number of trade unions in the country because it seems unlikely most newly created unions will be able to affiliate with a federation within two months. *Id.*

¹¹⁵ Shahdab Anwar, *President Signs Services Tribunal Amendment Bill*, CRITICAL APP BLOG (March 5, 2010), <http://criticalppp.com/archives/6755>. When paired with the Services Tribunal Act of 1973, workers only had the right to take their case to the Federal Services Tribunals and these decisions were only appealable to the Pakistani High Courts, rather than labor courts. *NA Repeals Removal from Services Ordinance 2000*, DAILY TIMES (Jan. 27, 2010), http://www.dailytimes.com.pk/default.asp?page=2010%5C01%5C27%5Cstory_27-1-2010_pg7_1. This made litigation more time-consuming and expensive. *Id.*

¹¹⁶ The “Lawyers’ Movement” in Pakistan consisted of lawyers, aided by other professionals, protesting the governmental overreach. See generally *The Pakistani Lawyers’ Movement and the Popular Currency of Judicial Power*, 123 HARV. L. REV. 1705, 1710-16 (2010) (providing history of Lawyers’ Movement in Pakistan) [hereinafter *Lawyers’ Movement*] and JORDYN PHELPS, INTERNATIONAL CENTER ON NONVIOLENT CONFLICT, MOVEMENTS AND CAMPAIGNS: PAKISTAN’S LAWYER MOVEMENT (2007-2009) (Aug. 2009), <http://www.nonviolentconflict.org/index.php/movements-and-campaigns/movements-and-campaignssummaries?sobi2Task=sobi2Details&sobi2Id=30>. Musharraf had tried to remove the Chief Justice of Pakistan because he was afraid the Chief Justice would rule against him and deem his ascent to power in 2002 unconstitutional. *Lawyers’ Movement*, *supra* note 116, at 1715. The ensuing protests would ultimately be the reason for Musharraf’s resignation from the presidency of Pakistan. *Id.* at 1715-16 (“Musharraf ended emergency rule in December 2007 under intense international pressure, and continued protests forced him to resign as President in August 2008.”); *Pakistan’s Musharraf Resigns in Face of Impeachment Motion*, RADIO FREE EUROPE RADIO LIBERTY (Aug. 18, 2008), http://www.rferl.org/content/Pakistans_Musharraf_Resigns/1191816.html (“Political analysts trace [Musharraf’s] downfall to March 9, 2007, when he tried to force Supreme Court Chief Justice Iftikhar Chaudhry

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C. Pakistan's Constitutional Framework

The Constitution currently effective in Pakistan was ratified in 1973.¹¹⁷ Before the passage of the Eighteenth Amendment, it included two legislative lists—the Federal and Concurrent Legislative Lists—that enumerated areas in which the federal government and the provincial governments could legislate.¹¹⁸ Only the federal government could legislate in areas listed in the Federal Legislative List.¹¹⁹ Matters listed in the Concurrent Legislative List (CLL) could be governed by both the federal and provincial governments.¹²⁰ Items 26 and 27 of the CLL allowed for both the Parliament and the provinces to legislate in relation to:

(26) [W]elfare of labour; conditions of labour, provident funds; employer's liability and workmen's compensation, health insurance including invalidity pensions, [and] old age pensions; [and]

(27) [T]rade unions; industrial and labour disputes.¹²¹

In practice, labor laws were usually enacted by the federal government with the provincial governments issuing rules or regulations adopting the laws or making alterations as needed.¹²²

to resign. It was Chaudhry's defiance that mobilized a lawyers' movement to defend the judiciary and also galvanized Musharraf's political opposition.”)

¹¹⁷ Pakistan has had three Constitutions in its short history (1956, 1962, and 1973) interspersed with periods of martial law. In more recent years, the Constitution of 1973 has been suspended on two occasions by Musharraf. It was first suspended in October 1999 shortly after Musharraf overthrew the Nawaz government. See KHAN, *supra* note 95, at 490 (Musharraf suspended the Constitution, the National Assembly, the Senate, and the four Provincial Assemblies until further notice). It was also suspended in 2007 after Musharraf's attempt to influence the judiciary resulted in a severe political backlash. See Isambard Wilkinson, *Musharraf Bid to Sack Pakistan Judge 'Illegal'*, TELEGRAPH (July 20, 2007), <http://www.telegraph.co.uk/news/worldnews/1557974/Musharraf-bid-to-sack-Pakistan-judge-illegal.html>.

¹¹⁸ AHMAD, *supra* note 31, at 4; BABAR SATTAR, PAKISTAN INSTITUTE OF LEGISLATIVE DEVELOPMENT AND TRANSPARENCY, 18TH CONSTITUTIONAL AMENDMENT AND DEVOLUTION OF LABOUR MINISTRY 9 (2011) [hereinafter PILDAT, DEVOLUTION]. Matters that were neither mentioned in the federal list nor the concurrent list were “residuary powers” vested in the provinces, albeit these lists were exhaustive and left little residual power for the provinces. See, e.g., Yasser Latif Hamdani, *Whither Labour Rights*, PAK TEA HOUSE (May 10, 2011), <http://pakteahouse.net/2011/05/10/whither-labour-rights/> (“Pakistan vests residuary powers in constituent units but the net thrown by the federation—federal and concurrent legislative lists—was so wide that residuary powers amounted to very little.”) and *Comparative Study of the Constitution of Pakistan and India*, CSS FORUM (Oct. 10, 2011) (“both lists in 1973 Constitution are so exhaustive that they left limited scope for provinces . . .”).

¹¹⁹ PILDAT, DEVOLUTION, *supra* note 118, at 9.

¹²⁰ AHMAD, *supra* note 31, at 3; PILDAT, DEVOLUTION, *supra* note 118, at 9; PILDAT, UNDERSTANDING LABOUR ISSUES, *supra* note 1, at 7.

¹²¹ PAK. CONST., FOURTH SCHEDULE, available at <http://www.pakistani.org/pakistan/constitution/schedules/schedule4.html> (providing Federal Legislative List and the now-repealed Concurrent Legislative List).

¹²² AHMAD, *supra* note 31, at 4. Generally speaking, the provinces would resist changes or rights provided by the federal government. GHAYUR, EVOLUTION, *supra* note 88, at 21-22 (discussing the Punjab Industrial Policy of 2003 which abolished labor inspections promised by the Factories Act of 1934); Farooq Tariq, *Solidarity Call for Striking Workers in Faisalabad*, INT'L VIEWPOINT (July 2010), <http://www.internationalviewpoint.org/spip.php?article1896> (discussing Punjab's resistance to implement wage increases implemented by the federal government); see also discussion *infra* Part 139-150 (discuss-

III. Labor Law under President Asif Ali Zardari (2008-Present)

Zardari was elected into office upon General Musharraf's resignation in August 2008.¹²³ He passed the Industrial Relations Act (IRA) of 2008 which repealed Musharraf's IRO of 2002.¹²⁴ Most notably, the IRA of 2008 reestablished labor appellate courts thereby allowing for the speedy hearing of appeals.¹²⁵ The "public interest" clause in the IRO of 2002 was also removed, which had previously allowed the federal government to suspend labor laws for any industry it deemed to be in the public interest for a period up to six months.¹²⁶ It also omitted Section 3(d) of the IRO of 2002, which had required all collective bargaining agents to affiliate with a national federation registered with the NIRC.¹²⁷

President Zardari also repealed the Removal from Services Ordinance of 2000 and amended the Services Tribunal Act of 1973.¹²⁸ The Removal from Services

ing the provincial industrial relations acts passed by the four provinces of Pakistan that retracted some of the rights available under the IRA of 2008).

¹²³ *Bhutto's Widower Wins Presidency*, BBC News (Sept. 6, 2008), <http://news.bbc.co.uk/2/hi/7600917.stm> (Zardari won with an overwhelming majority of votes).

¹²⁴ Sharmila Faruqi, *Zardari: A Visionary Leader*, INT'L NEWS (Dec. 22, 2010). Zardari also passed a number of laws aimed at promoting women's rights at the workplace such as the Protection against Harassment of Women at the Workplace Act. *Id.* This Bill cracked down on abuse of women in the workplace. *See, e.g.*, PILDAT, DEVOLUTION, *supra* note 118, at 14 ("While harassment has been a long-running serious problem, legislation to combat it has only recently been enacted in the form of [t]he Protection [a]gainst Harassment of Women at the Workplace Act . . ."). Others have noted, however, that no legislation exists to ensure equal treatment or equal pay for women, nor has any legislation been enacted to promote non-discrimination on the basis of sex. AHMAD & AHMAD, *supra* note 1, at 12. The IRA of 2008 was passed on December 14, 2008 and was to be in effect in the interim, until a new IRA could be drafted on April 30, 2010. *See* SABUR GHAYUR, PILDAT, INTERIM INDUSTRIAL RELATIONS ACT 2008: A REVIEW 4 (2010), <http://www.pildat.org/Publications/publication/LB/InterimIndustrialRelationsAct2008ARewiew.pdf> ("The Ministry of Labour of Labour and Manpower has reportedly, been working to replace the IRA 2008 with a proposed law, which in the draft form, is known as the Trade Unions and Industrial Relations [Act] 2010."). However, the passage of the Eighteenth Amendment, which devolved the federal government's authority over labor law, made a new IRA unnecessary. *Id.*

¹²⁵ GHAYUR, EVOLUTION, *supra* note 88, at 49 (mentioning that the IRA of 2008 restored labor appellate tribunals—a tier that had been removed by the IRO of 2002). However, even after promulgating this change, the creation of labor appellate tribunals was slow. *See No Appellate Tribunal in Punjab for Labourers*, INT'L NEWS (May 1, 2009), <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=175170&Cat=6&dt=5/1/2009> (expressing concern that the entire province of Punjab still did not have a single labor appellate tribunal a year after promulgation of the IRA of 2008).

¹²⁶ *Cf.* IRO 2002 §1(4) ("Provided that the Federal Government may suspend, in the public interest, by an order published in the official Gazette, the application of this Ordinance to any establishment or industry for a period specified in the order not exceeding six months at a time.") with INDUSTRIAL RELATIONS ACT § 1(4) (2008) [hereinafter IRA 2008], available at <http://www.ilo.org/dyn/travail/docs/51/Industrial%20Relations%20Act.pdf> (omitting the public interest clause).

¹²⁷ *Cf.* IRO 2002, §3(d) with IRA 2008 §3 (omitting registration language).

¹²⁸ These measures increased job insecurity for government employees. AAJ News Archive, *NA Approves Bill to Repeal Removal from Services Ordinance*, AAJ NEWS (Jan. 27, 2010), <http://www.aaj.tv/2010/01/na-approves-bill-to-repeal-removal-from-service-ordinance/> (the repeal increased job security for federal employees). Note, however, that at least one of the provinces retained the Removal from Services Ordinance in their own labor code. *See* Imdad Soomro, *Mazhar Uses Musharraf's Ordinance to Dismiss Eminent Writer*, IMDAD SOOMRO BLOG (Feb. 26, 2011), <http://imdadsoomro.wordpress.com/2011/03/20/mazhar-uses-musharraf%E2%80%99s-ordinance-to-dismiss-eminent-writer-pakistan-news-newspaper-daily-english-online/> (discussing Sindh government's removal of writer and teacher, Manzoor Solangi, through the Removal from Services Ordinance for speaking against the inefficiency of the education system in Sindh, despite the federal government's repeal of the law in 2010).

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Ordinance, which had been passed by Musharraf, had allowed the federal government to terminate its employees for any reason.¹²⁹ The Services Tribunal Act, which had been passed by Z. Bhutto, had required that appeals by federal employees be made to the Pakistani High Courts rather than labor appellate courts.¹³⁰

The Industrial Relations Act of 2008 remained in effect until April 2010, when Zardari passed the Eighteenth Amendment.¹³¹

A. The Eighteenth Amendment and Abolishment of the Concurrent Legislative List

The Eighteenth Amendment was passed largely because of the underlying belief that the provincial governments would be more efficient.¹³² It abolished the Concurrent Legislative List and devolved power to the provinces to solely legis-

¹²⁹ See discussion *supra* note 115 and accompanying text.

¹³⁰ See discussion *supra* note 92 and accompanying text.

¹³¹ IRA 2008, §87(3) (a provision within the IRA of 2008 automatically repealed it on April 30, 2010); see also Mukhtar Alam, *Centre's Move to Enact Labour Laws Seen as Trespass*, DAWN (May 30, 2011), <http://www.dawn.com/2011/05/30/centres-move-to-enact-parallel-labour-laws-seen-as-trespass.html> (The IRA of 2008, in accordance with its own Section 87(3), automatically stood repealed on April 30, 2010). Both the ILO and the Pakistan Supreme Court have opined that this was the practical effect of Section 87(3). See *Air League of PIAC Employees v. Pakistan*, Constitution Petition No. 24 of 2011, ¶¶ 2, 6, 29 (2011), available at http://www.supremecourt.gov.pk/web/user_files/File/Const.Petition.24_2011_dt02062011.pdf (holding that complainants had no cause of action under the IRA of 2008 because it was repealed in April 2010, but they still had a cause of action under the IRO of 1969 which filled vacuum until new labor legislation was promulgated); see also Complaint Against the Government of Pakistan Presented by the Muttahida Labour Federation (MLF) and the Pakistan Workers Federation (PWF) Supported by the International Trade Union Confederation (ITUC), Report No. 359, Case(s) No(s). 2799 (2011), available at <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=5103&chapter=3&query=Pakistan%40ref&highlight=&querytype=bool&context=0> (addressing complaint filed against Pakistan for repealing IRA of 2008, passing the Eighteenth Amendment and not creating new federal legislation to address union rights in national industries). A subsequent Industrial Relations Act of 2011 was passed to address labor rights in the federal capital (Islamabad) and unions of national scope, but was not applicable to the provinces. See *IRO 2011*, FOREX PK (Aug. 3, 2011), <http://www.forexpk.com/economic-updates/exclusive-articles/iro-2011.html>; *Tripartite Conference: Govt Urged to Amend Labour Laws, Curb Inflation, Unemployment*, EXPRESS TRIB. (May 14, 2011) (discussing conference held in which recommendation for IRA 2011 were given); *Labor Unions Praise Industrial Relations Act-2011*, PAPER PK (June 30, 2011), <http://www.paperpk.com/news/index.php/labor-unions-praise-industrial-revolution-act-2011/> (praising IRA of 2011 for simplifying process of registration of unions, among other improvements); Tahir Siddiqui, *NIRC Order Suspended on KESC Plea*, DAWN (Aug. 3, 2011), <http://www.dawn.com/2011/08/03/nirc-order-suspended-on-kesc-plea.html> (NIRC Order utilizing IRA of 2011 was inapplicable to Sindh Province after Eighteenth Amendment); and Babar Awan, *Islamabad – NIRC to be Restored*, PAKWORKERS (June 27, 2011), <http://www.pakworkers.com/news/islamabad-nirc-to-be-restored-babar-awan/> (government assured labor leaders NIRC would remain intact to protect unions in federal capital and unions that operated at the national-level).

¹³² Alauddin Masood, *Devolution of Power, Revisiting 18th Amendment*, WEEKLY PULSE, (July 8, 2011), <http://www.weeklypulse.org/details.aspx?contentID=919&storylist=1> (“It is, indeed, a commendable step taken by the government to ensure better service to the people and solution of their problems at the provincial level . . .”). Provincial autonomy and abolition of the concurrent list had actually been promised to the people in 1973 but was never fulfilled. *Id.* The Eighteenth Amendment was likely also welcomed because a wider distribution of power would prevent corruption. See PILDAT, DEVOLUTION, *supra* note 117, at 9.

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late, among other things, about labor and union matters.¹³³ This has rendered the federal government powerless to pass legislation that would affect the provinces.¹³⁴

To facilitate the transition, an Implementation Commission was created shortly after the passage of the Eighteenth Amendment.¹³⁵ A report on the progress of devolution was required in May 2011 and complete devolution was set for June 2011.¹³⁶ Devolution was conducted in three phases: the first phase was in December 2010; the second phase was in April 2011; and the third phase, as

¹³³ PAK. CONST., FOURTH SCHEDULE, available at <http://www.pakistani.org/pakistan/constitution/schedules/schedule4.html> (providing Federal Legislative List and the now-repealed Concurrent Legislative List). In addition to labor and employment, other areas that devolved to the provinces included: education, health, population, environment, tourism, print media, culture and archaeology, just to name a few. *Id.* The Eighteenth Amendment is seen as one of the largest devolutions of power in Pakistan since the ratification of the Constitution of 1973 and will undoubtedly result in drastic changes in Pakistan. See, e.g., Cookman, *supra* note 11 (The Eighteenth Amendment, in its aggregate, limits the powers of the president, increases the power of the National Assembly and prime minister, and devolves power to the provinces); Report: Conference on Labour Rights as Citizens Rights: Realising Constitutional Reforms, p.1 (May 27-28, 2011), available at <http://www.humanrights.asia/opinions/columns/pdf/AHRC-ETC-025-2011-01.pdf> (the Eighteenth Amendment modifies more than 100 sections of the 280-section Constitution and is considered a “rewriting of the social contract between the citizens and the state.”).

¹³⁴ See, e.g., Alam, *supra* note 131 (federal government has no power to promulgate labor laws that extend to the provinces and any such legislation will be regarded as trespass). The federal government, as far as its relation with the provinces goes on these matters, can only urge and coordinate the implementation of new labor laws in the provinces. See S.M. YAQOOB, LEGAL CONFUSION ON THE INDUSTRIAL RELATIONS ACT, 2008, <http://www.smyaqoob.com/C-119.htm>. The subsequently enacted IRA of 2011 was only applicable to the federal territories and trans-provincial industries. See *IRO 2011*, FOREX PK (Aug. 3, 2011), <http://www.forexpk.com/economic-updates/exclusive-articles/iro-2011.html>

¹³⁵ *18th Amendment: Implementation Commission Formed*, PAK. TRIB. (May 5, 2010) <http://paktribune.com/news/18th-Amendment-Implementation-Commission-formed-227181.html> (“The commission would examine the policy, programmes, capacity building and other measures that are required to be taken by the federal government and/or the provincial governments for the implementation of the devolution process.”). One early issue was what to do with the employees of all of the federal agencies whose jurisdiction was being devolved. The provinces expressed no interest in hiring these workers nor did the federal government wish to terminate their employment. *Provinces ‘Refuse’ to Accept Federal Govt Employees*, DAILY TIMES (Nov. 10, 2010), http://www.dailytimes.com.pk/default.asp?page=2010%5C11%5C10%5Cstory_10-11-2010_pg1_3 (provinces did not want these workers but wished to hire their own).

¹³⁶ PAK. CONST. § 270AA(9) (“For purposes of the devolution process under clause (8), the Federal Government shall constitute an Implementation Commission as it may deem fit within fifteen days of the commencement of the Constitution (Eighteenth Amendment) Act, 2010.”). Section 270AA(8) provides:

(8) On the omission of the Concurrent Legislative List, the process of devolution of the matters mentioned in the said List to the Provinces shall be completed by the thirtieth day of June, two thousand and eleven.

PAK. CONST. § 270AA(8). See generally *18th Amendment: Implementation Commission Report Unveiled*, EXPRESS TRIB. (May 4, 2011), <http://tribune.com.pk/story/161301/18th-amendment-implementation-commission-report-unveiled/> [hereinafter *IC Report*] (discussing report published by the Implementation Commission describing steps it had taken thus far to devolve power to provinces).

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planned, was in June 2011.¹³⁷ This third phase officially dissolved the federal Ministry for Labour and Manpower.¹³⁸

B. Response of the Provinces

All four provinces have passed drafts of their own industrial relations acts since the passage of the Eighteenth Amendment.¹³⁹ These provincial acts have adopted lower standards than what had been guaranteed under the IRA of 2008.¹⁴⁰

The Punjab Industrial Relations Act (PIRA) of 2010 differs from the IRA of 2008 in three ways.¹⁴¹ First, Section 3(i) restricts the right to unionize for employees who work at establishments with fewer than 50 employees.¹⁴² Second, it

¹³⁷ Ahmad Hassan, *Cabinet Approves Devolution of Seven Ministries*, DAWN (June 29, 2011), <http://www.dawn.com/2011/06/29/cabinet-approves-devolution-of-seven-ministries.html> (“In the first two phases, 10 ministries — education, social welfare and special education, tourism, special initiatives, population planning, local government and rural development, Zakat and Ushr, youth affairs, livestock and dairy development and culture were devolved in December last year and April this year.”); *13 Standing Committees to be Dissolved with Ministries*, SOUTH ASIAN NEWS AGENCY (June 30, 2011), <http://www.sananews.net/english/2011/06/13-standing-committees-to-be-dissolved-with-ministries/> [hereinafter *Standing Committees*] (“In [the] last phase[,] Ministry of Sports, Ministry of Environment, Ministry of Women Development, Ministry of Labor and Manpower, Ministry of Health, Ministry of Food and Agriculture, Ministry of Minorities’ Affairs along with their sub departments and divisions would also be dissolved to the provinces.”).

¹³⁸ *Standing Committees*, *supra* note 137. Upon the completion of the devolution, the federal government no longer has jurisdiction to monitor or pass laws in respect to those areas. See PAK. CONST., Art. 97 (“[T]he executive authority of the Federation shall extend to the matters with respect to which [the National Assembly] has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan . . .”); see also Alam, *supra* note 131 (laws passed by the federal government in respect to affairs listed in the concurrent legislative list are now deemed trespass).

¹³⁹ S.M. YAQOUB & S.M. IQBAL, PROVINCIAL INDUSTRIAL RELATIONS LAW (Sept. 30, 2010), <http://smyaqoob.com/c123.htm> (providing ratification dates in all four provinces—Sindh, Punjab, Balochistan and Khyber Pakhtunkhwa (Khyber P.K.). Khyber P.K. was formerly known as the North-West Frontier Province but underwent a name change through the Eighteenth Amendment. PAK. CONST. amend. XIIX, § 3, available at <http://www.pakistani.org/pakistan/constitution/amendments/18amendment.html>).

¹⁴⁰ See discussion *infra* note 141-150 and accompanying text (discussing differences between provincial industrial relations acts and IRA of 2008).

¹⁴¹ See generally PAKISTAN INDUSTRIAL RELATIONS ACT and PUNJAB INDUSTRIAL RELATIONS ACT (2010) [hereinafter PIRA 2010], available at <http://punjablaws.gov.pk/laws/2435.html>

¹⁴² Cf. PAKISTAN INDUSTRIAL RELATIONS ACT (not containing limitation clause in freedom of association section) and PIRA 2010, §3(i) (“workers of an establishment, employing not less than fifty workers, may establish and subject to the rules of the organization, may join associations of their own choice without previous authorization.”). This law was likely aimed at removing labor protections at brick kilns because most operate as small establishments. Yasser Latif Hamdani, *Implementing the 18th Amendment: Labour Rights?*, FRIDAY TIMES (April 15-21, 2011), <http://www.thefridaytimes.com/15042011/page5.shtml>. Punjab has almost half of the brick kilns in Pakistan. Azam Khan, *Over 250,000 Children Work in Brick Kilns*, EXPRESS TRIB. (Oct. 3, 2010), <http://tribune.com.pk/story/57855/over-250000-children-work-in-brick-kilns>. A second disturbing issue is that many employers in Pakistan opt to employ temporary workers rather than direct hires. See, e.g., INT’L LABOR RIGHTS FORUM, UNILEVER LIPTON WORKERS, <http://www.laborrights.org/end-violence-against-trade-unions/unilever-lipton-workers> (last visited Oct. 13, 2011) (Unilever Lipton factory in Punjab has 22 “directly-employed workers and 723 temporary workers). In a scenario like Unilever, the factory would be excused from complying labor laws.

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abolishes the NIRC and provides no provincial replacement;¹⁴³ by doing so, the PIRA of 2010 has removed the authority that enforces the minimum wage and conducts workplace inspections.¹⁴⁴ Finally, it has narrowed the scope of the PIRA of 2010 by excluding employees who work in “institutions providing education or emergency services excluding those on commercial basis.”¹⁴⁵

The Sindh Industrial Relations Act (SIRA) of 2011 also diverges from the IRA of 2008 in certain aspects.¹⁴⁶ One positive change was the inclusion of individuals in the security and fire services staff in the oil and liquefied petroleum sectors.¹⁴⁷ But Sindh has followed in Punjab’s footsteps and banned labor inspections.¹⁴⁸

The Khyber P.K. Industrial Relations Act (KIRA) of 2010 has also removed the NIRC without a provincial replacement thereby preventing the enforcement of a minimum wage and disallowing inspections in employer establishments.¹⁴⁹

The Balochistan Industrial Relations Act of 2010 does not deviate from the IRA of 2008.¹⁵⁰

¹⁴³ The NIRC is a federal authority that operated in both the federal territories and the provinces prior to the Eighteenth Amendment. The role of the NIRC has now been limited to just Islamabad (the federal capital) and the other federally administered areas. See Tahir Siddiqui, *NIRC Order Suspended on KESC Plea*, DAWN (Aug. 3, 2011), <http://www.dawn.com/2011/08/03/nirc-order-suspended-on-kesc-plea.html> (NIRC Order utilizing IRA of 2011 was inapplicable to Sindh Province after Eighteenth Amendment); and Babar Awan, *Islamabad – NIRC to be Restored*, PAKWORKERS (June 27, 2011), <http://www.pakworkers.com/news/islamabad-nirc-to-be-restored-babar-awan/> (government assured labor leaders NIRC would remain intact to protect unions in federal capital and unions that operated at the national-level).

¹⁴⁴ See generally PIRA 2010 (requiring transfer of all cases from NIRC to labor courts in Punjab, but providing no description of a new provincial commission to handle matters previously addressed by the NIRC); see also *Provincial Autonomy: Trade Unions not Happy with New Labour Law*, EXPRESS TRIB. (Jan. 8, 2011), <http://tribune.com.pk/story/100637/provincial-autonomy-trade-unions-not-happy-with-new-labour-law/> [hereinafter *Provincial Autonomy*] (noting Punjab did not revive its labour inspection policies). Punjab has banned inspections since 2003, and did not revisit their laws when drafting the PIRA. GHAYUR, *EVOLUTION*, *supra* note 88, at 21-22 (detailing the Punjab Industrial Policy of 2003); see also PILDAT, *UNDERSTANDING LABOUR ISSUES*, *supra* note 1, at 10.

¹⁴⁵ Cf. PIRA 2010, § 1(h) (excluding employees in education and emergency services) with IRA 2008, § 1 (containing no such exclusion for employees in education and emergency services).

¹⁴⁶ See generally SINDH INDUSTRIAL RELATIONS ACT (2011) [hereinafter SIRA 2011], available at <http://www.sdckarachi.org.pk/webcop/download/IRA2010.pdf>.

¹⁴⁷ Cf. IRA of 2008, § 1(3)(f), 1(3)(g) (excluding said industries) with SIRA 2011, § 1(3) (omitting those exclusions); see also Alam, *supra* note 131. These individuals were excluded from the IRA of 2008 and are also excluded in the other provinces’ IRAs.

¹⁴⁸ *NTUF Condemns Ban on Labour Inspection of Factories*, DAILY TIMES (Oct. 14, 2011), http://www.dailytimes.com.pk/default.asp?page=2011%5C10%5C14%5Cstory_14-10-2011_pg7_30 (“[T]he Sindh government had been toeing the line of the Punjab government, which had also placed a ban on labour inspection on the demand of industrialists.”).

¹⁴⁹ See generally KHYBER PAKHTUNKHWA INDUSTRIAL RELATIONS ACT (2010) [hereinafter KIRA 2010] (making no equivalent Commission to replace NIRC), available at <http://www.pakp.gov.pk/index.php/mediacenter/ntf/en/19/206>.

¹⁵⁰ Cf. IRA 2008 with BALOCHISTAN INDUSTRIAL RELATIONS ACT (2010) [hereinafter BIRA 2010], available at <http://www.pabalochistan.gov.pk/uploads/acts/2010xiv2.htm>. Although there may be deviations, there were no deviations pertinent to this Article.

IV. Analysis

Pakistan's history has seen substantial labor policy fluctuations due to changes in leadership.¹⁵¹ None of the anti-labor laws passed by Pakistan's past presidents were ever held to be unconstitutional.¹⁵² The laws only changed when the administrations changed.¹⁵³ Even though the labor protections in Pakistan's Constitution are "progressive" in theory, in reality, they have not been used to strike down legislation.¹⁵⁴ This was true even though Pakistani courts have exercised judicial review to enforce rights guaranteed by the Constitution in numerous other instances.¹⁵⁵

After the Eighteenth Amendment, the provinces have exclusive authority to pass legislation on labor matters¹⁵⁶ Many of the subsequent laws passed by the provinces have been anti-labor.¹⁵⁷ The necessary action to protect Pakistani laborers is twofold. First, courts must recognize that they still have jurisdiction¹⁵⁸ to enforce rights given to laborers under the Constitution and must add a "bite" to the articles that protect laborers.¹⁵⁹ This would be in stark contrast to the past, which shows the constitutional protections afforded to workers have been only empty promises because Pakistan's past presidents freely passed anti-labor laws despite being in clear contravention of the Constitution.¹⁶⁰ Second, the federal government must recognize that the amendment has not stripped it of its power to implement rights guaranteed by the ILO Conventions the country has ratified.¹⁶¹ This is because only the federal government is a Member State of the ILO, not

¹⁵¹ See discussion *supra* Part II.B (discussing the substantial variance in labor laws across leaders).

¹⁵² See discussion *supra* Part II.B (noting changes in policies as presidents took office).

¹⁵³ See discussion *supra* Part II.B (none of the anti-labor legislation was struck down for being unconstitutional but only changed when new president came into office and passed a new industrial relations act or ordinance).

¹⁵⁴ Cf. discussion *supra* note 1 and accompanying text (noting Pakistan is deemed to have progressive labor protections) with discussion *supra* Part II (none of the anti-labor legislation was struck down for being unconstitutional even though they are seemingly in contravention of the Constitution).

¹⁵⁵ See discussion *infra* note 208 and accompanying text (providing law cases where judicial review was exercised to protect parties).

¹⁵⁶ See discussion *supra* Part III.A (abolishment of Concurrent Legislative List means federal government has no power to legislate on labor and union affairs).

¹⁵⁷ See discussion *supra* Part III.B (discussing the IRAs passed by the provinces in the aftermath of the Eighteenth Amendment).

¹⁵⁸ Some legal experts in Pakistan have raised the question as to whether Pakistani courts can monitor labor legislation in the provinces even under the Constitution after the Eighteenth Amendment. See, e.g., SATTAR, *supra* note 118, at 18 (arguing Pakistani courts have jurisdiction over labor matters to the extent the laws affect constitutional rights). I assume courts have jurisdiction even after the Eighteenth Amendment because otherwise, provinces could act in contravention to the Constitution and take away fundamental rights of workers under the guise of labor legislation.

¹⁵⁹ See discussion *infra* Part IV.A (arguing Pakistani courts must give a "bite" to those articles that protect workers to counteract anti-labor legislation being passed by provinces).

¹⁶⁰ See discussion *infra* Part IV.A (providing a critical analysis of Pakistan's history of labor legislation).

¹⁶¹ See discussion *infra* Parts IV.B, IV.C (arguing Pakistani courts have jurisdiction to enforce the Constitution and the federal government has jurisdiction to implement ILO Conventions).

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the individual provinces.¹⁶² Unless these two steps are taken, laborers will have no protection against the anti-labor legislation passed by a province.¹⁶³

Subpart A provides a critical analysis of Pakistan's history as it pertains to labor rights, arguing that many of the negative changes made by the national leaders of Pakistan should have been found to be constitutional violations.¹⁶⁴ These laws were never struck down despite their apparent unconstitutionality and only changed when a new president took office.¹⁶⁵ This shows that the protections offered to workers in the Constitution were nothing more than empty promises in the past.¹⁶⁶ Subpart B argues that the courts have not been stripped of their authority to enforce rights given to laborers under the Constitution.¹⁶⁷ Even though the pertinent articles in the constitution have not been enforced in the past, courts should change course and provide "bite" to these articles if claims are brought to challenge some aspects of the new provincial IRAs.¹⁶⁸ These courts must recognize that workers have little other recourse against anti-labor legislation passed by a province.¹⁶⁹ Subpart C finally argues that the federal government has jurisdiction over labor matters under the Federal Legislative List to the extent it has ratified ILO Conventions because the duty to comply with the ILO rests with the federal government and not the provinces.¹⁷⁰

A. Constitutional Violations in Pakistan's Industrial Relations History

Pakistan has ratified numerous constitutional articles that protect workers' rights.¹⁷¹ Article 17(1) of the Constitution of 1973 states:

¹⁶² See discussion *infra* Part IV.C (Pakistan is a member-state, not the provinces).

¹⁶³ See discussion *infra* Part IV.B, IV.C (arguing otherwise, workers have no recourse against harsh policies enacted by provinces).

¹⁶⁴ Two steps are recommended. But note that this Article discusses the second step before the first step. The second step is that courts must take to provide "bite" to the Constitution. This, in the author's opinion, makes the Analysis easier to follow. See discussion *infra* Part IV.A (arguing most changes violated the Pakistani Constitution of 1973, and where applicable, the identical provision of the Constitution of 1962). The first step—that courts and the federal government must recognize they still have jurisdiction—follows in Part IV.B and Part IV.C.

¹⁶⁵ See discussion *supra* Part II (laws changed only when a new leader came into power).

¹⁶⁶ See discussion *infra* Part IV.A (arguing Pakistan's labor laws are not truly progressive, as commonly stated).

¹⁶⁷ See discussion *infra* Parts IV.B (arguing Pakistan must retain jurisdiction over labor laws to guarantee workers' rights under the Constitution and the ILO Conventions).

¹⁶⁸ See discussion *infra* Part IV.A (arguing the provincial IRAs violate the same articles previously discussed, namely, Articles 17(1), 18(a), and 37(e)).

¹⁶⁹ See discussion *infra* Part IV.B (arguing otherwise, there is no authority to monitor the legislation passed by the provinces. Most of the provinces have also abolished the agency that monitors labor conditions).

¹⁷⁰ See discussion *infra* Part IV.C (arguing the federal government still has the authority to implement international treaties and agreements in the provinces, most notably, the ILO Conventions it has ratified).

¹⁷¹ Numerous articles could be seen as protecting workers, although this article will focus on Articles 17, 18 and 37(e). For example, Article 25 provides for equality and prohibition of discrimination on the basis of sex. PAK. CONST. § 25. Article 37(d) requires the government to provide basic necessities when a person is temporarily unemployed. PAK. CONST. § 37(d).

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Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.¹⁷²

Article 18(a) of the Constitution of 1973 requires that Pakistan:

[S]ecure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants.¹⁷³

Finally, Article 37(e) of the Constitution of 1973 states:

[M]ake provision[s] for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.¹⁷⁴

These clauses have shown little “bite” because they have been commonly violated by Pakistan’s presidents.¹⁷⁵

1. Violations of Article 17(1) in Pakistan’s History

The public interest clause and the definition of public utility, both adopted by General A. Khan in the IDO of 1968, and the national affiliation requirement added by General Musharraf in the IDO of 2002 violated Article 17(1) of the Constitution because they unreasonably restricted the right of association.¹⁷⁶ The public interest clause allowed a government to prohibit a strike in any industry if it was deemed to be in the public interest.¹⁷⁷ This law had been added by General A. Khan in 1968, repealed by General Y. Khan in 1969, reenacted by General Musharraf in 2002, and repealed again by President Zardari in 2008.¹⁷⁸ This law had never been analyzed under Article 17(1) even though strikes are a means used by labor to effective collective bargaining and is an essential component of the right to association.¹⁷⁹

¹⁷² PAK. CONST. § 17(1).

¹⁷³ PAK. CONST. § 18(a).

¹⁷⁴ PAK. CONST. § 37(e).

¹⁷⁵ See discussion *supra* Part II (laws changed only when a new leader came into power).

¹⁷⁶ See discussion *infra* notes 176-207 and accompanying text (assessing the constitutionality of multiple laws in Pakistan’s history).

¹⁷⁷ This was passed by General A. Khan. See discussion *supra* note 74 and accompanying text (discussing public interest clause).

¹⁷⁸ All of the laws discussed were passed by the administrators of the respective Presidents. See discussion *supra* Parts II.B.1, II.B.2, II.B.4, II.B.5 (discussing public interest exception under leaderships of General A. Khan, General Y. Khan, General Musharraf, and President Zardari, respectively).

¹⁷⁹ AHMAD, *supra* note 31, at 4. The ILO has seen the right to strike as inseparable from the freedom of association because it is one of the principal means by which workers promote and defend their economic and social interests. GERNIGON, ODERO & GUIDO, ILO PRINCIPLES CONCERNING THE RIGHT TO STRIKE 11 (ILO 1998).

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The right to association was also curtailed in various sectors by defining them as “public utilities.”¹⁸⁰ The IDA of 1947 created a list that reasonably defined what sectors would fall under the ambit of the term public utilities and would have limited rights;¹⁸¹ the IDA of 1959, however, substantially expanded on this list and excluded sectors that had no relation to public utilities, such as textiles and sugar, from the full scope of labor protections.¹⁸² This expansion should not have been able to withstand a challenge under Article 17(1) because it arbitrarily excluded certain sectors from the full scope of labor protections.¹⁸³

The requirement that new collective bargaining units affiliate with a federation at the national level within two months of creation was also not a “reasonable” restriction as required by Article 17(1) because it served no purpose other than to curtail the growth of unions, most of which, could not meet this requirement.¹⁸⁴ Article 17(1) requires that the right to association be subject only to “reasonable” restrictions.¹⁸⁵ In 2002, Musharraf required all collective bargaining agents (CBAs) to affiliate with a federation at the national level that was already registered with the NIRC within two months of being declared a CBA.¹⁸⁶ However, at that time, there were only three federations at the national level that were registered with the NIRC, which made it difficult for CBAs to obtain affiliation

¹⁸⁰ The issue of what constituted a public utility was largely settled prior to the ratification of the Constitution of 1973. This over-expansive definition should have also been in violation of the Constitution of 1956. Part II, Article X of the Constitution deemed the freedom of association as a “fundamental right” that was subject only to reasonable restrictions. PAK. CONST., Part II, Art. 10 (1956), *available at* http://pakistanspace.tripod.com/archives/56_02.htm. This shows that the right to association did not have bite in the Constitution of 1956 as well.

¹⁸¹ See discussion *supra* note 46 (providing which sectors were public utilities). Public Utilities included: (1) any railway services; (2) postal, telegraph and telephone communications; (3) industries supplying power or water; (4) public conservancy and sanitation systems; (5) defense establishments; (6) naval dockyards; (7) services to maintain certain ports; (8) mechanically propelled transport; and (9) Pakistan Security Printing Press. SHAHEED, *supra* note 1, at 252.

¹⁸² See discussion *supra* note 65 (providing list of public utilities under General A. Khan); SHAHEED, *supra* note 1, at 252 (textiles, sugar, cement, oils, and technical equipment were all now deemed “public utilities,” among many other industries). The provincial and central governments were also empowered to declare the following industries “public utilities” for periods up to six months in emergency scenarios: (1) transportation (other than railway); (2) food and beverage producers; and (3) the State Bank of Pakistan and other scheduled banks. *Id.*; see also AMJAD & MAHMOOD, *supra* note 44, at 13.

¹⁸³ The Supreme Court of Pakistan has explicitly stated that the right to strike is not a fundamental right under Article 17(1). *Civil Aviation Authority v. Union of Civil Aviation Employees*, PLD 1997 SC 781 (Pak.). This would seem to undermine the argument that the expansion of the definition of public utilities is something the Court has foreclosed. However, in this instance, there was no justification for listing so many public and private enterprises as “public utilities.” In the *Civil Aviation* case, the IRA effective at the time listed airlines personnel as excluded based on a public policy decision. *Id.* No valid justification exists for listing all of these public and private sectors as “public utilities.” The two cases would therefore be distinguishable. Part II, Article X of the Constitution of 1956 deemed the freedom of association as a “fundamental right” that was subject only to reasonable restrictions. PAK. CONST., Part II, Art. 10 (1956), *available at* http://pakistanspace.tripod.com/archives/56_02.htm. This language was very similar to Article 17(1) of the Constitution of 1973.

¹⁸⁴ See discussion *supra* note 114 (discussing the law passed by General Musharraf); IRO 2002, § 3(d).

¹⁸⁵ PAK. CONST. § 17(1). This provides:

Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

¹⁸⁶ See discussion *supra* note 114 (discussing the law passed by General Musharraf).

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within two months.¹⁸⁷ This law was likely unconstitutional because no justification was given for requiring the affiliation,¹⁸⁸ but rather, it was passed to curtail the growth of new unions.¹⁸⁹ This law was only repealed when President Zardari passed the IRA of 2008.¹⁹⁰

None of these laws were struck down under Article 17(1), arguably, because Pakistani courts have not been willing to give practical effect to this Article.¹⁹¹ Courts must now change course and allow laborers to challenge provincial laws that seemingly violate Article 17(1).¹⁹²

2. *Violations of Article 18(a) in Pakistan's History*

The lack of effective monitoring of the minimum wage in Pakistan's history and the removal of the jurisdiction cap by General A. Khan constitute violations of Article 18(a) because these laws prevent the equitable distribution of wealth and equal rights between employers and employees as required by Article 18(a).¹⁹³ Pakistan, despite occasionally increasing the minimum wage, does little to enforce these minimum wage requirements in private establishments.¹⁹⁴ Also, whereas the IDA of 1947 had capped a court's jurisdiction over a labor dispute at

¹⁸⁷ Ali Amjad, *Industrial Law Perverted*, DAWN ARCHIVES (Nov. 18, 2002), <http://archives.dawn.com/2002/11/18/ibr19.htm> (all three of these unions were also affiliated with the ICFTU, making it nearly impossible for other types of unions, especially "un-American" ones, from forming).

Since then, the number of unions registered has increased to about 50. See LABOUR EDUCATION FOUNDATION, PAKISTAN LABOUR MOVEMENT 10, <http://www.lef.org.pk/images/Study%20Final%20Draft.pdf> (last visited Oct. 25, 2011).

¹⁸⁸ It is possible this law was passed to promote healthy trade unionism. See, e.g., PAKISTAN INSTITUTE OF LEGISLATIVE DEVELOPMENT AND TRANSPARENCY, LEGISLATIVE BRIEF: INDUSTRIAL RELATIONS ACT OF 2008, 1 (Jan. 27, 2009), <http://www.pildat.org/Publications/publication/LB/PILDATLegislativeBrief-IndustrialRelationsAct2008.pdf> (unions complained when the IRA of 2008 removed this requirement because there were already 6000 unions and this law allowed for consolidation of the smaller unions). But, based on the anti-union stance taken generally in the IRO of 2002, it is unlikely this one law was passed to strengthen union power.

¹⁸⁹ This was an indirect way to lower the number of trade unions in the country because it seems unlikely most newly created unions will be able to affiliate with a federation within two months. *Id.*

¹⁹⁰ See discussion *supra* note 127 (discussing repeal); cf. IRO 2002, §3(d) with IRA 2008 §3 (omitting registration language).

¹⁹¹ This has left laborers with minimal labor rights under the Constitution. As history has shown, labor laws passed by the country's past presidents were only changed when the administration changed.

¹⁹² See discussion *infra* notes 211-212 and accompanying text (pointing out provincial laws that could be challenged under Article 17(1)).

¹⁹³ PAK. CONST. § 18(a). Under this Article, the State shall:

[S]ecure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants.

¹⁹⁴ The Minimum Wage Ordinance was passed by General A. Khan in 1961. See discussion *supra* note 72; AMJAD, *supra* note 32, at 127. The minimum wage was increased by Z. Bhutto. See discussion *supra* note 76 (providing information on increase of minimum wage and increase of fringe benefits by Z. Bhutto). In recent years, however, the federal government has been unable to enforce the minimum wage despite the presence of Article 18(a). Faizan Khan, *Minimum Wage: Myth and Pakistani Reality*, VIEWPOINT (Oct. 28, 2011), <http://www.viewpointonline.net/minimum-wage-myth-and-pakistani-reality.html> (the presidential spokesman admitted the country could not actually enforce the minimum wages with private employers); see also Farhan Zaheer, *Minimum Wage: Yet Another Failed Act?*, EXPRESS TRIB.

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three months, the removal of the cap through the IDO of 1959 meant labor disputes could drag on for years and ultimately ensured employers would win because they had more resources to outlast the workers.¹⁹⁵

These laws were also never struck down under Article 18(a), arguably, because Pakistani courts have not been willing to give practical effect to this Article.¹⁹⁶ Courts must now change course and allow laborers to challenge provincial laws that seemingly violate Article 18(a).¹⁹⁷

3. *Violations of Article 37(e) in Pakistan's History*

The Services Tribunal Act passed by President Z. Bhutto and the Removal of Services Ordinance passed by General Musharraf constituted violations of Article 37(e) because they allowed government employees to be removed for any reason and made recourse impractical because appeals could only be made in Pakistani High Courts.¹⁹⁸ Article 37(e) ensures secure work.¹⁹⁹ The Removal from Services Ordinance, passed by General Musharraf in 2000, allowed the federal government to remove government employees for any reason it deemed fit.²⁰⁰ When coupled with the Services Tribunal Act of 1973, which was passed by President Z. Bhutto, that made recourse nearly impossible for government employees because they had to appeal to Pakistani High Courts, which were already substantially burdened, as opposed to labor appellate courts.²⁰¹ Even in the slight chance a government employee brought suit and won in court, Musharraf's

(Aug. 2, 2010) (most employers—up to 80%—openly pay their employees less than the minimum wage with little recourse by the federal government).

¹⁹⁵ AHMAD, *supra* note 31, at 2 (“[T]he compulsory adjudication system [led to workers] going from one court to another court for years in the quest for justice.”). This legislation, although predating the Constitution of 1973, would have violated Part III, Article 29 of the Constitution of 1956, which required the State “secure the well-being of the people . . . by preventing the concentration of wealth and means of production and distribution in the hands of a few . . . and by ensuring equitable adjustment of rights between employers and employees” PAK. CONST., Part II, Art. 10 (1956), *available at* http://pakistanspace.tripod.com/archives/56_03.htm. This shows that Article 29 of the Constitution of 1956 also had little “bite” to it.

¹⁹⁶ This has left laborers with minimal labor rights under the Constitution. As history has shown, labor laws passed by the country's past presidents were only changed when the administration changed.

¹⁹⁷ See discussion *infra* notes 213-214 and accompanying text (pointing out provincial laws that could be challenged under Article 18(a)).

¹⁹⁸ See discussion *supra* notes 92, 115, and accompanying text (The Removal from Services Ordinance of 2000 and the Services Tribunal Act of 1973—both, in conjunction, previously allowed federal employees to be terminated for any reason with little recourse since appeals had to be made in Pakistani High Courts rather than labor courts.).

¹⁹⁹ PAK. CONST. § 37(e). Under this Article, the State shall:

[M]ake provision[s] for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

²⁰⁰ See discussion *supra* note 115 (providing Removal from Services Ordinance in context); see also Shahdab Anwar, *President Signs Services Tribunal Amendment Bill*, CRITICAL APP BLOG (March 5, 2010), <http://criticalppp.com/archives/6755>.

²⁰¹ See discussion *supra* note 92 (providing Services Tribunal Act in context). See *NA Repeals Removal from Service Ordinance 2000*, DAILY TIMES (Jan. 27, 2010), http://www.dailytimes.com.pk/default.asp?page=2010%5C01%5C27%5Cstory_27-1-2010_pg7_1 (noting litigation was lengthier and more cumbersome since appeals had to be made to the Pakistan High Courts as opposed to labor courts).

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Removal from Services Ordinance entitled them to back-pay but not reinstatement.²⁰² These provisions were likely unconstitutional because workers could not ensure “secure working conditions” as required by Article 37(e) because they knew they could be fired at any moment with little recourse.²⁰³ Both the Services Tribunal Act and the Removal from Services Ordinance were repealed by President Zardari in 2008.²⁰⁴

These laws were also never struck down under Article 37(e), arguably, because Pakistani courts have not been willing to give practical effect to this Article.²⁰⁵ Courts must now change course and allow laborers to challenge provincial laws that seemingly violate Article 37(e).²⁰⁶

Although all of these laws have been repealed by the Eighteenth Amendment, they show that the rights guaranteed in Articles 17(1), 18(a) and 37(e) were empty promises and incapable of protecting workers from harmful legislation passed by Pakistan’s past presidents.²⁰⁷ Pakistani courts have not given these articles any practical effect even though courts have exercised judicial review and enforced rights granted by the Constitution in the past.²⁰⁸ Courts must

This law should have been found unconstitutional because the primary motive behind it was to make appeals more difficult for workers.

²⁰² See discussion *supra* note 111; IRO 2002, § 46(5); PILER, DENIAL AND DISCRIMINATION, *supra* note 108, at 18.

²⁰³ See discussion *supra* note 130 (discussing joint effect of two laws and repeal of laws by President Zardari).

²⁰⁴ See discussion *supra* note 130 (President Zardari repealed this in 2010). AAJ News Archive, *NA Approves Bill to Repeal Removal from Services Ordinance*, AAJ NEWS (Jan. 27, 2010), <http://www.aaj.tv/2010/01/na-approves-bill-to-repeal-removal-from-service-ordinance/> (these measures increased job security for federal employees).

²⁰⁵ This has left laborers with minimal labor rights under the Constitution. As history has shown, labor laws passed by the country’s past presidents were only changed when the administration changed.

²⁰⁶ See discussion *infra* notes 215-216 and accompanying text (pointing out provincial laws that could be challenged under Article 37(e)).

²⁰⁷ See discussion *supra* Part II (laws changed only when a new leader came into power).

²⁰⁸ The Pakistani Supreme Court has explicitly stated that it is mandated by Article 184(3) of the Constitution to exercise judicial review over cases of violations of fundamental rights that are guaranteed by the Constitution. *SC Reply to ICJ: Rules Exist for Sua Motu Cases*, DAWN (Sept. 18, 2011), <http://www.dawn.com/2011/09/18/sc-reply-to-icj-rules-exist-for-suo-motu-cases.html> (listing cases in which this requirement has been enumerated); see, e.g., *Jamiat Islam Pakistan v. Pakistan*, PLD 2000 SC 111 (Pak.), *brief excerpt available at* <http://pakistanconstitution-law.org/p-l-d-2000-sc-111/> (striking Section 5(2)(i) of the Anti-Terrorism Act, which would give Government a “license to kill” anyone committing acts of terror, because it violated Article 9 of the Constitution). The Supreme Court has also made recommendations for Parliament to rectify certain shortcomings rather than simply striking down a law or taking other adverse actions. See, e.g., *Nasreen v. Fayyaz Khan*, PLD 1991 SC 412 (Pak.), *brief excerpt available at* <http://pakistanconstitution-law.org/p-l-d-1991-sc-412/> (requiring federal government take certain steps to protect illiterate women in accordance with Articles 31, 34, 37 and 38). The Supreme Court has also had the opportunity to review the Eighteenth Amendment. Raja Asghar, *Nineteenth Amendment Bill to Address Concerns of SC*, DAWN (Dec. 22, 2010), <http://www.dawn.com/2010/12/22/pm-congratulates-nation-on-19th-amendment-bill.html>. It made certain recommendations in regards to the appointments of the judiciary—a process that was also changed by the Eighteenth Amendment. But no recommendations were made as to the consequences of the Eighteenth Amendment on labor rights. *Id.* The subsequent recommendations were passed in the form of the Nineteenth Amendment on January 1, 2011. See PAK. CONST., amend. XIX, *available at* <http://www.pakistani.org/pakistan/constitution/amendments/19amendment.html>. The IDO of 1959 was challenged by the Labour Federation of Pakistan, however, they challenged it on the grounds that the laws passed were in contravention to the Preamble of the

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change course and add “bite” to these articles to better monitor labor conditions in the provinces after the Eighteenth Amendment.²⁰⁹

B. Pakistani Courts’ Jurisdiction to Enforce Rights Granted by the Constitution

Courts must add “bite” to those articles that protect laborers because the provincial industrial relations acts passed after the Eighteenth Amendment have already presented constitutional concerns under the same articles—Articles 17(1), 18(a) and 37.²¹⁰ The PIRA of 2010, for example, has already banned the right to unionize at locations with less than fifty employees.²¹¹ This is in violation of Article 17(1) which guarantees the right to association.²¹² The dissolution of the NIRC in Sindh, Punjab and Khyber P.K. has also resulted in no adequate means of enforcing a minimum wage.²¹³ This is a violation of Article 18(a) which requires the distribution of wealth and rights between employees and employers.²¹⁴ These three provinces have also banned inspections in the workplace.²¹⁵ This is a potential violation of Article 37(e) which requires humane working conditions.²¹⁶

Courts must therefore not only change course and provide “bite” to Articles 17(1), 18(a) and 37(e),²¹⁷ but also be willing to exercise their jurisdiction over labor matters after the Eighteenth Amendment.²¹⁸ These courts must protect la-

Constitution, which stated that laws could not be inconsistent with the Quran (the Holy Book) and the Sunnah (the ways of the Prophet). Labour Federation of Pakistan v. Pakistan, PLD 1969 Lahore 188 (Pak.), *brief excerpt available at* <http://pakistanconstitution-law.org/p-1-d-1969-lahore-188/>. The Court held that the Preamble was not enforceable and that the Plaintiffs had not pointed to any specific Articles in the Constitution to support their claim. *Id.*

²⁰⁹ As will be discussed *infra* Part IV.B, the industrial relations acts of the provinces implicates these same Articles within the Constitution, although workers have no recourse under the Constitution.

²¹⁰ See discussion *supra* notes 171-174 and accompanying text (providing text and meaning of these Articles).

²¹¹ See discussion *supra* note 142 and accompanying text (discussing Section 3(i) of the PIRA of 2010).

²¹² See discussion *supra* note 172 and accompanying text (providing language of Article 17(1) which guarantees the right to association).

²¹³ See discussion *supra* notes 131, 136-37 (discussing dissolution of NIRC in PIRA of 2010, SIRA of 2011 and KIRA of 2010).

²¹⁴ See discussion *supra* note 173 and accompanying text (providing language of Article 18(a) which requires equitable distribution of wealth between employees and employers).

²¹⁵ See discussion *supra* notes 144, 148-149 and accompanying text (discussing dissolution of NIRC with no equivalent in PIRA 2010, SIRA 2011, and KIRA 2010).

²¹⁶ See discussion *supra* note 174 and accompanying text (providing language of Article 37(e) which requires secure and humane working conditions).

²¹⁷ This was the discussion undertaken in Subpart IV.A, *supra*.

²¹⁸ Due to the Eighteenth Amendment devolvement of power, Pakistan would not even have authority to enforce constitutional provisions or set minimum standards. See PILDAT, DEVOLUTION, *supra* note 118, at 11 (noting the broad language of the Eighteenth Amendment does not even allow federal government to enforce constitutional violations).

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borers' rights because, otherwise, workers will have little recourse against anti-labor legislation passed by a province.²¹⁹

C. The Federal Government's Authority to Implement Workers' Rights Granted by the ILO Conventions

Pakistan became a member of the International Labour Organization (ILO) in 1947.²²⁰ Pakistan has ratified 34 ILO Conventions since then, including the eight Core Conventions that the ILO has declared to be fundamental to workers' rights worldwide.²²¹ As a Member State of the ILO, Pakistan has a duty to convert these conventions into practice and to report violations within its own boundaries.²²² More specifically, it agrees to report regularly on measures it has taken to implement the Core Conventions.²²³ Pakistan's relationship with the ILO shows that the nation has been willing to abide by the Conventions it has ratified especially when pressured²²⁴ or threatened.²²⁵

²¹⁹ Some legal experts in Pakistan have raised the question as to whether Pakistani courts can monitor labor legislation in the provinces even under the Constitution after the Eighteenth Amendment. *See, e.g.,* SATTAR, *supra* note 118, at 18 (arguing Pakistani courts have jurisdiction over labor matters to the extent the laws affect constitutional rights). I assume courts have jurisdiction even after the Eighteenth Amendment because otherwise, provinces could act in contravention to the Constitution and take away fundamental rights of workers under the guise of labor legislation. The only issue, of course, is whether the courts will actually enforce the rights listed in the Constitution.

²²⁰ ILO, NATIONAL LABOUR LAW PROFILE: ISLAMIC REPUBLIC OF PAKISTAN, <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/pak.htm> (last visited Oct. 13, 2011). The ILO was created in 1919 and is "committed to spreading humane working conditions." ILO, THE ILO AT A GLANCE 2 (2007), http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@webdev/documents/publication/wcms_082367.pdf. Since its inception, the ILO has adopted more than 180 Conventions and 190 Recommendations regarding suitable working conditions. *Id.* at 8.

²²¹ PILDAT, DEVOLUTION, *supra* note 118, at 12; *see also* PAKISTAN LABOUR POLICY 2010, PREFACE (2010), available at <http://www.ilo.org/dyn/travail/docs/995/Government%20of%20Pakistan%20Labour%20Policy%202010.pdf>. These eight Core Conventions can be categorized into four groups: (1) freedom of association and the right to collective bargaining; (2) abolition of forced labour; (3) equality of opportunity and treatment; and (4) abolishment of the worst forms of child labour. PILDAT, DEVOLUTION, *supra* note 118, at 12; *see also* ILO'S EIGHT CORE CONVENTIONS ON FUNDAMENTAL HUMAN RIGHTS RATIFICATION TABLE (2007), <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/ratificationtable.pdf>.

²²² ILO, COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS, <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm> (last visited Oct. 13, 2011).

²²³ *Id.*

²²⁴ SHAHEED, *supra* note 1, at 89. One early example is the implementation of the tripartite consultation system that was created by the ILO in 1949. *Id.* It required the creation of a counsel composed of employees, employers, and government officials and the purpose was to evaluate labor policies in the country. *Id.* Pakistan adopted this on the recommendation of the ILO. *Id.* More recently, in the mid-1990s, the ILO, UNICEF and Save the Children Fund developed a plan to eliminate child labor in the soccer ball stitching industry in Sialkot, Pakistan. *See* International Labor Rights Forum, *Stop Child and Forced Labor: Pakistan*, <http://www.laborrights.org/stop-child-labor/foulball-campaign/pakistan> (last visited Oct. 13, 2011). By the late-1990s, Pakistan had come to account for more than 75% of total world production of soccer balls. *Id.* Most of this production occurred in the town of Sialkot. *Id.* The project required that all stitchers be registered employees and work in locations open to investigations to ensure children were not being used. ATLANTA AGREEMENT, § II(1), available at <http://www.imacpak.org/atlanta.htm>. Previously, most of the stitchers worked from home, thereby eluding monitoring of conditions. A new agency, the Independent Monitoring Association for Child Labour, was formed to monitor

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Although the federal government cannot legislate on labor issues after the Eighteenth Amendment, it has the authority to implement international treaties and agreements because that power is provided for in the Federal Legislative List (FLL).²²⁶ Item 3 on the FLL provides that only the federal government may

these plants. IMAC, WHO'S IMAC, <http://www.imacpak.org/> (last visited Oct. 13, 2011). This measure was deemed a huge success and by 2003, the soccer ball industry in Sialkot was labeled "child labour free." See, e.g., ILO, *From Stitching to Playing: Sialkot Ten Years After*, http://www.ilo.org/global/about-the-ilo/press-and-media-centre/insight/WCMS_071247/lang-en/index.htm (last visited Oct. 13, 2011); PAKISTAN INSTITUTE OF LABOR EDUCATION & RESEARCH, LABOR STANDARDS IN FOOTBALL MANUFACTURING INDUSTRY: A CASE STUDY OF A NIKE VENDOR IN SIALKOT, PAKISTAN 17 (2009) ("[A] monitoring system was put in place, children were phased out from the football industry and the stakeholders saw to it that the footballs produced in Sialkot were labeled 'child labour free'"); but see Alan Hyde, *The International Labor Organization in the Stag Hunt for Global Labor Rights*, 3 LAW & ETHICS HUM. RTS. 153, 172-73 (2009) (arguing follow-up monitoring was ineffective and no one knows what happened to all of the children who were removed from the stitching industry); John C. Knapp, *The Boundaries of the ILO: A Labor Rights Argument for Institutional Cooperation*, 29 BROOK. J. INT'L L. 369, 371 ("[The ILO] has 'proven largely ineffective in enforcing compliance with even the core universal standards it has delineated'"). Knapp has suggested the use of incentives and penalties through the International Monetary Fund and the World Bank to ensure compliance with labor standards citing the EPZ violation, discussed *infra*, as an example. See *id.* at 400-01.

²²⁵ In the mid-1980s, for example, Pakistan had exempted Export Processing Zones ("EPZs") from labor regulations. This was done through Section 25 of the Export Processing Zone Authority Ordinance of 1980. EXPORT PROCESSING ZONE AUTHORITY ORDINANCE, § 25 (1980), available at <http://jamilandjamil.com/?p=842> ("The Federal Government may, by notification in the Official Gazette, exempt any Zone from the operation of all or any of the provisions of any law for the time being in force which relates to any matter within the legislative competence of Parliament."). More than 400,000 workers were exempted from labor protections through this Ordinance. Ramapriya Gopalakrishnan, *Freedom of Association and Collective Bargaining in Export Processing Zones: Role of the ILO Supervisory Mechanisms* 20 (Int'l Labor Standards Dept., Working Paper, 2007), available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/publication/wcms_087917.pdf. Unionizing and striking, rights typically allowed by Pakistan's labor regulations, were banned in these work zones. JEAN-PAUL MARHOZ & MARCELA SZYMANSKI, ICTFU, TRADE UNION CAMPAIGN FOR A SOCIAL CLAUSE—BEHIND THE WIRE: ANTI-UNION REPRESSION IN THE EXPORT PROCESSING ZONES (1996), available at <http://actrav.itcilo.org/actrav-english/telearn/global/ilo/frame/epzicftu.htm>. The ILO initially sent a reminder that Convention Number 87 required that all workers be provided the right to establish organizations of their own choose. Knapp, *supra* note 224, at 401; see also CFA Case No. 1353, Complaint Against the Government of Pakistan Presented by The Trade Unions Action Committee (TUAC) ILO Report No: 253 (Vol. LXX, 1987, Series B, No. 3). Article 2 of the ILO Convention Number 87 states:

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

INTERNATIONAL LABOUR ORGANIZATION, CONVENTION No. 87 (1948), available at <http://www.ilo.org/ilolex/english/convdisp1.htm>. The ILO, for a period of 17 years, requested that the government amend its laws to extend labor protections to EPZ workers; but these requests fell on deaf ears. Knapp, *supra* note 224, at 401; see also Chu Yun Juliana Nam, *Competing for FDI through the Creation of Export Processing Zones: the Impact on Human Rights* 20 (Global Law and Justice, Working Paper, 2005). Finally, in 2000, the ILO threatened to request that the World Bank and the International Monetary Fund (IMF) suspend assistance to Pakistan if it continued to deny basic labor rights to workers in EPZs. Knapp, *supra* note 224, at 401; Nam, *supra* note 225, at 15-16. Pakistan redrafted its EPZ laws shortly thereafter to allow unionizing and granted other protections required by the ILO resolutions. Knapp, *supra* note 224, at 401; Nam, *supra* note 225, at 15-16.

²²⁶ PAK. CONST., FOURTH SCHEDULE, available at <http://www.pakistan.org/pakistan/constitution/schedules/schedule4.html>. This allows the federal government to at the very least, monitor labor conditions to ensure compliance with ILO Conventions. The individual provinces have no obligations under the ILO. See, e.g., Fasih Karim Siddiqi, Former Director, Employer's Federation of Pakistan, Speech at a Briefing Session on the Impact of the Eighteenth Constitutional Amendment on Labour Rights (Nov. 11, 2010), in PAKISTAN INSTITUTE OF LEGISLATIVE DEVELOPMENT AND TRANSPARENCY, BRIEFING SESSION: IMPACT OF THE 18TH CONSTITUTIONAL AMENDMENT ON LABOUR RIGHTS 13 (2010), <http://www.pildat>.

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“implement[] treaties and agreements.”²²⁷ Moreover, the provinces are not signatories of the ILO and therefore, the ILO would be unable to push for change, except through the federal government.²²⁸ Pakistan’s membership in the ILO would become meaningless post-Eighteenth Amendment in most of Pakistan’s territories if it does not retain jurisdiction to the extent necessary to monitor rights guaranteed by the ILO Conventions.²²⁹

V. Conclusion

Pakistan’s brief history has shown that the Constitution has not been enforced to protect workers from the anti-labor legislation passed by Pakistan’s past presidents.²³⁰ The laws only changed when a new administration came into office.²³¹ Most of the anti-labor legislation was repealed when President Asif Ali Zardari took office in 2008.²³² The Eighteenth Amendment, however, shifted many legislative subjects, including labor law, from joint national and provincial authority to the provinces exclusively.²³³ The resulting provincial labor laws have largely been anti-labor.²³⁴

The necessary action to protect Pakistani laborers post-Eighteenth Amendment is twofold. First, courts must recognize that they still have jurisdiction to enforce rights given to laborers under the Constitution and must add a “bite” to the articles that protect laborers.²³⁵ This would be in stark contrast to the past, which

org/Publications/Publication/labourissue/Impactofthe18thConstitutionalAmendmentonLabourRights-Report.pdf [hereinafter PILDAT, BRIEFING SESSION] (“The Provincial Governments however, do not have any understanding with the ILOs and therefore are not obliged to honour these conventions.”); *see also* A.U. Usmani, Director Personnel and Administration, Singer Pakistan Limited, Speech at a Briefing Session on the Impact of the Eighteenth Constitutional Amendment on Labour Rights (Nov. 11, 2010), *in* PILDAT, BRIEFING SESSION, *supra* note 226, at 15 (“As far as the conventions with the ILOs are concerned, not only do we need to implement them but we also have to . . . regulate the provinces and [] bring their laws in [] harmony.”).

²²⁷ PAK. CONST., FOURTH SCHEDULE, *available at* <http://www.pakistani.org/Pakistan/constitution/schedules/schedule4.html>. The exact language of Item 3 is as follows:

External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.

Id. Thus, the federal government is responsible for implementing treaties and agreements.

²²⁸ This means that the ILO cannot directly pressure or threaten the provinces. The only way the ILO can elicit change is to pressure the federal government, which in turn, ensures compliance. *See* discussion *supra* notes 224-225 (discussing the pressure and threats that have been exerted by the ILO on the federal government).

²²⁹ This is because the provinces are not signatories to the ILO and therefore, any changes required by the ILO’s Conventions must be made by the federal government.

²³⁰ *See* discussion *supra* Part IV.A (arguing none of these seemingly unconstitutional policies were ever struck down).

²³¹ *See* discussion *supra* Part II (laws changed only when a new leader came into power).

²³² *See* discussion *supra* Part III (discussing the IRA of 2008 that restored many of the rights taken away by previous administrations).

²³³ *See* discussion *supra* Part III.A (discussing passage of the Eighteenth Amendment).

²³⁴ *See* discussion *supra* Part III.B (discussing the industrial relations acts of the four provinces).

²³⁵ *See* discussion *supra* Part IV.A (arguing Pakistani courts must give a “bite” to those articles that protect workers to counteract anti-labor legislation being passed by provinces).

Protecting Pakistani Laborers Post-Eighteenth Amendment

shows the constitutional protections afforded to workers have been only empty promises because Pakistan's past presidents freely passed anti-labor laws despite being in clear contravention of the Constitution.²³⁶ Second, the federal government must recognize that the amendment has not stripped it of its power to implement rights guaranteed by the ILO Conventions the country has ratified.²³⁷ This is because only the federal government is a Member State of the ILO, not the individual provinces.²³⁸ Unless these two steps are taken, laborers will have no protection against the anti-labor legislation passed by a province.²³⁹

Pakistan's Constitution has provided only empty promises to laborers in the past, and unless the appropriate steps are taken, there is no reason to believe the future will be any different.

²³⁶ See discussion *supra* Part IV.A (providing a critical analysis of Pakistan's history of labor legislation).

²³⁷ See discussion *supra* Parts IV.B, IV.C (arguing Pakistani courts have jurisdiction to enforce the Constitution and the federal government has jurisdiction to implement ILO Conventions).

²³⁸ See discussion *supra* Part IV.C (Pakistan is a member-state, not the provinces).

²³⁹ See discussion *supra* Part IV.B, IV.C (arguing otherwise, workers have no recourse against harsh policies enacted by provinces).