

INDUSTRIAL RELATIONS ACT 2008

Current Status of the Bill

The Industrial Relations Act 2008 was passed by the Senate of Pakistan on **September 4, 2008**, and by the National Assembly on **November 19, 2008**. The President of Pakistan gave his assent to the Act on **December 14, 2008**.

About Legislative Brief

This Brief is a part of PILDAT's Legislative Development Programme and is primarily authored by **Mr. Adnan Sattar** at the request of PILDAT with input from PILDAT. The objective of the Brief is to assist parliamentarians to understand the context, objective and issues relating to the legislation and to enable them to participate in a more informed debate and take well considered position on the subject. The brief is also intended to enhance awareness of the citizens and media in general so that they can also participate in the process as informed stakeholders and communicate their views to the public representatives. A broader objective is to make the legislative process open and participatory.

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Highlights of the Act

The Industrial Relations Act 2008, consisting of 53 sections and spread over 89 pages came into force in December 2008, repealing the Industrial Relations Ordinance (IRO) 2002. Key features of the Act include:

- Guarantees to both employees and employers in the private sector industry¹ and establishments² and parts of the public sector to form and join unions of their choosing;
- Continued exclusion of the agricultural sector³ and significant categories of public sector employees from the ambit of the industrial relations law;
- Comprehensive provisions for registration and regulation of trade unions and to prevent trade union monopoly;
- Provisions for workers' participation in management through Works Councils and Joint Management Boards;
- Norms for the settlement of disputes through negotiation, mediation, arbitration and adjudication;
- Penalties for unfair labor practices on the part of employers, workmen and workers' representatives.
- IRA 2008 is an Interim Act only. It will remain in force until April 2010 unless repealed earlier⁴.

Executive Summary

Industrial relations legislation is a subset of the wider category of labour legislation, which basically seeks to establish a framework of mutual rights and obligations within which workers and employers can determine their own relations on a collective basis and settle disputes through legal channels. It entails a fine balancing act between ensuring economic efficiency and social protection. As with all ordinary laws, legislation in this area is subservient to the Constitution, including the Fundamental Rights (Articles 8 to 28). Internationally accepted fundamental labor standards enshrined in the ILO core Conventions⁵ also provide an important reference point for drafting and reviewing industrial relations legislation.

Against this backdrop, the IRA 2008 marks some improvement on the previous law. However, it still leaves much to be desired. In terms of applicability, the Act hardly represents a departure from the now defunct IRO 2002. It excludes the agricultural sector

and significant sections of the public sector. According to an estimate, this amounts to bypassing more than sixty per cent of the country's total labour force⁶. Under the ILO's freedom of association conventions states may limit the right to organise for members of the police and the armed services⁷ and senior managerial staff in the private sector. However, to exclude entire categories of public sector employees is evidently a very restrictive application of this fundamental right. On the positive side, the IRA 2008 has done away with the compulsory requirement for all Collective Bargaining Agents (CBAs) to "affiliate with any federation at the national level registered with the National Industrial Relations Commission⁸", which could facilitate more independent functioning of CBAs if they so choose. The provision, however, is seen by some as potentially detrimental to the strength of the federations, as there are more than six thousand registered unions in Pakistan, it is felt by some that this would not serve any useful purpose nor it would promote healthy trade unionism. It could also affect the efforts of uniting the labour movement in the country. (Continued page 2)

¹ The term "industry" is defined in Section 2 clause xvii of the Act. It does not include agriculture and specifically excludes charitable institutions.

² The term "establishment" defined in section 2, clause ix of the Act has deleted the words "having a common balance sheet and profit and loss account" as provided in IRO 2002, which might lead to mushroom growth of trade unions in different departments and branches of what is essentially the same establishment.

³ Internationally, the principle that the agricultural workers should have the same right to freedom of association as available to industrial workers was recognized as far back as 1921 in the Freedom of Association (Agriculture) Convention or ILO Convention 11.

⁴ Section 87, Clause 2, Sub-clause d

⁵ Through the 1998 Declaration on Fundamental Principles and Rights at Work, the ILO picked out eight Labour Rights Conventions and grouped them under four core rights: The right to organize and engage in collective bargaining; the right to equality at work; the abolition of child labour; and the abolition of forced labour. Pakistan is a signatory to the Fundamental Principles and has also ratified the core conventions.

⁶ The estimate includes agricultural workers; employees of state-owned telecommunication sector, hospitals, educational institutes, Export Processing Zones etc.; and the self-employed.

⁷ See for example, ILO Convention No. 87, Article 9, and Convention No. 98, Article 5. The Supreme Court of Pakistan in a 1983 case, Malik Amin et. vs. Federation of Pakistan, held that the prohibition to register a trade union by employees of organizations such as cantonment boards, the National Radio and Telecommunication Corporation was a reasonable restriction (1993 S.C.M.R. 1837).

⁸ Industrial Relations Ordinance, 2002, Section 3, Clause d.

Industrial Relations Act 2008

Background and Context

The passage of the Industrial Relations Act 2008 followed persistent demands by workers' representatives for the repealing of the Industrial Relations Ordinance 2002. Criticism of the IRO 2002 had centered on its restrictive application, narrow definitions of the terms "industry" and "workers", and abolition of Joint Management Board and Management Committees. The Ordinance was seen by many as a legacy of a dictatorial, or at best, a quasi-democratic set-up unsympathetic to freedom of association and workers' rights.

The federal government led by the Pakistan People's Party was responding to a long-standing demand by labour leaders when it floated the Industrial Relations Bill 2008 in the Senate of Pakistan in September 2008. However, IRA 2008 is in fact equivalent to replacing the 2002 Ordinance with a much older Industrial Relations Ordinance of 1969. Barring a few notable exceptions, the IRA 2008 is, in fact, a reenactment of IRO 1969 and consequently, has an antiquated ring to it. It would probably have been more pragmatic to amend the IRO 2002 since the new Act is an interim legislation only. In retrospect, some features of the IRO 2002 were more in conformity with the times than the 1969 Ordinance.

While the government claims to have consulted with stakeholders, it evidently stopped short of using the available institutional arrangement for tripartism, namely Pakistan Tripartite Labour Conference. By its very nature, legislation in the area of industrial relations requires participation of a range of stakeholders including employers, workers, their representatives and civil society at large to be effective and broadly acceptable. Lack of a comprehensive and structured consultative process was all the more conspicuous because of high hopes with the newly elected government led by a political party, which has traditionally had strong roots and support among the working class and trade unions.

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The Act seems to be taking away with one hand what it is giving with another by stipulating that a settlement "includes an agreement between an employer and his workmen arrived at otherwise than in the course of a conciliation proceedings"⁹. By deleting the words "the Collective Bargaining Agent"¹⁰, the Act leaves open the possibility of employers

marginalizing the role of CBAs. Other major criticism of the Act relates to authorizing provincial governments to appoint a Presiding Officer to a Labour Court without consultation with the Chief Justice of the High Court of that province. Given dissatisfaction among stakeholders, particularly workers' representatives, a broad-based consultative process to review the Act is required.

The Evolution of the Bill

The Industrial Relations Bill 2008 was tabled in the Senate of Pakistan on August 07, 2008 by Leader of the House, Mian Raza Rabbani, on behalf of the Minister for Labour, Manpower and Overseas Pakistanis. After a debate about the period when the government would bring in a new and more comprehensive Bill, Senator Rabbani assured that it would be done within one and a half years after consultations with all segments of society in a conference of workers, employers, government representatives and experts. The Bill was passed unanimously by the Upper House on September 5, 2008, following incorporation of a couple of amendments proposed by Senator Anwar Bhinder of the PML-Q and Prof Ibrahim Khan of the Jamaat-i-Islami¹¹. Workers' representatives through Pakistan Workers Federation (PWF) reportedly expressed serious reservations

over the Bill. On November 5, 2008, Workers Employers Bilateral Council of Pakistan (WEBCOP) passed a resolution calling for amendments in 22 sections of the Bill.

The Government presented the Bill without any change for approval in the National Assembly on November 19, 2008. The Bill was put to vote and passed into an Act of Parliament the same day amid a walk-out by the opposition party, the Pakistan Muslim League Nawaz (PML-N). PML-N's main demand, in addition to referring the Bill to the Standing Committee on Labour, was for the inclusion of a provision for the appointment of a serving or retired judge of the Supreme Court as chairman of the National Industrial Relations Commission (NIRC) in consultation with the Chief Justice rather than a government nominee as stipulated in the Bill. President Asif Ali Zardari signed the Act and it was promulgated on December 15, 2008.

⁹ Section 2, Clause xxv, IRA 2008

¹⁰ Section 2, Clause xxvi, IRO 2002

¹¹ The amendments included one in paragraph 1 of clause 2 moved by Senator Anwar Bhinder and the other by Senator Ibrahim Khan in paragraph 9 of clause 2.

Technical Review of the Act

Formation of Workers federation:

Some provisions of the Act, such as Section 18, which allows “two or more registered trade unions belonging to an industry” to constitute an industry-wise federation have been criticized by trade union leaders as it might encourage formation of what they call “letterhead federations”. However, the provision can also be seen in a positive light insofar as it allows the freedom necessary for collaboration among trade unions. Similarly, a clause under IRO 2002, which made it mandatory for every collective bargaining agent (CBA) to affiliate with a federation, has been deleted¹². Seen positively, that would imply non interference on the part of the government in the internal affairs of CBAs.

Strengths:

The Act delineates norms and procedures for formation and registration of trade unions in great detail and provides protection against trade union monopoly.

The definition of a “worker” under the IRA 2008 includes supervisors, who had been excluded from the corresponding clause in the IRO 2002. Significantly, the new Act has re-established Labour Appellate Tribunals¹³. That could potentially allow for speedy hearing of appeals against the judgments handed down by the Labour Court. Under the previous law, such appeals had to be brought before a High Court which resulted in delays and higher costs to the appellants.

Positively, the IRA 2008 takes away the provision in the IRO 2002 to the effect that the Labour Court may order an award of compensation in case of wrongful termination in lieu of reinstatement of the worker¹⁴. That provision, according to critics, enabled employers to sack “troublesome” workers, such as trade union representatives with impunity. The new Act also empowers the National Industrial Relations Commission (NIRC) to grant interim relief as it may deem fit including interim injunction. The Act has also restored certain powers of the Works Council and the Joint Management Board which had been taken away by the previous law. Moreover, the new act allows for union formation in the Employees' Old-Age Benefits Institution (EOBI), however, this amendment only affects not more than a few hundred workers

Weaknesses:

As was the case with IRO 2002, the Act excludes from its ambit employees of the Police, Armed Forces and services exclusively connected with Armed Forces; security staff of the PIA and those drawing wages above pay group V; staff of the Pakistan Security Printing Corporation, government hospitals and education institutions; the self-employed and agricultural workers. While the exclusion of the Police and Armed Forces as well as senior managerial staff is widely considered as legitimate for security and economic efficiency reasons respectively, the law's restrictive application otherwise is a cause for concern given the Constitutional guarantee of the Right to Freedom of Association and its normative value as a core labour right. Freedom of Association may not be an absolute right; however, any restrictions imposed have to be limited in

scope and demonstrably tied up with a public interest.

Section 2 of the Act has omitted the definition of “contractor”, which may affect unionization and labour rights in the construction and other sectors where employers rely heavily on contractors. The same section under clause 2, sub-clause xxvi, makes an “agreement between an employer and his workmen” part of a “settlement”. That would defeat the very purpose of collective bargaining, which is to overcome the unequal bargaining power of the worker vis-à-vis the employer. The Act does not specify the level of qualification of those nominated as presiding officers in the labour courts and grants the provincial governments authority to appoint them without consultation with the Chief Justice of the respective High Court. Similarly, the qualification and appointment of the Chairman of the National Industrial Relations Commission has also been left to the choice of the Federal Government. While the Act imposes penalties for unfair labor practices, they are to take the form of fines and not imprisonment, which most trade union leaders consider an inadequate deterrent against violation of labour rights. The otherwise comprehensive provisions for registration and transparent running of trade unions are silent on potential discrimination within trade unions on the basis of gender, race, ethnicity and national origins. In some countries, legislative provisions protecting workers against discrimination in employment and access to employment extend to trade union rights¹⁵.

Recommendations

1. In the light of dissatisfaction with the Act expressed by many stakeholders, the government must convene Pakistan Tripartite Labour Conference to get on board the views of workers, labour leaders and employers.
2. Legislators must act to amend controversial sections and clauses in the Act identified in the present brief and elsewhere. They also need to advocate for tripartite participation in the process of legislative reform.
3. Basic ILO principles and core labour standards must be taken into account while amending existing law or drafting a new one.
4. While exercising their legitimate right to protest, workers and workers' representatives must also show greater willingness to legislation aimed at ensuring transparency and non-discrimination in the running of trade unions and preventing trade union monopoly.
5. Media and civil society organisations need to undertake dispassionate and critical analyses of laws including the IRA 2008 and avoid sweeping generalizations; for example, instead of labeling certain laws as “black laws”, it would help more to put things into perspective and focus on grey areas.
6. Much of the criticism emanating from media and NGOs focuses on limitations on the right to organise. While this is indeed an important topic, there are a host of other industrial relations issues, which should not be assimilated under the right to organise only.

¹² Section 3, Clause 1, IRO 2002.

¹³ Section -55 of IR Act 2008

¹⁴ IRO 2002 Section 46(5) in

¹⁵ For example Section 7 of Argentina's Trade Union Law 1988 states: “Trade unions may not establish differences among their members based on ideological or political convictions or upon their social standing, creed, nationality, race or gender.”

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