

Industrial Relations Ordinance, 2002.

THE INDUSTRIAL RELATIONS ORDINANCE, 2002
ORDINANCE NO.XCI OF 2002.

(Published in Gazette of Pakistan 26th October 2002)

An Ordinance to amend, consolidate and rationalize the law relating to formation of trade unions, regulation and improvement of relations between employers and workmen and avoidance and settlement of any differences or disputes arising between them;

WHEREAS it is expedient to amend, consolidate and rationalize the law relating to formation of trade unions, regulation and improvement of relations between employers and workmen and avoidance and settlement of any differences or disputes arising between them;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitutional Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance;-

Chapter I Preliminary

1. Short title, extent, commencement and application. -

(1) This Ordinance may be called the Industrial Relations Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) It shall apply to all persons employed in any establishment or group of establishments or industry except those employed.

(a) in the Police or any of the Defence Services of Pakistan;

(b) in any installations or services exclusively connected with the Armed Forces of Pakistan including Ministry of Defence lines of the Railways;

(c) by the Pakistan Security Printing corporation or the Security Papers Limited or Pakistan Mint;

(d) in the administration of the State other than those employed as workmen by the Railways, Post Telegraph and Telephone Departments;

(e) by an establishment or institution maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on commercial basis;

(f) by an institution established for payment of employees' old-age pensions or for workers' welfare;

(g) as a member of the Watch and Ward, Security or Fire Service Staff of an oil refinery or of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products or of a seaport or an airport.

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.

2. Definitions:- In this Ordinance, unless there is anything repugnant in the subject or context,-

(i) "arbitrator" means a person appointed as such under this Ordinance;

(ii) "award" means the determination by a Labour Court, Arbitrator or an Appellate Court of competent jurisdiction of any industrial dispute or any matter relating thereto and includes an interim award;

(iii) "association" means any organization of employers formed primarily for furthering and defending the interests and rights of employers.

(iv) "Board of Conciliators" means a tripartite Board of Conciliators constituted under sub-section (3) of section 26;

(v) "collective bargaining agent" means the trade union of workmen which, under section 20, is the agent of the workmen in the establishment, group of establishments or, as the case may be, industry in the matter of collective bargaining;

(vi) "collective bargaining unit" means those workers or class of workers of an employer in one or more establishments coming within the same class of industry whose terms and conditions of employment are, or could appropriately be, the subject of collective bargaining together;

(vii) "Commission" means the National Industrial Relations Commission constituted under section 49;

(viii) "conciliation proceedings" means any proceedings before a Conciliator or Board of Conciliators;

(ix) "Conciliator" means-

(a) a person appointed as such by the Federal Government under sub-section (2) of section 26, in respect of disputes which the Commission is competent to adjudicate and determine; and

(b) in respect of other disputes, a person appointed as such by the Provincial Government under sub-section (1) of section 26.

(x) "employer" in relation to an establishment means any person or body of person, whether incorporated or not, who or which employs workmen in an establishment under a contract of employment and includes-

(a) an heir, successor or assign, as the case may be, of such person or, body as aforesaid;

(b) any person responsible for the direction, administration, management and control of the establishment;

(c) the authority, in relation to an establishment or group of establishments run by or under the authority of any department of the Federal Government or a Provincial Government, appointed in this behalf or, where no authority is appointed, the head of the department;

(d) the office bearer, in relation to an establishment run by or on behalf of a local authority, appointed in this behalf, or where no officer is so appointed, the chief executive office bearer of that authority;

(e) the proprietor, in relation to any other establishment, of such establishment and every director, manger, secretary, agent or office bearer or person concerned with the management of the affairs thereof;

(f) a contractor or an establishment of a contractor who or which undertakes to procure the labour or services of workmen for use by another person or in another establishment for any purpose whatsoever and for payment in any form and on any basis what so ever; and

(g) office bearers of a department or Division of the Federal or Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;

(xi) "establishment" means any office, firm, factory, society, undertaking, company, shop, premises or enterprise which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and profit and loss account and, except in section 54, includes a collective bargaining unit, if any, constituted under that section in any establishment;

(xii) "executive" means a person or body of persons, by whatever name called, to whom or which the management of the affairs of a trade union is entrusted under its constitution;

(xiii) "group of establishments" means establishments belonging to the same employer and the same industry;

(xiv) "illegal lock-out" means a lock-out declared, commenced or continued otherwise than in accordance with the provisions of this Ordinance;

(xv) "illegal strike" means a strike declared, commenced or continued otherwise than in accordance with the provisions of this ordinance;

(xvi) "industrial dispute" means any dispute or difference between employers and workmen or between workmen and workmen which is concerned with the employment or non-employment or the terms of employment or the conditions of work; and is not in respect of the enforcement of any right guaranteed or accrued to workers by or under any law, other than this Ordinance, or any award or settlement for the time being in force;

(xvii) "industry" means any business, trade, manufacture, calling, service, occupation or employment engaged in an organized economic activity of producing goods or services for sale, excluding those set up exclusively for charitable purposes, operating, through public or private donations where "charitable purpose" includes provision of education, medical care, emergency relief and other needs of the poor and indigent;

(xviii) "Inspector" means an Inspector appointed under this Ordinance;

(xix) "Labour Court" means a Labour Court established under section 44;

(xx) "lockout" means the closing of a place of employment or part of such place or the suspension, of work, wholly or partly, by an employer, or refusal, absolute or conditional, by an employer to continue to employ any number of workmen employed by him where such closing, suspension or refusal occurs in connection with an industrial dispute or is intended for the purpose of compelling workmen employed to accept certain terms and conditions of, or affecting, employment;

(xxi) "office bearer" means any member of the executive of a trade union in an establishment, industry or trade, but does not include in auditor or legal advisor thereof;

(xxii) "prescribed" means prescribed by rules made under section 79;

(xxiii) "public utility service" means any of the services specified in Schedule I;

(xxiv) "registered trade union" means a trade union registered under this Ordinance;

(xxv) "Registrar" means Registrar of trade unions appointed under section 57;

(xxvi) "settlement" means a settlement arrived at in the course of conciliation proceedings, and includes an agreement between an employer, the collective bargaining agent or workmen, as the case may be, arrived at otherwise than in the course of such proceedings, where the agreement is in writing and has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the Provisional Government, the Conciliator and such other persons as may be prescribed;

(xxvii) "Schedule" means the Schedule to the Ordinance;

(xxviii) "strike" means cessation of work by a body of persons employed in any establishment acting in combination or a concerted refusal or refusal under a common understanding of any number of persons who have been so employed to continue to work or to accept employment;

(xxix) "trade union" means any combination of workers formed primarily for the purpose of furthering and defending the interests and rights of workers in any industry or establishment and includes an industry-wise federation of two or more collective bargaining agent unions and a federation at the national level of ten or more collective bargaining agent unions; and

(xxx) "worker" and "workman" means any and all persons not falling within the definition of employer who is employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity.

CHAPTER II

TRADE UNIONS

Section 3. Trade unions and freedom of association. -

(1) Subject to the provision of Article 17 of the Constitution of the Islamic Republic of Pakistan, this Ordinance and any other law for the time being in force-

(a) the workers shall, without distinction whatsoever, have the right to form and subject to the constitution or rules of a trade union, join any trade union of their choice within the establishment or industry they are employed in; provided that worker shall not be entitled to be a member of more than one trade union at any one time; provided further that on joining another union, the earlier membership will stand automatically cancelled;

(b) the employers, shall, without distinction whatsoever, have the right to form or join any association of their choice and their association shall have the right to draw up their constitution and rules, elect freely their representatives, organize their administration and activities and formulate their programmes;

(c) trade unions of workers and associations of employers shall have the right to form and join federations and confederations of trade unions and associations, and such federations and confederations shall have the right to affiliate with international organizations and confederations of workers and employers, as the case may be; and

(d) every collective bargaining agent union shall have to affiliate with any federation at the national level registered with the National Industrial Relations Commission within two months after its determination as collective bargaining agent or promulgation of this Ordinance, whichever is earlier.

(2) The workers and employers and their respective bodies shall, exercising their rights under section (1), like other persons or organized collectivities, respect and abide by all Federal and Provincial laws.

4. Application for registration.- Any trade union may, under the signatures of its President and General Secretary, apply for registration of the trade union under this Ordinance.

5. Requirements for application. An application for registration shall be made to the Registrar and shall be accompanied by-

(a) A statement showing-

(i) the name of the trade union and the address of its head office;

(ii) date of formation of the trade union;

(iii) the titles, names, ages, addresses and occupations of the office bearers of the trade union;

(iv) statement of total paid membership;

(v) the name of the establishment, group of establishments or the industry, as the case may be, to which the trade union relates along with a statement of the total number of workers employed therein;

(vi) the names and addresses of the registered trade unions in the establishment, group of establishments or industry, as the case may be, to which the trade union relates;

(vii) the names, addresses and registration number of member trade unions, in case the application is made by a federation of trade unions;

(b) there copies of the constitution of the trade union together with a copy of the resolution by the members of the trade union adopting such constitution bearing the signatures of the Chairman of the meeting;

(c) a copy of the resolution by the members of the trade union authorizing its President and the General Secretary to apply for its registration; and

(d) a copy of the resolution from each of the constituent trade unions agreeing to become a member of a federation or confederation of trade unions, where such application is made by a federation or confederation.

6. Requirements for registration.-

(1) A trade union shall not be entitled to registration under this Ordinance unless the constitution thereof provides for the following matters, namely:

(a) The name and address of the trade union;

(b) the purposes for which the trade union has been formed;

(c) the purposes for which the general funds of the union shall be applicable;

(d) the number of persons forming the executive which shall not exceed the prescribed limit and shall include not less than seventy five per cent from amongst the workmen actually

engaged or employed in the establishment or establishments or the industry for which the trade union has been formed;

(e) the conditions under which a member shall be entitled to any benefit assured by the constitution of the trade union and under which any fine or forfeiture may be imposed on him;

(f) the maintenance of a list of the members of the trade union and of adequate facilities for the inspection thereof by the office bearers and members of the trade union;

(g) the manner in which the constitution shall be amended, varied or rescinded;

(h) the safe custody of the funds of the trade union, its annual audit, the manner of audit and adequate facilities for inspection of the account books by the office bearers and members of trade union;

(i) the manner in which the trade union may be dissolved;

(j) the manner of election of office bearers by the general body of the trade union and the term not exceeding three years, for which an office bearer may hold office upon his election or re-election through secret ballot;

(k) the procedure for expressing want of confidence in any office bearer of the trade union; and

(l) the meetings of the executive and of the general body of the trade union, so that the executive shall meet at least once in every four months and the general body at least once every year.

(2) Without prejudice to the provisions of the sub-section (1) a trade union of workmen shall not be entitled to registration under this Ordinance-

(a) unless all its members are workmen actually engaged or employed in the establishment or industry with which the trade union is connected; and

(b) where there are two or more registered trade unions in the establishment, group of establishments or industry, with which the trade union is connected, unless it has as its members not less than one-fourth of the total number of workmen employed in such establishments, group of establishments or industry, as the case may be.

7. Disqualification for being an office bearer or a trade union.- Notwithstanding anything contained in the constitution or rules of a trade union, a person who has been convicted of an offence under section 70 or of a criminal offence of heinous nature within the meaning of the Pakistan Penal Code (Act XLV of 1860), such as theft, physical assault, murder, attempt to murder, etc., shall be disqualified from being elected as, or from being a member or office bearer of a trade union.

8. Registered trade union to maintain register, etc. – Every registered trade union shall maintain in such form as may be prescribed-

- (a) a register of members showing particulars of subscriptions paid by each member;
- (b) an accounts book showing receipt and expenditure; and
- (c) a minute book for recording the proceedings of meetings.

9. Registration.-

(1) The Registrar, after having exercised due diligence and verification of facts, and on being satisfied that a trade union has complied with all the requirements of this Ordinance, shall register the trade union in a prescribed register and issue a registration certificate in the prescribed form within a period of fifteen days from the date of receipt of the application under intimation to the concerned employer.

(2) In case the application for registration is found by the Registrar to be deficient in any material respect, he shall communicate in writing all his objections to the trade union within a period of fifteen days from the receipt of the application and the trade union shall reply thereto within a period of fifteen days from the receipt of the objections.

(3) When the objections raised by the Registrar have been satisfactorily met, the Registrar shall register the trade union as provided in sub-section (1) and issue a registration certificate thereunder within three days of the date of the objections having been so met under intimation to the employer.

(4) In case the objections raised under sub-section (2) are not satisfactorily met or are not replied to within the time mentioned therein, the Registrar shall reject the application.

(5) Where the application for registration is rejected or the Registrar delays the disposal of such application beyond the period of fifteen days specified in sub-section (1) or does not issue a registration certificate within a period of three days specified in sub-section (3), the trade union may appeal to the Labour Court which may, for reasons to be recorded, by an order, direct the Registrar to register the trade union and to issue a registration certificate or may dismiss the appeal.

(6) Notwithstanding anything contained in any other provision of this Ordinance, every alteration made in the constitution of a registered trade union and every change of its office bearers shall be notified by registered post to the Registrar by the trade union within fifteen days of such alteration or change, as the case may be.

(7) The Registrar may refuse to register any alteration or change referred to in sub-section (6), if it is in contravention of any of the provisions of this Ordinance or if it is in violation of the constitution of the trade union.

(8) Subject to the provisions of sub-section (7), every inclusion or exclusion of any constituent unit of a federation of trade unions shall be notified by registered post to the Registrar by the federation within fifteen days of such inclusion or exclusion.

(9) In case there is a dispute in relation to the change of office bearers of a trade union or any trade union is aggrieved by order of the Registrar made under sub-section (7), any office bearer or member of the trade union may apply or appeal to the Labour Court which shall within seven days of receipt of the application or appeal, as the case may be, pass an order either directing the Registrar to register such alteration or change or may, for reasons to be recorded in writing, direct the Registrar to hold fresh elections of the trade union under his supervision.

10. Transfer, etc., of office bearers of trade union during pendency of application for registration.-Save with the prior permission

of the Registrar or the Labour Court, no office bearer of a trade union of workmen shall be transferred, discharged, dismissed or otherwise punished during the pendency of an application for registration of the trade union with the Registrar, provided that the union has notified the names of its office bearers to the employer in writing.

11. Certificate of registration.- The certificate of registration issued under section 9 shall be conclusive evidence of the registration of a trade union under this Ordinance.

12. Cancellation of registration.-

(1) The registration of a trade union shall be cancelled if the Labour Court so directs upon a complaint in writing made by the Registrar that the trade union has-

(i) contravened or has been registered in contravention of, any of the provisions of this Ordinance or the rules made there under;

(ii) contravened any of the provisions of its constitution; or

(iii) made in its constitution any provision which is inconsistent with this Ordinance or the rules made there under.

(2) Where any person who is disqualified under section 7 from being elected as, or from being an office bearer of a trade union, is elected as an office bearer of a registered trade union, the registration of that union shall be cancelled if the Labour Court, upon a complaint in writing made in this behalf by the Registrar, so directs.

(3) The registration of a trade union shall be cancelled by the Registrar, by giving reasons for such cancellation in writing, if, after holding an inquiry he finds that any trade union:

(i) has dissolved itself or has ceased to exist; or

(ii) or has not been a contestant in a referendum for the determination of a collective bargaining agent; or

(iii) has not applied for determination of collective bargaining agent under section 20 (2) within two months of its registration as another union or promulgation of this Ordinance, whichever is earlier, provided there does not already exist a collective bargaining agent determined under section 20 (11) in an establishment, or group of establishments or industry; or

(iv) has secured less than 15% of polled votes per final list of voters, during a referendum for the determination of collective bargaining agent.

13. Appeal against cancellation of registration.- Any trade union aggrieved by a decision given-

(a) by the Labour Court under sub-section (1) or (2) of section 12, may appeal to the High Court; or

(b) by the Registrar under sub-section (3) of section 12, may appeal to the Labour Court.

14. Incorporation of registered trade union.-

(1) Every registered trade union shall be a body corporate by the name under which it is registered, shall have perpetual succession and a common seal and the power to contract and to acquire, hold and dispose of property, both movable and immovable and shall by the same name sue or be sued.

(2) The Societies Registration Act, 1860 (XXI of 1860), the Co-operative Societies Act, 1912 (II of 1912), and the Companies Ordinance, 1984 (XLVII of 1984), shall not apply to any registered trade union and the registration of any trade union under any of these enactments shall be void.

15. Law of conspiracy limited in application.- No office bearer or member of a registered trade union or collective bargaining agent as certified by the Registrar shall be liable to punishment under sub-section (2) of section 120-B of the Pakistan Penal Code (Act XVI of 1860), in respect of any agreement made between the members thereof for the purpose of furthering any such object of the trade union as is specified in its constitution referred to in section 6, unless the agreement is an agreement to commit an offence, or otherwise to violate any law other than its Ordinance.

16. Immunity from civil suit in certain cases.-

(1) No suit or other legal proceedings shall be maintainable in any civil court against any registered trade union or collective bargaining agent or any office bearer or member thereof in respect of any action done in contemplation or furtherance of an industrial dispute to which the trade union is a party on the ground only that such act induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills.

(2) A trade union shall not be liable in any suit or other legal proceedings in any civil court in respect of any tortious act done in contemplation or furtherance of an industrial dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

17. Enforceability of agreement between members of trade union.- Notwithstanding anything contained in any other law for the time being in force, an agreement between the members of a trade union shall not be void or avoidable by reason only that any of the objects of the

agreement are in restraint of trade; Provided that nothing in this section shall enable any civil court to entertain any legal proceedings instituted for the express purpose of enforcing, or recovering damages for the breach of any agreement concerning the conditions on which any member of a trade union shall or shall not sell their goods, transact business, or work, employ or be employed.

18. Registration of federation of trade unions.-

(1) Any two or more registered trade unions belonging to an industry may constitute an industry-wise federation. Any ten or more registered trade unions (at least one from each Province) may constitute a federation or confederation at the national level. In both cases, the respective general bodies of the trade unions, if they so resolve, shall constitute a federation or confederation of trade unions by executing an instrument of federation or confederation and apply for registration of such federation or confederation: Provided that a trade union of workmen shall not join a federation which comprises of an association of employers, nor shall an association of employers join a federation which comprises of a trade union.

(2) No trade union, federation or confederation shall be formed and registered having same, similar or identical name.

(3) An instrument of federation referred to in sub-section (1) shall, among other things, provide for the procedures to be followed by federated trade unions or associations and the rights and responsibilities of the federation and the federated trade unions or associations.

(4) An application for the registration of a federation of trade unions or associations shall be signed by the President of all the trade unions or all associations constituting the federation or by the office bearers of these trade unions or associations respectively authorized by the trade unions or associations in this behalf and shall be accompanied by three copies of the instrument of federation referred to in sub-section (1).

(5) Subject to sub-sections (1), (2), (3) and (4), provisions of this Ordinance shall, so far as may be and with the necessary modifications, apply to a federation of trade unions or associations as they apply to a trade union or association.

19. Returns.-

(1) There shall be sent annually to the Registrar, on or before such date as may be prescribed, a general statement audited in the prescribed manner of all receipts and expenditure of every registered trade union, federation or confederation of trade unions during the year ending on the 31st day of December next preceding such prescribed date, and of the assets and liabilities of the trade union, federation or confederation existing on such 31st day of December, as may be prescribed: Provided that the accounts maintained by the collective bargaining agent having membership of five thousand or more shall be subject to external audit by a firm of chartered accountants appointed by the Registrar: Provided further that in case of the collective bargaining agent having membership of less than five thousand, the accounts shall be subject to audit in the manner as may be prescribed.

(2) Together with the general statement referred to in sub-section (1), there shall be sent to the Registrar a statement showing all changes of office bearers made by the trade union, federation or confederation of trade unions during the year to which the general statement refers, along with a statement of the total paid membership and a copy of the constitution of the trade union corrected up to the date of the dispatch thereof.

(3) A copy of every alteration made in the constitution of a registered trade union and of a resolution of the general body having the effect of a provision of the constitution shall be sent to the Registrar within fifteen days of the making of the alteration or adoption of the resolution.

(4) In case the registered trade union is member of a federation or confederation the name of that federation or confederation shall be given in the annual statement.

20. Collective bargaining agent.-

(1) Where there is only one registered trade union in an establishment or a group of establishments or industry, such trade union shall, if it has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments or industry, upon an application made in this behalf be certified by the Registrar in the prescribed manner to be the collective bargaining agent for such establishment or, as the case may be, group of establishments.

(2) Where there are more registered trade unions than one in an establishment or a group of establishments or industry, the Registrar shall, upon an application made to him in this behalf by any such trade union, hold within fifteen days from the making of the application, a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group of establishments:

Provided that the Registrar may, in the case of a large establishment having its branches in more than one town, hold the secret ballot within thirty days from the making of the application:

Provided further that the Registrar shall not entertain any application under this sub-section in respect of an establishment or group of establishment consisting of, or including, a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (XXV of 1934), unless such application is made during the month in which the number of workmen employed in such factory in a year is usually the maximum

(3) Upon receipt of an application under sub-section (2) the Registrar shall, by notice in writing, call upon every registered trade union in the establishment or group of establishments to which the application relates-

(a) to indicate whether it desires to be a contestant in the secret ballot to be held for determining the collective bargaining agent in relation to such establishment or group of establishments, as the case may be; and

(b) to submit to him within the time specified in the notice a list of its members showing, in respect of each member, his parentage, age, the section or department and the place in which

he is employed, his ticket number and the date of his becoming a member and if the trade union is a federation of trade unions, a list of its affiliated trade unions together with a list of members of each such trade union showing in respect of each such member the said particulars

(4) Every employer shall-

(a) on being so required by the Registrar, within fifteen days, submit a list of all workmen employed in the establishment excluding those whose period of employment in the establishment is less than three months and showing, in respect of each workman, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment. However a separate list of workmen whose period of employment is less than three months showing the said particulars in respect of each workman may also be submitted; and

(b) provide such facilities for verification of the list submitted by him and the trade unions as the Registrar may require:

Provided that in computing the period of three months referred to in clause (a), in the case of a workman employed in a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (XXV of 1934), the period during which he was employed in that factory during the preceding season shall also be taken into account

(5) The Registrar shall, after verification of the lists submitted by trade unions, prepare a list of voters in which shall be included the name of every workman whose period of employment, as computed in accordance with sub-section (4), is not less than three months and who is a member of any of the contesting trade unions and shall, at least four days prior to the date fixed for the poll, send to each of the contesting trade unions a certified copy of the list of voters so prepared.

(6) Every workman who is a member of any of the contesting trade unions and whose name appears in the list of voters prepared under sub-section (5) shall be entitled to vote at the poll to determine the collective bargaining agent.

(7) Every employer shall provided all such facilities in his establishment as may be required by the Registrar for the conduct of the poll but shall not interfere with, or in any way, influence, the voting.

(8) No person shall canvass for vote within a radius of hundred yards of the polling station

(9) For the purpose of holding secret ballot to determine the collective bargaining agent, the Registrar shall-

(a) fix the date of the poll and intimate the same to each of the contesting trade unions and also to every employer four days prior to such date;

(b) on the date fixed for the poll so place, in the polling station set up for the purpose, the ballot boxes which shall be sealed in the presence of the representatives of the contesting trade unions as to receive the ballot papers;

(c) conduct the poll at the polling station at which the representatives of the contesting trade unions shall have the rights to be present;

(d) after the conclusion of the poll and in the presence of such of the representatives of the contesting trade unions as may be present, open the ballot boxes and count the votes; and

(e) after the conclusion of the count, certify the trade union which has received the highest number of votes to be the collective bargaining agent:

Provided that no trade union shall be certified to be the collective bargaining agent for an establishment or group of establishments unless the number of votes received by it is not less than one-third of the total number of workmen employed in such establishment or, as the case may be, group of establishment:

Provided further that, if not trade union secures such number of votes in the first poll, a second poll shall be held between the two trade unions which secure the highest numbers of votes in the first poll and the trade union which secures a majority of the votes cast at such further poll

Provided also that, if the number of votes secured by two or more trade unions securing the highest number of votes is equal, further poll shall be held between them until one of them secures a majority of the votes cast at such further poll.

(10) No trade union shall be certified to be the collective bargaining agent under sub-section (2) without holding a secret ballot

(11) Where a registered trade union has been certified under clause (e) of sub-section (9) to be the collective bargaining agent for an establishment or group of establishments, no application for determination of the collective bargaining agent for such establishment or group of establishments shall be entertained within a period of three years from the date of such certification except where the registration of such a registered trade union is cancelled before the expiration of that period

(12) A collective bargaining agent may, without prejudice to its own position, implead as a party or any federation of trade unions of which it is a member

(13) A collective bargaining agent in relation to an establishment or group of establishments shall be entitled to-

(a) undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the terms of employment or the conditions of work, other than matter which relate to the enforcement of any right guaranteed or secured to it or any award or settlement;

(b) represent all or any of the workmen in any proceedings;
and

(c) give notice of, and declare, a strike in accordance with the provisions of this Ordinance

(d) nominate workmen on the Boards of Provident Funds and Workers' Participation Fund of their respective establishment or industry

(14) The Registrar may authorize in writing an office bearer to perform all or any of his functions under this Ordinance and the rules made there under

(15) After an application under sub-section (2) is made to the Registrar, no employer shall transfer, remove, retrench or terminate any worker who is office bearer of any contestant trade union save with the permission of the Registrar

21. Check-off

(1) If a collective bargaining agent so requests, the employer of the workmen who are members of a trade union shall deduct from the wages of the workmen such amounts towards their subscription to the funds of the trade union as may be specified with the approval of each individual workman named in the demand statement furnished by the trade union

(2) An employer making any deductions from the wages under sub-section (1) shall, within fifteen days of the end of the period for which the deductions have been made, deposit the entire amount so deducted by him in the account of the trade union on whose behalf he has made the deductions

(3) A collective bargaining agent shall maintain with any Scheduled Bank or with a Post Office Saving Bank an account to which shall be credited the entire amount deducted by the employer under sub-section (1) from the wages of the members of the trade union

(4) The employer shall provide facilities to the collective bargaining agent for ascertaining whether deductions from the wages of its members are being made under sub-section (1)

22. Performance of functions pending ascertainment of collective bargaining agent – Any act or function which is by this Ordinance required to be performed by, or has been conferred upon, a collective bargaining agent may, until a collective bargaining agent has been certified under the provisions of this Ordinance by performed by a registered trade union which has been recognized by the employer or employers.

CHAPTER III

Workers' Participation and Dispute Resolution

23. Shop Stewards to act as link between labour and management.-

(1) In every establishment in which fifty or more workmen are employed, a Shop Steward, from amongst the workmen in a shop, section or department of the establishment shall-

(a) be nominated by the collective bargaining agent, where there is a collective bargaining agent in the establishment; or

(b) be elected at a secret ballot held in the prescribed manner, where there is no collective bargaining agent in the establishment.

(2) The employer shall provide all such facilities in his establishment as may be required for the holding of a ballot under sub-section (1) but shall not interfere with, or in any way influence, the voting.

(3) A Shop Steward shall hold office for period of one year from the date of his nomination or election, as the case may be.

(4) Any dispute arising out of or in connection with, the election of a Shop Steward shall be referred to the Registrar whose decision shall be final and binding on all parties to the dispute.

(5) A Shop Steward shall act as a link between the workers and the employer, assist in the improvement of arrangements for the physical working conditions and production work in the shop section or department for which he is elected and help workers in the settlement of their problems either connected with work or with any such individual grievance of a workman as is referred to in sub-section (1) of section 46.

24. Joint Works Council.-

(1) Every establishment which employs fifty persons or more, shall set up a Joint Works Council consisting of not more than ten members in which workers' participation shall be to the extent of forty per cent and the Convenor of the Council shall be from the management.

(2) The employer's representatives on the Joint Works Council shall be from amongst the Directors or their nominees or senior executives and the workers' representatives shall be the office bearers of collective bargaining agent or their nominees or from workers elected in the prescribed manner, in case there is no collective bargaining agent. (3) The Joint Works Council shall deal with the following matters, namely:-

(i) improvement in production, productivity and efficiency;

(ii) provision of minimum facilities for such of the workers employed through contractors as are not covered by the laws relating to welfare of workers;

(iii) promoting settlement of differences through bilateral negotiations;

(iv) promoting conditions of safety and health for the workers;

(v) encouraging vocational training within the establishment;

(vi) taking measures for facilitating good and harmonious working conditions in the establishment;

(vii) provision of educational facilities for children of workmen.

(4) The Joint Works Council may call for reasonable information about the working of the establishment from its management and the management shall supply the information called for.

(5) The Joint Works Council shall meet at such intervals as may be prescribed.

25. Negotiations relating to differences and disputes.-

(1) If at any time an employer or a collective bargaining agent finds that an industrial dispute has arisen or is likely to arise, the employer or, as the case may be, the collective bargaining agent may communicate his or its views in writing to the other party.

(2) On receipt of the communication under sub-section (1), the party receiving it shall try to settle the dispute by bilateral negotiations within fifteen days of the receipt of the communication or within such further period as may be agreed upon by the parties and, if the parties reach a settlement, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator and the authorities specified in clause (xxvi) of section 2.

(3) Where a settlement is not reached between the employer and the collective bargaining agent, the employer or the collective bargaining agent may, within fifteen days from the end of the period referred to in sub-section (2), serve on the other party to the dispute a notice of conciliation, in accordance with the provisions of this Ordinance.

26. Conciliator.-

(1) The Provincial Government shall, by notification in the official Gazette, appoint as many persons as it considers necessary to be Conciliators for the purposes of this Ordinance and shall specify in such notification the area within which, or the class of establishments or industries in relation to which, each one of them shall perform his functions.

(2) The Federal Government may, by notification in the official Gazette, appoint as many persons as it considers necessary to act as Conciliators in such disputes as the National Industrial Relations Commission is competent to adjudicate and determine under this Ordinance.

(3) A tripartite Board of Conciliators, hereinafter called the Board, consisting of men of standing competence shall be appointed on the request of the party raising the dispute, by the Federal Government or by a Provincial Government, as the case may be, by notification in the official Gazette, to conciliate in an industrial dispute involving more than one establishment in a Province or in an industry at national level or in an industrial dispute of national importance, if the negotiations are not satisfactorily progressing.

(4) The Board constituted under sub-section (3) shall stand dissolved on the settlement of dispute or on the failure of conciliation proceedings.

27. Period of notice of conciliation.- The period of a notice of conciliation under sub-section (3) of section 25 shall be fifteen days.

28. Conciliation after notice:- Where a party to an industrial dispute serves a notice of conciliation under sub-section (3) of section 25, it shall, simultaneously with the service of such notice, deliver a copy thereof to the Conciliator who shall proceed to conciliate in the dispute and to the Labour Court.

29. Proceedings before Conciliator.-

(1) The Conciliator or the Board shall, as soon as possible, call a meeting of the parties to a dispute for the purpose of bringing about a settlement.

(2) The parties to a dispute shall be represented before the Conciliator or the Board by persons nominated by them and authorized to negotiate and enter into an agreement binding on the parties:

Provided that if, in the opinion of the Conciliator or the Board, the presence of the employer or any office bearer of the trade union connected with the dispute is necessary in a meeting called by him, he or, as the case may be, it shall give notice in writing requiring the employer or such office bearer to appear in person before him or it at the place, date and time, specified in the notice and it shall be the duty of the employer or the office bearer of trade union to comply with the notice.

(3) The Conciliator or the Board shall perform such functions in relation to a dispute before him or it as may be prescribed and may, in particular, suggest to either party to the dispute such concessions or modifications in its demand as are in the opinion of the Conciliator or the Board likely to promote an amicable settlement of the dispute.

(4) If a settlement of the dispute or of any matter in dispute is arrived at in the course of the proceedings before him or it, the Conciliator or the Board shall send a report thereof to the Provincial Government or the Federal Government, as the case may be, together with the memorandum of settlement signed by the parties to the dispute. (5) If no settlement is arrived at within the period of the notice of conciliation, the conciliation proceedings may be continued for such further period as may be agreed upon by the parties.

30. Arbitration.-

(1) If the conciliation fails, the Conciliator shall try to persuade the parties to agree to refer the dispute to an arbitrator, and in case the parties agree, they shall make a joint request in writing for reference of the dispute to an arbitrator agreed upon by them.

(2) The arbitrator to whom a dispute is referred under sub-section (1) may be a person borne on a panel to be maintained by a Provincial Government or the Federal Government as the case may be or any other person agreed upon by the parties.

(3) The arbitrator shall give his award within a period of thirty days from the date on which the dispute is referred to him under sub-section (1) or such further period as may be agreed upon by the parties to the dispute.

(4) After the arbitrator has made the award, he shall forward a copy thereof to the parties and to a Provincial Government or the Federal Government, as the case may be, who shall cause it to be published in the official Gazette.

(5) The award of the arbitrator shall be final and no appeal shall lie against it and shall be valid for a period not exceeding two years or as may be fixed by the arbitrator.

31. Strike and lockout.-

(1) If no settlement is arrived at during the course of conciliation proceedings and the parties to the dispute do not agree to refer it to an arbitrator under section 30, the workmen, subject to a seven days notice to the employer, may go on strike or, as the case may be, the employer may declare a lock-out on the expiry of the period of the notice under section 27 or upon a declaration by the Conciliator or the Board that conciliation proceedings have failed, whichever is the later.

(2) The party raising a dispute may at any time, either before or after the commencement of a strike or local-out, make an application to the Labour Court for adjudication of the dispute.

(3) Where a strike or lock-out lasts for more than fifteen days, the Federal Government, if it relates to a dispute which the Commission is competent to adjudicate and determine, and a Provincial Government, if it relates to any other dispute, may, by order in writing, prohibit the strike or lock-out;

Provided that the Federal Government may, with respect to a strike or lock-out relating to a dispute which the Commission is competent to adjudicate and determine and the Provincial Government, with the previous approval of the Federal Government may, with respect to any other strike or lock-out, by order in writing, prohibit a strike or lock-out at any time before the expiry of thirty days, if its is satisfied that the continuance of such a strike or lock-out is causing serious hardship to community or is prejudicial to the national interest;

Provided further that the Federal Government or a Provincial Government, as the case may be, shall prohibit, by an order in the official Gazette, the commencement of a strike or lock-out, as the case may be, if the same, in the opinion of the Government concerned, is detrimental to the interest of the community at large.

(4) In any case in which the Federal Government or a Provincial Government prohibits a strike or lock-out it shall forthwith refer the dispute to the Commission or, as the case may be, the Labour Court.

(5) The Commission, or as the case may be, the Labour Court shall, after giving both the parties to the dispute an opportunity of being heard, make such award as it deems fit as expeditiously as possible but not exceeding thirty days from the date on which the dispute was referred to it;

Provided that the Commission, or as the case may be, the Labour Court may make an interim award on any matter of dispute; Provided further that any by the Commission or, as the case may be, the Labour Court in making an award shall not affect the validity or any award by it.

(6) An award of the Commission or, as the case may be, the Labour Court shall be for such period, as may be specified in the award, but shall not be for more than two years.

32. Strike or lockout in public utility services. – The Federal Government or a Provincial Government, as the case may be, in the case of a strike or lock-out relating to an industrial dispute in respect of any of the public utility services may, be order in writing, prohibit a strike

or lock-out at any time before or after the commencement of the strike or lock-out and refer the dispute to a Board of arbitrators comprising serving or retired Judges of the High Court or of the Supreme Court of Pakistan, as may be constituted by the respective Government, for compulsory arbitration.

33. Application to Labour Court. Any collective bargaining agent or any employers may apply to the Labour Court for the redressal of any grievance or enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.

34. Commencement and conclusion of proceedings.-

(1) A conciliation proceeding shall be deemed to have commenced on the date on which a notice of conciliation is received by the Conciliator under section 28.

(2) A conciliation proceeding shall be deemed to have concluded-

(a) where a settlement is arrived at, on the date on which a memorandum of settlement is signed by the parties to a dispute; and

(b) where no settlement is arrived at,-

(i) if the dispute is referred to an arbitrator under section 30, on the date on which the arbitrator has given his award; or otherwise.

(ii) on the date on which the period of the notice of conciliation expires.

(3) Proceeding before a Labour Court shall be deemed to have commenced-

(a) in relation to an industrial dispute, on the date on which an application has been made under section 31 or 33, or on the date on which it is referred to the Labour Court by a Provincial Government under section 31 or 32; and

(b) in relation to any other matter, on the date on which it is referred to the Labour Court.

(4) Proceedings before the Commission in relation to a dispute referred to it under section 31 or 32 or to a dispute raised under section 56 shall be deemed to have commenced on the date on which the reference is made to it or, as the case may be, the dispute is raised before it.

(5) Proceedings before the Commission or a Labour Court shall be deemed to have concluded on the date on which the award or decision is delivered under sub-section (1) of section 47.

35. Raising of industrial dispute.- No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer.

36. Prohibition on going on strike or declaring lock-out while proceedings pending.- No party to an industrial dispute shall go on strike or declare a lockout while any conciliation proceedings or

proceedings before an arbitrator or a Labour Court is pending in respect of any matter constituting such industrial dispute.

37. Powers of Labour Court and Appellate Court of competent jurisdiction to prohibit strike, etc.-

(1) When a strike or lock-out pursuant of an industrial dispute has already commenced and is in existence at the time when, in respect of such industrial dispute, there is made to, or is pending before, the Labour Court, an application under section 33, the Labour Court may, by an order in writing, prohibit continuance of the strike or lock-out.

(2) When an appeal in respect of any matter arising out of an industrial dispute is preferred to the High Court under section 48, the High Court may, by an order in writing, prohibit continuance of any strike or lock-out in pursuance of such industrial dispute which had already commenced and was in existence on the date on which appeal was preferred.

38. Illegal strikes and lock-outs.-

(1) A strike or lock-out shall be illegal if-

(a) it is declared, commenced or continued without giving to the other party to a dispute, in the prescribed manner, a notice of conciliation or in contravention of section 36; or

(b) it is declared, commenced or continued in consequence of an industrial dispute raised in a manner other than that provided in section 35; or

(c) it is continued in contravention of an order made under section 31, 32, 37 or sub-section (3) section 39; or

(d) it is declared, commenced or continued during the period in which a settlement or award is in operation in respect of any of the matters covered by a settlement or award.

(2) A lockout declared in consequence of an illegal strike and a strike declared in consequence of an illegal lockout shall not be deemed to be illegal.

39. Procedure in cases of illegal strikes or lock-out.-

(1) Notwithstanding anything contained in any other provision of this Ordinance or in any other law for the time being in force, an office bearer of the Labour Department not below the rank of Assistant Director, Labour Welfare, hereinafter in this section referred to as the Officer, may make enquiries in such manner as he may deem fit into an illegal strike or illegal lock-out in a factory and make a report to the Labour Court.

(2) After completing an enquiry the Officer shall serve a notice on the employer and the collective bargaining agent or the registered trade union concerned with the dispute to appear before the Labour Court on a date to be fixed by the Court.

(3) The Labour Court may, within ten days following the day on which it receives a report under sub-section (1), after considering the report and hearing such of the parties as appear before it, order the strike to be called off or the lock-out to be lifted.

(4) If the employer contravenes the order of the Labour Court given under sub-section (3) and the Labour Court is satisfied that the continuance of the lock-out is causing serious hardship to the community or is prejudicial to the national interest, it may issue an order for the attachment of the factory and for the appointment of an official receiver for such period as it deems fit, and such period may be varied from time to time.

(5) The official receiver shall exercise the powers of management and any transact business, enter into contracts, give valid discharge of all moneys received and do or omit to do all such acts as are necessary for conducting the business of the factory.

(6) The Labour Court may, in appointment and regulating the work of an official receiver, exercise the powers of a Civil Court under the Code of Civil Procedure (Act V of 1908).

(7) If the workers contravene the order of the Labour Court given under sub-section (3), the Labour Court may pass orders of dismissal against all or any of the striking workers and, notwithstanding anything to the contrary contained in this Ordinance, if the Labour Court, after holding such inquiry as it deems fit, records its finding that any registered trade union has committed or abetted the commission of such contravention, the finding shall have the effect of cancellation of the registration of such trade union and debarring all office bearers of such trade union from holding office in that or in any other trade union for the unexpired term of their offices and for the term immediately following:

Provided that the Labour Court may review its orders if good and sufficient cause is shown by an affected worker within seven days of the orders of dismissal.

(8) Subject to any rules made by a Provincial Government in this behalf, the Officer may, for the purpose of enquiry under sub-section (1), within the local limits for which he is appointed, enter with such assistants, if any, being persons in the service of Pakistan, as he thinks fit, in a factory where he has reason to believe an illegal strike or lock-out to be in progress, and make such examination of the premises and plant and of any registers maintained therein and take on the spot or otherwise such evidence of persons and exercise such other powers as he may deem necessary for carrying out the purposes of this section.

(9) The Officer shall have authority to call any party to such dispute to his office or secure his presence in the factory and shall also have the power to bind any party to the dispute to appear before the Labour Court.

(10) Where a party to an illegal strike or lock-out, on being required or bound under this section to appear before the Officer or the Labour Court does not so appear, the Officer or the Labour Court, as the case may be, may, besides taking such other action as may be admissible under this Ordinance, proceed ex-parte.

40. Conditions of service to remain unchanged while proceedings pending.-

(1) No employer shall, while any conciliation proceedings or proceedings before an arbitrator, the Labour Court or a Court of competent jurisdiction in respect of an industrial dispute are pending, alter to the disadvantage of any workman concerned in such dispute, the conditions of service applicable to him before the commencement of the conciliation proceedings or of the proceedings before the arbitrator, the Labour Court or, as the case may be, any other Court of competent jurisdiction, nor shall he,- (a) save with the permission of the Conciliator or the Board, while any conciliation proceedings are pending; or (b) save with the permission of the arbitrator, the Labour Court or a Court of competent jurisdiction, while any proceedings before the arbitrator, the Labour Court or the High Court are pending, discharge, dismiss or otherwise punish any workman except for misconduct not connected with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an office-bearer of a registered trade union shall not, during the pendency of any proceedings referred to in sub-section (1), be discharged, dismissed or otherwise punished for misconduct, except with the previous permission of the Labour Court.

41. Removal of fixed assets.- No employer shall remove any fixed assets of an establishment during the currency of an illegal lock-out or a strike which is not illegal: Provided that the Labour Court may, subject to such conditions as it may impose, cause to be removed any such fixed assets for safe custody to avoid damage to such assets due to flood, fire, catastrophe or civil commotion.

42. Protection of certain persons.-

(1) No person refusing to take part or the continue to take part in any illegal strike or illegal lockout shall, by reason of such refusal, be subject to expulsion from any trade union or to any fine or penalty or to the deprivation of any right or benefit which he or his legal representatives would otherwise have been entitled, or be liable to be placed in any respect, either directly or indirectly, under any disability or disadvantage as compared with other members of the trade union.

(2) Any contravention of the provisions of sub-section (1) may be made the subject-matter of an industrial dispute, and nothing in the constitution of a trade union providing the manner in which any dispute between its executive and members shall be settled shall apply to proceedings for enforcing any right or exemption granted by sub-section (1).

(3) In any proceedings referred to in sub-section (1), the Labour Court may, in lieu of ordering a person who has been expelled from membership of a trade union, order to be restored to membership and he be paid out of the funds of the trade union such sum by way of compensation or damages as the Labour Court thins just.

43. Representation of parties.-

(1) A workman who is a party to an industrial dispute shall be entitled to be represented in any proceedings under this Ordinance by an office-bearer of a collective bargaining agent and subject to the provisions of sub-section (2) an (3) any employer who is a party to an industrial dispute shall be entitled to be represented in any such proceedings by a person duly authorized by him.

(2) No party to an industrial dispute shall be represented by a legal practitioner in any conciliation proceedings under this Ordinance.

(3) A party to an industrial dispute may be represented by a legal practitioner in any proceedings before the Labour Court, or before an arbitrator, with the permission of the Court or the arbitrator, as the case may be.

CHAPTER IV Labour Courts

44. Labour Court.-

(1) A Provincial Government may, in consultation with the Chief Justice of the respective High Court, by notification in the official Gazette, establish as many Labour Courts as it considers necessary and, where it establishes more than one Labour Court, shall specify in the notification the territorial limits within which or the industry or the classes of cases in respect of which, each one of them shall exercise jurisdiction under this Ordinance.

(2) A Labour Court shall consist of one Presiding Officer appointed by a Provincial Government, in consultation with the Chief Justice of the respective High Court.

(3) A person shall not be qualified for appointment as Presiding Officer unless he has been, or is qualified to be, Judge or Additional Judge of the respective High Court or is a District Judge.

(4) A Labour court shall-

(a) adjudicate and determine an industrial dispute which has been referred to or brought before it under this Ordinance;

(b) enquire into or adjudicate any matter relating to the implementation or violation of a settlement which is referred to it by a Provincial Government;

(c) try offences under this Ordinance and such other offences under any other as the Provincial Government may, by notification in the official Gazette, specify in this behalf; and

(d) exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under this Ordinance or any other law.

45. Procedure and powers of Labour Court.-

(1) Subject to the provisions of this Ordinance, while trying an offence a Labour Court shall follow as nearly as possible summary procedure as provided under the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) A Labour Court shall, for the purpose of adjudicating and determining any industrial dispute, be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908), including the powers of-

(a) enforcing the attendance of any person and examining him on oath;
(b) compelling the production of documents and material objects; and

(c) issuing commissions for the examination of witnesses or documents.

(3) A Labour Court shall, for the purpose of trying an offence under this Ordinance or the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (W.P. Ordinance VI of 1968), or any other labour law, have the same powers as are vested in the Court of a Magistrate of the first class specially empowered under section 30 of the Code Criminal Procedure, 1898 (Act V of 1898).

(4) No court fee shall be payable for filling, exhibiting or recording any document in, or obtaining any document from a Labour Court.

(5) If the parties to a case, at any time before a final order is passed by a Labour Court that matter has been resolved by them amicably and that there are sufficient grounds for withdrawing the case, it may allow such withdrawal.

46. Redress of individual grievances.-

(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his Shop Steward or collective bargaining agent, within one month of the day on which cause of such grievance arises.

(2) Where a worker brings his grievance to the notice of an employer himself or through his Shop Steward or collective bargaining agent, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.

(3) If an employer fails to communicate a decision within the period specified in sub-section (2) or if a worker is dissatisfied with such decision, the worker or Shop Steward may take the matter to his collective bargaining agent or the Labour Court, as the case may be, and where the matter is taken to the Labour Court, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute: Provided that a worker who desires to take the matter to the Labour Court, he shall do so within a period of two months from the date of communication of the employer or, as the case may be, from the expiry of the period specified in sub-section (2).

(4) In adjudicating and determining a grievance under sub-section (3), the Labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.

(5) The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service.

(6) If a decision under sub-section (4) or an order under sub-section (5) given by the Labour Court or a decision of the High Court in an appeal against such a decision or order is not given effect to or complied with within one month or within the period specified in such order or decision, the defaulter shall additionally be punishable with fine which may extend to ten thousand rupees.

(7) No person shall be prosecuted under sub-section (6) except on a complaint in writing by a workman if the order or decision in his favour is not implemented within the period specified therein.

(8) For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court.

47. Awards and decision of Labour Court.-

(1) An award or decision of a Labour Court shall be given in writing and delivered in open Court and two copies thereof shall be forwarded forthwith to a Provincial Government, provided that if the Federal Government be a party, two copies of the award or decision shall be forwarded to that Government as well.

(2) A Provincial Government shall, within a period of one month from the receipt of the copies of the award or decision, publish it in the official Gazette.

(3) Any party aggrieved by an award given under sub-section (1) or a decision given under section 46 or on an application made under section 33 or a sentence passed in an offence tried by the Labour Court under clause (c) of sub-section (4) of section 44 may prefer an appeal to the High Court within thirty days of the delivery or passing thereof and the decision of the High Court in such appeal shall be final.

(4) Save as otherwise expressly provided in this Ordinance, all decisions of, and all sentences passed by, a Labour Court shall be final and shall not be called in question in any manner by or before any court or other authority.

48. Appeal to the High Court.-

(1) The High Court may, on appeal, confirm, set aside, vary or modify the award or decision given under section 46 or 33 a sentence passed under clause (c) of sub-section (4) of section 44 and shall exercise all the powers conferred by this Ordinance on the Labour Court, save as otherwise provided.

(2) The decision of the High Court shall be delivered as expeditiously as possible, within a period of sixty days following the filing of an appeal, provided that such decision shall not be rendered invalid by reason of any delay in its delivery.

(3) The High Court may, on its own motion, at any time, call for the record of any case or proceedings under this Ordinance in which Labour Court within its jurisdiction has passed an order, for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order, in relation thereto as it thinks fit: Provided that no order under

this sub-section shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.

(4) The High Court, subject to its appellate jurisdiction, shall punish for contempt of its authority, or that of any Labour Court with a fine which may extend to twenty five thousand rupees.

(5) Any person if sentenced with a fine exceeding twenty thousand rupees by a single bench of a High Court under sub- section (4) may prefer an appeal to the division bench of that High Court.

(6) A High Court may, on its motion or on the application of any party, transfer any application or proceeding from a Labour Court within its jurisdiction to any other Labour Court.

(7) Notwithstanding anything contained in sub-section (3), if, in an appeal preferred to it against the order of a Labour Court directing the re-instatement of a workman or compensation in lieu thereof, the High Court makes an order staying the operation of the order of the Labour Court, the High Court shall decide such appeal as soon as possible but not later than sixty days.

National Industrial Relations Commission

49. National Industrial Relations Commission. -

(1) The Federal Government shall constitute a national Industrial Relations Commission consisting of not more than eight members, including its Chairman.

(2) The Chairman and the members shall be appointed by the Federal Government.

(3) The qualification and terms and conditions of service for appointment as Chairman and member of the Commission shall be such as may be determined by the Federal Government.

(4) The functions of the Commission shall be to -

(a) adjudicate and determine an industrial dispute to which an industry-wise trade union or a federation of such trade unions is a party and any other industrial dispute which, in the opinion of the Federal Government, is of national importance and is referred to it by that Government;

(b) register industry-wise trade unions, federations of such trade unions and federations at the national level and carry out ratings of the trade unions and federations registered by it in terms of their standing and representative character;

(c) determine the collective bargaining agents amongst industry- wise trade unions, federations of such trade unions and federations at the national level;

(d) try offences punishable under.-

(i) section 65, other than sub-section (1) and (5) thereof; and

(ii) any other provisions, in so far as they relate to employers or workers in relation to an industry-wise trade union, a federation of such trade unions, a federation at the national level or office-bearers of such unions or federation;

(e) deal with cases of unfair labour practices specified in section 63 and 64 on the part of employers, workmen, collective bargaining agents, industry-wise trade unions of either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 46 or 33 or in such other way as may be prescribed and to take, in such manner as may be prescribed by regulations under section 55, measures calculated to prevent an employer or workman from committing an unfair labour practice;

Provided that, except during pendency of an industrial dispute, the Commission shall not grant interim relief against any action mentioned in section 63 (d) of this Ordinance.

(f) advise Government, industry-wise trade unions and federations in respect to the education of workers in the essentials of trade unionism, including education in respect of their rights and obligations, and to secure the provision of facilities required therefor;

(g) promote healthy trade unionism whether in establishments within a Province or in more than one Province and federations of such trade unions;

(h) facilitate the formation of federations at the national level; and

(i) exercise such other powers and perform functions as the Federal Government may by notification in the official Gazette, assign to it from time to time.

(5) The Commission may, on the application of a party, or of its own motion-

(a) initiate prosecution, trial or proceedings or take action, with regard to any matter relating to its functions; and

(b) withdraw from a Labour Court any application, proceedings or appeal relating to unfair labour practice.

(6) For the purpose of dealing with a case of unfair labour practice of which the Commission is seized, the Commission may- (a) proceed directly with the case; (b) ask the registrar within whose jurisdiction the case has occurred or is likely to occur to enquire into it and submit a report; or (c) refer the case to the Labour Court within whose jurisdiction the case has occurred or is likely to occur, either for report or for disposal.

(7) The Labour Court to whom the case is referred under clause (c) of sub-section (6) shall enquire into it and, if the case was referred to it for report, forward its report there on to the Commission or, if the case was referred to it for disposal, continue the proceedings and dispose of the case as if the proceedings had originally commenced before it and grant such relief as the Commission has the power to grant.

(8) Save as provided in sub-sections (6) and (7), no Registrar or Labour Court shall take any action, or entertain any application or proceedings, in respect of any matter which falls within the jurisdiction of the Commission.

(9) Nothing in this section shall be deemed to exclude the jurisdiction of a Labour Court to entertain cases of unfair labour practices on the part of employers or workmen, whether individually or collectively:

Provided that no Court, including a Labour Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labour practice which is being dealt with by the Commission. Explanation.- In this section and in the succeeding provision of this Ordinance, the expressions "industry-wise trade unions, "federation of such trade unions" and federation at the national level "refer to a trade union, membership of which extends to establishments in more than one Province and a federation of trade unions whose membership extends to registered trade unions in more than one Province.

50. Benches of the Commission, etc.-

(1) The Chairman of the Commission shall exercise general superintendence over its affairs.

(2) For the efficient performance of the functions of the Commission, the Chairman of the Commission shall constitute-

(a) a Full Bench of the Commission which shall consist of not less than three members of the Commission; and

(b) as many other Benches of the Commission consisting of one or more members of the Commission as he may deem fit.

(3) The benches shall- (a) in relation to cases based on allegations of unfair labour practices brought before the Commission for trial of offences, or enforcement of, or for redress of individual grievances in respect of any right guaranteed or secured to any employer or worker by or under any law or any award or settlement, perform such functions and exercise such powers as are performed and exercised by a Labour Court; and (b) in relation to industry-wise trade unions, federations of such trade unions, federations at the national level and cases referred to the Commission, perform such functions and exercise such powers as are performed and exercised by a Registrar or a Labour Court in relation to trade unions and federations of trade unions within a Province, and, for this purpose, any reference in this Ordinance to a "Registrar" or "Labour Court", as the case may be, shall be deemed to be a reference to the appropriate Bench of the Commission to which such functions are assigned: Provided that, in the performance of those functions and in the exercise of those powers, the Benches shall, unless otherwise provided in this Ordinance, follow the procedure laid down in the regulations to be made under section 55.

(4) If any member of the Commission is absent from, or is otherwise unable to attend any sitting of the Commission or of a Bench consisting of more than one member of which he is a member, the proceedings of the Commission or Bench may continue, and the decision or award may be given or judgement or sentence may be passed in the absence of such member and no

act, proceedings, decision, or award of the Commission or Bench shall be invalid or be called in question merely on the ground of such absence or of the existence of vacancy in or any defect in the constitution of the Commission or Bench.

(5) If the members of a Bench differ in opinion as to the decision to be given on any point-

(a) the point shall be decided according to the opinion of the majority, if there is a majority; and

(b) if the members are equally divided, they shall state the point on which they differ and the case shall be referred by them to the Chairman for hearing on such point by one or more of the other members of the Commission and such point shall be decided according to the opinion or the majority of the members of the Commission who have heard the case, including those who first heard it: Provided that if upon any matter requiring the decision of a Bench which includes the Chairman of the Commission as one of its members, there is a difference of opinion among its members and the members so constituting the Bench are equally divided, the opinion of the Chairman shall prevail and the decision of the bench shall be expressed in terms of the views of the Chairman.

(6) Any order of decision made, award given sentence passed, power exercised, function performed or proceedings taken by any Bench of the Commission in accordance with this Ordinance and the order constituting the Bench shall be deemed to be the order or decision made, award given sentence passed, power exercised, function performed or proceedings taken, as the case may be, by the Commission.

Explanation.- In this section, the expression 'the Chairman of the Commission' includes such member of the Commission (to be known as Senior Member) as the Federal Government may nominate to perform the functions and exercise the powers of the Chairman during his absence.

51. Additional powers of the Commission.- In addition to the powers which the Commission has under section 50- (a) the Commission shall have power to punish any person who obstructs or abuses its process or disobeys any of its order or directions or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members in relation to proceedings of the Commission into hatred or contempt, or does anything which, by law, constitutes contempt of court, with fine which may extend to forty thousand rupees; and (b) for the purpose of any investigation, inquiry or adjudication to be made by the Commission under this Ordinance, the Chairman or any member of the Commission may at any time between the hours of sunrise and sunset, and any other person authorized in writing by the Chairman or any member of the Commission in this behalf may, after he has given reasonable notice, enter any building, factory, workshop, or other place or premises whatsoever and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to matters before the Commission.

52. Appeals.-

(1) Notwithstanding anything contained in this Ordinance, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission,

other than a Full Bench, may, within thirty days of such award, decision, sentence or order, prefer and appeal to the Commission.

(2) An appeal preferred to the Commission under sub-section (1) shall be disposed of by the Full Bench of the Commission which shall have the power to confirm, set aside, vary or modify such award, decision, sentence or order.

53. Finality of order.- No Court shall entertain any plea as to the jurisdiction of the Commission or an application or as to the legality or propriety of anything done or purporting to be done by the Commission or any of its Benches, and no order, decision, judgement or sentence be called in question in any manner whatsoever, in or before any Court or authority.

54. Determination, etc., of collective bargaining unit.-

(1) Where the Commission, on an application made in this behalf, by a trade union of workmen or a federation of such trade unions, or on a reference made by the Federal Government, after holding such inquiry as it deems fit, is satisfied that for safeguarding the interest of the workmen employed in an establishment or group of establishments belonging to the same employer and the same industry, in relation to collective bargaining, it is necessary, just and feasible to determine one or more collective bargaining units of such workmen in such establishment or group of establishments, it may, having regard to the distribution of workers, existing boundaries of the components of such establishment or group of establishments, facilities of communication, general convenience, sameness or similarity of economic activity and other cognate factors-

(a) determine and certify one or more collective bargaining units in such establishment or group of establishments;

(b) specify the modifications which, in consequence of the decision under this section, shall take effect in regard to the registration of the trade unions and federations of trade unions affected by among such unions and federations, nomination or election of Shop Stewards, and workers' representatives for participation in the management of the factories, if any, affected by such decision;

(c) specify the date or dates from, and the period for which, all or any of such changes shall take effect: Provided that the date so specified shall not be a date falling within the period of three years-specified in sub-section (II) of section 20 in its application to a collective bargaining agent certified in respect of an establishment or establishments; Provided further that, after the receipt of a reference for determination of a collective bargaining unit, the Commission may stop or prohibit the proceedings to determine collective bargaining agent under section 20 for any establishment or group of establishments which is likely to be affected by a decision made under this section.

(d) take such measures or issue such directions to the Registrar as may be necessary to give effect to such modifications; and

(e) determine and certify a collective bargaining agent for each such unit in accordance with section 20, in so far as applicable and with necessary modifications, if such a unit relates to

more than one Province, or direct the Registrar to take such action, if such a unit relates to only one Province.

(2) Where the Commission issues any directions to the Registrar under this section, the Registrar shall comply with them within such period as the Commission may from time to time determine.

(3) After the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such unit and no certification or proceedings for determination of collective bargaining agent under section 20 shall take place for a part of a collective bargaining unit or a group of collective bargaining units.

(4) An order of the Commission under this section shall have effect notwithstanding anything to the contrary contained in this Ordinance.

55. Power to make regulations.-

(1) Subject to the provisions of this Ordinance, the Commission may, with the prior approval of the Federal Government, make such regulations relating to its procedure and the performance of its functions as it may deem fit.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) registration on industry-wise trade unions, federations of such trade unions and federations at the national level, and the procedure for such registration;

(b) determination of collective bargaining units;

(c) determination of collective bargaining agent from amongst the industry-wise trade unions, federations of such trade unions or, as the case may be, federations at the national level, and the procedure therefor;

(d) procedure, including rules of evidence, for adjudication of industrial disputes;

(e) procedure, including rules of evidence, for trial of offences;

(f) procedure for dealing with unfair labour practices;

(g) superintendence of the Chairman over the affairs of the Commission;

(h) forms of registers, processes and returns in respect of matters relating to the functions of the Commission; and

56. Raising of industrial dispute by a federation.-

(1) Notwithstanding anything contained in this Ordinance, a federation of industry-wise trade unions or a federation at the national level may, if it is a collective bargaining agent, raise an

industrial dispute affecting all employers or workers of the establishments represented by that federation and a decision of the Commission shall be binding on all such employers and workers.

(2) No collective bargaining agent shall, at any time when a decision of the Commission in respect of any matter is effective, be entitled to raise a demand relating to that matter.

CHAPTER VI Authorities

57. Registrar of trade unions.- For the purpose of this Ordinance, a Provincial Government may, by notification in the official Gazette, appoint as many persons as it considers necessary to be Registrars of trade unions and where it appoints more than one Registrar, it shall specify in the notification the area within which each one of them shall exercise and perform the powers and functions under this Ordinance.

58. Powers and functions of Registrar.-

The functions and powers of the Registrar shall be-

(a) to register the trade unions under this Ordinance and maintain a register for that purpose;

(b) to lodge, or authorize any person to lodge, complaints with the Labour Court for action, including prosecution, against trade unions, employers, workers or other persons for any alleged offence or any unfair labour practice or violation of any provision of this Ordinance or for expending the funds of a trade union in contravention of the provisions of its constitution;

(c) to determine as to which one of the trade unions in an establishment or group of establishments or an industry is entitled to be certified as the collective bargaining agent in relation to that establishment or group of establishments or industry;

(d) to inspect the accounts and records of the registered trade unions, investigate or hold such inquiry as he deems fit, either himself or through any officer subordinate to, and authorized in writing in this behalf by, him; and

(e) to perform such other functions and exercise such other powers as may be prescribed.

CHAPTER VII Decisions, Settlements and Awards

59. Settlement and awards on whom binding.-

(1) A settlement arrived at in the course of a conciliation proceeding or otherwise between employer and a collective bargaining agent or an award of arbitrator published under section 30, or an award or decision of a Labour Court delivered under section 47, or the decision of a High Court under section 48 shall be-

(a) binding on all parties to an industrial dispute:

(b) binding on all other parties summoned to appear in any proceeding before a Labour Court as parties to an industrial dispute, unless the Labour Court specifically otherwise directs in respect of any such party'

(c) binding on the heirs, successors or assigns of an employer in respect of the establishment to which an industrial dispute relates where the employers is one of the parties to that dispute; and

(d) binding, where a collective bargaining agent is one of the parties to a dispute, on all workmen who were employed in the establishment or industry to which an industrial dispute relates on the date on which the dispute first arose or who are employed therein after that date: Provided that, where a collective bargaining agent or a trade union performing the functions of a collective bargaining agent under section 20 exists, the employer shall not enter into a settlement with any other trade union, and any contravention of this provision shall be deemed to be an unfair labour practice under section 63.

(2) A settlement arrived at by agreement between an employer and a trade union otherwise than in the course of conciliation proceedings shall be binding on the parties to the agreement.

60. Effective date of settlement, award, etc.-

(1) A settlement shall become effective-

(a) on the date, if a date is agreed upon by the parties to the dispute to which it relates; and

(b) on the date on which the memorandum of the settlement is signed by the parties, if a date is not agreed upon.

(2) A settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of two years from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the aforesaid period until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the settlement.

(3) An award given under sub-section (1) of section 47 shall, unless an appeal against it is preferred to the High Court, become effective on such date and remain effective for such period, not exceeding two years, as may be specified therein.

(4) The arbitrator, the Labour Court or, as the case may be, the High Court, shall specify dates from which the award on various demands shall be effective and the limits by which it shall be implemented in each case: Provided that if, at any time before the expiry of the said period any party bound by an award applies to the Labour Court which made the award for reduction of the period on the ground that the circumstances in which the award was made have materially changed, may, by order, after giving to the other party an opportunity of being heard, terminate the said period on a date specified in the order.

(5) A decision of the High Court in appeal under sub-section (3) of section 48 shall be effective from the date of award.

(6) Notwithstanding the expiry of the period for which an award is to be effective under sub-section (3), the award shall continue to be binding on the parties until the expiry of two months from the date on which either party informs the other party in writing of its intention no longer to be bound by the award.

61. Interpretation of awards and settlements.-

(1) If any difficulty or doubt arises as to the interpretation of any provisions of an award or settlement, it shall be referred to the High Court.

(2) The High Court to which a matter is referred under sub-section (1) shall, after giving the parties an opportunity of being heard, decide the matter and its decision shall be final and binding on the parties.

62. Recovery of money due from an employer under an award or settlement.-

(1) Any money due from an employer under an award, settlement or decision of the arbitrator, Labour Court or High Court may be recovered as arrears of land revenue or as a public demand if, upon an application of the person entitled to the money, the Labour Court so directs.

(2) Where any workman is entitled to receive from the employer any benefit, under an award, settlement or decision of the arbitrator, the Labour Court or High Court, which is capable of being computed in terms of money, the amount at which such benefit shall be computed may, subject to the rules made under this Ordinance, be determined and recovered as provided for in sub-section (1) and paid to the workman concerned by a specified date.

CHAPTER VIII

Penalties and Procedures

63. Unfair labour practices on the part of employers.-

(1) No employer or an association of employers and no person acting on behalf of either shall-

(a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union; or

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is or is not, a member or office-bearer of a trade union; or

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is or is not, a member or office-bearer of a trade union; or

(d) dismiss, discharge, remove from employment or transfer a workman or injure him in respect of his employment by reason that the workman- (i) is or proposes to become a member or office-bearer of a trade union; or (ii) participates in the promotion, formation or activities of a trade union;

(e) induce any person to refrain from becoming, or to cease to be a member or office-bearer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person; or

(f) compel or attempt to compel any office-bearer of a collective bargaining agent to arrive at a settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power or telephone facilities or by such other methods; or

(g) interfere with or in any way influence the balloting provided for in section 20; or

(h) recruit any workman during the period of notice of strike under section 31 or during the currency of a strike which is not illegal except where the Conciliator has, being satisfied that complete cessation of work is likely to cause serious damage to the machinery or installations, permitted temporary employment of a limited number of workmen in the section where the damage is likely to occur; or

(i) close down the whole of an establishment in contravention of Standing Order 11A of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1969 (West Pakistan Ordinance No VI of 1968); or

(j) commence, continue, instigate or incite others to take part in, or expend or supply money or otherwise act in furtherance or support of an illegal lock-out.

(2) Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or office-bearer of a trade union of workmen.

64. Unfair labour practices on the part of workmen.-

(1) No workman, a trade union of workmen or any of its members or office-bearers, or any other person shall-

(a) persuade a workman to join or refrain from joining a trade union during working hours; or

(b) intimidate any person to become, or refrain from becoming, or to continue to be or to cease to be a member or office-bearer of a trade union; or

(c) induce any person to refrain from becoming, or cease to be a member or office-bearer of a trade union by intimidating or conferring or offering to confer any advantage on or by procuring or offering to confer any advantage on or by procuring or offering to procure any advantage for such person or any other person; or

(d) compel or attempt to compel the employer to accept any demand by using intimidation, coercion, pressure, threat, confinement or ouster from a place, dispossession, assault, physical injury, disconnection of telephone, water or power facilities or by such other methods; or

(e) compel or attempt to compel any member of a body, bipartite or tripartite or of any composition, relating to the functioning of the industry or is in place for the benefit of workers, to accept any demand by using intimidation, coercion, pressure, threat, confinement or ouster from a place, dispossession, assault, physical injury or by such other methods; or

(f) commence, continue, instigate or incite others to take part in or expend or supply money or otherwise act in furtherance or support of an illegal strike or adopt go- slow measures; or

(g) carry any arms or weapons within the premises of an employer without any legal authority. Explanation.- In clause (f) the expression 'go slow' means an organized, deliberate and purposeful slowing down of normal output, or the deterioration of the normal quality, of work by a body of workmen acting in a concerted manner, but does not include the slowing down of normal output, or the deterioration of the normal quality, of work which is due to mechanical defect, break-down of machinery, failure or defect in power-supply or in the supply of normal materials and spare parts of the machinery.

(2) It shall be an unfair labour practice for a trade union to interfere with a ballot held under section 20 by the exercise of undue influence, intimidation, impersonation or bribery through its executive or through any person acting on its behalf.

65. Penalty for unfair labour practices.-

(1) Whoever contravenes the provisions of section 10 shall be punishable with fine which may extend to twenty thousand rupees.

(2) Whoever contravenes the provisions of section 63 shall be punishable with fine which may extend to thirty thousand rupees.

(3) Whoever contravenes the provisions of section 64, other than those of clause (d) of sub-section (1) thereof shall be punishable with fine may extend to twenty thousand rupees.

(4) An office-bearer of a trade union, a workman, or a person other than a workman, who contravenes, or abets the contravention of, the provisions of clause (d) of sub-section (1) of section 64 shall be punishable with fine which may extend to thirty thousand rupees.

(5) Where the person accused of an offence under sub-section (4) is an office-bearer of trade union, the Court may, in addition to any other punishment which it may award to such person under that sub-section, direct that he shall cease to hold the office of an office-bearer and be disqualified from holding any office in any trade union during the term immediately following the term in which he so ceases to hold the office.

(6) Whoever contravenes the provisions of section 41 shall be punishable with fine which may extend to fifty thousand rupees.

(7) Nothing in this Ordinance shall be deemed to exclude the jurisdiction of a Labour Court or the court of a Magistrate to try a case under this section if it is authorized to do so by a general or special order of the Commission.

(8) Notwithstanding anything to the contrary contained in any law, custom, usage, constitution of a trade union, memorandum and articles of association of a company or agreement, no fine paid or payable due to conviction under this Ordinance shall be debatable against the accounts of any establishment.

66. Penalty for committing breach of settlement.- Whoever commits any breach of any term of any award, settlement or decision which is binding on him under this Ordinance shall be punishable with a fine of twenty thousand rupees for each offence.

67. Penalty for failing to implement settlement, etc.- Whoever willfully fails to implement any term of any settlement, award or decision which it is his duty under this Ordinance to implement, shall be punishable with a fine which may extend to twenty thousand rupees, and, in the case of continuing failure, with a further fine which may extend to five thousand rupees for every day after the first day during which the failure continues.

68. Penalty for false statements, etc.- Whoever willfully makes or causes to be made in any application or other document submitted under this Ordinance or the rules made there under, any statement which he knows or has reason to believe to be false, or willfully neglects or fails to maintain or furnish any list, document or information he is required to maintain or furnish under this Ordinance or the rules, shall be punishable with fine which may extend to ten thousand rupees.

69. Penalty for offences under section 40.- Any employer who contravenes the provisions of section 40 shall be punishable with fine which may extend to twenty thousand rupees.

70. Penalty for embezzlement or misappropriation of funds.-

(1) Any office-bearer or any other employee of a registered trade union, guilty of embezzlement or misappropriation of trade union funds shall be liable to a fine double the amount found by the Court to have been embezzled or misappropriated.

(2) Upon realization of the amount of fine referred to in sub- section (1), it may be reimbursed by the Court to the trade union concerned.

71. Penalty for other offences.- Whoever contravenes, or fails to comply with any of the provisions of this Ordinance shall, if no other penalty is provided by this Ordinance for such contravention or failure, be punishable with fine which may extend to five thousand rupees.

72. Offences to be non-cognizable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no police officer shall be competent to arrest without warrant an employer or a worker for an offence under this Ordinance other than the offence of illegal strike or illegal lockout continued in contravention of an order made under sub-section (3) of section 39.

73. Offences by corporations.- Where the person guilty of any offence under this Ordinance is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence, be deemed to be guilty of such offence; Provided that, where a company has intimated to government in writing the name of any of its directors resident in Pakistan whom it has nominated for the purpose of this section and the offence is committed while such director continues to be so nominated, only such director shall be deemed to be guilty of such offence.

74. Trial of offences.- Save as provided in this Ordinance, no Court other than a Labour Court or any other Court of competent jurisdiction shall try any offence punishable under this Ordinance.

CHAPTER IX Miscellaneous

75. Certain matters to be kept confidential. There shall not be included in any report, award or decision under this Ordinance any information obtained by an arbitrator, inspector, Registrar, Conciliator, Labour Court or High Court in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such authority, if the concerned trade union, person, firm or company has made a request in writing to the authority that such information shall be treated as confidential, nor shall such Conciliator or Board or any person present at or concerned in such proceedings disclose any such information without the consent in writing of the Secretary of such trade union or the person, firm or company, as the case may be; Provided that nothing contained in this section shall apply to disclosure of any such information for the purpose of prosecution under section 193 of the Pakistan Penal Code (Act XLV of 1860).

76. Indemnity.- No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rules made there under.

77. Registrar, etc., to be public servants.- A Registrar, Conciliator, Board of Conciliators, the Presiding Officer of a Labour Court, and the Chairman and members of the Commission shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

78. Limitation.- The provisions of section 5 of the Limitation Act. 1908), shall apply in computing the period within which an application is to be made, or any other thing is to be done, under this Ordinance.

79. Power to make rules.

(1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance, in relation to the Commission.

(2) Except as provide din sub-section (1), a Provincial Government may, in consultation with the Federal Government, make rules for carrying out the purposes of this Ordinance, provided that such rules shall not be inconsistent with the rules made by the Federal Government under sub-section(1).

(3) Rules made under this section may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees.

80. Repeal and savings.-

(1) The Industrial relations Ordinance, 1969 (XXIII of 1969), is hereby repealed.

(2) Notwithstanding the repeal of the Industrial Relations Ordinance, 1969 (XXIII of 1969), hereinafter to be called the repealed Ordinance, and without prejudice to the provisions of sections 6 and 24 of the General Clauses Act, 1897 (X of 1897)-

(a) every trade union existing immediately before the commencement of this Ordinance, which was registered under the repealed Ordinance shall be deemed to be registered under this Ordinance and its constitution shall continue in force until altered or rescinded;

(b) Anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given proceedings commenced or other actions taken under the repealed Ordinance shall be deemed to have been done, made, issued, appointed, constituted, given, commenced or taken, as the case may be, under the corresponding provision of this Ordinance; and

(c) any document referring to the repealed Ordinance relating to industrial relations shall be construed as referring to the corresponding provisions of this Ordinance.

(d) The appeals pending in the Labour Appellate Tribunals shall stand transferred to the respective High Courts from the date of commencement of this Ordinance and it shall not be necessary for the High Court or recall any witness or to record any evidence that may have been recorded.

81. Former registration offices, officers, etc., to continue.-

(1) The offices existing at the commencement of this Ordinance for registration of trade unions shall be continued as if they had been established under this Ordinance.

(2) Any person appointed to any office under, or by virtue of the provisions of the repealed Ordinance shall be deemed to have been appointed to that office under or by virtue of this Ordinance.

(3) Any books of accounts, book, paper, register or document kept under the provisions of the repealed Ordinance relating to companies shall be deemed to be part of the books of accounts, book, paper, register or document to be kept under this Ordinance.

82. Removal of difficulties.- If any difficulty arises in giving effect to any provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be

necessary for the purpose of removing the difficulty; Provided that no such power shall be exercised after the expiry of two years from the coming into force of this Ordinance.

83. Observance of workers and employers reciprocal rights and obligations.-

(1) Notwithstanding anything contained in the foregoing provisions of this Ordinance and any other law in force, workers and employers of an establishment or the industry shall respect each other's rights and promote the interests of their enterprise for reasonable return on investments and for its expansion and growth.

(2) The rights and duties of workers and employers shall be such as given in Schedule-II and as may be prescribed.

(3) Workers and employers both shall promote and foster an atmosphere of mutual trust, confidence, understanding and co-operation and shall make every effort to avoid conflict or dispute amongst them and resolve their differences, if any, through bilateral dialogue and shall strive to develop good industrial relations for the efficiency and increased output of the enterprise.

(4) Workers and employers in their individual capacity as well as through participative approach, shall take reasonable steps to ensure compliance with mutual agreements arrived at between them and follow agreed procedures to achieve the objectives of higher productivity in the interest of the growth of the enterprise. The Schedule I [See section 2 (xxiii) and 32]

PUBLIC UTILITY SERVICES

1. The generation, production, manufacture or supply of electricity, gas, oil, or water to the public.
2. Any system of public conservancy or sanitation.
3. Hospitals and ambulance services.
4. Fire-fighting services.
5. Any postal telegraph and telephone services.
6. Railways and Airways.
7. Ports.
8. Watch and ward staff and security services maintained in any establishment.

The Schedule II
[See section 83(2)]

RIGHTS AND DUTIES OF WORKERS AND EMPLOYERS

Employer's Rights

(a) Right to conduct business.- The employer shall have the right to manage, control and use the property of his enterprise and conduct his business in any manner considered appropriate by him.

(b) Right to manage.- The employer shall have the right to use available resources including human resources efficiently and effectively in the best interest of the enterprise.

Employer's Duties.

(a) While exercising the right to conduct business and the right to manage the enterprise, the employer shall act in accordance with the law and shall comply with the law faithfully.

(b) The employer shall protect rights of the workers as guaranteed under the law or secured to them by any award, agreement or settlement in force.

(c) the employer shall protect rights of the workers as guaranteed under the law or secured to them by any award, agreement or settlement in force.

(d) The employer shall protect and safeguard the interest of his workers and take measures within his resources for their socio-economic uplift and welfare. He shall create an environment congenial for enhanced productivity of labour and maximum output of the enterprise.

(e) The employer shall respect the right of the workers to employment, wages, decent living and better quality of working life.

Worker's Rights

(a) Right to work, wage and Welfare.- It is the right of a worker to work according to the job assigned and to receive wages as per agreed terms and conditions of employment and to such welfare benefits and safety measures as one is entitled to according to law, agreement settlement and award.

(b) Right to freedom of association and collective bargaining and other rights secured or guaranteed under this Ordinance and other laws.- Worker has inherent right to trade unionism and collective bargaining and the right to enjoy the benefits guaranteed to him under the law, rules and regulations, settlement, award or agreement.

(a) Worker will perform his duty, as assigned by the employer or his representative, according to his best ability with due diligence, care, honesty and commitment.

(b) worker will fully observe norms of organizational discipline.

(c) Worker, in exercise of his right, will fully respect the rights of the employer and will co-operate with him in the efficient performance of the business of the establishment or , as the case may be enterprise.

GENERAL PERVEZ MUSHARRAF,
(PRESIDENT).

Mr. Justice MANSOOR AHMED,
(SECRETARY).-

COMPARISON OF PROVISIONS OF 1969 ORDINANCE AND ORDINANCE OF 2002
INDUSTRIAL RELATIONS ORDINANCE, 2002.

COMPARISON OF PROVISIONS OF 1969 ORDINANCE AND ORDINANCE OF 2002

SECTIONS STATEMENT OF CHANGES AND
THEIR SALIENT IMPLICATIONS

Provisions
Under
IRO, 1969

Provisions
Under
IRO, 2002

CHANGE & IMPLICATIONS

1(1)

1(1)

CHANGE: Name has been changed from IRO, 1969 to IRO, 2002

(2)

(2)

No Change

(3)

(4)

CHANGE: The entire clause has been reworded. It now provides as under:

It shall apply to all persons employed in any establishment or group of establishments or industry except those employed

(a) in the Police or any of the Defence Services of Pakistan;

(b)

(c) in any installations or services exclusively connected with the Armed Forces of Pakistan

including Ministry of Defence lines of the Railways;

(d) by the Pakistan Security Printing Corporation or the Security Papers Limited or Pakistan Mint;

(e)

(f) in the administration of the State other than those employed as workmen by the Railways, Post Telegraph and Telephone Departments;

(g)

(h) by an establishment or institution maintained for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on commercial basis;

(i) by an institution established for payment of employees' old age pensions or for workers' welfare;

(j)

(k) as member of the Watch and Ward, Security or fire Service Staff of an oil refinery or of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas or petroleum products or of a seaport or an airport. 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.

(i) There is no change as far as applicability to police and Defence Services of Pakistan are concerned.

(ii) Now only installations or services exclusively connected with the armed forces of Pakistan are excluded, whereas previously services or installation connected with or incidental to armed forces of Pakistan were excluded.

(iii) Ministry of Defence Lines of Pakistan Railways have been excluded. Previously this was done through a Notification in the official gazette which notification had been upheld both by the High Courts as well as by the Supreme Court of Pakistan.

(iv) Previously, an Ordinance Factory maintained by the Federal Government was excluded. Now it is not so excluded.

(3)(b)

(d)

No Change.

(c)

Change: This related to certain categories of PIA employees. It has been deleted. Thus, Ordinance is now applicable to all workmen employed by PIA subject however to what has been provided in section 1(4)g.

(d)

Nil

This clause has been deleted. It related to Pakistan Television Corporation and Pakistan Broadcasting Corporation. No corresponding provisions exist in Ordinance of 2002. Therefore, this Ordinance is now applicable to all workmen employed by Pakistan Television Corporation and Pakistan Broadcasting Corporation.

(e)

(c)

Pakistan Mint has been excluded in addition to Pakistan Security Printing Corporation and Security Papers.

(f)

(e)

CHANGE: (i)In addition to establishments, Institutions have also been excluded.

(ii)By using words "excluding those run on commercial basis" now hospitals etc. run on commercial basis fall within the purview of the IRO, 2002.

(g)

(h)

(g)

CHANGE : Words "or petroleum products or of a sea port or an air port" have been added. Now therefore watch and ward staff, security and fire services staff of these organizations are excluded from the purview of the IRO, 2002.

(f)

CHANGE: Words "by an Institution established for payment of employees Old Age Pensions or for workers' welfare. The Supreme Court has in a number of cases held that IRO is applicable to the Employees Old Age Benefits Institution and even to the Social Security Institutions. Now the provisions as included indicates that the Ordinance shall not be applicable to any institution established for payment of employees Old Age Pensions or workers welfare.

provisio

The following proviso has been added: 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.

IMPLICATIONS:

Previously the Federal Government had no power to suspend the IRO, 1969. Now the Federal Government has been granted power to suspend the operation of the IRO, 2002 by order published in the official gazette. Such order may be in respect of an establishment or even an entire industry. However, the period of suspension of the Ordinance cannot be more than six months at a time. It is pointed out that there is no restriction on extension or number of extensions that may be made by the Federal Government

2(i)

(i)

No Change

(ii)

(ii)

CHANGE: For "Appellate Tribunal" words "an Appellate Court of competent jurisdiction" have been substituted. IMPLICATION: Since Labour Appellate Tribunals have been abolished, it is merely a consequential change.

NIL

(iii)

CHANGE: A new definition of association has been included, which is as follows: "Association" means any organization of employers formed primarily for furthering and defending the interests and rights of employers.

IMPLICATIONS: Previously a trade union could be of employers or of workmen. Now association has been defined for employers and trade union has been restricted to workers.

NIL

(iv)

CHANGE: A Board of Conciliation has been defined as follows: Board of Conciliation means a Tri-Partite Board of conciliation constituted under subsection (3) of section 26.

IMPLICATIONS:

Provision has been made for constitution of a Tri-Partite Board of Conciliation for conciliating certain categories of industrial disputes.

(v)

(v)

This section defines CBA. CHANGE: Previously CBA could be only in respect of an "establishment or industry." Now "group of establishments" has also been included in definition of CBA.

(v-a)

(vi)

NO CHANGE

(v-aa)

(vii)

NO CHANGE

(vi)

(viii)

CHANGE: Since provision has been made for "Board of Conciliators", definition of conciliation proceedings has been enlarged to include proceedings before "Board of Conciliators".

(vii)

(ix)

There is no material change.

(viii)

(x)

CHANGES:

(i)

(j) Special provision which was as follows has been deleted: Special Provision: For the purposes of distinction from the category of "workers" or "workmen", officers and employees of a department of the Federal Government or a Provincial Government or local authority who belong to the superior, managerial, secretarial, directorial, supervisory or agency staff and who have been notified for this purpose in the official Gazette shall be deemed to fall within the category of "employer".

In its place, the following clause (g) has been added:

(g) office bearers of a department or Division of the Federal or Provincial or local authority who belong to the managerial, secretarial or directorial cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;

(ii) Following clause (f) has been added:

(f) a contractor or an establishment of a contractor who or which undertakes to procure the labour or services of workmen for use by another person or in another establishment for any purpose whatsoever and for payment in any form and on any basis what so ever.

(iii) Previously employer included any person responsible for "supervision" of establishment. Word "supervision" has been deleted.

(iv) Similarly in clause (viii)(e) corresponding to clause (x)(e) word supervisor has been omitted.

IMPLICATIONS:

(i) Contractor has been included in the definition of employer.

(ii) But he must be a contractor who or which "undertakes to procure labour or services of workmen". Thus for more care would now be required in contracting for services.

(iii) A supervisor is no longer an employer.

(ix)

(xi)

This subsection defines an establishment. Previously, establishment was defined as under: "establishment" means any office, firm, industrial unit, undertaking, shop or premises in which workmen are employed for the purpose of carrying on any, industry and, except in section 22-EE, includes a collective bargaining unit, if any, constituted under that section in any establishment or group of establishment.

Definition of establishment has been changed and is now as under:

"establishment" means any office, firm, factory, society, undertaking, company, shop. Premises or enterprise which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and profit and loss account and, except in section 54, includes a collective bargaining unit, if any, constituted under that section in any establishment.

IMPLICATIONS:

(i) Previously each branch constituted an establishment. Now all branch/offices all over the country would be on establishment provided they have a common balance sheet and profit and loss account except where a separate CBU is determined.

(ii) Society, Company and enterprise have also been included in definition of establishment.

(iii) Therefore, there can be only one CBA in a company in respect of all of its branches and offices except where CBU is determined.

(iv) Registration of all trade unions which are registered on zonal, sectional or any other regional basis shall be liable to be cancelled.

(x)

(xii)

CHANGE: Now executive of a union can be "a person" also whereas previously it could only be a "body of persons". Union dictatorship has been granted de jure recognition.

(xiii)

Definition of "group of establishments has been added which is as under: "group of establishments" means establishments belonging to the same employer and the same industry.

Question: When all branches / offices have been (in case of a company) declared to be one establishment, this provision appears to be a product of mere confusion.

(xi)

(xiv)

No Change.

(xii)

(xv)

No Change.

(xiii)

(xvi)

This section defines industrial dispute. Three changes have been made: (i) Whereas previously disputes between employers and employees were included in definition of industrial dispute, they have now been deleted.

(ii) Words "any person" have been deleted.

(iii) Whereas previously "rights secured to him" were excluded from definition of industrial dispute, now "rights secured to workers" have only been excluded. Implication is that now there can be industrial dispute in respect of rights secured to employers. The employer can no longer say, "hands off".

(ix)

(xvii)

CHANGE: Words "engaged in an organized economic activity of producing goods or services for sale, excluding those set up exclusively for charitable purposes, operating, through public or private donations where "charitable purpose" includes provision of education, medical care, emergency relief and other needs of the poor and indigent" have been added. IMPLICATIONS:

(i) Production activity must be of goods or services for sale.

(ii) Charitable organizations are excluded provided charitable purposes include: (a) Education, (b) medical care (c) emergency relief (d) need of poor (e) need of indigent.

(iii) Since word "include" is used, which is preceded by "where" it indicates that even charitable organizations would be excluded only if their purposes include the above stated purposes.

(iv) Word "exclusively" has also been used.

(xiv-a)

(xviii)

No Change.

(xv)

(xix)

No Change.

(xvi)

(xx)

No Change.

(xvii)

Nil

Since now association has been separately defined, this clause has been deleted.

(xviii)

(xxi)

There is no material change.

(xix)

(xxii)

No Change.

(xx)

(xxiii)

No Change.

(xxi)

(xxiv)

No Change.

(xxii)

(xxv)

No Change.

(xxiii)

Nil

Definition of rule has been deleted.

(xxiv)

(xxvi)

Previously settlement was limited to agreement "between employer and his workmen". Now phraseology has been changed to "employer, the collective bargaining agent or workmen".

NIL

(xxvii)

Schedule has been defined as follows:
Schedule means "the Schedule to the Ordinance".

(xxv)

(xxviii)

No Change.

(xxvi)

(xxix)

The Changes are:

The changes are:

(i)Whereas previously a Trade Union was defined as a combination of "workmen or employers" now words "or employers" have been deleted. This is a consequence of separate provision of definition of association. (ii)Purpose of union has been changed from " for regulating the relations between workmen and employers, or workmen and workmen or employers and employers or for imposing restrictive conditions on the conduct of any trade or business" to "of furthering or defending the interests and rights of workers in any industry or establishment".

(iii)Previously definition included "federations of two or more trade unions". Now it includes "industry-wise federation of two or more collective bargaining agent union and a federation at national level of ten or more collective bargaining agent unions".

(xxvii)

Nil

Since Labour Appellate Tribunal has been abolished, this clause which defined Labour Appellate Tribunal has been deleted.

(xxvii-a)

Nil

This clause defines wage commission. Since Wage Commission and all references and provisions in respect of wage commission have been deleted, this clause has also been deleted. Wage Commission Awards are therefore no longer binding of their own force.

(xviii)

(xxx)

CHANGES: (i) Whereas previously workmen was defined to mean any person etc. now it has been stated to mean "any or all persons".

(ii) Whereas previously the following categories were also excluded from definition of workmen through sub clause (b) this clause has now been deleted:

"who, being employed in a supervisory capacity, draws wages exceeding eight hundred rupees per mensem or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

3

3

CHANGES: There are three changes in section 3: (i) Whereas previously the freedom of association and rights contained in this section were only subject to provisions of the IRO, now they have been made subject to "the provisions of Article 17 of the Constitution of the Islamic Republic of Pakistan, this Ordinance and any other Law for the time being in force". Any other law would obviously include section 27-B of the Banking Companies Ordinance, 1962.

(ii) Clause (a) previously granted right subject to "rules of organization". Now there are made subject to the "constitution or rules of a trade union".

(iii) Words "without previous authorization" have been omitted.

(iv) Clause (a) as now worded gives the choice to the worker to join trade unions "within the establishment or industry there are employed in".

(v) A second proviso has been added which states as under:

"Provided further that on joining another union, the earlier membership will stand automatically cancelled."

(vi) Employers rights has been stated to be in respect of associations.

(vii) A new clause (d) has been added which reads as under:

"every collective bargaining agent, union shall have to affiliate with any federation at the National level registered with the National Industrial Relations Commission within two months

after its determination as Collective Bargaining Agent or promulgation of this Ordinance, whichever is earlier.

4

3(2)

Section 4 has been substantially incorporated as sub section (2) of section 3.

5

4

No change. It is however, pointed out that the section is restricted only to Trade Unions and is not at all applicable to associations.

6

5

No material change.

7

6

REQUIREMENTS FOR REGISTRATION There are four changes that have been introduced in this section:

(i) Under section 7(1)(j) of IRO, 1969 maximum terms of officers of a trade union without election was 2 years. It has been changed to 3 years.

(ii) Under section 7(1)(l) of IRO, 1969, it was provided that executive shall meet at least once every year. Now it is provided that executive shall meet at least once in every four months and general body shall meet at least once every year.

(iii) Under section 7(2)(a) of IRO, 1969 it was required that all members of the trade union must be actually engaged or employed in the "industry". Now it is provided that there must be engaged or employed in the "establishment or industry".

(iv) For third union requirement was at least 20% of workers as its members. Now it has been increased to 25%.

7(a)

7

DISQUALIFICATION FOR BEING AN OFFICER OF A TRADE UNION Whereas previously only those convicted under section 61 of the IRO, 1969 were disqualified from being elected or being officer of a trade union, such disqualification has now been extended to those who are convicted of "a criminal offense of heinous nature within the meaning of the Pakistan Penal Code (Act XLV of 1860) such as theft, physical assault, murder, attempt to murder etc."

7(b)

8

No Change

8(1)

9 (1) &(2)

REGISTRATION Two changes have been introduced:

(i) Whereas previously it was provided that the Registrar "on being satisfied" now it is provided that the Registrar "after having exercised due diligence and verification of facts and on being satisfied". In a number of cases the Courts have held that satisfaction is a conscious state of mind and is not a mechanical act and in appropriate cases it may call for an inquiry. Now that Registrar has been burdened with the responsibility of verification of facts, it appears that the case of employer to be associated with the Registration process has become stronger.

(ii) The second sentence of sub-section (1) has been now stated as sub-section (2) of Section 9.

8(2)

9 (3) & (4)

There are two changes: (i) When the Registrar is to issue certificate of registration it has now been provided that it shall be issued "under intimation to the employer".

(ii) The second sentence of sub-section (2) has now been stated as sub-section (4) of Section 9.

8(3)

9(5)

No material change.

8(4to6)

9 (6) to (8)

No Change

8(7)

9 (9)

There is only one change. Whereas previously trade union could approach a Registrar if it is aggrieved by "refusal" of the Registrar. Word "refusal" has been substituted by the word "order".

8-a

10

TRANSFER ETC. OF OFFICERS OF TRADE UNION DURING PENDENCY OF APPLICATION FOR REGISTRATION No change.

9

11

CERTIFICATE OF REGISTRATION No material change.

10-(1)

12 (1)

CANCELLATION OF REGISTRATION No material change.

(2)

(3)

This section empowered the Registrar to cancel registration when, after holding such inquiry as he deems fit, he finds that such Trade Union has dissolved itself or has ceased to exist it. Now the Registrar is required to give reasons for such cancellation in writing. This is mere elaboration because it is settled law that a functionary exercising power must do so for valid and recorded reasons. Three additional grounds have been included for action by the Registrar under this section:

(i) Where Trade Union is not a contestant in a referendum for determination of CBA.

(ii) Where Trade Union has not applied for determination of CBA under section 20(2) (corresponding to section 22(2) of IRO, 1969) within two months of its registration as another union or promulgation of the Ordinance of 2002, whichever is earlier provided there does not already exist a CBA.

(iii) Where the Trade Union has secured less than 15% of polled votes in the referendum.

The objective appears to be to cancel registration of dormant as well as in consequential unions.

11

13

APPEAL AGAINST CANCELLATION Since Labour Appellate Tribunal has been abolished appeal is provided to the High Court against an order by the Labour Court canceling registration of a Trade Union.

12

57

REGISTRAR OF TRADE UNIONS: No change.

13

58

POWERS AND FUNCTION OF REGISTRAR: No change.

14

14

INCORPORATION OF REGISTERED TRADE UNION No material change.

15

63

UNFAIR LABOUR PRACTICES ON PART OF EMPLOYERS: There are two changes:

(i) In the opening words of subsection (1) for words "trade union of employers" words "association of employers" have been used.

(ii) Clause (d) of subsection (1) previously included "or threaten to dismiss, discharge, or removed from employment or transfer" which words have been deleted.

Such deletion may be of significance as far as criminal prosecution is concerned because threat no longer constitutes the offense. However, where a stay is sought against apprehension of unfair labour practice, threat could be seen as a ground justifying apprehension.

16

64

UNFAIR LABOUR PRACTICES ON PART OF WORKMEN: The following four changes have been introduced:

(i) In the opening words "any of its (trade unions) "members or office bearers" have been added.

(ii) Clause (e) has been added which is as follows:

"compel or attempt to compel any member of a body, bipartite or tripartite or of any composition, relating to the functioning of the industry or is in place for the benefit of workers, to accept any demand by using intimidation, coercion, pressure, threat, confinement or ouster from a place, dispossession, assault, physical injury or by such other methods; or

(iii) Clause (g) has been added which reads as under:

"carry any arms or weapons within the premises of an employer without any legal authority".

In our opinion, non of these additions add any additional value or teeth to the provisions.

17

15

LAW OF CONSPIRACY LIMITED IN APPLICATION No change.

18

16

IMMUNITY FROM CIVIL SUIT IN CERTAIN CASES No change.

19

17

ENFORCEABILITY OF AGREEMENT No change.

20(1)

18

18(2)

REGISTRATION OF FEDERATION OF TRADE UNIONS There are three changes introduced in this subsection:

(i) Whereas previously any two or more registered Trade Union could form a federation, it is now provided that any two or more registered Trade Unions belonging to an industry may constitute an industry wise federation. It is to be noticed that in this case the Trade Unions must belong to the same industry.

(ii) Whereas previously any two or more Trade Unions could form a federation now it is provided that any ten or more registered Trade Unions with at least one from each province can form a federation etc.

(iii) Subsection (2) has been added which states as under:

"No Trade Union, federation or confederation shall be formed and registered having same, similar or identical name".

20(2)

18(3)

No Change

20(3)

18(4)

Words "Trade Unions" have been substituted by words "Trade Unions or Associations".

20(4)

18(5)

Words "Trade Unions" have been substituted by words "Trade Unions or Associations".

21(1)

19(1)

RETURNS Two provisos have been added which are as follows:

(i) Provided that the accounts maintained by a Collective Bargaining Agent having membership of five thousand or more shall be subject to External Audit by a firm of chartered accountants appointed by the Registrar.

(ii) Provided further that in case of the Collective Bargaining Agent having membership of less than five thousand the accounts shall be subject to audit in the manner as may be prescribed.

21(2)

19(2)

No Material Change

21(3)

19(3)

No Change

21(4)

19(4)

No change

22(1)

20(1)

COLLECTIVE BARGAINING AGENT The word "industry" has been added after the words "establishment or group of establishments". Otherwise there is no change.

22(2)

20(2)

Two significant changes have been brought about in this sub section: (i) Originally only a Trade Union having as its members not less than one third of the total number of workmen employed could apply for certification as CBA. Requirement of having one third membership has been deleted.

(ii) Previously the employer as well as the government could also apply for certification of CBA. Such right has been taken away from the employer as well as the government.

22(3)

20(3)

No material change.

22(4)

20(4)

This section requires employer to submit list of employees and to provide facilities. There are two changes: (i) On being required by the Registrar the employer is required to submit a list of workmen having more than 3 months service. Now the employer is required to do so within 15 days.

(ii) The employer is also required to provide a separate list of workmen whose employment is less than 3 months showing relevant particulars.

22(5)

20(5)

No change

22(6)

20(6)

No change

22(7)

20(7)

No change

22(8)

20(8)

This sub section says that no person shall canvass for board within radius of 50 yards of the polling station. 50 yards have been increased to 100 yards.

22(9)

20(9)

There has been two changes: (i) Clause (a) required that date of poll being intimated to the employer and contesting Trade Unions. It has now been provided that this shall be done at least four days prior to the poll.

(ii) Third proviso relating to where in a run of poll equal votes are secured has been deleted.

22(9-a)

20(10)

There is a major change. Previously it was provided that if no trade union indicates that it desired to be a contestant, the applicant union shall be certified as CBA. It has now been provided in subsection (10) as under: "No trade union shall be certified to be the collective bargaining agent under sub section (2) without holding a secret ballot"

Therefore there are two points here: firstly a ballot must be held and secondly a union which does not participate in the ballot or which secures less than 15% of the polled votes would render itself liable to cancellation of registration under section 12 of the Ordinance of 2000.

22(10)

22(11)

This section bars further entertainment of applications for certification as CBA for a limited period. Such period was fixed at two years in the Ordinance of 1969. It has now been increased to 3 years.

22(11)

22(12)

No change

22(12)

22(13)

There is only one change which is in clause (d). Whereas previously the CBA was entitled to nominate representative of workmen on Board of Trustee of Provident Fund, Workers Profit Participation Fund and "any welfare institutions". Now such entitlement has been restricted only to Provident Fund and WPPF.

22(13)

22(14)

No change

22(14)

22(15)

This new subsection provides as under: "After an application under subsection (2) is made to the Registrar, no employer shall transfer, remove retrench or terminate any worker who is office bearer of any contestant trade union save with the permission of the Registrar."

This proviso has many serious, loaded implications. Such as:

(i) the certificate of CBA process may drag on and on (and we are familiar with situation where it dragged on for more than two years). The restriction on the employer shall remain for the entire duration.

(ii) the general tenor of such restrictions has been that employer shall not "discharge, dismiss or otherwise punish". Departure has been made from it and now not only retrenchment, termination and removals but also transfers have been prohibited. It certainly requires serious attention by the employers.

22-A(1&2)

49(1)

NATIONAL INDUSTRIAL RELATION COMMISSION: This subsection deals with constitution of the Commission. New subsection (1) incorporates subsections (1) and (2) of the old ordinance with one change: whereas previously Commission was to consist of not less than 7 members including the Chairman it is now to consist of not more than 8 members including the Chairman.

(3)

(3)

No change

(4)

(2)

No material change

(5)

Nil

Deleted

(6)

Nil

Deleted

(7)

Nil

Deleted

(8)(a)

4(g)

This function is now stated to be as under: "Promote healthy trade unionism whether in establishment within a province or in more than one province and federation of such trade unions."

(8)(b)

4(h)

From "promotion" the function of NIRC has been redefined as "facilitating" formation of federations at the National level.

(8)(c)

4(a)

No change.

(8)(d)

4(b)

In addition to performing functions of Registrar in respect of Industry wise Trade Unions, Federation of such trade unions, and federation at national level, NIRC has been given the function of carrying "out rating of the trade unions and federations registered by it in terms of there standing and representative character."

(8)(e)

4(c)

No change.

(8)(f)

4(d)

No Material Change.

(8)(g)

4(e)

No change except for word "trade unions" words "collective bargaining agents and industry wise trade unions" have been substituted. A proviso has been added which reads as under:

"Provided that, except during pendency of an industrial dispute the Commission shall not grant interim relief against any action mentioned section 63(d) of this Ordinance. "

This would mean that except when an industrial dispute is pending (whether in (i) bilateral negotiations or (ii) conciliation or (iii) arbitration or (iv) adjudication before (a) Labour Court (b) High Court) no stay order or any other relief against termination, dismissal, discharge or transfer or a disciplinary action can be granted.

(8)(h)

4(f)

Words "and to apportion the cost thereof between the provincial and Federal governments, industry wise trade union, federation of such trade unions and federations at the national level, and the employers, in such manner as may be considered equitable by the Commission" have been deleted.

(8)(i)

(4i)

No change.

(9)

5

No change.

(10)

6

No change.

(10-a)

7

No change.

(11)

8

No change.

(12)

9

No change.

Explanation

Explanation

No change.

BENCHES OF COMMISSION: .

22-B(1)

50(1)

No change.

(2)

(2)

No change.

(3)

(3)

No change except reference to Labour Appellate Tribunal has been deleted. However, no corresponding reference to High Court is made.

(4)

(4)

No change.

(5)

(5)

No change.

(6)

(6)

No change.

22-c

51

ADDITIONAL POWERS OF THE COMMISSION: There is only one change. Previously the punishment prescribed was "simple imprisonment" which may extend to six months or with fine which may extend to two thousand rupees or with both." Now the punishment has been substituted as "fine which may extend to forty thousand rupees".

This appears to be a policy shift on part of the government. Under the IRO, all punishment of imprisonments have been abolished and have been substituted by fines of substantially higher amounts.

22-D

52

(1)

APPEALS:

No change.

(2)

(2)

It is now provided that on appeal the full bench shall have "power to confirm, set aside, vary or modify such award, decision sentence or order". This phraseology though much simpler does not in any way reduce any of the powers available to the full bench under previous phraseology.

22-E

53

FINALITY OR ORDERS:

No change.

22-EE

54

DETERMINATION ETC. OF COLLECTIVE BARGAINING UNIT:

No change.

22-F(1)

55

(1)

POWER TO MAKE REGULATIONS: Words "and the regulation shall have effect notwithstanding anything in consistent therewith contained in the Evidence Act, 1872 (I of 1872), the Court of Criminal Procedure, 1898 (Act V of 1898), the Code of Civil Procedure, 1908 (Act V of 1908) or any other law for the time being in force" have been deleted.

(2)

(2)

Clause (h) which states "fixing of placing and times of its sitting and deciding whether to sit in public or in private" has been deleted.

(23)

21

There is only one change. Whereas previously a CBA was required to maintain an account either with National Bank of Pakistan or with a Post Office Saving Bank, now it may maintain an account with a schedule bank or with a Post Office Saving Bank.

23(a)

23

SHOP STEWARDS:

No change.

23(b)

Nil

WORKER PARTICIPATION IN MANAGEMENT: A joint work council has been created and this section has been deleted.

23(C)

Nil

JOINT MANAGEMENT BOARD:

A joint work council has been created and this section has been deleted.

24(1)

24(1)

JOINT WORK COUNCIL: This subsection provides as under:

“Every establishment which employs fifty persons or more, shall set up a Joint Works Council consisting of not more than ten members in which workers’ participation shall be to the extent of forty percent and the Convener of the Council shall be from the management.”

Previously three bodies were provided: (i) Management Committee under section 23-B, (ii) Joint Management Board under section 23-C and (iii) Works Council under section 24. Now only one body joint work council has been provided. Previously the representation of workers was 50% in a management committee, 30% in the Joint Management Board and 50% in the work council. It has now been fixed at 40% in JMC.

24(2)

24(2)

The new provision reads as under: “The employer’s representatives on the Joint Works Council shall be from amongst the Directors or their nominees or senior executives and the worker’s representatives shall be the office bearers of collective bargaining agent or their nominees or from workers elected in the prescribed manner, in case there is no collective bargaining agent.

25

24(3)

Functions of JMC are a mixture of functions of three bodies and are as follows: (i) same as old 23-C(3)(a).

(ii) same as old 23-C(3)(e).

(iii) same as old 25(aa)

(iv) same as part of 25(b)

(v) same as part of 25(c)

(vi) same as part of 25(d)

(vii) same as part of 25(d)

24(4 & 5)

These subsection which are almost identical to subsection 4 and 5 of section 23-C of IRO, 1969, provide as under: 4. “The Joint Works Council may call for reasonable information about the working of the establishment from its management and the management shall supply the information called for.”

5. "The Joint Works Council shall meet at such intervals as may be prescribed."

25

Nil

This section provided for function of work council. It has been deleted and replaced by provisions of section 24 of IRO, 2002.

25-A(1)

40(1)

REDRESS OF INDIVIDUAL GRIEVANCES: No change except period for service of grievance notice has been reduced from 3 months to 1 month.

(2)&(3)

(2)

The only change is that whereas previously period of 7 days was prescribed where grievance was brought to the notice of the employer through Shop Steward or CBA and 15 days where the workmen himself brought the grievance to the notice of the employer, now a uniform period of 15 days has been prescribed.

(4)

(3)

Whereas previously words "or, as the case may be, the collective bargaining agent, may take the matter to Labour Court" have been omitted.

(5)

(4)

No change

(5)

This new subsection reads as under: "The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service."

This provision needs a closer examination. Points to be noticed are:

(i) Though a discretion is vested in the Court, to award compensation, the court cannot exercise it arbitrarily or capriciously. It must do so for reasons and just like every other set of reasons, such reasons would be justifiable and appealable.

(ii) It is to be noticed that compensation is to be in lieu of reinstatement. Thus if an employee is entitled to back benefits compensation cannot be in lieu of back benefits.

(8)

(6)

The provisions are identical except period for implementation of order of Labour Court, in cases where no period has been prescribed by the Labour Court in the order itself, has been increased from 7 days to 1 month.

(9)

(7)

This subsection has been totally recast. It now reads as under: "No person shall be prosecuted under subsection (6) except on a complaint in writing by a workmen if the order or decision in his favor is not implemented within the period specified therein".

Previously where the period was specified in the order, prosecution could be initiated on a complaint by the worker and where no period was specified on a complaint by the Labour Court or Tribunal. Such distinction has been done away with.

(10)

(8)

No change

(26-1)

25(1)

NEGOTIATIONS RELATING TO DIFFERENCES AND DISPUTES: The provisions are almost identical except previously communication could be sent to works council. All references to works council have been deleted.

(26-2)

25(2)

While period of bilateral negotiations has been increased from 10 to 15 days and references to works council have been deleted, the provision remains the same.

26(3)

25(3)

There are three changes: (i) reference to works council have been deleted.

(ii) previously the terminology was "noticed of strike" or "notice of lockout". Now they have been replaced by "notice of conciliation".

(iii) the period for service of such notice has been increased from 7 days to 15 days.

27(1)

26(1)

CNCILIATOR

No change.

27(2)

26(2)

No change

27(3)

Nil

This sub section as well as the succeeding subsection deal with the Board of Conciliation. They provide as under: 3. "A tripartite Board of Conciliators, hereinafter called the Board, consisting of men of standing competence shall be appointed on the request of the party raising the dispute, by the Federal Government or by a Provincial Government, as the case may be, by notification in the official Gazette, to conciliate in an industrial dispute involving more than one establishment in a Province or in an industry at national level or in an industrial dispute of national importance, if the negotiations are not satisfactorily progressing.

4. "The Board constituted under sub-section (3) shall stand dissolved on the settlement of dispute or on the failure of conciliation proceedings."

28

27

PERIOD OF NOTICE OF CONCILIATION:

While terminology has been changed to notice of conciliation, period has been increased from 14 days to 15 days.

29

28

CONCILIATION AFTER NOTICE: There is no change except terminology has been change to notice of conciliation.

30

29

PROCEEDINGS BEFORE CONCILIATOR: No change except reference is also made to the Board.

31

30

ARBITRATION: Except that the words "federal government" has been added in subsection (4) there is no change.

32(1)

31(1)

STRIKE AND LOCKOUT: The subsections are identical except under the Ordinance of 2002 the worker right to go on strike after no settlement is arrived at during the course of conciliation proceedings and the parties do no agreed to refer the dispute to arbitration is now made subject to a seven days notice to the employer.

(1-A)

(2)

No change.

(2)

(3)

Under this subsection the power to ban the strike arises after 30 days. Period of 30 days has been reduced to 15 days. It is pointed out that power under the proviso in cases of strikes or lockout causing hardship to the community or prejudice to the national interest remains unchanged. A second proviso has been added which is as follows: "Provided further that the

federal government or a provincial government, as the case may be, shall prohibit by an order in the official Gazette, the commencement of strike or lockout, as the case may be if the same in the opinion of the Government concern, is detrimental to the interest of the community at large.

It appears that a duty has thus been cast on the government.

(3)

(4)

No change.

(4)

(5)

No change.

(5)

(6)

No change.

33

32

STRIKE OR LOCKOUT IN PUBLIC UTILITY SERVICES: There are two changes:

(i) Previously section 33 dealt with public utility services as well as industrial disputes of national importance. Now section 32 deals with only public utility service.

(ii) Previously there was clear indication as to cases in which Federal Government could and in cases which provincial government could intervene. Now though power of intervention has been given to both the governments, respective areas have not been prescribed meaning thereby that the power is concurrently available to both the governments.

(iii) Previously Federal Government could refer it to the Commission and provincial government to a Labour Court. Now it has to be referred to a Board of Arbitrators comprising of serving or retired judges of a High Court or the Supreme Court.

34

33

APPLICATION TO LABOUR COURT:

No change.

34-A

56

RAISING OF INDUSTRIAL DISPUTE BY A FEDERATION:

No change.

35(1)

44(i)

LABOUR COURTS: Constitution of Labour Court has been made conditional. The provincial government can do so only "in consultation with the Chief Justice of the respective High Court". If the word "consultation" is given the meaning which was assigned to it in judges case (which it must be) the opinion of the Chief Justice will be almost binding on the provincial government.

(2)

(2)

Appointment of presiding officer must now be in consultation with the Chief Justice of respective High Court.

(3)

(3)

Additional district judges are no longer qualified to be presiding officers. Proviso relating to appointments in Balochistan has been omitted.

(5)

(4)

No change.

36

45

PROCEDURES AND POWERS OF LABOUR COURT:

No change.

37

47

AWARDS AND DECISIONS OF LABOUR COURT: There is no change except now appeal lies to the High Court.

38(1)

48(Nil)

APPEALS TO THE HIGH COURT: Subsection (1) of IRO, 1969 relating to establishment of Labour Appellate Tribunals has been deleted. Thus Labour Appellate Tribunals stand abolished.

(2)

Nil

This provision relating to qualification of the Tribunal has been consequently deleted.

(3)

(1&2)

There is no change except instead of Labour Appellate Tribunals appeal is provided to High Court and second sentence of subsection (3) has been included as subsection (2) of the Section.

3

This section relating to power of revision has not undergone any change except instead of Labour Appellate Tribunal, power is given to the High Court.

(4)

Nil

This subsection which provided that "the Tribunal shall follow such procedure as may be prescribed" has been deleted.

(5)

(4)

This subsection which conferred power on the Tribunal to punish for its contempt and for contempt of Labour Court has been retained with two changes: Firstly the power now vests with the High Court being the Appellate Court and secondly, it is made "subject to Appellate Jurisdiction" of High Court.

(6)

(5)

This subsection relates to Appellate jurisdiction in case of sentence for contempt passed by the High Court. It provides as under: "any person if sentenced with a fine exceeding twenty thousand rupees by a single bench of a High Court under subsection (4) may prefer an appeal to the Division Bench of that Court.

(7)

(6)

No change except High Court substitutes Labour Appellate Tribunal.

(8)

(7)

There is no change in this subsection except period of twenty days where a stay order suspending operation of reinstatement order is granted by a Court has been increased to 60 days. The proviso which provided for vacation of stay order upon expiry of 20 days has been deleted.

38-A to 38-1

(Nil)

WAGE COMMISSION All these sections related to Wage Commissions. They have been deleted.

39

59

SETTLEMENT AND AWARDS ON WHOM BINDING:

No change.

40-1

60(1)

EFFECTIVE DATE OF SETTLEMENT AWARDS ETC.

No material change.

(2)

(2)

Period of one year in case of settlement in which no period is agreed upon has been increased to two years.

(3)

(3&4)

There is no change except second sentence has been made subsection (4).

(4)

(5)

No change except reference to Tribunal has been replaced by High Court.

(5)

(6)

No change.

41

34

COMMENCEMENT AND CONCLUSION OF PROCEEDINGS No change.

42

75

CERTAIN MATTERS TO BE KEPT CONFIDENTIAL: References have been made to High Court and the Board of Conciliators and reference to "Labour Appellate Tribunal" has been deleted.

43

35

RAISING OF INDUSTRIAL DISPUTES:
No change.

44

36

PROHIBITION ON GOING ON STRIKE OR DECLARING LOCK OUT WHILE PROCEEDINGS PENDING: This is a new addition. It provides a under:

“No party to an industrial dispute shall go on strike or declare a lock out while any conciliation proceedings or proceedings before an arbitrator or a labour court is pending in respect of any matter constituting such industrial dispute.”

Previously there was restriction of service of notice of strike or lock out. Now it has been made applicable only to strikes and lock outs.

45

37

POWER OF LABOUR COURT AND APPELLATE COURT OF COMPETENT JURISDICTION TO PROHIBIT STRIKE: There is no change in this section except reference is made to the High Court instead of Labour Appellate Tribunal.

46

38

ILLEGAL STRIKES AND LOCK OUTS:
No change.

46-A

39

PROCEDURE IN CASES OF ILLEGAL STRIKES AND LOCK OUTS:
No change.

47

40

CONDITIONS OF SERVICE TO REMAIN UNCHANGED, WHILE PROCEEDINGS PENDING: There is no change in this section except reference to the Tribunal has been omitted and in its place reference to High Court has been made and since provision regarding Board of Conciliators have been made reference is made to proceeding before it also.

47-A

41

REMOVAL OF FIXED ASSETS:
No change.

48

42

PROTECTION OF CERTAIN PERSONS:

There is no change except second sentence of subsection (2) has been included as subsection (3).

49

43

REPRESENTATION OF PARTIES: While subsection (1) and subsection (3) have remained unchanged, in case of subsection (2) which deals with representation before a conciliator whereas previously it was stated that no party shall be entitled to be represented by a legal practitioner it is now provided that no party shall be represented by a legal practitioner.

50

61

INTERPRETATION OF AWARDS AND SETTLEMENT: No change except power to interpret, with abolition of Tribunals, lies with High Court.

51

62

RECOVERY OF MONEY DUE FROM AN EMPLOYER UNDER SETTLEMENT OR AWARD: No change except reference to Tribunal is substituted by reference to High Court.

52

22

PERFORMANCE OF FUNCTIONS PENDING ASCERTAINMENT OF COLLECTIVE BARGAINING AGENT: No change.

53

65

PENALTY FOR UNFAIR LABOUR PRACTICE: All penalties of imprisonment have been abolished by IRO 2002 and fines have been substantially enhanced. In this case fine range from a maximum of twenty thousand to a maximum of fifty thousand. It is pointed out that in all these cases a sum is stated as fine and there is no statement that this is the maximum. Therefore where the court comes to the conclusion that the person is guilty it can award only one punishment i.e. the prescribed fine.

54

66

PENALTY FOR COMMITTING BREACH OF SETTLEMENT: Fine of twenty thousand rupees is prescribed as penalty. It is point

55

67

PENALTY FOR FAILING TO IMPLEMENT SETTLEMENT: It is now twenty thousand rupees with five thousand rupees for each day of continued failure.

56

68

PENALTY FOR FALSE STATEMENT ETC.: The fine in this case is rupees ten thousand.

60

69

PENALTY FOR OFFENSES UNDER SECTION 40: The penalty prescribed is rupees twenty thousand.

61

70

PENALTY FOR EMBEZZLEMENT OR MISAPPROPRIATION OF FUNDS: The penalty is doubled the amount embezzled.

62

71

PENALTY FOR OTHER OFFENSES: The penalty is five thousand rupees.

62-A

72

OFFENSES TO BE NON COGNIZABLE:
No change.

63

73

OFFENSES BY CORPORATION:

No change.

64

74

TRIAL OF OFFENSES: For words " (Court) of a magistrate of first class" words "any other Court of competent jurisdiction" have been substituted.

65

76

INDEMNITY:

No change.

65-A

77

REGISTRAR ETC. TO BE PUBLIC SERVANTS: No change except reference to Tribunal has been deleted.

65-B

78

LIMITATION:

No change.

66

79

POWER TO MAKE RULES: (i) Reference to Wage Commission has been deleted.

(ii) In subsection (2) it has been added that "provided that such rules (i.e. rules made by the provincial government) shall not be in consistent with the rules made by the Federal government on subsection (1)".

67

REPEAL AND SAVINGS: (i) Clause (1) now states that "the Industrial Relation Ordinance, 1969 (XXXIII of 1969) is hereby repealed.

(ii) Subsection (2) reads as under:

(i) every trade union existing immediately before the commencement of this Ordinance, which was registered under the repealed Ordinance shall be deemed to be registered under this Ordinance and its constitution shall continue force until altered or rescinded.

(ii) Anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given proceedings commenced or other actions taken under the repealed Ordinance shall be deemed to have been done, made, issued, appointed, constituted, given, commenced or taken, as the case may be, under the corresponding provision of this Ordinance; and

(iii) Any document referring to the repealed Ordinance relating to industrial relations shall be construed as referring to the corresponding provisions of this Ordinance.

(iv) The appeals pending in the Labour Appellate Tribunals shall stand transferred to the respective High Courts from the date of commencement of this ordinance and it shall not be necessary for the High Court or recall any witness or to record any evidence that may have been recorded.

FORMER REGISTRATION OFFICES, OFFICERS, ETC. TO CONTINUE: (i) The offices existing at the commencement of this Ordinance for registration of trade unions shall be continued as if they had been established under this Ordinance.

(ii) Any person appointed to any office under, or by virtue of the provisions of the repealed Ordinance shall be deemed to have been appointed to that office under or by virtue of this Ordinance.

(iii) Any books of accounts, book, paper, register or document kept under the provisions of the repealed Ordinance relating to companies shall be deemed to be part of the books of accounts, book, paper, register or document to be kept under this Ordinance.

REMOVAL OF DIFFICULTIES: If any difficulty arises in giving effect to any provisions of this Ordinance, the Federal Government may, by notification in the official Gazette, make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty; Provided that no such power shall be exercised after the expiry of two years from the coming into force of this Ordinance.

OBSERVANCE OF WORKERS AND EMPLOYERS RECIPROCAL RIGHTS AND OBLIGATIONS: (i) Notwithstanding anything contained in the foregoing provisions of this Ordinance and any other law in force, workers and employers of an establishment or the industry shall respect each other's rights and promote the interests of their enterprise for reasonable return on investments and for its expansion and growth.

(ii) The rights and duties of workers and employers shall be such as given in Schedule II and as may be prescribed.

(iii) Workers and employers both shall promote and foster an atmosphere of mutual trust, confidence, understanding and cooperation and shall make every effort to avoid conflict or dispute amongst them and resolve their differences, if any, through bilateral dialogue and shall strive to develop good industrial relations for the efficiency and increased output of the enterprise.

(iv) Workers and employers in their individual capacity as well as through participative approach, shall take reasonable steps to ensure compliance with mutual agreements arrived at between them and follow agreed procedures to achieve the objectives of higher productivity in the interest of the growth of the enterprise.

Points to be noted are:

(i) Rights given in the Schedule have been granted overriding effect not only over the provisions of the Ordinance but other laws.

(ii) Reasonable return on investment has been recognized as one of rights of employer.

SCHEDULE

SCHEDULE I

PUBLIC UTILITY SERVICES

No Change

NIL

SCHEDULE II

RIGHTS AND DUTIES OF WORKERS AND EMPLOYERS This Schedule is a new addition and provides as under:

Employer's Rights

(a) Right to conduct business.- The employer shall have the right to manage, control and use the property of his enterprise and conduct his business in any manner considered appropriate by him.

(b) Right to manage.- The employer shall have the right to use available resources including human resources efficiently and effectively in the best interest of the enterprise.

Employer's Duties.

(a) While exercising the right to conduct business and the right to manage the enterprise, the employer shall act in accordance with the law and shall comply with the law faithfully.

(b) The employer shall protect rights of the workers as guaranteed under the law or secured to them by any award, agreement or settlement in force.

(c) the employer shall protect rights of the workers as guaranteed under the law or secured to them by any award, agreement or settlement in force.

(d) The employer shall protect and safeguard the interest of his workers and take measures within his resources for their socio-economic uplift and welfare. He shall create an environment congenial for enhanced productivity of labour and maximum output of the enterprise.

(e) The employer shall respect the right of the workers to employment, wages, decent living and better quality of working life.

Worker's Rights

(a) Right to work, wage and Welfare.- It is the right of a worker to work according to the job assigned and to receive wages as per agreed terms and conditions of employment and to such welfare benefits and safety measures as one is entitled to according to law, agreement settlement and award.

(b) Right to freedom of association and collective bargaining and other rights secured or guaranteed under this Ordinance and other laws.- Worker has inherent right to trade unionism and collective bargaining and the right to enjoy the benefits guaranteed to him under the law, rules and regulations, settlement, award or agreement.

(a) Worker will perform his duty, as assigned by the employer or his representative, according to his best ability with due diligence, care, honesty and commitment.

(b) worker will fully observe norms of organizational discipline.

(c) Worker, in exercise of his right, will fully respect the rights of the employer and will co-operate with him in the efficient performance of the business of the establishment or , as the case may be enterprise.