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Protecting Journalists and Media Workers in International Labor Law Framework: A Critical Appraisal of Pakistan's Compliance and Challenges

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Abstract

The media landscape in Pakistan has undergone exponential transformation since the turn of the millennium, witnessing a massive expansion in human resources, particularly following the deregulation of electronic media licensing in 2002. While the number of working journalists and media workers surged from approximately 28,000 in 2002 to an estimated 250,000 by 2018, the legal framework governing their employment remains archaic and fragmented. The primary legislation, the Newspapers Employees (Conditions of Service) Act (NECOSA), 1973, is narrowly tailored only to print media employees, creating a massive regulatory vacuum for workers in the expansive electronic and burgeoning digital/internet-based media sectors. This article critically appraises Pakistan's domestic legal architecture, its compliance with fundamental international Labour related obligations (specifically ILO Conventions 87 and 98), and highlights the systemic shortcomings related to the precarious state of rights for the gig workers, lack of gender inclusivity, and compromised implementation mechanisms. Through a detailed analysis of NECOSA's structural flaws, the judicial interpretation of 'workman,' and a study of comparative regional and international best practices, the article concludes by urging immediate, comprehensive legislative reform to establish a holistic, sector-wide labour protection framework for all media workers, thereby upholding the guarantees of fundamental rights enshrined in the Constitution. The continued failure to update this framework institutionalizes labour apartheid in a sector vital to democratic discourse.

Keywords: *Media Workers , Right to Association, Technology Based Workers, Labour Law, ILO*

1. Introduction:

The evolving crisis in media employment and widening socio-legal vacuum necessitates that a corresponding substantial study may be undertaken to bring on surface some principle measures for the requisite reforms in this sector. The Pakistani media sector's evolution since the early 2000s represents a microcosm of globalization and technological convergence, marked by a dual narrative: rapid industrial expansion and profound regulatory stagnation. Prior to 2002, the media market was dominated by print and state-controlled electronic platforms. The subsequent deregulation of electronic media licensing ushered in a "media boom," resulting in an unprecedented increase in television channels, radio stations, and cable networks. This industrial growth necessitated a dramatic surge in human capital, transforming the workforce from an estimated 28,000 media workers in 2002 to over a quarter of a million by 2018. The vast majority of this growth occurred in the electronic sector.

However, the legal architecture designed to protect this workforce has failed to keep pace. The cornerstone of media labour law, the *Newspapers* Employees (Conditions of Service) Act (NECOSA), 1973, remains strictly confined to the print sector. This fifty-year-old Act, rooted in a pre-digital, pre-broadcast-boom era, fundamentally excludes the overwhelming majority of contemporary media personnel, including electronic journalists, digital content creators, and the critical support staff essential to modern broadcasting.

This regulatory lacuna is not merely a bureaucratic oversight; it proves to be a systemic crisis involving, *inter alia*, Constitutional dimensions. It renders approximately 90% of the media workforce to precarious employment conditions, rampant contractual abuses, arbitrary terminations, and denial of the right to collective bargaining, often under the guise of 'contracting' or 'freelance' arrangements that mask traditional employer-employee relationships. This article argues that Pakistan's current media labour framework is structurally deficient, contravenes binding international labour obligations, and requires immediate, wholesale legislative intervention to ensure that freedom of the press - a constitutional right - is not built upon the exploitation of the workers who sustain it. The relevance of this study is further heightened by the increasing trend of cross-media ownership, where print media corporations also operate broadcast and digital platforms, using the legal distinction to apply NECOSA where convenient and evade it where profitable.

1.1. The Domestic Regulatory Regime: Structure, Scope, and Limitations

The protection of media workers in Pakistan derives from a fragmented structure comprising the Constitutional guarantees, specialized media law (NECOSA), and general labour related legislation (the Industrial Relations Acts and Standing Orders Ordinances).

1.2. The Constitutional Framework

The Constitution of the Islamic Republic of Pakistan, 1973, does not explicitly provide right to work in its chapter of fundamental rights. In alternative words it, however, it provides right to pursue business or any lawful profession (Article 18). Additionally, the Constitution provides a fundamental mandate for labour protection, which binds the State to positive action. This is the foundational right for trade unionism and collective bargaining (Constitution, Article 17). The implications of the right to association, so provided, are directly aligned with ILO Conventions. Any law restricting its exercise must be reasonable and in the interest of state integrity or public order. In order to ensure protection against exploitation, the Constitution also prohibits forced and bonded labour in express term (Article 11). This article is critical in addressing situations where employees, particularly during wage arrears or arbitrary contract changes, are compelled to continue working under duress, a common occurrence in under-regulated media environments.

Besides the these guarantees which are enforced and protected under a right to petition, the Constitution also includes a package of soft rights, called principles of policy. Among those, there are provisions which mandate the State to secure just and humane conditions of work, prevent economic exploitation, and ensure social justice. While non-justiciable, they impose a clear legislative duty (Article 37(e) and Article 38).

1.3. The Subordinate and Specialized Laws:

The subordinate legal regime governing the media workers emanates from a traditional piece fof legislation titled, The *Newspapers Employees (Conditions of Service) Act,* NECOSA *1973*. The Act was considered to be a landmark legislation that brought newspaper employees under the protection of general industrial law. Some of its essential parts merit a microscopic purview for the purpose of this study.

- **Scope and Definition:** *NECOSA* defines "newspaper employee" broadly, including working

journalists, non-journalist newspaper employees, and other persons employed to do any work in a newspaper establishment. Critically enough the "newspaper establishment" is defined as an establishment primarily engaged in the production or publication of newspapers, specifically excluding the rapidly expanding electronic and digital sectors (Section 2(d).

- **Incorporation of General Laws:** Among the substantial provisions of *NECOSA*, is one which is mandating the application of the *Industrial Relations Ordinance (IRO)* and the *Industrial and Commercial Employment (S.O.) Ordinance, 1968*, to newspaper employees (Section 17). This provision grants print media workers the right to collective bargaining, protection against unfair labour practices, and statutory job security (e.g., notice requirements, gratuity, and fixed-term contract rules).
- **The Wage Board Mechanism:** NECOSA mandates the constitution of a Wage Board to fix or revise the rates of wages for all newspaper employees. While intended to guarantee minimum professional standards, the Wage Board process is often politicized and its awards (as detailed in Section III) are rendered ineffective by a lack of enforcement, creating a practical non-compliance with the Act's core purpose (Section 9).

1.4. General Labour Laws and Their Incomplete Applicability

In the absence of *NECOSA*'s protection, electronic and digital media workers must rely on the general labour statutes, primarily the provincial Industrial Relations Acts (IRAs) and the Standing Orders Ordinances.

- **The 'Workman' Status Test:** Protection under general labour law hinges on the definition of a 'workman' (or 'worker'). This definition often excludes those performing duties that are mainly managerial, administrative, or supervisory. Many working journalists—especially sub-editors, producers, and senior reporters—often find their functions deemed 'intellectual' or 'supervisory' by employers, allowing them to be dismissed without the protections afforded to 'workmen' under the Standing Orders. This distinction is frequently litigated and remains a significant loophole.
- **Judicial Affirmation and Limitations:** Superior courts have attempted to bridge the gap by affirming the general applicability of these laws to the media sector. As established in cases like *Daily Mashriq* [3] and *Zia Shahid* [4], a media house, whether print or otherwise, qualifies as a 'commercial establishment.' However, this judicial extension is limited: it only grants basic industrial protection and does not address the specialized issues of the media profession, such as professional wage fixation or mandatory employee participation in industry-specific regulatory bodies, which *NECOSA* was designed to provide. Moreover, the judicial approach is reactive (post-dispute) rather than proactive (legislative framework).

2. Critical Appraisal of Systemic and Institutional Deficiencies

The current legal framework's flaws are exacerbated by institutional malaise and the failure to recognize emerging forms of employment. Its implantation mechanism merits an analysis here.

The institutions designed to enforce NECOSA are largely dysfunctional, undermining the Rule of Law in the media sector.

The Impotence of the Implementation Tribunal for Newspaper Employees (ITNE) remains ignored from the concerned quarters as it was established under the Act to enforce Wage Board awards, the ITNE suffers from critical operational and structural deficits.

According to the 8th award of the wage board, the data from 2012–2021 confirms its paralysis. Out of over 40,000 cases filed before 2012, approximately 39,000 remained pending in the subsequent

decade [8th Award]. This immense backlog effectively denies justice, as justice delayed is justice denied.

Secondly the subject framework suffers from being not so independent. The Tribunal's reliance on the Federal Ministry of Information and Broadcasting for administrative and budgetary support fundamentally compromises its independence. It operates not as an autonomous judicial body but as an extension of the executive, making it susceptible to political influence from powerful media owners. This structural dependency erodes public and worker confidence in its ability to enforce compliance impartially against well-connected establishments.

Thirdly there are no less challenges as regards the enforcement of an award. 8th Wage Board Award (December 2019) is a case in point. Years after its announcement, its implementation remains negligible across the industry. This failure stems from ITNE's inadequate enforcement powers and the absence of a dedicated, effective inspectorate to monitor and prosecute non-compliant media establishments.

3. The Crisis of the Gig Economy: Freelancers and Digital Workers

The rise of digital and online media has created a massive category of 'freelance,' 'independent,' or 'gig' workers, who are functionally employees but legally classified as independent contractors. This deliberate misclassification is the single largest mechanism for evading labour protections in the modern media sector.

One of the substantial challenges is the misapplication of the 'Control Test**'.** Traditionally, courts use the 'control test' to determine employment status: does the employer control the worker's manner, method, and location of work? In digital journalism, employers often retain tight editorial control, dictate deadlines, and assign specific topics, yet deny 'employee' status because the worker uses their own equipment or works from home. The law has failed to evolve beyond the antiquated control test to include economic dependence and integration into the employer's core business, which is the defining characteristic of digital journalistic work.

Secondly, there exists a legal fragmentation across provinces. The failure to enact federal legislation for gig and digital workers means that protection, where it exists, is fragmented. Only the Sindh province has taken a legislative step to protect home-based workers (HBWs). While HBWs are not explicitly digital journalists, this law provides a crucial recognition of non-traditional employment. The lack of similar legislation in other provinces creates an uneven playing field and leaves the majority of digital freelancers unprotected across Pakistan.

4. Gender, Inclusivity, and Institutional Representation

The current labour regime fails to institutionalize gender equity and inclusivity, particularly within the trade union and regulatory structures. For instance, while efforts have been made, many sections of the Industrial Relations Acts and relevant rules still default to the gendered term 'workman.'

The laws are silent on requiring women's representation within the executive bodies of trade unions or within regulatory bodies like the National Industrial Relations Commission (NIRC) and the ITNE. This absence of a clear mandate results in systemic underrepresentation, meaning the specific issues faced by women media workers (e.g., workplace harassment, maternity leave, equity in pay) are often overlooked in collective bargaining and adjudication. A modernized framework must mandate gender and minority representation to ensure truly inclusive governance.

5. International Law and Comparative Best Practices for Labour Reform

Pakistan's commitment to international labour standards provides a powerful legal and moral impetus for domestic reform. Furthermore, examining legislative solutions adopted in other jurisdictions offers concrete models for modernizing the national framework.

The Mandate of ILO Conventions 87 and 98 is primarily applicable in this regard. Pakistan's ratification of the Freedom of Association and Protection of the Right to Organize Convention (C87) and the Right to Organize and Collective Bargaining Convention (C98) imposes a binding obligation to ensure effective unionization and bargaining rights.

Non-Compliance in the Electronic Sector involves the exclusion of electronic and digital media workers from *NECOSA*'s protections means that the State is effectively failing in its duty under C87 to ensure that all workers "without distinction whatsoever" have the right to establish and join organizations of their own choosing. The lack of an enabling Act for the majority of media workers prevents them from forming recognized trade unions under the current Industrial Relations framework, directly undermining their C98 right to collective bargaining.

The Tripartite Principle under which the ILO framework ensures consultation of government, employers, and workers nonetheless, ignores, a recognized national worker body representing the majority of the electronic and digital sector undermines the integrity of this entire consultative structure.

6. Comparative Models for Recognizing Freelance and Gig Work

International legal trends increasingly acknowledge the need for an intermediate category of labour protection to address economic dependency, providing clear pathways for Pakistan's legislative overhaul.

The 'Worker' Status in United Kingdom (UK) needs a careful appreciation to find a best possible model. UK employment law recognizes three distinct categories: 'employee' (full protection), 'self-employed' (minimal protection), and 'worker' (intermediate protection). The 'worker' status grants rights like minimum wage, paid annual leave, and protection against discrimination, which is often applied to economically dependent freelancers. Implementing such a tripartite distinction in Pakistan could immediately protect digital journalists without forcing them into a rigid 'employee' category.

The Presumption of Employee Status in Germany also suggests few lessons. German law often relies on a high threshold for independent contractor status, with the burden of proof frequently falling on the employer to demonstrate true independence. For media workers, certain arrangements can lead to a *Künstlersozialkasse* (Artists' Social Security Fund) membership, which ensures subsidized social security and pension payments, even for the self-employed, funded partly by the media companies that utilize their services. This is a powerful model for social security access.

The Aggregator-Funded Welfare Model as being proposed in Indiain Rajasthan may also be considered in this regard. The Rajasthan Platform Based Gig Workers (Registration and Welfare) Bill 2023 offers a highly relevant regional solution. This law defines 'gig workers' and 'aggregators' and mandates the creation of a 'Welfare Fund' through a ‘cess’ (tax) levied on the aggregators (the media platforms). This innovative approach ensures that those who profit from the gig economy bear a responsibility for the social security and welfare of their non-employee contributors. This is a crucial blueprint for Pakistan's digital media sector.

The Italian Decree on Transparency i.e. the Legislative Decree No. 104/2022 mandates detailed contractual transparency for all workers, especially those on quasi-regular or non-standard contracts. It requires employers to clearly disclose working hours, compensation, and conditions, limiting the use of short probationary periods and protecting against arbitrary dismissal. This prioritizes clarity and predictability, addressing a major source of conflict in Pakistani media employment.

7. Conclusion and Comprehensive Policy Imperatives

The ongoing failure to modernize Pakistan's media labour law represents a systemic crisis that undermines democratic institutions, violates constitutional rights, and breaches international commitments. The current legal fragmentation has created a class-based system of protection—legal apartheid—that is both unjust and economically inefficient.

Rectifying this crisis demands decisive, comprehensive action across the legislative, executive, and judicial branches. The recommendations of this analytical study are categorized in three parts as prescribed below:

A. Legislative Reforms: the legislative reforms aiming at revamping the current legislation in order to make a Unified Media Labour Act is required. The immediate and primary imperative is the enactment of a single, unified Media Workers (Conditions of Service) Act, which must supersede *NECOSA, 1973*, and apply universally to all workers in print, electronic (broadcast/cable), and digital/internet-based media platforms. This Act must:

1. Define and Consolidate Jurisdiction: Clearly define a "Media Establishment" and "Media Worker" to encompass all modern formats and roles, eliminating the regulatory vacuum.
2. Introduce a Tripartite Work Status: Adopt the 'employee,' 'worker,' and 'independent contractor' classification system, granting minimum wage, severance, and leave rights to the 'worker' category of economically dependent freelancers.
3. Mandate Social Security for Gig Workers: Establish a Media Workers Welfare Fund, financed by a small percentage cess on the revenues of all media establishments (aggregators and primary employers) to ensure social security, health, and pension coverage for all economically dependent contributors, drawing inspiration from the Rajasthan Model.
4. Strengthen Collective Bargaining: Ensure that all media worker associations, regardless of the platform, are recognized as trade unions under the Industrial Relations Acts, thereby empowering them with the right to raise industrial disputes and bargain collectively.
5. Gender and Inclusivity Mandate: Incorporate mandatory provisions within the Act and its subordinate rules requiring at least 20% representation of women and marginalized groups in the executive bodies of registered unions and all regulatory/adjudicatory forums, including the NIRC and the reformed ITNE.

B. Institutional Reform: The Need for Independence and Enforcement requires the institutions of enforcement must be structurally re-engineered to operate autonomously and effectively:

1. Re-establish ITNE Autonomy: The Implementation Tribunal must be delinked from the Federal Ministry of Information and Broadcasting and repositioned as an independent, quasi-judicial, high-level labour court for the media sector. Its administrative and budgetary control should be transferred to a judicial body or a genuinely independent tripartite oversight committee.
2. Empower Enforcement: The Tribunal must be granted the power to enforce its decisions *suo motu* and be supported by a dedicated Media Labour Inspectorate, with statutory authority to audit compliance, impose severe penalties, and swiftly recover wage arrears.
3. Reform the Wage Board: The process for determining Wage Board awards must be accelerated and made transparent, relying on independent economic analysis rather than political negotiation, with mandatory enforcement timelines.

C. The Call for Judicial Intervention: In the face of chronic legislative inertia, the judiciary must exercise its role as the ultimate guardian of constitutional rights. Drawing upon the precedent set in Darshan Masih v. The State [11], where the Supreme Court

provided an interim legal framework to protect bonded labourers until Parliament acted, a similar extraordinary intervention is warranted. The Honourable Court is urged to:

1. Mandate Interim Protection: Issue a ruling that, until comprehensive legislation is enacted, the key protections of the *Standing Orders Ordinance* (e.g., notice period, severance pay) are deemed to apply universally to all media workers, regardless of the platform (print, electronic, digital) or the dubious 'contractor' classification, provided there is a verifiable relationship of economic dependence.
2. Force Consultation: Direct the Federal Government to establish a time-bound, tripartite commission (Government, Owners, and PFUJ/Media Worker Representatives) to draft and present the unified Media Workers Act within a stipulated timeframe, ensuring constitutional and international compliance.

The protection of the constitutional right to freedom of expression (Article 19) requires a concomitant commitment to the constitutional right to livelihood and justice (Articles 3, 37, 38). When media workers are deprived of basic labour rights, the integrity of the information they produce and the democratic discourse they facilitate is invariably compromised. The time for systemic reform is now.

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