Compulsory Winding up of Companies: A Comparative Study of Judicial Forums in India and Pakistan

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Abstracts

The research contemplates over the replacement of the Company Bench of High Courts and the establishment of a Company Law Tribunal on Indian pattern in Pakistan. Tribunals have success stories in Pakistan in service, environment, insurance, banking matters, etc. The capacity and qualification of the judges of Company Benches of High Courts compared with the Company Law Tribunal have been evaluated. The study covers only compulsory winding up of companies, Company Bench of High Courts in Pakistan and Company Law Tribunal in India. The main thesis is that the specialised and plural-member tribunal is more efficient than the less specialised and single-member Company Bench. Comparative and empirical research has been done focusing on primary sources—statutes, precedents, and Rules and secondary sources—books and articles. It has been found that qualification and expertise of the judges of the Company Benches in corporate affairs and business decisions are less compared with members of the tribunals. The composition of the Company Benches compared with the tribunals is not adequate. The replacement of a Company Bench with the tribunal is more advantageous for a healthy corporate environment in Pakistan. There are numerous tribunals successfully working in the judicial system of Pakistan. Owing to the growing tendency of substitution of the courts with tribunals in Pakistan and the world, the chances of success of the Company Law Tribunal in Pakistan are bright. This work will contribute significantly to the corporate legal framework of Pakistan. The generalised application of this work may pave the way for the establishment of tribunals for other legal subjects.

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Key Words *winding up, forum, tribunal, judicial member, efficacious, company, court.*

Introduction

Allah Almighty commands justice and fair dealings.[1] The courts are guardians of the rights of the people of Pakistan and legally duty-bound to administer justice because injustice anywhere is a threat to justice everywhere.[2] The 1973 Constitution of Pakistan distributes powers of the state among three organs—legislature, judiciary, and executive.[3] The judicial organ of the state is responsible for the administration of justice among masses and government functionaries. There are multi-tier courts in Pakistan from civil court to the Supreme Court of Pakistan[4] along with special courts and tribunals. In matters related to winding up of companies, the High Court exercises original jurisdiction. Its role commences from filing winding-up petition till the dissolution of the company.[5] However, there is a question mark on the performance of the High Courts in matters of corporate nature, including winding up.

The Company Law Review Commission (CLRC) [6] contemplated the composition and performance of the High Court in matters of corporate affairs and compulsory winding up of companies. The forum of the High Court has not been replaced in the Companies Act, 2017. However, India has replaced the court with the National Company Law Tribunal in 2013.[7] Thus, the possibility of substitution of the court with the tribunal in Pakistan has been discussed here keeping in view the corporate environment of Pakistan. Specialised and multi-member forums are becoming popular due to efficient, meritorious, and advantageous adjudication of corporate issues in Pakistan. The major research questions in this article are four: whether the High Court in Pakistan or the tribunal in India is more appropriate to adjudicate petitions of compulsory winding up of companies? Whether the High Court or the tribunal has better composition? How is the performance of the High Court and tribunal in deciding petitions for compulsory

winding up? Whether the forums of tribunals working in Pakistan are successful?

This research aims to comparatively analyse the qualifications of the judges of the High Court in Pakistan and members of the tribunal in India. It also focuses on an analysis of the composition and performance of the tribunal and the High Court. Moreover, it evaluates the possibility of the success of the proposed tribunal for compulsory winding up of companies keeping in view the performance of other tribunals in Pakistan.

In Pakistan, many jurists have authored books on company law. But no specific book on the law of companies on compulsory winding-up has yet been authored. Pros and cons of the courts and tribunals have not been evaluated in juxtaposition so far in Pakistan. Books, such as *Company Law and Practice in Pakistan*,[8] *Company Law in Pakistan*,[9] *The Companies Ordinance with Rules, 2003-2004*,[10] and *Company Law in Pakistan*[11] touch the subject of winding up of companies by the Court in Pakistan in commentary but do not critically analyse the subject. Dr Avatar Singh's *Company Law,*[12] H.K. Saharay's *Company Law,*[13] Gover and Davies's *Principles of Modern Company Law,*[14] and Palmer's *Company Law*[15] analyse the law of winding up of companies by the courts but are silent with respect to the role that could be played by the tribunals.

This study is a combination of mainly comparative, empirical, and prescriptive research. Deductive analysis has been done to argue the proposed replacement of the High Court with the tribunal in matters of compulsory winding up of companies in Pakistan. Primary sources—statutes, precedents, and rules—and secondary sources—articles, books, reports, etc., have been utilised. The data analysed is comprised of available reported precedents of the superior courts of India and Pakistan.

This research is focused on compulsory winding up of incorporated companies. The statutory corporations, unregistered

companies, and banking companies are not in its scope. The sources available online have been utilised. Due to the scarcity of funds and denial of access, all data could not be collected. The subject under probe is innovative and significant as far as winding up of companies is concerned. Specialised forums are being introduced in Pakistan for various subjects. Corporate culture is becoming more complex day-by-day. Expert judicial forums may distinguish between corporate promotion and corporate termination and ensure balance in the application. Most of the businesses are in corporate form and have positive and negative impacts upon a huge number of persons. The qualification, composition, and performance of the members of the tribunal are rich areas for future in-depth research.

Comparison of the Court and the Tribunal

The term 'judiciary' is broadly used to refer to the courts, the judges, the magistrates, the adjudicators, and other support personnel who run the judicial system. The terms 'judiciary' and 'court' are used interchangeably. The 1973 Constitution of Pakistan recognises the principle of trichotomy of powers. As per this principle, the power of the state is distributed among legislature, executive, and the judiciary.[16] We are concerned here with the judiciary, which is the final arbiter of the Constitution. It protects the fundamental rights and civil liberties of the citizens. It plays a pivotal role in the formation of a healthy nation and a democratic society.[17] The courts apply the law, resolve disputes, and penalise law-breakers as per law. The masses knock the doors of the courts to get the perceived injustices against them redressed. The government also generally approaches the court for interpretation of laws. In this scenario, the judiciary is bound to perform its role without any fear, favouritism, bias, and partiality.[18] The founder of Pakistan Quid-i-Azam Muhammad Ali Jinnah said:

> I shall always be guided by the principles of justice and fair play without any, as is put in the political language, prejudice or ill-will; in other words, partiality or favoritism. My guiding principle will be justice and complete impartiality, and I am sure that with your support and co-operation, I can look forward to Pakistan becoming one of the greatest Nations of the world.[19]

The larger public interest has always been the prime consideration before the courts while examining a particular piece of legislation at the touchstone of fundamental rights guaranteed under the Constitution.[20] In this context, Tassaduq Hussain Gillani[21] stated:

> The role of judiciary is assuming greater importance with every passing day as citizens are reposing greater confidence in this institution for redressal of their grievance. This is exacerbated by the lack of governance on the part of the executive and in turn the burden of such deficiencies is shifted towards the judiciary. Sociopolitical and economic dynamics have confronted the Courts with new issues and challenges.[22]

The judiciary plays an effective role in the enforcement of laws. It guarantees liberation for individuals or the society or the nation as a whole.[23] Similarly, in Pakistan, the judiciary is committed to judicial values, e.g., judicial independence, rule of law, fair trial, impartiality, integrity, propriety, equality, competence, and diligence. The judiciary promotes values of trust, tolerance, and protecting minorities and weaker sections of the society[24] and affects behaviour patterns. Martin Luther King-I opined that morality could not be legislated but behaviour could be regulated. Further adding that judicial decrees might not change the heart but they could restrain the heartless.

The annual reports of the Supreme Court of Pakistan and High Courts reveal that the proceedings of winding up of companies

remained pending for years. One of the reasons for the delay is the general nature of the court in Pakistan. The subject of compulsory winding up of companies is technical and commercial, which can be properly dealt with by a judicial forum having legal as well as technical expertise. The judiciary, which is not specialised and expert, may pronounce a verdict which is harsh, economically unsound, and erroneous in the corporate context. This happens because the generalised judiciary depends upon the intelligence and expertise of individual judges and not upon a structured system. For certainty and continuity of policy, a judicial system must have solid roots in the technical nature of laws.[25] Summarily, the importance of the court and tribunal in the administration of justice is pivotal. In the context of winding up of companies, the court steps forward to safeguard the interests of the state, creditors, contributors, and public at large. Even the discretion cannot be exercised by the court but to advance the ends of justice.[26] From entertaining winding-up petition to the conclusion of winding up proceedings, the role of the court is to aid the aggrieved person and redresses his grievances. Thus, the tribunal is very important.

Tribunals and the Judicial System of Pakistan

The tribunal being a judicial forum is part of the judicial system of Pakistan, which is based on Constitutional courts,[27] statutory courts,[28] and tribunals[29]. The former include the Supreme Court of Pakistan,[30] the Federal Shariat Court,[31] the Lahore High Court,[32] the High Court of Sindh,[33] the High Court of Baluchistan,[34] the Peshawar High Court,[35] and the Islamabad High Court.[36] The statutory courts are further sub-classified as Civil Courts[37] and Criminal Courts.[38] The Civil Courts include Courts of District Judge,[39] Additional District Judge,[40] Senior Civil Judge,[41] Civil Judge 1st Class,[42] Civil Judge 2nd Class,[43] Civil Judge 3rd Class,[44] Family Courts,[45] Guardian Courts,[46] Foreign Exchange Regulation Appellate Boards,[47] Banking Courts,[48] Commercial Courts,[49] Consumer Courts,[50] and Labour Courts.[51] The Criminal Courts include

Courts of Sessions Judge,[52] Additional Sessions Judge,[53] Magistrate Section 30,[54] Magistrate 1st Class,[55] Magistrate 2nd Class,[56] Magistrate 3rd Class,[57] Special Judicial Magistrate,[58]Accountability Courts,[59] Drug Courts,[60] Special Courts (Central),[61] Special Courts (CNS),[62] Special Courts of Customs, Taxation, and Anti-Smuggling,[63] Special Courts for Offences against Banks,[64] Anti-Corruption Courts (Provincial),[65] Anti-Terrorism Courts,[66] Child-Protection Court,[67] Special Court (Protection of Pakistan),[68] and Special Court Public Property (Removal of Encroachment).[69] Similarly, the tribunals may also be classified as civil and criminal tribunals. The former include Appellate Tribunal Inland Revenue,[70] Customs Appellate Tribunals,[71] Rent Tribunal,[72] Insurance Appellate Tribunal,[73] Federal Service Tribunals,[74] Competition Appellate Tribunal,[75] Provincial Service Tribunals,[76] Intellectual Property Tribunal,[77] and the Lahore Development Authority Tribunal.[78] The latter include Anti-Dumping Appellate Tribunal,[79] Modarba Companies Tribunal,[80] and Environmental Protection Tribunals.[81] Appendix I has the detail of all the tribunals and their composition in Pakistan.

In addition to courts in Pakistan, there are offices of 'ombudsmen'[82] to redress the grievance of the aggrieved persons against maladministration of the executive. These ombudsmen offices are- *Wafaqi Mohtasib*,[83] Federal Tax Ombudsman,[84] Federal Insurance,[85] Banking, [86] and Federal for Protection against Harassment of Women at Workplace.'[87] The Supreme Court of Pakistan is at the top and Civil Court is at the bottom in the judicial hierarchy. Supreme Court of Pakistan gives the final verdict on all disputes of Constitutional, civil and criminal nature. It also interprets the Constitution and the law. The precedents of the Supreme Court of Pakistan have binding nature on all the other Courts in Pakistan.[88] Only the legal principles and not factual determinations are of binding effect.[89]

In the provinces, the High Courts supervise all the subordinate courts and are the principal courts.[90] However, on the judicial side, all

the courts are independent. No court can direct another court to decide an issue in a particular manner. However, the policy guidelines are compiled by the 'National Judicial Policy Making Committee (NJPMC).'[91] In addition, either the Supreme Court of Pakistan or High Court may specifically direct a court lower in the hierarchy to adjudicate upon an issue of emergent nature promptly.[92]

Overlapping Jurisdiction of the Courts for Winding Up

As elaborated in preceding lines, there are numerous courts in Pakistan. The question is which court has jurisdiction to deal with winding up of companies? Before the promulgation of Companies Act, 2017, the court was defined in the Ordinance, 1984, and the Companies (Court) Rules, 1997, Section 2(11) of the Ordinance, 1984, and Rule 2(d) of the Company (Court) Rules 1997, define that court means 'the Court having jurisdiction under the Ordinance'. Moreover, the word 'judge' is defined in the Rules 1997, as a judge means in the High Court the judge for the time being exercising the jurisdiction of the High Court under the Ordinance 1984 and in the District Court, the Judge of the Court exercising jurisdiction under the Ordinance 1984.[93] The Federal Government had the discretion to empower any Civil Court to exercise all or any of jurisdictions by the Ordinance 1984 conferred upon the Court by notification in official Gazette and subject to such restrictions and conditions as it thinks fit.[94] The Ordinance 1984 has been repealed and there is no express provision concerning Rules. Thus, the question remained under consideration whether the High Court, District Court or Civil Court was the court of competent jurisdiction. Perusal of relevant provisions revealed that the petition for winding up of companies is within the exclusive jurisdiction of the High Court in whose territorial jurisdiction registered office of the company is located.[95] The expression 'registered office' means the place which has longest been the registered office of the company during six months immediately preceding presentation of a petition for winding up for only purposes

of jurisdiction to wind up companies.[96] The controversy of the court has been resolved to some extent in the Companies Act, 2017, as there is no room of empowerment of a Civil Court and Company Benches have been specifically recognised.[97] The court dealing with a winding-up petition is called as 'Company Bench of High Court' and is constituted by the Chief Justice of the High Court concerned to exercise jurisdiction under the Ordinance, 1984, qua matters including compulsory winding up of the company.[98]

The High Court has, in matters of winding up of companies by the Court, 'original civil jurisdiction',[99] which means that the power of the Court to hear a civil case for the first time and is conferred by or under any statutory law.[100] The Constitutional jurisdiction is exercised under the Constitution of 1973.[101] The civil jurisdiction is in contradiction to criminal jurisdiction. The court dealing with the process of winding up of a company has jurisdiction to entertain or dispose of any suit or proceeding by or against the company notwithstanding anything contained in any other law for the time being in force.[102] Thus, the Company Bench overlaps the jurisdiction of the other Courts. Section 9 of Code of Civil Procedure, 1908, empowers Civil Court to adjudicate upon all matters of civil nature unless expressly or impliedly barred. Generally, suits and proceedings by or against company come within the jurisdiction of Civil Courts.[103] However, Section 316 of the Ordinance 1984 being special law has an overriding effect upon general law and bars the jurisdiction of Civil Court.[104] The jurisdiction of Court of Small Causes has also been specifically barred to adjudicate upon a claim founded upon the liability of contributory in the words that "no claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes."[105]

The Companies Act of 2017 has retained the scheme of the Ordinance, 1984. Thus, there is still a need for clarification of

jurisdiction of the Company Benches and the other courts, particularly special courts.

There are numerous instances of the liquidation proceedings taken to incompetent court. Such proceedings are valid due to this reason.[106] Thus, an exception has been created of the principle *coram non-judice* and proceedings before incompetent forum remain valid.[107] The jurisdiction of other courts have been curtailed and barred on the one hand and the proceedings before incompetent forum are not invalid on the other hand. Thus, it seems an apparent contradiction qua the suits or proceeding instituted against or by a company facing compulsory winding up. Besides, the Company Bench may permit withdrawal and transfer of suits and proceedings.[108] Such withdrawal or transfer of suits etc. is discretionary. The guiding principles and objects for this purpose are to ensure the administration of justice, the convenience of the litigants and avoidance of contradictory findings. The consent of the other High Court is necessary when such transfer or withdrawal has a link with any other province. Such transfer and entrustment of suit to a Federal Government empowered subordinate Civil Court was permitted.[109] Now there is no existence of such empowered court in the Companies Act, 2017. There is no bar on withdrawal or transfer of suits or proceedings even during the pendency of the winding-up proceedings before a Civil Court if convenience so requires.[110]

The controversy of appellate forum remained in the field for a considerable time qua matters of companies when in compulsorily winding up. Before the Companies Act, 2017, the 1984 Ordinance also recognised two forums of appeal[111] in the matter of compulsory winding up of the companies. The forums were the Supreme Court of Pakistan and the Division Bench of High Court. The criterion was the amount of paid-up share capital. The appellate forum was the Supreme Court of Pakistan in case the paid-up share capital was one million rupees or more. In case of below one million rupees or no

share capital, the appellate forum was the Supreme Court of Pakistan, which had the discretion to grant leave to appeal.[112] In the former case, an appeal was available as a right but not in the second situation. However, the criterion of paid-up capital was immaterial and an appeal lay before the Supreme Court of Pakistan when the company was ordered to be wound up. The controversy of the appellate forum remained under consideration when winding-up petition was not accepted by the court. Section 10 of the 1984 Ordinance prescribed and endorsed ordinary mode and forum of appeal in all other orders and decisions passed by a High Court.[113] In normal practice, Intra-Court Appeal (ICA)[114] is the remedy before the Division Bench of the same High Court against an order passed by a Single Bench.[115] However, an important question of appellate court arose when a Civil Court, empowered under section 7(1) of the 1984 Ordinance, was conducting winding up proceedings. Because Section 10 did not make a distinction between an empowered Civil Court and the High Court. Under the law, the appellate forum against an order of the Civil Court is the District Court. The High Court is appellate forum against the decision of the District Court.[116] This is astonishing that a Civil Court has never been empowered by the federal government and practically no question of District Court being the appellate forum arose.

The controversy has been resolved by barring appeal and leave to appeal against interlocutory orders and prescribing only leave to appeal against final judgement and order before the Supreme Court of Pakistan in the Companies Act of 2017.[117] Thus, there might emerge another challenge as there is no remedy against an unjust interlocutory order.

Why the Company Law Tribunal?

The adjudication of winding up petitions and accomplishment of winding up process is a complicated phenomenon. Modern societies keep their judicial system updated per modern trends and

absorb good features of contemporary judicial systems. The trend of specialisation is gaining ground in every walk of life in Pakistan and around the world. The corporate realm and company law is not an exception to this tendency. The judicial system of Pakistan is substituting the courts with tribunals as is evident from Modarba Companies Tribunal, Customs Appellate Tribunal, Competition Appellate Tribunal, Intellectual Property Tribunal, Insurance Tribunal, etc. Furthermore, India has also established the National Company Law Tribunal and the National Company Law Appellate Tribunal to regulate winding up of the companies. The High-Level Committee[118] on winding up of companies in India has formulated its recommendations as follow:

> The jurisdiction, power and authority relating to winding up of companies shall be vested in a National Tribunal instead of in the High Court as at present. The composition of the Tribunal and powers to be exercised by it are detailed in Chapter 5. In addition, proposed Tribunal shall also have power to consider rehabilitation and revival of companies, a mandate presently entrusted to BIFR. Further; the jurisdiction and the powers presently exercised by Company Law Board under the Companies Act in 'future shall be exercised by the proposed Tribunal.[119]

In light of the recommendations of the committee, the National Company Law Tribunal and the National Company Law Appellate Tribunal have been proposed in the Companies Act, 2013, and established in India.[120] The Company Law Tribunal is also necessary for Pakistan as this is an unfortunate state of affairs that some judges of High Courts in Pakistan have not been appointed on merit but political grounds and personal liking and disliking.[121] The major reason for such appointments is the absurd criteria of appointment of judges in High Courts in Pakistan.[122] Most of the appointed judges are either kith and kin of judges of the superior

courts of Pakistan or leading office-bearers of political parties.[123] These peculiar facts affect the competence of company benches and expeditious disposal of winding up petitions on merit in light of modern corporate practices.

The Annual Reports of High Courts [124] and the Supreme Court of Pakistan[125] speak of pendency of thousands of cases and petitions including winding-up petitions. A perusal of precedents of Company Benches also reveals a pathetic picture of prolonged and delayed disposal of winding-up petitions. The years lapsed in the adjudication of winding up petitions and appeals defeat the mandate of Section 6 of the Companies Act, 2017, which requires adjudication of winding petitions by the court and appeals within 90 days.[126] However, the practical realities are bitter enough as almost a decade has lapsed in some cases, e.g., *Punjab National Silk Mills Ltd. v. NBP* case.[127] Years have lapsed in several other cases as well and seldom has the job been done within the prescribed time. Thus, the performance of the court is not up to the mark.

Furthermore, the judges of High Court are not specialised and qualified persons of complicated corporate issues as they may be well equipped with knowledge of legal aspects but lack qualification of corporate and economic aspects. An advocate with 15 years of experience of the High Court or a judge of the High Court with five-year experience is eligible for appointment as the judge of the Supreme Court of Pakistan.[128] Similarly, an advocate with 10 years of experience of High Court or a District Judge with three-year experience or a person who has held a judicial office for 10 years is eligible for appointment as a judge of the High Court.[129] An advocate with 10-year experience and with two-year experience is eligible for appointment as Additional District Judge and Civil Judge, respectively.[130] A person who holds a degree of Bachelors of Laws is eligible for appointment as an advocate.[131] Most universities of Pakistan only teach the 1984 Ordinance to the students of Bachelors

of Laws.[132] The Companies Act, 2017, is not comparatively taught in many universities. Many other important pieces of company legislation are inevitable to understand complicated corporate issues.

The substitution of the court with the tribunal is also justified due to 'multifarious jurisdiction'[133] of the Supreme Court of Pakistan and High Courts. The Supreme Court of Pakistan exercises original jurisdiction qua inter-governmental disputes.[134] It protects the fundamental rights of public importance.[135]It hears criminal and civil appeals against judgements or orders of High Court. It answers questions of interpretation of the Constitution.[136] It grants leave to appeal[137] and exercises advisory jurisdiction qua subjects of public importance referred to it by the President.[138] It issues special directions or orders to do complete justice in pending cases.[139] It reviews its judgments or orders.[140] It punishes for contempt of court.[141] It hears appeals from administrative courts and tribunals.[142] Its Shariat Appellate Bench hears appeals against judgements or orders rendered by the Federal Shariat Court.[143]

Similarly, five writs, i.e., *mandamus*, *habeas corpus*, prohibition, *certiorari*, and *quo warranto*[144] are issued by the High Court. It also enforces fundamental rights,[145] supervises subordinate courts,[146] and penalises for contempt of court.[147] The High Court hears criminal and civil appeals,[148] review,[149] and revision.[150] The High Court of Sindh has original jurisdiction in civil cases valued 15 million rupees and above.[151] The High Court's original jurisdiction qua civil cases is one hundred million rupees and above.[152]

Tribunals are comprised of judicial and technical members.[153] The judicial members are experts in the Constitution and law, whereas the technical members being chartered accountants, economists, company secretaries, etc., are experts in their respective branches. Thus, the composition of the tribunal makes it a compact forum where a matter is addressed comprehensively. The company benches in High Courts are constituted by the respective Chief Justice and these

benches are normally changed after a year.[154] As discussed in preceding lines, the company benches are not expert in company affairs due to lack of qualification and expertise. When a company bench comes to understand the affairs of the company, the bench is changed. Thus, causing delay and compromises the quality of adjudication. The comparison of disposal of cases by tribunals and courts leads to the conclusion that the former perform far better than the courts in terms of figures and quality, as tribunals are well-equipped to avoid formalism and technicalities by excluding the application of regular procedure and general application of Qanoon-e-Shahadat Order, 1984[155] and adopting summary procedure.[156]

Furthermore, the latest enactments of specialised nature in Pakistan have introduced and recognised tribunals for expeditious and just adjudication of matters of technical nature, e.g., sales tax, income tax, service issues, rent matters, etc. The overall performance of these tribunals is satisfactory and room for betterment is always there.[157] The tribunals being compact forums can evolve the best strategy and scheme for rehabilitation of companies as the guiding principle is the preference of rehabilitation over winding up of the company.[158] The fruitful and just scheme of rehabilitation protects the interest of all stakeholders and depends upon multiple factors, which can best be evaluated by the tribunals.[159] Also, the Constitutional courts are primarily meant for interpretation of the Constitution and law.[160] Hence, the proposed tribunal will surely decrease the burden on the courts. It is worth mentioning here that contemporary jurisdiction of India has established tribunals and appellate tribunals to regulate the winding up of companies.[161] Furthermore, the tribunals will also help avoid the multiplicity of authorities. The establishment of tribunals confronts numerous challenges. The availability of honest and competent candidates within a limited budget is the first one. Lack of practical and required experience is the second one. The most important challenge is inherent bias and limited approach of one man.

The development of law might suffer due to static viewpoints. Last but not least is the credibility of the members whereupon responsibility and authority is consolidated.[162]

Conclusion and Recommendations

Discussion in preceding lines summarises that the courts in Pakistan being guardians of the rights of the masses and responsible for the administration of justice are striving hard for dispensation of expeditious justice, including adjudication of winding-up petitions. However, the judges of High Courts in Pakistan are not better qualified than members of the tribunal in India to adjudicate petitions of compulsory winding up of companies keeping in view corporate decisions. Similarly, the composition of the tribunal in India is better than that of High Courts in Pakistan for deciding petitions for winding up of companies. The presence of expert and technical members in the tribunal results in better corporate decisions. To the contrary, the Company Bench of High Court is comprised of a single judge with limited expertise.

The performance of the Company Bench of the High Court is not as satisfactory as that of the tribunal. The adjudication of winding up petitions has been done by the courts with considerable delay, defeating the objects of winding up of companies. There is an ambiguity with respect to the court of original jurisdiction and appellate court qua petitions for compulsory winding up. The strict observance of formalism, technicalities, early rotation of company benches, etc., are among the main causes. More so, the Rent Tribunals, Service Tribunals, and other tribunals on specific subjects are successful in Pakistan. Thus, the solution is the establishment of a Company Law Tribunal in Pakistan like in India.

Appendix I

Tribunals in Pakistan

S#	Name	Composition	Qualification
1	Modarba Companies Tribunal	One member	Equal to a Judge of a High Court
2	'National Company Law Tribunal'	President Judicial Member Technical Member	Past or present Judge of a High Court with five years. Experience. (a) past or present Judge of a High Court (b) past or present District Judge with five years of experience (c) Advocate with 10 years experience. (a) member of Corporate Law Service or Legal Service with 15 years experience. (b) a past or present chartered accountant with 15 years experience (c) past or present cost accountant with 15 years experience (d) past or present company secretary with 15 years experience (e) special knowledge and experience of 15 years in law etc (f) A past or present presiding officer of a Labour Court, Tribunal or National Tribunal with five years experience.
3	'National Company Law Appellate Tribunal'	Chairman Judicial Member	Past or present Judge of Supreme Court or the Chief Justice of a High Court Past or present Judge of High

		Technical Members	Court or Judicial Member of the Tribunal for five years. A person of special knowledge and 20 years of experience in law etc.
4	Appellate Tribunal Inland Revenue	Chairman or Judicial member Accountant member	District Judge or Advocate eligible for appointment of Judge of High Court Regional Commissioner or the Commissioner of Inland Revenue or Commissioner of Inland Revenue (Appeals) with five years experience
5	Customs Appellate Tribunals	Judicial member Technical member	Judge of High Court, or District Judge or Advocate eligible for appointment as Judge of High Court Officer of Pakistan Customs Service of specified rank with three years experience
6	Rent Tribunal	Special judge rent	Civil Judge or Judicial Magistrate
7	Insurance Appellate Tribunal	One member	District and Sessions Judge
8	Federal Service Tribunal	Chairman Three members	Eligible for appointment as Judge or past or present Judge of a High Court Prescribed qualification for members
9	Competition Appellate Tribunal	Chairman Technical Members	Past Judge of Supreme Court or Chief Justice of a High Court Persons of special knowledge with 10 years of professional experience in International Trade etc.

10	Provincial Service Tribunals	Chairman members government	Past or qualified to be appointed as Judge of High Court with a maximum 63 years of age District Judge or person in service of Pakistan of Secretary rank with experience of quasi-judicial functions or service matters or qualified for appointment as Judge of a High Court
11	Intellectual Property Tribunal	Presiding Officer	District and Sessions Judge
12	Lahore Development Authority Tribunal	President	Senior Civil Judge or Civil Judge 1st Class with five years experience or an advocate with seven years of experience or retired district or Additional District Judge
13	Anti Dumping Appellate Tribunal	Chairman Two members	a retired judge of the Supreme Court person of expertise and experience in economics with particular reference to international trade-related issues or customs law and practice.
14	Environmental Protection Tribunals	Chairman Judicial Member Technical Member	Past or present Judge of a High Court or eligible for appointment as Judge of High Court. Person of professional qualification and experience in the environment.

Notes and References

[1] The Holy Quran, 16:90. See also: Latin maxim. *Fiat Justitia, Ruat Coelum.*

[2] The message of Chief Justice of Lahore High Court, Lahore as displayed on official website of Lahore High Court Lahore. <www.lhc.gov.pk> last accessed 17 July 2016.

[3] Hamid Khan, *Constitutional and Political History of Pakistan* 2nd edition, (London: Oxford University Press, 2009), 562.

[4] Dr Faqir Hussain, *The Judicial System in Pakistan,* 4th edition (Islamabad: Federal Judicial Academy, 2015).

[5] Companies Ordinance 1984, Section 7. See also, Companies Act, 2017, Section 5.

[6] It was established by SECP to review company law in Pakistan.

[7] Companies Act, 2013 (Sections 408 and 410).

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[14] Gower and Davies, *Principles of Modern Company Law,* Paul Davies and Sarah Worthington (eds.), 9th edition, (London: Sweet & Maxwell Ltd., 2012).

[15] Sir Francis Beaufort Palmer, *Company Law*, Clive M. Schmitt et. al. (eds), 23rd edition, (London: Stevens & Sons Ltd., 1982).

[16] The Constitution of Pakistan 1973 also endorses the principle of separation of power.

[17] Hamid Khan, *Constitutional and Political History of Pakistan,* 2nd edition (London: Oxford University Press, 2009), 562.

[18] National Judicial Policy, Foreword by Chief Justice of Pakistan (2009).

[19] G. Allana, *Pakistan Movement Historical Documents* (Karachi: Department of International Relations, University of Karachi, 1969), 407-411.

[20] *A.F. Ferguson & Co Chartered Accountants v SECP etc*, CLD 1433 (Kar), 2009.

[21] He is former Chief Justice of Pakistan, Supreme Court of Pakistan, Islamabad.

[22] Address by Tassaduq Hussain Gillani, Chief Justice of Pakistan, Inaugural Session, International Judicial Conference, Islamabad, 18 April 2014.

[23] Irum Khalid, "Role of Judiciary in Evolvement of Democracy in Pakistan," *Journal of Political Studies*, Vol. 19, Issue 2, 125-142, (2012).

[24] Ibid.

[25] Karimullah Adeni, "IP courts: are we ready for them?" in Dawn , 16 November 2015.

[26] Code of Civil Procedure 1908, Section 151. See: Companies (Court) Rules 1997, Rule 3. See also: Hashmi Can Company Ltd v K K & Co Pvt Ltd, 1992 SCMR 1006.

[27] The Courts established under the Constitution, e.g., Supreme Court of Pakistan and High Courts, etc.

[28] The Courts established under the Statute, e.g., District Court or Family Court, etc.

[29] The seat of a judge; the place where he administers justice; a judicial Court: the bench of judges. See *Foster v Worcester*, 10Pick

Mass 81, Available at http://thelawdictionary.org/ tribunal (last accessed 19 July 2016).

30 Constitution of Pakistan 1973, Article 175 (1).

31 Constitution of Pakistan 1973, Article 203 (c).

32 Ibid.

33 Constitution of Pakistan 1973, Article 175 (1).

34 Ibid.

35 Ibid.

36 Ibid.

37 <http://dictionary.cambridge.org/dictionary/english/civil-Court> accessed 19 July 2016. A Court of law that deals with disagreements between individual people or private companies rather than with criminal activity.

38 <http://thelawdictionary.org/criminal-Court/> accessed 19 July 2016. The name of the Court where criminal cases are tried and not civil cases.

39 Civil Courts Ordinance, 1962, Section 5.

40 Ibid, Section 6.

41 Ibid, Section 8. The word 'Civil Judge' has been used in section 8 of this Ordinance of 1962 and the word 'Senior Civil Judge' is used in administrative sense.

42 Ibid, Section 5. Furthermore, Section 9 of the Ordinance 1962 and notifications issued by High Court classify the Civil Judges among 1st, 2nd and 3rd.

43 Ibid.

44 Ibid.

45 West Pakistan Family Courts Act, 1964, Section 3.

46 The District Court having jurisdiction under section 9 of the Guardian and Wards Act, 1890.

47 The Boards have been established under the Foreign Exchange Regulation Act, 1947 to regulate certain payments, dealings in

foreign exchange and securities and the import and export of currency and bullion.

[48] It is established under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

[49] It is established under the Imports and Exports (Control) Act, 1950.

[50] It is established under Punjab Consumer Protection Act, 2005, Section 26.

[51] It is established in the Province of Punjab under the Punjab Industrial Relations Act, 2010.

[52] Code of Criminal Procedure 1898, Sections 6(1) and 9.

[53] Criminal Procedure Code 1898, Sections 6(1) and 9. The Code recognises only Court of Sessions. Additional Session Judge is appointed under Punjab Judicial Service Rules, 1994.

[54] Code of Criminal Procedure 1898, Sections 6(2), 12 and 30.

[55] Ibid, Sections 6(2) and 12.

[56] Ibid.

[57] Ibid.

[58] Ibid, Section 14.

[59] It is established under the National Accountability Bureau Ordinance, 1999.

[60] It is established under section 31 of the Drugs Act,1976.

[61] It is established under Pakistan Criminal Law Amendment Act,1958.

[62] It is constituted under the Control of Narcotics Substances Act, 1997.

[63] It is established under section 185 of the Custom Act, 1969.

[64] It is established under offences in respect of Banks (Special Courts) Ordinance, 1984.

[65] It is established under Criminal Law Amendment Act,1958.

[66] It is established under section 13 of Anti-terrorism Act, 1997.

[67] It is established under the Punjab Destitute and Neglected Children Act, 2004

[68] It was established under Section 8 (i) of Protection of Pakistan Act, 2014.

[69] Sindh Public Property (Removal of Encroachment) Act, 2011, Ss 25 and 26.

[70] It is established under the Income Tax Ordinance, 2001.

[71] It is established under the established under section 194 of the Customs Act, 1969.

[72] It is established under the Punjab Rented Premises Act, 2012, section 16.

[73] Vide notification no. SECP/ID/04/06, 30 October 2006, District and Session Judges of provincial capitals has been delegated powers of Insurance Appellate Tribunal under Insurance Ordinance, 2000.

[74] It is established under the Constitution of Pakistan 1973, Article 212. See also: Service Tribunal Act, 1973.

[75] It is established under the Competition Act, 2010, Section 43. It works at Islamabad.

[76] It is established under the Punjab Service Tribunals Act, 1974, Section 3.

[77] It is established under the Intellectual Property Organisation of Pakistan Act, 2012.

[78] It is established under the Lahore Development Authority Act, 1975, Section 25-C.

[79] It is established under the Anti-Dumping Ordinance, 2000.

[80] It is established under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance 1980, Section 24.

[81] It is established under the Environmental Protection Act, 1997.

[82] A person appointed by governments to investigate complaints from citizens against large organisations. Avaialble at <http://thelawdictionary.org/ombudsman/> (last accessed on 19 July 2016).

[83] It is established under the Office of Wafaqi Mohtasib (Ombudsman), Order 1983, section 3.

[84] It is established under the Federal Tax Ombudsman Ordinance 2000, Section 3.

[85] It is established under the Insurance Ordinance 2000, Section 125.

[86] It is established under the Banking Companies Ordinance 1962, Section 82-A.

[87] It is established under Protection against Harassment of Women at the Workplace Act, 2010, Section 7.

[88] Constitution of Pakistan 1973, Article 189.

[89] Muhammad Munir, *Precedents in Pakistan* (Karachi: Oxford University Press, 2014), 10.

[90] The Constitution of Pakistan 1973, Article 203.

[91] National Judicial Policy Making Committee is statutory body and apex judicial forum in Pakistan headed by the Chief Justice of Pakistan. Its members are the Chief Justice of the Federal Shariat Court and all the provincial High Courts. The Secretary Law and Justice Commission of Pakistan is the secretary of this committee.

[92] Dr Faqir Hussain - Registrar Supreme Court of Pakistan, *The Judicial System in Pakistan*, 4th edition (Islamabad: Federal Judicial Academy, 2015) 47.

[93] Comp anies (Court) Rules, 1997, Rule 2(e).

[94] Companies Ordinance, 1984, Section 7(1) proviso. See also: Jawwad S Khawaja (Judge Lahore High Court Lahore), 'Commercial Enforcement and Insolvency Systems', Pepperdine University School of Law Malibu California, May 2003, 19-23.

[95] Companies Ordinance, 1984, Section 7(1); Contra: the State v Director General FIA, PLD 2010 Lah 23.

[96] Companies Ordinance 1984, Section 7(2). See: UK, Insolvency Act 1986, Section 117 whereby High Court and County Courts have concurrent jurisdiction to wind up companies.

[97] Companies Act, 2017, Sections 5 and 6.

[98] Companies Ordinance, 1984, Sections 8.

[99] Companies Ordinance, 1984, Section 7. See: Mehr textile Mills Ltd v Investment Corporation of Pakistan, 2005 SCMR 1328.

[100] Muzamil Sultan v FOP, PLD 2013 Lah 353; Sunrise Textile v Mashreq Bank, PLD 1996 Lah 1.

[101] Constitution of Pakistan, 1973, Article 199.

[102] Companies Ordinance, 1984, Section 316(2).

[103] Code Civil Procedure Code, 1908, Section 9.

[104] Under the principles of interpretation of statutes, special laws prevail over general law.

[105] Companies Ordinance, 1984, Section 301(2).

[106] Ibid, Section 7(3).

[107] A Latin Maxim which means- an act without authority. See: UK, Insolvency Act, 1986, Section 118 whereby proceedings before wrong court are valid.

[108] Companies Ordinance, 1984, Section 316(3). *See: Premier Insurance Company Ltd v Messrs Mackinnon Machenzie & Company,* 2002 CLD 1673.

[109] *IDBP v Messrs Valibhai Kamarudin Ltd.,* SCMR 415, 2002.

[110] Companies Ordinance, 1984, Section 308.

[111] *Sikandar Jahan v Ghulam Zainab*, 2013 CLC 228. An appeal is the continuation of original proceedings and appellate court is vested with power to rehear and decide the entire dispute between the parties.

[112] Companies Ordinance, 1984, Section 10. See: *Sohail Najeeb v Ministry of Finance Pakistan*, 2014 PLC (CS) 750 (Isd); 2014 CLD 848 (Isd); *Zakaudin v Dastgir Investment and Management Ltd.*, SCMR 971, 2005.

[113] Companies Ordinance, 1984, Section 10(2) See: *IDBP v Messrs ValiBhai Kamarudin* etc, 2002 CLD 1485 (SC); *Diamond Industries Ltd v M Zafar-ul-Haq Hijjazi*, 2003 CLD 621*; Ibrahim Shamsi v Bashir Ahmed Memon*, 2005 SCMR 1450.

[114] Intra Court appeal means an appeal before bench of two or more judges of High Court against order of Single Judge of High Court.

The purpose of this appeal is to decrease work burden of Supreme Court. See: *Zakaudin v Dastgir* Investment and Management Ltd., 2005 CLD 976.

115 Law Reforms Ordinance, 1972, Section 3.

116 Code of Civil Procedure, 1908, Section 100.

117 Companies Act, 2017, Section 6(14).

118 Justice Javed Iqbal, "The Role of the Judiciary as a Catalyst of Change" an article available at http://www.supremecourt.gov.pk/ijc/Articles/9/1.pdf (last accessed 26 July 2016).

119 Indian Report by High Level Committee on Law Relating to Insolvency and Winding up of Companies, 2000, chaired by *Justice Shri V Balakrishna Eradi*, P. 7, 33.

120 Companies Act, 2013, Sections 408, 410.

121 Hamid Khan, *Constitutional and Political History of Pakistan,* 2nd edition, (London: Oxford University Press, 2009), 563.

122 Constitution of Pakistan, 1973, 18th and 19th Amendment. Judicial Commission of Pakistan and Parliamentary Committee.

123 Syed Sabeeh, "Petition seeks selection of judges through competitive exam," *The Daily Times*, *12 July 2016*, *See also: Hamid Khan*, *Constitutional and Political History of Pakistan*, *2nd edition* (London: Oxford University Press, 2009), 562.

124 Annual report 2015 of Lahore High Court Lahore; Annual Report 2015 of High Court of Sindh.

125 Annual report 2015; Annual report 2014; Annual report 2013 of Supreme Court of Pakistan. There were pending 22979 cases in Supreme Court of Pakistan as per its Annual Report for the Year 2014-2015.

126 Companies Ordinance, 1984, Section 9.

127 The appeal was filed in, 1972 and was decided in 1986.

128 Constitution of Pakistan, 1973, Article 177(2).

129 Ibid., Article 193(2).

130 Punjab Judicial Service Rules 1994, Rule 7.

[131] Legal Practitioners and Bar Council Act 1973, Section 26 whereby law degree is the major requirement.

[132] University of the Punjab Lahore, University of South Asia Lahore, Bahaudin Zakria University Multan.

[133] Original, Appellate, Revision, constitutional jurisdiction of High Courts and Supreme Court of Pakistan.

[134] Constitution of Pakistan 1973, Article 184(1).

[135] Ibid., Article 184(3).

[136] Ibid., Article 185(2).

[137] Ibid., Article 185(3).

[138] Ibid., Article 186.

[139] Ibid., Article 187.

[140] Ibid., Article 188.

[141] Ibid., Article 204.

[142] Ibid., Article 212.

[143] Constitution of Pakistan 1973, Article 203F.

[144] Ibid, Article 199(1); Code of Criminal Procedure 1898, Section 491.

[145] Constitution of Pakistan 1973, Article 204.

[146] Ibid., Article 203.

[147] Ibid., Article 184(1).

[148] Code of Civil Procedure 1908, Section 100; Code of Criminal Procedure 1898, Section 410; Law Reforms Ordinance 1972, Section 3.

[149] Ibid., Section 114.

[150] Ibid., Section 115.

[151] Website of the Sindh High Court, available at <www.sindhhighcourt.gov.pk/jurisdiction.php> (last accessed on 27 July 2016).

[152] Islamabad High Court Act, 2010, Section 4.

[153] Companies Act, 2013, Sections 409, 411.

[154] Perusal of reported judgments of Superior Courts of Pakistan reveal that different Honorable Judges decided company matter in almost each year.

[155] Companies Ordinance, 1984, Section 9. *Mian Javed Amir v United Foam Industries Ltd.*, 2016 SCMR 213.

[156] *Mian Javed Amir v United Foam Industries Ltd*, 2016 SCMR 213; Contra: *Muhammad Aslam Javed v Malik Ejaz Ahmed,* 2003 YLR 2150.

[157] "Special Courts and Tribunals, Law and Justice Commission of Pakistan," *Annual Report, 2014*.

[158] *Messrs Glorex Textiles Ltd. v Investment Corporation of Pakistan*, 1999 SCMR 1850; ., 2004, SCMR 1443.

[159] *Ch. Muhammad Hussain v Khiali Paper and Board Mills* Pvt Ltd., 2005, CLD 636.

[160] Justice Fazal Karim, *Access to Justice in Pakistan,* 3rd edition, (Lahore: Pakistan Law House, 2012), 35.

[161] Companies Act, 2013, Sections 408, 410.

[162] Karimullah Adeni, "IP courts: are we ready for them?" *Dawn*, 16 November 2015.