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# COMPULSORY WINDING UP OF COMPANIES: A COMPARATIVE STUDY OF JUDICIAL FORUMS IN INDIA AND PAKISTAN

MUHAMMAD AJMAL\* AND DIL MUHAMMAD MALIK\*\*

## 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*

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*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.*

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

## **Introduction**

Allah Almighty commands justice and fair dealings.<sup>1</sup> 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.<sup>2</sup> The 1973 Constitution of Pakistan distributes powers of the state among three organs—legislature, judiciary, and executive.<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> 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)<sup>6</sup> 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.<sup>7</sup> 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*,<sup>8</sup> *Company Law in Pakistan*,<sup>9</sup> *The Companies Ordinance with Rules, 2003-2004*,<sup>10</sup> and *Company Law in Pakistan*<sup>11</sup> 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*,<sup>12</sup> H.K. Saharay's *Company Law*,<sup>13</sup> Gover and Davies's *Principles of Modern Company Law*,<sup>14</sup> and Palmer's *Company Law*<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>



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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> In this context, Tassaduq Hussain Gillani<sup>21</sup> 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.<sup>22</sup>

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.<sup>23</sup> 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<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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,<sup>27</sup> statutory courts,<sup>28</sup> and tribunals<sup>29</sup>. The former include the Supreme Court of Pakistan,<sup>30</sup> the Federal Shariat Court,<sup>31</sup> the Lahore High Court,<sup>32</sup> the

High Court of Sindh,<sup>33</sup> the High Court of Baluchistan,<sup>34</sup> the Peshawar High Court,<sup>35</sup> and the Islamabad High Court.<sup>36</sup> The statutory courts are further sub-classified as Civil Courts<sup>37</sup> and Criminal Courts.<sup>38</sup> The Civil Courts include Courts of District Judge,<sup>39</sup> Additional District Judge,<sup>40</sup> Senior Civil Judge,<sup>41</sup> Civil Judge 1<sup>st</sup> Class,<sup>42</sup> Civil Judge 2<sup>nd</sup> Class,<sup>43</sup> Civil Judge 3<sup>rd</sup> Class,<sup>44</sup> Family Courts,<sup>45</sup> Guardian Courts,<sup>46</sup> Foreign Exchange Regulation Appellate Boards,<sup>47</sup> Banking Courts,<sup>48</sup> Commercial Courts,<sup>49</sup> Consumer Courts,<sup>50</sup> and Labour Courts.<sup>51</sup> The Criminal Courts include Courts of Sessions Judge,<sup>52</sup> Additional Sessions Judge,<sup>53</sup> Magistrate Section 30,<sup>54</sup> Magistrate 1<sup>st</sup> Class,<sup>55</sup> Magistrate 2<sup>nd</sup> Class,<sup>56</sup> Magistrate 3<sup>rd</sup> Class,<sup>57</sup> Special Judicial Magistrate,<sup>58</sup> Accountability Courts,<sup>59</sup> Drug Courts,<sup>60</sup> Special Courts (Central),<sup>61</sup> Special Courts (CNS),<sup>62</sup> Special Courts of Customs, Taxation, and Anti-Smuggling,<sup>63</sup> Special Courts for Offences against Banks,<sup>64</sup> Anti-Corruption Courts (Provincial),<sup>65</sup> Anti-Terrorism Courts,<sup>66</sup> Child-Protection Court,<sup>67</sup> Special Court (Protection of Pakistan),<sup>68</sup> and Special Court Public Property (Removal of Encroachment).<sup>69</sup> Similarly, the tribunals may also be classified as civil and criminal tribunals. The former include Appellate Tribunal Inland Revenue,<sup>70</sup> Customs Appellate Tribunals,<sup>71</sup> Rent Tribunal,<sup>72</sup> Insurance Appellate Tribunal,<sup>73</sup> Federal Service Tribunals,<sup>74</sup> Competition Appellate Tribunal,<sup>75</sup> Provincial Service Tribunals,<sup>76</sup> Intellectual Property Tribunal,<sup>77</sup> and the Lahore Development Authority Tribunal.<sup>78</sup> The latter include Anti-Dumping Appellate Tribunal,<sup>79</sup> Modarba Companies Tribunal,<sup>80</sup> and Environmental Protection Tribunals.<sup>81</sup> 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'<sup>82</sup> to redress the grievance of the aggrieved persons against maladministration of the executive. These ombudsmen offices are- *Wafaqi Mohtasib*,<sup>83</sup> Federal Tax Ombudsman,<sup>84</sup> Federal Insurance,<sup>85</sup> Banking,<sup>86</sup> and Federal for Protection against Harassment of Women at Workplace.<sup>87</sup> 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.<sup>88</sup> Only the legal principles and not factual determinations are of binding effect.<sup>89</sup>

In the provinces, the High Courts supervise all the subordinate courts and are the principal courts.<sup>90</sup> 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).'<sup>91</sup> 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.<sup>92</sup>

### **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.<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup>

The High Court has, in matters of winding up of companies by the Court, 'original civil jurisdiction',<sup>99</sup> 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.<sup>100</sup> The Constitutional jurisdiction is exercised under the Constitution of 1973.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> However, Section 316 of the Ordinance 1984 being special law has an overriding effect upon general law and bars the jurisdiction of Civil

Court.<sup>104</sup> 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.”<sup>105</sup>

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.<sup>106</sup> Thus, an exception has been created of the principle *coram non-judice* and proceedings before incompetent forum remain valid.<sup>107</sup> 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.<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup>

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<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> In normal practice, Intra-Court Appeal (ICA)<sup>114</sup> is the remedy before the Division Bench of the same High Court against an order passed by a Single Bench.<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup> 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<sup>118</sup> 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.<sup>119</sup>

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.<sup>120</sup> 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.<sup>121</sup> The major reason for such appointments is the absurd criteria of appointment of judges in High Courts in Pakistan.<sup>122</sup> 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.<sup>123</sup> 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<sup>124</sup> and the Supreme Court of Pakistan<sup>125</sup> 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.<sup>126</sup> 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.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup> An advocate with 10-year experience and with two-year experience is eligible for appointment as Additional District Judge and Civil Judge, respectively.<sup>130</sup> A person who holds a degree of Bachelors of Laws is eligible for appointment as an advocate.<sup>131</sup> Most universities of Pakistan only teach the 1984 Ordinance to the students of Bachelors of Laws.<sup>132</sup> 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'<sup>133</sup> of the Supreme Court of Pakistan and High Courts. The Supreme Court of Pakistan exercises original jurisdiction qua inter-governmental disputes.<sup>134</sup> It protects the fundamental rights of public importance.<sup>135</sup> It hears criminal and civil appeals against judgements or orders of High Court. It answers questions of interpretation of the Constitution.<sup>136</sup> It grants leave to appeal<sup>137</sup> and exercises advisory jurisdiction qua subjects of public importance referred to it by the President.<sup>138</sup> It issues special directions or orders to do complete justice in pending cases.<sup>139</sup> It reviews its judgments or orders.<sup>140</sup> It punishes for contempt of court.<sup>141</sup> It hears appeals from administrative courts and tribunals.<sup>142</sup> Its Shariat Appellate Bench hears appeals against judgements or orders rendered by the Federal Shariat Court.<sup>143</sup>

Similarly, five writs, i.e., *mandamus*, *habeas corpus*, prohibition, *certiorari*, and *quo warranto*<sup>144</sup> are issued by the High Court. It also enforces fundamental rights,<sup>145</sup> supervises subordinate courts,<sup>146</sup> and penalises for contempt of court.<sup>147</sup> The High Court hears criminal and civil appeals,<sup>148</sup> review,<sup>149</sup> and revision.<sup>150</sup> The High Court of Sindh has original jurisdiction in civil cases valued 15 million rupees and

above.<sup>151</sup> The High Court's original jurisdiction qua civil cases is one hundred million rupees and above.<sup>152</sup>

Tribunals are comprised of judicial and technical members.<sup>153</sup> 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.<sup>154</sup> 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<sup>155</sup> and adopting summary procedure.<sup>156</sup>

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.<sup>157</sup> 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.<sup>158</sup> 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.<sup>159</sup> Also, the Constitutional courts are primarily meant for interpretation of the Constitution and

law.<sup>160</sup> 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.<sup>161</sup> 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.<sup>162</sup>

### **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  Technical Members	Past or present Judge of Supreme Court or the Chief Justice of a High Court  Past or present Judge of High 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 1 <sup>st</sup> 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	Chairman Judicial Member	Past or present Judge of a High Court or eligible for appointment as Judge of High

	Tribunals	Technical Member	Court. Person of professional qualification and experience in the environment.
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## Notes and References

- <sup>1</sup> The Holy Quran, 16:90. See also: Latin maxim. *Fiat Justitia, Ruat Coelum*.
- <sup>2</sup> The message of Chief Justice of Lahore High Court, Lahore as displayed on official website of Lahore High Court Lahore. <[www.lhc.gov.pk](http://www.lhc.gov.pk)> last accessed 17 July 2016.
- <sup>3</sup> Hamid Khan, *Constitutional and Political History of Pakistan* 2<sup>nd</sup> edition, (London: Oxford University Press, 2009), 562.
- <sup>4</sup> Dr Faqir Hussain, *The Judicial System in Pakistan*, 4<sup>th</sup> edition (Islamabad: Federal Judicial Academy, 2015).
- <sup>5</sup> Companies Ordinance 1984, Section 7. See also, Companies Act, 2017, Section 5.
- <sup>6</sup> It was established by SECP to review company law in Pakistan.
- <sup>7</sup> Companies Act, 2013 (Sections 408 and 410).
- <sup>8</sup> Nasrullah Khan Baber, *Company Law and Practice in Pakistan* (Lahore: Fajar Publications House, 2006).
- <sup>9</sup> A.G. Chaudhary, *Company Law in Pakistan: A Commentary on the Companies Ordinance, 1984*, Reprint Edition (Lahore: Khyber Publishers, 2012).
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- <sup>11</sup> Ahmed Nafeer, *Company Law* (Lahore: Punjab Law Books Publishers, 2015); Mehmood Shaukat, *Company Law* (Lahore: Legal Research Centre, 2013).
- <sup>12</sup> Avatar Singh, *Company Law*, 14<sup>th</sup> edition (Lahore: Mansoor Law Book House, 2004).
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- <sup>14</sup> Gower and Davies, *Principles of Modern Company Law*, Paul Davies and Sarah Worthington (eds.), 9<sup>th</sup> edition, (London: Sweet & Maxwell Ltd., 2012).

- <sup>15</sup> Sir Francis Beaufort Palmer, *Company Law*, Clive M. Schmitt et. al. (eds), 23<sup>rd</sup> edition, (London: Stevens & Sons Ltd., 1982).
- <sup>16</sup> The Constitution of Pakistan 1973 also endorses the principle of separation of power.
- <sup>17</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> edition (London: Oxford University Press, 2009), 562.
- <sup>18</sup> National Judicial Policy, Foreword by Chief Justice of Pakistan (2009).
- <sup>19</sup> G. Allana, *Pakistan Movement Historical Documents* (Karachi: Department of International Relations, University of Karachi, 1969), 407-411.
- <sup>20</sup> *A.F. Ferguson & Co Chartered Accountants v SECP etc*, CLD 1433 (Kar), 2009.
- <sup>21</sup> He is former Chief Justice of Pakistan, Supreme Court of Pakistan, Islamabad.
- <sup>22</sup> Address by Tassaduq Hussain Gillani, Chief Justice of Pakistan, Inaugural Session, International Judicial Conference, Islamabad, 18 April 2014.
- <sup>23</sup> Irum Khalid, "Role of Judiciary in Evolvement of Democracy in Pakistan," *Journal of Political Studies*, Vol. 19, Issue 2, 125-142, (2012).
- <sup>24</sup> Ibid.
- <sup>25</sup> Karimullah Adeni, "IP courts: are we ready for them?" in Dawn , 16 November 2015.
- <sup>26</sup> 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.
- <sup>27</sup> The Courts established under the Constitution, e.g., Supreme Court of Pakistan and High Courts, etc.
- <sup>28</sup> The Courts established under the Statute, e.g., District Court or Family Court, etc.
- <sup>29</sup> 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).

- <sup>30</sup> Constitution of Pakistan 1973, Article 175 (1).
- <sup>31</sup> Constitution of Pakistan 1973, Article 203 (c).
- <sup>32</sup> Ibid.
- <sup>33</sup> Constitution of Pakistan 1973, Article 175 (1).
- <sup>34</sup> Ibid.
- <sup>35</sup> Ibid.
- <sup>36</sup> Ibid.
- <sup>37</sup> <<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.
- <sup>38</sup> <<http://thelawdictionary.org/criminal-Court/>> accessed 19 July 2016. The name of the Court where criminal cases are tried and not civil cases.
- <sup>39</sup> Civil Courts Ordinance, 1962, Section 5.
- <sup>40</sup> Ibid, Section 6.
- <sup>41</sup> 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.
- <sup>42</sup> Ibid, Section 5. Furthermore, Section 9 of the Ordinance 1962 and notifications issued by High Court classify the Civil Judges among 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>.
- <sup>43</sup> Ibid.
- <sup>44</sup> Ibid.
- <sup>45</sup> West Pakistan Family Courts Act, 1964, Section 3.
- <sup>46</sup> The District Court having jurisdiction under section 9 of the Guardian and Wards Act, 1890.
- <sup>47</sup> 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.

- <sup>48</sup> It is established under the Financial Institutions (Recovery of Finances) Ordinance, 2001.
- <sup>49</sup> It is established under the Imports and Exports (Control) Act, 1950.
- <sup>50</sup> It is established under Punjab Consumer Protection Act, 2005, Section 26.
- <sup>51</sup> It is established in the Province of Punjab under the Punjab Industrial Relations Act, 2010.
- <sup>52</sup> Code of Criminal Procedure 1898, Sections 6(1) and 9.
- <sup>53</sup> 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.
- <sup>54</sup> Code of Criminal Procedure 1898, Sections 6(2), 12 and 30.
- <sup>55</sup> Ibid, Sections 6(2) and 12.
- <sup>56</sup> Ibid.
- <sup>57</sup> Ibid.
- <sup>58</sup> Ibid, Section 14.
- <sup>59</sup> It is established under the National Accountability Bureau Ordinance, 1999.
- <sup>60</sup> It is established under section 31 of the Drugs Act, 1976.
- <sup>61</sup> It is established under Pakistan Criminal Law Amendment Act, 1958.
- <sup>62</sup> It is constituted under the Control of Narcotics Substances Act, 1997.
- <sup>63</sup> It is established under section 185 of the Custom Act, 1969.
- <sup>64</sup> It is established under offences in respect of Banks (Special Courts) Ordinance, 1984.
- <sup>65</sup> It is established under Criminal Law Amendment Act, 1958.
- <sup>66</sup> It is established under section 13 of Anti-terrorism Act, 1997.

- <sup>67</sup> It is established under the Punjab Destitute and Neglected Children Act, 2004
- <sup>68</sup> It was established under Section 8 (i) of Protection of Pakistan Act, 2014.
- <sup>69</sup> Sindh Public Property (Removal of Encroachment) Act, 2011, Ss 25 and 26.
- <sup>70</sup> It is established under the Income Tax Ordinance, 2001.
- <sup>71</sup> It is established under the established under section 194 of the Customs Act, 1969.
- <sup>72</sup> It is established under the Punjab Rented Premises Act, 2012, section 16.
- <sup>73</sup> 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.
- <sup>74</sup> It is established under the Constitution of Pakistan 1973, Article 212. See also: Service Tribunal Act, 1973.
- <sup>75</sup> It is established under the Competition Act, 2010, Section 43. It works at Islamabad.
- <sup>76</sup> It is established under the Punjab Service Tribunals Act, 1974, Section 3.
- <sup>77</sup> It is established under the Intellectual Property Organisation of Pakistan Act, 2012.
- <sup>78</sup> It is established under the Lahore Development Authority Act, 1975, Section 25-C.
- <sup>79</sup> It is established under the Anti-Dumping Ordinance, 2000.
- <sup>80</sup> It is established under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance 1980, Section 24.
- <sup>81</sup> It is established under the Environmental Protection Act, 1997.
- <sup>82</sup> A person appointed by governments to investigate complaints from citizens against large organisations. Available at <<http://thelawdictionary.org/ombudsman/>> (last accessed on 19 July 2016).

- <sup>83</sup> It is established under the Office of Wafaqi Mohtasib (Ombudsman), Order 1983, section 3.
- <sup>84</sup> It is established under the Federal Tax Ombudsman Ordinance 2000, Section 3.
- <sup>85</sup> It is established under the Insurance Ordinance 2000, Section 125.
- <sup>86</sup> It is established under the Banking Companies Ordinance 1962, Section 82-A.
- <sup>87</sup> It is established under Protection against Harassment of Women at the Workplace Act, 2010, Section 7.
- <sup>88</sup> Constitution of Pakistan 1973, Article 189.
- <sup>89</sup> Muhammad Munir, *Precedents in Pakistan* (Karachi: Oxford University Press, 2014), 10.
- <sup>90</sup> The Constitution of Pakistan 1973, Article 203.
- <sup>91</sup> 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.
- <sup>92</sup> Dr Faqir Hussain - Registrar Supreme Court of Pakistan, *The Judicial System in Pakistan*, 4<sup>th</sup> edition (Islamabad: Federal Judicial Academy, 2015) 47.
- <sup>93</sup> Companies (Court) Rules, 1997, Rule 2(e).
- <sup>94</sup> 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.
- <sup>95</sup> Companies Ordinance, 1984, Section 7(1); Contra: the State v Director General FIA, PLD 2010 Lah 23.
- <sup>96</sup> 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.
- <sup>97</sup> Companies Act, 2017, Sections 5 and 6.
- <sup>98</sup> Companies Ordinance, 1984, Sections 8.

- <sup>99</sup> Companies Ordinance, 1984, Section 7. See: *Mehr textile Mills Ltd v Investment Corporation of Pakistan*, 2005 SCMR 1328.
- <sup>100</sup> *Muzamil Sultan v FOP*, PLD 2013 Lah 353; *Sunrise Textile v Mashreq Bank*, PLD 1996 Lah 1.
- <sup>101</sup> Constitution of Pakistan, 1973, Article 199.
- <sup>102</sup> Companies Ordinance, 1984, Section 316(2).
- <sup>103</sup> Code Civil Procedure Code, 1908, Section 9.
- <sup>104</sup> Under the principles of interpretation of statutes, special laws prevail over general law.
- <sup>105</sup> Companies Ordinance, 1984, Section 301(2).
- <sup>106</sup> *Ibid*, Section 7(3).
- <sup>107</sup> A Latin Maxim which means- an act without authority. See: UK, Insolvency Act, 1986, Section 118 whereby proceedings before wrong court are valid.
- <sup>108</sup> Companies Ordinance, 1984, Section 316(3). See: *Premier Insurance Company Ltd v Messrs Mackinnon Mackenzie & Company*, 2002 CLD 1673.
- <sup>109</sup> *IDBP v Messrs Valibhai Kamarudin Ltd.*, SCMR 415, 2002.
- <sup>110</sup> Companies Ordinance, 1984, Section 308.
- <sup>111</sup> *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.
- <sup>112</sup> 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.
- <sup>113</sup> 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.
- <sup>114</sup> 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.

- <sup>115</sup> Law Reforms Ordinance, 1972, Section 3.
- <sup>116</sup> Code of Civil Procedure, 1908, Section 100.
- <sup>117</sup> Companies Act, 2017, Section 6(14).
- <sup>118</sup> 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).
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- <sup>120</sup> Companies Act, 2013, Sections 408, 410.
- <sup>121</sup> Hamid Khan, *Constitutional and Political History of Pakistan*, 2<sup>nd</sup> edition, (London: Oxford University Press, 2009), 563.
- <sup>122</sup> Constitution of Pakistan, 1973, 18th and 19th Amendment. Judicial Commission of Pakistan and Parliamentary Committee.
- <sup>123</sup> 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*, 2<sup>nd</sup> edition (London: Oxford University Press, 2009), 562.
- <sup>124</sup> Annual report 2015 of Lahore High Court Lahore; Annual Report 2015 of High Court of Sindh.
- <sup>125</sup> 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.
- <sup>126</sup> Companies Ordinance, 1984, Section 9.
- <sup>127</sup> The appeal was filed in, 1972 and was decided in 1986.
- <sup>128</sup> Constitution of Pakistan, 1973, Article 177(2).
- <sup>129</sup> *Ibid.*, Article 193(2).
- <sup>130</sup> Punjab Judicial Service Rules 1994, Rule 7.



- <sup>131</sup> Legal Practitioners and Bar Council Act 1973, Section 26 whereby law degree is the major requirement.
- <sup>132</sup> University of the Punjab Lahore, University of South Asia Lahore, Bahaudin Zakria University Multan.
- <sup>133</sup> Original, Appellate, Revision, constitutional jurisdiction of High Courts and Supreme Court of Pakistan.
- <sup>134</sup> Constitution of Pakistan 1973, Article 184(1).
- <sup>135</sup> Ibid., Article 184(3).
- <sup>136</sup> Ibid., Article 185(2).
- <sup>137</sup> Ibid., Article 185(3).
- <sup>138</sup> Ibid., Article 186.
- <sup>139</sup> Ibid., Article 187.
- <sup>140</sup> Ibid., Article 188.
- <sup>141</sup> Ibid., Article 204.
- <sup>142</sup> Ibid., Article 212.
- <sup>143</sup> Constitution of Pakistan 1973, Article 203F.
- <sup>144</sup> Ibid, Article 199(1); Code of Criminal Procedure 1898, Section 491.
- <sup>145</sup> Constitution of Pakistan 1973, Article 204.
- <sup>146</sup> Ibid., Article 203.
- <sup>147</sup> Ibid., Article 184(1).
- <sup>148</sup> Code of Civil Procedure 1908, Section 100; Code of Criminal Procedure 1898, Section 410; Law Reforms Ordinance 1972, Section 3.
- <sup>149</sup> Ibid., Section 114.
- <sup>150</sup> Ibid., Section 115.
- <sup>151</sup> Website of the Sindh High Court, available at <[www.sindhhighcourt.gov.pk/jurisdiction.php](http://www.sindhhighcourt.gov.pk/jurisdiction.php)> (last accessed on 27 July 2016).
- <sup>152</sup> Islamabad High Court Act, 2010, Section 4.
- <sup>153</sup> Companies Act, 2013, Sections 409, 411.

- <sup>154</sup> Perusal of reported judgments of Superior Courts of Pakistan reveal that different Honorable Judges decided company matter in almost each year.
- <sup>155</sup> Companies Ordinance, 1984, Section 9. *Mian Javed Amir v United Foam Industries Ltd.*, 2016 SCMR 213.
- <sup>156</sup> *Mian Javed Amir v United Foam Industries Ltd.*, 2016 SCMR 213; Contra: *Muhammad Aslam Javed v Malik Ejaz Ahmed*, 2003 YLR 2150.
- <sup>157</sup> "Special Courts and Tribunals, Law and Justice Commission of Pakistan," *Annual Report, 2014*.
- <sup>158</sup> *Messrs Glorex Textiles Ltd. v Investment Corporation of Pakistan*, 1999 SCMR 1850; ., 2004, SCMR 1443.
- <sup>159</sup> *Ch. Muhammad Hussain v Khiali Paper and Board Mills Pvt Ltd.*, 2005, CLD 636.
- <sup>160</sup> Justice Fazal Karim, *Access to Justice in Pakistan*, 3<sup>rd</sup> edition, (Lahore: Pakistan Law House, 2012), 35.
- <sup>161</sup> Companies Act, 2013, Sections 408, 410.
- <sup>162</sup> Karimullah Adeni, "IP courts: are we ready for them?" *Dawn*, 16 November 2015.

# INDO-US PARTNERSHIP: FROM ESTRANGEMENT TO ENGAGEMENT

SABAHA KHURSHID\*

## Abstract

*South Asian region has a great significance for the world powers and also for regional states because of their strategic interests. It has been more than 50 years since the independence of the South Asian countries but their political and economic situation is uncertain. The United States is considered one of the oldest democracies and India is considered the world's largest democracy. The perception is that if the world's two greatest democracies engage in a partnership, it will ultimately result in ensuring peace and stability in the region. The Indo-US partnership has gone through many ups and downs. This partnership has earlier faced estrangement and after a few years, it transformed into a strong bond based on the convergence of interests. This research aims to analyse the factors that contributed to the convergence of the interests of both states and how far both of them have come. The research also evaluates the security concerns for Pakistan.*

**Key Words:** *India, US, strategic partnership, engagement*

## Introduction

After the disintegration of the Soviet Union, the US started asserting supremacy over a unipolar world militarily and politically. The short-term priorities of US policymakers did not make them lose sight of their long-term priorities and interest. The US is aiming to

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achieve and then sustain its dominant position in the South Asian region.

The relationship between India and the US has been complex. The relationship between the two countries has been cold for the first few decades since Indian independence. During the Cold War, both countries had taken a ride of a rollercoaster in their relationship, i.e., sometimes at peak and sometimes below the average line. Other than this, there existed a kind of mistrust between both states. Because both the countries have so much in common, they did not succeed in convincing each other for their respective policies. This resulted in the creation of a vacuum between them. The Cold War era gave rise to two factions. One having the US and its allies and the other having the Soviet Union and its allies. India adopted the policy of non-alignment and tried to struggle for new world order. It was done by keeping good relations with both the factions of the Cold War. India, at that time, decided not to be a part of either side and tried to create a world order consisting of countries that were not interested in becoming a part of either side. Referred to as the non-alignment policy,<sup>1</sup> the states pursuing it were termed as non-aligned states. Considering all this and even though India declared itself to be a non-aligned state, it failed to convince and build a level of confidence among the American think-tanks and became a strategic partner of the Soviet Union in 1965. Since then, there has existed an air of mistrust between India and the United States. The reason for this was the Pakistan-centric US policies and its disregard for Indian interests. US mistrust was compounded by the fact that India supported the Soviet Union during the Cold War. In the post-Cold War era, there were some serious efforts from both sides towards strengthening the relationship.

This research paper aims to assess the evolution of the Indo-US relationship. It evaluates how India and the United States moved from estrangement to engagement and the factors that led to the

convergence of interests of both states. Besides, it discusses the security implications of the Indo-US engagement for Pakistan.

### **The Cold War Era**

The history of the two states, i.e., India and the United States, has roots in the year 1492. This was the time when Columbus discovered America during his search for a new route to India. Later on, when the Japanese attacked Pearl Harbour during the Second World War, the President of the United States Franklin D. Roosevelt realised that the United States could use India as a base for conducting operations against Japan. This made the Roosevelt administration realise that India could only provide them with assistance if they showed interest in the Indian political crisis. Therefore, in 1941, there was an exchange of diplomatic personnel between the United States, India, and the British government.<sup>2</sup> President Roosevelt wanted a solution to the political turmoil in India but he refrained from any direct involvement in the British colony. President Roosevelt sent a telegram to Sir Winston Churchill, the then Prime Minister of Great Britain, on 10 March 1942 in which he suggested to form a government in India that would represent different religious, cultural, and geographical groups along with the provinces belonging to the British and native princes, and it could be called a temporary 'Indian Dominion Government'.<sup>3</sup> In April 1942, Roosevelt appointed Colonel Louis Johnson as an Ambassador to India but, in fact, he was sent as his representative.<sup>4</sup> While the Cripps Mission stayed in Indian territory, Colonel Johnson held meetings with several political leaders and it was thought that all this was done under special instructions of President Roosevelt. Colonel Johnson also took a part in the Cripps Mission dialogues and negotiations, which was appreciated by India,<sup>5</sup> as it was the first time that the United States took interest in the Indian problem and tried to make efforts in finding a solution. But later the Cripps mission failed to show any results due to which Roosevelt was

quite disappointed. On 11 April 1942, Roosevelt wrote a letter to the British Prime Minister to express his disappointment on the failure of the Cripps Mission.<sup>6</sup> Although the Mission failed to succeed, it laid the foundations for the future Indo-US political relationship.

The independence of India, however, was the start of the official relationship with the United States. India got independence from the British rule on 15 August 1947. It was a new beginning for the Indo-US relationship. Despite the vast geographical distance as well as differences in norms, cultures, race, and traditions, there were the following similarities between India and the United States.

- India and the United States had been colonised by the same major power, i.e., Great Britain.
- Both India and the United States got freedom through political struggles. The US got freedom through an armed resistance while India adopted the strategy of getting freedom without violence.<sup>7</sup>

In the Cold War, the United States pursued a policy of containing communism, whereas India adopted the policy of non-alignment.<sup>8</sup> This was a major difference that obstructed their relationship. India refused to become a part of any alliance and its stand on different international issues was not liked by the Americans. Whereas American support to Pakistan on the Kashmir issue along with military aid and support to Pakistan on Bangladesh issue was not welcomed by the Indians.<sup>9</sup>

As India and Pakistan locked horns over Kashmir, India took the matter to the United Nations Security Council on 1 January 1948.<sup>10</sup> India did not appreciate the role played by the US during this time, including at the United Nations Security Council (UNSC), as it considered it in support of Pakistan.<sup>11</sup> The US considered Pakistan strategically important for its future plans in the region. The solution to the Kashmir issue was important for obliging Pakistan in future.<sup>12</sup>

There was serious criticism of India in the US. One of the headlines in a leading newspaper of the US published a story with a title, 'India Hides behind Russia's Veto'.<sup>13</sup> Furthermore, the US-supported Portugal—a member of the NATO—in the Goa crisis.<sup>14</sup> Later, in 1962, when China invaded India's northern territories, India asked for military assistance from the UK and the United States.<sup>15</sup> They provided aid but with the condition of solving the Kashmir issue by negotiating it with Pakistan.<sup>16</sup> The aid provided by the US was to restrict Chinese communism.

In 1975, the United States lifted a decade-old ban on the trade of arms in South Asia, which resulted in a hard reaction from the Indian side.<sup>17</sup> This made India cancel the visit of its Minister for External Affairs to the US. In 1977, the Indo-US relationship improved during the presidency of Jimmy Carter, who became the 39<sup>th</sup> President of the United States.<sup>18</sup> Due to the difference in the interests, the US and India had some difference of opinion on global issues. The US saw communist China as a threat, whereas India was somehow in favour of China becoming a member of the UN.<sup>19</sup> Differences over Diego Garcia further embittered the relationship between India and the US. It is an island located in the Indian Ocean, approximately a thousand miles from the Indian coast. The US wanted a naval base on the island, whereas India was against it. India assumed that a naval base in the Indian Ocean will result in a rivalry between great powers.<sup>20</sup> In 1968, despite being a strong supporter of nuclear disarmament, India refused to sign the Nuclear Non-proliferation Treaty (NPT), an action not appreciated by the United States.<sup>21</sup> These differences did not mean that there was a serious tension between India and the US. These developments were followed by some friendly gestures as well.

The visit of Indira Gandhi to the US in 1982 worked as an icebreaker in the Indo-US relationship.<sup>22</sup> Later, her son, Rajiv Gandhi visited the US in 1985, the year he came into power, which further strengthened the relationship.<sup>23</sup> An MoU signed regarding the transfer

of technology was appreciated in India.<sup>24</sup> The obstacles in the way of Indo-US relationship were further removed in 1986 and the relationship picked further pace in the post-Cold War era.

### **Initial Stages of Strategic Partnership**

There was a great transformation of the relationship between the two states after the Cold War. After 9/11, there was a gradual but purposeful shift in the policies of the US. It tilted its policies, especially security policies, towards South Asia.<sup>25</sup> The disintegration of the Soviet Union converged the interests of both New Delhi and Washington and they came closer. In the 21<sup>st</sup> Century, there were discussions and negotiations between India and the United States on the security aspects as well as military cooperation. It was a shift from the policy approach of the Cold War years.

The US was then looking at India to help it achieve a regional milestone in the post-Cold War era. The strategy and the policy it made for the post-Cold War era needed to be implemented and that was to strengthen its position in South Asia. To do this, the US had to have India on its side considering that the centre of gravity for the world in this region was going to be China as an emerging power and a challenge to the US. In the year 2000, after coming into power, President George W. Bush changed his policies towards the region and referred to China as a 'strategic competitor' rather than a 'partner'.<sup>26</sup> The Bush administration aspired to preserve the US national interest and started assisting India to rise and become a regional power. This Indo-US strategic partnership flourished just because of the US efforts to contain China in the region as they thought it would be a challenger to the US position in the existing world order. So the China factor played a pivotal role in strengthening this Indo-US partnership. In terms of the policy, the US and India have a China-centric policy, seeing China as a common threat bringing them closer.<sup>27</sup> India and South Korea in the South and Southeast Asia view China and its



economic and military rise as a threat. Both had already been in alliance and started increasing their military and economic ties with a non-Asian military and economic powerhouse, that is, the United States. Considering the countries in East Asia, the US has a good relationship with Japan, as Japan perceives China and North Korea as a major threat.<sup>28</sup> As China is emerging in East Asia, it is posing a threat to Australia too. This threat has brought Australia and India closer and they wish to extend their ties to the United States. A Strategic relationship and a union between Australia, Japan, and India would check Chinese strength in both the Pacific region and Asia.

### **Defence Pact of 2005**

On 28 June 2005, India and the United States signed a defence and military cooperation pact in Washington D.C.<sup>29</sup> This defence pact became highly beneficial to India for the production of weapons, assistance on the defence of missiles, and transfer of both civil and military technology and equipment to India.<sup>30</sup> It has enabled India to get access to US military technology without signing the Comprehensive Test Ban Treaty (CTBT).<sup>31</sup> This ten-year defence pact was signed for the achievement of two main goals:

- a) To assist India in emerging as a regional power to serve America's strategic goals in South Asia; and
- b) To help India expand its military might beyond its borders.

The Indo-US strategic partnership is based on common interests. It will pave new ways for India and the United States to cooperate on different levels for the coming ten years. Washington has admitted that this defence pact was to counter global security challenges and also to secure its strategic interests in South Asia.<sup>32</sup> After a long session of talks, the defence ministers of both states expressed their views in a joint press conference in which they stated that a new era of a strategic partnership between the two countries had started. The Defence Procurement Agreement was formulated on

the decision of both countries to keep a check on defence trade, collaboration in terms of technology, joint naval exercises and training, research, and development, as well as evaluation. There was a strong reason for setting up this Defence Procurement and Production Group.<sup>33</sup> The agreement helped the US rise above the criticism that it did not supply high technology equipment and weapons to India and considered its relationship with Pakistan more important.

### **Indo-US Nuclear Agreement**

In February 2006, the then President of the United States George W. Bush visited India. The two sides signed a much-hyped and discussed civil-military energy cooperation pact or agreement during the visit. The deal signed by the two states was one of its kind and created plenty of noise among the non-proliferation lobby. The reason was that the signing of the pact provided India with a shield against not becoming a part of the NPT.<sup>34</sup>

Different analysts across the globe have analysed a lot of aspects of this deal both inside and outside the South Asian region but still, they are leaving some voids. As all this discussion, analysis, and debate somehow miss the implications of this deal. Some key points have been missed. These key points need to be discussed and analysed holistically. The earlier debates were more focused on the immediate and the first-stage implications that this deal would bring but there was no consideration or strategy for the long run. The key points that were missed in most of the discussions were as follows: first, what impact would this deal have for the global stakeholders? Second, what would be the implications for Pakistan considering its rivalry with India? Third, what this deal signifies in terms of geostrategic alliances in the region? These implications were not considered at the time this deal was signed by the signatories.<sup>35</sup>

The deal of energy cooperation at that time with India was called a 'significant plum' for the US, which was considered the world's largest

democracy and it made India its strong and influential strategic partner in South Asia for the coming years.<sup>36</sup> Considering its rivalry with India, Pakistan demanded an expansion of its nuclear power plants and asked the Bush administration to help, which was rejected. Washington's deal with New Delhi for supplying new weapons and establishing an energy deal, along with the rejection of Pakistan's demand for assistance in power production was not a good idea. As speculated, the deal pushed Pakistan and the US farther from one another.<sup>37</sup> Critics in Pakistan were of the view that by signing this deal with India the US made it clear to Pakistan that it would favour India at the cost of Pakistan. The Indo-US deal had implications both regionally and globally.<sup>38</sup> Although the implications it had for Pakistan were severe, it still tried to strengthen its relationship with the US and extend cooperation in different fields.

This deal and its consequences right after it got signed exposed the fragility of the global principles in the face of national interests of powerful states. On the one hand, it provided an opportunity to states for engagements outside the NPT. On the other hand, it proved to escalate conflict and tension in South Asia. The nuclear arms race in South Asia has escalated, which has endangered peace and stability of the region and requires preventive measures to defuse tensions and reduce the chances of a nuclear mishap.<sup>39</sup>

### **Indo-US Convergence of Interests**

National interest deals with survival and protection of different types of entities against the other states.<sup>40</sup> The foreign policy of a state is always designed keeping in view the national interest.<sup>41</sup> That is why there is a relationship between foreign policy and the national interest and this is evident in international politics.

The strategic partnership between India and the United States showed that there were a lot of fields and arenas that were yet to be explored by these two countries. This strategic partnership holds a lot

of potential and strength to be a part of different sectors such as contributing in weapons and nuclear cooperation, economy, supporting GDP growth, fighting for freedom, and enhancing, maintaining, and strengthening democratic values. Their commitment and will to collaborate for the growth of the economy and to help in the growth of GDP and markets made them join hands in fighting against influenza and other viruses including HIV.<sup>42</sup>

### **Collaboration on Countering Terrorism**

9/11 marks a turning point in the history of terrorism and counter-terrorism.<sup>43</sup> Post-9/11, counter-terrorism became the key factor for cooperation between India and the US. As years passed on, the Mumbai attacks, which are also referred to as 26/11, further strengthened this partnership to counter-terrorism and also took it to the level of sharing of intelligence and capacity building.<sup>44</sup> India and the United States have been a part of an informal partnership since 2000 but they both launched a formal Counterterrorism Joint Working Group (CTJWG) in 2000. This group had to meet once or twice a year.<sup>45</sup> However, many political critics in India showed concerns and reservations over the US support to India in countering terrorism, which, in their view, poses a threat to India.

It is evident from the history of Indo-US relations that India has been upset over the US giving statements in favour of Pakistan when it came to taking action against terrorists.<sup>46</sup> India also had reservations over the US not supporting them in getting information related to terrorism and to embarrass Pakistan globally over its linkages with Kashmiri militants who, they alleged, might also have connections with Al-Qaeda. Indians believed that until the terrorism originating from Pakistan did not hit American interests, the US was not ready to act against it.<sup>47</sup> Both countries, however, worked on their loopholes and tried to work out on their differences to strengthen their partnership. Mutual cooperation among these two on issues of counter-terrorism, law enforcement, and working for democracy and

freedom had always been the key points in every Indo-US summits. This shows their partnership for countering terrorism and to get their interests served.<sup>48</sup>

The US support to Indian stance linking the global war on terror and the freedom fighting in Kashmir was a setback for the struggle. Indian strategy of defaming Pakistan as a terrorist state started picking pace after the attacks in Mumbai in 2008, where India started portraying itself as a victim.<sup>49</sup> India jumped on the Islamic terrorism bandwagon immediately after 9/11, as it fits together with its propaganda against so-called Pakistani terrorist activities. The US acknowledged Indian efforts on countering terrorism and on the other hand demanded from Pakistan to do more and stop militant infiltration into the India-Occupied Kashmir (IOK).<sup>50</sup> There was immense pressure on Pakistan on the claims of India that Pakistan supported and gave funds to the Islamic terrorist groups operating on its territory. The presence of Osama Bin Laden in Pakistan and his killing further strengthened Indian stance to call Pakistan a terrorist state.<sup>51</sup>

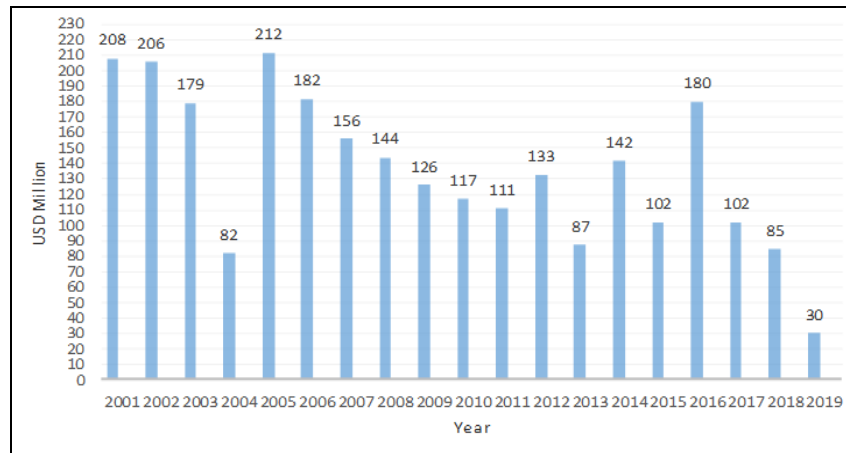
### **Economic Gains**

The year 2010 was thought to be a year of development for India. It was said that by the end of that year India would increase its imports and would outpace the imports of European nations and Japan together. The four Asian Big Emerging Markets (BEMs) include China, India, South Korea, and Indonesia. Poland, Argentina, Brazil and Mexico, and India have crucial significance in terms of world economy already, they constitute nearly 40 per cent of the world population and half the GDP of all the BEMs, this means that by the next 20 years this could mean two-thirds of the total import growth of these countries.<sup>52</sup> India has outpaced China and South Korea in the field of Biotech as it has shown significant development in this field. Not only this but the preservation of food, telecommunication, and insurance policies in the financial sector have also significantly helped in economic growth. For

the optimisation of businesses at a small scale and also for agricultural development, micro-financing schemes were introduced by the banking sector so that green revolution would turn into a reality. All these developments showed that the more you invest in development, the more will be the economic growth of a country. Other regional states have not touched the bar set by India where half of the economy is provided by the service and manufacturing sector whereas agriculture provides quarter. India has developed itself in terms of technology. Moreover, it gained an international status because of its services as it provides one-fifth of the world's software exports.

The sheer size of the Indian population allows it to utilise its human resource. India has abundant labour. Another factor that provides India with an edge over China is that before becoming rich and strong it will get old sooner.<sup>53</sup> The economic growth of India in the local and international market was a dominant factor that made the US think that it should enhance and strengthen its economic ties with India.

Emphasis has been put by India on two significant questions to be answered by the United States. On 21 December 2005, the then Indian Foreign Minister Shyam Saran visited Washington, D.C., and highlighted "closer cooperation with the international market."<sup>54</sup> Secondly, India stressed the point that development and economic growth will ultimately strengthen democracy. Furthermore, it suggests that economic growth will bring a lot of benefits and outcomes that will help in reducing poverty and suffering for the masses of the country. Ultimately it will make democracy in India successful and that is what the US wants and it will be in favour of the US strategic interests.<sup>55</sup>

**Figure 1:****US Economic Aid to India in Every Sector from 2001-2019**

Source: <https://explorer.usaid.gov/cd/IND>

**Chinese Influence**

China has shaped the Indo-US relationship since its existence. The US desired to stress and promote the concept of unilateralism worldwide during the post-Cold War era.<sup>56</sup> The Indo-US strategic partnership has vindicated all the hard work of India to gain the long-awaited regional supremacy endangering the interests of China.<sup>57</sup>

In South Asia, China is countering India's ambitions to rise as a leading world power and also to have a hold of the region. Besides, the involvement of the US in the South Asian region and the strategic partnership of India and the United States acts as a barrier in the way of its harmonious relations with the region.<sup>58</sup>

Amusingly, India's main aim is balancing its interests with various states and to become an important player and show its performance in the region as well as across the globe.<sup>59</sup> Having China as a neighbour in the region and the border issues with Pakistan resulting in war, India began to develop and adopted a nuclear policy. It was done to balance the threat and competition in the region. India gained nuclear weapons and proclaimed the nuclear doctrine in 1974

stating that the weapons were for a peaceful purpose and not a threat. But the friendship of Pakistan and China is old enough and they are on the same page regarding the security concerns and also on the Kashmir issue. That is why China is ambivalent towards India.<sup>60</sup> Some experts argue that it is China that compelled India to become a nuclear state just to balance the competition in the region.

### **War in Afghanistan**

India and Afghanistan had close ties before the rise of the Taliban. India had always supported and assisted Afghanistan in the initiation of propaganda against Pakistan. When the Soviets invaded Afghanistan, the Indian intelligence agency and government supported the Soviets against the mujahideen. The attacks of 9/11 came as an opportunity for India to make its way back into the Afghan soil. From then on, India has tried to adopt high-level diplomacy for its engagement in Afghanistan. According to Indian claims, their high-level engagement in Afghanistan is because it wants peace and stability along with the development in the country. However, that is so not true. India may have some hidden agenda behind it considering its economic and strategic interests.<sup>61</sup>

Following are some of the economic interests of India in Afghanistan:

- Afghanistan provides a gateway to the Central Asian states;
- Afghanistan will provide grounds to India to counter China's growing influence in the Central Asian states;
- After completion of India's Chabahar Port project in Iran, Indian goods will be transported to Afghanistan circumventing the route of Pakistan;
- Afghanistan will serve as a market for Indian goods; and
- India's presence in Afghanistan will help it to become a part of major projects regarding Pakistan.<sup>62</sup>

The strategic interests include:

- India will have an upper hand in Afghanistan against Pakistan;



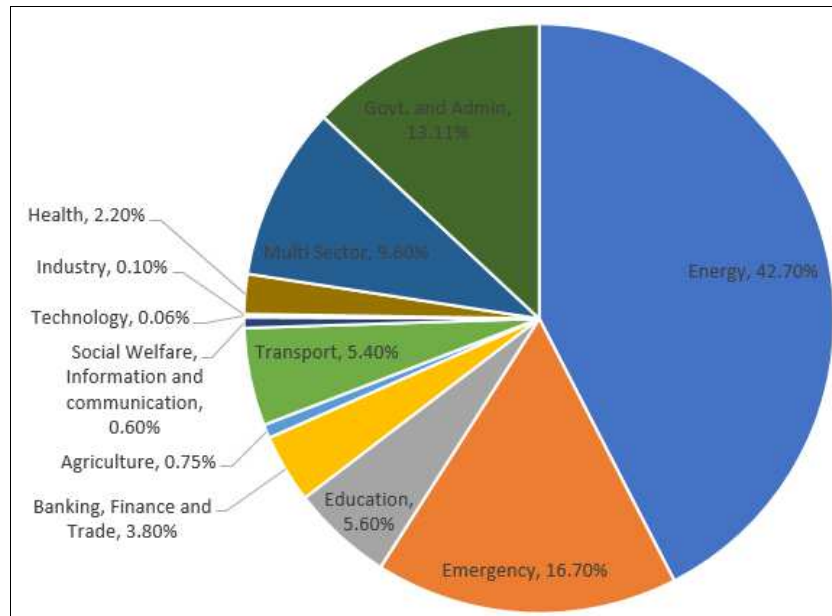
- Increasing the presence of India in every field including politics and development;
- Have a pro-India Afghan government;
- To establish a strong opposition against China's growing economic influence in Central Asian Republics (CARs); and
- Establishing an opposite land route against Gwadar Port to Afghanistan and CARs.<sup>63</sup>

After 9/11, Indians were brought by the United States into Afghanistan for its interests.<sup>64</sup> Afghanistan's support to India for conducting operations in Pakistan from Afghan territory shows that the US is aware of this collaboration and the jihadi and terrorist organisations operating in Pakistan. 9/11 brought India and the United States closer in Afghanistan along with collaborating on other regional and global issues. The interests of India and the United States converged in Afghanistan at the following points:

- To keep an eye on Pakistan and its activities regarding nuclear capability;
- Using Afghanistan for getting access to the oil/gas enriched states of Central Asia;
- Countering China's growing economic and development progress in Central Asia by increasing its military presence in Afghanistan;
- To have a government in Afghanistan that will serve their interests;
- Diffusing Pakistan's involvement in Afghanistan deeply by supporting Northern Alliances;
- To become a part of any great oil/gas project that has something to do with Pakistan;
- To influence the internal issues Pakistan is facing like Balochistan and water issues; and
- India's activities in Balochistan to create hurdles in the way of the China-Pakistan Economic Corridor (CPEC).

**Figure 2**

**Sector-wise Division of Indian Assistance in Afghanistan from  
2006 to 2017**



*Source: Indian Development Cooperation Research, Centre for Policy Research*

### **Security Concerns for Pakistan**

The strategic partnership between India and the US, which consists of a 10-year agreement and a nuclear agreement, the United States may have made up its mind to give greater consideration and importance to India. This has given rise to doubts and speculations in the US and countries of the South Asian region who were alarmed because of concerns related to nuclear proliferation. The most important difference was that the Bush administration was planning to sign a nuclear deal with a non-signatory state of the NPT. This was a serious distinction. Besides, the agreement did not impose any sort of check on the nuclear ability of India for security and defence motives. It gave rise to serious challenges for the Asian states, especially for those that had outstanding disputes with India. George W. Bush took a

critical yet very unfavourable step by giving nuclear technology to a state that had not yet signed the NPT.<sup>65</sup>

No essential restrictions were imposed on the ability of India to make nuclear arms. The deal had geopolitical implications for the US strategy on Asia.<sup>66</sup> Pakistan's security is threatened because of the Theatre Missile Defence (TMD) system<sup>67</sup> in which India has superiority due to the defence deal between the two states. The existence of a nuclear environment would involuntarily give rise to threats, chaos, and turmoil in the South Asian region. In addition to that, activating the Proliferation Security Initiative (PSI)<sup>68</sup> is an indication of disparity in the region. The PSI is a fragment of the US concept of 'coalition of the willing', which intends to denounce the worldwide law of the sea by allocating the members of its union the right to cease trading of doubtful transportation of WMD stuff and equipment on the international waters.<sup>69</sup> Under the Indo-US strategic partnership, maritime security is nothing but a reason to keep safe the maritime region that would induce serious maritime problems between the two arch-rivals in the Indian Ocean, i.e., Pakistan and India, and in the seven seas as well. The world has been coming in contact with the new opportunities along with new challenges for the past so many years. The neighbouring states of India have serious concerns and reservations over the development that is making India play an oversized role in the region. Also, India may assume itself as a regional policeman and it is all because of the support the US is giving to India. Additionally, India has supported insurgencies in Sri Lanka and its evidence of links with Nepal and Bangladesh are also doubtful as mentioned in *Views Differ on JC. U.S. Energy Deal with New Delhi* by Steven Fidler.<sup>70</sup> The US had been giving a lot of importance to India and considers it to be an important sphere of influence in the South Asian region.<sup>71</sup> The Bush administration praised New Delhi to intensify its already substantial commitment with Kabul.<sup>72</sup>

The first term of Bush was marked by a conversion when India was forced by the then Secretary of State to limit its communication with the Karzai government and also to limit its support to the post-Taliban establishment as it was disliked by the then President of Pakistan Gen. Musharraf.<sup>73</sup> In March 2004, Pakistan was given a status of a major non-NATO ally in appreciation of its support in the war on terror in Afghanistan by the US. In June 2005, however, India was given a status of the 10-year long-term ally, which resulted in a strategic imbalance in the South Asian region.

The tribal areas of Pakistan were affected badly by the presence of NATO forces in Afghanistan, which were led by the US. These elements had been a cause of tension between Pakistan and the US. Other than this, the Indo-US partnership without a doubt had been supporting and bracing the involvement of India in Afghanistan. President Bush on his visit to New Delhi in March 2006 stated in a speech that he wanted to thank and appreciate the nation and the government of India for accepting and assisting a newly formed democracy in the region, i.e., in Afghanistan.<sup>74</sup> Furthermore, India has promised aid of about \$565 million for reconstruction and almost \$50 million for the construction of the new building of the Afghan lower house.

The United States has failed to avert the comeback of the Taliban in Afghanistan.<sup>75</sup> Pakistan's efforts to address the concern was seen as doubtful by the US. Consequently, India was encouraged to start deadly propaganda against neighbouring Pakistan for providing shelter and assistance to the terrorists. A grave security concern for Pakistan is that the new Indo-US defence cooperation will make India have more authority and presence in Afghanistan. The deal on missile and defence cooperation between the two nuclear allies, i.e., India and the US, is a major concern for Pakistan. These developments in the fields of defence and missile technology were explained by George Koblentz that the accession of Anti-Ballistic Missile (ABM) by India is an

effort to dispossess Pakistan of its guaranteed ability to strike back and it would be a threat to the nuclear balance in South Asia. The Government of Pakistan feared that during a crisis, it would not be able to perceive the first attack by India, which would depend on the ability of its defence system of missiles.<sup>76</sup>

Pakistan had strong reasons to show its reservations over it as it was capable to diminish the retaliation by Pakistan in terms of nuclear war. Also, it would give India an edge against Pakistan and could tangle Pakistan in a conventional war without any threat of strike from Pakistan's nuclear defence. Some gaps in the security balance of the region may have an impact and end up in chaos and restlessness in the region.<sup>77</sup> India is committed to access more developed and refined arms to decrease the deterrence and nuclear ability of Pakistan giving more strength to India's nuclear defence. The Indo-US cooperation in terms of defence is not maintaining balance in the South Asian region and ultimately it would have chaotic effects for Pakistan's missile defence ability. The undermining results of the advance supply of arms to India for South Asia need to be highlighted. The strategic balance in the region would get dismantled by the supply of the ABM system to India.

There has been a geopolitical shift in the region after the strategic partnership between India and the United States and it has raised some serious concerns for China.<sup>78</sup> As the newspapers and other sources in Beijing that are the representative of the Communist Party of China have asserted that every nuclear state has its allies according to its interests. The intimate terms between China and Pakistan and China's serious efforts to strengthen Pakistan's military capability had always been seen by the US with suspicion. On the other hand, China is aware of the growing military capability of India and is also keeping an eye on the strategic partnership that is strengthening India. China has been rankling in the hearts of the US policymakers for quite a long time as the US dream of dominating the region is endangered by the

rise of China and it is reasonable according to the US to make India stand strong to balance the weight and counter China in the region.<sup>79</sup>

A talk between the US Under-Secretary and the Indian Secretary was made public by the Daily *Telegraph* in its report, which highlighted that China had been discussed extensively during the conversation and that US aim was not to contain China.<sup>80</sup>

China has not yet come up with any policy against the US supply of arms to India. The partnership may result in a geopolitical shift in the region. This will ultimately challenge the sovereignty of small South Asian states. That is why the US is making India powerful to help in the US imperial outreach and to deal with any kind of crisis in the region. This Indo-US partnership would result in the launching of different ventures in the name of countering terrorism, which would be directly threatening the freedom, peace, and harmony of the world. India and the US will work side-by-side to support each other and grow the military capability of India to counter China on the one hand and to counter terrorism emanating from the 'Muslim World' on the other.<sup>81</sup>

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# GLOBALISATION-INDUCED BRAIN-DRAIN AFFECTING ACADEMIC FACULTY'S PROFESSIONALISM AT THE HIGHER LEVEL

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## Abstract

*This paper assesses the effects of globalisation in terms of brain-drain on the professionalism of the teachers of higher education institutions in Pakistan. The research is based on a survey method. The target group consisted of 11,092 faculty members of HEC-recognised universities located in Islamabad. By using a convenience sampling technique, 198 faculty members were selected as sample. To measure the intention to migrate Planning and Preparation for Opportunities Assessment scale was used. Professionalism Assessment scale was used to assess teachers' professionalism. The data revealed that the intention to migrate was having a significant effect on the professionalism of the teachers. Female faculty members were found to be significantly more inclined to migrate and better in their professionalism as compared to male faculty members. The faculty members between the ages of 46 and 55 were significantly better in professionalism. Teachers who had completed their PhD were more inclined toward migration in search of opportunities. The faculty having over 15 years of*

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*experience was also found to be significantly more inclined to migrate. They were also better in professionalism as compared to the other respondents. The paper recommends that teachers need to be incentivised by the government to make them resist the temptation to migrate, such as high salary, participation in departmental decisions, appreciation certificates, job security, etc.*

**Key Words:** *brain-drain, professionalism, classroom environment management, instruction and assessment strategy, professional attitude*

## **Introduction**

With rapid changes in information technology, communication is becoming increasingly easier. Every new development across the globe is shared by people living in different parts of the world due to fast means of communication. This is only one aspect of what is referred to as globalisation. Globalisation refers to the inter-relationship and inter-linkage between countries and people living far away from each other but connected and aware of the happenings around the globe. This is the reason that the world is referred to as a global village.

With the development of new ways of communication and transportation, fields like trade, travelling, and tourism expanded. As people nowadays have the facilities to travel, communicate, and interact with areas far away from them more easily and swiftly, the significance of space between countries and people has diminished. New ways of living in the world have enabled people to interact with others living at distances of miles to share ideas, culture, trade, communication, information, entertainment, earning, investment, and migration. It has also improved people's lifestyles.

With better and more efficient communication infrastructure, it has become easier to communicate and travel. The print and electronic media have made it possible for us to see news from all parts of the world by just having a television at our home by reading a



newspaper every morning, by clicking a search engine via our internet system, or by having a look at our smartphones. Rapid advancement in technology has brought people together. With the rising awareness and swift means of transportation, new horizons for skilled people to find opportunities to acquire education, jobs, better living conditions, social security, and a desirable lifestyle have opened up. This has given birth to the concept of migration towards the developed countries to improve the standard of life. People living in developing and under-developed countries are more likely to move to other parts of the world where they can earn better and give better education and life to their children. In these efforts, the skilled and intelligent minds leave their country and serve other countries, while their own country needs them for its economic development. This is referred to as brain-drain.

Brain-drain is one of the most common and sensitive issues faced by the majority of developing and under-developed countries. Lifestyles and living standards are changing with the effects of globalisation. With the wave of globalisation, the world has transformed into a global village. Nowadays, it has become much easier to move and migrate to any country in search of better facilities and job opportunities. That is the major cause of brain-drain from the developing countries to the developed ones.

Pakistan is also facing brain-drain. The government invests through the system of education in each child of the country. Depending upon the ability of the children, they move on through the stages of education. Some leave their education at primary level, some leave it at the secondary level, and some leave at the graduation level. However, there are a few who reach higher levels of education. It means that those who reach higher levels have spent more years in the educational institutions and the government has spent more money on their development. That is why we look at them as the future of the country. Moreover, only a few reach MPhil and PhD level. These are the finest products of the education system. This, for them,

should be the time to serve the nation. Unfortunately, after this, the majority of the professionals from all fields of education move or try to move towards the developed countries in search of a good salary and job facilities. At the same time, their own country's government has to hire professionals for its own country from other countries who in return take heavy salaries and this income is indirectly transferred to their countries. Like all other professions, the teaching profession is also facing the same situation. Already, in Pakistan, teachers are still fighting for a better status. When a highly qualified teacher does not get any suitable or desirable job, he or she moves in search of better opportunities. Tertiary level education is the most important step of education and thus we need more skilled and competent faculty at this stage to handle the future of the nation. In this situation, brain-drain is a real challenge for the administrative authorities and the government.

This study assesses the intentions of the teachers serving at higher-level educational institutional in Islamabad and the effect of their intention to move in search of a better job on their professionalism.

### **Understanding the Phenomenon of Brain-Drain**

The humans of today have much more and better facilities than the past and this betterment is moving on and on. This is all possible due to the interconnections between the countries. Now all the parts of the world are so interconnected that invention, research, and discovery in any part of the world are shared with other people within seconds and thus all can get quick and easy benefit from these developments.<sup>1</sup>

Technology is one of the major factors that have influenced globalisation. With the discoveries and technological innovations, the people of today have the fastest means of communication and interaction with the world. These technologies have also helped to

provide the fastest means of production that are not only faster but also cheaper. Thus, it has ensured the provision of quick and cheaper goods for people all around the world. Technological development has also provided a stable environment for industries and consumers. Now the consumers have more and more options available to satisfy their demands. Globalisation has not only benefitted the governments but also individuals by providing them opportunities to earn and explore options all around the world. It has provided them with a chance to raise their standard of living and secure the future of their countries.<sup>2</sup>

Pakistan, being a developing country, has also been influenced by globalisation. The trend of globalisation has provided Pakistan with a chance to present and preserve the cultural handicrafts in the markets of the world and get a profitable income for the economic stability of the country. For example, the sports goods that are made in the city of Sialkot are famous all over the world for their quality. Handmade dresses and embroidery are known all over the world about Pakistan. Agricultural products like fruits are also produced in Pakistan that are exported to different parts of the world.

Everything in the world has two sides depending upon its use or misuse. One side of this wave of globalisation has benefited the countries in such a way that industrial development and technology developed by the engineers and scientist can be shared easily by the developing countries.<sup>3</sup> It is a blessing of sharing of knowledge, especially when the poor and under-developed countries do not have the resources to generate their research processes.<sup>4</sup> In this context, research in the health sector has also benefited many people. Above all, people have better and easy access to educational facilities.<sup>5</sup> In the same way, now there are more opportunities to move to other countries and earn better.<sup>6</sup>

At the same time, such blessings of mobility become a concern for a state when its skilled manpower starts moving in search of better

earning and living facilities to the developed countries and leave their own country.<sup>7</sup> Travelling facilities have created many problems as well that are getting serious day-by-day. With the ease of travelling from one country to another, many infectious diseases spread all over the world.<sup>8</sup> It has also created income disparity, alongside environmental degradation. Drugs and human smuggling have become more serious with the advent of globalisation. For this study, it has resulted in a brain-drain from developing countries to the developed ones.<sup>9</sup>

Brain-drain is a term used to refer to the trend of going to the developed countries, which have better education, health, earning, and living conditions. It is more popular among people in developing countries.<sup>10</sup> It negatively affects the economy of the countries that are already facing a shortage of skilled manpower and invest their money on the education of its people to overcome it. They expect that the skilled and trained graduates will at the end of their education serve that country and will support it in its development. But, unfortunately, what happens is that when these people are well trained they travel to developed countries in search of better living and earning opportunities and their own country remains at the same point; dependant on the aid of other countries not only for money but also for human resource.<sup>11</sup> As an example, it can be observed that in Pakistan most of the doctors and engineers are not ready to work in the rural areas. Instead, when they get an opportunity to go abroad and establish their career, they are willing to do so. Such a situation produces a space in the country that has to be plugged to fulfil the needs of the local people. Then, the government has to call trained people from other countries and pay them heavily. That is another burden on the economy of the country while its workforce serves other nations.<sup>12</sup>

Like all other fields, the wave of globalisation has also affected the education system all over the world. With the expansion of knowledge, breaking the boundaries of space and time, economic

resources to acquire knowledge, knowledge at the doorstep with information and communication technology, the world has turned into a single-language state. More awareness related to global and social issues and sharing of research and ideas at the international level at an economical cost are examples of this fact.

Learning has become a lifelong process without any restriction of age. E-learning, e-content, virtual learning programmes, use of virtual teams, constructivist approach to learning, effects of the advancement of technology, brain-based learning programmes, international organisations to facilitate learning, digital libraries, e-search engines, e-conferencing, and availability of readymade material that makes the learners dependant on ICT has opened a new world for the academics.<sup>13</sup> It also attracts educators, students, and professionals to the developed countries in search of better education and job opportunities.

Globalisation has not only changed the systems and structures of developed countries but has also changed the policies and systems of developing countries. To adjust to and live with this change, the coming generation must be equipped with the latest technology and made aware of the global changes. Its major responsibility lies on the shoulders of the system of education and training. Since businesses have changed their strategies and policies, the construct of knowledge has also changed with the emergence of new researches and technologies. It all calls for a dynamic system to educate and train people for the demands of the future.

As the above discussion has shown, globalisation has affected every aspect of our lives. It has changed the concept of living among the people of today. Now the distance between different parts of the world has lost its meaning. Every 15 seconds a new website is launched, every 15 minutes a new technology is invented, and every 15 days a new product is introduced in the world. Due to globalisation, all these things are equally shared by the people living in different

parts of the world. All these changes have changed our thinking, lifestyles, facilities that we use, ways of communication, travelling, business and trading, and, of course, all these changes ultimately affect the education that we require to meet the needs of the modern day and age. As globalisation is putting more and more demands on us to live and compete with the changing world, the education system that was in use a few years back is no longer able to fulfil the needs of today and tomorrow. For the changing world, we need a more focused and dynamic system of education and training of our people so that they should be able to contribute to the progress of the world and their own country. Learning has become a lifelong process without any restriction of age. Furthermore, the following new trends have emerged in the field of learning:

1. E-learning
2. E-content
3. Virtual learning programmes
4. Cooperative learning programmes
5. Use of virtual teams
6. A constructivist approach to learning
7. Advancement of technology
8. Brain-based learning programmes
9. International organisations to facilitate learning
10. Digital libraries
11. E-search engines
12. E-conferencing
13. The enhanced role of media in highlighting and expanding learning opportunities
14. Availability of readymade material making the learners dependant on ICT
15. Increase in the quantity of available material and decreased in quality

16. The confusion created for learners due to extensive material availability creates confusion for the learners
17. Extensive use of ICT blocking the creativity of the students

## **Methodology**

### **Research Design**

This research is based on a survey method. The researchers visited the respondents and analysed the responses to a survey questionnaire.

### **Population**

Research population consisted of 11,092 faculty members serving in the 17 HEC recognised universities of Islamabad. The HEC database revealed that in Islamabad 13 universities were working under the public sector and only 4 universities were from the private sector. 9,421 faculty members were serving in the public sector universities and 1,671 faculty members were serving in the private sector universities.

### **Sample**

By using a convenience sampling technique, 220 faculty members were selected as a sample. The respondents were contacted personally and asked to give responses to the research. However, 22 questionnaires were rejected due to missing information. Finally, 198 respondents were finalised as the sample of the research.

### **Data Collection**

To measure the intention to migrate, Planning and Preparation for Opportunities Assessment scale was used. It was based on 10 items. Professionalism Assessment Scale was used to assess professionalism and it was based on further three major areas (classroom environment management, instruction and assessment strategy, and professional attitude). In total, it was having 36 items.

Both scales were developed by the researchers and were found reliable (See Table No. 1).

### Data Analysis

The data collected by the researchers was analysed with the help of SPSS. For analysis reliability, item-total correlation, inter-section correlation, regression analysis, t-test, and ANOVA were used.

**Table 1**

#### **Cronbach's Alpha Reliability Analysis (n=198)**

Scale	Items	Cronbach's Alpha Reliability
Planning and Preparation for Opportunities Assessment Scale	10	0.81
Professionalism Assessment Scale	36	0.95

Table 1 shows that both the scales used by the researchers were reliable and can be used for further research as well. The reliability of the Planning and Preparation for Opportunities Assessment Scale was 0.81. The reliability of the Professionalism Assessment Scale was 0.95.

**Table 2a**

#### **Item Total Correlation of Planning and Preparation for Opportunities Assessment Scale (n=198)**

Item	Correlations	Item	Correlations
PP1	0.66	PP6	0.60
PP2	0.61	PP7	0.74
PP3	0.67	PP8	0.59
PP4	0.39	PP9	0.66
PP5	0.58	PP10	0.68



**Table 2b**

**Item Total Correlation of Professionalism  
Assessment Scale (n=198)**

Item	Correlations	Item	Correlations
C1	0.52	I8	0.55
C2	0.53	I9	0.63
C3	0.66	I10	0.73
C4	0.59	I11	0.71
C5	0.64	P1	0.72
C6	0.65	P2	0.62
C7	0.62	P3	0.64
C8	0.58	P4	0.68
C9	0.46	P5	0.56
C10	0.71	P6	0.84
C11	0.63	P7	0.73
I1	0.77	P8	0.73
I2	0.66	P9	0.80
I3	0.47	P10	0.63
I4	0.53	P11	0.64
I5	0.74	P12	0.51
I6	0.77	P13	0.41
I7	0.77	P14	0.69

Tables 2a and 2b show the item-total correlation of the Planning and Preparation for Opportunities Assessment Scale and the Professionalism Assessment Scale. Table 2a shows that the highest correlation was of PP7 (0.74). Table 2b shows that the highest correlation was of P6 (0.84). All the items were significantly correlated with each other.

**Table 3**

**Inter-Section Correlation of Professionalism  
Assessment Scale (n=198)**

	Classroom Environment Management	Instruction and assessment strategy	Professional Attitude	Professionalism Assessment Scale
Classroom Environment Management	1	0.762**	0.726**	0.885**
Instruction and assessment strategy	0.762**	1	0.841**	0.938**
Professional Attitude	0.726**	0.841**	1	0.942**
Professionalism Assessment Scale	0.885**	0.938**	0.942**	1

Table 3 shows the inter-section correlation between the sub-scales of the Professionalism Assessment Scale. The table reveals that all the sub-scales were statistically significantly correlated with each other. The highest correlation was found between Professional Attitude and the Professionalism Assessment Scale (.942\*\*)

**Table 4**

**Effect of Planning and Preparation for Opportunities (Brain-drain)  
on Professionalism of the teachers (n=198)**

Independent Variable	Dependent Variable	B (Coefficients)	t	Sig.	R Square
Planning and Preparation for Opportunities Assessment	Professionalism	2.00	9.80	0.00	0.32
	Classroom Environment Management	0.68	10.91	0.00	0.37
	Instruction and assessment strategy	0.58	8.30	0.00	0.26
	Professional Attitude	0.72	7.92	0.00	0.23

\*p < 0.05, \*\*p < 0.01

Independent Variable: Planning and Preparation for Opportunities Assessment (IV)

Dependent Variable: Professionalism (DV)

- a. Classroom Environment Management
- b. Instruction and assessment strategy
- c. Professional Attitude

Table No. 4 shows that intention to migrate was having 32 per cent statistically significant effect on the 'professionalism' of the teachers. Thus, the hypothesis that there is no statistically significant effect of globalisation in terms of brain-drain on the professionalism of the teachers is rejected ( $p < 0.01$ ).

- a. Classroom environment management was having a 37 per cent significant effect on the 'professionalism' of the teachers.
- b. Instruction and assessment strategy was having 26 per cent significant effect on the 'professionalism' of the teachers.
- c. Professional Attitude was having 23 per cent significant effect on the professionalism of the teachers.

In this way, hypothesis 1a, 1b, and 1c are also rejected ( $p < 0.01$ ).

**Table 5a**

**Gender-wise Difference in Planning and Preparation  
for Opportunities (n=198)**

Variable		N	Mean	t value	df	Sig
Planning and Preparation for Opportunities Assessment	Male	66	39.64	3.59	196	0.00
	Female	132	42.24			

\* $p < 0.05$ , \*\* $p < 0.01$

Table 5a shows that the t value (3.59) was statistically significant (\*\* $p < 0.01$ ). It shows that there was a significant difference between male and female respondents with reference to planning and preparation for opportunities. The females were found more focused on planning and preparation for opportunities.

**Table 5b****Gender-wise difference in Professionalism (n=198)**

Variable		N	Mean	t value	df	Sig
Professionalism Assessment Scale	Male	66	149.59	3.35	196	0.00
	Female	132	158.11			

\*p < 0.05, \*\*p < 0.01

Table No. 5b shows that the t value (3.35) was statistically significant (\*\*p < 0.01). It shows that there was a significant difference between male and female respondents with reference to professionalism. The females were found more focused on the profession in comparison to males. In this way, the hypothesis that there is no statistically significant difference in the intention to migrate and professionalism of the teachers based on gender is rejected.

**Table 6a****Age-wise difference in Planning and Preparation for Opportunities (n=198)**

Variable	Age	N	Mean	F	df	Sig
Planning and Preparation for Opportunities Assessment	25-35	128	41.13	0.95	194	0.41
	36-45	53	41.34			
	46-55	13	43.23			
	55+	4	43.50			
	Total	198	41.37			

\*p < 0.05, \*\*p < 0.01

Table No. 6a shows that the F value (0.95) was not statistically significant. It shows that there was no significant difference with reference to Planning and Preparation for Opportunities Assessment on the basis of the age difference. Thus, there is no statistically significant difference in the intention to migrate based on age.

**Table 6b****Age wise difference in Professionalism (n=198)**

Variable	Age	N	Mean	F	Df	Sig
Professionalism Assessment Scale	25-35	128	152.84	2.62	194	0.05
	36-45	53	159.08			
	46-55	13	162.85			
	55+	4	158.00			
	Total	198	155.27			

\*p &lt; 0.05, \*\*p &lt; 0.01

Table 6b shows that the F value (2.62) was statistically significant (\*p < 0.05). It shows that there was a statistically significant difference with reference to professionalism on the basis of the age difference. The respondents of age 46-55 were found better in comparison to the other age groups. Thus, there is no statistically significant difference in professionalism based on age.

**Table 7a****Qualification wise difference in Planning and Preparation for Opportunities (n=198)**

Variable	Qualification	N	Mean	F	df	Sig
Planning and Preparation for Opportunities Assessment	Masters	57	42.02	4.33	193	0.00
	M.Phil	82	40.51			
	Ph.D	49	42.88			
	Post- doctorate	1	31.00			
	Any other	9	38.11			
	Total	198	41.37			

\*p &lt; 0.05, \*\*p &lt; 0.01

Table 7a shows that the F value (4.33) was statistically significant (\*\*p < 0.01). It shows that there was a statistically significant difference with reference to planning and preparation for opportunities assessment on the basis of academic qualification. The

respondents who had done PhD were found better in comparison to the other respondents.

**Table 7b**

**Qualification wise difference in Professionalism (n=198)**

Variable	Qualification	N	Mean	F	Df	Sig
Professionalism Assessment Scale	Masters	57	153.35	0.69	193	0.59
	M.Phil	82	154.55			
	Ph.D	49	158.65			
	Post-doctorate	1	160.00			
	Any other	9	155.11			
	Total	198	155.27			

\*p < 0.05, \*\*p < 0.01

Table 7b shows that the F value (0.69) was not statistically significant. It shows that there was statistically no significant difference concerning Professionalism based on Academic Qualification.

**Table 8a**

**Experience-wise difference in Planning and Preparation for Opportunities (n=198)**

Variable	Experience	N	Mean	F	df	Sig
Planning and Preparation for Opportunities Assessment	1-5 years	61	40.21	2.66	194	0.04
	6-10 years	70	41.19			
	11-15 years	63	42.59			
	15+ years	4	43.25			
	Total	198	41.37			

\*p < 0.05, \*\*p < 0.01

Table 8a shows that the F value (2.66) was statistically significant (\*p < 0.05). It shows that there was a statistically significant

difference with reference to planning and preparation for opportunities assessment on the basis of experience. The respondents who had 15 years and more teaching experience were found better in comparison to the other respondents.

**Table 8b**

**Experience wise difference in Professionalism (n=198)**

Variable	Experience	N	Mean	F	df	Sig
Professionalism Assessment Scale	1-5 years	61	147.57	6.82	194	0.00
	6-10 years	70	157.20			
	11-15 years	63	160.00			
	15+ years	4	164.50			
	Total	198	155.27			

\*p <0.05, \*\*p <0.01

Table 8b shows that the F value (6.82) was statistically significant (\*\*p <0.01). It shows that there was statistically no significant difference regarding professionalism based on teaching experience. The respondents who had 15 years and more teaching experience were found better in comparison to the other respondents.

The hypothesis that there is no statistically significant difference in intention to migrate and professionalism of the teachers on the basis of job experience is rejected (\*p <0.05).

### **Analytical Outcome**

Countries invest in education of their citizens with the vision to develop skilled manpower to progress.<sup>14</sup> This is a long-term investment that gives results after a long time.<sup>15</sup> A child who is enrolled in the education system spends several years in that education system and during these years the government spends money on the education system to facilitate the learning process of the child. However, with the latest development in technology and

media, the world is interconnected and every minute is openly shared by people all over the world. Travelling has got much easier for people in terms of time and resources, so people easily move from developing countries to the developed ones in search of facilities, jobs, and education.<sup>16</sup> In this situation, the developing countries spend money on the education of the children but when the students complete their education they move to the other countries. In doing so, all the investment goes in vain. Keeping in view this critical issue, the research was planned in the context of Pakistan. The researchers were interested in assessing the effects of the intention to migrate on the professionalism of the teachers. Like all other professions, teaching is also a very important field to be discussed. Brain-drain is a danger for the teaching profession like other professions. Skilled teachers are equally important to other professionals. A country needs skilled teachers just like it needs other skilled manpower. So when the skilled teacher migrates the country loses its investment.

The first objective of the research was to assess the effect of brain-drain as a product of globalisation on the professionalism of the teachers. It was found that the intention to migrate was having 32 per cent statistically significant effect on the professionalism of the teachers.

The second objective of the research was to find out the difference in the intention to migrate and professionalism of the teachers based on gender. It was found that females were significantly more inclined to migrate and better in their professionalism as compared to males.

The third major objective of the study was to find out the difference in intention to migrate and professionalism of the teachers based on age. The faculty members between the ages of 46 and 55 were significantly better in professionalism.

The fourth objective of the research was to find out the difference in intention to migrate and professionalism of the teachers



based on academic qualification. It was found that the faculty members who had done their PhDs were more interested in migrating in search of opportunities.

The fifth objective was to find out the difference in the intention to migrate and professionalism of the teachers on the basis of job experience. While based on experience the faculty having over 15 years of experience was having significantly higher intent to migrate, they were also better in professionalism as compared to other respondents.

### **Recommendations**

1. Teaching professionals need greater attention from the government to make the profession attractive to the teachers.
2. The status of the teacher in our society needs attention. The government may launch awareness programmes in collaboration with the media related to the teaching profession and its benefits to attract talented people to join this profession by choice.
3. Special facilities like revised pay structure have to be given to teachers to make this profession acceptable by people like other income-generating professions. It would make the teachers more satisfied with their salary and pay full attention to their duties.
4. Medical facilities, housing, and social security have to be provided for a comfortable life within the country, so that teachers may not look for opportunities in search of these facilities outside the country.
5. The teaching profession needs to be given security from political interference and the selection process needs to be fair, so that the young generation may not be disappointed by the system.

6. Teacher training programmes also need to be revised, according to the international standards, so that teachers as professionals may upgrade the quality of education.
7. Special awards related to teaching may be announced at all stages of education frequently. It would help to motivate the teachers.
8. Motivational techniques need to be applied for the motivation of employees and to attract new professionals to this field such as the following:
  - a. High salary
  - b. Participation in departmental disciplinary decisions
  - c. Issuance of participatory certificates
  - d. Issuance of appreciation certificates
  - e. Job security
  - f. Health benefits
  - g. Trust in employee's potential
  - h. Delegation of authority
  - i. Challenging tasks to perform
  - j. Constructive feedback from seniors
9. The following is the model to improve teaching as a profession to attract graduates towards this profession within the country. The model explains the activities needed as a major milestone in teaching as a profession. Thus, it is recommended to the management of the educational institutions to implement this plan of action to improve the situation.
  - a. Orientation
  - b. Training
  - c. Group socialisation
  - d. Feasible work environment
  - e. Facilities
  - f. Motivational techniques
  - g. Social benefits

**Figure 1**

**Teacher Development Model**



## Notes and References

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