



PAKISTAN INSTITUTE FOR PARLIAMENTARY SERVICES
DEDICATED TO PARLIAMENTARY EXCELLENCE

ISSN # 2414-8040

VOLUME 8, ISSUE 01

JANUARY, 2021

Parliamentary Research Digest

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Editorial

Dear Readers,

May Allah SWT bless the world with a safe, prosperous and happier 2021, amin. Enormous Thanks to Allah SWT the Master of the Whole Universe and the Creator of All; the Pakistan Institute for Parliamentary Services (PIPS) is a recognized international seat of parliamentary learning, which offers quality-oriented legislative, research, capacity building and outreach services to the Members of Parliament and parliamentary committees to provincial legislatures.

In 2020-21, as envisioned by the PIPS Act 2008 and the Honourable Members of PIPS Board of Governors, the PIPS Research and Legislation Wing updated the PIPS data portal comprising all FEDERAL LAWS OF PAKISTAN, to commence service of conducting post-legislative scrutiny of laws in the country. In this context, the Pakistan Institute for Parliamentary Services recently published a book titled: LAWS OF PROVINCES OF PAKISTAN: OBJECTS AND URPOSES (1812-2020), which is a milestone in country's history as the first of its kind book in Pakistan.

This Issue of the PIPS Parliamentary Research Digest includes analytical articles on Kashmiri Struggle for Self-determination, US Biden Presidency and Implications for Pakistan as well as a post- legislative assessment of the country's environmental laws. We welcome feedback of our invaluable readers. Please do not hesitate to send your feedback or contact for any of our services at research@pips.gov.pk

Muhammad Rashid Mafzool Zaka
Senior Director General (Research and Legislation)



**Honorable Syed Amjad Ali, Speaker, Legislative Assembly of Gilgit Baltistan, calls
on the Executive Director, Pakistan Institute For Parliamentary Services
Mr. Muhammad Anwar, January 01, 2021**

Human Rights Violations in Indian Occupied Kashmir (IOK)

August, 2019 - June, 2020



800

Houses were damaged by the Indian forces



271

Innocent civilians were killed by the aggression of Indian forces



16,000 - 17,000

Innocent civilians were arrested by the Indian forces



128

Cordon and Search Operations (CASO) by the Indian forces



175

Days internet was disrupted to halt free communication by the Indian forces

Source:

Nasir Qadri et al., *Kashmir's Statehood Abrogated* (Institute of Policy Studies, Legal Forum for Oppressed Voices of Kashmir, 2020), <https://www.ips.org.pk/kashmirs-statehood-abrogated-legal-fact-finding-report/>.

ANALYSIS

**(Commemorating Kashmir Solidarity Day-February 05, 2021)
Kashmir's Struggle for Self-Determination Today and World Conscience****Fakiha Mahmood**

Deputy Director (Research), PIPS

Abstract

In the aftermath of the Indian illegal occupation and annexation of disputed Jammu & Kashmir territory through the legislative measures of August 05, 2019 as well as the subsequent developments, the Kashmiri struggle for right of self-determination has entered a perilous path. Though the Indian illegal moves attracted unprecedented coverage across the world in parliamentary, media and intellectual platforms, however, with reticent role of the world political leadership in the ongoing crisis, these overtures run the risk of being reduced to the pages of history without any decisive action to end Indian atrocities in the illegally occupied territories. This paper analyses the Kashmiri struggle of self-determination and world conscience as it stands today in the aftermath of the Indian illegal moves of August 2019 as well as the ongoing advances to change the demography of the disputed region meant to deny Kashmiri Muslims their right of self-determination.

1. Introduction

“When Narendra Modi stripped Kashmir of its autonomy and statehood in August 2019, he also cancelled Kashmiris’ rights to land and jobs. Along with the loss of rights came the loss of dreams for so many. It has also laid bare the true motivation for such a removal of freedoms for the entire world to see – see, yet say nothing about, and in most cases unfortunately, do nothing about as well.”

Honorable Sarah Owen, UK House of Commons, 13 January 2021¹

“In 1945, the world set up the United Nations, with peace, justice and international co-operation in mind. At the signing of the UN Charter, which was signed by 50 nations, including ours, President Truman famously said: “if we had this Charter a few years ago – and above all, the will to use it – millions now dead would be alive. If we should falter in the future in our will to use it, millions now living surely die.” For Members across this House and to those who listen to my words after this debate, the Charter lives on today but, tragically for the people of Kashmir, the will to use it does not. UN Security Council resolution 47, which provides for the right of a plebiscite for the people of Kashmir, has existed since 1948. The will to implement still does not. Seventy-four years on, the trajectory for the people of Kashmir is leading to a future far from a right of self-determination and close to one of non-existence.”

Honorable Naz Shah, UK House of Commons, 13 January 2021²

The United Kingdom House of Commons resonated with these words of Honorable Members in the middle of January 2021, aptly describing the state of Kashmiri people struggle for self-

¹ UK Parliament, Hansard, “Kashmir,” <https://hansard.parliament.uk/Commons/2021-01-13/debates/026E7515-F272-4127-A619-D8723D3B0DC0/Kashmir>.

² UK Parliament, “Kashmir”.

determination and calling the world conscience to wake up to save Kashmir from annihilation at the hands of Indian occupation forces. In the aftermath of the Indian illegal occupation and annexation of disputed Jammu & Kashmir territory through the legislative measures of August 05, 2019 and subsequent developments, the Kashmiri struggle for right of self-determination has entered yet another challenging phase. The people living under the Indian occupation have been deprived of the name sake autonomy which provided them with a distinct flag, legislature, as well as constitution. With the imposition of security lockdown and communication blackout, Indian occupation forces have intensified the genocide of defenseless Kashmiri people. The Indian forces have specifically been targeting young boys of ages between 13 and 28. According to some reports around 13,000 boys have been detained and forcibly disappeared, though actual figure is even more.³ This strategy is very much similar to what Pharaoh did with *Bani Israel* (or Israelites) at the time of Prophet Mosa (Peace be Upon Him). Quran at several places narrates⁴ the enslavement of this nation at the hands of the people of Pharaoh. They used to slay the sons of *Bani Israel* and spared their daughters from being killed. The fantasized story of Prophet Mosa (Peace be Upon Him) whereby he escaped extermination due to the wise action of his mother still lives in the memory of billions of people around the world.

Though the Indian illegal moves attracted unprecedented coverage across the world in Parliamentary, media and intellectual platforms, however, with reticent role of the world political leadership in the ongoing crisis, these overtures run the risk of being reduced to the pages of history without any decisive action to end Indian atrocities in the occupied territories. This paper analyses the Kashmiri struggle for right of self-determination and world conscience as it stands today – in the aftermath of the Indian illegal moves of August 2019 as well as the more recent efforts to change the demography of the disputed region.

2. Self-determination: a principle of international law

The concept of self-determination implies giving a certain group of people the right to decide for its own socio-political future expressed through various means such as plebiscite or referendum. Over the course of twentieth century, it has evolved to become one of the fundamental pillars of the international law. It has acquired the status of *erga omnes*, i.e. it is the responsibility of states to oblige with this principle, as well as *jus cogens*, understood as “peremptory norm of international law.”⁵ Table 1 highlights excerpts of some of the key international instruments which identify the self-determination among its core purposes and principles.

³ Sardar Masood Khan, “It is not just Kashmir, It is Pakistan,” *Strategic Thought: A Journal of International Affairs* Issue 1 (2020), 1-2.

⁴ For example, see *Surah Qasas*.

⁵ Diakonia International Humanitarian Law Center, “International Law and Self-Determination,” <https://www.diakonia.se/en/IHL/The-Law/International-Law1/IL--Self-Determination/>.

Table 1 The Principle of Self-Determination in various international instruments**1 United Nations Charter**

Signed on 26 June 1945: Entered into force on 24 October 1945: Current UN Member States: 194
Article 1 (2)

“... to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”⁶

Article 55

“... with a view to the creation of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people....”

2 United Nations General Assembly Declaration of Friendly Relations

Unanimously adopted in 1970

“By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities to it by the Charter regarding the implementation of the principle ...

The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitutes modes of implementing the right of self-determination by that people.

Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.”

3 Charter of the Organization of Islamic Cooperation (OIC)

Adopted in 1974: Member States: 57

Preamble: “We the Member States of the Organization of Islamic Cooperation, determined ... to respect the right of self-determination ...”

Article 1: “The objectives of the Organization of Islamic Cooperation shall be: ... (3) to respect the right of self-determination ...”

4 International Covenant on Economic, Social and Cultural Rights

Opened for signature on 19 December 1966: Entered into force on 3 January 1976; Signatories: 71, Parties: 171⁷

Article 1 (1)

⁶ <https://www.un.org/en/sections/un-charter/chapter-i/index.html>.

⁷ Status as of 20-01-2021, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en.

“All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

5 International Covenant on Civil and Political Rights

Opened for signature on 19 December 1966; Entered into force on 23 March 1976; Signatories: 74, Parties: 173⁸

Article 1 (1)

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

3. International recognition of Kashmir’s right of Self-Determination

The right of self-determination of Kashmiri people has been recognized at the highest forums of the world including the United Nations Security Council and General Assembly as well as the Organization of Islamic Cooperation. The UN Security Resolutions passed during the early years of the dispute, i.e. from 1948 to 1957, stipulate that the dispute will be resolved in accordance with the wishes of the people of Jammu and Kashmir. For example, UNSC resolution 47 of 21 April 1948 stated that; “the Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan ... The Government of India should agree that a nominee of the Secretary General of the United Nations will be appointed to be the Plebiscite Administrator.”

Similarly, the resolution adopted by the United Nations Commission on India and Pakistan on 5 January 1949 stated that; “the question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.” These resolutions have consistently been endorsed by international organizations like the OIC, and various countries around the world have time and again referred to these resolutions as the ultimate solution of the dispute. However, decades have passed without implementation of these resolutions while India continues to oppress the Kashmiri people with sheer use of force – committing genocide and crimes against humanity.

4. Indian legislative measures defying the right of self-determination

The Kashmiri struggle for self-determination entered another phase on August 05, 2019 when the BJP led Indian government amended its laws to abolish the special status granted to the occupied Kashmir under its constitution articles 35A and 370. The legislative measures were undertaken amidst the imposition of strict lockdown, communication blackout, and deployment of additional troops in the world’s highest militarized zone. Educational institutions were closed down and tourists were asked to leave the region. The Kashmiri leadership across the political spectrum, including even those allied with the Indian government, was detained.

Working on its pledge to scrap the special status of occupied Jammu and Kashmir, Narendra Modi led Indian Government issued the Presidential Order C.O. 272. Consequently, Article 35-

⁸ Status as of 20-01-2021, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND.

A which was meant to protect the demography of disputed region till its resolution lost place in the Indian Constitution. Furthermore, Article 370 was scrapped which gave the disputed territory a special status. Section 3 of this article had laid down the procedure for abrogation of this Article on the condition of recommendation of the Constituent Assembly of Jammu & Kashmir thereby empowering the President to remove this Article from the Constitution. The Constituent Assembly of Indian Occupied Jammu and Kashmir was dissolved as far back as 1957, without recommending the removal of this Article. Even the Legislative Assembly of occupied Jammu and Kashmir was dissolved in November 2018.⁹

Hence, it establishes that the Indian illegal moves of August 05 have been carried out with utter disregard of the will of the people of occupied Jammu and Kashmir. No legislative or constituent platform existed in the occupied territory and no plebiscite or referendum was carried out. Rather, the disputed region was subject to worst kind of siege witnessed in the twentieth century.¹⁰

Moreover, the promulgation of Jammu & Kashmir Reorganization Bill resulted in the bifurcation of the State of Jammu and Kashmir into 'Union Territories' termed as Laddakh and Jammu & Kashmir. Again this move was carried out with utter disregard of Article 3 of the Indian Constitution which stipulates that the consent of respective Legislative Assembly is required in order to alter the title or territorial boundaries of any Indian State.¹¹

All in all, through legislative moves of August 05, 2019, the Indian Government has defied the democratic norms, violated its own Constitution and violated the United Nations Security Council Resolutions which call for holding free and impartial plebiscite in order to provide the people of Kashmir the right of self-determination guaranteed to them under the international law. And it has been done through the use of indiscriminate force and intimidation of defenseless Kashmiri people suffering from gross violations of human rights.¹²

5. Demographic engineering to reduce the Muslim majority into a minority

During March 2020, the BJP led Indian Government amended 109 laws and repealed 29 laws of Indian Illegally Occupied Jammu & Kashmir in order to pursue further the illegal annexation of Kashmir valley. Among these set of legal changes, most significant is the new domicile law which allows the Indian citizens of other areas to acquire properties in the disputed region. This was earlier barred under the law till the resolution of Kashmir dispute.¹³

The demographic roadmap of Indian government in occupied Kashmir is consistent with the Hindutva inspired BJP manifesto which stated in 2014 that; "the return of Kashmiri Pandits to the land of their ancestors with full dignity, security and assured livelihood will figure high on the BJP's agenda. The long standing problems and demands of refugees from Pakistan Occupied

⁹ Ahmer Bilal Soofi, Jamal Aziz, Muhammad Oves Anwar, Ayesha Malik and Shayan Ahmad Khan, "The Status of Jammu and Kashmir under International Law: the law of occupation and illegal annexation," *Legal Memorandum, Research Society of International Law* (2019), 7-8.

¹⁰ Sufi et al., "Status of Jammu and Kashmir".

¹¹ Sufi et al., "Status of Jammu and Kashmir".

¹² Sufi et al., "Status of Jammu and Kashmir".

¹³ Fakiha Mahmood, "Indian Legislative measures to convert occupied Jammu and Kashmir's Muslim majority into a minority," *PIPS Parliamentary Research Digest* vol. 7, no. 4 (April 2020), 8-15.

Kashmir (POK) will be addressed.” BJP reiterated this pledge in 2019 manifesto. The objective of these demographic alterations is to deny Kashmiri’s the right of self-determination by reducing the Muslim majority into a minority. The population of Indian Illegally Occupied Jammu and Kashmir is as follows: 69,07,623 in Kashmir valley, 53,50,811 in Jammu, and 2,90,492 in Laddakh. The religious compositions is as follows: Muslims constitute 68%, Hindus 28.44%, Sikh 1.87%, Buddhist 0.9%, Christian 0.28%, and Jain 0.02%. The new domicile law is aimed to change this composition so that if ever a plebiscite or referendum is held the result confirms that the people of Kashmir want to remain part of Indian Union.¹⁴

The new domicile law violates the international instruments which recognize Kashmiri peoples’ right of self-determination provided for under the international law. The resultant demographic alterations contradict several international legal instruments, for example according to fourth Geneva Convention “the occupying power shall not deport or transfer parts of its own population into the territories it occupies.” Article 8 of the Statue of the International Criminal Court stipulates “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies [constitutes a war crime].” It will eventually culminate into the implanting of settlers without the consent of the disputed territory; the report (1997) of the UN Special Rapporteur on population transfer considers such moves illegal under the international law. According to this report “the range of human rights violated by population transfer and the implantation of settlers place this phenomenon in the category of systematic or mass violations of human rights.”¹⁵

6. World Conscience

The Indian illegal acts of August 05, 2019 have attracted severe criticism from around the world. Various countries including China, Turkey, Malaysia, Iran, Germany, Sweden, and Finland denounced Indian attempts to colonize Kashmir. The leaders of Turkey and Malaysia went up to support the Kashmir cause in the United Nations General Assembly and rejected Indian threats of imposition of sanctions. Signaling a departure from its earlier pro-Indian inclination, the Russian Federation in the context of the UNSC meeting on Kashmir expressed its desire to balance its relations between India and Pakistan and resolve the Kashmir dispute in accordance with the UN Charter and resolutions of the UNSC on Kashmir dispute.¹⁶ The move attracted criticism within India where parliamentarians from opposition aisle, human rights advocates, intellectuals and members of civil society decried BJP led Indian government for its colonization of occupied Kashmir.¹⁷

Legislatures on both sides of the Atlantic took up the Kashmir issue during public hearings and plenary sessions, including; US Congress, European Parliament and British Parliament. A number of parliamentarians in these countries openly supported the Kashmir cause and spoke about Indian atrocities in occupied Kashmir inside and outside their respective legislatures.¹⁸

¹⁴ Mahmood, “Indian Legislative measures”.

¹⁵ Mahmood, “Indian Legislative measures”.

¹⁶ Dmitry Polyanskiy (@Dpol_un), “Russia continues to promote normalization of India Pakistan ties,” Twitter, August 16, 2019, https://twitter.com/dpol_un.

¹⁷ Sardar Masood Khan, “It is not just Kashmir, It is Pakistan,” *Strategic Thought: A Journal of International Affairs* Issue 1 (2020), 1-14.

¹⁸ Khan, “It is not just Kashmir”.

Indian oppressive actions in the occupied Kashmir also found their way into the international media which earlier ignored the gross human rights violations under the Indian influence. Some of the leading international media outlets including BBC, CNN, The New York Times, Global Times, and Washington Post etc. published series of reports highlighting Indian atrocities in Indian Illegally Occupied Kashmir. Some of them denounced Indian actions through their editorials. However, most of these news stories remained focused on demanding the end of siege rather than calling for a decisive resolution of the dispute.¹⁹

The people of Kashmir are still looking towards the United Nations, especially the Security Council for a decisive action such as the case of East Timor. While the conduct of a Kashmir specific meeting in the UNSC after more than five decades has been dubbed as great success by the diplomatic community, the lack of decisive outcome has cast dark shadows over these successes. The highest diplomatic forum vested with the responsibility of international peace and security could not come up with the lifting of strict lockdown imposed since August 2019. The obvious result is that Indian intransigence has been gaining strength. The lockdown imposed since August 2019 continues to cripple the lives of Kashmiri people who have been facing worst human rights abuses at the hands of Indian occupation forces protected under the draconian laws.²⁰

Moreover, history reveals that such failure of highest diplomatic forums meant to ensure peace and security results into nothing else than war, destruction and human suffering. It also shifts the balance of power among the competing parties. For instance, recently as a result of inaction of the UNSC to implement its three decades old resolutions calling for withdrawal of occupied Armenian forces from Azerbaijani territory, war erupted between Armenia and Azerbaijan over the Nagorno-Karabakh region.

7. Conclusion

The Kashmiri struggle for self-determination has entered a perilous path with the recent illegal steps of the BJP led Indian Government. Changing the status quo which has emerged and is evolving in the aftermath of August 05, will require sustained and dedicated efforts from all stakeholders. At the same time it opens the opportunity by providing a superior cause for revisiting the past policies and making strategic choices for future. The case of East Timor had demonstrated how the UNSC can act decisively and ensure the right of self-determination for a select group of people. More recently, the events surrounding the Armenia Azerbaijan War 2020 over Nagorno-Karabakh region have shown that how a community after getting reticent response from UNSC resorted to violent measures in order to get rid of the illegal occupation.

¹⁹ Khan, "It is not just Kashmir".

²⁰ Khan, "It is not just Kashmir".

OPINION

46th US President Joe Biden and Implications for Pakistan**Areeb Shirazi & Laraib Kiani**

Young Parliamentary Officers, PIPS Research & Legislation Wing

1. Introduction

Pakistan and United States established diplomatic relations following the independence of Pakistan in 1947. Since then, the relationship has been multi-faceted – in areas ranging from counter terrorism to trade and investment to energy as well as commonly working together to bring peace in the region. United States has been the largest export destination for Pakistan; the trade between Pakistan and US stood at \$6.5 billion in the year 2019. Similarly, United States has made substantial investments in Pakistan in the last two decades. The investments were largely focused in the areas of consumer goods, chemicals, energy, agriculture, transportation, and communication.¹ Presidential elections in US carry immense importance for all the regions of the world. Being a super power and closely knitted with various countries and regions, the US presidential elections have a substantial impact across regions of the world. As the set of ideologies, diplomatic priorities and operational methodologies often change with the new administration; countries hope to have a mutually beneficial relation with United States. The importance of Pakistan on world map cannot be ignored. Its geo-strategic positioning, demographics and natural resources make it an important player across regions. Pakistan and United States has enjoyed mutually beneficial relations since last decades. Although, the relations did not always have a smooth trajectory, it was often marked with turbulence; various highs and lows but the cooperation stayed intact on ranging issue. With the change of administration in US, particularly the newly-elected president Joe Biden – who knows Pakistan well and have been to the country in various capacities such as; the Vice President and Chairman of Senate Committee on Foreign Policy, we can hope to have strengthened ties, mutually beneficial cooperation, and mitigation of complexities.

2. Joe Biden – A glimpse in to political career

Hailing from a middle-class family, the newly elected President of United States Joe Biden graduated from University of Delaware in 1965, with a degree in History and Political Science and in 1968, graduated in law from Syracuse University Law School. He later moved to Wilmington, Delaware and started his professional career with a law firm. This move paved his way towards politics and later joined the Democratic Party. In 1970, Joe Biden was elected member of the New Castle County Council and the next year he started his own law firm. In 1972, on the encouragement of the Delaware Democratic Party, Biden contested for the US Senate. With a rigorous campaign, he became the fifth youngest Senator in US history. This was the beginning of his long and well accomplished political career. Despite personal tragedies and traumas, Biden remained true to his political commitments and served as Senator from the year 1973 to 2009.

¹ United States Department of State, "U.S. Relations With Pakistan," *United States Department Of State*, 2020, January 20, 2021, [https://www.state.gov/u-s-relations-with-pakistan/#:~:text=Bilateral%20Economic%20Relations&text=The%20United%20States%20is%20Pakistan's,most%20surplus%20of%20\\$241.3%20billion.](https://www.state.gov/u-s-relations-with-pakistan/#:~:text=Bilateral%20Economic%20Relations&text=The%20United%20States%20is%20Pakistan's,most%20surplus%20of%20$241.3%20billion.)

Since the initiation of his political career, Joe Biden has reflected a strong inclination towards the democratic norms, values and principles in his policies and stances. During his presidential campaign and time in office as the Vice-President, he has extensively advocated for the rights and benefits of the working class. Over his extensive career as a Senator, he served as the Chair of Committee on Foreign Relations for four years and Chair of Committee on Judiciary for eight years. He proposed several legislations on criminal justice, and women and children centric legislations. Furthermore, he has put a great deal of interest and attention to eradicate criminal activities from United States through effective legislations.²

Joe Biden served as an esteemed member of the Senate Judiciary Committee for 17 years; out of which, he remained the Chair of the Committee for 8 years. As Chair of Committee on Judiciary, Biden presided over the confirmation hearings for six Supreme Court nominees which were monumental events in his career.³

LEGISLATION	YEAR
BILL TO PROVIDE FOR THE IMPLEMENTATION OF TREATIES FOR THE TRANSFER OF OFFENDERS TO OR FROM FOREIGN COUNTRIES	1977
CLASSIFIED INFORMATION CRIMINAL TRIAL PROCEDURES ACT	1981-1982
PRETRIAL SERVICES ACT OF 1982	1981-1982
SENTENCING ACT OF 1987	1987-1988
GENOCIDE CONVENTION IMPLEMENTATION ACT OF 1987 (THE PROXMIRE ACT)	1987-1988
CRIME CONTROL ACT OF 1990	1989-1990
VIOLENCE AGAINST WOMEN ACT OF 1994 (VAWA)	1994
ANABOLIC STEROID CONTROL ACT OF 2004	2003-2004
PROTECT OUR CHILDREN ACT OF 2008	2007-2008
PROCEDURAL FAIRNESS FOR SEPTEMBER 11 VICTIMS ACT OF 2007	2007-2008
LAW ENFORCEMENT CONGRESSIONAL BADGE OF BRAVERY ACT OF 2008	2007-2008
CRIMINAL HISTORY BACKGROUND CHECKS PILOT EXTENSION ACT OF 2008	2007-2008

Over the years as a Senator, Biden's foresight in foreign affairs played a crucial role in shaping the U.S. foreign relations. As Senator, he was at the forefront in formulating US policies regarding NATO, Balkan states, Cold War and Post Cold-war era relations with Europe and Russia. Post 9/11, he played major role in policy formulation regarding Global War on Terror, and casted the decisive vote sanctioning use of force in Iraq. As the Vice President, Biden also played a pivotal role in signing JCPOA with Iran and the decision to draw down troops from Afghanistan under the former President Barrack Obama.⁴

² History, "Joe Biden", History.com, December 15, 2020, <https://www.history.com/topics/us-politics/joe-biden>.

³ Tanner Curtis *et al.*, "Joe Biden's Long Road to the Presidency," *The New York times*, January 20, 2021.

⁴ "Joseph R. Biden Jr.", *Congress.Gov*, n.d., <https://www.congress.gov/member/joseph-biden/B000444?searchResultViewType=expanded&q=%7B%22sponsorship%22%3A%22sponsored%22%2C%22bill-status%22%3A%22law%22%7D>.

Personal Achievements⁵

Member of Senate	1978, 1984, 1990, 1996, 2002, 2008
Chair of Committee on Foreign Relations	For 4 years (January 3-20, 2001; June 6, 2001-January 3, 2003)
Chair of Committee on Judiciary	For 8 years
47 th Vice President of USA	2009-2017
President of USA	Present

3. New US administration – President Joe Biden – Implications for Pakistan

Over the years, the nature of relationship between Pakistan and United States has been largely transactional. Both countries have extracted the benefits of good relations – where the interests converged. But, both have their own strategic objectives as well as long-term mutual interests – which often led to turbulence in relations; experiencing highs and lows. United States and Pakistan continue to engage closely on range of issues; even the ones with diverging concerns – which lights a kindle of hope for prosperous and progressing relationship.⁶ 46th President of the United States of America Joe Biden took charge of the office of the President on January 20, 2021, whereas, he was elected on November 7th, 2020. Enjoying a dominant position characterized by its extensive ability to exert influence or project power; whether economically, technologically, or militarily on a global scale, elections of the President of United States holds immense importance for all the regions of world. Specifically, the region of South Asia has been paying keen attention to the elections and tied certain hopes with the new democratic administration.

Unlike his predecessor, Joe Biden has significant knowledge about Pakistan and its importance in the region. In 2009, Joe Biden along with Senator John Kerry has been the principal architect of the Kerry-Lugar Berman Act that made way for providing annual civilian assistance of \$.15bn to Pakistan; from 2010 to 2014 to support the economic development in the country.⁷

President Joe Biden has visited Pakistan several times in the capacity of Chairman Senate Committee of Foreign Relations and Vice President of the United States. In 2008, US President Joe Biden was the member of three-senator delegation that visited Pakistan to observe the national elections, held on February 18. The then President of Pakistan, Asif Ali Zardari awarded the then US Vice President nominee Joe Biden and Senator Richard Lugar, one of the highest civil awards of Pakistan; the Hilal-e-Pakistan, for their consistent support and pure intentions for democratic development in Pakistan.⁸

Followed by turbulent relations over diverging concerns, Pakistan and United States found close convergence of interest on Afghan peace process. For last 20 years, the war in Afghanistan has

⁵ Encyclopedia Britannica, "Joe Biden Biography, Family, Policies, & Facts," *Encyclopedia Britannica*, 2021, <https://www.britannica.com/biography/Joe-Biden>.

⁶ Sitara Noor, "U.S. Elections 2020: The Pakistan-U.S. Relationship," *South Asian Voices*, 2021, <https://southasianvoices.org/u-s-elections-2020-the-pakistan-u-s-relationship/>.

⁷ Abdul Basit, "What Will A Biden Presidency Mean For US-Pakistan Relations?" *Aljazeera.Com*, 2021, <https://www.aljazeera.com/opinions/2020/11/17/what-will-the-biden-presidency-mean-for-us-pakistan-relations>.

⁸ Sabir Shah, "Biden Visited Pakistan In 2008, 2011," *The News*, 2020, <https://www.thenews.com.pk/print/740346-biden-visited-pakistan-in-2008-2011>.

been the defining point of US-Pakistan relations. Peace in Afghanistan holds significant importance for both; Pakistan and United States. Pakistan has played a vital role in making the latest endeavour of a substantial and meaningful Afghan peace process a success. The process enabled both the states to work closely for bringing the Afghan Taliban to negotiation table and participate in intra-Afghan dialogue. Pakistan has earned due acknowledgment for its positive role in making Afghan peace process a success – and have reinforced its position as a major player in the South Asia region – as well as the world. Pakistan can expect to receive plenty of interest and appreciation from the new democratic administration led by Joe Biden for its role in Afghan peace process.⁹ Afghanistan peace process is a long-term process, which will require critical assistance and close engagement with Pakistan – bringing an enhanced opportunity for strengthening the ties between United States and Pakistan for lasting peace in the region. It is a great opportunity for the entire region that US-Pakistan close cooperating on Afghan peace process is not only successful but it lays down a renewed trust for enhanced support of various regional and global contributions together, especially for support of a peaceful, developed and world order based on interdependence and welfare of people.

Pakistan would be expecting US relations under Biden Administration to give a fresh thought on former President Trump's right wing politics shared with his Indian counterpart that adversely and gravely undermined peace in South Asia as India and Pakistan came close to full-fledged war. Trump and Modi, both right-wing leaders accused by their critics of undermining the foundations of their respective democracies, forged a strong connection between 2017 and 2020.¹⁰ A recent analysis says:

Since his re-election in 2019, Modi has pushed through a series of policies seen by many in the country as unduly targeting India's Muslim minority, including the revocation of Muslim-majority Kashmir's semi-autonomous status and a new citizenship act that makes it easier for adherents of most large faiths practiced in South Asia, except Islam, to claim citizenship in India. Modi's government has also sought to suppress dissent, most recently forcing the Indian branch of Amnesty International to shut down through legal pressure, which the rights group said was part of a "deliberate attempt by the government of India to stoke a climate of fear and dismantle the critical voices in India."

Biden and Harris have both spoken out against India's human rights violations and Modi's nationalist leadership. In his Agenda for Muslim-American Communities, Biden condemned the Modi government's new citizenship act and a separate attempt to build a population register that could provide future justification to expel or international foreigners, calling the projects "inconsistent with the country's long tradition of secularism and with sustaining a multi-ethnic and multi-religious democracy."¹¹

⁹ Abdul Basit, "What Will A Biden Presidency Mean For US-Pakistan Relations?," *Aljazeera.Com*, 2021, <https://www.aljazeera.com/opinions/2020/11/17/what-will-the-biden-presidency-mean-for-us-pakistan-relations>.

¹⁰ Anna Purna Kambhampathy and Billy Perrigo, "How a Joe Biden Presidency change US India Relations," *Time*, November 07, 2020, <https://time.com/5908261/joe-biden-kamala-harris-india>

¹¹ Kambhampathy and Perrigo, "Joe Biden Presidency change".

Kashmir remains a nuclear flashpoint for the South Asian Region and any effort for a sustainable peace and tranquility of the region primarily rests with an earliest and final resolution of the Kashmir dispute, in the light of UN conventions, and the will of the people of Kashmir. Regions, international organizations and countries across globe are aware of the grave human rights violations committed by the Indian forces in Indian Occupied Kashmir – which include worst state terrorism that has left more than 1 lac dead in addition to crude atrocities of rape, torture and use of pellet guns to injure the body and soul of innocent and unarmed youth in Indian-held Kashmir. The US President Joe Biden and Vice President Kamala Harris have made some critical statements on Indian government's actions in Indian Occupied Kashmir.¹² In Sept., 2019, in wake of Article 370 invoked by India (Aug., 2019) in an attempt to forcibly change the status of Indian Held Kashmir, incumbent Vice President Kamala Harris was asked about the unrest in Kashmir (that included massive lockdown that included suspensions of communications, strict curfews, and the arrests of thousands of local political leaders—among them were multiple former chief ministers as well as all central leaders of Kashmiri's struggle for self-determination) during a campaign event for her own presidential bid. "She stated that "we are all watching," and she implicitly attacked the Modi government's handling of the issue up to that point by calling out human rights abuses inflicted by India."¹³

Conclusion

Pakistan and United States has successfully built and maintained a multi-faceted – long-term relationship over the years. Since the cold war, both countries have been strategic partners to ensure peace and security in the region. From economic cooperation to democratic development, and strategic partnership on matters of defense and security, United States has been a close ally of Pakistan. Both countries have worked together dedicatedly to ensure peaceful South Asia as well as the world. The relationship has not always been smooth; it was marked with turbulence but largely, both countries continued to cooperate on ranging issues for sustainable peace and development of the region. With the change in United States administration led by President Joe Biden, it is hoped that the countries will enhance their cooperation to mitigate discrepancies in the relation, address each other's concern, and work together with a common goal of economic prosperity and sustainable peace in the region. Pakistan, that has been a frontline state sacrificing over 50,000 precious lives in the world's war against terrorism, in addition to its sincere efforts for working with the US and Afghan government for a sustainable and meaningful peace in Afghanistan, can now hope a harder and a fairer US eye on Kashmir that inspires and guides, like the Afghan peace process, towards substantial progress on final resolution of Kashmir dispute in accordance with the will of the Kashmiri people as envisaged in the UN resolutions under the incumbent Biden-Harris administration.

¹² Sitara Noor, "U.S. Elections 2020: The Pakistan-U.S. Relationship", *South Asian Voices*, 2021, <https://southasianvoices.org/u-s-elections-2020-the-pakistan-u-s-relationship/>.

¹³ Anik Joshi, "A Biden-Harris Administration would mean a harder eye on Kashmir, Foreign Policy," *FP*, September 30, 2020, <https://foreignpolicy.com/2020/09/03/biden-harris-kashmir-policy-india-modi>.

ANALYSIS

Legal Framework on Environment Protection Laws in Pakistan: Applying ROCCIP Model of assessment

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1. Introduction

Environment pollution is a phenomenon not new to this world, and it still remains one of the biggest problems facing humanity leading to causes of morbidity, mortality and numerous associated risks. Both developed and developing countries stand accountable for global environmental pollution. However, to a larger extent the developed nations have contributed most in protecting the environment through awareness and tougher laws. Whereas developing countries like Pakistan face many challenges in enacting and implementing environmental laws owing much to numerous factors that will be discussed in this paper.

The paper will apply ROCCIP Model in assessing environment laws of Pakistan. ROCCIP is an acronym for seven categories namely, (*Rules, Opportunity, Capacity, Communication, Interest, Process and Ideology*). It was developed by Dr. Prof Ann Siedman and is currently widely in practice. It simply is a way of explaining a behavior that is problematic in the society and applying ROCCIP categories can make us better understand that problematic behavior and help us devise laws, rules or policies needed to mitigate or in response of such problematic behaviors. However, ROCCIP Model applied in practice is mainly for the use of legislatures or legal and social researchers at an initial stage either at the time when a bill is to be introduced or when a bill is introduced for relevant deliberations, first identifying such problematic behaviors that needed adequate response. However, in this paper we will apply the same methodology in reverse, hence applying 'Reverse ROCCIP' addressing each aforementioned category. We will be assessing the existing environment laws that were put in place in response of certain problematic behaviors i.e. increasing pollution and climate change in the country.

2. ROCCIP Model of assessment

2.1 Rules

The term rules here are referred to the laws, rules and regulations, and policies that are put in place in response to the problematic behaviors. As we will see that there are many environmental protection laws, rules and policies in effect responding to the increasing pollution that has adversely impacted the lives and living of our people. ROCCIP allows us to (1) identify all the major laws in effect (2) identify any ambiguity in these laws (3) laws that are ineffective in tackling the problematic behavior (4) laws that do not allow too much discretion for effective implementation i.e. delegated legislation (5) laws that do not stand accountable to those who fail to implement it.¹

¹ "Introduction to the ROCCIP problem solving methodology," www.legislativeconsulting.com, (accessed on 19-Jan-2021), <http://www.legislativeconsulting.com/Textbook/Draft/LDTextDraft-ch2.htm>.

2.1.1 Existing Environmental Laws in Pakistan

Article 9 of the Constitution of the Islamic Republic of Pakistan 1973 guarantees us the right to live in pollution free and peaceful and healthy environment. Besides Pakistan is signatory to many International Conventions and commitments that makes it obligated to abide and follow not only for its own betterment but as a commitment for the betterment of the world as a whole. Briefly stated the Federal Environment Ministry of Pakistan was set up in 1975 following Stockholm declaration of 1972. It played a main role in promulgating first comprehensive legislation on environment protection in Pakistan namely, the Environment Protection Ordinance 1983 (the “**Ordinance**”). The Ordinance established Federal and Provincial Environmental Protection Agencies and Pakistan Environmental Protection Council (PEPC). Pakistan Environmental Protection Act 1997 (“**PEPA 1997**”) was later enacted which is the existing prevailing primary law on environment protection in Pakistan, repealing the Ordinance. Moreover, Pakistan’s commitment to various International convention and protocols on environment protection since 1951, were incorporated in Schedule 1 of the PEPA, thus making such conventions binding upon us, besides, bringing further improvements environmental processes and standards in the country.

Moreover, post 18th amendment in the Constitution of the Islamic Republic of Pakistan, 1973, most of federal laws have been devolved and thus delegated to the provincial administrations, consequently empowering the provinces to enact their own environmental protection laws. PEPA is enforceable in the Federal Capital whereas all the Provinces have adopted the same with minor and meager changes therein. In this regard the environment laws that provinces promulgated adopting PEPA namely are:

- (i) Khyber Pakhtunkhwa Environmental Protection Act, 2014²
- (ii) Sindh Environmental Protection Act, 2014³
- (iii) Balochistan Environment Protection Act, 2012⁴ and
- (iv) Punjab Environmental Protection Act, 1997⁵.

The provinces have also set up similar institutions enumerated in PEPA 1997, consisting of

- (1) Provincial Environmental Protection Council
- (2) Provincial Environmental Protection Agency
- (3) Provincial Sustainable Development Fund and
- (4) Provincial Environmental Tribunal, responsible for policy making, monitoring, organizing and execution respectively within their respective jurisdiction.

For the purposes of this paper we will assess PEPA 1997 as all the provincial laws have merely adopted the same with meager changes.

² “The Khyber Pakhtunkhwa Environmental Protection Act, 2014,” http://kp.gov.pk/uploads/2016/04/7_Environmental_Protection_Act_2014_.pdf, (accessed 21-Jan-2021),

³ “Sindh Environmental Protection Act, 2014,” <http://epasindh.gov.pk/Rules/Sindh%20EPA%20Act%202014-.pdf>,

⁴ “Balochistan Environment Protection Act, 2012,” (accessed January 21, 2021), https://www.elaw.org/system/files/balochistan_environment_protection_act_2012-1.pdf.

⁵ “Punjab Environmental Protection Act, 1997,” (accessed January 21, 2021), <http://punjablaws.gov.pk/laws/2192a.html>.

2.1.2 Pakistan Environmental Protection Act 1997

PEPA is a general law on environment protection that supplements all the other areas of laws that concerns environment including forestry, factories, motor vehicles, wildlife, construction, canal and drainage, and local government laws. Hence PEPA 1997 aims to supersede and regulate with an objective to protect, conserve, rehabilitate and improve the environment “for the prevention and control of pollution and promotion of sustainable development.”⁶ Moreover, most of functioning under PEPA is dependent upon rules and regulations recommended to be made thereunder. In which context many rules and regulations prescribed under PEPA 1997 have yet to be notified. PEPA 1997 requires the Federal Environment Protection Agency (EPA) to set up two types of standards for the quality of ambient (i) air (ii) water, (iii) land obligated under section 6(1)(g) of the same, specifying different standards for emission from different sources and for different areas and conditions, however, such standards have not been notified to date except the NEQs for ambient air and water in 2010.⁷

PEPA has established following institutions namely,

- (i) Pakistan Environmental Protection Council under section 4 of the same responsible for policy making and its implementation, coordination and supervision of enforcing the law;
- (ii) Pakistan Environment Protection Agency (“EPA”) under section 6 of the same that ensures implementation of policies approved by the council;
- (iii) Provincial Sustainable Development Funds under section 9, that is derived from grants or loans provided by Federal or Provincial governments and aids from foreign governments. The fund is mainly utilized in assisting projects designed to prevent, protect and conserve the environment, and
- (iv) Environmental Tribunal under section 20 of the Act.

2.1.3 Rules and Regulations made under PEPA Act 1997

There are eleven (11) rules and six (06) regulations made in total and notified under the PEPA 1997. The below mentioned rules and regulations, *inter alia*, concerns the Industries operating in Pakistan, hospital wastes, clean water, noise pollution, procedures and functions of environment tribunal, and ban on use of polythene bags and degradable plastic products. There is however, one un-notified draft rule on hazardous substances and one un-notified draft regulation concerning motor vehicles pollution.⁸

Rules:

- i. Handling, Manufacture, Storage, Import of hazardous waste and hazardous substances Rules, 2016.
- ii. Compounding of Offences and Payment of Administrative Penalty Rules 2015.

⁶ “Pakistan Environmental Protection Act 1997,” The Pakistan Code, (accessed on January 20, 2021), <http://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apqaZQ%3D%3D-sg-jjjjjjjjjjjj>.

⁷ Irum Ahsan and Saima A Khawaja, “Development of Environmental Laws and Jurisprudence in Pakistan”, *Asian Development Bank*, 2013, <https://www.adb.org/sites/default/files/publication/31140/environmental-law-jurisprudence-pakistan.pdf>.

⁸ “Rules and Regulations made under PEPA, 1997,” Ministry of Climate Change, (accessed January 20, 2021), http://www.environment.gov.pk/desc.php?page=rules_regulations.

- iii. NEQS for Ambient Air, Drinking Water and Noise vide SRO 2010.
- iv. NEQS for Motor Vehicle Exhaust and Noise Vide No. SRO 2009.
- v. Hospital Waste Management Rules, 2005.
- vi. Pakistan Biosafety Rules 2005.
- vii. Provincial Sustainable Development Fund (Utilization) Rules, 2003.
- viii. **Hazardous Substances Rules, 2003 (Draft).**
- ix. The Pollution Charge for Industry (Calculation and Collection) Rules, 2001.
- x. Self-Monitoring and Reporting by Industries Rules, 2001-Amended.
- xi. Provincial Sustainable Development Fund Board (Procedure) Rules, 2001.
- xii. NEQS (Self-Monitoring and Reporting by Industries) Rules, 2001.
- xiii. Environmental Samples Rules, 2001.
- xiv. Revised NEQS for Municipal and Liquid Effluents & NEQS for Gaseous Emissions Vide No. S.R.O. 549 (I)/2000.
- xv. Environmental Tribunal Rules (Procedure and Functions), 2008.
- xvi. NEQS relating to Municipal and Liquid Industrial effluents vide SRO 1993 & 95.

Regulations:

- i. Ban on (Manufacturing, Import, Sale, Purchase, Storage and Usage) Polythene Bags Regulations, 2019.
- ii. **(Draft) Pakistan Environmental Protection Motor Vehicle Regulations 2016 under section 33 of Pakistan Environmental Protection Act, 1997.**
- iii. Amendments in the Non-Degradable Plastic Products Regulation 2015.
- iv. Regulation on Prohibiting Non-Degradable Plastic Bags & Products (Manufacture, Import, Sale and Usage) Regulation 2013.
- v. NEQS (Environmental Laboratories Certification) Regulations, 2000.
- vi. Pakistan Environmental Protection Agency (Review of IEE/EIA) Regulations, 2000.

2.1.4 Other Relevant Laws And Policies Relating To Environment: It is pertinent to mention the policies in this paper for readers information as most of the laws are derived and enacted from government policies made after well observed deliberations from all concerned stakeholders.

- i. **Climate Change Act 2017⁹:** Pakistan is fifth country in the world to adopt legislation on climate change. This law was enacted to ensure the fulfillment of obligations by Pakistan, under international conventions relating to climate change. The Act set up Pakistan Climate Change Council, primarily responsible for implementing the Kyoto Protocol and the Paris agreement, make and monitor climate change policies. Moreover, the Pakistan Climate Change Authority under the Act is responsible to implement government policies related to climate change and assist provinces through mutual consultations. The Pakistan Climate Change Fund under the Act provides a financial base by which the Pakistan Climate Change Authority shall undertake its functioning.

⁹ Government of Pakistan, National Assembly, "Climate Change Act, 2017," National Assembly of Pakistan, (accessed January, 2021), http://www.na.gov.pk/uploads/documents/1491459994_555.pdf.

- ii. **The Canal and Drainage Act, 1873** that have been amended from time to time and the **Punjab Minor Canals Act, 1905**, govern water pollution in the Indus. It is an offence to corrupt or foul the water of any canal that making it less fit for its ordinary or irrigation use, under the aforesaid Acts, thus rendering such offence punishable with fine or imprisonment under section 17(b) of the 1873 Act.
- iii. **The Forest Act 1927** (as amended or adopted by the Provinces) prohibits all acts subject to the rights granted or the rules made thereunder. It prohibits any fire endangering forest, plant or tree; felling, damaging or cutting of a tree or plant, any construction in forest, unlawful cultivation in forest; unlawful hunting etc., trespass or pastures cattle in forest; damages natural environment or structures.
- iv. **The Factories Act 1934** (as amended or adopted by the provinces), under section 14, obligates every factory to make effective arrangements for the disposal of wastes and effluents. In contravention of the same the Act impose fines on such polluters. The Act demands all provinces to devise rules for the health and safety of persons exposed to any serious risks.
- v. **The National Climate Change policy 2012**¹⁰, address issues the country faces due to climate change affecting our water resources, energy, agriculture, forests, livestock, coasts and other vulnerable habitat. The policy devises measures to mitigate undue extreme changes in these sectors by strengthening institutions, sharing technology, capacity building, introducing climate change curriculum in higher education, ensuring environment protection and compliance through Initial Environmental Examinations (IEE) and Environmental Impact Assessments (EIA), addressing increasing deforestation and illegal forestry trade and promoting Pakistan's position on climate change in International forums.
- vi. **The National Environment Policy 2005**¹¹, was devised considering increasing population and industrialization resulting in severe environmental changes in the country. The policy aims to protect, conserve and restore Pakistan's changing and adverse environment. Primarily aiming to mitigate polluted fresh and coastal waters, air, increasing waste requiring adequate management system, deforestation, protecting biodiversity, and protection from natural disasters and change in climate.
- vii. **National Forest policy 2015**¹², recognizes the role of forestry in mitigating changes in our climate, therefore, it aims to expand, protect and devise strategies for sustainable use of (i) our natural forests, (ii) our areas that are considered protected, (iii) our natural habitats and (iv) watersheds in order to restore the ecosystem.

¹⁰ Government of Pakistan, Ministry of Climate Change, *National Climate Change Policy 2012* (Islamabad: Ministry of Climate Change, 2012).

¹¹ Government of Pakistan, Ministry of Environment, *National Environment Policy 2005* (Ministry of Environment, 2005), <http://www.mocc.gov.pk/SiteImage/Policy/NationalEnvironmentalPolicy2005.pdf>.

¹² Government of Pakistan, Ministry of Climate Change, *National Forest Policy 2015* (Islamabad, Ministry of Climate Change, 2015).

- viii. **National Sanitation Policy, 2006**¹³ provides a direction and groundwork, to Federal and Provincial Governments, Local Governments and development authorities, in increasing sanitation works in the country by formulating their indigenous projects, plans, strategies and programs on sanitation.
- ix. **National Drinking Water Policy 2009**¹⁴ aims to mitigate and conserve depleting and polluted waters. Polluted waters have led to many diseases in the country. Moreover, lack of safe drinking water is in an alarming situation.
- x. **Punjab Environment Policy 2015**¹⁵ provides the overall framework to mitigate issues of environment in the province particularly, addressing pollution in waters, air, waste management, deforestation, depleted biodiversity, natural disasters and changes in climate.
- xi. **Policy on Controlling Smog, 2017**¹⁶ was introduced by the government of Punjab to control increasing smog. The policy addresses many short term and long term solutions tackling the issue. The policy claims that the issue, amongst other reasons, mainly stems from burning rice stubble in the neighboring country therefore it suggests monitoring the same and informing relevant agencies to adopt suitable measures to mitigate the issue. Other measures it tackle it includes use of low-sulphur fuels and adopting better standard of fuel in motor vehicles etc.

2.1.5 It is important to have a system that is reliable in order to make monitoring and enforcement effective. The government must concentrate on introducing innovative technologies and modern techniques. Pakistan being a developing country has a majority of medium and small sized industrial enterprises, most of which have unsatisfactory knowledge, industrial competence and scarce financial resources needed to solve their environmental issues.

2.1.6 It is important that besides having controlling laws on air, noise and solid waste pollution, we must also devise rules and regulations concerning odour, radiation, vibration and municipal solid waste management.

2.1.7 As observed in 2.1.2 above, the Federal EPA has never notified standards for ambient air, water and land under section 6(1)(g) of PEPA. Moreover, after the 18th amendment and the adoption of PEPA by all the provinces the provinces now have the power to make such standards. Many observers believe that the quality of

¹³ Government of Pakistan, Ministry of Environment, *National Sanitation Policy 2006* (Islamabad: Ministry of Environment, 2006), <http://www.environment.gov.pk/images/policies/SanitationPolicy.pdf>.

¹⁴ Government of Pakistan, Ministry of Environment, *National Drinking Water Policy 2009* (Islamabad: Ministry of Environment, 2009), <http://www.mocc.gov.pk/PolicyDetail/YTA0ZDNkYjEtZTdINC00N2M3LTg4YjgtNTIzMzUxYzg0MjEy>.

¹⁵ Government of Punjab, Environmental Protection Agency, *Punjab Environment Policy 2015* (Punjab: Environmental Protection Agency, 2015), https://epd.punjab.gov.pk/system/files/Draft%20Punjab%20Environment%20Policy%202015_0.pdf.

¹⁶ Government of Punjab, Environment Protection Department, *Policy on Controlling Smog, 2017* (Lahore: Environment Protection Department, 2017), https://epd.punjab.gov.pk/system/files/Policy%20on%20Controlling%20Smog%20%28Final%29_0.pdf.

environment cannot be improved or sustained only through the NEQs and without the ambient standards. Therefore, it is important for the Federal government and all the Provinces to promulgate such standards obligated under their respective statute, thus making enforcement of the law and penalizing those violating it applicable and effective.

2.2 Opportunity

This category refers to the circumstances or occasions in which stakeholders engage in problematic behavior causing undue problems to the society or obey the laws. Therefore in this category we have to assess whether the laws in place are effective enough giving no opportunity to problematic behaviors, if not than laws will require to be amended.¹⁷

- 2.2.1** In the context of controlling pollution and protecting and conserving the environment, PEPA 1997 set up a Federal ‘Environmental Protection Agency’ (“EPA”) under section 5 of the same. In order to mitigate and provide quick relief against pollutants, EPA is empowered to either take notice, inquiry and investigation of any environmental issue on its own or through a complaint from any person or an organization under section 6(2)(a) of PEPA. EPA is empowered to take any measure or stop any objectionable pollution by any commercial activity. EPA and PEPA are also empowered under section 17(7) of PEPA to impose an administrative penalty on the violators of any provision of PEPA Act.
- 2.2.2** Moreover, the administrative penalty for any violation of sections 11 (Discharge of emission of any effluent or waste or air pollutant or noise in amount exceeding level set by National Environmental Quality Standards), 12 (No project to commence construction without prior approval from EPA for ‘initial environmental examination’ or for projects likely to cause adverse environmental effect an ‘environmental impact assessment’), 13 (prohibition on import of hazardous waste) or 16 (noncompliance of any direction given to violators by EPA), prescribed in section 17 is on offence extendable to one million rupees and in case of continuing contravention fine of one hundred thousand rupees for every day violation. On the other hand for any violation of section 14 (handling of hazardous substances) or 15 (prohibiting anyone to operate motor vehicle emitting air and noise pollution in excess of level set by National Environment Quality Standards) the amount of maximum fine is one hundred thousand rupees and in case of continuing violation the fine will not exceed one thousand rupees for every day. It is ironical that section 15 deals with air and noise pollution being the primary source of pollution in urban areas and larger cities but the penalty does not equate to it.
- 2.2.3** Similarly, PEPA has established Employment Tribunals under section 20 of the same. All the offences enumerated in PEPA are triable by an Environment Tribunal except that it can take cognizance of such offences, under section 21(3) of PEPA, only (i) when a complaint is received from EPA, or any government department including local councils

¹⁷ Ann Seidman, Robert Seidman, and Nalin Abeysekere, *Assessing Legislation- a manual for legislators* (Boston: 2003), <https://iknowpolitics.org/sites/default/files/assessing20legislation20-2001.200320-20en20-20pi.pdf>.

or (ii) by any aggrieved person affected by the pollution first diverting its complaint to the EPA or the NEPA in order to register the complaint before the tribunal. It is revealed that EPAs and Environment Tribunal play an effective role conserving the environment by strictly implementing the legislation. However, it has been observed that on numerous occasions Environment Tribunal have remained non-functional due to unfilled vacancy of a chairperson, technical staff or non-appointment of judge by the Federal Government to head the tribunal for this task.¹⁸

- 2.2.4** The role of penalties over pollutants has been discouraged by few environmentalists. It is said not to serve well for environment conservation, protection or eradication of pollution. It is possible that industries may have kept a cost of fines and penalties in their anticipated accounts. Some environmentalists believe that more importance should rather be given to the mitigation and adaptation policy. Thus encouraging EPAs and Environment Tribunal to focus on four main components of the Paris Agreement of COP21 2015, Pakistan being signatory to it, namely (i) mitigation, (ii) adaptation, (iii) climate finance and (iv) technology transfer, by problematic actors or industries. This will help ensure reduction in pollution from the source.¹⁹

2.3 Capacity

Here we identify certain rules or laws that impede or prevent the stakeholder's ability thus making them engage in a problematic behavior or the inability to perform the appropriate behavior. A possible factor that addresses capacity is the lack of knowledge, skill or expertise by the implementing agencies, institutions or executive heads.

- 2.3.1** Currently following government departments and independent institutions exists in Pakistan for the environment protection namely:

- i) Ministry Of Climate Change,
- ii) National Disaster Management Authority,
- iii) Federal Environmental Protection Department,
- iv) Environmental Protection Department, Punjab Departments
- v) Forest Environment & Wildlife, Sindh
- vi) Environment Department, Khyber Pakhtunkhwa,
- vii) Environmental Protection Agency, Balochistan,
- viii) Environmental Protection Agency, AJK,
- ix) Environmental Protection Agency, Gilgit Baltistan,
- x) The World Conservation Union (IUCN-Pakistan),
- xi) United Nations Environment Program (UNEP),
- xii) World Wide Fund for Nature (WWF-Pakistan).

It is observed that the international organizations have also been very helpful in lobbying for greener Pakistan.

¹⁸ Sardar Asif Sial, *Review of existing environmental laws and regulations in Pakistan* (WWF-Pakistan, 2018), https://wwfasia.awsassets.panda.org/downloads/review_of_existing_environmental_laws.pdf.

¹⁹ Sial, *Review of existing environmental laws* 2018.

- 2.3.2** One of the major reasons for unsuccessful and incomplete compliance of our environmental laws is the lack of proper investment in improving the capacity of professional environmental managers, specialists and lawyers to administer and enforce the laws and policies. The government has considerably ignored EPA in terms of budgetary funding in different areas including training, maintaining environmental laboratories with modern equipment that can be helpful in monitoring and assessing important environment data, as prescribed under section 6(2)(e) of PEPA.²⁰

2.4 Communication

This category identifies the effectiveness of a law or a rule etc. that promotes communication to stakeholders for whom the law or rule has been laid. If the people are unaware of the obligations in the law, rules or regulation then it is impractical to expect the kind of behavior or conformity expected by that law. Hence it is always a good practice to adequately advertise and create awareness of the obligation amongst the stakeholders and the public at large.

- 2.4.1** In this context, in section 6(1) (o), (p) and (q) of the PEPA, the EPA is held responsible to make compliance of the PEPA by “providing information and guidance to the public on environmental matters” and “recommend environment courses...in curricula and syllabi of educational institutions”. Similarly, it must “promote public awareness of environmental issues through mass media and other means”.
- 2.4.2** However, we have not seen any public awareness campaign that has played an effective role in educating the people about basic concepts of clean environment and responsibilities we all share in order to sustain a clean and healthy environment.
- 2.4.3** Lack of awareness about concerning environmental issues has made it difficult to pressurize industries to observe the environmental laws. The people of Pakistan have the right to live in pollution free and peaceful and healthy environment as guaranteed by Article 9 of the Constitution of the Islamic Republic of Pakistan 1973. The general public must know about the importance and value of cleaner production of the industries so that pressure can be built on pollutant industries through public and they voluntarily submit to compliance of our environmental laws rather than focusing on punitive measures against violations.
- 2.4.4** Moreover, we have not seen the government interested in putting in place contemporary syllabi on environment for educational institutions from primary level onwards.

2.5 Interest or Incentive

This category of ROCCIP, relates to the incentives or motivational mechanism that the law allows for an actor engaged in a problematic behavior. The stakeholders are thus indulged to assess the cost and benefit in order to make compliance of law easy and profitable. Here we must also discuss disincentives that discourage actors from compliance.

²⁰Sial, *Review of existing environmental laws* 2018, 35.

- 2.5.1** In this context, EPA may recommend to the Federal Government for adoption of any financial or fiscal programs or measures in order to tackle environmental issues in the country. It can ask the Federal Government for any type of incentive, awards, tax exemptions, subsidies, or rebates under section 6(2) (d) of PEPA, for those stakeholders behaving in accordance to the social norms.

2.6 Process

This term refers to the processes or the criteria laid down in a law that explains the decision making process and assess whether such criteria are suitable for particular problematic behavior. Moreover, we must assess whether the decision making processes are followed in letter and spirit.

- 2.6.1** In this context it is pertinent to note that prior to Environmental specific laws, the industries, being one of the main contender in pollution discharge, were obligated to implement Factory Act, 1934. Under such circumstances the industries were not required to seek environment approvals or no objection certificates from concerned EPAs. However, seeking such approvals for an industry has now been made mandatory enumerated under section 12 of PEPA.
- 2.6.2** No project, construction or operation can commence without first submitting an Initial Environment Examination (“**IEE**”) and Environment Impact Assessment (“**EIA**”) with the EPA or the respective Provincial EPAs which shall then be reviewed by it along with public participation. Whereupon EPA or the Provincial EPAs will approve or refuse such activities under section 12 of the PEPA or by the Provincial EPA under its respective Act. Moreover, the EPAs or Provincial EPAs may require any area as an “environmental sensitive area” thus requiring EIAs be conducted for all such areas under Regulation 22 of Pakistan Environmental Protection Agency (Review of IEE/EIA) Regulations, 2000. This provision demands to be used effectively by the EPAs, which the independent observers think otherwise.²¹
- 2.6.3** In the Balochistan Environment Protection Act, 2012 an additional incorporation is made introducing a concept of “strategic environmental assessment” in section 13 of the same. This additional concept requires the government “at all levels of administration and in every sector ... to incorporate environmental considerations into policies, plans, programs and strategies”.
- 2.6.4** PEPA also provides a quasi-judicial mechanism to restrain any harmful effects from pollution caused by any activity or violation of PEPA of any rules or regulation, through an ‘Environmental Protection Order’ (“**EPO**”). EPO can be issued by a Federal EPA or a Provincial EPA after due inspections and if satisfied that such activities are in violations he then informs the same to the Director General for necessary action under section 16

²¹ Irum Ahsan and Saima Amin Khawaja, *Development of Environmental Laws and Jurisprudence in Pakistan* (Philippines: Asian Development Bank, 2013), <https://www.adb.org/sites/default/files/publication/31140/environmental-law-jurisprudence-pakistan.pdf>.

of PEPA. Similarly, the Environment Tribunals (Procedures and Functions) Rules 2008²² also requires the DG to submit monthly reports containing number of cases concerning environmental violations that were reported, registered, investigated, controlled, halted, and disposed of in accordance with steps and measures provided under section 16 of PEPA. This section of PEPA if completely applied can bring immense improvement in the effectiveness and performance of EPA and Provincial EPAs by way of monitoring by the Environmental Tribunal.²³

2.6.5 The Environment Tribunal consists of three members prescribed in section 20 of PEPA. Chaired by a judge of the High Court appointed after consultation with the Chief Justice of the high Court and two members of which at least one is a technical member with suitable professional qualification in environmental field and a third member that is qualified to be a judge of the High Court. Importantly it is noted that the chair of the environment tribunal is not an expert or trained in environmental laws. However, in the 2013 meeting of the Committee for Enhancing Environmental Justice (“CEEJ”), (a committee of High Court and Supreme Court judges and the International Union for Conservation of Nature), directed that in future the chair and the members of the environmental tribunal must be trained in environmental laws.²⁴

2.6.6 The Environment Tribunal has inherent powers to collect and document evidence in detail. If complainant or EPA fails to get adequate evidence, the environment tribunal must dismiss the complaint for failure of producing evidence under Rule 20 of Environment Tribunals (Procedures and Functions) Rules 2008. Limited resources and expertise, unsatisfactory quality of collecting evidence and inspection procedures leads to such dismissals on failure of producing adequate evidence. Therefore we must have advance research, evidence collection and the laboratories facilities.

2.7 Ideology

This category relates to the beliefs, values, attitudes and socio economic views that form our perception of the world and shape our decisions in accordance with those perceptions. Therefore it is necessary to assess a particular law through feedback from all concerned stakeholders and neutral observers and devise a solution based on a collective wisdom.

2.7.1 Before commencement of any project EPA under section 12 of PEPA or Provincial EPAs under their respective Act, issue notices in local newspaper in order to evaluate any reservations that may come from the community where the project is being undertaken. EPA conducts public hearings and share details of the proposed project, highlighting any pollutant or emissions from such proposed projects. This is a practical example of a law indulging the community in the decision making processes and such practices need to be applied more frequently.

²² Employment Tribunals (Procedure and Functions) Rules 2008.

²³ Ahsan and Khwaja, *Environmental Laws and Jurisprudence*.

²⁴ Ahsan and Khwaja, *Environmental Laws and Jurisprudence*, 12.

- 2.7.2** The Act can be amended to indulge policymakers of all concerned stakeholders including the chamber of commerce, SECP and other regulators, and health department to develop a joint mechanism of awareness, providing training, and put in place stricter control.

3. Conclusion

The main cause of environmental pollution has revealed to be lack of awareness on environment laws and issues. Secondly, the unplanned land use of industries and its continuing expansion without proper environmental assessments has led to alarming situation, despite having numerous general and special laws in place for environment protection. The implementing agencies have not been honest with their responsibilities. Statutory responsibilities are not undertaken properly by the relevant institutions. EPA for instance must ensure that proper advice and assistance is given at the time of any new commercial or industrial activity being undertaken so that compliance is ensured and environment standards are set at the beginning of any new activity. The monitoring mechanism on EPAs must be ensured and strengthened by the federal and provincial government(s) and employment tribunals. The employment tribunals must be chaired and membered with professionals trained in environmental laws. PEPA and all the provincial Environment Protection laws must be revisited and re-assessed by the parliament after every three to five years so that any shortcoming therein is identified and amended.

FROM THE PARLIAMENTARY PAPERS

Fiscal Deficit of Pakistan Railways

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& **Areeb Shirazi**, Young Parliamentary Officer
Information Center, PIPS

Fiscal deficit of Pakistan Railways: A Comparative Analysis from 2014 – 2019

On January 28, 2020, Honorable Minister In-charge of Railways presented the statistics of fiscal deficit of Railways (2014 – 2019) in the upper house of Parliament, during the 295th session.

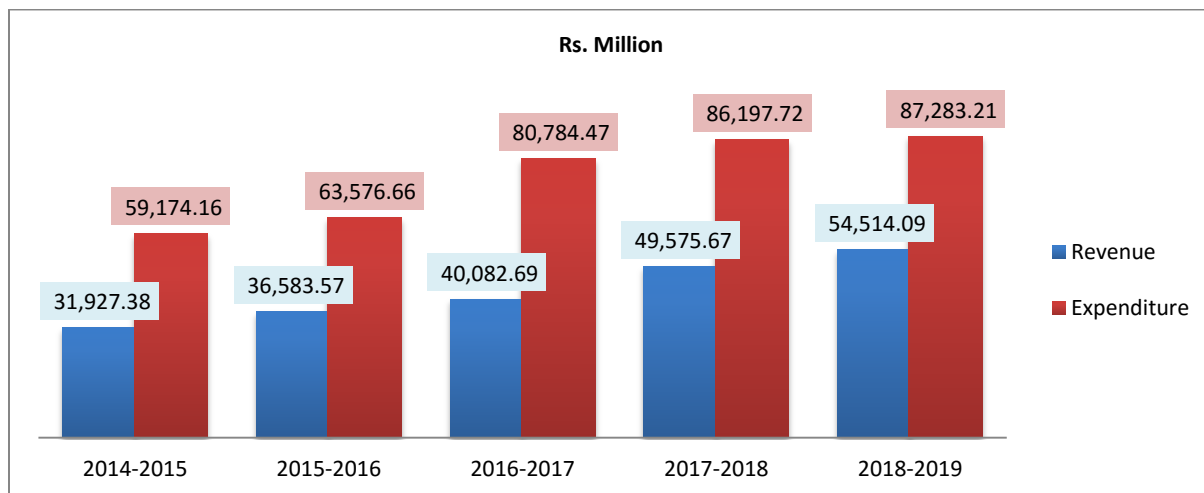


Figure 1 Total Revenue and Expenditure of Pakistan Railways during 2014-19

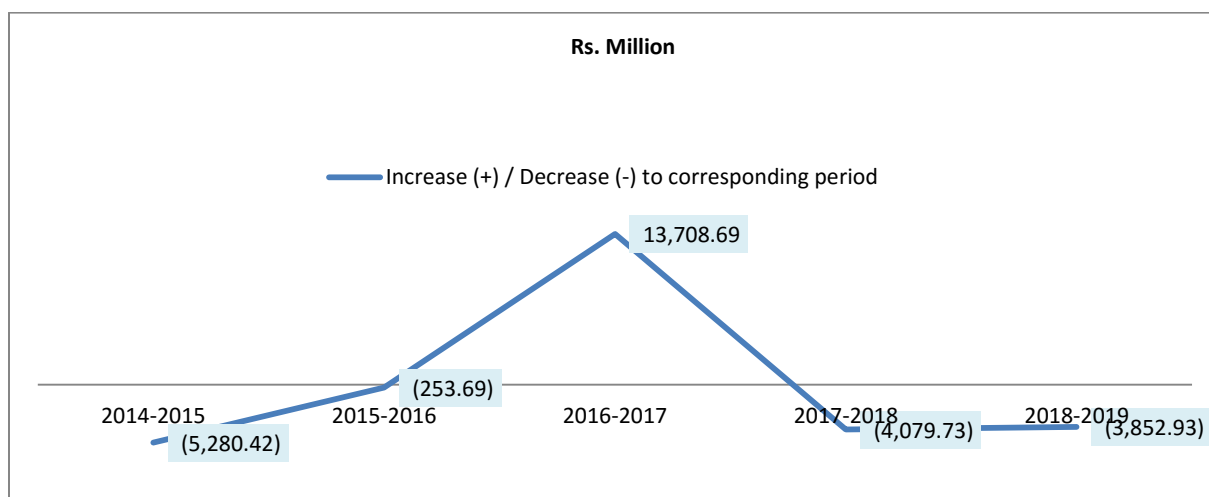
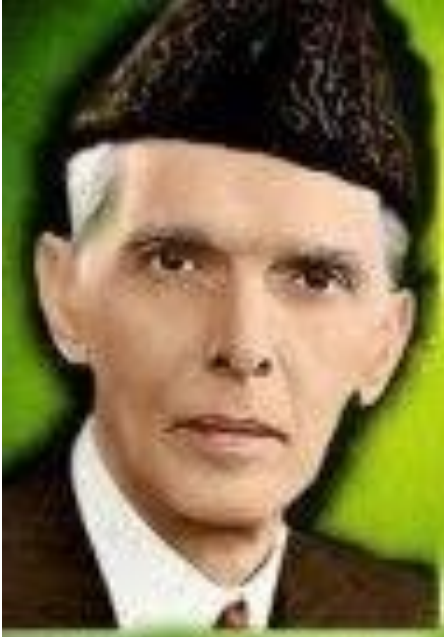


Figure 2 Fiscal deficits of Pakistan Railways during 2014-19

QUOTE OF THE QUAID-E-AZAM MUHAMMAD ALI JINNAH



"Oh ye Muslims, Our Allah is one, our Prophet (SAW) is one and our Quran is one; therefore, our voice and COUNTRY MUST BE ONE". (Addressing in Dalgate, Srinagar at the reception of the Muslim Conference and Kashmir Muslim Students Union)



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