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## Editorial

Dear Readers,

The Nation celebrated the 23<sup>rd</sup> March, 2021 with renewed zeal to strengthen parliamentary democracy ensuring a welfare state fulfilling human rights to all citizens especially the masses and the non-muslims in consultation with them, as enshrined in the vision of the founding fathers of Pakistan on 23<sup>rd</sup> March, 1940 resolution, which united all to create the Islamic Republic of Pakistan.

Meanwhile, it is matter of great satisfaction that Team-Pakistan Institute for Parliamentary Services (PIPS) continues its mandated legislative, capacity building, research and outreach services besides a grave 3<sup>rd</sup> Covid19 wave. This month, PIPS held a virtual Roundtable on Immigration – Challenges & Way forward that saw absorbing deliberations by Hon Members of Senate and National committees for overseas Pakistanis, legal experts, stakeholders and team Research and analysis at PIPS and the Migration Resource Centre IMPCD.

This Issue of the PIPS Parliamentary Research Digest includes analytical articles on recent UAE-backed Confidence Building Measures between India and Pakistan; Myth and Reality of Women Inheritance laws in Pakistan and legal framework of civil aviation laws in the country. The digest also presents key recommendations of Virtual Round Table on Immigration as well as latest inflation statistics of the country. 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](mailto:research@pips.gov.pk)

**Muhammad Rashid Mafzool Zaka**  
Director General (Research)



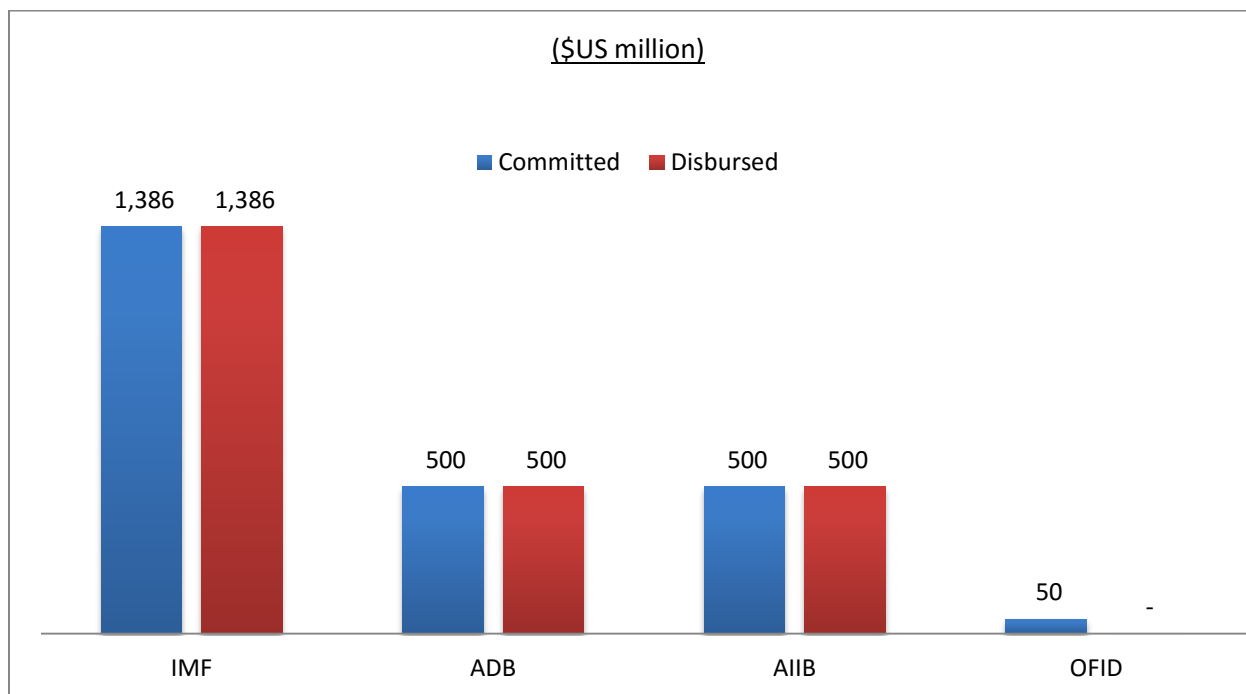
Group photo of Executive Director, PIPS Mr. Muhammad Anwar, with the participants of 7th National Parliamentary Development Course March 12, 2021

## FROM THE PARLIAMENTARY PAPERS

### Financial Assistance provided by the Countries & International Organizations to cope with COVID-19 pandemic

**Qaiser Iqbal**, Librarian  
& **Areeb Shirazi**, Young Parliamentary Officer  
Information Centre, PIPS

On August 18, 2020, during the 302<sup>nd</sup> session of Senate of Pakistan, Honorable Minister In-charge for Finance and Economic Affairs presented the statistics regarding financial assistance received by Pakistan to fight the coronavirus pandemic. Fifteen (15) countries and international organizations have committed to provide an amount of US\$ 3302.06 million to Pakistan as loans, grants and technical assistance in the wake of COVID-19 pandemic. Out of the total committed amount, US\$ 2660.35 million have been disbursed so far. The details are as under:



**Figure 1** Total budgetary support extended to Pakistan (As of March 2020 - August 2020) (Loan)<sup>1</sup>

<sup>1</sup> IMF (International Monetary Fund); ADB= (Asian Development Bank); AIIB (Asian Infrastructure Investment Bank); OFID (OPEC Fund for International Development)

## OPINION

## Prospects of India-Pakistan Diplomacy: Key Issues and Challenges

Fakiha Mahmood

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## Abstract

*The February 2021 announcement of ceasefire on LoC and other sectors, followed by the resumption of talks under the framework of Permanent Indus Commission and statements from leadership calling for peaceful dialogue on both sides signal warming of Pakistan India bilateral relations which sunk to lowest level in the aftermath of Indian illegal steps in occupied Kashmir in August 2019. After more than a year of extremely tense relations, seemingly both the South Asian neighbors are on the course towards a fresh round of negotiations aimed at resolving the outstanding issues ruining the bilateral relationship. At a time when the relationship is marred by allegations and counter allegations over key issues like Kashmir dispute and terrorism the talk of resuming the diplomatic activity has triggered the debate about the modalities, roadmap as well as the potential efficacy of such moves if they come about in the upcoming months. This paper seeks to inform the ongoing debate by analyzing the historical background, the emerging peace overtures as well as the perceptions based on the existing strategic and geopolitical scenario.*

**1. Introduction:** The February 2021 announcement of ceasefire on LoC and other sectors, coupled with the resumption of talks under the framework of Permanent Indus Commission and statements from leadership calling for peaceful dialogue on both sides signal warming of Pakistan India bilateral relations which sunk to lowest level in the aftermath of Indian illegal steps in occupied Kashmir in August 2019. After more than a year of extremely tense relations, seemingly both the South Asian neighbors are on the course towards a fresh round of negotiations aimed at resolving the outstanding issues ruining the bilateral relationship.

The idea of resumption of peaceful dialogue comes about at a time when Kashmiris are under the threat of extinction out of the ongoing genocide in the occupied territories and Pakistan is raising awareness across the world that under the Hindutva inspired Modi, India is on the mission to eliminate its minorities especially Muslims on the pattern similar to what Nazis did with Jews under Hitler. The regional peace and security are being threatened due to Indian offensive and intransigent attitude towards its neighbors. On the other hand, India is convincing friends and allies that Kashmir was and is an integral part of India, and Pakistan is a terrorist state which aims to destabilize the region by raising supporting and funding terrorists on its soil. Therefore, Pakistan should be blacklisted at the forums like FATF and India should be admitted as a permanent member of the United Nations Security Council if the world is really interested in bring peace and harmony across the globe.

In this backdrop the two South Asian neighbors have again called for peaceful dialogue as a way forward in regional affairs, triggering a debate about the modalities, roadmap as well as the potential efficacy of peaceful negotiations if they come about in the upcoming months. This paper seeks to inform the ongoing debate by analyzing the historical background, the emerging peace overtures as well as the perceptions based on the existing strategic and geopolitical scenario.

**2. Historical Background:** Though more than seven decades history of Pakistan-India relations is marred by wars, conflict, skirmishes and confrontation, efforts at peace building through dialogue and negotiations have also been carried out simultaneously. Beside their joint efforts for peaceful settlement of differences through bilateral dialogue, various third parties including the World Bank, UN, US, UK, and Soviet Union have played crucial role in concluding

agreements between the conflicting parties at various junctures in history over the decades. Though SAARC did not come up with successful agreement between the two countries, it did provide avenues for bilateral engagements at the highest level.

The United Nations played crucial role to end the 1948 war over Kashmir. The ceasefire culminated on January 1, 1949 and the UNSC came up with a resolution on January 9, 1949 calling for resolution of Kashmir dispute through a free and fair plebiscite. During the 1965 war UN passed the resolution for ceasefire on September 22, 1965. Third party mediation has proved most instrumental in bringing the two countries together. The successful conclusion of Indus Waters Treaty brokered by the World Bank is one such example.<sup>1</sup>

Both countries have carried out several rounds of talk under the bilateral track. In 1950 the South Asian neighbors agreed to protect minorities under the Nehru-Liaquat Pact which the first agreement reached bilaterally. The leadership on both sides of the borders committed to resolve the Kashmir dispute through dialogue in 1953 when Prime Minister of Pakistan, Muhammad Ali Bogra, met Indian Prime Minister Nehru in New Delhi. However, in the aftermath of US military assistance to Pakistan in 1954, India pulled out of the process. Again the two countries sat for talks in 1958, though ended without any breakthrough. A comprehensive dialogue process was held from December 1962 to May 1963 when foreign ministers of both countries held six rounds of detailed talks around the central theme of Kashmir. Again the talks ended without meaningful outcome.<sup>2</sup>

A relative success in bilateral talks was achieved in 1971 after the breakup of Pakistan to two separate countries. The Simla Accord of 1972 paved the way for the release of 90,000 prisoners of war and generated a framework for the resolution of issues through peaceful dialogue between the two neighboring countries. Furthermore, both countries agreed to address the conflict over Siachen during the visit of Prime Minister Rajiv Gandhi in July 1989. However, the agreement endorsed by Prime Minister Benazir Bhutto from Pakistani side could not be implemented. Earlier in December 1985 both sides resolved to abstain from targeting each other's nuclear facilities and established a framework for the exchange of list of civil nuclear installations on annual basis. This agreement is among few successful bilateral processes still implemented among the agreed parties. The era of sustained bilateral diplomacy began during 1990s. During this decade, both sides agreed to notify the other side about the military movements and exercise, resolved to prevent airspace violations and banned the use of chemical weapons.<sup>3</sup>

High-level engagements as well as multiple diplomatic tracks like Track II diplomacy between the two countries also continued during this decade. Prime Minister of Pakistan Nawaz Sharif and his counterpart in India I.K. Gujral held meeting during their stay in Maldives in relation to the SAARC Summit in 1997. Both sides resolved to settle differences through peaceful means during the visit of Indian Prime Minister Atal Bihari Vajpayee under the framework of Lahore Declaration signed by Prime Minister Nawaz Sharif in February 1999. However, the nuclear tests of 1998 by both countries coupled with the Kargil War of 1999 hampered the ongoing diplomatic activity. Both countries sat together again during the Agra Summit in July 2001 led by Gen. Pervez Musharraf and Atal Bihari Vajpayee. The process which was initiated in response to an article written by the Indian Prime Minister calling for resolving the Kashmir issue through peaceful dialogue ended without a joint declaration.<sup>4</sup>

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<sup>1</sup> Muhammad Sajjad Malik, "Pakistan-India Relations: An analytical perspective of peace efforts," *Strategic Studies* volume 39, issue 1, (2019): 68-74.

<sup>2</sup> Malik, "Pakistan-India Relations," 68-74.

<sup>3</sup> Malik, "Pakistan-India Relations," 68-74.

<sup>4</sup> Malik, "Pakistan-India Relations," 68-74.



The stalemate ended soon with the initiation of dialogue under the much comprehensive Composite Dialogue Process in 2004. The process was a comprehensive activity which included eight clusters: peace and security, Jammu and Kashmir, Siachin, Wullar Barrage, Sir Creek, terrorism, commerce, and promotion of friendly exchanges in various fields. However, the hectic efforts spanning more than five years were shattered with Mumbai attacks in July 2008. The attacks continued to haunt the idea of peaceful dialogue for several years. The scars of attacks continued to overshadow the outcomes of high-level engagements held at various junctures.

**3. Pakistan-India relations during the Modi era:** An anti-Pakistan hawk while in opposition and champion of Hindutva ideology, Narendra Modi began his era as Prime Minister in 2014 with positive gestures towards Pakistan. On his invitation, the Prime Minister of Pakistan, Muhammad Nawaz Sharif, attended his swearing-in ceremony on 26 May 2014. Furthermore, his surprise stopover in Lahore on 25 December 2015 generated hopes for peaceful dialogue. However, this goodwill soon withered away at the beginning of January 2016 in the aftermath of terrorist attack on Indian airbase in Pathankot. India put the responsibility for attack on chief of Jaish-e-Muhammad, Masood Azhar, and demanded his arrest. Consequently, secretary-level talks scheduled for January 2016 were deferred for indefinite period. The prospects for dialogue were shattered as India made Pakistan's commitment against terrorism a precondition for the resumption of peace process.

Later in 2016, bilateral relations deteriorated further with the martyrdom of Burhan Wani, the young leader of Hizbul Mujahideen and an icon of Kashmiri freedom struggle among youth, at the hands of Indian forces which prompted large scale protests across the occupied Kashmir. In order to neutralize Pakistan's efforts to raise human rights violations in Kashmir at the international level, Modi made the case for human rights violations in Balochistan, Gilgit-Baltistan, and Azad Kashmir in his Independence Day speech. The terrorist attack on Uri Army camp culminating into the death of 18 soldiers further dented the already strained relations. Just months before general elections in India, the killings of Indian paramilitary soldiers in Pulwama generated another spat between the two countries. The worst had yet to come.<sup>5</sup>

**4. Indian unlawful actions in the occupied Jammu and Kashmir:** Soon after taking the reins of power for second time, Narendra Modi acted on his promise to scrap the special status of occupied Kashmir granted under the Indian Constitution. On August 05, 2019 India changed the disputed status of occupied Jammu and Kashmir acting unilaterally, thereby generating a legal crisis amidst a strict security lockdown imposed in the occupied territories coupled with the arrest of Kashmiri political leadership across the spectrum. Through the legal instruments passed hurriedly through the houses of Indian Parliament occupied Jammu and Kashmir was bifurcated and made a union territory.

India not only violated its own constitution due to the manner in which the whole exercise was carried out, even more than that the Indian leadership utterly discredited the rules based order under the international law. The move attracted widespread criticism across the world. On one hand, the United Nations Security Council held a meeting to discuss the Kashmir issue after a break of more than five decades, on the other hand the international human rights organizations feared an ongoing genocide in the occupied territories completed devoid of civil and political rights under a strict lockdown. As a result of these unwelcome developments, Pakistan downgraded its diplomatic relations with India and rubbished the possibility of dialogue until the resumption of Kashmir's earlier status.

Further consolidating its colonial designs in the illegally occupied Jammu and Kashmir, India carried out legislation during early 2020 to change the demographic makeup of the occupied

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<sup>5</sup> Nabila Jaffer, "Troubled India-Pakistan relations and major stumbling blocks in the peace process," *Regional Studies* volume 36, issue 1 (2018): 50-52.

territories in order to reduce the Muslim majority into a minority in Kashmir valley. The Jammu and Kashmir Reorganization (Adaptation of State Laws) Order, 2020 issued on March 31, 2020 amended 109 laws and repealed 29 laws to change the demography in the disputed region. In this backdrop bilateral relations remained extremely tense over the recent months.

## 5. Peace overtures post August 5, 2019

The strained Pakistan India bilateral relations began changing in February 2021 as the military on both sides agreed to ceasefire along the LoC and the Working Boundary. Furthermore the Pakistani delegation attended talks over the disputed hydroelectric projects carried out by India and River Chenab in New Delhi. Also there were statements from leadership on both sides signaling the path of peace.

- a. **Ceasefire on LoC:** In a joint statement by the Director General Military Operations both countries “agreed for strict observance of all agreements, understandings and cease firing along the LoC and all other sectors, with effect from midnight 24/25 February 2021.”<sup>6</sup> Ceasefire agreement along the LoC and the Working Boundary was concluded in November 2003. It was implemented for few years, however, violations began afterwards especially since 2008. The coming into power of Narendra Modi led BJP government in 2014 culminated into significant increase in ceasefire violations.
- b. **Talks under the framework of Permanent Indus Commission:** After a break of more than two years, i.e. since August 2018, the South Asian neighbors held talks under the rubric of Permanent Indus Commission on March 23 in New Delhi in order to deliberate upon the disputed under construction hydroelectric projects built by India on the River Chenab. Though the round of talks concluded without any breakthrough, the commencement of the talks signaled warming of relations between the two countries after straining of ties due to the unilateral Indian illegal actions in the occupied Jammu and Kashmir.<sup>7</sup>
- c. **Calls for peaceful dialogue from Pakistani side:** During the recently held Islamabad Security Dialogue the Prime Minister as well as the COAS called for peaceful resolution of disputes between Pakistan and India though with precondition to resolve the Kashmir dispute. Prime Minister Imran Khan stated that “we are trying, but India would have to take the first step and unless it does that we cannot move ahead.” On Kashmir he said that “we have to see how we can resolve it through dialogue and establish relations like civilized neighbors.”<sup>8</sup> COAS, Qamar Javed Bajwa, stated that “it is time to bury the past and move forward. But for the resumption of a peaceful process or meaningful dialogue, our neighbor will have to create a conducive environment, particularly in Indian Occupied Kashmir.” He also enunciated that “we are ready to improve our environment by resolving all our outstanding issues with our neighbors through dialogue in a dignified and peaceful manner.” he emphasized the need to focus on geo-economics.<sup>9</sup>
- d. **Pakistan Day message from Modi:** The message of felicitation on Pakistan Day from Indian Prime Minister through a letter to the Prime Minister of Pakistan was projected as the key development towards resumption of dialogue process between both the countries. In his letter, Narendra Modi stated that “as a neighboring country, India

<sup>6</sup> Baqir Sajjad Syed, “Pakistan, India agree on LoC ceasefire,” *Dawn* February 26, 2021.

<sup>7</sup> Amjad Mahmood, “Talks begin on India’s disputed hydroelectric projects,” *Dawn* March 24, 2021.

<sup>8</sup> Baqir Sajjad Syed, “India must make first move to normalize ties: PM,” *Dawn* March 18, 2021.

<sup>9</sup> Express Tribune, “Full text of Gen. Qamar’s speech at first ever Islamabad Security Dialogue,” March 18, 2021.

desires cordial relations with the people of Pakistan. For this, an environment of trust, devoid of terror and hostility, is imperative.”<sup>10</sup> Thus, at the moment, letter of Indian Premier clearly continues to implicitly toe the same line of seeing their relations with suspicion and spectacles of lack of trust and hostility.

**6. ‘Cautious welcome’ and ‘considerable skepticism’:** In the words of former foreign minister of Pakistan, Khurshid Mahmood Kasuri, the recent “announcement of renewed ceasefire by Pakistan and India was greeted by both cautious welcome and considerable skepticism.”<sup>11</sup> Those optimistic about the peace process springing out of these recent overtures are cautious in spreading the euphoria about the talk of peace as they see it as purely a tactical move. Probably, India aims at relaxing the western border in order to gain mileage in its dealings with Chinese, and Pakistan wants to meet its targets in Afghanistan. At the same time their optimism is not the corollary of any strategic calculation rather they see hope for peace only because there remains no other sane option.

On the skeptics’ side of the spectrum, analysts do not see anything coming out of the dialogue more than the resumption of diplomatic relations at higher level, trade and commerce ties, and at the most cricket match between both countries. In strategic terms, India will benefit the most out of the dialogue exercise, which will culminate into nothing for Pakistan on Kashmir and will only raise India’s image in the world that has been dented recently due to Pakistan’s outcry over worst human rights violations in occupied Kashmir. The dialogue offer from Pakistani side has largely been welcomed in the Indian media because they interpret it as Pakistan’s acceptance of India’s fiat accompli in Kashmir. As Ambassador (Retd.) Ashraf Jehangir Qazi puts it “defeat cannot be dressed up in ‘geo-economics’. It can only exist in a geopolitical and geostrategic context.” Moreover, “a geo-economic initiative towards a hegemonic and intransigent India can only indicate a lack of options.” Such a venture will not only have far reaching consequences in Kashmir on both sides of the LoC as well as within the country at large. “It could also impact on China’s perception of Pakistan’s ability to be true to its own national interest.”<sup>12</sup>

**7. The geopolitical environment:** It is imperative to locate the issue of Pakistan India diplomacy in the wider regional cum global political scenario. In the contemporary context US is gaining greater proximity with India in order to contain China, Pakistan stands nowhere in this picture. Pakistan is already being threatened due to the sophisticated weapons India has been receiving from US thereby upsetting the military balance between both countries in favor of India. As the history of Pakistan India diplomacy reveals, third party intervention has played instrumental role in achieving a decisive settlement. The United States has on several occasions played key role in bilateral talks. In the contemporary context, the US seems not much irritated with what India has done with the occupied Kashmir. US finds no reason to lose friends like India in order to deal with the challenges out of the emergence of China at the global stage. Therefore, for Pakistan-India diplomacy analysts do not see instrumental role from the US benefitting Pakistan under the current dispensation.<sup>13</sup>

**8. Conclusion:** The history of South Asia spanning more than seven decades is replete with cycles of war, conflict and violence giving way to rounds and rounds of peaceful negotiations either bilateral or brokered through a third party intervention. Bilateral relations sunk much lower under the leadership of Narendra Modi. The scars of August 05, 2019 and

<sup>10</sup> The News, “Modi felicitates people of Pakistan,” March 24, 2021.

<sup>11</sup> Khurshid Kasuri and Radha Kumar, “There is hope for Pakistan India peace process,” *Dawn* March 24, 2021.

<sup>12</sup> Ashraf Jehangir Qazi, “Even if India-Pakistan negotiations are restored they will go nowhere on Kashmir,” *Dawn* March 26, 2021.

<sup>13</sup> Qazi, “Even if India-Pakistan negotiations are restored.”

subsequent Indian actions in the occupied Kashmir will take time to heal. The talk of peaceful dialogue at this juncture is getting much appreciation on the Indian side of the border, while skeptics dominate the debate on Pakistani side and even the optimists are cautious. The agenda of peacemaking will have to overcome serious difficulties and friends cum allies do not offer much hope any time soon. At most the UAE backed Indian-Pakistan diplomacy will turn out to be another short-term eye wash serving only both governments to satisfy their local political environment viz a viz present hostilities put forth in wake of farmers in India and an inflation-ridden Pakistani society that perceives betrayal on Kashmir cause by compromising and labeling it a mere human rights issue rather than as an indigenous struggle of self-determination.

## Inflation Update of Food Basket (February, 2021)

**Muhammad Rizwan Manzoor**, Research Officer, PIPS Budget and Economy Desk

**Adila Shehzadi**, Young Parliamentary Officer, PIPS

### Introduction

Controlling inflation is one the most challenging tasks for any democratically elected government. Public at large, who lack understanding of various economic indicators, evaluate the performance of government on one decisive factor; price of essential commodities/daily use items in a household. Hence, the governments put in all the necessary efforts to control the inflationary pressures and keep a positive outlook of economy and governance. Inflation rate is calculated mostly on Week on Week (WoW), Month on Month (MoM) or Year on Year (YoY) basis. According to Pakistan Bureau of Statistics (PBS), MoM inflation rate for February, 2021 over January, 2021 is increased by 1.80 percent while YoY inflation rate for February, 2021 over February, 2020 is increased 8.70 percent. On the other hand average inflation rate for July- Feb 2020-21 over July- Feb 2019-20 is increased by 8.25 percent.<sup>1</sup>

Inflation rate reaches to an alarming level on the upward trajectory during the month of Ramadan. With the advent of the holy month of Ramadan, people have to face the price hike of essential food and non-food commodities. The prices of various essential food items such as meat, chicken, ghee/cooking oil, flour, vegetables, onion and fruits had gone up during Ramadan in 2019 and 2020. For example, in Ramadan 2019, the meat price was increased by 20-50 Rs/Kg, sugar price by 5 Rs/kg, ghee/ cooking oils` price by 20 Rs. per kg/liter, bread prices by 8 percent, onions and potatoes by 8.35 and 4.71 percent respectively. Not only vegetables, cooking oil and meat prices were increased but the prices of fruits were also at the peak during this month i.e. dates price was increased by 50- 100 Rs/kg while the price of melon was increased by 20-30 Rs/kg, tomato 124 %, moong 26 %, fresh vegetables 23 %, gur 20 %, and spices 17 %.<sup>2</sup> Similar situation was seen during Ramadan 2020 and inflation rate was increased by 14.56%. With the arrival of Ramadan, the prices of edibles items such as vegetables, fruits, some pulses and gram flour were increased by almost 30-40%. The prices of various food items before and during Ramadan 2020 is given in the table 1.<sup>3</sup>

<sup>1</sup> Pakistan Bureau of Statistics, *Press Release On Consumer Price Index (CPI) Inflation For The Month Of February, 2021*, (Islamabad: GOP, Pakistan Bureau of Statistics, February 2021)

<sup>2</sup> Aamir Shafaat Khan, "Markets Welcome Ramazan with Massive Price Hike," *Dawn*, May 07, 2019. <https://www.dawn.com/news/1480791>

<sup>3</sup> Zubair Qureshi, "COVID-19: Food Prices Sky Rocket in Pakistan during Ramadan," *Dawn*, April 26, 2020.



**Table 1** Prices of various food items before and after Ramadan during the year 2020

Commodities	Before Ramadan	During Ramadan
Apple	240 Rs/kg	280 Rs/kg
Banana	120 Rs/ Dozen	150 Rs/ Dozen
Guava	84 Rs/kg	200 Rs/kg
Melon	60 Rs/kg	120 Rs/kg
Lemon	150 Rs/kg	400 Rs/kg
Onion/Potato	225/5kg	300/5kg

- 1. Consumer Price Index with Base Year 2015-16:** The CPI is comprised of both urban and rural CPI. According to the PBS, 35 cities and 356 consumer items, 27 Rural Centers and 244 consumer items were covered under Urban CPI and Rural CPI respectively.
- 2. Month on Month Inflation Rate Feb 2021 over Jan 2021:** CPI National for the month of February, 2021 increased by 1.80% over January, 2021. The Urban CPI recorded an increase of 2.27% while Rural CPI recorded an increase of 1.12%. There are some commodities that were varied from January, 2021 are given below
  - a) Urban Commodities:** The urban food commodities that were varied from previous month of January 2021 are given here
    - i) Increased:** Chicken (37.01%), Cooking oil (11.92%), Fruits (9.26%), Vegetable ghee (9.03%), Condiments and Spices (5.50%), Pulse gram (4.48%), Mustard oil (3.80%), Pulse masoor (3.28%), Pulse mash (2.62%) and Rice (1.20%).
    - ii) Decreased:** Tomatoes (58.7%), Potatoes (12.92%), Eggs (10.38%), Onions (7.88%) and Vegetables (7.35%).
  - b) Rural Commodities:** The rural food commodities that were varied from January 2021 are given here
    - i) Increased:** Chicken (31.54%), Fruits (9.92%), Vegetable ghee (7.05%), Cooking oil (5.58%), Mustard oil (3.76%), Pulse Gram (2.46%), Pulse Masoor (1.57%), Pulse Moong (1.18%), Rice (1.18%), and Pulse Mash (1.01%).
    - ii) Decreased:** Tomatoes (56.33%), Eggs (18.41%), Potatoes (17.48%), Onions (8.30%), Vegetables (6.00%), and Wheat Flour (1.10%).<sup>4</sup>
- 3. Year on Year Inflation Rate Feb 2020 over Feb 2021:** Year on Year inflation rate for February, 2021 over February, 2020 is 8.70 percent.
  - a) Urban Commodities:** The urban food commodities that were varied from Feb 2020 to Feb 2021 are given here
    - i) Increased:** Eggs (48.10%), Chicken (36.33%), Condiments and Spices (31.13%), Wheat (23.79%), Mustard oil (22.71%), Beans (17.34%), Vegetable ghee (17.27%), Sugar (17.16%), Cooking oil (15.39%), Milk (14.65%), and Wheat flour bag (13.51%).
    - ii) Decreased:** Onions(29.72%), Tomatoes(29.49%), Fresh vegetables(22.58%) and Fish (7.37%).

<sup>4</sup> Pakistan Bureau of Statistics, *Press release on Consumer Price Index, 2021*

- b) **Rural Commodities:** The rural food commodities that were varied from Feb 2020 to Feb 2021 are given here
- i) **Increased:** Eggs (35.81%), Chicken (27.28%), Condiments and Spices (24.18%), Wheat (23.14%), Mustard oil (20.16%), Cooking oil (18.95%), Vegetable ghee (18.17%), Wheat Flour (16.58%), Sugar (15.13%).
  - ii) **Decreased:** Tomatoes (34.33%), Onions (30.24%), Fresh Vegetables (26.45%) and Potatoes (10.14%).<sup>5</sup>
4. **Average Inflation Rate for July- Feb 2020-21 over July-Feb 2019-20:** The average inflation rate was increased by 8.25 % for July- Feb 2020-21 over July-Feb 2019-20. While the Urban and Rural CPI was increased by 7.18% and 9.87% respectively.
- a) **Urban Commodities:** The urban food commodities that were varied from July-Feb 2019-20 to July-Feb 2020-21 are given here:
- i) **Increased:** Chillies Powder (73.69%), Cardamom Small (54.38%), Ginger (51.69%), Potatoes (45.68%), Eggs (42.09%), Wheat (32.70%), Gold (31.64%), Silver (27.72%), Beans (27.46%), Pulse moong (26.62%), Pulse Mash (25.47%), Sugar (24.43%), Pulse masoor (20.09%), Vegetable Ghee (19.26%), Wheat Flour Bag (14.91%) and Gur (13.94%).
  - ii) **Decreased:** Cauliflower (34.74%), Onions (24.82%), Turnip (23.81%), Peas (20.89%), Garlic (17.09%), Apples (9.51%), Reddish (9.07%), and Gram Whole (5.32%).
- b) **Rural Commodities:** The rural food commodities that were varied from July-Feb 2019-20 to July-Feb 2020-21 are given here:
- i) **Increased:** Chilli Powder (82.44%), Ginger (52.69%), Potatoes (44.77%), Eggs (40.01%), Wheat (32.89%), Pulse Moong (30.56%), Beans (30.26%), Pulse Mash (26.40%), Sugar (24.16%), Wheat Flour Bag (23.29%), Pulse Masoor (23.13%), Vegetable Ghee (20.44%) and Rice Basmati (15.38%).
  - ii) **Decreased:** Cauliflower (29.53%), Onions (25.18%), Turnip (21.05%), Peas (16.63%), Garlic (14.62%), Apple (12.51%), Gram Whole Yellow (4.83%), and Fish (1.87%).<sup>6</sup>

**Conclusion:** The data collected by Pakistan Bureau of Statistics (PBS) for the successive years shows that inflation during the month of Ramadan rapidly increases. This change is credited to a rapid increase in factors determining the demand curve, hence it becomes challenging for the governments to control the inflationary pressure. Learning from the previous years, governments should pre-empt the indicators which adds to the inflation during the month of Ramadan and take necessary steps before the arrival of the holy month – so that the pressure on public can be minimized as much as possible. Consequently, it can help the government to project a positive outlook of economy – gaining people’s confidence in economic policies of the government.

<sup>5</sup> Pakistan Bureau of Statistics, *Press release on Consumer Price Index, 2021*

<sup>6</sup> Pakistan Bureau of Statistics, *Press release on Consumer Price Index, 2021*

## ANALYSIS

## Myths in Understanding Women's Inheritance Rights: Legislative Analysis and Way Forward

Saadia Bashir

Deputy Director (Legislation), PIPS

**Abstract**

*Women's rights violations is a grave issue in both western and Muslim world. In many societies world over, women are still deprived of their inheritance rights after the death of their parents. However in the Islamic tradition as per Quranic injunctions and Sunnah of Prophet Muhammad (SAW), the right of inheritance is an integral right that assures socioeconomic, political empowerment to the Muslim women. Furthermore, Islam established the right of inheritance to women, and guaranteed complete control over what they earn and possess,<sup>1</sup> her share is completely hers and no one, including her father and husband can make claim on it. As it's clearly mentioned in the Holy Quran:<sup>2</sup> "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share." Pakistan, as an Islamic Republic State, handles all inheritance matters in accordance with Shariah and law, according to which property is inherited to legal heirs. Yet whenever Pakistani women claim their right of inheritance, they have to undergo grave trauma of social barriers or legal challenges. This Research Paper studies the women's inheritance rights in Pakistan and emphasizes on exploring (a) Islamic law perspective on women rights of inheritance (b) myths / common traditions deteriorating inheritance right of women in Pakistan (c) legal framework of all existing (pre and post partition legislation) on Women inheritance and way forward.*

**1. Introduction**

Property rights (linked with inheritance) are a vital rule of law institution that has an inevitable connection with empowerment and role in society. They are a dynamic legal body that enables owners to use sections of nature and prohibit their use by others.<sup>3</sup> As Arthur Lee pointed out in Virginia (1775:14): "The right of property is the guardian of every other right, and to deprive the people of this is in fact to deprive them of their liberty."<sup>4</sup>

Pakistan, with a 98% Muslim population, is an Islamic republic. The Constitution of the Islamic Republic of Pakistan states that every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan.<sup>5</sup> Article 24 goes on to state that "no person shall be deprived of their property save in accordance with the law." It also guarantees equal legal protection and states that "not only all citizens are equal, there shall be no discrimination on the basis of sex and nothing in this Article will prevent the State from making special provisions for the protection of women and children."<sup>6</sup> Although the Constitution does not contain any separate provisions dealing with the right of women to inheritance, it provides guarantees that secure this right through the above-mentioned articles.

According to the International Property rights index 2020 "Pakistan's IPRI score increased by 0.267 to 4.142 placing it 18<sup>th</sup> in the Asia and Oceania region and 116<sup>th</sup> in the world. Pakistan's

<sup>1</sup> Jamal.A Badawi, *The status of women in Islam* (Islamabad: Publication Section Dawah Academy International Islamic University Islamabad 1999) P 22.

<sup>2</sup> The Holy Quran 4:7

<sup>3</sup> Eric T. Freyfogle, "Property and Liberty," *Harvard Environmental Law Review* 34, no.1(2010):75-118 Accessed on March 23, 2021, <http://ssrn.com/abstract=1024574> or <http://dx.doi.org/10.2139/ssrn.1024574>.

<sup>4</sup> Arthur Lee, *An appeal to the justice and interest of the people of Great Britain in the present dispute with America* (London: Printed for J. Almon, 1775.)

<sup>5</sup> The Constitution of Islamic Republic of Pakistan 1973, Article (23)

<sup>6</sup> The Constitution of Islamic Republic of Pakistan 1973, Article (25)

Physical Property Rights Sub index increased by 0.542 to 5.343 with scores of 5.089 in perception of Property Rights Protection, 6.658 in Registering Property, and 4.281 in Ease of Access to Loans.”<sup>7</sup> The key contributors that result in women deprivation of their share are legally accepted customary practices, lack of awareness, lacunas in judicial and monitoring system, and implementation of law. The international community has drawn attention to these deprivations and violations through treaties and conventions, but they have yet to be incorporated into domestic legislation due to prevailing customary prejudices and complications in the legal system. It is evident in the shape of the Gender Equality IPRI indicators that reflect Women’s Social Rights as weak, showing an average score of 5.28, followed by Inheritance Practices) ranked and show lower results of (3.929).<sup>8</sup>

## 2. Islamic law perspective on women's rights of inheritance

In pre-Islamic era in nearly all continents, women were considered as low-graded individual dominated by males; and worse example of these subjugations include practices of female infanticide, unrestricted polygamy and with no previous right of succession and prevalence of primogeniture laws (only male can inherit it is called patrilineal succession <sup>9</sup>(and if only females can inherit it is called **matrilineal primogeniture**).<sup>10</sup> Simply put, this inheritance right was granted to mature male relatives only. Women were not allowed to attend higher education institutions in Europe until the 18<sup>th</sup> century.

Islam acknowledged the women’s right of independent ownership, property rights and inheritance 1400 years ago as Allah swt lays it in the Quran the right of inheritance to wives, daughters' sisters, mothers and grandmothers of deceased. The Quran states in Surah e Al-Nisaa:<sup>11</sup> **“Allah enjoins you about [the share of inheritance of] your children: A male's share shall equal that of two females”**. The next verses of Al-Nisaa clearly mention their shares accordingly:<sup>12</sup>

*“You shall get half of what your wives leave, if they die childless. But if they do have children, your share shall then be a quarter of what they leave after carrying out any will made by the deceased or payment of any debt owed by her. And they (your wives) shall have a quarter of what you leave, if you die childless. But in case you have children, they shall then get one-eighth of what you leave, after carrying out any will made by you or payment of any debt owed by you (the deceased).”*

It is further narrated in the Quran: **“You who believe, it is not lawful for you to inherit women against their will”**<sup>13</sup> Thus, it has been ensured that women’s inherited or self-acquired property belongs to them and therefore, only they possess the ownership. According to a tradition narrated by Sa’ad bin Abbi Waqqas (RA), the Prophet Muhammad (SAW) advised

<sup>7</sup>Property Rights alliance, “International Property Rights Index 2020 Pakistan” retrieved from [www.internationalpropertyrightsindex.org](http://www.internationalpropertyrightsindex.org)

<sup>8</sup> Dr.Sary Levy Carciete “International Property Rights Index 2019” retrieved from [https://atripri2017.s3.amazonaws.com/uploads/IPRI\\_2019\\_FullReport.pdf](https://atripri2017.s3.amazonaws.com/uploads/IPRI_2019_FullReport.pdf).

<sup>9</sup> open Education Sociology Dictionary, “patrilineal succession” retrieved from [sociologydictionary.org](http://sociologydictionary.org) › P Words

<sup>10</sup> Open Education Sociology Dictionary, “primogeniture laws,” Open Education Sociology Dictionary, Accessed on March 25, 2021 <https://sociologydictionary.org/?s=+patrilineal+succession+>.

<sup>11</sup> The Holy Quran 4:11

<sup>12</sup> The Holy Quran 4:12

<sup>13</sup> The Holy Quran 4:19

Sa‘ad bin Khaula (RA), who was on his deathbed, to distribute his property among his wife and daughter rather than leaving it for charity.

“...I was stricken by an ailment that led me to the verge of death. The Prophet (SAW) came to pay me a visit. I said, “O Allah’s apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?” The Prophet (saw) said, “No.” I said, “Half of it?” He (SAW) said, “No.” I said, “One-third of it?” He (SAW) said, “You may do so though one-third is also too much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help. And whatever you spend (for Allah’s sake) you will be rewarded for it, even for a morsel of food, which you may put in the mouth of your wife...”<sup>14</sup>

According to the provisions of Quran and Islam after the death of the person when all of the deceased's debts and expenses are paid, the property left behind is immediately devolved and distributed among the legal heirs. Heirs are classified into three types:

- a. **Sharers** (also called Quranic heirs, parents, children are entitled heirs for inheritance)
- b. **Residuary heirs** (also known as Agnatic Heirs) do not have prescribed shares, however they become entitled to what is left. This category includes grandfathers, paternal uncles, and so on.)
- c. **Distant Cousins** (also known as Uterine Heirs: those are neither sharers nor Residuaries but are related to the deceased through blood. These are some different shares in (inheritance) of Mother, wife, daughter under the Islamic law.<sup>15</sup>

Entitled women	Expected share
Mother (if the deceased has children and other siblings)	1/6th of estate
Mother (if deceased left no living children or siblings)	1/3rd of estate
Wife (if has children)	1/8th of estate
Wife (if no living children)	1/4th of estate
Daughter (if only child)	½ of estate
Daughter (if two or more and no brothers)	2/3rd of estate collectively to be divided equally among all daughters
Daughter (if has 1 male sibling)	1/3rd of estate

<sup>14</sup> Muhammad bin Ismail Bukhari, Shahih Bukhari, “Book of Inheritance Laws,” vol. 8, book 80, Hadīth No 725

<sup>15</sup> Tanzeel- ur Rehman, “Majmowa-e-Qawaneen Islam,” Vol 5, (Islamabad: Idara Tahqiqat-e-Islami, 1978)P 1071.

(Note: however it must be noted that every share of women shall be dealt according to her own sect (personal law)



### 3. Myths & Customary practices affecting women's right of inheritance

Although the Islamic law and the Pakistani laws are explicitly explaining the right of women's inheritance yet some customary practices and myths are so dominating that these create big hurdle for women to get their rights. Dowry, cousin marriages, marriage to Quran, and surrendering the right of inheritance by women herself due to fear of family shame and disown are few classical examples. As so many Pakistani women don not receive any share in the property at all and even most of them are forced to turn their right of share to their brothers. Few grave cultural norms are as under:

- i. **Discriminatory attitude towards women:** In the Joint Family system, the male member of the family have exclusive right of headship or guardian and as a result of this preference this gender bias assumption starts from the home and women are deprived from her rightful inheritance right after the death of her nearest kin.
- ii. **Lack of women empowerment:** Men are vested with exclusive rights of headship of the family so they assert their right to decide and women as mother, sister and daughter remain submissive under the guardianship of the men. These presumptions vested the idea that women cannot own and manage a family property independently. Hence, women cannot get education or choose a profession and even in selection of spouse she doesn't have any right to choose or decide.
- iii. **Lack of awareness:** Mostly it has been observed that in rural as well as in urban areas, women do not have awareness regarding their share in property. From childhood, girls are taught that if they ask for a share of property, they are violating their brother's rights.
- iv. **Dowry:** It is used as compensation for women as they are expected to surrender their right of inheritance due to dowry. Eventually inheritance right is denied when gift and dowry is given to the women at the time of their marriage.
- v. **Withdrawal or surrender by women herself** as most of the women are forced to leave their share in the property or they are pressurized on the slogan of the shame and disown of the family , these emotional indicators compel a woman to surrender her share in favour of her brother or any male kin.
- vi. **Marriage to Holy Quran (haq bakhshi)** is a disapproved practice by the Islam and Constitution of Pakistan yet in some downtrodden rural setups in Punjab and Sindh, women are denied share in inheritance and their life is dedicated to the verses of the Holy Quran with the condition of not marrying to any human being. According to the human rights Commission of Pakistan “there are currently over 5,000 women in Sindh married to the Holy Qur'an.”<sup>16</sup>
- vii. **Walver (bride price):** Another form of practice usually found in Baluchistan and KPK Province, involves the price of the bride that bridegroom is expected to pay on marriage in lieu of no share of Women in inheritance.
- viii. **Marriage system and Mode of Marriages:** Customary practices play a vital role in selection of mate selection and for entering into the bond of marriage. As marriage is just not marrying of man and women rather it creates a basis for sharing and transferring of property (moveable or immoveable) from one tribe/family to another.<sup>17</sup> There are different mode of marriages which are prevailing in Pakistan like

<sup>16</sup> Human Rights Commission of Pakistan Report ‘State of Human Rights in 2000’ quoted in Amnesty International Report 2002 titled ‘Pakistan: Insufficient Protection of Women’ <<http://web.amnesty.org/library/index/engASA330062002?OpenDocument>> accessed on 4-03-2021

<sup>17</sup> National Commission on the Status of Women, *Women's Right of Inheritance and its Implementation*, Islamabad: Ministry of Human Rights, 2008. Accessed on March 5, 2021, <https://www.ncsw.gov.pk/SiteImage/Downloads/Women's%20Rights%20of%20Inherence%20and%20its%20Implementation.pdf>.

arrange marriage, Watta satta Marriage (bride's brother marries bridegroom's sister), Court Marriage, an arranged marriage the guardian of the family has the exclusive right to select the mate of their children which is binding on the children to admit the decision. Ultimately it has been observed that traditionally ownership of the land remain confined to the male member of the family women are denied their share in inheritance.

- ix. **Absence of the proper legal documents and legal procedure** is one of the major obstacle for women to get her share in inheritance is missing of proper legal documents like birth certificates, Death certificate, CNICs, and B form and Fard (record of ownership). The main cause of this neglect is a lack of awareness and empowerment among women, which has made it difficult for women to obtain their fair share of inheritance rights. Similarly, a lack of understanding of legal procedures and information has resulted in women's exclusion from their share of the property. This also encourages Fraud and deception through documents by family members in which thump impression and signatures has been taken on blank page as it will be used to get rid of women's role of inheritance. A fake gift deed has been produced in the court as showing the fact that sister has gifted her share in the name of Brothers.

#### 4. Legal framework of inheritance laws in Pakistan

Property rights in Pakistan are regulated by a complicated blend of Civil Law, Islamic Law and Customary Laws, many of which have their origins in English Common Law concepts.<sup>18</sup> These laws on the other hand, are enforced by the Common Law Court system (inherited from British India). Property ownership and transfers are regulated by gender-neutral civil laws, while inheritance rights are governed by Muslim personal law. In era of British regime, Customary law was given priority over Muslim Personal law under section 5 of the Punjab laws Act 1872 and Section 27 of the NWFP Justice Regulation 1901, according to verdicts of these laws, agnatic relatives are preferred over cognate relatives, in this way female relatives like daughters and sisters had limited interest only, and even female legal heirs did not have a right to challenge the alienation of ancestral property.<sup>19</sup> However since the 1930s through introduction of various legislative instruments the law of inheritance has been progressively Islamized.

The British arrival in India had a major impact on the development of Islamic law in South Asia. However, the advent of the new nation state developed the state's monopoly on legislation, and displaced the traditional position of the Muslim jurist as the legal authority in Muslim society which later Jurists describes this change as "transformation of Shari'a from Jurists law to State law."<sup>20</sup> Through this gradual reformative process the enactments of the (North West Frontier Province Muslim Personal Law (Shariat) Application Act 1935, at the Provincial Level and the Muslim Personal Law (Shariat) Application Act 1937 at the Federal Level must be witnessed as protection to the women's right to Property. The Muslim Personal Law (Shariat) Application Act 1937 regulated the matters related to marriage, divorce and succession amongst Muslims. The Muslim Personal Law (Shariat) Application Act was enacted after persistent demands to replace customary law with Muslim Personal Law.

The most important legal document in personal law in Pakistan was the Report of the Marriage and Family law Commission 1956 which later promulgate the Muslim Family Laws Ordinance

<sup>18</sup> Sustainable Development Policy Institute, *Land Rights for Muslim Women: Review of Law and Policy*, August, 2008, <http://www.lcwu.edu.pk/ocd/cfiles/Gender%20&%20Development%20Studies/Maj/GDS%20-%20403/LandRightsforMuslimWomen.pdf>.

<sup>19</sup> Muhammad Zubair Abbasi and Shahbaz Ahmad Cheema, *Family laws in Pakistan*, (Karachi: Oxford University Press, 2020).

<sup>20</sup> Abbasi, *Family Laws*

1961. This report led towards heated debate among traditional Scholars and modernists but the Ordinance accepted some of the report's recommendations and sought to amend divorce law and inheritance law relating to orphaned grandchildren of deceased persons in their estates. Later the Muslim Personal Law (Shariat) Application Act 1937 was repealed by the West Pakistan Muslim Personal Law (Shariat) Application Act 1962. This Act covered agricultural land and gave Muslim women the right to inherit all property, including agricultural land, in proportion to their relationship with the deceased.

### Other Prevailing laws in Pakistan:

- a. **The Succession Act, 1925** is one of the most important statutes dealing with the laws of inheritance, whether they are Muslim, or from any other religion residing in Pakistan. It is based on English Law applicable to all classes of intestate and testamentary succession. A succession certificate may be issued under section 370 of the said Act, but that is restricted to debts or securities i.e. only for all movable properties. This statute repealed the following acts:<sup>21</sup>
  - i. The Succession (Property Protection Act) Act (XIX of 1841);
  - ii. The Indian Succession Act (X of 1865);
  - iii. The Hindu Wills Act (XXI of 1870);
  - iv. The Married Women's Property Act (III of 1871), S.2;
  - v. The Probate and Administration Act (V of 1881), Act VI of 1889, Act II of 1890, and Act VIII of 1903;
  - vi. The District Delegates Act (VI of 1881);
  - vii. The Succession Certificate Act (VII of 1889);
  - viii. The Native Christian Administration of Estates Act (VII of 1901)<sup>22</sup>
- b. **Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011:** This act penalized under **489A (added in Pakistan Penal Code 1860)** which prescribes the punishments of ten years or fine of one million or both for depriving women of their right to inheritance and **489C** further criminalize and prohibit marriage with the Holy Quran and prescribe three to seven years punishment and five hundred thousand fine as well.
- c. **National Commission on the Status of the Women Act, 2012:** There is a National Commission on the status of Women, which recommends Federal Government to solve the problems being faced by the women in getting their share in inheritance. NCSW is a recommendatory body its main mandate is to review all law, policies rules and regulation related to status and rights of women in Pakistan. There are several Legislations at Federal and Provincial Level related to women inheritance right.

### Brief analysis/review of two major Legislations enacted in recent 2020

- a. **Enforcement of Women's Property Rights Act, 2020:** The Government of Pakistan managed to reach a pivotal point in February 2020 when the President of Pakistan signed the Enforcement of Women's Property Rights Act, 2020 as its implementation will be one of the most important steps toward empowering women. Salient points of the Act are:
  - i. The Act empowers the ombudsman to take appropriate action to protect and secure women's rights of ownership of property.

<sup>21</sup> National Commission on the Status of Women, *Right of Inheritance*

<sup>22</sup> NOTE: There are more other laws like West Pakistan Land Revenue Act, 1967, and Registration act 1908 which prescribes procedure for the determination of the legal rights of heirs.

- ii. Now, any woman, who is deprived of ownership or possession of her property by any means, can file a complaint to the ombudsman, if no proceedings regarding that property are pending in a court of law.
  - iii. In case, the woman deprived of her property is unable to do so, any other person or NGO may initiate action on her behalf. The ombudsman, after preliminary assessment, will direct the matter to the concerned Deputy Commissioner.
  - iv. The deputy commissioner will then conduct an inquiry and submit a report to the ombudsman within 15 days following which the ombudsman may call for further record or submission of objections by the complainant and her adversaries.
  - v. The ombudsman will preferably pass the orders within 60 days of receipt of the complaint.
  - vi. The role of ombudsman does not end here but he or she will ensure implementation of the orders by directing the police and district administration officials to restore possession and title of the property to the complainant.
  - vii. No court or authority will be able to question the validity of action taken or grant a stay or interim order after orders by ombudsman have been passed. Under Article 23 of the Constitution, it is the citizens' right to acquire hold and dispose of property in any part of Pakistan. Since it applies to all the citizens, there is no differentiation of man and woman.
- b. **The Letters of administration and Succession certificate Act, 2020:** Under the Succession Act, 1925, a succession certificate may be issued under section 370 of the said Act, but that is restricted to debts or securities i.e. only for all movable properties. For the purpose of immovable property, a Letter of Administration is granted under Succession Act, 1925, but that is again for a limited purpose. The Succession Act provides a summary procedure which does not lead to the detailed determination of the right to inheritance, as also held in Rukhsana Kausar's case.<sup>23</sup> The relevant para of the judgment reads: "from the plain reading of section 373 of the Succession Act, it is crystal clear that the Act has provided only summary procedure, and if any person wants that there should be detailed determination of rights, remedy lies in shape of suit filed under S.37, Succession Act, and if a person is dissatisfied or aggrieved by issuance of a Succession Certificate he would prefer an appeal under section 384 of the Act against the order of granting or refusing the certificate."

Under the new law of Letter of administration and succession certificate Act 2020, the legal heirs will receive Letter of administration and succession certificates in two weeks in order to inherit their property. Previously, civil judges used to issue them and the process would take years. Legal heirs will now just have to show the family registration certificate and the succession certificate will be issued to them in 15 days.<sup>24</sup>

**Step 1: Application initiation-** Submit their CNIC number along with the deceased's death certificates.

**Step 2: Legal heirs and assets-** Submit relevant details of legal heirs and information on the deceased's properties.

**Step 3: Verification and consent-** All legal heirs will have to visit NADRA's Registration Centre for biometric verification.

**Step 4: Advertisement-** NADRA will publish the notice for the public at large in newspapers seeking any objections against the particular objection.

**Step 5: Printing and delivery-** If no objection is received within 14 days then succession certificate/letter of administration will be printed and issued.<sup>25</sup> The law ministry has established

<sup>23</sup> Rukhsana Kausar vs. Additional District & Session Judge Khanewal & 11 others, 2000 CLC 585

<sup>24</sup> "PM Imran to launch letters of administration, succession certificates initiative" *The Express Tribune* January 21, 2021.

<sup>25</sup> NADRA "Succession Certificates and Letter of Administration" Islamabad retrieved from <https://succession.nadra.gov.pk>

succession facilitation units in collaboration with NADRA for issuing succession certificates to legal heirs in 15 days. Previously this process used to take years.

## 5. Prospects for strengthening women's property and inheritance rights

There is an urgent need for religious scholars to come to the forefront in (Friday) sermons and other occasions to spread the message of Islam on inheritance in a conceivable and logical way, emphasizing the people to ensure the provision of shares to women.

- a. There is overabundance of legislation pertaining to women's inheritance; however, the state law must be followed in letter and spirit in order for discrimination to be reduced.
- b. Advocacy efforts by the government's Technical Unit for Legal Reform (Ministry of Law, Justice, and Human Rights) and research institutions such as the Pakistan Institute For Parliamentary Services (PIPS) must be increased to accelerate the legal reform of succession law. So far, the emphasis has primarily been on women's property and inheritance rights. The Women Parliamentary Caucus (WPC) in the National Assembly of Pakistan can undertake parliamentary initiatives through cross party caucusing.
- c. To improve legal protection for women's inheritance, it is critical to train and build the capacity of judges, magistrates, court officials, police officers, and other law enforcement officials.
- d. The government may establish a legal aid cell to ensure liaison with Social Support Bodies or Non-Profit Organizations at the district level regarding women's right to inheritance and access to courts or an ombudsman.
- e. Discriminatory attitudes toward women can be changed through education. There is a need to reform education curricula in order to implement the Civic Education Act in all schools across the country. The chapter on the translation and interpretation of Surah Nisa, as well as the significance of women's inheritance rights, should be taught to all and sundry.
- f. Open debate should be encouraged to bring the issue of inheritance rights out of the private family sphere and into the public eye, as this may encourage people to condemn various forms of property deprivation and lead to proactive community behavior.

## Conclusion

It has been observed that women are deprived of their share of inheritance due to illiteracy, a lack of education, and a lack of awareness of their moral and legal rights. This Prophet Muhammad (PBUH) Saying should be practically implemented through the aforementioned legal, moral, and societal intervention: "All people are equal, as equal as the tooth of a comb. There is no claim of merit of an Arab over a non-Arab or of a white over a black person: only God-fearing people merit a preference with God. Thus, men and women are equal."<sup>26</sup>

<sup>26</sup> Hajjat-ul-Wida ,the last address of the Prophet(PBUH) on the occasion of last pilgrimage



## ANALYSIS

## Legal Framework of Civil Aviation Laws in Pakistan

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## Abstract

*Pakistan's aviation industry is growing; bringing new challenges that accounts for a well thought and efficacious legislation. The aviation in Pakistan has faced numerous events of disturbances and is a long way from being brought to its original stage. In this paper we will review the domestic laws and international conventions governing civil aviation industry in Pakistan – applying the ROCCIP Model of assessment including the laws and practices that are in place internationally. ROCCIP model is the combination of seven factors namely, Rules, Opportunity, Capacity, Communication, Process, Interest and Ideology. We will apply each factor in assessing the laws of civil aviation industry in Pakistan. We will discuss environmental laws in relation to aviation industry and how can Pakistan improve its aviation laws in accordance with the international environmental standards. Moreover, we will discuss the laws that address the safety and security of passengers and cargo and the mechanism of compensation to victims. We also discuss the investigation processes of airline accidents domestically and more importantly the rules regarding safety and airworthiness of airplanes consistent with the international conventions.*

## 1) Rules

Here we will address all the major laws that relate to the aviation sector of Pakistan and critically analyze their significance. We will also highlight the areas that these laws relate to. The aviation laws in every country including Pakistan are governed under three categories of laws, namely; the international law, continental laws e.g. EU, and the national laws. Hence, for a peaceful use of airspace and smooth operation of aviation activities internationally the Convention on International Civil Aviation at Chicago was concluded in 1944. Pakistan became signatory to it in 1947.<sup>1</sup> The main purpose of developing international civil aviation was to create understanding among nations as any abuse of aviation could lead to serious security issues. It was developed to promote cooperation and to also create equal economic opportunity for all. The Convention has numerous Articles and Annexes to be adhered by the contracting states. The Convention formed an International Civil Aviation Organization (“ICAO”) made up of an Assembly, a Council and such other bodies that may be established over time, such as the ICAO secretariat. ICAO is a regulatory and legislative body of international civil aviation basing its rules from a collective general principle of universal peace.<sup>2</sup> The ICAO Assembly under Article 64 of the Chicago Convention unanimously agreed to enter into an agreement with the United Nations (“UN”) in 1947, becoming one of the fifteenth specialized agencies of the UN. The Chicago convention has over 10,000 Standards and Recommended Practices (“SARPs”) envisaged in its nineteen (19) Annexures, and all the member states use these SARPs as reference in developing their civil aviation laws, rules and regulations, which ICAO monitors and oversees.<sup>3</sup>

a) **Civil Aviation Ordinance 1960** was promulgated for the better control of manufacture, use, sale or import and export of aircraft, to bring conformity in the control and regulation of services relating to air transport, and for the development and control of aerodromes in Pakistan. The Ordinance empower the Federal Government to make rules for the effective implementation of certain important International Conventions namely the Conventions on, International Civil Aviation in Chicago 1944, International Recognition of Rights in Aircraft

<sup>1</sup> ICAO, *Signatories of Convention on International Civil Aviation 1944*, ICAO Contracting States.

<sup>2</sup> ICAO Treaty, *Convention on International Civil Aviation Chicago 1944*, accessed on 26 March 2021, available from [https://www.icao.int/publications/documents/7300\\_orig.pdf](https://www.icao.int/publications/documents/7300_orig.pdf).

<sup>3</sup> ICAO Uniting Aviation a UN specialized agency, “About ICAO”, accessed on 27 March 2021, available from: <https://www.icao.int/about-icao/Pages/default.aspx>

Geneva 1948, Damage caused by foreign Aircraft to Third Parties in the Surface 1952, and any other treaty or convention signed or decision taken at international body of civil aviation. The Ordinance reserves the rights of the Federal Government in bringing any changes to such conventions.<sup>4</sup>

b) In Pakistan Civil Aviation Authority (“PCAA”) is a federal regulatory body envisaged in item 6 of Part I of the Federal Legislative List, hence the functions and regulatory duties it performs are within the exclusive sphere of the Federal Legislature. It was established under section 3 of the Pakistan Civil Aviation Authority Ordinance, 1982 (“PCAAO”). It regulates all forms of civil aviation in Pakistan and is established to provide “for the promotion and regulation of civil aviation activities and to develop an infrastructure for safe, efficient, adequate, economical, and properly coordinated civil air transport service” in our country.<sup>5</sup> PCAA must uphold transport system of the country in line with ICAO Annexures and other related documents.<sup>6</sup> Moreover, Pakistan Civil Aviation Authority Board (PCAAB) was constituted in section 7 of PCAAO, mainly being responsible in performing all functions of directing and administering PCAA. As a result, while PCAAB is **responsible** for taking all important decisions with regards to the entire civil aviation industry of Pakistan, the PCAA is responsible for regulation and control of civil aviation activities, air traffic services, Air navigation services (“ANS”), services at airports, inspection services, and the search and rescue services.<sup>7</sup>

c) **Civil Aviation Rules 1994**<sup>8</sup> (the “CAR”) were made by the Federal Government under section 4,5,7 and 8 of the CAO. The CAR apply to “flights operations within Pakistan by aircrafts other than military aircrafts.”

d) **The Carriage by Air Act 2012** was promulgated to give effect to all the international conventions dealing with international carriage by air and in particular the rights and liabilities of such carriers, its agents, passengers, consignors and other related persons. The Act adopted the provisions of Warsaw Convention 1929, Hague Convention 1955, Guadalajara Convention 1961, Montreal Convention 1999, and incorporated the same in its Schedules.<sup>9</sup> The Montreal Convention in particular deals with rights and liabilities of international airliners and the Act of 2012 have also subsumed these rights and liabilities also applicable on domestic carriers, subject to certain modifications.

e) **The Fatal Accident Act 1855**,<sup>10</sup> the victims of accidents in the event of death or serious injury, in any case, can also bring a claim under this law. Hence, the liability is not limited to the extent of the Act of 2012. Under this Act the liability arises when wrongful act, negligence or default has occurred on the part of the airliner that causes death or injury. The amount of damage is determined by the court that is just keeping into account all the possible circumstances related to the victim. Moreover, any loss that is non-pecuniary or monetary will be dealt under law of tort.

<sup>4</sup> Civil Aviation Ordinance 1960, available from:

<https://www.caapakistan.com.pk/upload/SF/pdf/PCAA%20Ord%201984.pdf>.

<sup>5</sup> Civil Aviation Ordinance 1960

<sup>6</sup> The Convention on International Civil Aviation 1944, Annex 1 to 18, available from: [https://www.icao.int/safety/airnavigation/nationalitymarks/annexes\\_booklet\\_en.pdf](https://www.icao.int/safety/airnavigation/nationalitymarks/annexes_booklet_en.pdf).

<sup>7</sup> Pakistan Civil Aviation Authority Ordinance 1982.

<sup>8</sup> Civil Aviation Rules 1994, available from <https://www.caapakistan.com.pk/SF/SF-LS.aspx>.

<sup>9</sup> The Carriage by Air 2012, available from: [https://www.caapakistan.com.pk/upload/SF/pdf/1331612091\\_770.pdf](https://www.caapakistan.com.pk/upload/SF/pdf/1331612091_770.pdf).

<sup>10</sup> Fatal Accident Act 1855, available from: <http://nasirlawsite.com/laws/fatal.htm>.

- f) **The Aircraft (Removal of Danger to Safety) Ordinance 1965**, empowers the Federal Government to remove any place e.g. slaughterhouse, cattle yard etc. around airfields that attracts birds to that site, and which will eventually cause danger to the safety of aircraft.<sup>11</sup>
- g) **The Airport Security Force Act 1975**, was promulgated to constitute and regulate the airports security force and maintain law and order in the limits of airports and aerodromes, ensure security to all aerodromes, airports, aircrafts and civil aviation installations.<sup>12</sup>
- h) The first **National Aviation Policy was introduced in 2015**,<sup>13</sup> mainly aimed to improve oversight and compliance of ICAO standards of safety, security and efficiency.

## 2) Opportunity

Here we will assess whether the laws in place are effective enough to not provide any opportunity to a problematic behavior:

- a) PCAO requires PCAA to formulate a five years infrastructure development plan aimed for the advancement the safety and security of our civil air transport system. It is also required to formulate schemes to improve air traffic and navigational services. PCAA is also tasked to plan a layout with regards to flight inspection, in in section 5(3) (v) of PCAO. According to section 5(4) of the Ordinance PCAA must also carry out surveys, experiment and research and approve developmental schemes. Under section 6 of the Ordinance, all civil airport, its routes and aerodromes are controlled and managed by the Authority. PCAA is also obligated to negotiate and settle air transport agreements with other countries. PCAA is also responsible to conduct inquiries and investigations into air accidents under the CAR, and in the event of fatal accidents the Federal Government has the discretion to constitute a Board of Inquiry, headed by a chairman and other members appointed by the Government, prescribed under section 6 of the Ordinance and Rule 282 of CAR. Similarly, the DG of PCAA issues airworthiness certificate and airport operator certificates to an aircraft and to the operators of flight operations respectively, after proper inspection and subject to meeting the standards required under Rule 18 and 187 of CAR, respectively.
- b) The fact that there are a combination of other environmental legislation and policies enforced in the country, but they bleakly obligate PCAA to ensure environmental protection standards. Many developing and developed nations have set up aviation specific environmental actions plans for example the US has the Aviation Greenhouse Gas Emissions Reduction Plan, 2015, the Turkey has ICAO State Action for emissions reduction 2018, India has Action Plan on Reducing Carbon Emissions from Civil Aviation 2015, a there is a list of countries with such aviation specific action plans exhibited in the reference below and these plans assist ICAO to bring further improvements in achieving their goals.<sup>14</sup> **The National Climate Change Policy 2012**, encourages airliners operating in the country to adopt efficient fuel emitting minimum carbon. It also supports the ICAO initiatives in reducing carbon emission through “improved air traffic management ... including weather services and free flight air routes, instead of defined routes, that hold the potential for reduced flight time and thus fuel consumption.” The policy

<sup>11</sup> The Aircraft (Removal of Danger to Safety) Ordinance 1965.

<sup>12</sup> The Airport Security Force Act 1975, available from: <https://www.caapakistan.com.pk/SF/SF-LS.aspx>.

<sup>13</sup> Government of Pakistan, *National Aviation Policy 2015*, Islamabad: Aviation Division Government of Pakistan, 2015.

<sup>14</sup> ICAO Environment, “State Action Plans and Assistance”, accessed on 28 March 2021, available from: [https://www.icao.int/environmental-protection/Pages/ClimateChange\\_ActionPlan.aspx](https://www.icao.int/environmental-protection/Pages/ClimateChange_ActionPlan.aspx).

acknowledges the importance of Pakistan's active participation in ICAO activities and initiatives. However, it wants the government to ensure that the new strategies and policies of ICAO do not disturb the economic interests in aviation sector of developing countries.<sup>15</sup> The policy here needs to be revisited for strict implementation of environmental protection regulations.

c) The CAR 1994 in Rule 91 to 110 deals with safety of the aircraft and its passengers, particularly, restricting any access of an unauthorized person, subject to lawful access, in different areas of the airport for example the hanger, Air Traffic Service Unit, customs area, communication center, any movement area or maneuvering area, or passenger arrival and departure area. These provisions also deal with any unacceptable or disorderly conduct of a passenger on board aircraft including unwarranted interference with crew, smoking, trading on board, keeping animals, causing any damage to the aircraft, dumping rubbish, or the possession of drugs or firearms on board.

### 3) Capacity

Here we will identify laws that prevent the ability of individuals to the extent that they behave or engage in a non-problematic way, in other words, laws that make individuals unable to perform appropriately.

a) The rules regarding aircraft registration is provided in CAR 1994, and any aircraft unregistered under these rules cannot fly in Pakistan, except military aircraft that can fly in Pakistan without any restriction. The DG of PCAA maintains a register of registered aircrafts in Pakistan. The application process is mainly straightforward and in accordance with ICAO standards and puts no undue burden on the registering individual or entity, except certain safety considerations. Moreover, the National Aviation Policy 2015 provides for an additional condition to fulfill for registering an aircraft in Pakistan. According to the Policy 2015 it is mandatory for any aircraft applied for registration to be not less than 12 years old and the aircrafts older than 20 years cannot fly in Pakistan.

b) The rules and regulations regarding airworthiness certification of an aircraft lies with domestic legislature of the contracting state. However, the standard enumerated in the Article 37 and the relevant Annexes of Chicago Convention has to be adhered while drafting such legislation and any subsequent changes in the laws concerning such registration must be notified with ICAO. Civil Aviation rules 1994, from Rule 16-22 deals with certification of airworthiness in Pakistan. The airworthiness certification is issued after proper inspection and sufficient satisfaction on the safe operations of an aircraft and the maximum validity period is of 12 months. Except under Rule 19 of the same, the certificate will expire earlier than the allowed period if during the registered period any (1) modifications are made to an aircraft (2) modification specified by the certification issuing authority (the DG of PCAA) are not made (3) directives of the government are not complied with (4) schedules are not carried out (5) damages sustained to the aircraft. The certificate can also be cancelled at any time by DG PCAA under Rule 21, if he "has reason to believe" that aircraft is not airworthy, however, before doing this he needs to take prior approval from the Federal Government. In my opinion this provision cause

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<sup>15</sup> Government of Pakistan Ministry of Climate Change, *National Climate Change Policy 2012*, Islamabad Pakistan, September 2012.

for concern bringing in too much political interference into the system and any untoward decision could possibly put lives of innocent people/passengers in danger.<sup>16</sup>

c) The PEPA although, does mention certain specific sources of emission it regulates, but the aviation sector has not been particularly specified. However, the Federal government under section 31 did notify an **Industry (Calculation and Collection) Rules, 2001**. These rules are also adopted, subject to certain modification and amendments where necessary, by the provinces, since environment related matters after the 18<sup>th</sup> amendment are now the legislative subject of the provinces. These rules impose pollution charge on the industrial units discharging effluents and waste and emissions of air pollutants and they themselves are responsible for “ensuring the correct calculation, reporting and payment of the pollution charge.” The Director General of the federal or provincial environmental protection agencies, as the case may, determine the level of pollution of industrial units once a year, conducted by the agency’s inspection teams.<sup>17</sup> It is to be noted that many countries levy charges on air and noise pollution drawn from flights within their country. The same approach should also be adopted in Pakistan and the imposition will be regulated by the PCAA.

d) The provision of security is one of the most important concerns and requires to be dealt with priority not only for the safety of public and but also for the safety of all national interest of the country. It is observed through legal assessment that PCAA deals with its operating and administrative expenses through its own income generating mechanism and also self-funds any developmental projects. However, the ASF is funded by the Federal Government and sometimes delayed, especially when funds are needed in urgency, resultantly, that causes many loopholes in the security infrastructure. Therefore, laws need to be revisited to find a better and quick settlement of funds for ASF that could fast track the process of essential security funding to the ASF.

#### 4) Communication

This category identifies how effective the law is in communicating and promoting the obligations in the laws, rules or regulations to people or stakeholders associated to those laws. There is lack of literature on the aviation laws in Pakistan. The laws have not been documented in a manner suitable for layman to understand nor have they have been critically evaluated in light of the international laws and obligations. It is important that ministry and its relevant institutions must draw a communication strategy to ensure that all stakeholders get ample opportunity to know about legal framework of civil aviation laws and interconnected instruments such as civil and criminal law, environmental laws, the safety and security laws of Pakistan and the international obligations.

#### 5) Interest or Incentive

Here we identify the provisions that motivate the stakeholders to hold back on illegal or problematic behavior. We will also discuss the provisions that lack support to actors ultimately discouraging the motivational aspect of compliance to laws. The National Aviation Policy 2015 aims to promote new air routes and location targeting the socially deprived population of Pakistan. The airlines will be offered incentives to the extent of waiver in fees and other charges,

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<sup>16</sup> Civil Aviation Rules 1994

<sup>17</sup> Pollution Charge for Industry (Calculation and Collection) Rules 2001, available from: <http://environment.gov.pk/images/rules/PolutonChrgCalColRules.pdf>.



if they fly to and from such localities.<sup>18</sup> Statistically speaking there are around 100 aircrafts all together operated by the Pakistani airlines and other organizations. These aircrafts require regular maintenance, repair and overhauling including the aircrafts in our neighboring countries and other regions of the world. The maintenance, repair and overhauling industry is a massive multi-million dollar market and government wishes to attract this market into the country by offering tax incentives, land leases, unlimited foreign direct investment being permitted and open up the possibility of joint venture with a local business entity.<sup>19</sup>

## 6) Process

The term refers to the legal criteria that are required to be fulfilled by the decision makers in the process of making their decisions. Therefore, here we will assess whether such criteria envisaged in laws are proper to cater for particular problematic scenario or behavior. We will also assess whether the decision making processes are followed strictly or not.

**a) Safety and accidents investigations:** In the context of air accidents and stopping such incidents from happening in the future it is imperative to have a proper investigation agency. Their role is also crucial in terms of proving liability. In this regard under Rule 282 of CAR, the Federal Government may “whenever it is considered to be desirable in the public interest”, appoint an Investigation Board (referred to as Safety Investigation Board “SIB”) to conduct inquiries “into the causes of the accident”. The chairman of Board under Rule 283 of the same can either be a person with knowledge and experience in law, or aeronautical engineering or flight operations. In my opinion the head of the Board must be a person from an aeronautical engineering background who can understand the technical aspect of investigation at length and the CAR must also specify active years of knowledge and experience required in this field, which is absent, from a person to head this Board.

Moreover, it is pertinent to point out towards the arbitrariness of the Federal Government and its discrete powers in appointing SIB for investigating an accident. In this regard the Chicago Convention on International Aviation explicitly stipulates in its Annexes that are duly drawn by the Council of ICAO under the powers given in Article 54(I) of the Convention, in Annex 13, point 5.4 that “the investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct...”.<sup>20</sup> However, in Pakistan according Rule 273 of CAR, the Director General of CAA appoints investigators that look into aviation accidents and incidents but in case of “accident involving serious injury or death” the DG has to obtain prior approval from the Federal Government for appointing such investigator(s) and under Rule 293 the Federal Government can redirect the board for another investigation if it has reason to believe that investigation was conducted unfairly, or an important evidence has come to light that requires due consideration. Moreover, the investigation report is not final until it has been passed on to the DG PCAA under Rule 279, who shall then compose his own opinion and give recommendations relating to the cause of accident before forwarding the whole report and his recommendation to the Federal Government and publish the same after an obligatory consultation with the Federal Government under Rule 281.<sup>21</sup>

**The National Aviation Policy 2015**, also proposes an independent SIB, solely responsible to the ministry of aviation. The Policy 2015 recognizes the need of having trained and qualified personnel in SIB, considering the nature of its task.<sup>22</sup> The opposition in the National Assembly of Pakistan desired to introduce an independent National Air Transportation Safety Board

<sup>18</sup> National Aviation Policy, Pakistan 2015

<sup>19</sup> National Aviation Policy, Pakistan 201.

<sup>20</sup> ICAO International Standards and Recommended Practices, Annex 13 Aircraft Accident and Incident Investigation, available from: [http://www.emsa.europa.eu/retro/Docs/marine\\_casualties/annex\\_13.pdf](http://www.emsa.europa.eu/retro/Docs/marine_casualties/annex_13.pdf).

<sup>21</sup> Civil Aviation Rules 1994

<sup>22</sup> National Aviation Policy, Pakistan 2015, Pg 21-22.

through an Act of 2014. Although, there were serious reservations with regards to the composition, authority and functions of the Board amongst the Members Parliament and the independent commentators, but it indeed was an important step from the Parliament recognizing the importance of free, fair and transparent board investigating air accidents without any political influences whatsoever.<sup>23</sup> In contrast, in the United States, the National Transportation Safety Board (“NTSB”), is a completely independent federal agency of the Department of Transport, established under the Independent Safety Board Act 1974, responsible for investigating aviation accidents and incidents. It consists of five member board and more than 400 staff members the board members are appointed by the president in consultation and consent of the Senate and they serve five years term or continue to serve until new members are appointed.<sup>24</sup> A balanced free and fair investigation board is maintained in the Act requiring, not more than three members that can be chosen from same political party and at least three members having the knowledge and experience in aeronautical technical profession. Similarly in the United Kingdom, the Secretary of State appoints Chief Inspector of Air Accidents under The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018<sup>25</sup>, who heads the ‘Air Investigation Branch’ an independent body that is responsible to conduct safety investigation on both civil and military aviation accidents and fatal incidents.

**b) Liability and compensation from air carriers:** It is equally important to address the safety and security of passenger, luggage or cargo, and compensations against injury or loss of life victims and damages or to cargo. In this regard Rule 199 of CAR all the airlines registered and operating in Pakistan must maintain an insurance policy covering “aircraft, crew, passengers and cargo and third party risks” equal to that required by ICAO Convention.<sup>26</sup> Similarly, in Rule 17(1) of the Montreal Convention incorporated in Schedule four of the Carriage by Air Act 2012, asserts a liability on airline carriers in the event of death or bodily injury of a passenger only when such accident occurs at the time on board the aircraft or in the process of embarking or disembarking from the aircraft. The compensation for any of stated damage subject the conditions specified will not exceed 10,000 Special Drawing Rights (SDR is an international monetary reserve currency created by International Monetary Fund) and equates to approx. 150,000 dollars. On the other hand, the occurrence of similar incident in an airliner operating within Pakistan, the damages have reduced to Rs. 50 million to a victim or their heir.<sup>27</sup> It can be said that the liability on domestic carriers is set on a lower end of the scale as the compensation awarded by international airliners is way high and also because all the airliners operating domestically must have a mandatory insurance coverage and the premium is borne by passengers through ticket purchases. Moreover, the action for damages must be brought to the court within 2 years from the date of the accident.

In the event of loss or damage to the luggage or cargo, the maximum liability imposed on an airliner is limited to one thousand rupees per KG for each passenger or a consignor. However, if the passenger has declared a special amount of on their luggage at the time of checking in the luggage than the airliner will be liable to pay only the amount that is declared. The claim for loss or damage can be claimed within two years of the cause of action.

<sup>23</sup> National Assembly of Pakistan, National Air Transportation Safety Board Bill 2014, available from: [http://www.na.gov.pk/uploads/documents/1396953167\\_250.pdf](http://www.na.gov.pk/uploads/documents/1396953167_250.pdf).

<sup>24</sup> The National Transportation Safety Board, *Background and possible issues for reorganization and oversight*, August 2016, available from: <https://www.everycrsreport.com/reports/R44587.html>.

<sup>25</sup> The United Kingdom, “The Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 2018”, available from: <https://www.legislation.gov.uk/uksi/2018/321/made>,

<sup>26</sup> Civil Aviation Rules 1994

<sup>27</sup> “Inadequate air crash compensation to victim families in Pakistan”, parhlo online news, September 2020, available from: <https://www.parhlo.com/inadequate-air-crash-compensation-to-victim-families-in-pakistan/>.

c) **Autonomy and Separation of services provided by PCAA:** The Air Navigational Services (ANS) provided by PCAA is currently separate division altogether. Previously such services including the regulatory functions were provided under the domain of PCAA itself, resultantly there were numerous reports of inefficiencies and irregularities. It was important to separate the two functions, the regulatory and ANS, therefore former stayed vested with PCAA and the latter being separated. ANS domain includes the management of air traffic, search and rescue, communication, navigation and surveillance, aeronautical information and flight design within Pakistan.<sup>28</sup> This autonomy and separation of navigation services from the regulatory oversight functions services was well established in ICAO guidelines.<sup>29</sup> In light of the above said, to bring further improvement in resolving issues between the separate functions, our opinion recommends separate DGs heading three separate functions namely, the authority, airport services, and air navigation services.

## 7) Ideology

This category requires us to see the view or perception of the general public regarding the laws or a particular provision in place, thus forming our decision in accordance with those perceptions. Therefore it is important to assess the laws through feedback from general public or concerned stakeholders and come to a solution derived from a collective wisdom. It is generally observed that the human resource of the sector especially at the services end is considerably under trained especially at the level of international footing. It is observed that appropriate training and qualification must be given to all the segments of our aviation sector that includes airport management, technicians, traffic controllers, regulators, safety regulators, and airworthiness inspectors. Moreover, it is equally felt that the governments have shown lack of interest in the infrastructure development of the aerodrome facilities in the country. There is also a lack of communicative ability and surveillance coverage between the north and south of Pakistani airspace. This is due to hilly terrain and lack of adequate technology such as the use of satellite. The Federal Government must ensure adequate technology is started to be used for the harder terrains in Pakistani airspace and ensure safety of passengers at the same time improve the industry economically.<sup>30</sup>

**Conclusion:** It is important to have an investigation authority that is impartial and independent from any influence or pressure from the government. Neither is it suitable for the cause of the betterment of aviation industry, which is in need of learning and developing not only from our successes but also from our mistakes, hand in hand. Failure to publish crash reports in Pakistan has become a norm which can only be addressed through professional, impartial and independent power and conduct. Moreover, legislation must be modified to make PCAA more independent, as any directives from the federal Government is binding upon them. Similarly, DG PCAA being the most important position of the Authority is appointed by the Federal Government, that needs to be changed, rather the PCCA Board can be vested with the power to appoint their own DG. Although a brief initiative was taken under National Climate Change Policy 2012 highlighting the countries aviation related environmental impact, but we lack a specific policy or law that governs the area. The government and legislatures must formulate an aviation specific environmental protection policy and laws in line with ICAO goal of environmental standards.

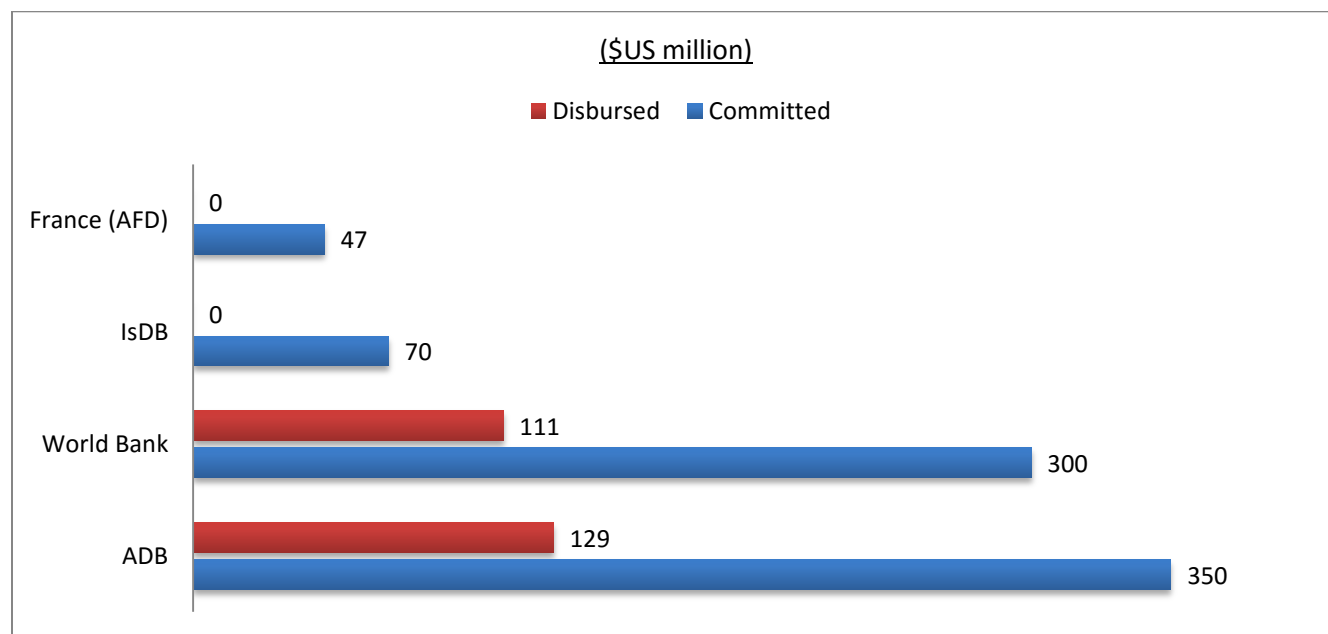
<sup>28</sup> Pakistan Civil Aviation Authority, "About Air Navigation Services", accessed on 27 March 2021, available from: <https://www.caapakistan.com.pk/ANS/Ops/ANS-About.aspx>.

<sup>29</sup> ICAO, *Working Paper, conference on the economics of airports and air navigation services*, Montreal, September 2008, available from: [https://www.icao.int/Meetings/ceans/Documents/Ceans\\_Wp\\_005\\_en.pdf](https://www.icao.int/Meetings/ceans/Documents/Ceans_Wp_005_en.pdf).

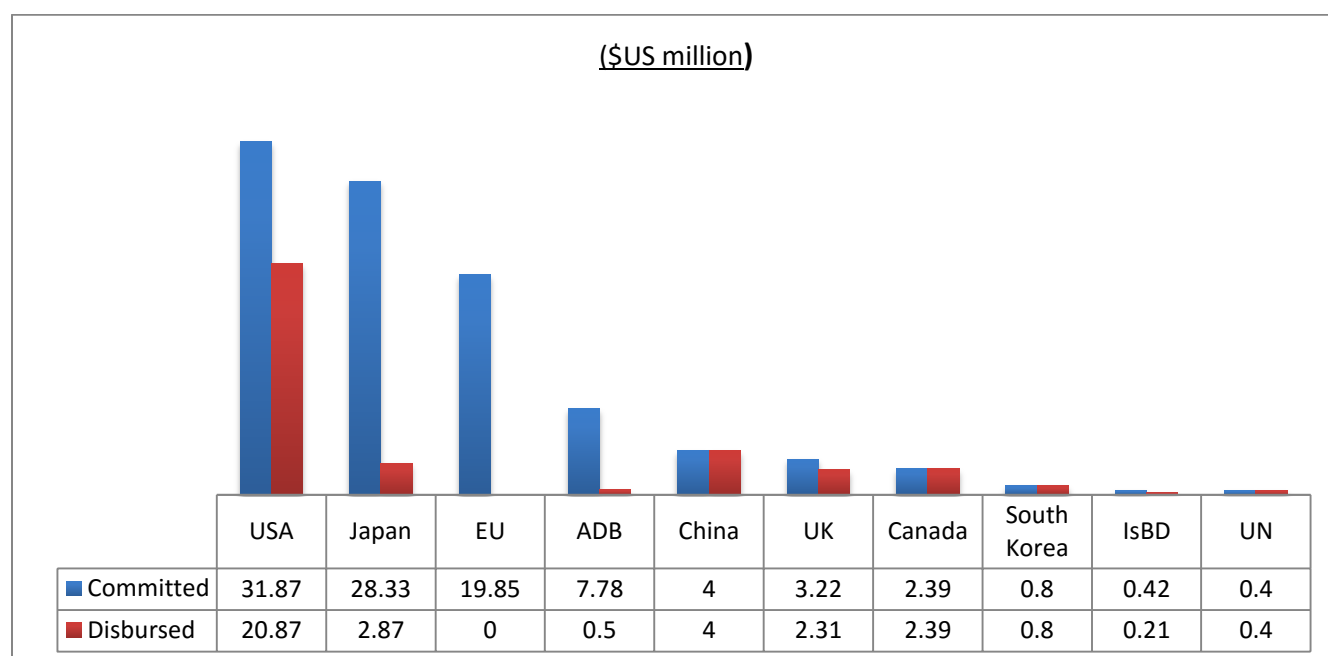
<sup>30</sup> National Aviation Policy, Pakistan 2015

## FROM THE PARLIAMENTARY PAPERS

### Financial Assistance provided by the Countries and International Organizations to cope with COVID-19 Pandemic (*continued*)



**Figure 2** Project Financing for long-term projects to capacitate the Health infrastructure in Pakistan (Loan)



**Figure 3** Grants extended to government to fight the coronavirus pandemic in Pakistan (As of March 2020 - August 2020) - (not a Loan)





Glimpses of Parliamentary Webinar on Migration with Members of Parliament and experts along with International Centre for Migration Policy Development, Austria and Switzerland EU, Friday, March 19, 2021



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