

EVALUATIONS OF REGULATORY AUTHORITIES, GOVERNMENT PACKAGES, AND POLICIES

Editor:

Fahd Zulfiqar

Introduction by:

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PAKISTAN INSTITUTE OF DEVELOPMENT ECONOMICS



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PIDE produces policy-relevant research of Pakistan. Research based on evaluative frameworks is the need of the hour not only for pragmatic reasons but also for identifying soft spots in the existing policies, programs and regulatory frameworks and for improving the policy practice, therein. The current compilation provides detailed evaluative research-based studies conducted by researchers in PIDE. The papers were presented in a conference and feedback from an evaluation expert, Dr. Tariq Husain and by representative regulatory authorities was incorporated by respective authors for each of the studies included in this book. I am very grateful to Dr. Nadeem Ul Haque for his untiring efforts to bring this book to life. Dr. Haque has remained actively involved in every step of the way, right from the inception of idea for conducting evaluative studies to holding a conference and finally publishing this book. We hope to continue our efforts in producing more policy-relevant research and bring more research based on evaluations of State's policies, packages and regulatory authorities. I am also grateful to Mian Imran ul Haq (Senior Publications Officer, PIDE) for his insightful comments and detailed proofreading of the book chapters.

Fahd Zulfikar

INTRODUCTION

The papers in this compilation assessed four regulatory authorities (the CCP, DRAP, NEPRA and PEMRA), two important government initiatives (Naya Pakistan Housing and the construction sector package), and policy requirements for an important sector of the economy (namely, SMEs). PIDE and the authors should be commended for taking on this wide-ranging challenge and presenting a wealth of information in each paper. With the exception of the construction and SME sectors, where independent research was already available, these papers can be said to be pioneers in the evidence-based assessment of the subjects they have addressed. Many of the observations in the papers would doubtless resonate with those who know the subject, either as specialists or those who are affected by regulation and government interventions. An important aspect of evaluation is the connection between research and policy, which also enhances the credibility and usefulness of evaluations.

First paper, **Market Regulations, Competition Policy and the Role of Competition Commission of Pakistan (CCP)** by Karim Khan and Ahmad Fraz starts with an introductory section on the importance of competition and the state of markets in Pakistan. Citing various sources, it concludes that “markets in Pakistan are poorly organised, with negligible competitive practices prevailing in the marketplace”. It notes, in particular, that: (i) Domestic competition is constrained by regulatory barriers to entry, market dominance by a few firms, and lack of effective competition policies; and, (ii) The level of foreign competition is low due to trade barriers, which are still relatively high. The paper then describes the Monopoly Control Authority (MCA), which was established to administer a law dating back to 1970, the limitations of the MCA, and how it was replaced by the Competition Commission of Pakistan (CCP) under an ordinance promulgated in 2007, which was passed as an act of parliament in 2010. The paper conveys the impression that the CCP and the law it administers are aligned with international best practices and current economic realities. The paper highlights four essential aspects of the Competition Act that prohibit the abuse of dominant position leading to anti-competitive practices, prohibit agreements or practices that restrict free trading and competition, prohibit deceptive marketing practices, and entrust the CCP with the supervision of mergers and acquisitions. The paper asserts that the CCP has struggled to restrain anti-market practices, and that influential businessman and companies flout competition laws, which significantly weakens the role of the CCP. This is followed by some useful information and insights on the performance of the CCP, and a set of recommendations.

Second paper, **Regulating the Pharmaceutical Industry: An Analysis of the Drug Regulatory Authority of Pakistan (DRAP)**, by Shahid Mehmood is a comprehensive analysis of drug regulation and the performance of DRAP, based on an abundance of empirical evidence and incisive insights. One point that comes across is that DRAP, which was established in 2012, is better than its predecessor, the Drug Control Organisation. But that is where the good news ends, as the paper proceeds systematically to assess DRAP’s performance in terms of: the quality of drugs and drug

dispensing; the nature and consistency of policies and their effect on doing business; research and development (R&D) and its supporting infrastructure; investment; and consumer welfare. The paper presents evidence to show that the policy environment has been highly unstable and often subject to sudden ad hoc changes, which has created uncertainty in the industry. In addition, the regulations make it difficult to do business. Moreover, pricing – or price control – has had negative repercussions for pharmaceutical firms as well as consumers. One result of the policy and pricing regime is that a large number of multinational companies have left Pakistan over a twenty-year period and domestic firms have also discontinued the production of essential, life-saving medicines.

Another result is reflected in a low level of foreign investment in the industry over a period of approximately 20 years. Moreover, the paper makes the case persuasively that price controls have led to shortages of drugs and high prices in the black market. As a result, consumers are not better off than before. The paper also argues that government regulators lack adequate knowledge of technical and industry matters. The paper recalls that the federal government has been collecting a research tax from the industry since 1976, and accumulated billions of rupees from it over the years. There is little to show for it, as Pakistan lacks quality infrastructure and has little (if any) quality R&D in drugs. One result is that Pakistan imports 95 percent of the Active Pharmaceutical Ingredients (APIs), mainly from India and China. The paper's overall conclusion is that DRAP's performance is better than its predecessor, but there are still huge gaps to be filled and significant challenges to be addressed. With persuasive evidence, it points out that there is tremendous room for improvement in DRAPs performance.

Third paper, **Evaluation of Naya Pakistan Housing**, by Ayaz Ahmed discusses the continuing shortage of low-cost housing in Pakistan and the way the Federal Government's Naya Pakistan Housing initiative aims to address it. The estimate is that there is a shortage of around 10 million units, about half of which is in urban areas. Naya Pakistan aims to deliver 5 million units in five years. The paper mentions official announcements of housing schemes in various parts of the country but data on actual achievements are not available. The paper anticipates several problems in making Naya Pakistan effective, and most of them are deep-rooted problems that have been present for a long time. In view of this background, the prognosis for Naya Pakistan is not encouraging. The paper then draws attention to the kind of reforms that are needed to address the housing shortage. Two areas of concern stand out, in particular. One of them is urban planning, which has a complicated institutional context as well as a stubborn political economy. These stand in the way of the paper's recommendation for densification through high-rise buildings to lower prices and increase housing availability. The second is located in financial markets, where the recommendation is for mortgage financing for lower-middle-income groups and daily wage earners. Evidently, policies are lacking to move decisively in these directions.

Fourth paper titled **National Electric Power Regulatory Authority (NEPRA)**, by **Afia Malik** presents a thorough assessment of NEPRA and its performance. Its stated purpose is to review the operational structure, governance, and effectiveness of the National Electric Power Regulatory Authority (NEPRA), which was established in 1997; identify flaws in the regulatory framework; and suggest ways to improve it. In the process, the paper examines every aspect of NEPRA and its regulatory responsibilities in

detail. Indeed, it discusses all the issues that newspaper readers in the country come across on a regular basis. The overall conclusion is that the regulatory system has many of the features required for this purpose, but the system functions poorly in practice. For purposes of improvement, the paper offers recommendations aimed at the transition towards a competitive market, which is the intention behind the amended 2018 NEPRA Act.

For greater efficiency, the paper recommends:

- decentralisation of decision-making powers;
- greater use of information and communication technologies;
- simpler regulatory processes; and
- enhanced coordination between NEPRA and the Federal Government.

The paper also recommends measures for greater transparency and accountability:

- NEPRA's recommendations and government responses should be made available to the public, and government bodies should be required to provide public explanations for rejecting recommendations or suggesting changes in them.
- The financial accounts should be submitted to the Parliament for review and discussion.
- NEPRA's annual and state of the industry reports must also be evaluated by independent experts, just like its financial reports.

Fifth paper, **Prime Minister's Construction Package – An Evaluation**, by **Lubna Hasan, Hanzla Jaleel and Hafeezur Rahman Hadi** examines the construction sector package announced in April 2020 that is related to the government's goal of building 5 million houses under the Naya Pakistan Housing initiative discussed in another paper. Drawing upon previous PIDE research, it starts with an informative discussion of the actors, regulatory framework and issues in the construction sector, with particular reference to housing. It also examines in detail the Prime Minister's Construction Package and its stated objectives, namely, to reduce the housing shortage through affordable housing, generate economic activity, and provide employment. Its conclusion is that the package, with its tax incentives and subsidies, looks promising in relation to these objectives. This is the conclusion about the relevance of the package. The paper then assesses the extent to which the package is likely to achieve these objectives; this is the matter of effectiveness. It notes that 1,070 projects worth PKR 383 billion have been registered with the FBR to avail the incentives and amnesty offered under the package. Increases in construction sector borrowing and cement sales support the perception that the package has contributed to the sector's growth and, presumably, generated additional employment.

When it comes to affordable housing, however, the paper presents evidence leading to the conclusion that the impact of the package would be minimal. There is a wide-ranging analysis of challenges to affordable housing for low-income households in the paper, some of it similar to the paper on the Naya Pakistan Housing initiative. The paper presents ideas for the way forward that emphasise high-rise mixed-use

construction, urban regeneration, deregulation and simple rules and their enforcement, and clarity of jurisdiction in managing cities. It is a much broader and longer-term agenda for reform than what the government's construction package offered and deserves serious consideration.

Next in discussion is the paper titled, **Pakistan Electronic Media Regulatory Authority (PEMRA)**, by Fahd Zulfiqar and Fida Muhammad Khan. The Pakistan Electronic Media Regulatory Authority (PEMRA) was established in 2002 under the PEMRA Ordinance, 2002. It has a wide range of objectives aimed at improvement in the standards of information, education and entertainment, provision of a wider choice of news and current affairs to the people, easier access of mass media to the rural and urban areas, and ensuring accountability, transparency and good governance through free flow of information.

At the same time, the federal government is authorised to issue policy directives to PEMRA, and PEMRA is obliged to seek the Federal Government's approval any major action. Therefore, PEMRA cannot be considered an independent institution. Moreover, the paper makes the point that the political forces in power and the federal government do not have the incentive to make PEMRA an autonomous institution.

The paper asks why there is a need for regulating the media and what the effects of regulation are. The paper recalls that PEMRA was established to regulate the media market that had just been opened to the private sector, ending the monopoly of the state-owned Pakistan Television, which had existed as a tool in the hands of the government of the day. The paper reviews the experiences of some other countries in media regulation, while pointing out that the unique feature of PEMRA compared to other regulators is that it has a very sensitive and strong relationship with the cultural and social aspects of society.

The main conclusion the paper offers is that PEMRA has not been useless, but it has not played the role that it was required to play. There are several dimensions of this observation, the most important ones being:

- The legal and regulatory framework structure is based on a mentality of controlling and policing.
- PEMRA has not come up to need to upgrade laws for the digital era.
- It has not prevented oligopolies that impede the entry of new content creators and media houses.
- It is unable to prevent undue government intervention in the media.

The paper notes that several changes are required at different levels to make PEMRA independent from the political and economic control of the government. It recommends that there should be changes in the law to make PEMRA more independent in terms of funds, recruitment, remuneration, and policy making.

The paper, **SME Sector in Pakistan: Mapping the Policy Framework, Opportunities and Constraints**, by Iftikhar Ahmad, Muhammad Umair Ghani, Saba Anwar, and Fizzah Khalid Butt states that the SME Policy of 2007 is to be replaced by a new one that was expected in 2021 and the paper aims to assess the success and shortcomings of the 2007 policy. The paper starts by highlighting the importance of SMEs to the national economy and identifying the constraints they face, including

difficulty in market access, financial constraints, lack of information, and various institutional constraints.

The paper notes that the 2007 policy intended to promote the business environment, access to finance, human resource development, technical guidance, and technology. It asserts that this policy was an excellent first step for encouraging SMEs. However, it focused mainly on the agriculture and manufacturing sectors, and ignored the service sector, which has been contributing more than 50 percent of the country's GDP since 2006.

Based on interviews, the paper suggests that relevant officials are well aware of the prospects for SMEs. It also offers a number of suggestions for the new SME policy, including:

- a mass awareness campaign introducing potential projects and international opportunities to SMEs;
- strengthening the role of SME Bank and support from other commercial and financial institutions;
- strengthening inter-organisational coordination among relevant government and private sector institutions, particularly between SMEDA and SME Bank for policy making;
- supporting SMEs for participating in global value chains and international production networks; and,
- one-window facilitation for SMEs through SMEDA and SME Bank.

The last paper **Islamabad Real Estate Regulatory Authority: An Evaluation** by Ahmed Waqar Qasim and Mohsin Kiani explains that the goal of the Real Estate (Regulation and Development) Act, 2020, is to establish the Real Estate Regulatory Authority (RERA) that will regulate and promote the real estate sector of Islamabad. The evaluation of the proposed RERA that has been conducted in this volume is concentrated on the fundamental question: would the proposed RERA be able to regulate and promote the real estate sector or not? Our findings based on well-functioning real estate market characteristics and prevailing situations indicate that the realisation of the objectives of this intervention will be a daunting task. Furthermore, the RERA will cost heavily in the form of a regulatory burden. Based on the experiences from other sectors, the promotion and regulation of the real estate market through the Authority seems challenging. Especially when the proposed new rules and regulations and strategies have already existed or been tried in the market. Our analysis indicates that the government should utilize the existing infrastructure and resources instead of focusing on the development of a new Authority.

Dr. Tariq Husain

Chapter 1

Market Regulations, Competition Policy and the Role of Competition Commission of Pakistan (CCP)

KARIM KHAN and AHMAD FRAZ

1. INTRODUCTION

Market regulations are exercised to ensure efficiency in production, streamline standard-setting, and provide protection to consumers by ensuring quality products at competitive prices. Alternatively, regulations are aimed at providing a legal framework to create a business environment based on healthy competition for improving economic efficiency, developing competitiveness, and protecting consumers from anti-competitive practices. Competition, thus, is playing an important role in the functioning of markets. Accordingly, it has always been on the forefront of academic discourse.¹ Economic freedom or competition in markets ensure efficiency from both the production and consumption sides of the market. On the resource allocation side, competition is presumed to spur investments, innovations, and productivity, all leading to reduced cost of production. On consumers' side, competition ensures a variety of quality products and services at cheaper prices, resulting in an enhanced consumer welfare. At aggregate level, market competition ensures economic growth, help in curbing poverty and inequality in countries. For instance, a recent study from Mexico on two markets, i.e., mobile telecom and corn products, shows that an increase in competition from 4 to 12 firms in the mobile telecom industry and reducing the market share of the oligopoly in corn products from 31.2 percent to 7.8 percent result in a combined reduction of poverty headcount by 0.8 percentage points together with a decline of 0.32 points in the Gini coefficient.²

Non-competitive behaviour can be defined in a number of ways; however, broadly, a market with firms in dominant position is characterised as non-competitive. For instance, if firms with market power are raising their prices, limiting sales, or charging discriminatory prices, the firms are deemed as guilty of a dominant position. In general, low investment rate in the country, efficiencies associated with economies of scale, firms' crowding out of existing or potential competitors either deliberately or via innovation, increased merger or acquisition activities etc. are causing dominance in market or lack of competitive practices in the market. In addition, regulatory barriers to entry such as licensing requirements for entry into a market, inappropriate government policies, or the

¹Haque, N., Ahmed, V., & Shahid, S. (2011). Reforms for competitive markets in Pakistan.

²Rodriguez Castelan, C., Araar, A., Malasquez Carbonel, E. A., Olivieri, S. D., & Vishwanath, T. (2019). *Distributional Effects of Competition: A Simulation Approach*. The World Bank.

power of vested interest to block necessary reforms etc. put a bearing on competition.³ Competition policy is presumed to prohibit such behaviours. In fact, competition policy incorporates the structures that governments have in place for the regulation of markets and monopolies. Competition policy generally aims to: prevent growth of monopoly power; prevent abuse of monopoly power and restrictive trading practices; investigate suspected abuses of monopoly power and recommend policy decision; and reduce barriers to entry and keep markets contestable. In this article, we are focusing on three aspects. First, we provide stylised facts about market competition in Pakistan. Second, we want to highlight the purpose and structure of the Competition Commission of Pakistan (CCP). Finally, we want to see what CCP has achieved so far, given its organisational capabilities and jurisdictions and what is the way forward in this regard.

2. STYLISTED FACTS ABOUT COMPETITION AND MARKETS IN PAKISTAN

Markets in Pakistan are not as competitive as is stressed in economic theory. Instead, they are presumed to be concentrated and controlled by a handful of powerful lobbies, having close ties with either government officials or politicians. Despite a long tradition of the market economy, competition is still poorly regulated in Pakistan. In order to highlight this situation, we summarise the Bertelsmann Stiftung's Transformation Index (BTI) with regard to organisation of the market and competition in table 1. The BTI analyses and evaluates the quality of democracy, a market economy and political management in 128 developing and transition countries. Based on their status score of 1 to 10, a country is characterised as 'developed' in terms of market economy if its score is 8 and above. Likewise, a country is grouped as 'functioning' if it has a score between 7 and 8. A status ranking between 5 and 7 means as 'functional flaws' group, and a score between 3 and 5 means that the country is 'poorly functioning' and a score below 3 means the country enjoys a 'rudimentary' status. As is evident from the table, in 2020, Pakistan remains among the 'functional flaws' group of countries in terms of the overall Organisation of the Market and Competition. In terms of Market Organisation, the situation has been worsened since 2006 as the status of the country has been deteriorated from 'functional flaws' group of countries in 2006 to the group of 'poorly functioning' countries in 2020. In terms of Competition Policy, Pakistan has been persistent since 2006 as the country remains in the list of 'poorly functioning' countries since 2006. Though, in terms of Trade Liberalisation and Banking System, the country is performing a bit better by being in the group of 'functioning' countries, but it is still lower than the advanced countries in terms of these characteristics. All these statistics imply that markets in Pakistan are poorly organised, with negligible levels of competitive practices are prevailed in the marketplace. According to the BTI Report 2020, Pakistan has high market concentration which renders economic or market powers to the so-called 22 families and the military. Market constraints are causing deterioration to the formal sector, with around 70 percent of firms are classified as small.⁴ In particular, the costs

³Furman, J. (2016). Benefits of competition and indicators of market power. *Washington: Council of Economic Advisers (Issue Brief), The White House.*

⁴Haque, N. (2020). Framework for economic growth. Islamabad: Pakistan Institute of Development Economics

associated with the formalisation of large businesses, the aspiration for the business community to expand in scale seems to be low. If we compare Pakistan with other comparable countries, we have only 8 percent of Pakistani firms as ‘large’ compared with 54 percent in Sri Lanka, 52 percent in Indonesia, and 47 percent in Thailand. Overall, a managed float exchange rate, protection for investors, lack of efficient and transparent competition laws, poor contract enforcement mechanism, red-tapism, subsidies etc. are among the major constraints to market competition in Pakistan.⁵

Table 1

Ranking of Organisation of the Market and Competition

| Year | Country | Organisation of the Market and Competition | Market Organisation | Competition Policy | Liberalisation of Foreign Trade | Banking System |
|------|------------|--|------------------------|-----------------------|------------------------------------|-------------------|
| 2020 | Bangladesh | 5.8 | 5 | 6 | 7 | 5 |
| 2006 | | 5.8 | 5 | 7 | 7 | 4 |
| 2020 | China | 6.8 | 6 | 7 | 8 | 6 |
| 2006 | | 5 | 4 | 5 | 7 | 4 |
| 2020 | India | 6.5 | 6 | 7 | 7 | 6 |
| 2006 | | 6.25 | 6 | 6 | 6 | 7 |
| 2020 | Malaysia | 7.5 | 7 | 7 | 7 | 9 |
| 2006 | | 6.25 | 7 | 5 | 6 | 7 |
| 2020 | Pakistan | 5.3 | 4 | 4 | 7 | 6 |
| 2006 | | 5.5 | 5 | 4 | 6 | 7 |
| 2020 | Sri Lanka | 6.5 | 7 | 5 | 7 | 7 |
| 2006 | | 8.25 | 8 | 9 | 8 | 8 |
| 2020 | Thailand | 6.3 | 5 | 5 | 7 | 8 |
| 2006 | | 7.75 | 7 | 7 | 9 | 8 |
| 2020 | Turkey | 7.8 | 7 | 7 | 8 | 9 |
| 2006 | | 7 | 7 | 7 | 7 | 7 |

Source: Author compilation from Bertelsmann Transformation Index (BTI), 2020.

Additionally, according to the Global Competitiveness Report (GCR) 2019, Pakistan is ranked at 110 out of 141 countries on the Global Competitiveness Index (GCI) which is very low as compared to the comparable countries (see table 2).⁶ Again, the report identify corruption, ambiguous tax system, government instability, financial constraints, inadequate infrastructure, poor capacity to innovate as the main hurdles that dampen competitive economic activities in Pakistan. If we decompose the GCR ranking in terms of its 12 pillars and 103 indicators, Pakistan’s ranking related to institutions stood at 107th position, infrastructure 105th, ICT adoption 131st, macroeconomic stability at 116th, health 115th, skills 125th, product market 126th, labour market 120th, financial system 99th, market size 29th, business dynamism 52nd, and innovation capacity 129th position in accordance with Global Competitiveness Index. All these statistics suggest that we need significant improvements, especially in innovation capacity, skills development, macroeconomic stability, labour and product markets etc. in order to have a pro-growth and competitive private sector.

⁵BTI, 2018.

⁶ The GCR is a yearly report published by the World Economic Forum which ranks countries since 2004 based on the Global Competitiveness Index (GCI).

Table 2

Global Competitiveness Index (2008-2019)

| | 2019 | 2018 | 2016 | 2014 | 2012 | 2010 | 2008 |
|------------|------------|------------|------------|------------|------------|------------|-----------|
| Bangladesh | 105 | 99 | 107 | 110 | 108 | 106 | 107 |
| China | 28 | 27 | 28 | 29 | 26 | 29 | 34 |
| India | 68 | 40 | 55 | 60 | 56 | 49 | 48 |
| Indonesia | 50 | 36 | 37 | 38 | 46 | 54 | 54 |
| Malaysia | 27 | 23 | 18 | 24 | 21 | 24 | 21 |
| Nepal | 108 | 88 | 100 | 117 | 125 | 125 | 114 |
| Pakistan | 110 | 115 | 126 | 133 | 118 | 101 | 92 |
| Sri Lanka | 84 | 85 | 68 | 65 | 52 | 79 | 70 |
| Turkey | 61 | 53 | 51 | 44 | 59 | 61 | 53 |

Source: World Economic Forum, 2019.

As far as market competition is concerned; it is constrained in both the domestic as well as foreign markets. Domestic competition is constrained by structural regulatory barriers to entry, market dominance by few firms, lack of effective competition policies etc. (see Table 3). Likewise, the level of foreign competition is low due to incidences of trade barriers which are still relatively higher. Moreover, the trade barriers indirectly affect domestic competition by curbing the availability of inputs or making it more costly. All these obstacles suggest that, in order to encourage procompetitive businesses, effective competition laws and policies should be promulgated. Due to recent digitalisation and some other improvements in business regulations, Pakistan climbed 28 places and rose to a rank of 108 in the global ease of doing business rankings 2020 from 136 in 2019. The report acknowledges ten countries, including Pakistan, that improved significantly on the ease of doing business after implementing regulatory reforms. The efforts focused primarily on the areas of starting a business, dealing with construction permits, getting electricity, paying taxes, and trading across borders (Figure 1). Still, a lot needs to be done in order to reap the potential benefits of a competitive private sector. For instance, we are still poor in terms of the intensity in local competition, number of procedures to start a business, trade barriers, or capacity to innovate etc.

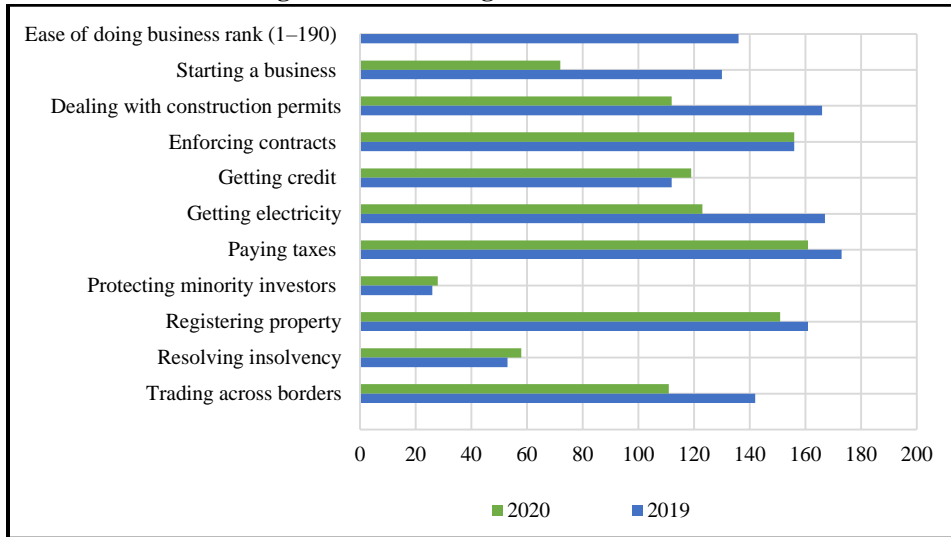
Table 3

Sub- Components of Global Competition Index

| | 2018-19 | 2013-14 | 2007-08 |
|--|------------|------------|------------|
| Property rights | 110 | 122 | 92 |
| Irregular payments and bribes | 102 | 123 | - |
| Judicial independence | 80 | 55 | 79 |
| Favouritism in decisions of government officials | 62 | 130 | 83 |
| Burden of government regulation | 64 | 82 | 70 |
| Efficiency of legal framework in settling disputes | 83 | 112 | - |
| Intensity of local competition | 120 | 79 | 105 |
| Extent of market dominance | 71 | 77 | 84 |
| Effectiveness of anti-monopoly policy | 70 | 85 | 66 |
| Effect of taxation on incentives to invest | 85 | 82 | - |
| No. procedures to start a business | 125 | 116 | 85 |
| No. days to start a business | 93 | 91 | 39 |
| Prevalence of trade barriers | 106 | 92 | 95 |
| Prevalence of foreign ownership | 112 | 121 | 64 |
| Burden of customs procedures | 93 | 91 | 82 |
| Trade tariffs, % duty | 135 | 142 | 110 |
| Capacity for innovation | 129 | 49 | 71 |

Source: World Economic Forum, 2019.

Fig. 1. Ease of Doing Business Indicators



Source: World Bank, Doing Business various reports.

Given these international rankings, the implications of limited competition are huge in terms of formalisation of businesses, size of the businesses, and the development of a competitive private sector. For instance, Pakistan has a huge fraction of informal economy, ranging from around 30 percent to 60 percent of GDP, depending upon the definition employed (International Finance Commission (IFC), 2021). This translates into the range of \$100 billion to \$190 billion a year. If you define it in terms of employment, then the share of employment in informal economy is 71.4 percent of non-agriculture employment. A critical feature of informal employment is that formal workers earn on average 120 percent more than informal workers. Second, it enhances unfair competition, especially from the perspective of formal companies. According to the World Enterprise Survey of the World Bank, nearly half of formal companies face unfair competition from unregistered or informal companies (World Bank, 2015). During a recent business roundtable discussion in Islamabad with large manufacturers, some business leaders admitted off-the-record that they operated three or four informal plants for every formal plant (IFC, 2021). It is encouraged by the confiscatory behaviour of tax officials and inspectors as is argued by them during the roundtable. They also argued that any enterprise that broke this pattern would go out of business with operating profits seldom exceeding ten percent, and taxes and official fees often exceeding 40 percent.

With regard to size, Pakistan's SME sector, by some estimates, accounts for around 90 percent of all businesses and it accounts for roughly 80 percent of the non-agricultural labour force, 30-40 percent of GDP, and 25 percent of exports. The average SME in Pakistan has been in operation for around 20 years while the average large business has been in operation for around 30 years. Growth oriented business are rare, and most businesses do not grow over their life cycle. The relatively old age of SMEs suggests that they do not have the resources or do not have the incentives to invest and grow. The Government of Pakistan has prepared a draft SME Policy that would help strengthen the enabling environment for SMEs. Moreover, 74 percent of survey

businesses in the World Enterprise Survey operate as a sole proprietorship compared to a global average of 41 percent. It means that the enterprise is owned and managed by one person without legal distinction between the owner and the business entity. This structure curbs the expansion potential of said entities by limiting access to finance and other advantages that come with other structures that separate the legal obligations of the owner and the enterprise. It also leaves individuals, and families, exposed to the risks of bankruptcy. A lack of dynamism and competitiveness means that the private sector has not been able to attract much needed efficiency enhancing FDI, which through knowledge spillovers can boost productivity across supply chains. Only 1.5 percent of all firms surveyed as part of the enterprise survey indicated to having 10 percent or more foreign ownership, in comparison to 12.3 percent average globally.

3. COMPETITION COMMISSION OF PAKISTAN

The Competition Commission of Pakistan (CCP) is an independent quasi-regulatory and quasi-judicial body that helps to ensure healthy competition between companies for economic efficiency.

The Commission prohibits abuse of a dominant position in the market, certain types of anti-competitive agreements, and deceptive market practices. It also reviews mergers of undertakings that could result in a significant lessening of competition. Combined with its advocacy efforts, the Commission seeks to promote voluntary compliance and develop a ‘competition culture’ in the economy. The Commission was established in October 2007 under the Competition Ordinance 2007⁷, which was later passed as the Competition Act in October 2010.⁸ Major aim of the Competition Ordinance was to provide for a legal framework to create a business environment based on healthy competition for improving economic efficiency, developing competitiveness, and protecting consumers from anti-competitive practices. Prior to the Ordinance, Pakistan had an anti-monopoly law namely ‘Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance’ (MRTPO) 1970. The Monopoly Control Authority (MCA) was the organisation to administer this Law. In the fast changing global and national economic environment, the MRTPO, 1970 was inadequate to address competition issues effectively. In other words, the 1970’s outdated law was inadequate for transition to modern market economy. Second, the MCA was not able to meet the expectations of businesses and the consumers due to several limitations in the law. Third, the first-generation reforms that liberalised the economy and encouraged the private sector required a competition policy that could promote and protect competition and innovation. Accordingly, the government of Pakistan launched a programme to develop Competition Policy as a key “second generation reform” initiative. Towards this end, the Ministry of Finance and the MCA in collaboration with the World Bank and the Department for International Development (DFID), UK, replaced the MRTPO with the Competition Ordinance 2007. After getting approved, Competition Ordinance 2007 finally transformed into Competition Act 2010. The Competition Act, 2010 considers the current economic realities as well as corrects the deficiencies of the MRTPO related to definitional aspects, coverage, penalties, and other procedural matters.

⁷The Competition Ordinance, 2007 (Published in the Gazette of Pakistan Extraordinary, Oct. 02, 2007).

⁸The Competition Act, 2010, Act No. XIX of 2010 (Published in the Gazette of Pakistan Extraordinary, Oct. 13, 2010).

In line with modern competition regimes, the law adopts a ‘carrot and stick’ approach - the law provides for higher fines combined with imprisonment for non-compliance; on the other hand, the carrot is sweetened with sophisticated leniency provisions that may eventually lead to no fines and imprisonment, subject to certain conditions. To maintain high standard of evidence for unearthing secret cartels, the Competition Commission has legal powers to conduct searches and inspections.

3.1. Mandate of CCP

Anti-competitive business conduct can have harmful effects on the level of competition in the economy and thus, on consumers. The Competition Act, 2010, prohibits undertakings from abusing a dominant position in the market, participating in anti-competitive agreements, and resorting to deceptive marketing practices that could result in a transaction based on incorrect or inaccurate information. It also reviews mergers between undertakings that could result in significant impediments to effective competition. Through advocacy, the Commission encourages voluntary compliance and promotes a ‘competition culture’ to take root in the economy. The Competition is based on international best practices, considers the current economic realities and corrects the deficiencies of the Monopolies and Restrictive Trade Practices Ordinance (MRTPO) of 1970 related to definitional aspects, coverage, penalties, and other procedural matters. It covers all sectors of the economy, regardless of their public or private ownership.

3.2. Organisational Structure

In order to make policy decisions and provide guidance to the various departments, the Commission serves as collegiate body. The Commission comprises of four members, including the Chairperson. Current members are Ms. Rahat Kaunain Hassan who is also the chairperson of the commission, Ms. Shaista Bano, Ms. Bushra Naz Malik, and Mr. Mujtaba Ahmed Lodhi. The commission has 5 DGs and a secretary and Registrar. The DG Competition Policy is focusing on analysis and recommendations to address emerging challenges to competition. DG Research is in charge of the research activities of the commission on various aspects of competition policy. There is also a DG for Advocacy and Media, along with a DG for Administration and Finance, and a DG for Cartel & Trade Abuse.

The Commission Secretariat, headed by the Registrar of the commission, oversees the conduct of business of the Commission under the approved procedures. Among the powers and duties of the secretariat to the Commission are, inter alia, to represent the Commission at any forum as authorised by the Commission, to issue notices and minutes of the meetings of the Commission and certifying the decisions or documents used in hearings by the Commission. The Chair may assign other powers and duties to the secretariat based on organisational exigencies.

3.3. Critical Analysis of the Role of CCP

There are four essential aspects of the Competition Act. First, Section 3 is about prohibiting abuse of dominant position by undertaking(s) of all such anti-competitive practices that prevent, restrict, reduce, or distort competition in the relevant market. Such practices include predatory pricing, tie-ins, boycotting and refusal to deal. Second,

Section 4 is about prohibiting agreements or practices that restrict free trading and competition between business entities. This includes in particular the repression of cartels; obtaining individual or block exemptions with respect to prohibited agreements provided, it can be established that, benefits of the transaction outweigh its adverse effect. Third, Section 10 is about prohibiting deceptive marketing practices which aim at protecting consumer interests and enhance consumer welfare. Fourth, Section 11 is about supervising the mergers/acquisitions of undertaking(s), including some joint ventures. Mergers/acquisitions that are considered to threaten the competitive process can be prohibited altogether, or approved subject to conditions as deemed appropriate under the circumstances.

As is stated earlier, CCP has the mandate to ensure free competition in all spheres of commercial and economic activities in order to promote economic efficiency and to protect the rights of the consumers. Its regulatory function is mainly processing or granting clearance to mergers or granting exemptions in respect of prohibited agreements. As opposed to the MRTPO, the Competition Act does not seek to curb or reduce a dominant position; it prohibits the abuse of dominance. Although it provides a threshold in terms of market share beyond which there is a presumption of dominance, it does not rule out either dominance or abuse thereof at a level lower than the threshold for market share. Unlike the MRTPO, which prohibited only “restrictive” trade practices resulting in unreasonable lessening of competition, the Act prohibits any agreement that reduces competition within the relevant market whether or not it is “unreasonably restrictive”. Furthermore, CCP has power to grant block exemptions on grounds of efficiency or economic merit which did not exist earlier. The Act stipulates *ex-ante* merger control procedure i.e., mandatory procedure for review and prior clearance of mergers and acquisitions meeting the thresholds specified by the CCP. Under the Act, the requirement of registration of agreements has been done away with thus eliminating unnecessary transactions or compliance costs.

In order to create awareness regarding competition issues, CCP has to engage itself in advocacy. Holding of open public hearings on matters affecting the state of competition in Pakistan and the issuance of non-binding opinions in this connection is another important aspect in which Act differs from the MRTPO. Unlike the MRTPO, the power of forcible entry, to search any premises and to grant leniency or a reprieve as may be merited under the Act also considerably strengthens the investigative capacity of the CCP. To preserve independence of the CCP, a certain degree of protection from arbitrary removal and security of tenure is given under the Act. Tied sources of funding to meet operational needs has been catered for without resort to subventions from the Federal Budget. The MRTPO had no such provision, and the MCA was wholly dependent upon allocations from the Federal Budget. Penalties under the Act are much higher than those provided in the MRTPO to make implementation effective. Recovery powers are also not restricted to recovery as arrears of land revenue, but it can now be through attachment, and appointment of receiver. Orders of the MCA were appealable to the High Court. Under the Act, an order by a single member or an authorised officer can be appealed before an Appellate Bench (consisting of at least two members). However, judicial redress can always be sought against the final orders of the CCP. Any person aggrieved by order of the CCP comprising two or more Members or of the Appellate Bench can prefer an appeal to the Supreme Court.

3.4. Some further Clarifications about the Act

In this section, we are providing further explanation of the violations which are formally provided in the Competition Act.

3.4.1. Abuse of Dominant Position

Under the Act, dominance is not stated to be in terms of percentage alone, but it is also deemed to exist if an undertaking or undertakings has/have the ability to behave to an appreciable extent independent of competitors, customers, consumers and suppliers. However, it is important to appreciate and emphasise that dominant share is not barred by the Act; it is the abuse thereof that constitutes an offence. Undertakings can even hold 90 percent of the market share and they may be allowed to continue to do so, provided they do not abuse such dominance. Significantly, the behavioural aspect of an undertaking or undertakings having even less than 40 percent of share in the market may manifest dominance if such undertaking on its own or with other undertakings can act independent of its competitors, customers, consumers and suppliers and engage in practices which prevent, restrict, reduce or distort competition in the relevant market. The CCP can take cognizance of the matter, only when such dominance is abused as envisaged under section 3 of the Act. Presumption of dominance under the Act has been kept at forty (40) percent share in the relevant market, although globally it varies between 20 percent to 70 percent.

3.4.2. Prohibited Agreements

In line with best international practices, and similar to EU and Singapore, the Act prohibits all agreements (including vertical or horizontal agreements) that have the 'object' or 'effect' of preventing, restricting or reducing competition. Each of the terms, 'object' and 'effect' in Section 4 of the Act entails a distinct feature. Agreements having the "object of preventing, restricting or reducing competition" are those to which the per se rule applies e.g. agreements directly affecting price or output are considered inherently suspect. Since, the anti-competitive effect of such agreements is readily apparent they are made subject to per se treatment and there is no further need to probe into its effects. As for examining the anti-competitive effects of an agreement the "rule of reason" applies. It is explicitly stated in sub-section (3) of Section 4 of the Act that any agreement entered into in contravention of the provision in sub-section (1) (of Section 4) shall be void. Therefore, parties to such agreements cannot insist upon the performance of their obligations arising from such agreement. Besides declaration of such agreements as void under law, the CCP is empowered to annul such an agreement or require the undertaking concerned to amend the agreement and not to repeat the prohibitions. Additionally, penalties can also be imposed under Section 38 of the Act. While the door to exemption is open, it has narrow scope and places the onus of proof on the parties to the agreement. Exemption can be granted with respect to prohibited agreements if it can be shown in terms of Section 9 that:

- (a) It contributes to the efficiency or production;
- (b) It promotes technical or economic progress, while allowing consumers a fair share of the resulting benefit; or

- (c) the benefits clearly outweigh the adverse effects of absence or lessening of competition.

3.4.3. *Deceptive Marketing Practices*

The power given to the CCP to prevent deceptive marketing practices is a natural corollary to its mandate and aims at protecting consumer interests and enhances consumer welfare. The consumer protection mandate is in line with the international trend followed by inter alia EU, US, Canada, Australia and New Zealand. Certain practices have been deemed to constitute deceptive marketing practices under law. Such practices are not easily avoidable by the consumers and are likely to cause substantial injury to them. It may be relevant to add that certain other laws may also cover such practices; however, they are narrower and distinct in scope. Also, enforcement provisions in the Act are far more effective, as CCP is empowered to impose significant penalties as opposed to nominal and non-detering penalties under such other laws. It must also be appreciated that the Act is by no means extraordinary in providing higher penalties as a deterrent against deceptive practices. As compared to Pakistan, EU and Canada enjoy much wider scope and authority with respect to curtailing deceptive market practices. CCP within its umbrella has setup the Office of Fair Trading particularly for the purposes of enforcing Section 10 of the Act.

3.4.4. *Mergers and Forcible Entry*

It is important here to note that out of around 110 countries with Competition Law regimes, less than ten (10) have adopted a voluntary notification regime for merger clearance. Pakistan, India and EU are part of the overwhelming majority of jurisdictions which prescribe a mandatory notification regime. The substantive test to be applied in merger control is to see whether the merger/acquisition substantially lessens competition. In Pakistan, similar to EU and India, clearance would only be required with respect to such mergers/acquisitions that cross certain thresholds initially prescribed with reference to turnover or the value of gross assets of the undertaking(s). Here, it is indeed critical to appreciate that the term „merger“ as used under the Act. Clearly, has a much wider scope and meaning than it is generally understood, particularly in the context of company law. In terms of clause (h) of sub-section (1) of Section 2 of the Act “merger” means: “Merger” means the merger, acquisition, amalgamation, combination or joining of two or more undertakings or part thereof into an existing undertaking or to form a new undertaking: and expression “merger” means to merge, acquire, amalgamation, combine or join, as the context may require. It may be noted that the thresholds prescribed under Competition (Merger Control) Regulation, 2007, (the “CMCR”)¹ for seeking clearance may be rightly perceived as somewhat low but these are likely to be gradually raised over time based on experience and a better understanding of commercial exigencies. There has already been a modification in the initial thresholds prescribed, and these are expected to be revised from time to time. As we traverse the learning curve acquiring through experience a more pragmatic assessment of what thresholds should be allowed – possibly even sector or sub-sector specific – to rationally proceed to make necessary adjustments in the prescribed thresholds. There has been a debate on enforcing mandatory regime in Pakistan. It seems clear that the option of adopting voluntary regime over mandatory

regime would be retrogressive. Why should we not remain part of the progressive overwhelming majority? The list of countries having compulsory notification includes Argentina, Brazil, South Korea, Canada, France, Germany, Israel, Japan, South Africa, EU and US. Even the UK is in the process of moving to a fully mandatory regime from its current quasi-voluntary regime. Since compulsory notification brings in greater certainty and reduces business risks associated with combining, most countries in the world have opted for compulsory notification. Mandatory regimes are more effective in preventing anti-competitive concentration/merger/takeover as it is almost impossible to undo a merger once it has been implemented; reverting to voluntary regime, therefore, is not a pragmatic option.

Like various other jurisdictions, the power of forcible entry without warrant has been kept in the Act in view of its effectiveness. The law provides an inbuilt mechanism of how this power is to be exercised. First, the officer to enter and search premises must be authorised by CCP. Next, if the undertaking refuses to allow CCP to exercise the power, without “reasonable cause” a deliberation process is provided. The investigating officer is required to obtain a written order signed by two members of CCP, before entering the premises by force. The power to summon, search, forcibly enter any place or order production of records etc., are similar to those enjoyed by SECP; hence, there is nothing exceptional under municipal law about such powers being conferred upon CCP. This is also in line with global practice in the enforcement of competition norms.

3.4.5. Imposing and Recovering Penalties, Overlapping Powers

Penalties (if) recovered by CCP shall form part of the CCP Fund in terms of Section 20 of the Act. However, the Fund does not consist of penalties alone (as wrongly propagated). It also includes allocations by the Government; contributions from local and foreign donors or agencies with the approval of the Federal Government; returns on investments and income from assets of the CCP; all other sums which may in any manner become payable or vested in the CCP; and a percentage of the fees and charges levied by other regulatory agencies in Pakistan as prescribed by the Federal Government. Moreover, penalties forming part of the CCP Fund is very much in line with the laws administered by sector specific regulators such as Securities & Exchange Commission of Pakistan (SECP), National Electric Power Regulatory Authority (NEPRA), Oil & Gas Regulatory Authority (OGRA) or Pakistan Telecommunication Authority (PTA) etc. In any case, CCP cannot spend more than its approved annual budget. Further, to ensure transparency and accountability, CCP is required to maintain proper accounts which are be audited by the Auditor General of Pakistan or by a firm of Chartered Accountants nominated by the Auditor General of Pakistan. The annual report is to be published in the official gazette and to be laid before both the houses of Majlis-e-Shoora (Parliament).

The power to vary the rates and number of penalties is subject two requirements: it should be necessary in the public interest; and it can only be done with the approval of the federal government. As regards the issue of about excessive delegation, there are two inbuilt checks (including the scope to vary penalties) provided in the Act. When the parent legislation gives the mandate and prescribes parameters within the statute itself, the question of excessive delegation does not arise. Moreover, the power to vary does not necessarily mean power to increase, as variation can also be downward. Looking

generally at judicial precedents in Pakistan, the likelihood for courts to interfere, and hold delegation of such nature as excessive is remote.

The CCP is not to be viewed as usurping the important functions of sector specific regulators. Consistent with its legislative mandate and also consistent with contemporary best practices extant in the civilised world, the CCP role is confined to enhancing economic efficiency by acting as a bulwark against anti-competitive practices in all sectors of the economy. The CCP makes do efforts to consult relevant agencies. A Competition Consultative Group (CCG) has already been set up which comprises about 15 participants drawn primarily from sectors specific regulators, relevant professional bodies the private sectors and academics. This forum meets periodically to consider any concerns and suggestion and to get informal feed-back and guidance for CCP's on-going activities and proposed initiatives. Most comforting factor is that despite initial reluctance by some of the regulator's CCG has been able to achieve participation from all sector specific regulators, including State Bank of Pakistan.

4. DECISIONS OF CCP

Though, the Commission is a crucial player in ensuring competitive markets but it is not the only player, particularly in the case of Pakistan where the economy has moved from nationalised to the private sector economy. This transition phase had achieved some good results in the form of increased growth in the private sector, like in the telecom and banking sector. In line with modern competition regimes, the law adopts a "carrot and stick" approach - the law provides for higher fines combined with imprisonment for non-compliance. On the other hand, the carrot is sweetened with sophisticated leniency provisions that may eventually lead to no fines and imprisonment, subject to certain conditions. To maintain a high standard of evidence for unearthing secret cartels, the CCP has legal powers to conduct searches and inspections.

There are two programs, leniency and informed programs; the former is designed to give incentives to cartel members in approaching the competition authority, confess their participation in a cartel. The leniency comes from the cartel's participants, and the leniency applicant must be part of the cartel. However, for the later program, it can be anyone who has factual information about the existence of a cartel. They have an incentive of up to 5 billion PKR to the informant so that is divided into different stages and has that in place since 2012 and there are several applications.⁹ For example, Siemens claimed leniency provisions under Regulation 3 or 4(1) of the Leniency Regulations. Under this regulation, CCP can provide up to 100 percent of leniency but with certain conditions. These include the corporation, the amount of additional evidence that the entity provides against the other cartel participants and aid the competition law enforcers. In providing, 233 documents to CCP along with its Leniency Application, Siemens has granted a 100 percent reduction in penalty concerning contravention alleged in the relevant markets of switchgear and transformer. These programs have been used as an effective and low costs investigative tool worldwide; however, Pakistan's leniency regime has not been able to reach that triumph in cracking cartels.

⁹CCP's Landmark decision-leniency granted to Siemens, to break cartels in switchgear and transformer markets, Islamabad, Apr. 03, 2012.

The CCP as an antitrust body has struggled to restrain the anti-market practices effectively, although it has issued more than 100 orders since its inception totaling over PKR 26 billion in fines. In most cases, violators obtain court stays to avoid paying penalties. Therefore, the powerful businessman and companies flout competition laws and significantly weakening the role of the CCP.

Table 4

The list of CCP Orders

| Sr. No | Categories | Total | Section of the Act | Nature of Violation |
|--------|---|-------|--|--|
| 1 | Deceptive Marketing Practices | 46 | Section 37 of the Act | Deceptive Marketing Practices |
| 2 | Prohibited Agreement | 30 | Section 4 | Unfair trading conditions, Price Fixation |
| 3 | Miscellaneous (Orders on Non-Compliance of Commission's Orders) | 1 | Section 38 of the Act | For not complying with the conditions of earlier Order |
| 4 | Miscellaneous (Actions initiated under MRTPO & Disposed of under the Act by the Commission) | 4 | Section 5, 6 of the MRTPO | Unreasonably restrictive trade practices |
| 5 | Miscellaneous (Interim Orders) | 7 | Section 10, 20 32 of the Act | Interim Order |
| 6 | Miscellaneous (Withdrawal of Complaint/Application) | 2 | Section 5 and 9, Regulation 4 of the General Enforcement | Exemption Application under Section 5, Section 4 and Alleged Non-Compliance of Regulation 4 of the General Enforcement |
| 7 | Miscellaneous (Exemptions) | 1 | Section 5 | Exemption Order |
| 8 | Miscellaneous (Orders Passed Pursuant To High Court Directions) | 3 | | |
| 9 | Appellate Bench's Orders | 6 | Section 41 of the Act | Price fixing |
| 10 | Abuse of Dominant Position | 19 | Section 3 | Unfair trading conditions, price hike, Refusal to deal Excessive pricing, Tie-in, Refusal to deal etc. |
| 11 | Approval of Mergers – Ph I | 353 | Section 11 of the Act | |
| 12 | Approval of Mergers - Ph II | 9 | Section 11 of the Act | |

CCP has issued around 481 orders as is shown by the data on their website. 362 of these are about the approval of mergers. Around 52 are about the deceptive marketing practices. 19 are about the abuse of dominant position and around 30 are about the prohibited agreements. We have taken the sample of 81 orders as we have complete information about these orders. CCP has issued 46 orders related to “deceptive marketing practices” and 30 orders related to “prohibited Agreements” and we have taken 5 deceptive marketing related “miscellaneous orders” as a case. Total 81 orders are taken as a sample.

Table 5

Notices by Section of the Competition Act

| Section | Orders | Number of Notices Issued |
|--|-------------------------------|--------------------------|
| Under Section 4 of the Competition Act 2010 | Prohibited Agreement | 29 |
| Under Section 37 of the Competition Act 2010 | Deceptive Marketing Practices | 3 |
| Under Section 37(1) of the Competition Act 2010 | Deceptive Marketing Practices | 5 |
| Under the provisions of Section 37(2) of the Competition Act, 2010 | Deceptive Marketing Practices | 44 |
| Grand Total | | 81 |

All the prohibited agreement orders are covered under section 4 of the competition act 2010 and deceptive marketing practices are covered under section 37 of the competition act 2010.

Table 6

Notices by Types of Complainant

| Complaints filed by | Number of Notices Issued |
|-------------------------|--------------------------|
| Associations * | 6 |
| Citizens of Pakistan ** | 10 |
| Companies | 39 |
| CCP | 26 |
| Grand Total | 81 |

* Association bodies

** Individuals

Most of the complaints are launched the companies against the other companies and the second number of complaints are sue-moto taken by the CCP.

Table 7

Notices by Sectors

| Sectors | Number of Notices Issued |
|---------------------------------------|--------------------------|
| automobile | 5 |
| Construction | 2 |
| Contract | 1 |
| Education | 7 |
| electricity | 1 |
| Exploration and production | 3 |
| fertiliser and chemical manufacturing | 5 |
| Financial institutions | 1 |
| FMCG | 12 |
| Food | 9 |
| Health | 3 |
| House hold products | 8 |
| Insurance | 1 |
| live stock | 3 |
| Media | 6 |
| online store | 2 |
| Pharma | 2 |
| Real estate | 5 |
| Services | 3 |
| Stock market | 1 |
| Textile | 1 |
| Grand Total | 81 |

Most of the orders and enquires held in FMCG sector related to misleading claims about the products and using the trademark of the other companies. Out of twelve FMCG companies 8 are fined approximately Rs. 270 million.

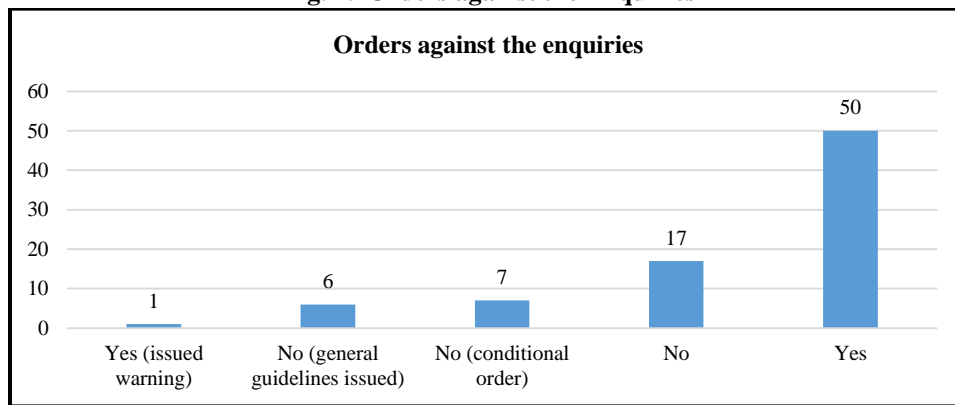
Table 8

Enquiry Conclusions

| Enquiry Conclusion | Number of Notices issued |
|--|--------------------------|
| Matter needs investigation (commission may proceed the case) | 68 |
| N/A* | 7 |
| Not found guilty | 5 |
| Penalty proposed | 1 |
| Grand Total | 81 |

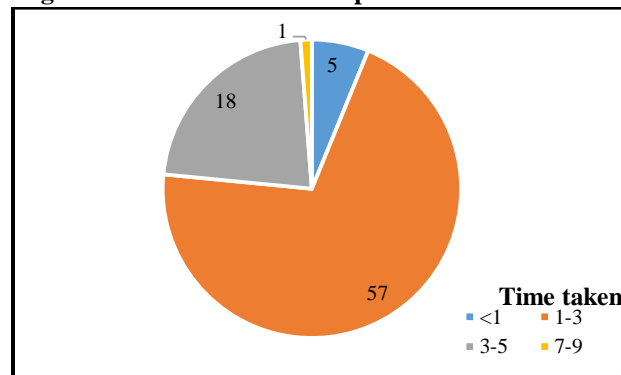
*Enquiry reports not found.

Fig. 2. Orders against the Enquiries



Out of 81 orders enquiry committee suggest investigating the 68 orders for further decision and declare 5 respondents not guilty and proposed penalty in one case. In further investigation CCP has issued 81 orders and impose penalty against 50 complaints and issued on warning on leniency basis. In 30 cases no penalties have been imposed and general guidelines are issued in 6 cases and conditional orders are issued against 7 cases.

Fig. 3. Time taken from Complaint to Order Issuance



Most of the enquiries took 1 to 3 years to complete the process from complaint to final decisions and most of the cases resolved in 3 to 5 years. Total fines in the selected cases was approximately Rs. 2143 million and most of the fines are ranging from Rs 250000 to Rs 10 million.

Table 9

Fines against the Violations

| Fine (in Million) | Fines in millions | Number of Notices issued |
|--------------------|-------------------|--------------------------|
| 0-10 | 73.75 | 56 |
| 10-20 | 65 | 6 |
| 20-30 | 90 | 4 |
| 30-40 | 95 | 3 |
| 40-50 | 45 | 1 |
| 50-60 | 200 | 4 |
| 60-70 | 64.71 | 1 |
| 100-110 | 100 | 1 |
| 140-150 | 140 | 1 |
| 150-160 | 300 | 2 |
| 200-210 | 200 | 1 |
| 760-770 | 770 | 1 |
| Grand Total | 2143.46 | 81 |

5. CONCLUSION

This study is motivated by the recent literature on market competition from the perspective of declining competition in the domestic and foreign markets in Pakistan. Limited competition has not only inversely impacted the welfare of consumers but also; it has halted the development of a competitive private sector (Khan 2020; Khan 2021). In general, it is highlighted that government intervention in the market, protection to domestic industries, state footprint in the economy, and higher import tariffs are among the leading factors that are restricting competition in markets. For instance, Government of Pakistan is actively intervening in markets like Wheat Market, Sugar Market, Power Sector among others (Salman and Javed 2020; Khan 2020; Khan 2021). Likewise, there is huge foot-print of the state in sectors like power, transport, and industry etc. In addition to limiting competition, state foot-print causes huge losses of the budgetary resources. According to the World Bank, the total liabilities of loss-making State-Owned Enterprises (SOEs) in Pakistan has been ranging from 12 percent to 18 percent of the GDP in recent years. Further, in terms of trade restrictions, Pakistan is currently the world's seventh most protected economy as measured by the Overall Trade Restrictiveness Index. The complexity of the tariff structure is relatively high with tariff lines augmented with para tariffs such as additional duties, regulatory duties and special regulatory orders (Varela et al., 2020). This is creating anti-export bias, limiting competition and hurting the development of private sector. All these imply that competition in the market is needed to resolve the conundrum of Pakistan's faulty private sector and protect consumers from anti-competitive practices.

Given a dismal situation of market competition in Pakistan, three-fold reforms are needed. First, the government needs to reduce the cost of doing business and remove policy distortions to investment, competition, and trade. Second, the government needs to reduce its footprint of inefficient and loss-making State-Owned Enterprises (SOEs) in all sectors, like electricity, transports, and industry. Third, protection to domestic industry should be converted into facilitations in terms of removing infrastructure deficit to businesses. In this regard, the role of competition commission is crucial, especially from the perspective of a robust antitrust framework.¹⁰ In particular, it has to enforce its decision. For example, the Pakistan Poultry Association (PPA), was fined PKR 100 million in 2016 for price fixing, after a PPA didn't pay a similar fine in 2010 for the same violation. There are many other instances in which the CCP could not implement its decision in one way or the other.¹¹ In order to improve the effectiveness of CCP as an organisation, several plans are tied with certain things like: work on the outcome of court cases; appointment of members to complete the quorum; structural changes for collaborations and regulations for policymaking with Government; online hearings of cases etc.

5.1. Way Forward

There several areas where CCP can improve in order to make the market functioning in Pakistan.

- Competition law and policy have to be actively promoted and nurtured as well-designed and effectively implemented competition law and policy provide a level playing field, where economic actors can freely and fairly compete, to the ultimate benefit of the consumer and society.
- Especially, the CCP has to ensure the enforcement of the laws in those sectors of the economy that is deemed as essential for boosting the economic growth and stability of the country.
- The commission team must also include the high-level professionals, with expertise in economics, finance, commerce, law, accountancy, and public administration, rather than only bureaucrats.
- The CCP may also initiate different capacity building program, for example engage with different economic research institutes to have collaborative work on different competition issues. The faculty and students may work, in this regard, on targeted economic research relevant to market and competition. Therefore, the investigation has to be initiated, based on solid economic review of cases that would enhance the efficiency in the CCP work.
- The focus should be on minimum Government interference, as the rules and regulation refrain people to invest in businesses.
- The Commission is expected to monitor the pricing environment for every business and avoid the price-fixing by the leading players not just for private but even for government and semi-government players in the markets.

¹⁰BTI,2018.

¹¹The effectiveness of antitrust enforcement is well reflected in the perception-based indicators, where Pakistan ranked 70 in 2017-18 as compared to 85 in 2013-14, and 66 in 2007-08.

- CCP has the role of enforcement according to the stated laws and is not responsible for the market's conditions. It acts like a referee that aims to avoid match-fixing. As the market is the backbone of every nation so this element should also be focused by CCP to have fair competition and perfect saturation of the market in addition to ensuring the level playing field and avoid all the stated offensive laws.

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Chapter 2

Regulating the Pharmaceutical Industry: An Analysis of the Drug Regulatory Authority of Pakistan (DRAP)

SHAHID MEHMOOD

Healthy lives and the longevity of humans over time have critically been dependent upon the availability of quality drugs. Therefore, regulating the pharmaceutical industry for ensuring quality drugs and quality services (like drug dispensing) have traditionally been a priority for governments all around the globe. Pakistan is no exception, and at present has DRAP as its regulator of the pharmaceutical industry. Founded in 2012, few studies have analysed the performance of DRAP to date, and even those are limited in content, coverage and data.

Five criteria are used to gauge the performance of DRAP. It does better than its predecessor in terms of quality of drugs and ensuring quality in dispensing, but significant gaps still remain. Poor quality drugs are still prevalent in markets, and questionable techniques (like mislabeling drugs) still persist. Similarly, there are wide gaps in ensuring that the dispensing practices at public and private healthcare facilities. Additionally, the quality of dispensers is still poor.

Regarding policy consistency, we find a litany of SROs through which policies are constantly being modified. This tends to create uncertainty since the industry is never sure of what the near future would bring? Doing business is still a challenge from the industry's perspective, although there have been certain improvements post-DRAP. Tightly regulated pricing is still the most contentious issue; businesses face a plethora of charges, there are various taxes on products, and even closing a company could be cumbersome.

To have good quality drugs, it is necessary to have quality infrastructure, especially R&D facilities. Since 1976, the federal government has been collecting a research tax, equal to a percent of the industry's gross sales. Yet despite garnering billions of rupees over time, Pakistan lacks quality infrastructure and has little (if any) in terms of quality R&D in drugs.

For an industry that was once described as the 'sunshine industry' by renowned consultant McKinsey, the net FDI has been dismal in the two decades, since 2000. This state of affairs has to primarily do with government regulation, especially pricing and lack of support for patent protection for originator brand medicine.

Last, but not the least, is the critical question of whether consumers are better off than before DRAP? The simple answer is NO! Over time, their Out-of-Pocket expense has increased despite the government refusing price increases in drugs to, as per their explanation, keep prices 'affordable'. The aim has failed. Similarly, drug shortages are

still persistent and the short medicines have to either be imported or are found in the black market at astronomical prices. The quality of drug dispensers and healthcare providers still remains poor, and most pharmacies operate without a qualified pharmacist. In essence, consumers have not realised much (if any) increase in their utility after founding of DRAP.

In sum aggregate, DRAPs performance is better than its predecessor, but there are still significant gaps to be filled and significant challenges to be addressed.

2.1. INTRODUCTION AND CONTEXT

The Drug Regulatory Authority of Pakistan (DRAP) is the main regulator of the pharmaceutical industry in the country. Created in 2012 in the aftermath of deaths due to sub-standard medication at Lahore Institute of Cardiology, it was perceived as an autonomous body under the Federal Government's domain, as an autonomous arm of the Ministry of National Health Services Coordination and Regulation (MNHSCR). It succeeded the previous federal regulatory entity, the Drug Control Organisation (DCO), which worked under the now-defunct Ministry of Health. Although provinces have their drug regulatory authorities, their domain of influence and work pales in comparison to the extent of powers and regulatory roles conferred upon the DRAP. Except for distribution and sales, all other aspects related to drugs¹² (licensing, pricing, import, export, manufacturing, etc.) are dealt by the federal government. Post 18th Amendment, there was a push towards devolving even these to the provinces but they, through the Council of Common Interest (CCI), agreed to let these be in federal government's regulatory realm.

The tasks to be performed under the DRAP Act 2012 are vast, diverse and challenging. It starts by emphasising the necessity of effectively coordinating and implementing provisions of the previous Act (the 1976 Act) and to harmonise inter-provincial trade in therapeutic goods. The canvass of responsibilities gradually assumes a broader role, from import/export of drugs, storage and distribution issues, to coding and marketing practices and maintaining the quality of products (through Goods Manufacturing Practices or GMP). Suffice to say, the set of rules to govern the working of the pharmaceutical industry are immense in their aggregate.

An analysis of the regulatory performance is in the offing, given the challenging ground realities. The fact of the matter is that despite having over 700 pharmaceutical firms, Pakistan regularly experiences drug shortages, many of them categorised as 'critical' (or life-saving) drugs. More than 40 Multi-National Corporations (MNCs) worked in Pakistan, bringing with them reputation, experience and FDI. Barely 25 are left now, with several divesting away from manufacturing drugs to other products (like dry milk, baby food, etc.). In the throes of the Corona pandemic, we found that none of the pharmaceutical firms did any research on corona virus to try to manufacture corona vaccines. In fact, the industry does not manufacture a single vaccine! The critical shortages of life-saving drugs and the non-availability of vaccines puts lives in danger.

¹²Although 'medicines' and 'drugs' are used interchangeably, 'drug' is the reference term for allopathic medicines. 'Medicines', in contrast, cover a wider range of products including homeopathic and ayurvedic medicines. For the proposed written piece, drugs will be used for allopathic medicines only.

The industry points towards regressive regulations, especially those concerning pricing, lack of quality control, extractive practices like CRF, etc., as the culprits in terms of the above-mentioned. It claims that adverse regulations and uncertainty have marred the efficiency of an industry that was once labelled as the ‘sunshine’ industry by McKinsey for its potential. They point to the increasing gap between imports and exports and other factors like dismal FDI numbers (between 2002-03 and 2019-20, the net FDI was only \$267 million) as outcomes of the adverse regulations and uncertainty created by the actions of the regulator and the government.

Given what DRAP has been tasked with under the DRAP Act, the central theme of this paper is to analyse its performance keeping these tasks in context, and gauge whether it has been effective in carrying out its responsibilities or not? Further, what has been the outcome of DRAP’s actions on the industry, which has traditionally remained at loggerheads with DRAPs predecessor? The study aims to answer whether DRAPs arrival has changed the status quo and lessened the distrust between the industry and the regulator, whether regulations have helped the industry in any manner, or if things have barely changed compared to pre-DRAP days?

2.2. LITERATURE REVIEW

When it comes to regulating the pharmaceutical industry and its outcomes, a wide gap exists between the narrative of the industry and the government (specifically the regulator). Credible studies analysing the performance of the regulator and the industry could have given the reader a true picture of where the reality lies? However, not many studies address these two competing narratives in one place. Rashid (2015) undertook an analysis of the DRAP based on policies related to three areas (industry regulation, encouragement of its development and ensuring availability of drugs). She opined that there were significant gaps in regulator’s performance that were hampering the development of the industry. The second study that exclusively analysed DRAPs performance was Rasheed et al. (2019), specifically targeting quality of medicines as the central question of their research. They found significant gaps in terms of the regulator’s performance and in terms of ensuring the recommended quality of medicines. They further propose improving the overall framework for ensuring quality, like increasing Good Manufacturing Practice Inspections (GMPI).

Mehmood (2018)¹³ attempts to compare these two competing narratives by analysing the issues plaguing both the regulator and the industry. He found that although the sector had issues to take care of (producers at lower tiers producing sub-standard medicines, etc.), the main issues hampering the efficient working and development of the industry were traced to how the industry had been regulated historically. Especially vexing was the issue of administered pricing that pushed producers to take specific actions (like putting a stop to the production of certain drugs) that had overall negative welfare repercussions.

The majority of the research on the pharmaceutical industry and public sector regulations usually address a single (or a few) criteria rather than taking a holistic picture. For instance, the aspect related to the shortage of drugs has been touched upon in various

¹³ ‘Pharmaceutical Industry Report’ (2018)

studies. Rizvi (1999) blamed the government policies, especially ‘freezing’ drug prices, as the primary contributor to shortages of essential drugs in Pakistan. A paper by Third World Network Briefing (2001) touched upon the issue of high-priced imported medicines and the black market in medicines, discussing the role of government mandated quotas in Pakistan and its effects on drug supply. Zaidi et al. (2013) analysed the availability of drugs in government/public sector hospitals. They concluded that lower expenditures per capita (less than \$2) as proposed by the World Health Organisation (WHO) for maintaining a steady supply of essential drugs was not being met. A paper by Noureen and Zaidi (2013), researchers at the Agha Khan University, put the essential drugs availability in the public sector at a dismal 3.3 percent, much lower than Zaidi et al. estimate of 15 percent. Interestingly, their results seemed to confirm earlier estimates by The Network for Consumer Protection (2006) that found a similar percentage in terms of median availability of essential drugs at public sector outlets. Gilani, Babar and Malik (2013) opined that the non-availability of essential medicine at government facilities explains why 67 percent of total patients consult private physicians, thus increasing their expenditures on healthcare. Hira Rashid (2015) analysed the performance of the main regulator (DRAP) and issues that lead to expansion of informal channels (‘black market’). Sayeed and Dawani (2020) concluded that pricing policies lead to preference for manufacturing drugs which have a high price margin, plus incentivise hoarding and rent-seeking.

Khan, Kundi and Saqib (2019) look at the tort law related to injuries caused by sub-standard drugs. They find that tort laws are weak in their reach, effectiveness and implementation. Saleha, Hassan and Iqbal (2010) analyse industry’s returns over a decade, and conclude that the regulations are responsible for the below-par performance of the industry, which could have performed better had the regulations been friendlier. The World Health Organisation (WHO, 2017) assessed the transparency in the public sector policies related to the pharmaceutical industry. They found that perception of corruption for different regulating categories differs, with some higher and some lower. Shahnaz, Bano and Arshad (2009) carried out a technical analysis of 6 generic products of a particular drug (Cefixime 400 mg). They found that all six varieties are effective in treating symptoms and interchangeable. Aqeel, Shabbir, Bashir et al (2014) touch upon the very important issue of self-medication, in Islamabad capital territory. They found that the percentage of self-medication was a staggering 61 percent, reinforcing the generally agreed result that in Pakistan, the rates of self-medication are high.

2.3. METHODOLOGY AND LIMITATIONS

The foremost method in such analysis is to consult/ analyse earlier studies and their results. These inform the researcher of the criterion used, while additionally indicating where any shortcoming lies (if any). All this information is then aggregated to produce a final analysis. Primary data will be used from information provided by DRAP that is available on its website, updated from time to time. This will be complemented by reports appearing in the media since there are several aspects of regulation that DRAP may not report on, at least regularly (like quality control).

A thorough analysis of existing literature will be undertaken, aside from the results/outcomes of previous performance appraisals by other authors, to gauge which

criterion and methodology may be adopted. Depending upon data and information availability, an attempt will be made at the end to compare the performance of DRAP with its predecessor.

The paper's main limitation is that the require data on pharmaceutical sector regulation does not exist at a central place or central repository. There is no central, long-term data store of DRAP (and its predecessor) regulatory data; its officials are often reluctant to discuss details of their work and the data put up on its website is often patchy rather than continuous. For example, they remain tight-lipped about the utilisation of money taken from the industry under the Central Research Fund (CRF). Similarly, there is little (if any) information concerning the coordination between the federal and the provincial regulatory authorities. Additionally, there has rarely (if ever) been a study on the monetary costs of regulations that could give us a heads-up in terms of this study.

Another limitation of this study is that it will concentrate mainly upon federal level regulation through its regulatory body (DRAP). Provincial regulatory authorities will not be covered in this research piece. The reason being that as far as regulation of the pharmaceutical industry goes, provincial authorities only deal with distribution and sale of drugs, which is a small part of the industry's functioning, and do not constitute significant factors impinging upon the issues confronted by the industry.

In essence, analysis of five main themes can give us a credible picture of whether DRAPs performance stands up to scrutiny or not? These cover both the demand and supply side of the pharmaceuticals. They are:

- (a) Quality of drugs and drug dispensing
- (b) Consistency of Policies
- (c) Ease of conducting/doing business
- (d) Research and Development (R&D), and its supporting infrastructure
- (e) Attracting Investment
- (f) Are consumer's better off than before?

2.4. QUALITY OF DRUGS AND DRUG DISPENSING

There is perhaps no issue more important than ensuring that supplied drugs are of good quality, and they conform to quality standards. Simply put, sub-standard, low quality drugs puts lives at risk. Moreover, it has to be further ensured that those who are dispensing drugs are knowledgeable about the attributes of those drugs. Therefore, one of the foremost reasons for having a drug regulatory authority is to prevent such a happenstance and to ensure standards in drug dispensing practices. In this regard, majority of DRAPs Departments (Quality Assurance, Licensing, Pharmacy Services, Controlled Drugs, Biological Drugs, Health & OTC) deal with these issues pertaining to drug and drug dispensing quality. Field offices spread across the country report their findings to the HQ. For example, the Quality Assurance wing has five field offices all over the country, where day-to-day activities are carried out by federal drug inspectors, assistant drug controllers and an appellate board.

Quality of drugs has been a pervasive issue for a long time. In 1975, the Generic Drugs Act was repealed after 38 companies were found to be producing sub-standard drugs, resulting in the Drugs Act 1976 which proposed heavy fines and imprisonment for producing sub-standard, adulterated drugs. Yet, despite decades, the instances refuse to

die down! In 2011, more than 230 people were killed after being administered adulterated cardiovascular medicine. The reaction led to the immediate formation of DRAP, something that had been in the works since the mid-2000s. In 2012, a contaminated cough syrup claimed numerous lives, bringing the issue of adulterated, low-quality drugs and loose quality control of regulators into the limelight again. In both these cases, public laboratories could not identify the dangerous substance in these drugs (Bigdeli et al., 2017). Pakistan's first 'Stem Cell Policy' acknowledges that Pakistan has no USFDA or EMA (Europe Medicine Agency) approved pharmaceutical protein purification /stem cell production facility in Pakistan, neither in the public sector nor in the private sector.¹⁴

The attractiveness of indulging in manufacturing sub-standard, low-quality medicines is that nominal pay-off's are quite high. Blackstone, Pociask and Fuhr (2014) contended that dealing with fake drugs through black market has higher monetary payoffs than even heroin and other narcotics. Therefore, it's imperative to stop such practices through tighter, efficient checks by the regulator.

DRAP has gradually picked up pace since its founding in terms of enhancing and ensuring quality. There has been progress on this end under various heads through regulations. Separation of allopathic and alternative medicine facilities was ordered due to risk of contamination. Only a common lab is allowed for both products but to be manufactured separately (something that was not happening before), and with the manufacturer having area above 4 kanals. Similarly vitamins and other Nutraceuticals (basically 'food supplements') are to be treated separately under separate regulations to ensure 'truthful labelling', efficacy of ingredients and from discouraging manufacturers/distributors in terms of making fallacious claims about the cure or prevention of disease through their products.¹⁵

Between 2013 and early 2017, 18 drug manufacturing licenses were suspended and 89 drugs were banned for being sub-standard. The following table presents available figures of drug tests and their results since 2015, indicating that testing has increased over time.¹⁶

| Year | Drug Recalls | Samples Tested | Substandard | Spurious | Unregistered | False Warranty | Misbranded Drugs |
|------|--------------|----------------|-------------|----------|--------------|----------------|------------------|
| 2015 | | 43,933 | 538 | 252 | | | |
| 2016 | | 74,071 | 813 | 97 | | | |
| 2017 | | 53,371 | 446 | 63 | | | |
| 2018 | | 41,435 | 2,527 | 42 | 497 | | |
| 2019 | | 51,194 | 490 | | 587 | 1,710 | 222 |
| 2020 | 34 | | | | | | |
| 2021 | 7 | | | | | | |

¹⁴ 'National Bio-safety Regulations' (2020), p 'i'.

¹⁵ F. No 1-78/2018-DD (H&OTC) (Pt), 2nd September 2019.

¹⁶ Note that these figures do not include a few categories like sale of prohibited or 'controlled' drugs without authorisation, sale of drugs that were not kept as per the required quality criteria ('unsatisfactory storage'), etc., because the data was not available.

Besides DRAP, Punjab's quality control unit (PDCU) has published data on tests and their results since 2017. Between January and June 2021, over 3,800 inspections were carried out in the Rawalpindi district alone, resulting in sealing of 88 drug selling premises.

For reference, a total of 60,000 tests were carried in 2009 and 2010 in public Drug Testing Laboratories (DTL) by Drug Control Organisation (DCO, DRAPs predecessor), whereby 2 percent failed to comply with quality standards. This implies that testing has picked up after DRAPs founding compared to pre-DRAP days.

Another positive development occurred in the form of DRAP attaining full membership of Uppsala Monitoring Centre (UMC) in 2018. UMC is an independent think tank that works to ensure the safety of drugs for patients through safer use, i.e, pharmacovigilance. UMC helps countries identify dangerous drugs that need to be withdrawn. Formerly, Pakistan was an Associate Member only.

All this, both in the pre-DRAP and post-DRAP period, implies that the issue of quality is still a very pressing matter due to its continuous recurrence under various heads. Rasheed et al. (2019) consider the published DRAP data on quality of the medicines as negligible and unsatisfactory! One further aspect to be noted here, which is critically important, is that the tested samples are almost always from officially procured batches of drugs for public health facilities. That means that a large number of drugs available in the open market remain unchecked, untested. Similarly, DTLs do not carry out all the tests required for the quality purpose, like the 'impurity test' that are considered important.

Last, but the least, there is a dearth of Bioequivalence (BE) labs in the country. These labs are an essential component of ensuring the quality equivalency of generic brands with originator brands¹⁷, something that can really be helpful for consumers since generic brands tend to be cheaper than originator brands. They can additionally be beneficial in boosting exports and bringing in Foreign Direct Investment (FDI). However, there are only two BE labs¹⁸ in the country approved by DRAP under Bio-Study Rules 2017! In 2012, there were seven, whose licenses were not renewed by DRAP.

Available literature tends to support the contention that drug quality is a considerable issue in Pakistan. Rasheed et al. (2019) carried out an investigation into the quality issues of drugs in Pakistan. They found no proper mechanism and neither a concise study that had ever studied this issue in depth. Further, their investigation did not find evidence of a large-scale presence of poor-quality medicines, as alleged by certain quarters. However, they suggest that the overall quality framework (like GMPIs) needs considerable improvement to tackle the issue of the prevalence of low-quality medicines. Additionally, they propose funding comprehensive studies to document this issue properly.

Razvi, Anjum and Ahmed (2015) noted that the pharmaceutical regulators needed to upgrade their skills to regulate in a manner that could help achieve positive outcomes, like increasing prospects of pharmaceutical exports. Godman et al. (2016)

¹⁷ 'Originator' brands are drugs that carry a patent. In Pakistan, they are imported. Generic brands are domestic equivalents to originator brands, but without a patent and carrying their own brand name.

¹⁸ Both are situated in Karachi, one at M/S Pharma International manufacturing facility and the second at Karachi University's Centre for Bioequivalence Studies

undertook a technical assessment of API's in drug registration procedures. They concluded that there was an urgent need to improve the registration process of generic drugs in Pakistan.

At the international level, World Health Organisation's (WHO) Programme for International Drug Monitoring (WHO-PIDM) is a widely followed practice in ensuring drug quality, with the main purpose being to develop a pharmacovigilance system in member countries and coordination at the national and international level for timely intimation on any medicine safety alerts. This concept was put into practice in 1968. Pakistan joined as late as 2018, reflecting poorly on regulator and policy makers' priority in terms of ensuring quality medicines to the population.

Other indicators reflect equally poorly as far as quality of medicines is concerned. By the end of 2018, there was only one drug manufacturing firm that held the Good Manufacturing Practice (GMP) certification issued by the European Medicines Agency. Not a single DTL is United States Food and Drug Administration (USFDA) certified, the international gold standard for quality assurance in drug manufacturing. This is despite the fact that the pharmaceutical industry has been paying 1 percent of their gross sales to the federal government since 1976 for setting up research infrastructure and conducting research. There are 12 DTLs, but except for one or two, none qualifies as per WHO quality standard.¹⁹ Recently, DRAP claimed to have launched a 'world-class' DTL in Karachi.²⁰

Quality assurance is not only critical in terms of manufacturing drugs, but also in terms of dispensing practices at pharmacies, with the majority of these activities coming under the 'pharmacovigilance' ambit. Drugs, for example, kept without following specified temperature conditions turn to be ineffective. A year before DRAP's founding, Mahmood et al (2011) bemoaned the fact that there was not even a proper pharmacovigilance policy, let alone system, in place in Pakistan, terming it practically 'non-existent'. In the same year, Azhar, Ibrahim and Baber (2011) carried out a cross-country study of pharmacies, and concluded that the regulatory enforcement in terms of quality assurance of drugs was poor.

The situation has not changed much, unfortunately. Study after study has found questionable dispensing practices at both public and private health facilities. Atif and Malik (2020) found that the community pharmacists, besides being low in number relative to demands of services, were poorly trained to meet the Covid related challenges. A recent report²¹ on safe dispensing practices in Pakistan came up with a startling revelation that approximately 95 percent of the pharmacies in Pakistan are run without a pharmacist, thus putting a large question mark around which drugs are dispensed. Last, but not the least, the latest outbreak of HIV among children as young as two years old in Larkana (Sindh, with the outbreaks continuously happening for more than a decade) attests to the significant lags in quality dispensing as almost all the studies attribute it to unsafe medical practices, complemented by poor drug quality.

¹⁹ DRAP representatives maintain that WHO certified labs are 5 in total. However, there are no independent sources confirming this statistic

²⁰ 'Pakistan launches world-class drug testing lab in Karachi'

²¹ '95 percent pharmacies in Pakistan are run without a pharmacist'

2.5. CONSISTENCY OF POLICIES

Uncertainty in policies can induce negative repercussions in an economy. With businesses being unsure of whether a policy would continue or not, it can be difficult to plan for the future, especially long-term investments. Pakistani governments, over time, have been notorious for being inconsistent in their policies. We normally witness either the same government making frequent changes to the existing policies, or a new government coming up with a set of new policies. The favoured instrument for carrying out these frequent changes is the Statutory Regulatory Order (SRO).

The pharmaceutical sector of Pakistan, like many other sectors, has been at the receiving end of frequent policy changes for decades. And the situation continues unabated in the post-DRAP era. The following is a selective list of instances whereby the government over-turned its own regulations concerning various areas under its ambit:

- (a) An April 2020 notification²² allowed holders of valid Drug Manufacturing Licenses (DML) to manufacture hand sanitisers as per the prescribed formulae, *but only for three months!* There were similar notifications allowing hand sanitiser manufacturing on the 10th, 14th and 17th April 2020. But suddenly, within a month, all these four notifications were withdrawn on 21st May 2020 under Cabinet's directive! There was no reason mentioned for the decision.
- (b) The rules for Alternative Medicines and Health Products were approved through an SRO 412 (I)/2014 (titled 'Alternative Medicines and Health Products (Enlistment) Rules, 2014'), dated 27th May 2014, which was amended through another SRO²³ in 2016.
- (c) While SRO No. 28(1)2013, dated 22nd January 2013 and SRO No. 334(1)2010, dated 18th May 2010 (and likewise SROs) were aimed at discouraging imports, SRO No. 577(1)2016, dated 15th May 2016 allowed a five year exemptions for the import of drugs meant for donations. But there is no fool-proof mechanism to check the abuse of this exemption by individuals or companies, especially by informal market participants.
- (d) Under SRO No. F.11-2/2020-DD (P) dated 15th July 2020, the rule for applying for 'hardship' cases was modified to reduce the number of days from 180 to 120, which are ultimately approved by federal government after being forwarded by DRAP. An important part of this is part 'vii' of 'b', whereby the Federal Government can nullify agreed upon price increase in line with Consumer Price Index (CPI) if it has a 'cogent' reason, thus keeping a window open for government nullifying agreed upon price increases.
- (e) Policy inconsistency was recently witnessed in terms of importing much-needed COVID-19 vaccines. SRO, No. 113(I)/2021, dated 2nd February 2021 was issued by DRAP, allowing unfettered, unrestricted import of vaccines from abroad, allowing the importer to sell it as per the market price. However, on 18th March 2021, another SRO (No. 308(I)/2021) rescinded the previous SRO, leaving the population without a shot at more vaccines.

²² F. No 4-2/2017-DD (H&OTC) (Pt), 6th April 2020

²³ F-3-5/2013-DDC (Alt. Med.), dated 10th June 2016

- (f) SRO No. 307 (I)/2021, dated 18th March 2021, regarding COVID-19 vaccines. SRO stipulates that the vaccine shall be first approved by DRAP. Recently, however, new vaccines landed in Pakistan (bought by the federal government) without DRAP even knowing anything about it.
- (g) Four SROs were issued between 6th and 17th April 2020, all cancelled by SRO (F. NO 4-2/2017-DD (H&OTC) in lieu of Cabinet's decision on 5th May 2020
- (h) In 2013, SRO No. 1002(1)/2013, dated 27th November 2013, was initiated to end the more than decade-long 'price freeze' policy. Within two days, it was cancelled after the then PM ordered to cancel drug price increases.

The above were a few instances that reflect poorly upon consistency of policies by the government and its regulator.

Apart from lacking in consistency of policies, there is also the fact that DRAP, like its predecessor DRO, displays a reactive rather than pro-active approach in many cases. This also is one factor that leads to changes in policies/ regulations. For example, SRO No.F.296-DRB/2020 (PE&R) (ft.), dated 4th February 2021, directs manufacturers to disclose 'gluten/lactose' on labels/packs. But this happened only after persistent complaints by patients suffering from Celiac disease. Similarly, through notification No. F.1-21/2019-Add; Dir. (PE&R), DRAP called for clearing manufacturing license of Fludrocortisone tablets (for Congenital Adrenal Hyperplasia) in Pakistan on a fast track basis as debilitating shortages started to surface in Pakistan. But DRAP only came to know about it after complaints from PM Citizen's Portal.

2.6. EASE OF CONDUCTING/DOING BUSINESS

Industry and business will always find it difficult to work in a challenging environment. And one of the biggest impediments to their working could be adverse regulations. Historically, the pharmaceutical industry in Pakistan has had to face a tightly regulated market that has made conducting business difficult. Since DRAP's founding, there have been some good initiatives, like exempting pharmaceutical raw material from import duties, as announced in the recent budget. In this regard, DRAPs work is a continuation of its predecessor, whereby exemptions used to be granted on imported raw material, drug manufacturing equipment, General Sales Tax (GST) exemption, exemptions on drugs imported by United Nations (UN) agencies and donor funded programs (Zaidi et al., 2013).

However, formidable challenges still beckon for the industry which makes doing business difficult.

Pricing—Drug pricing has (and still is) arguably been the most contentious issue between the industry and the federal government. Traditionally, the federal government has kept drug pricing strictly regulated, not allowing the industry freedom in pricing. This was especially valid post-2000 when the 'price freeze' policy came into existence. Before that, the government had been relatively more liberal in its approach. Between 1994 and 2001, for example, price increases were allowed yearly²⁴ but this was discontinued after 2001.

²⁴ 'Medicines being sold in black market'

Industry officials blame pricing issues as the most detrimental to business operations, having several negative repercussions. For example, up till 1999, there were more than 40 pharmaceutical MNCs in Pakistan. But more than a decade of the government's 'price freeze' policy from 2001 to 2013 led to a large-scale exodus of MNCs from Pakistan. Their present number stands at 22, but not all are manufacturing drugs, as many have divested away to other products (like infant milk, etc.). Aside from the MNCs, even the domestic firms suffered under this policy, as many discontinued producing essential, life-saving medicines.

The main reason for heavy public regulation of drug pricing rests on two misguided beliefs: *a)* government can enhance welfare through administered drug prices, and *b)* government has the wherewithal, knowledge and workforce to efficiently administer drug pricing. Over time, there is enough evidence to completely negate both of these assumptions; instead of 'enhancing welfare', price controls have spawned detrimental repercussions ranging from continued recurrence of drug shortages (endangering the lives of patients) to expansion of black market, where drugs in short supply can be found but at an alarmingly high price²⁵. Similarly, drug manufacturing, distribution, dispensing and administration, etc., are technical matters that government regulators never had the proper knowledge to deal with.

Additionally, a critical consideration in public drug pricing decisions has always been politics. Any drug price increase tends to bring a negative response that casts the government of the time in a negative mode, something that could be politically detrimental in the context of populist politics. The tirade against price increases is perpetuated by the media, which usually reports the increase in percentages rather than nominal numbers to make it look substantial. A population-level backlash tends to follow, which more often than not leads governments to back out of any plans for increasing drug prices. For example, as prices were increased in 2016 in line with the 2015 Pricing Policy, a media-led backlash erupted that resulted in legislators in National Assembly and the Senate calling to take back the increases and taking 'strict action against the culprits' (i-e, the drug manufacturers).

There has been a slight improvement on this front. However, pricing still remains a tightly regulated aspect, with the final decision to grant price increases lying with the Cabinet, i-e, even if DRAP allows a drug price increase, the Cabinet can reject it, a common occurrence that has continued to-date. In essence, drug pricing remains a political decision rather than one determined by the market forces of supply and demand. Interestingly, though, the government recently admitted in the Parliament that price increases in drugs were necessary to curtail black marketing and shortages!²⁶

Post-2012, with DRAP's founding, there was a welcome movement away from the destructive 'price freeze' policy. For pricing, drugs are divided into two categories- Drugs in the National Essential Medicine (NEM) list, and all other drugs. Since DRAP's founding, there have been two pricing policies (2015 and 2018), the latter coming to fore after Supreme Court's intervention. There has been a gradual movement away from complete control over pricing towards one based upon Consumer Price Index (CPI) and Reference pricing, mechanism that is more agreeable to the industry. However, the

²⁵ Detailed discussion of this aspect is provided in the section titled 'Are consumers better off?'

²⁶ 'Minister explains why prices of medicines increased'

government has often, especially post-2015 policy, failed to live up to the agreed-upon pricing formulae, which led to lengthy litigation by the companies. The result, after litigation reached Supreme Court, was the 2018 pricing regulation that is in practice now.

Despite a relatively liberal regime in terms of drug pricing, price increases are still largely a political decision, needing Cabinet's nod. This, maintain the industry representatives and experts, is counterintuitive keeping in context the negative outcomes and especially as government (both federal and provincial) move towards providing health insurance, which also covers drug expenses. Moreover, legislation has been tinkered with in order to maintain a hold over the pricing one way or another. For example, under SRO No. F.11-2/2020-DD (P) dated 15th July 2020, the rule for 'hardship' cases was modified to reduce the number of decision-making days from 180 to 120. One important part of this SRO, though, is part 'vii' of 'b', whereby the Federal Government can nullify price agreed upon price increase in line with CPI if it has a 'cogent' reason, thus keeping a window open for government nullifying agreed-upon price increases.

Contract Manufacturing—'Contract' or 'Toll' manufacturing is a substantial industry in the pharmaceutical business. Large pharmaceutical MNCs outsource drug manufacturing to developing nations. While contract pharmaceutical manufacturing is an \$11 billion industry in India, in Pakistan is not even \$5 million! There are thirteen basic steps required to be a contract manufacturer including submitting details of production of each batch manufactured quarterly on Form-7 to the Registration Board. There is a fee for a simple registration, and separate fee for contract manufacturing exclusively for exports (Rs. 30,000). By law, DRAP allows it for two years but that is also contingent upon quarterly renewal, which may not be granted. This makes would-be investors shy as there is a lot of uncertainty created by the presence of such rules. Recently, through SRO No. 421(I) 2021, dated 4th June 2021, rules for contract manufacturing have been proposed to be amended to extending the contract manufacturing for thirty months, further extendable by another 24 months (part'd'). However, it remains to be seen whether it will be implemented or not?

Manufacturing License—For manufacturing license, nineteen major and minor steps are required to be met. For instance, after approval of the building unit and granting of manufacturing license, there's a requirement for filing Common Technical Dossier (CTD), a process which itself can take 1 to 1.5 years. As per the industry officials, the on-ground realities present a different picture. First, this whole process takes a very long time, anywhere between 4 to 5 years. The standard SOP in other countries where the pharma industry is thriving (like India or China) is that a drug inspector only visits after the plant starts producing drugs, which are then checked for quality. But over here, a want-to-be producer has to file everything (factory design, buy plot and then submit papers, get approval for building plan, etc.) and only then can he think about production.

Then there are other requirements that create issues. For example, firms are told to locate in designated industrial areas, plots for producing alternative medicines (Herbal, Ayurvedic, etc.) has to be 2 kanals at least (making it an expensive proposition), plus there are limits on vertical expansion of plants. The staff at DRAP and at provincial level lacks the knowhow of how modern pharmaceutical plants operate and their requirements. Most of what they have in terms of skills is in consonance with old rules and regulations that mainly go back to the 1976 Act.

Aside from the above two categories, a number of steps are required for exporting and importing medicines. To become a licensed importer of drugs, an individual/company must meet fourteen basic steps. Additionally, in all of these cases, a plethora of attestations from authorised officers of no less than Grade-17 are required.

Litany of charges—A wide array of charges continue to be charged from the industry, aside from the CRF tax equal to 1 percent of the industry's gross sales. These add to the overall cost of doing business. Some of these are as follows-²⁷

| Category | Total Charges (In rupees) |
|--|------------------------------|
| Grant of drug manufacturing license (Basic and semi-basic manufacturing) | 45,000 |
| Grant of drug manufacturing license (by way of formulation) | 150,000 |
| Grant of drug manufacturing license (by way of repacking) | 90,000 |
| Renewal of drug manufacturing license (Basic and semi-basic manufacturing) | 22,500 |
| Renewal of drug manufacturing license (by way of formulation) | 75,000 |
| Renewal of drug manufacturing license (by way of repacking) | 45,000 |
| Site verification and layout (site inspection and verification), Approval layout plan, Revision/Extension of layout plan | 7,500 (each) |
| Grant of drug registration (New drug or molecule / drug not manufactured locally) | 75,000 |
| Grant of drug registration (Any other drug for import) | 150,000 |
| Grant of drug registration (Drug for local manufacture) | 30,000 |
| Advertisement (per advertisement Print Media) | 15,000 |
| Advertisement (per advertisement radio/audio) | 22,500 |
| Advertisement (per advertisement TV/Cinema) | 37,500 |
| Drug Pricing (grant of an additional pack) | 7,500 |
| Drug Pricing (price increase for hardship cases) | 30,000 |
| Drug Pricing (price increase linked with CPI) | 2,000 |

Taxation—How many taxes does a business pay or are applied on a product make a substantial difference to the working of a business and the sale chance of a product. In the above-stated table, we observed a litany of charges applied by DRAP on the industry for meeting its functions. Additionally, aside from the recent exemption of imported pharmaceutical raw material, the industry's products are taxed heavily, as the following examples would demonstrate.

There are the following taxes on imported products- LC charges, Insurance, Rate of Customs duty, Rate of Income Tax, Rate of Federal Excise Duty (FED), any other import duty, clearing charges if any, and Civil Aviation / Port charges. The costing criteria for imported drugs that are bulk imported and repackaged locally is the same except for the addition of repackaging costs (cost of inner packing, cost of outer packing, etc.). Similarly, in terms of reference pricing for 'Originator' brands, there is VAT, sale tax, education, excise duty, local tax or any other levy on sale of the drug (whichever is applicable).

²⁷ SRO No. F.7-11/2012-B&A/DRAP, dated 7th May 2021

Then there are different charges that businesses find cumbersome to meet. Junaidi (2013), in the aftermath of DRAPs founding, noted that the first meeting of its policy board resulted in the approval of numerous taxes and fees on the industry for the provision of services. The extent of these fees and taxes could be gauged by the fact that \$ 4 million were collected under multiple heads (drug registration applications, manufacturing license applications, contract extensions, etc.) within two months.

Drug registration—There has been considerable improvement on this front. Compared to the around 55,000 registered drugs in 2015, there are now 100,000 registered drugs²⁸, reflecting a faster pace of approval. There are, though, gaps still to be filled. An August 2019 list of requests for registering various medicines, constituting total requests of 21,867 products, showed that 10 percent dated back to 2014²⁹. Similarly, a December 2019 provisional list contained the following numbers- A total of 20,263 applications for enlistment. The year and their percentages were as following- 2014 (955 or 5 percent); 2015 (213 or 1.11 percent); 2016 (396 or 2.06 percent); 2017 (1,538 or 8 percent); 2018 (6,922 or 36.13 percent) and 2019 (9,130 or 47.66 percent). 1,109 medicines undated, saying ‘evidence of R&I receiving is required’.

More importantly, though, is the fact that not all drugs that are manufactured continue to be produced. A lot of drug production is discontinued as price increase requests are refused by the regulator. As per both industry and regulator, hardly half of the registered medicines are being produced at the moment.

Winding up manufacturing unit/business—This might come as a surprise to readers, but even if a manufacturer having a valid Drug Manufacturing License (DML) wants to wrap up his business for any reason, it has to first take permission from DRAP for doing so! DRAP, in return, can opt to reject its closure request, forcing the firm to continue. This, as anybody with even a minute understanding of business and commerce would tell, is highly counterintuitive and illogical. The opening or closure of businesses depend upon many factors, and are supposedly the sole prerogative of the proprietor. But in drug manufacturing, we find this principle turned upside down in the case of a manufacturing plant wanting to close down its drug manufacturing plant. For example, in the 232nd meeting of their Central Licensing Board (CLB), the request by M/s Abbot Laboratories Ltd., (Karachi) was rejected by the Board, raising seven objections/queries to closure, with one query asking why the plant was being closed despite enhanced capacity for drug production?³⁰

2.7. R&D AND SUPPORTED INFRASTRUCTURE

As mentioned above, not a single DTL in Pakistan meets FDA level criterion despite the federal government extracting 1 percent of their gross sales from the pharmaceutical industry since 1976 for setting up research infrastructure and conducting research. To gauge the ineffectiveness and illogicality of this policy, it’s worthwhile to point out that till 2001 the SOPs for using this money were not even approved.

²⁸ DRAP sources

²⁹ Statistics from DRAP website

³⁰ Minutes of the 232nd meeting of the Central Licensing Board (CLB, held on 29th July 2013), p. 15 and 16.

One outcome of failure to enhance R&D and set up quality infrastructure is that 95 percent of the Active Pharmaceutical Ingredients (APIs) are imported, with India and China being the primary sources. From time to time, DRAP does grant a license for manufacturing APIs to the domestic firm. For example, in its 276th meeting held on 3rd September 2020, the Central Licensing Board (CLB) approved the application of M/s Winbrains Research Laboratories (located in Industrial Estate Hattar, KP) to manufacture 45 APIs³¹. But such approvals are a more recent phenomenon, and account for hardly 5 percent of the industry's requirements. They are also basic APIs, with sophisticated, advanced drugs (like cancer) requiring high-quality APIs that have to be imported. Simply put, the research incentive (research support, protecting patent rights) and research infrastructure (high quality, internationally accredited labs) are not available in Pakistan.

So where did all the research money go? Why can't Pakistan manufacture its APIs through research? Why is there no research or effort to produce the APIs in Pakistan rather than being heavily reliant on imports? We find a probable answer in the botched case of manufacturing 'interferon' drug, an initiative gone awry³². A production facility was set up at Hattar Industrial Estate for research into stem cells and APIs. But the promised funds never materialised, despite repeated requests for provision of funds for research. The head of the initiative was made to appear repeatedly in front of the Federal Investigation Agency (FIA) on embezzlement charges, which later proved to be completely false. In between, the initiative fizzled out, only to be revived later after SCs intervention.

Another example is the failed attempt to manufacture APIs using 'ephidra sinica' plant, found in abundance in Baluchistan. This is extensively used in cough syrups and low blood pressure drugs during spinal anaesthesia. An attempt was made to set up a plant for its extraction, but eventually had to be shut down, partly due to regulatory barriers.

The above two reflect examples of why few APIs are being manufactured in Pakistan. We see a non-continuation of policies in the form of first providing an incentive and then withdrawing it (set up a production plant but then refuse support), the paucity and dubious use of funds (why did DRAP or Health Ministry not provide funds from CRF when they are needed?), and that regulator works on a reactive basis (the 'stem cell' policy, for example, was adopted as a result of Supreme Court intervention in case No. 69699-P of 2018).

To top it off, as COVID-19 struck the world and the globe scurried for a vaccine, Pakistani's found out the grim reality that vaccines are not manufactured in Pakistan, and neither is there any research on them. This is despite the fact that billions of rupees are collected from the pharmaceutical industry every year in the name of research (CRF, discussed above).³³ Industry officials cite the lack of incentive to indulge in setting up costly R&D infrastructure in lieu of paying a hefty sum to the government for this very purpose, lack of implementing patent related regulations and continuous change in policies that induces considerable uncertainty.

³¹Minutes of the 276th meeting of the Central Licensing Board (CLB, held on 21st September 2020), p. 4.

³²The episode is discussed in Pakistan's first 'Stem Cell Policy' (2020), p i and ii

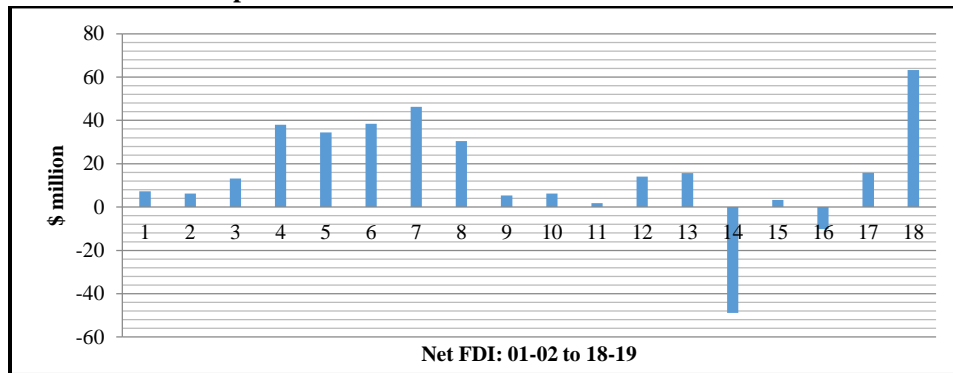
³³'Economics of Vaccines'

2.8. ATTRACTING FDI THROUGH INCENTIVES

A major expected outcome of regulating a particular sector of the economy, either by design or default, is to make its working smooth, hindrance free (from monopolies, for example) so as to make it attractive for both domestic and foreign investors. For a country like Pakistan, FDI is of critical importance.

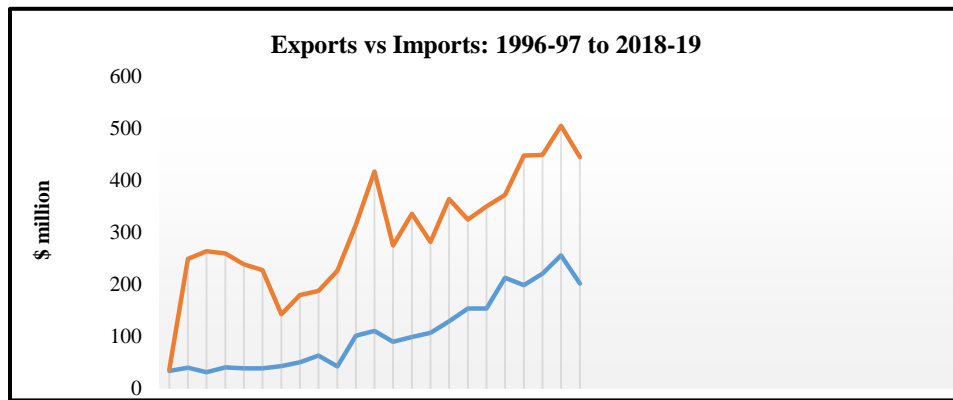
For an industry that was once termed a promising ‘sunshine’ industry (Mckinzeey and Planning Commission, 2010), Net FDI is dismal. Average FDI per FY b/w 01-02 and 18-19 was \$15.6 million, with some years experiencing a negative inflow (outflows greater than inflow). On net, only \$280 million was received as FDI by the pharmaceutical sector in almost two decades. This is represented by the following graph:-

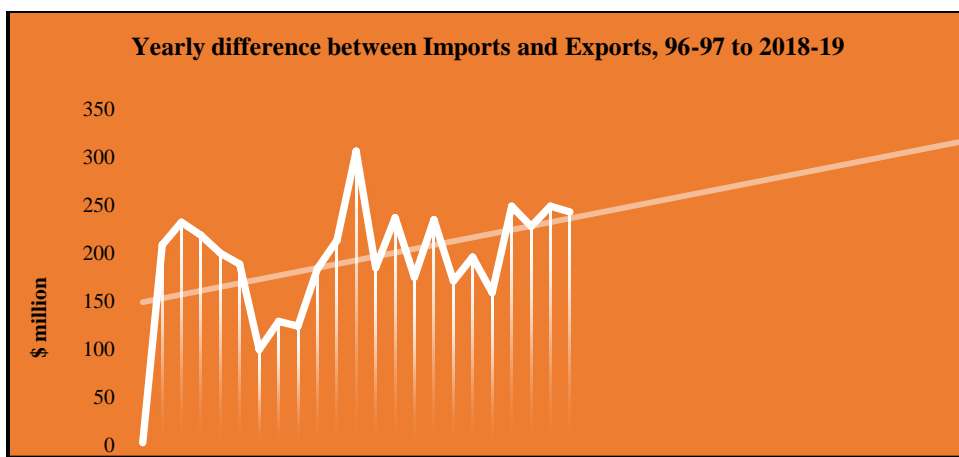
Graph 1—Net FDI Pakistan’s Pharmaceutical Sector



One indicator of this sector being unattractive to foreign investors is reflected in the gradual exodus of Multi Nationals Corporations (MNCs) over time, with their presence being a major conduit of bringing in much needed foreign capital, technology and skill.

Imports and exports similarly present a subdued picture. At the onset of DRAP, it was estimated that if regulations can be made sound, the export potential could be worth \$600 million in a couple of years (Hasan, 2012). However, as the following graphs demonstrate, exports have been much lower than the potential. The gap between imports and exports has widened considerably, with imports growing faster.





The reasons for this poor performance are many, ranging from the high cost of business and manufacturing to regulations. But there is little doubt that regulations have been a major concern. For example, as pointed above, the presence of state of the art Bioequivalence (BE) labs is must to ensure the quality of generic medicines, which then makes it easier for foreign buyers to accept the drugs. One of the main drivers in India and China’s increasing pharmaceutical exports has been these labs (Hasan, 2012). In 2012, there were seven BE labs in Pakistan whose licenses were later not renewed by the DRAP. At the moment, there are only 2!

A persistently recurring issue with regards to attracting FDI has been the absence of steps to protect patent rights. This is despite the fact that Pakistan was a signee of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995. World over, it is the responsibility of the government and its concerned regulatory arm to protect these rights. In this regard, DRAP (and especially its predecessor, DCO) have been a failure. Generic copies of patented drugs, duplicate copies of the same drugs, mislabeled drugs, etc., that all defy patent protection laws, are a common recurrence in the domestic market. There is hardly any policy to address this shortcoming on the patent front.

2.9. ARE CONSUMERS BETTER OFF NOW?

Whenever states take up market regulation, one of the main reasons was to protect consumers from negative spillovers of imperfections in the market. For example, fixing due to collusion between energy firms can mean higher energy rates for the end consumer. In terms of regulating the pharmaceutical industry, some major considerations for regulating the industry come from ensuring quality drugs, consistent supply of life-saving drugs, affordability and access to medicines, etc. On all these counts, serious shortcomings are observed that need to be addressed. These shortcomings are discussed in the following lines:

Out-of-Pocket (OOP) expenditures—OOP expenses on drugs have been dubbed a drain on consumer’s financial resources, especially the poorer segment that is hardest hit by OOP expenses on drugs. And the repercussions go far beyond adverse health in case of non-affordability. Datta, Hussain and Fatehin (2020) documented that

expenditures on drugs have a ‘crowding out’ effect on food consumption, with the effect being substantially stronger on poor households who already experience food insecurity. A good proxy to identify the effectiveness of regulations in terms of the pharmaceutical industry is the expenses on drugs, something that is importance to the end consumer. The following table contains data on per capita expenses on drugs in Pakistan since 2003-04.³⁴

| Year | Expenses on drugs as percentage of total health expenses | Per Capita expense on drugs |
|------|--|-----------------------------|
| 2004 | 25 | |
| 2008 | 56 | Rs. 900 |
| 2010 | 56 | Rs. 920 |
| 2012 | 50 | Rs. 822 |
| 2014 | 53 | Rs. 1,338 |
| 2016 | 50 | Rs. 1,400 |
| 2018 | 51 | Rs. 1,580 |

As reflected in the table, and despite all regulatory efforts (like price freezes), the expenditure on medicines has refused to budge from its pre-DRAP rates. Especially noticeable is the rise in expenses on drugs between 2004 and 2010, when drug prices were not allowed to rise because the government wanted to make drugs affordable! It is also important to note that although the mean expenses on drugs at public facilities is lower, it should not hide the fact that many essential drugs are usually in short supply in these facilities, compelling customers to buy from private stores. Additionally, many observers of the health sector believe that the expenses are understated, primarily because the sample size used in NHA is small.

Drug Shortages and black market in drugs Many essential medicines vanish every year or are unavailable in the market, causing tremendous stress to the consumers, especially patients who need it the most. This is not a relatively recent phenomenon either. The shortages are, in turn, complemented by the expansion of black market activities whereby the drugs experiencing shortages are available at exorbitant rates (Junaidi, 2013).

Post DRAP, and despite changes in pricing policies, drug shortages are still persistent. One of the main reasons is the refusal by the government and its regulator³⁵ to accept the price demanded by the producer. But such refusals have had disastrous consequences, and continue to do so. Two recent examples are *Acetazolamide* and *Pylocarpine*. Acetazolamide (generic brand name) treats headaches, tiredness, shortness of breath and nausea. Around 2017, the drug started experiencing shortages as the

³⁴ Numbers are taken from National Health Account (NHA) surveys, and various Household Income Expenditure Survey (HIES). Note that the 2008 numbers were calculated based on deflating 2009-10 numbers to 2008 by 18.75 percent(explained on p.51 of the survey), which were then used in this table to calculate the given numbers. The per capita expense on drugs is calculated by multiplying the percentage spent on drugs by aggregate per capita expense on health

³⁵ Sometimes the refusal is at the DRAP stage, while at other times the Cabinet refuses to grant the asked-for price even after approval by DRAP

manufacturer refused to produce at officially determined rates of Rs. 60 per pack. As shortages became pronounced, the drug completely vanished off the shelves, only to be found in the black market at an astronomical rate of around Rs. 3,000 per pack (both the short domestically produced pack or the imported ones). Only recently did the government agreed to revise the prices upward to Rs. 200 per pack. As a result, the shortage has been ameliorated to a large extent.

But within these three years or so, millions of rupees would have flown out of the users' pockets in buying this drug from the black market. The same millions could have been saved if the government had the foresight to increase the price in 2017, which would have prevented the occurrence of this adverse event.

Something similar is now occurring in the case of **Pylocarpine** (generic brand name), used in treating dry mouth caused by radiotherapy in patients suffering from head and neck cancer, and Sjogren's syndrome (a condition affecting the immune system). Thus, the issue of persistent drug shortages continues unabated, which clearly is a loss for the consumer (and failure of the government and its regulator). Interestingly, the government recently admitted in the Parliament that price increases in drugs were necessary to curtail black marketing and shortages³⁶. This was only after public complaints against shortage of certain drugs assumed a wide proportion. Yet, we still find governments reluctant to increase drug prices when asked by firms.

Drugs that become short in the market or are not available then become available in the black market. There is no concise estimate of the Pakistan's black market size in drugs, but it is well known that it tends to expand as needed drugs become short. The consumer ends up paying an astronomical amount, besides getting drugs that are of questionable quality. Since the availability of critical medicines in public and private health facilities is at best 20 and 40 percent respectively, it's not difficult to guess that many of the non-available drugs are found in the black market.

Reactive rather than pro-active approach—This aspect was discussed above in terms of regulations. But it is equally valid in ensuring availability of much-needed medicines, an aspect in which DRAP has proven ineffective. As COVID-19 struck the world and the globe scurried for a vaccine, Pakistani's found out the grim reality that vaccines are not manufactured in Pakistan, and neither is there any research on them. This is despite billions of rupees collected from the pharmaceutical industry every year in the name of research (CRF, discussed above)³⁷. Any active regulator should have taken care of this even before this pandemic.

Another example comes in the form of domestic non-production of drugs that can cure *cutaneous leishmaniasis*, a dangerous skin disease that has persistently plagued Pakistan, especially its rural areas (MSF, 2018). Yet there has neither been any incentive nor any coordination with the industry from the regulator for producing this drug domestically. As a result, it's found in black at an exorbitant price, and even then its quality is questionable in many instances.

Before DRAP, a third of medicines were imported, as reported by many studies like Baber et al. (2011), this was when the exchange rate was Rs. 98 to a dollar. The situation is still the same in terms of the proportion of the medicines imported, but the exchange rate now hovers around Rs 150 per dollar, meaning that there's now a bigger drain on domestic consumer's resources. This failure has been a continuing trend since decades.

³⁶ 'Minister explains why prices of medicines increased'

³⁷ 'Economics of Vaccines'

Pharmacovigilance and pharmacy practices—Another major quality related issue in the context of consumer's well-being occurs in drug dispensing practices at retail and health facility levels. Traditionally, Pakistan has always experienced significant quality gaps in terms of retail outlets supplying drugs due to the unavailability or absence of qualified pharmacists. The government- led efforts that came up with policies like National Good Pharmacy Practice Guidelines in 2011 remained un-implemented. Similarly, the lack of effective regulations at the public and private sector health facilities has meant that the dispensing quality healthcare aspect remains unfulfilled. Hafeez et al. (2004) found that in public sector facilities, cooling equipment was working in only 60 percent facilities while temperature control was present in only 24 percent. Even more damning was the fact that the manual for procedures was available in only five percent of these facilities, with most of the staff unaware of healthy dispensing practices. There was minimal restriction in terms of dispensing Over-the-Counter (OTC) medicines at community pharmacies.

Almost a decade after this research, Zaidi and Nishtar (2011) and Zaidi et al. (2013) found a similar state of affairs. In the approximately 80,000 drug stores in the country, the majority did not have a pharmacist, with shopkeepers acting as one. Only 0.06 pharmacists were available per 10,000 people, while the standard recommended ratio is five pharmacists per 10,000 people. In terms of traditional medicines (ayurvedic, homeo, Unani, etc.), more than estimated 130,000 practitioners largely remain unregulated. This weakness to properly regulate dispensation of drugs has resulted in excessive use of medicines, with self-prescription and over-prescription among consumers common in Pakistan.

A further decade after the above findings, the situation has not improved much. Hussain and Hassali (2019) assessed the overall system and the new Pharmacovigilance policy in Pakistan, concluding that the whole system needed a major revamp. Hashmi et.al (2020) assessed physicians in terms of reporting Adverse Drug Reaction (ADR), an essential part of pharmacovigilance. They found that majority of them were unaware of the requirements of proper ADR. Atif and Malik (2020) found that the community pharmacists, besides being low in number relative to demands of services, were poorly trained to meet the Covid related challenges. A recent report³⁸ on safe dispensing practices in Pakistan came up with a startling revelation that approximately 95 percent of the pharmacies in Pakistan are run without a pharmacist, thus putting a large question mark around which drugs are dispensed.

2.10. THE AGGREGATE SUM

In 2001, a new National Health Policy (NHP) was launched with much fanfare. Among other things, it envisaged:

‘improving the performance of the drug sector and to ensure the availability, affordability and quality of drugs. In realising these objectives, it has been planned to encourage drug manufacturers through maximum market competition, to manufacture imported drugs within the country, and to increase the investments in the pharmaceutical sector. The document also intends to strengthen the capacity of the Drug Control Organisation in market surveillance and quality control’.

³⁸ ‘95 percent pharmacies in Pakistan are run without a pharmacist’

None of the above stated goals, however, were achieved! DRAPs founding as an autonomous body has not altered the state of affairs by much either. In 2017, Dr. Sania Nishtar, who now heads the country's Social Safety Net efforts and is one of the leading experts on the health sector, stated that there was no difference between DRAP and its predecessor.³⁹

Given that the performance of DRAP as a regulator is under consideration, it's always a feasible idea to compare a regulator's performance with its predecessor. In Pakistan's case, we have the Drug Control Organisation (DCO) as the pre-DRAP authority, established in 1976 and working under the Ministry of Health (MOH), just like DRAP. The following table briefly analyses the issues and the situation existing pre and post-DRAP.

Table 1

A comparison of Pre and post-DRAP policies

| Category | DCO | DRAP |
|----------------------------|---|---|
| Autonomy | DCO was under the control of the now-defunct National Health Ministry. Typical bureaucratic manner of operations, with every aspect of operations needing approval from the federal government | Comparatively greater autonomy in its functions, but still largely under the federal government's control under the National Health Services, Regulations and Coordination Division (NHSRC). Major decisions are put up for approval to policy board, made up of federal secretaries and provincial representatives. |
| Quality of drug dispensing | Both at retail outlets and in health facilities, shortage of trained pharmacists and trained staff with adequate knowledge of drugs and dispensing has been a recurring problem for long. Policies were brought up (like National Good Pharmacy Practice Guidelines in 2011) but rarely implemented. | The void that existed formerly continues on even today. Ensuring quality dispensing remains a dream as significant voids still need to be filled with policy implementation. Despite efforts of both the federal and provincial regulators, the presence of qualified pharmacists and required equipment (like cooling arrangements) are still a major issue. |
| Infrastructure | Poor infrastructure, both in terms of R&D and provision of services that could not only provide good quality services to consumers but also support industry's efforts. Hardly three major DTL labs were operative in Pakistan, none qualifying either the WHO standard or the USFDA standard. There was no BE lab. | Comparatively better performance under DRAP, as now there are 12 DTLs across the country. However, only one of them is WHO certified, while none of them is USFDA certified. Only 2 BE labs at the moment. |
| Pricing of drugs | Mixed performance. Before 2001, room allowed for price increases, although by not a lot. But after 2001, 'price freeze' policy was implemented that continued till 2013, disallowing any increase in drug prices. | After DRAP's founding, there was a push to end the 'price freeze' policy given its adverse nature and outcomes. In 2015, there was a new pricing policy. However, the government refused to honor its commitment several times as per the policy, leading the pharmaceutical companies to litigate. After SCs intervention, there was another policy in 2018. But issues in pricing persist, as drug pricing is still primarily a political issue (requiring Cabinet's nod) rather than one decided by supply and demand. |
| Market Imperfections | Failure to resolve issues like significant price dispersions of a drug with the same molecules, mislabeled drugs and deceptive marketing techniques. The black market in drugs was operating since long, but the regulator could not do much about it. Various taxes and charges on the pharmaceutical company. | <ul style="list-style-type: none"> ➤ Market imperfections persist. Price dispersions, which can be termed as price differentiation, is quiet prevalent in the market ➤ Misleading advertising and misleading branding of medicines are still an issue ➤ 'Polypharmacy' practices, whereby a prescription made of a combination of four drugs is prescribed to patients, is prevalent, especially in major urban centres like Karachi and Lahore ➤ Collusion between drug companies and medical practitioners is still poorly understood and regulated ➤ Black market in drugs is still thriving ➤ Taxation and various charges are still an issue for the industry and the market |

³⁹ 'Pakistani drug regulatory body a complete failure'

Table 1—(Continued)

| | | |
|---|--|---|
| Transparency | Typical bureaucratic style. Little information available to the public regarding its operations and the logic underlying regulations. Public would usually learn through WHO or similar reports about its activities. | <ul style="list-style-type: none"> ➤ Comparatively higher level of transparency. The majority of the decisions, notifications and actions are present on DRAP website ➤ But some aspects still remain off-limits and DRAP officials are unwilling to share information about it with the public. For example, there is no information about utilisation figures of CRF money. Similarly, the logic behind short-term policy changes through SROs also non-transparent ➤ Recent allegations, backed by proof, of DRAP record being disposed off to hide certain aspects. This led to the removal of DRAP CEO |
| Research | Poor record in terms of research. Very little research on industry's problems, issues confronting smooth functioning of the market, and research into drugs. Only 3 DTLs that were of average quality that could not indulge in quality research. | <ul style="list-style-type: none"> ➤ No research reports or research effort aimed at addressing the critical, recurring issues ➤ Despite the addition of more departments compared to the previous regulator, there is no dedicated research wing in DRAP to analyse critical issues plaguing the pharmaceutical sector ➤ No attempt to engage academia in research work or build research linkages with relevant domestic and foreign academic institutions ➤ No effort at regular tracking of expenditures on drugs ➤ Refusal to give any information about where billions of rupees collected from the industry in the name of CRF was utilised? |
| Access to information | Limited access to information, except for the one given to organisations like WHO or produced in legislature. There was no proper website from where one could gauge the developments | <p>Much better access to information, with a DRAP website now hosting majority of the DRAP-related information and decisions. Further,</p> <ul style="list-style-type: none"> ➤ Information on every departments under DRAP and its decisions available ➤ Helped establish a quality control unit in Punjab (PDCU) that publishes updates and newsletters regarding its quality control initiatives ➤ Collaborations with external agencies regarding its upgrading and coordination ➤ Requirements regarding various issues, like licensing, OTC drug sales requirements, etc. can be found online ➤ Different tasks made relatively easier. For example, companies can now apply online for a drug license |
| Attracting Investment | No clear policy on regulating investment attraction through regulations that could make the pharmaceutical sector attractive for domestic and foreign buyers | <p>Same as predecessor's policies. No indication that regulations have enhanced the scope and chances of FDI coming in.</p> <ul style="list-style-type: none"> ➤ No worthwhile FDI; only \$53.2 million in net since DRAPs formation ➤ No figure available on domestic investment ➤ No research on issues that hinder chances of domestic and FDI investment in this sector |
| Intellectual Property/Patent protection | No policy or regulatory measures to protect patented drugs and to prevent cheaper copies of such drugs from being sold in the market. The overall record was poor. This despite Pakistan being a signee of Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995 | Minimal (if any) regulatory mechanism or policy to take care of patented drugs and their IP rights. Generic brands of patented drugs are readily available in the market, while duplicate labeling is still an issue, as well as 'misbranded drugs'. No policy is in the offing to enforce TRIPS-like mechanism, which is extremely important for attracting investment. |
| Consumer welfare and Utility | Little information was available in terms of regulations/ steps that could increase consumer welfare. What we do know is that consumers found it hard in lieu of recurring drug shortages, increasing OOP expenses and facing low-quality services in terms of drug dispensing and quality healthcare in public plus private facilities. | Some steps, like more access to information and increase in the rate of testing drugs, aimed at enhancing quality and consumer protection. But vexing challenges like persistent shortages of medicines and drug quality still persist. OOP increased over time, and critical drugs suffering from shortage are often found in the black market at exorbitant prices |

In lieu of the above, it is sufficient to state that there is tremendous room for improvement as far as DRAPs performance is concerned. In post-Covid-19 world, the experience of the vagaries unleashed by the pandemic should alert policymakers to the reality that the required improvement needs to be achieved quickly. Otherwise, the state of affairs will remain the same.

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Chapter 3

Evaluation of Naya Pakistan Housing

AYAZ AHMED

3.1. INTRODUCTION AND BACKGROUND

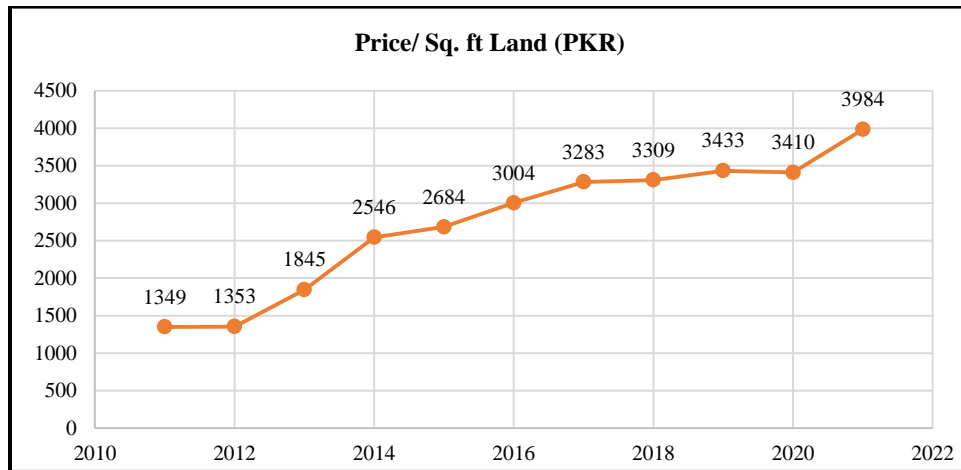
The seriousness of the housing crisis in Pakistan can be judged by the fact that successive estimates put the backlog in housing at 9 million units, increasing by 300,000 units annually due to unmet demand. Sixty-two percent of this need is for low-income groups. A huge gap between the supply and demand for housing is evident in urban areas around the world. Because of the uncontrolled housing crisis, many families are forced to live in extreme conditions with unhealthy and unsafe homes¹. Of the nearly 208 million people in the country, more than a third live in 20.01 million units in urban areas and the rest from 12.19 million in rural areas. A study on Pakistan shows that housing shortages around 10 million units, about half of which are in urban areas, are one of the highest in South Asia.²

By 2030, more than half of Pakistan's estimated 250 million people are expected to live in cities compared to 36 percent now, according to the United Nations. And so, the demand for accommodation is expected to grow exponentially. This shortage is a problem if it is not always met and is a great opportunity for investors to enter this challenge and develop affordable housing for low-income people. The housing shortages in Pakistan require an investment of \$ 250 billion. "Government must provide solutions, in terms of infrastructure and urban planning, land reform, policy resources and incentives for mixed-use development, and the removal of regulatory barriers. The private sector - builders, developers, building solution providers, banks, leasing companies, and finance - will have to consolidate their resources."³

The Naya Pakistan Housing & Development Authority (NAPHDA) has been established for the purpose of planning, construction managing programs and development projects. It also includes housing related facilities, other support structures for the purpose of providing nonprofit and other repairs, or establishing and maintaining infrastructure, roads etc. and performing other community and municipal programs.

In the official forms, there are three installment plans under the system. Applicants can pay Rs5,000 per month to Rs10,000 in the lowest category; Rs10,001 to Rs15,000 in the medium term and between Rs15,001 to Rs20,000 in the top category³. Let's do some quick math. If the house costs Rs3.5 million and the monthly installment the buyer will pay Rs18,000 (and you can also assume the household was able to borrow from the House Building Finance Corporation (HBFC) under its "Ghar Pakistan" program which offers a loan of 11 percent (for 20 years), the monthly subsidy that the government should provide to this house is about Rs10,000. Now the government wants to build 300,000 houses in Pakistani cities in one year. The total annual funding for the above example amounts to Rs36 billion! Does the government have this kind of fiscal space?

Apart from that, the land and construction cost has increasing over the past few years. The single story 5 Marla house has approximately a covered area of 910 sq. ft. The house has one kitchen, two bedrooms with attached bathrooms. The grey structure cost is 1,445/sq. ft and the land cost is 3,984/sq. ft. The cost of a 5 Marla unfinished single-story house comes to around 6.3 million. Complete purchase at this price is beyond the reach of majority of the population. The price of land increased by around 195.3 percent from march-2011 to march-2021¹. The graph below shows the price of land/ Sq. ft for the past 10 years.



Source: www.zameen.com.

3.2. NEED FOR REFORMS AND ITS PROBABLE EFFECTS UPON THE ECONOMY

Housing affordability and access to adequate land is a major problem in Pakistan. Total population of Pakistan is about 207.7 million with number of households 32.2 million (Pakistan Bureau of Statistics, 2017). Every year, the shortage of housing has been rapidly increasing by 270,000 housing units in Pakistan. At the end of 2018, the housing backlog reached 10 million which was 7.5 million⁴. Two-third of the population is not able to afford housing without financial support and subsidy⁵. The comparison of the housing demand in the world is given in Table 1.

Table 1

Comparison of Annual Housing Demand in Selected Asian Countries.

| Country | Annual Housing Demand |
|-------------|----------------------------|
| Pakistan | 10 million |
| India | 40 million |
| Sri Lanka | Between 50,000 and 100,000 |
| Bangladesh | 659,000 |
| Indonesia | 735,000 |
| Philippines | 3.75 million |

Source: Un-Habitat, 2011.

The World Bank estimates that the total national housing shortage is more than 10 million units, with a gap of 350,000 units a year. The growing deficit is estimated to rise to 400,000 units. Therefore, the Naya Pakistan Housing Project not only improve the housing shortage in the country but also improve the unemployment because there are 30 to 40 industries directly or indirectly connected with the housing expansion and construction. According to World Bank estimate the 100,000-housing unit increase in one year contributes up to 2pc of GDP. In addition, the provision of housing to the people greatly reduces the cost of health care and other economic and social costs imposed by urban slums. The World Bank estimates that about 47 percent of urban slum dwellers (katchi abadis) have limited access to public infrastructure and sanitation services. The immediate cost of public health, and the long-term cost of social welfare, about half of a city living in homeless homes is staggering. Housing stock improvement is a sensible mid-term macroeconomics tool.⁶

The housing crisis is so huge that it cannot be resolved through conventional means. What is required is to support the densification process by developing urban design plans for those areas where it is taking place and providing technical and design advice to the builders along with short term loan packages. It would also require containing speculation on land and built assets. For this a heavy non utilisation fee on land and properties would have to be imposed. To conserve land an urban land ceiling act would also have to be enacted to limit land holdings per individual and a minimum density determined for all housing, including elite projects. In addition, laws giving the state the power to acquire land for low-income housing at appropriate locations will be required. There is also a need of mortgage financing for lower middle-income group and daily wage earners to ensure the availability of housing for those groups.

The success of this major project will require well-planned long-term planning, as well as a strong financial model. Also, the inefficiencies in the real estate market will need to be addressed. This will keep the affordable housing stock growing or over time. Such needed improvements include:

- (1) Land reform
- (2) Land redistribution and land use laws
- (3) Reduce market speculation
- (4) Documenting the real estate sector
- (5) Establish a real estate regulatory authority.
- (6) An effective governance system is required

3.3. MAIN FEATURES OF THE NAYA PAKISTAN HOUSING PROGRAM

The main objective of the Housing Task Force (HTF) is the establishment of a full-fledged housing authority under the name of the Naya Pakistan Housing & Development Authority (NAPHDA). The Authority will be an independent, autonomous body, assisted by an independent Executive Board, under the supervision of the Prime Minister of Pakistan. The aim of the current government is to provide 50 lacs homes to the Pakistan over the next five years. There are more than 70 related industries are linked with the housing because housing is such a huge labour-intensive sector, simultaneously creating jobs, will be the real foundation, where government can lay the groundwork to successfully build and produce houses for the people which is not common throughout

the country⁷. The Naya Pakistan Housing & Development Authority is also working in federal and provincial level with their relevant housing department. The detail of their respective governing body at province level is given below in the Table 2:

Table 2

Governing Body of Naya Pakistan Housing at Federal and Province level

| Province | Housing Department |
|------------------|--|
| Federal | Federal Government Employees Housing Authority (FGEHA) |
| Punjab | Punjab Housing and Town Planning Agency (PHATA) |
| Sindh | Under progress |
| KPK | Provincial Housing Authority Khyber Pakhtunkhwa |
| Baluchistan | Provincial setup for Naya Pakistan Housing is yet to be established. |
| Gilgit Baltistan | Provincial setup for Naya Pakistan Housing is yet to be established. |
| AJK | Physical Planning and Housing Department |

Source: Naya Pakistan Housing & Development Authority (NAPHDA) www.naphda.gov.pk

Currently the country's urgent need for 0.1 million (ten lacs) housing units a year, or 50 lacs units in five years. Therefore, the government's agenda is to improve the supply of the required number of houses in urban and rural areas⁷. The Government's housing policy aims to meet the goal of 10 lacs houses next year as follows:

- 4 lacs/year in the Rural Areas,
- 2 lacs/year in Peri-Urban areas under Social Housing Schemes, and
- 4 lacs/year housing units in the Urban Areas.

Policymakers see the introduction of high-rise towers in urban areas, to allocate higher land costs to more low-cost units that will keep units accessible. This approach is largely covered in economic and social literature. One of the lessons from other experiences is that the accumulation of low-cost units in high-rise areas (such as council houses in the UK, or "projects" in the US) is leading to ghettoisation, leading to intensification of poverty and crime in the area. In addition, low-income households who do not have the income to dispose of to contribute to social costs, resulting in the rapid collapse of high-rise housing / building schemes with only low units. Commercial banks will ensure that they are committed to lending twenty-units to those communities. A strong eviction/foreclosure framework will not influence the bank otherwise.

3.4. PROGRESS TILL NOW

The government's current housing policy is a combination of the housing program in Naya Pakistan and State Bank's 'low-income housing policy', launched in July 2018. Through this program, the government aims to build 5 million low-income housing catering to the demand of low-income groups. The establishment of the Naya Pakistan Housing Authority was planned earlier this year, but no final steps have been taken yet⁶. In the first phase of the project, in Islamabad, 25,000 apartments will be built for the federal government workers, the remaining 110,000 apartments will be built in Baluchistan including the fishing community in Gwadar. The second phase of registration for the Naya Pakistan Housing Project was announced on 15 July 2019. According to the

Premier, the registration process will assist the relevant authorities to identify community needs and implement housing projects in areas where they are needed. The government initially start the Naya Pakistan Housing project in major cities of the country. Following are the housing policies for each province (Table 3).

Table 3

| <i>Province Wise Progress of Naya Pakistan Housing</i> | |
|--|--|
| Province | Progress |
| Federal | FGEHA has launched a housing project in Islamabad for Govt employees. |
| Punjab | Projects been announced in cities including Okara, Lodhran, Bahawalnagar, Faisalabad, Sialkot, Chistian, Chiniot and Jhelum. |
| Sindh | The housing scheme is under progress in the Sindh province. |
| KPK | Land identification process has been initiated along with review of its acquisition process for the housing program. |
| Baluchistan | A few housing projects have been announced by Federal Government Employees Housing Authority (FGEHA). |
| Gilgit Baltistan | Some housing projects has been announced by FGEHA. |
| AJK | Naya Pakistan Housing has announced in Rawalakot and Plundri |

Source: Naya Pakistan Housing & Development Authority (NAPHDA) www.naphda.gov.pk

3.5. WEAKNESSES AND HINDRANCES

First, it underscores the government's concerns about the slowdown in housing loans, and that those who wish to become homeowners face difficulties in obtaining a bank loan. Second, it shows that the central bank can now put more pressure on commercial banks that do not want to speed up the processing of loan applications. In doing so, banks will be forced to borrow risky loans even though central bank officials have repeatedly said that the State Bank will only provide loans to expand the housing industry and that decisions on credit risk will be taken by lenders. However, commercial banks are reluctant to offer home loans as they believe that expanding the housing industry is not possible without strict foreclosure law that allows them to recover property in the case of reimbursement.

The government has repeatedly promised to improve the eviction laws but has not done anything about it. Third, it means that the government can ask the NBP to pursue a more open collateral policy to make up for the unwillingness of private banks. That would be a disaster for the bank balance. We still remember the yellow cab system introduced by the government in the 1990s.

All project failures may have policy errors or implementation failures. It has always been a myth that so far in Pakistan it was. In any case, policymakers or the implementation team did not specify their position rather than always the failure is attributed to one reason or another. No specific tasks were evaluated for any group and what were the consequences or failure of implementation or policy failure (tasks are performed as instructed but the results do not promise to be based on flawed policy).

Housing development is highly dependent on a strong mortgage market, which is not the case here at all. Many countries have already overcome their housing shortages by doing so by creating a mortgage industry and providing the common people with a wide range of loans to buy or build a home. In terms of housing finance, the situation in Pakistan is much worse, with Pakistan standing lower in terms of Mortgage to GDP Ratio compared to the regional and global situation. Outstanding Financial Debts-Mortgages (M/D) represents a grim picture of Pakistan as a stand-alone or compared to other countries in the region. The rate in Pakistan is less than 1 percent. The outstanding mortgage debt has declined in Pakistan over the past decade⁹. While in India it is about 10 percent, Bangladesh is 5 percent; and in other countries in the region such as Malaysia, Thailand, and Indonesia the rates are constantly rising, reflecting significant housing finance activities⁹. However, in the case of Pakistan even 70 years after the country was born, the House Building finance Corporation (HBFC) is the only housing finance company. It is very disturbing to see the role and function of HBFC in the decline over the years. The shares of commercial real estate banks are very small compared to commercial banks around the world. Although the State Bank has taken other important steps to encourage banks to expand their house financing to support the government's housing and construction industry, banks remain reluctant. The housing program will not start in a big way until we have a mortgage industry. That will always be a dream if the government does not tighten refunds to protect banks from potential losses.

3.6. SUGGESTIONS FOR IMPROVEMENT

There are two key policy measures that can greatly enhance the current proposed policy interventions for Naya Pakistan Housing & Development Authority (NAPHDA). This is a transformation of the city's development, as well as a strong mortgage policy for middle-income families. In general, to achieve the outstanding goals of the NAPHDA, changes need to ensure two key outcomes. The first is the use of high-rise building as a driver of lower prices and increased general housing availability. The second is the prevention of intensifying poverty traps through ill-conceived low-income units that worsen the existing divides.

— City Development Reforms

From a regulatory and legal point of view, this is a very difficult nut to crack. City management is divided. For example, Karachi's planning and municipal plan consists of twenty federal, provincial, and local agencies with different legal and administrative structures, as well as minimal institutional coordination. Local governments may exist but do not have the authority to make their decisions binding to various agencies and authorities. This fragile institutional alignment among agencies makes city management ineffective when it comes to trying to create space for land development. For example, about 90 percent of urban land in Karachi is under public ownership, but the authorities are often reluctant or unable to make land available for development. Under the NAPHDA, the current planning regime prefers low to medium development. Karachi and Lahore are one of the most densely populated cities in the world. Geographical segregation does not allow for higher upheavals that have led to an increase in low population density. This limitation of control over the provision of residential land has

also resulted in an increase in the price of available land. To address this, the government needs to legislate and empower local governments to bring in other structures designed for integrated city planning, to acquire and/or release unutilised or underutilised lands for development and rezone it to allow high-rise developments. Housing is a provincial issue the federal government will need to work closely to ensure that government agencies are align with the provincial and local government officials. In addition, where possible, government policy should only allow high-rise units. With so much housing shortages, and increasing urbanisation, the government will not be able to afford more low-rise units.

— Mortgage Policy for Middle-Income Group

The middle-income group has households that earn more than the low-income group and work in the formal sector such as doctors, university professors, professionals working for companies. Such lenders have the capacity to provide sufficient proof of their current income, future income potential and net worth to qualify for a mortgage. Currently, the housing shortages is estimated at 10 million units. It can be assumed that middle-income group makes up the largest percentage affected by deficit. However, both SBP Policy and NAPHDA have not provided any indication of an interest in this vital segment and are thus silent on any kind of bespoke policy framework for middle-income families.

3.7. POLICY RECOMMENDATIONS FOR NAYA PAKISTAN HOUSING

- The housing crisis is so huge that it cannot be resolved through conventional means. What is required is to support the densification process by developing urban design plans for those areas where it is taking place and providing technical and design advice to the builders along with short term loan packages.
- It would also require containing speculation on land and built assets. For this a heavy non utilisation fee on land and properties would have to be imposed.
- To conserve land an urban land ceiling act would also have to be enacted to limit land holdings per individual and a minimum density determined for all housing, including elite projects.
- Laws giving the state the power to acquire land for low-income housing at appropriate locations will be required.
- There is also a need of mortgage financing for lower middle-income group and daily wage earners to ensure the availability of housing for those groups.
- High rise buildings are cost efficient so it is highly recommended to consider this option as well.
- Government may sell unused commercial areas and used that money on the construction of new and cheap housing units for people to fulfil the dream of Naya Pakistan housing.

In the absence of above recommendation steps, it is more than possible that large scale housing projects will either not take place or will end up being victims of massive speculation and causing further environmental damage as has happened many times before and in many countries.

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Chapter 4

National Electric Power Regulatory Authority (NEPRA)

AFIA MALIK

4.1. BACKGROUND

Historically, in Pakistan, electricity sector policymaking, regulation, and service provision were all under Government's control. However, the lack of managerial capacity and fiscal resources restrict the Government from keeping pace with the growing demand for services.

The Government of Pakistan (GOP) in 1992 prepared a strategic plan for restructuring the electricity sector. It unbundles vertically integrated utility, WAPDA, into separate generation, transmission, and distribution companies for better management. The GOP invited private capital in the generation sector to augment state-owned generation resources. The establishment of an autonomous regulatory agency to introduce transparent and judicious economic regulation in the power sector of Pakistan was also part of this plan.

The National Electric Power Regulatory Authority (NEPRA) was established under Section 3 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (NEPRA Act No. XL 1997) to regulate the provision of electric power services in Pakistan. To create a legal basis for developing a competitive electricity market, NEPRA Act got amended in 2018.

Initially, NEPRA was established as an autonomous organisation with no administrative control from the GOP. However, for better interaction with Federal and Provincial Governments, it was made an attached department to the Ministry of Water and Power. Later, it allied GOP through the Ministry of Law and Justice. Since 2000, NEPRA has been under the Cabinet Division.

4.1.1. NEPRA Act

As in the NEPRA Act 1997, the aim behind the formation of NEPRA was to have an independent regulatory body to improve the efficiency and availability of electric power services while protecting the interests of consumers, investors, and the operators equally, and to promote competition and deregulate power sector activities where competition exists.

Under the act, NEPRA's policy guidelines for power sector reforms revolve around: cost-effective tariff structure to ensure investments in the short run; expansion of generation, transmission, and distribution capacities in the long run to meet the growing energy demand; and to guarantee a reliable provision of electricity to consumers (Malik, 2007).

Box 4.1

Major regulatory obligations under NEPRA Act No. XL 1997

- *Grant of licenses, approval of power acquisition programmes.*
- *Determination of tariff, terms and conditions and rates.*
- *Prescription and enforcement of quality-of-service standards, approval of operating codes and investment standards.*
- *Industry structure/privatisation including the transition towards a competitive market where feasible.*
- *Consumer rights and obligations_ complaint redressal.*

However, the Regulation of Generation, Transmission and Distribution of Electric Power (Amendment) Act (2018) has increased its responsibilities. Its additional responsibilities include_

- to guarantee high standards of transparent, clear, and effective regulation of the electric power markets of Pakistan;
- specification of the legal framework within which a competitive electric power market can develop and sustain; and
- to manage conflict of interest between the state and the development of the electric power markets.

Appendix Table 4A states key amendments in NEPRA Act.

Besides, ensuring the elimination of energy poverty and facilitating the development of environment-friendly renewable electricity markets are among the foremost responsibilities of NEPRA.

Box 4.2. NEPRA Mandate under Amended Act [Act No. XII of 2018]

In addition to grant licences and tariff determination, NEPRA is given authority to

- *Specification of procedures & standards for registration of persons providing electric power services.*
- *Advisory to the Federal Government in the formulation of electricity plan, policy, and public sector projects.*
- *Specification and enforcement of performance standards for generation companies and persons licensed or registered under the Act.*
- *Specification of procedures & standards for investment programs by generation companies and persons licensed or registered under the Act.*
- *Specification of accounting standards and establish a uniform system of account by generation companies and persons licensed or registered under the Act.*
- *Ensuring efficient tariff structures and market design for sufficient liquidity in the markets.*
- *Specifying fees.*
- *Review of its own decisions.*
- *Settle dispute between licenses in accordance with the specified procedure.*
- *Issue guidelines and operating procedure to promote market development, including trading in accordance with national electricity plan and policy.*
- *Review of organisational affairs of generation companies and persons licensed or registered under the Act for efficient supply of services.*
- *Encourage uniform industry standards and code of conduct for generation companies and persons licensed or registered under the Act for efficient supply of services; and*
- *Submit report on the activities of generation companies and persons licensed or registered under the Act to the Federal Government.*

In short, under the amended act, NEPRA's policy guidelines revolve around creating a legal basis for moving to a competitive market structure.

4.1.2. Purpose of Evaluation

The purpose of this evaluation is to:

- Review the effectiveness of the National Electric Power Regulatory Authority (NEPRA), identify flaws in the current regulatory infrastructure, explore reasons behind these flaws, and suggest ways to improve it.
- The evaluation will explore the institutional and governance structure at NEPRA and its capacity to play its regulatory role effectively.

4.1.3. Methodology

For this evaluation, i.e., the regulatory effectiveness of NEPRA, a case study approach is adopted. The data is collected from interviews (interactive sessions) with officials (current and ex) at the authority, sector experts, and government officials. Besides, the evaluation relies on secondary data sources_ NEPRA Annual Reports, State of Industry Reports, and other published reports and documents available.

Limitation: The evaluation relies only on information (both qualitative and quantitative) gathered from informal interviews/discussions and published sources; a perception survey is not conducted.

4.1.4. Scope of Evaluation

The evaluation covers the subject matter under two main headings:

Regulatory Mandate and its Effectiveness

- What is the status of its policies, strategies, various processes (that is, regulatory framework) involved in_ the grant of licenses, the determination of tariffs, and the making of rules, regulations, standards, and specifications? What are the flaws in execution?
- To what extent its rules/ regulations are facilitating market development and competition?
- What is the impact of the regulatory framework at NEPRA on power sector outcomes? That is, did NEPRA achieve its objectives as in NEPRA Act, 1997?

Regulatory Capacity

- Does NEPRA as an institution has the competence and capacity to carry out its functions and achieve its objectives effectively?
- Does NEPRA Act facilitate an effective governance structure at NEPRA? To what extent does NEPRA Act facilitate its independent and effective functioning?

4.1.5. Structure of Evaluation

Findings in this evaluation are obtained from informal and detailed discussions and reviews of available documents.

Recommendations in the evaluation identify specific areas/ policies that can be modified for improved outcomes.

4.2. REGULATORY MANDATE AND ITS EFFECTIVENESS

What is the status of its policies, strategies, various processes (that is regulatory framework) involved in the grant of licenses, in the determination of tariffs and in the making of rules, regulations, standards and specifications? What are the flaws in execution?

To what extent its rules/ regulations are facilitating market development and competition?

Findings

NEPRA Act defines the mandate of NEPRA. It specifies its powers and functions. Rules and Regulations are fundamental instruments to achieve NEPRA's objectives and perform responsibilities under the Act. It is the prerogative of the Federal Government to make rules⁴⁰. While NEPRA can only recommend or ask for it. But the government must consult the Authority and the Provincial Governments. While NEPRA has powers to formulate regulation, issue directives, codes, guidelines, circulars, or notifications as are necessary to carry out the purposes of the NEPRA Act.

NEPRA is a quasi-judicial organisation. It regulates the power sector of Pakistan. Its main functions include issuing licenses, determining tariffs, and monitoring energy companies for ensuring proper standards and quality of services. Additionally, it addresses consumer complaints. Section 14A (5) states that the authority shall perform its functions under the national electricity policy and plan, which, after a long delay, has been announced in the last week of June 2021.

To be effective, NEPRA needs to have processes to deliver licensing, determining tariffs, monitoring, review and assessment, and enforcement functions, including the withdrawal of previous authorisations. Within the broader framework of the 1997 Act, NEPRA has prescribed rules, regulations, guidelines, codes to oversee the power sector. Processes are defined clearly in the NEPRA Regulatory Framework (Figure 4.1). The processes allow for a timely response as rules, regulations, and guidelines mention the time frame.

However, after the amendment in 2018, new rules, regulations, and specifications of standards are required. As per the amended Act, distribution will be separate from the electricity supply by 2023, which requires new standards/rules/regulations. Similarly, a competitive (wholesale) market is envisaged to be developed. Section 50(1) of the NEPRA Act requires the secondary legislative instruments notified before 2018 to be brought in line with the amended NEPRA Act within one year from the date of coming into effect of the Regulation of Generation, Transmission, and Distribution of Electric Power (Amendment) Act, 2018. However, three years have passed, but the requisites are not in place. There are delays in finalising the rules/ regulations/ guidelines required for the market.

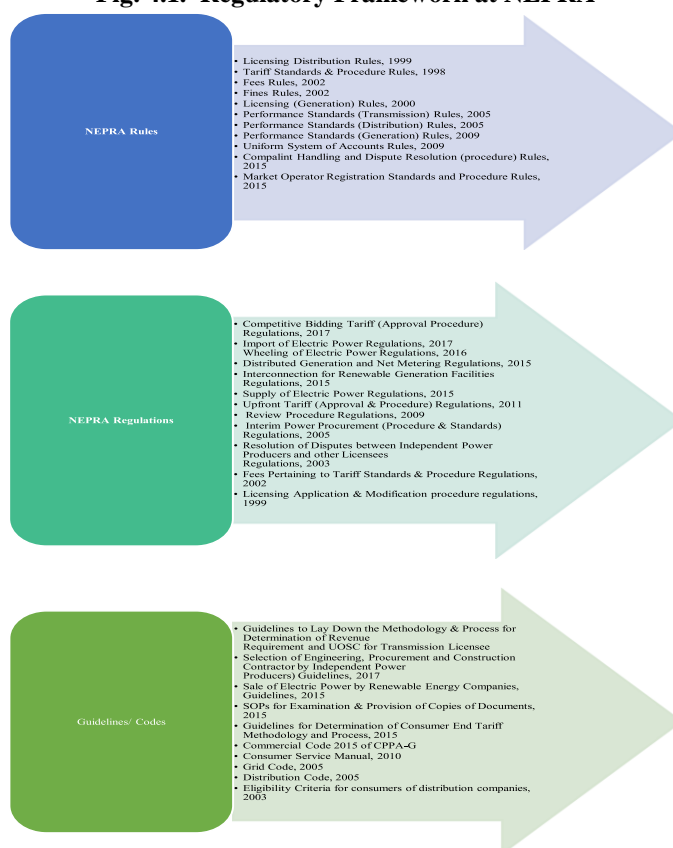
⁴⁰ This is through amendment in Section 12(d) in NEPRA Act XL of 1997. Before the amendment, NEPRA had the power to make rules.

Its latest Annual Report 2020-21, its websites and inquiry at various levels revealed that most of these new rules/ regulations are still in the making process. As of now, only three regulations have been notified:

- NEPRA Licensing (Application, Modification, Extension and Cancellation) Procedure Regulations, 2021
- NEPRA (Fees) Regulations, 2021
- NEPRA (Selection of Operation and Maintenance Contractors by Generation Companies) Guidelines, 2021

NEPRA approved a Competitive Trading Bilateral Contract Market Model (CTBCM) on December 05, 2019, to be operational in April 2022. Three months have left, but pre-requisites are not in place. Beyond that, it was prepared under rules made before the passage of the amended NEPRA Act. Section 14A of the NEPRA Act requires the government to develop “an efficient and liquid power market design”, along with any matter on development, reform, improvement, and sustainability of the power sector (more details in sub-section 4.2.5). NEPRA is fundamentally found to be weak in carrying out its functions in a timely and effective manner. It is elaborated further below in the discussion on the existing regulatory framework.

Fig. 4.1. Regulatory Framework at NEPRA



4.2.1. Grant of Licenses

Licensing is one of the principal activities at NEPRA. No company may carry out generation, transmission, and distribution without getting a license from NEPRA. NEPRA is performing this function in the light of NEPRA Licensing (Application and Modification Procedure) Regulations, 1999; NEPRA Licensing (Generation) Rules, 2000 and NEPRA Licensing (Distribution) Rules, 1999. As per the NEPRA regulations 1999, Section 5(2), license is an instrument used to allow market entry; an instrument to check the development of capacity more than required; fuel mix; to evaluate the professional ability of an operator to execute the project; and the financial viability of the project.

The NEPRA legal framework states the procedure for allotting licenses. The rules state licenses' fees, terms for issuance and renewal, revocation, and suspension; licensees' accounting practices and audit, provision of information, fines and penalties, resolution of disputes, and so on. In law, a time is specified in which NEPRA must approve or refuse a license application. The process involves a public hearing.

The process is cumbersome; in terms of the documentation required and the time involved in the final decision. In most cases, the time taken in making the final decision is more than what the rules prescribe. For instance, in the case of generation licenses to IPPs, the determinations took more than a year in some cases against the four months allowed time.⁴¹

There are provisions to force companies to relinquish licenses or permits for a legal or contractual violation. Penalties are allowed in law for violating contractual terms, but these are rarely applied. NEPRA, being a regulator, needs to ensure that generation plants are operational in compliance with their respective generation licenses. A proper check & balance process is required. But it is missing in NEPRA practices.

In the generation licensing decision, the professional ability of an operator to execute the project; and the financial and technical feasibility of the project are reviewed. But no focus to check the capacity required or towards fuel mix. The fact is it is the government that decides about the projects; the job of the regulator is to check for the technicalities and issue licenses. Officials at NEPRA complain about the non-availability of the national electricity plan to guide them.

Market entry regulatory framework has remained weak in Pakistan, mainly due to the limited role of NEPRA in Power Purchase Agreements. The prices and guarantees offered to new entrants in the generation sector did not allow competition among the generation companies. Contrary to NEPRA regulation, which says that the review and approval of a project are based on least-cost considerations, new contracts have been justified in filling the demand and supply deficit. NEPRA was not involved in the review and approval of the agreement, but it determines the generation tariff that will apply to a power plant, and the PPA must follow.

NEPRA competitive bidding tariffs (approval procedure) regulations were notified in 2008, amended in 2014, 2017, and then in 2019 but not applied in practice. The absence of competitive bidding for these projects and non-transparent procurement processes has always raised serious concerns about the potential for corruption. The guarantee clauses in power purchase agreements (PPA) with these IPPs have not only

⁴¹ It is obvious from the dates on final decisions.

restrained the dispatching efficiency but overburdened the power sector and the government with hefty liabilities. Section 3(6) of NEPRA Licensing (Generation) Rules, 2000, allowed NEPRA for additional terms and conditions for a good cause. But it is the lack of regulatory oversight that today Pakistan’s power sector is in a “capacity trap.”

NEPRA issues licenses for generation, transmission, and distribution. After the amendment in the ACT in 2018, issuing licenses for an electricity supplier, market operator, system operator, and market trader is the mandate of NEPRA. Figure 4.2 describes license categories granted by NEPRA under Sections 14B, 14C, 16, 17, 19, and 20 of the NEPRA Act up to June 2020. Figure 4.3 lists new license categories established under the amended Act.

Fig. 4.2. Licenses Issued under Three Main Categories



Figure 4.3. New license Categories in the Amended NEPRA Act, 2018.



For distributed generation (DG), the “National Electric Power Regulatory Authority (Alternative & Renewable Energy) Distributed Generation and Net Metering Regulations” (2015) specify the rules for connecting these generators to the primary grid. The regulator determines whether distributed generators can sell power back to the utility. As reported in Bacon (2019), new entrants (mainly solar) have faced problems getting through the various initial stages of approval. For both wind and solar, the number of Letters of Intent (LOI) issued with associated land allocation rights is greater than the land available and the interconnection potential of the grid. As a result, only those private participants who have links with the government have land identification and allocation and have moved on to the stage of conducting the feasibility; otherwise, not.

Another issue is the delay in getting the interconnection permit from NTDC. Under the influence of the Ministry, not only does NTDC take more than allowed 30 days (sometimes more than a year) to comment on the inter-connection study, its Planning department (responsible for interconnection permits) also delay the process. Though utilities are required to connect distributed generation assets to the grid within a specified period, this gets delayed generally.

Licensing for transmission and distribution licensing was not an issue in the past because of restricted market entry⁴². But with the implementation of CTBCM, market participation in transmission and energy supply will increase, thus increasing license requirements. NEPRA officials view the existing processes and procedures as not requiring immediate reform, but the experts had a different viewpoint.

4.2.2. Tariff Determination

NEPRA determines electricity tariff, keeping in view the principles of economic efficiency and service quality according to the prescribed Tariff Standards and Procedure Rules, 1998. Under Section 7 (3) of the NEPRA Act, 1997, NEPRA has been bestowed with the power to determine tariff rates/ charges and other terms and conditions for supplying electric power services by generation, transmission, and distribution companies.

NEPRA Tariff Standards and Procedure Rules (1998) provide guidelines for process and parameters for setting tariffs. Licensee, consumer, or person interested in the tariff may file a petition with the NEPRA by submitting it before the Registrar along with such fee as may be determined by the Authority. On receipt of tariff petition, the process is followed as elaborated in Figure 4.4.

Tariff determined by NEPRA is forwarded to the Federal Government under Section 31(4) of the NEPRA Act for notification in the Official Gazette. NEPRA Act, 1997 states that the Federal Government may file a reconsideration request concerning the determination/decision of the authority in 15 days. The authority within 15 days shall decide upon the matter and intimate the Federal Government for notification in the official gazette. As per the rules, five days are allowed to file a motion for a recalculation; and ten days to file a review motion. The amended Act (2018) removed the reconsideration request, and tariff notification in the official gazette was required to be done within 15 days. However, through another amendment in 2021 (NEPRA ACT

⁴² For the first time in 2015, a private transmission company was granted a license.

NO.XIV OF 2021), the number of days has increased from 15 to 30. At the same time, the reconsideration request within 30 days is also allowed.

Figure 4.5 elaborates the tariff structure for generation, transmission, and distribution, and Tariff Regime/ Procedures followed are elaborated in Figure 4.6.

Fig. 4.4. Steps Involved in Tariff Notification

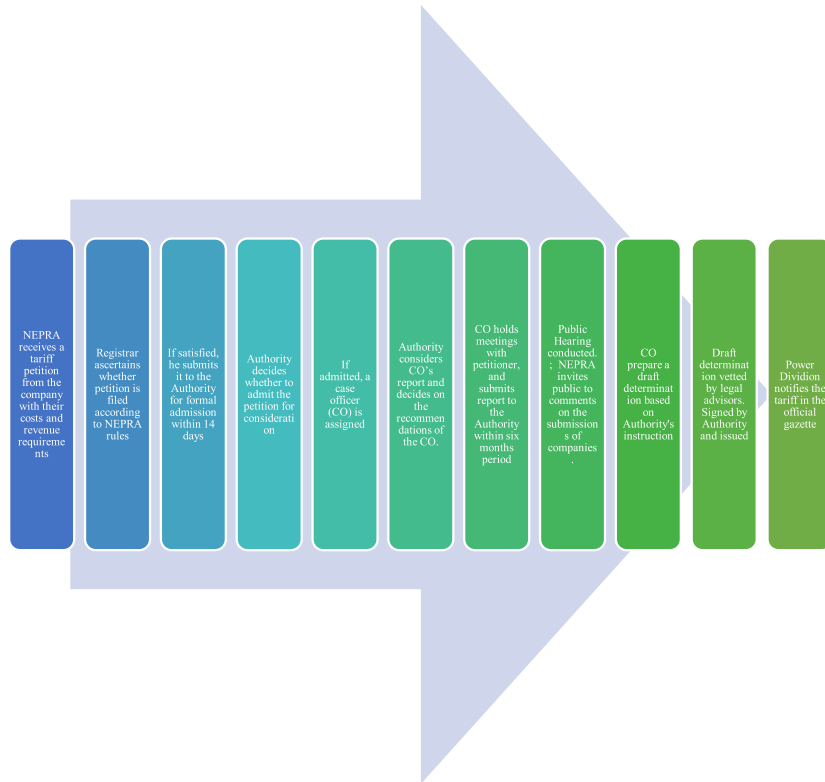


Fig. 4.5. Tariff Structure

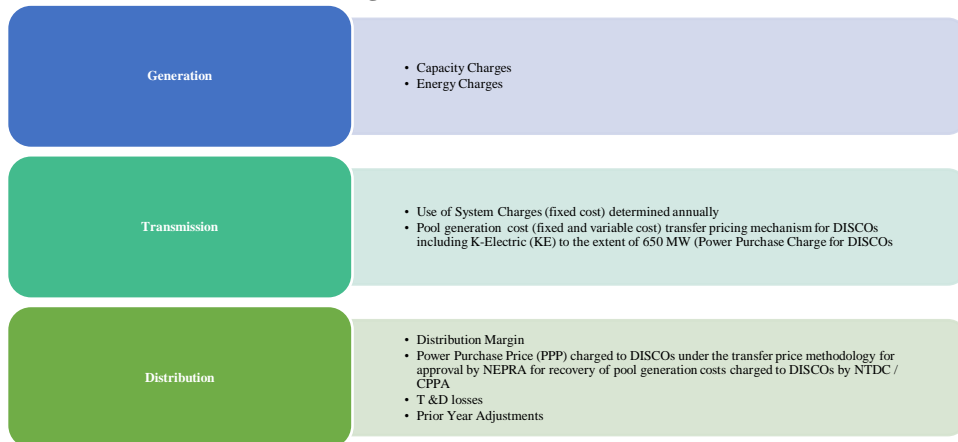
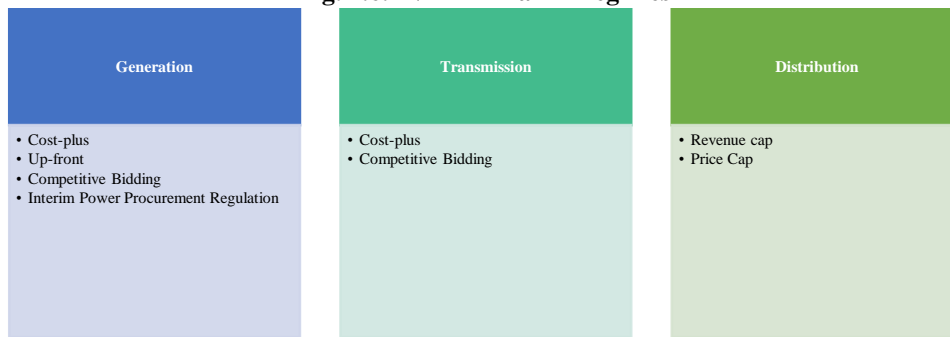


Fig. 4.6. NEPRA Tariff Regimes



Before the amendment in NEPRA Act, NEPRA determined consumer-end tariffs for each distribution company (DISCOs) separately. NEPRA determines consumer-end tariffs to recover the entire supply chain costs⁴³. In deciding the average sale price, NEPRA considers the annual revenue requirement of DISCOs which includes all the costs involved. The main factors in the annual revenue requirements include power purchase price⁴⁴, net distribution margin⁴⁵, transmission and distribution (T&D) losses, and prior-year adjustments.⁴⁶

The tariff so determined was different for each DISCO because of its distinct characteristics: the difference in annual revenue requirement and T & D losses. NEPRA used to make its valuation of cost and revenue requirements, determine the average sale price of each DISCO, set tariffs for different slabs of various categories of consumers for each DISCO, and send its recommendation to the Government of Pakistan (Power Division). The Government of Pakistan notified the final tariff for different consumer categories but the same across all DISCOs. Usually, the minimum consumer-end tariff for a particular consumer category among all DISCOs was adopted for application across the board to all DISCOs.

However, in the Amended Act, 2018, NEPRA shall determine a uniform tariff for distribution licensees wholly owned and controlled by a common shareholder based on their consolidated accounts. In the amended Act, it is further stated that NEPRA will take

⁴³During the transition phase towards the complete corporatisation of the former WAPDA companies, the bulk tariffs charged for the electricity purchased by the distribution companies have been determined at the discretion of NTDC. Until 2000, a uniform bulk tariff was charged to all distribution companies to buy electricity. In 2001, a new pricing methodology was established, through which each distribution company would retain a margin that reflects its cash expenses, debt services, and line losses (but not capital expenditures or non-cash expenses).

⁴⁴It includes the generation and transmission costs of the power a DISCO has projected to purchase.

⁴⁵It is the difference between gross margin and other income of DISCO. Gross margin includes operation and maintenance (O&M) costs, depreciation and returns on the asset base of DISCO. Other income refers to remuneration of deferred credit, meter and rental income, late payment surcharge, profit on bank deposit, sale of scrap, income from non-utility operations, commission on PTV fees and miscellaneous incomes.

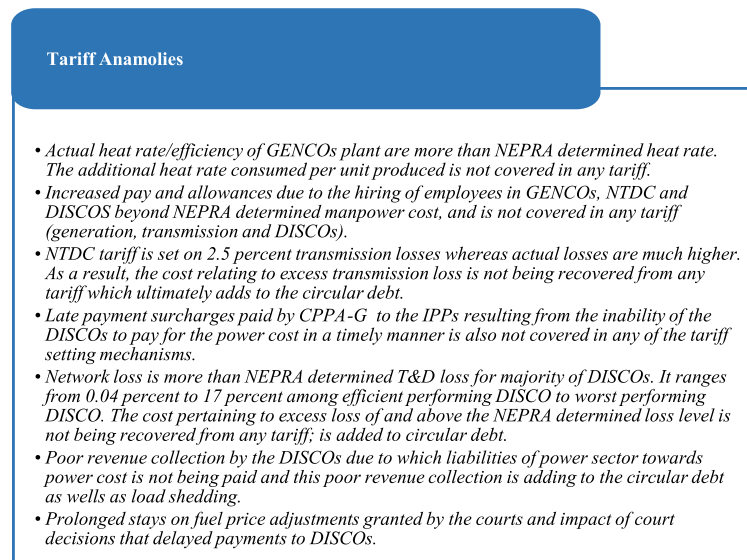
⁴⁶It is the gap between the projected and the actual cost in the previous year, built into tariffs for that year. This adjustment is for the difference between the projected and actual electricity units purchased by DISCOs; the difference between the projected and actual distribution margins; the difference between actual and notified previous year adjustment; the difference between projected and actual other income; and the difference between the projected and actual consumption mix.

guidance from National Electricity Policy to determine, modify or revise rates, charges, and terms and conditions for the provision of electricity services. To sum up, the tariff structure in Pakistan is not based on regional and consumer-specific long-run marginal costs. It is used as an instrument to achieve political and socio-economic objectives. This is not NEPRA's fault, as Act binds the authority.

Apart from monthly fuel price adjustments, NEPRA also allows for quarterly adjustments in the determined tariff of DISCOs. It results from the regulatory failure, as it is made when DISCOs do not use the allowed energy quota and ask for a quarterly adjustment. Instead of regulating DISCOs, the burden is transferred to the consumers.

Over the years, the determinations process has seen delays, and the regulator has not allowed prudent cost (Figure 4.7). In the generation tariff, the BOOT tariff was applied to the BOO regime_ a payment of 80 percent plant cost in the first 10-15 years. The 15-18 percent returns on equity with return in dollars despite substantial cost incurred in Pakistani rupees caused huge capacity payments. Higher outages and higher capital costs were allowed making capacity purchase prices higher (Sohail, 2014).

Fig. 4.7.



For independent power plants (IPPs), the up-front tariff regime under Up-front Tariff (Approval & Procedure) Regulations, 2011, is generally applied by NEPRA. One of the reasons for the high cost of electricity generation in Pakistan, cited by many experts, was NEPRA's lack of capacity in determining up-front tariffs. For instance, imported coal power plants (under CPEC) had been built at \$1.4 million per MW and a tariff almost double to a similar coal plant tariff under construction in UAE by the same Chinese company at the same time. The reason was the upfront tariff system of NEPRA. NEPRA estimated a high tariff.⁴⁷

⁴⁷ <https://www.syedakhtarali.com/2019/07/03/why-is-power-so-pricey/>

Although, it would be unfair to attribute all tariff issues to NEPRA. Sometimes delays are from the side of a licensee or because of legal challenges⁴⁸ or government interventions due to political considerations. But still, it is primarily the regulator which will have to take responsibility and lead reform in this area, especially in terms of providing guidelines and solutions.

To give the credit where it is due, NEPRA established for the first time in South Asia a CPI-X based Multi-Year Tariff (MYT) regulatory framework. In 2002, NEPRA approved a framework of MYT for KESC (now K-Electric) for seven years from its privatisation (given its expected privatisation). Later, the same tariff regime was established for FESCO, IESCO, and GEPCO, anticipating their privatisation. K-electric got privatised in 2006. Ideally, now NEPRA should be regulating K-electric tariff and not determining. But the focus of NEPRA is on determining K-electric tariffs. Through multi-year tariff determination, K-electric still needs regulatory approvals for its investment decisions (Malik and Khawaja, 2021).

4.2.3. Performance Standards and Enforcement

According to section 7(2) clause c and section 34 of the NEPRA Act (XL of 1997), the authority is obliged to prescribe performance standards for the generation, transmission, and distribution companies for safe and reliable service.

All the required Standards under NEPRA Act 1997 for distribution, transmission, and generation are put in place, although after a long and delayed process. While after the amendment, new performance standards for the generation, transmission, distribution, electricity supply, and electricity trader are in the making. NEPRA has not prescribed environmental standards; all the generation companies granted a license by NEPRA are required to maintain environmental standards as may be defined by the Federal Environmental Protection Agency.

On papers, the regulatory framework for service quality is there⁴⁹. All the companies (generation, transmission, and distribution) are bound by law to meet these standards for quality, supply, and commercial service; otherwise, they would be eligible for a fine or penalty. For quality-of-service enforcement, regulated entities must report various indicators, such as System Average Interruption Duration Index (SAIDI), System Average Interruption Frequency Index (SAIFI), voltage indicators, recovery rates, and transmission & distribution losses. NEPRA evaluates these, and the report is uploaded on its website.

But, in general, the enforcement mechanism is fragile at NEPRA. Fines are rarely applied (as is evident from NEPRA Annual Reports⁵⁰); there is no consistent approach to applying a penalty if the company fails to meet standards. Above all, there is no evidence

⁴⁸As per the NEPRA Annual Report 2019-20, the regulator is presently facing litigation in around 1304 cases pending before various courts. Some of the critical issues among others in litigation were Exclusivity of DISCOs, Inclusion of "surcharges" in the "Schedule of Tariff" by NEPRA upon re-consideration request filed by Federal Government, Fuel Adjustment Charges, Recovery of fixed charges during load-shedding.

⁴⁹Old rules are applicable as long as the new ones are finalised and announced.

⁵⁰In 2019-20, NEPRA imposed fines on DISCOs on account of violations of Performance Standards, Distribution Code, and other applicable documents and the occurrence of fatal accidents. Similarly, imposed 50 million fine on K-Electric on account of 19 fatal accidents in Karachi because of heavy rainfall during July and August 2019.

of recovery of these fines. NEPRA's role is limited to sending an advisory to the government about DISCO's performance. But the authority itself is unable to enforce these performance standards. At the same time, information on government response to NEPRA advisories is not available.

4.2.4. Consumer Affairs and Complaint

The Consumer Affairs Division (CAD) handles consumers' complaints. Consumers can approach NEPRA under NEPRA Complaint Handling and Dispute Resolution (Procedure) Rules, 2015 read with Section 39 of the NEPRA Act against a Licensee for breach of any provision of the Act or any Order, Rule, Regulation, License, or instructions made or issued thereunder. NEPRA has established Regional Offices to facilitate consumers for the speedy redressal of their grievances.

As reported in NEPRA Annual Reports, consumers complain about excessive billing, delay in the provision of connections, replacement of defective meters, low voltage problem, augmentation of transformers, non-receipt of electricity bills, delay in replacement of replacement damaged transformers, and excessive load shedding, etc. As the reported data revealed, on average, about 92 percent of complaints were resolved in the last five years. Any information from other resources is not available to countercheck NEPRA's claims.

4.2.5. Competitive Market Development

The driving force behind the Amended NEPRA Act is to guide NEPRA to adapt to new challenges involved in creating a competitive electricity market. Though, NEPRA was mandated in the previous Act to smooth the transition towards a competitive market where it is possible. But unfortunately, it didn't happen.

The Amendment creates a legal basis for the licensing of various stakeholders in the market to smooth the transition towards a 'competitive market' structure. Many new stakeholders (units) were introduced, which require the development of a comprehensive framework by the regulator to implement and enforce competitive market reforms.

Besides, under the NEPRA amended Act, the two distribution functions, 'wire or distribution network' and 'sale', must be separated by 2023, which traditionally were covered in a single distribution license. The amended Act also provides a gradual cessation of the licensing requirement for generation companies after 2023 and a complete exemption for 'Captive Power Plants' to obtain a license.

Under the amended Act, the regulator has been granted powers to monitor and enforce the competitive market. However, the amendments only provide a legal basis for developing a competitive electricity market, legal guidelines for guaranteeing de jure regulatory performance. The successful transition towards a competitive market requires de facto regulatory performance, which depends on significant preparation at NEPRA and the Power Division, Central Power Purchasing Agency-Guarantee (CPPA-G), PPIB, and other related institutions. It requires new pricing and procurement rules, new software at each entity, capacity building of staff to enable them to handle market forces while meeting their primary objective to supply electricity to consumers.

The USAID Report (2019) testifies what is informed by experts that various departments at NEPRA are not yet ready for this change. Management has little knowledge of different competitive market models_ their strengths and weaknesses. NEPRA's expertise to supervise long-term bilateral contracts and spot purchasing is minimal at present. It was NEPRA duty_ to ensure that the CTBCM is in line with the amended NEPRA Act. It was also its job to evaluate whether the sector conditions are suitable enough for the competitive market model to be implemented⁵¹. Unfortunately, this has not been done. The irony is, CTBCM was evaluated by a foreign consultant, on behalf of NEPRA, who hardly understood ground realities. Some experts view that due to market intricacies and complexities, the fear is it (CTBCM) will crash.

So far, the only plus point is to facilitate wheeling of power; NEPRA made NEPRA (Wheeling of Electric Power) Regulations in 2016. Under these regulations, generation companies connected to the transmission and distribution networks or those who intend to be connected can transport their power using the transmission network of NTDC or distribution networks of DISCOs to the Bulk Power Consumers. It is the first step considered towards developing the market.⁵²

*What is the impact of regulatory framework at NEPRA on power sector outcomes?
Did NEPRA achieve its objectives as stated in NEPRA Act, 1997?*

Findings

What ultimately matters are sectors outcomes, not regulatory processes. The key objective behind the formation of NEPRA was to develop and pursue a regulatory framework to improve efficiency and reliability and provide affordable electricity to consumers while protecting the interests of consumers, investors, and operators equally. In addition, facilitating the transition from a protected monopoly structure to a competitive environment was also NEPRA mandate in NEPRA Act 1997.

4.2.6. A Balance between Consumer, Investor, and Operator

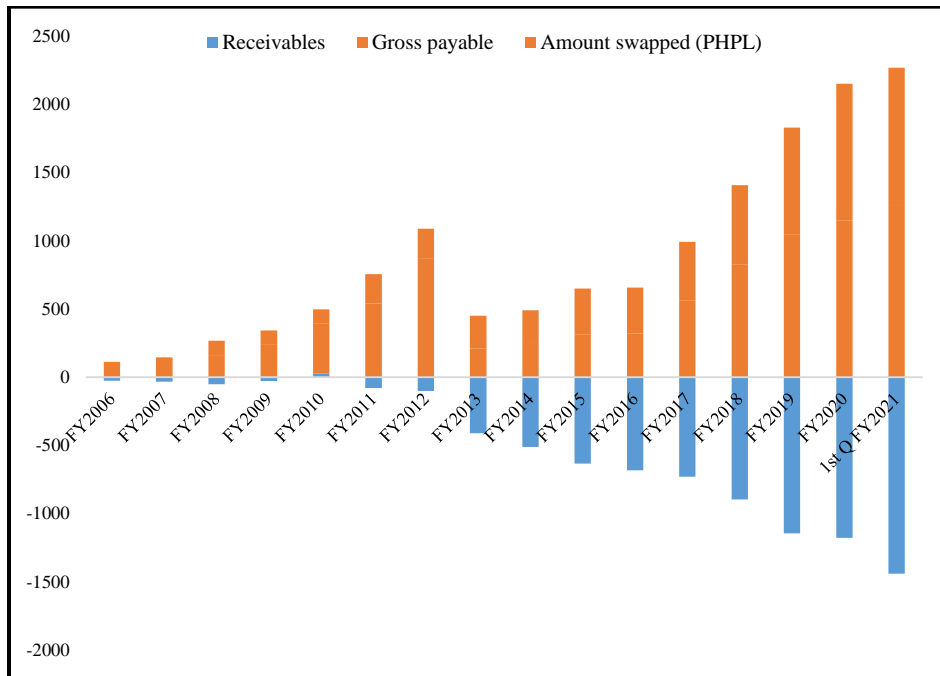
NEPRA was mandated to create a balance between investors and consumers, where it failed as the problems faced in the power sector in the last two decades are un-exemplary. Consumers remained the worst sufferers of the government fiscal and

⁵¹Wholesale market must meet specific pre-requisites. Financially viable and a reliable payment chain. The creditworthiness of all, particularly distribution utilities, is critical. Another pre-requisite for the wholesale market is many buyers and sellers in a market. We don't have enough buyers and sellers to compete. On the generation side, all the independent power plants and even state-owned generation companies, despite being inefficient, are all under take-or-pay contracts. There isn't enough free generation capacity available_ to be traded in the market. In the CTBCM, because of take-or-pay contracts, the distribution companies (DISCOs) would be required to provide a credit cover for future electricity procurement. The status of DISCOs balance sheets suggests that it is not possible. If buyers are not financially sound, how will the market function? The benefits of competition are unlikely to pass to end-users if there is a significant concentration of market power either in the generation or the distribution sector. Sufficient transmission infrastructure and stable macroeconomic and political environment are not present_ these support market development.

⁵²Bulk Power Consumers wanted to pursue 'Wheeling of Power' under the Wheeling Regime. But hurdles are being created by Power Division & CPPA-G to protect DISCOs.

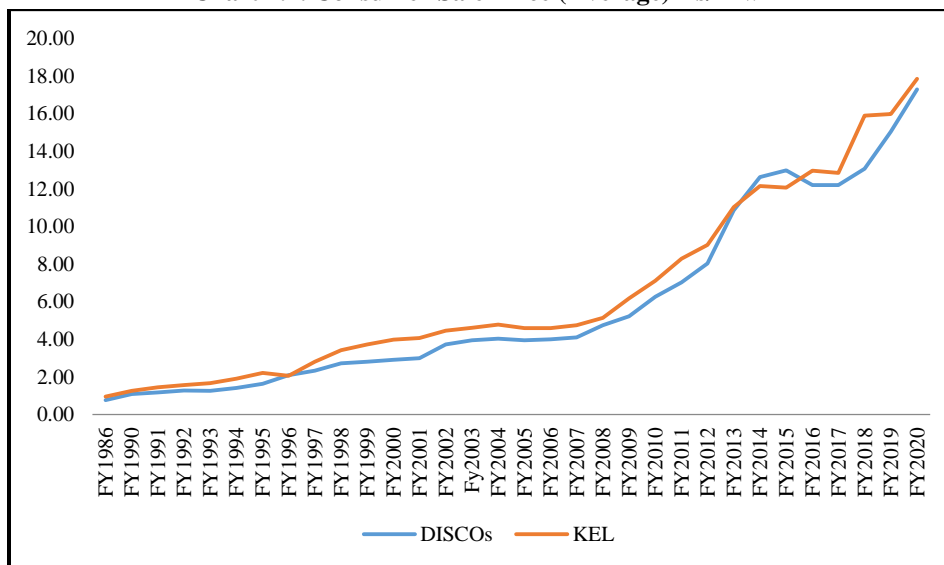
financial issues due to enormous and rising circular debt (Chart 4.1). Power outages of 8 to 10 hours in urban areas and up to 16 hours in rural areas and a significant increase in electricity prices (Chart 4.2 and Chart 4.3).

Chart 4.1. Circular Debt Growth



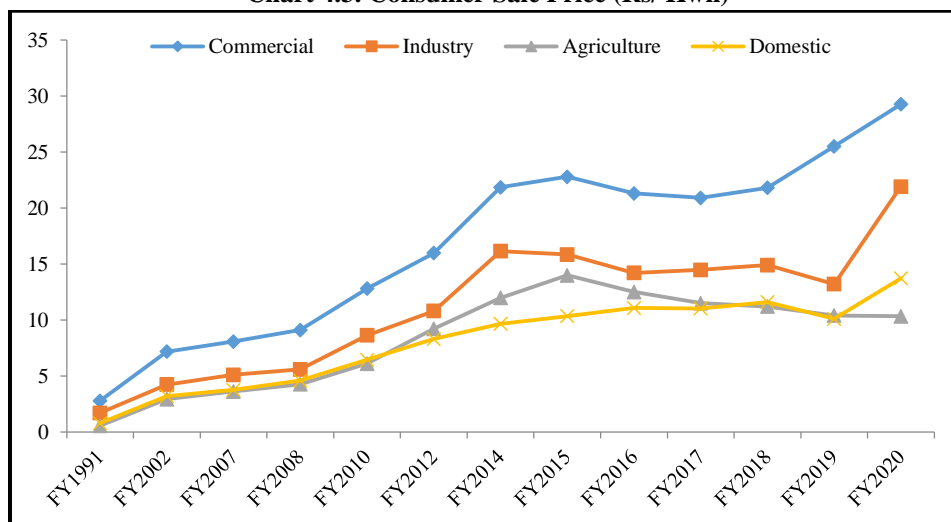
Source: NEPRA State of Industry Reports, CPPA-G Annual Reports, and Various Government Documents.

Chart 4.2. Consumer Sale Price (Average) Rs/ Kwh



Source: Electricity Marketing Data (Various Years) and NEPRA State of Industry Report (Various Years).

Chart 4.3. Consumer Sale Price (Rs/ Kwh)



Source: Electricity Marketing Data (Various Years) and NEPRA State of Industry Report (Various Years).

While power sector policies allowed unreasonably very high profits to independent power plants,⁵³ excess payments have been made to power producers because of either misreporting by the producers or regulatory oversight (Report on the Power Sector, 2020).

Pakistan has the highest cost of electricity across all major consumer groups in South Asia (Table 4.1). Some of our low value-added exports rely heavily on electricity consumption. The high cost of electricity has reduced the competitiveness of our exports, thereby impacting the country's trade deficit and balance of payment. Large cross-subsidies (especially in favour of domestic and agriculture consumers) and heavy tax incidence are contributing to grid defection by large consumers (industry, commercial and high-end consumers) (Report on the Power Sector, 2020).

Table 4.1

Cost of Electricity- Regional Comparison

| Cents/ Kwh | Residential | Commercial | Industry |
|------------|-------------|------------|-----------|
| Pakistan | 1.3-15.4 | 12.4-15.9 | 11.8-12.5 |
| India | 4.2-11.2 | 8.4-11.9 | 10.9 |
| Bangladesh | 4.1-12.6 | 10.8 | 6.8 |

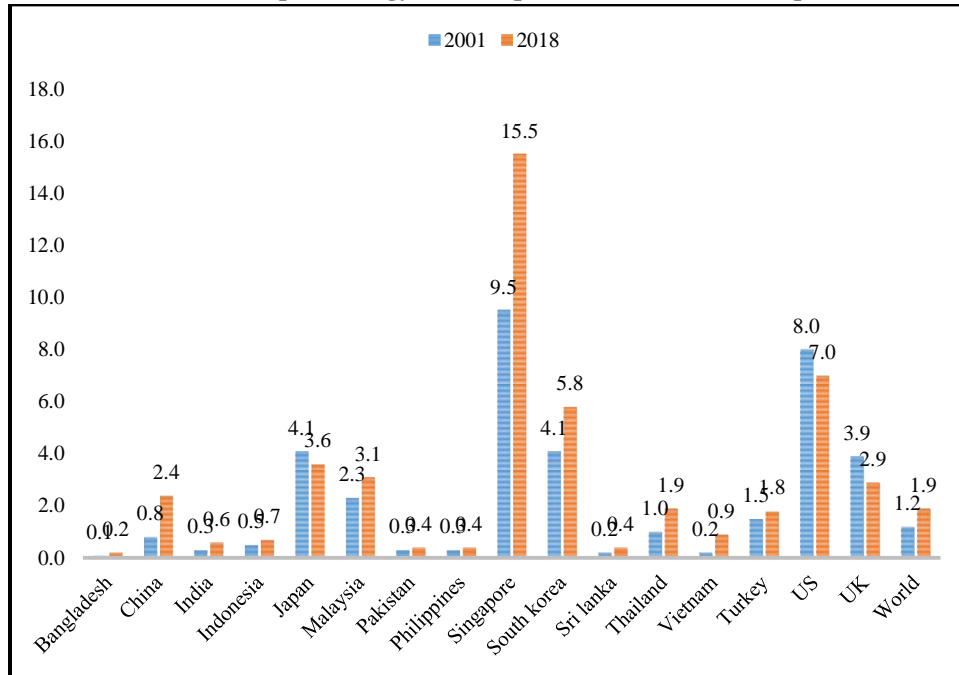
Source: Power Sector Report, 2020.

Although energy poverty was not directly NEPRA's mandate under the 1997 Act, being a regulator, consumer welfare was. Around 29 percent of our population has no access to electricity. The situation is worse in rural areas. Despite all the growth in electricity consumption over the years, Pakistan's electricity consumption per capita is

⁵³ Profits generated were as high as 18.26 times the investment, and dividends were taken out as high as 22 times the investment (Report on the Power Sector, 2020).

meagre compared to other developing countries (Chart 4.4). Under the amended Act, one of the NEPRA objectives is to alleviate energy poverty. However, no specific activity at NEPRA is noticeable to provide an enabling environment for increasing access to those who are under-served or un-served.

Chart 4.4. Per Capita Energy Consumption in Tonnes of Oil Equivalent



Source: BP Statistical Review of World Energy.

4.2.7. Efficiency, Reliability, and Financial Viability

A regulator makes no serious effort to minimise if not eliminate inefficiencies in the public sector generation (GENCOs) and distribution companies (DISCOs). The performance of (GENCOs) remained lacking in terms of all Key Performance Indicators (KPI) for the past many years. These GENCOs are running below their net available capacities because the desired maintenance and scheduled outages over the years (as per standard industry practices) are not in place. Lack of maintenance has increased their cost of generation. These power plants have not only poor operational results, the workforce, which is already on the higher side on a per MW basis, remained idle due to their closure and non-operation, contributing towards higher cost of generation. The Framework of Economic Growth by PIDE (2020) reports a loss of Rs 251.6 billion due to inefficiency in these public sector generation companies.

Similarly, the KPIs indicate poor performance and inefficiency of state-owned distribution companies (DISCOs) and even privatised utility K-Electric (Table 4.2, 4.3 and 4.4). One of the policy tools adopted by NEPRA to improve the operational performance is to set some targets for T & D losses for each DISCO in their revenue

requirements. Via this tool, NEPRA anticipates that DISCOs would improve their operational efficiency to avoid deficits. However, this strategy has not worked in most of the DISCOs. Instead, when the respective DISCO does not meet the target, it is added to the payables of that individual distribution company, as it is not compensated by tariff differential subsidy.

Likewise, in tariff determination, NEPRA counts 100 percent recovery. However, the reported recovery percentage of DISCOs remained around 90 percent. Wrong energy billing is also responsible for low recoveries by DISCOs. Overloaded transformers and transmission lines also constrain the transmission system. Regarding reducing T&D loss levels, improving bill recovery, and achieving performance standards and license conditions, NEPRA is either reluctant or has no authority to apply penalties for non-compliance with quality standards. Besides, issues in NEPRA specified technical standards were also highlighted by some experts. According to them, faults in technical standards specified by NEPRA are responsible for high system losses.⁵⁴

These indicate regulatory oversight in monitoring and enforcement of KPIs in the generation, transmission, and distribution companies. These inefficiencies jeopardise sectors' financial viability and negate NEPRA's objective to ensure a reliable electricity supply to consumers. NEPRA lacks the authority to make DISCOs accountable for their performance, whether operational and commercial inefficiency or over-billing to consumers. Similar is its role regarding the accountability of generation companies (whether in the public or private sector). In particular, the enforcement of service quality is weak. There is no mechanism to incentivise good performance or impose a penalty in case of poor performance. NEPRA is not effective in monitoring power sector companies.

Table 4.2

Distribution Losses

| FY | 2006 | 2009 | 2012 | 2015 | 2018 | 2019 | 2020 |
|-------|------|------|------|-------|-------|-------|-------|
| PESCO | 34.1 | 37.4 | 36.0 | 34.81 | 38.15 | 36.6 | 38.69 |
| TESCO | | | | 21.68 | 12.47 | 11.97 | 16.19 |
| IESCO | 13.2 | 10.8 | 9.5 | 9.41 | 9.14 | 8.9 | 8.69 |
| GEPCO | 10.2 | 10.7 | 11.2 | 10.72 | 10.01 | 9.9 | 9.51 |
| LESCO | 13.1 | 13.3 | 13.5 | 14.10 | 13.83 | 13.2 | 12.4 |
| FESCO | 11.6 | 10.7 | 10.9 | 11.03 | 10.53 | 9.8 | 9.62 |
| MEPCO | 20.5 | 18.4 | 17.9 | 15.50 | 16.59 | 15.8 | 15.23 |
| HESCO | 39.2 | 35.1 | 27.7 | 27.08 | 29.88 | 29.5 | 28.82 |
| SEPCO | | | 39.5 | 38.29 | 36.67 | 37.0 | 36.27 |
| QESCO | 20.7 | 20.4 | 20.9 | 23.10 | 22.44 | 23.6 | 26.68 |
| K-EI | 37.5 | 38.5 | 29.7 | 23.7 | 20.4 | 19.1 | 19.8 |

Source: NEPRA State of Industry Report (Various Years).

⁵⁴ Power sector technical experts were not consulted effectively when these standards were specified.

Table 4.3

% Recovery

| FY | 2008 | 2010 | 2012 | 2014 | 2016 | 2018 | 2019 | 2020 |
|-------|------|------|------|------|------|------|------|------|
| PESCO | 92 | 85 | 83 | 86 | 89 | 89 | 89 | 88 |
| TESCO | | | | 7 | 437 | 67 | 68 | 68 |
| IESCO | 98 | 96 | 96 | 90 | 91 | 90 | 88 | 90 |
| GEPCO | 98 | 96 | 99 | 96 | 99 | 97 | 96 | 94 |
| LESCO | 98 | 96 | 96 | 98 | 99 | 98 | 98 | 95 |
| FESCO | 99 | 97 | 100 | 100 | 100 | 99.6 | 99.2 | 94 |
| MEPCO | 97 | 94 | 97 | 96 | 100 | 97 | 99 | 93 |
| HESCO | 77 | 60 | 69 | 79 | 72 | 77 | 75 | 73 |
| SEPCO | | | 51 | 60 | 55 | 60 | 63 | 57 |
| QESCO | 86 | 76 | 36 | 42 | 72 | 26 | 27 | 49 |
| K-EI | | 100 | 91 | 87 | 88 | 91 | 92.6 | 92.1 |

Source: NEPRA State of Industry Report (Various Years).

Table 4.4

Overloading of Distribution Transformers

| DISCOs | Total Distribution Transformers | | % Distribution Transformers loaded above 80 % | |
|--------|---------------------------------|---------|---|---------|
| | 2015-16 | 2019-20 | 2015-16 | 2019-20 |
| PESCO | 60365 | 77307 | 31.99 | 4.50 |
| TESCO | 15634 | 18903 | 1.11 | 35.35 |
| IESCO | 45438 | 50210 | 6.83 | 3.31 |
| GEPCO | 60080 | 72007 | 2.58 | 2.70 |
| LESCO | 97048 | 116030 | 43.23 | 22.19 |
| FESCO | 97761 | 113079 | 3.36 | 0.58 |
| MEPCO | 152806 | 178730 | 4.65 | 3.26 |
| HESCO | 35334 | 37896 | 23.59 | 3.20 |
| SEPCO | 35029 | 38616 | 18.39 | 6.93 |
| QESCO | 53646 | 62337 | 16.30 | 10.93 |
| K-EI | 653141 | | 15.31 | |

Source: NEPRA State of Industry Report (Various Years).

4.2.8. Privatisation and Market Competition

Privatisation was not directly the function or responsibility of NEPRA, not even after the amended Act. But under law, NEPRA was supposed to facilitate the process to bring efficiency in the power sector and help ensure competition where feasible. The privatisation process remained slow in the last two decades. Except for K-electric and Kot Addu Power Plant, the privatisation of ex-WAPDA distribution companies has been pending. After unbundling, these distribution companies have been corporatised with independent Boards of Directors, yet operationally they are still under the administrative control of the Government.

Moving toward market competition_ it represents the central element of the sector reform program. It has still not been implemented in Pakistan -- partly because of the lack of government willingness and capacity and partly because of the exemptions given to IPPs -- whose operations were exempted from market forces by sovereign guarantees provided by the Government of Pakistan. Thus, restricting free generation capacity available for a competitive market. As discussed earlier, the Government and NEPRA as a regulator are equally responsible.

Besides, a financially viable sector and a reliable payment chain are crucial for a market (details in sub-section 4.2.5). The creditworthiness of all, in particular distribution utilities, is critical. Presently, the power sector is not fully solvent; its deficit, circular debt, is rising continuously and has reached an all-time high of Rs. 2.4 trillion. One of the significant institutional weaknesses in the electricity sector is in the regulatory process_ compromising the efficiency of both private and state-owned companies.

NEPRA's job as a regulator was to resolve all the power sector problems, including system losses, rising costs, high tariffs, and generation capacity challenges. Again, the outcome of regulatory oversight is that the circular debt emerged for the first time in 2006. Since then, it has been there and rising. NEPRA has not done anything to control this debt from rising in so many years. Increasing costs of generation and sector inefficiencies, anomalies in tariff methods and delays in tariff determinations are responsible for the circular debt issue. If NEPRA had played an effective role, the power sector scenario could have differed.

An overall assessment of NEPRA regulatory performance and its effectiveness indicates that the overall de jure performance is high, meaning a regulatory system with many necessary qualities for the power sector. However, de facto performance highlights a significantly poor regulatory functioning in practice. The regulatory reform required to transition towards a competitive market has historically been resisted in Pakistan. NEPRA, an autonomous organisation (by law), didn't make serious efforts to improve regulatory infrastructure in the power sector. NEPRA has been unsuccessful in developing and pursuing a regulatory framework to guarantee reliable, efficient, and affordable electricity. Effective regulation creates a balance in the interests of all stakeholders. When investors achieve fair returns, consumers receive quality service, and governments are not allowed political exploitation. NEPRA failed in creating this balance.

Only the institutional capacity of a regulator can ensure that all its' regulatory decisions and requirements are met effectively in a timely and correct manner. That is, it is possible only when the regulator has qualified staff, a well-coordinated organisational setup, sufficient funds, and the powers to take decisions autonomously and balance all stakeholders. But at the same time, the regulator should also be accountable for all its decisions. The next part of this evaluation explores NEPRA's regulatory capacity to find the reason.

4.3. REGULATORY CAPACITY

Does NEPRA has competence and institutional capacity to carry out its functions and achieve its objectives effectively?

Findings

Section 3 (1) defines the *governing structure* at NEPRA. The ‘Authority’ is the governing body. The ‘Authority’ consists of a chairman to be appointed by the Federal Government; and four members, one from each province, to be appointed by the Federal Government after considering the recommendations of the respective Provincial Governments. At the same time, section 3(2) states that the Vice-Chairman shall be appointed from amongst the members for one year, by rotation.

As in the amended Act, power sector experience will be preferred in selecting the Chairman and four members (Box 4.3), which is a positive change. The aim of the amendment is apparently to make the Authority more responsive to the needs and challenges in the power sector.

Currently, the Chairman and three members are all engineers with experience directly/ indirectly in the power sector. Member Punjab completed his tenure a few months back, and he was from the civil service of Pakistan (District Management Group). New member Punjab is yet to be appointed by the Government. The selection for a new regulator or a member often involves delays, thus overburdening the rest of the members and affecting NEPRA’s capacity to deliver timely.

Box 4.3

Experience/ Qualification of the Authority

1997 Act, Section 3 (3) states that the Chairman shall be an eminent professional of known integrity and competence with at least twenty years of related experience in law, business, engineering, finance, accounting, economics, or the power industry. At the same time, Section 3 (4) states that every member shall be a professional of known integrity and competence with at least fifteen years of related experience in law, business, engineering, finance, accounting, economics, or the power business.

2018 Amended Act, Section 3 (3) states that the Chairman shall be a person known for his integrity and eminence and having experience of not less than twelve years in any relevant field including law, business, engineering, finance, accounting, or economics, preferably in the electric power services business. The same rule applies to four members, as stated in Section (4).

As per Section 5(1), the ‘Authority’ has powers to perform its functions and conduct proceedings under regulations made under this Act. As per section 5(2) of the Act, the ‘Authority’ to decide must have three members to make up a quorum. Meanwhile, the ‘Authority’ may delegate powers to the Chairman, member, officer, or a special tribunal constituted under section 11, all or any of its powers to carry out its functions or duties under this Act. However, the *decision-making* is only at the top, and various departments only provide inputs when required.

Over the years, NEPRA has become increasingly more centralised, overburdening ‘Authority’ in such routine matters which otherwise could have been dispensed at the lower level. It has increased regulatory meetings on every subject, which not only delays decisions but affects its quality. NEPRA Annual Report 2021 reported that the ‘Authority’ held 542 regulatory meetings and 142 hearings in FY2021. Although some

staff members at NEPRA claimed that except for licensing and tariff determination⁵⁵, the Authority does delicate powers at the lower level, the opposite was the view when asked the same question to other experts' outside NEPRA. Meanwhile, the enormous number of regulatory meetings held in 2020-21 confirmed other experts' views.

Due process of consultations with all stakeholders, including consumers through public hearings, is followed. However, experts observed that the time allocated to general consumers is relatively small.

NEPRA is designed with various units/ departments corresponding to each essential function of the regulatory body as in NEPRA Act, 1997, i.e., licensing, tariff, consumer affairs & complaint and monitoring and enforcement. Then there is the legal department, information technology department, coordination and implementation department, finance, media, and human resource (development and management) departments to support the departments mentioned above. There are specific roles and responsibilities for each staff member within these departments. Apart, so far, no significant change is evident in its organisational structure in the light of the amended Act to support the development of a competitive electricity market.

The critical challenge in this kind of setup is the *lack of communications across various units*. NEPRA officials claim that good communication exists between departments and staff members when required to respond to organisational priorities. But, while analysing NEPRA's intended objectives in the previous section, one can observe no progress regarding market development, competition, elimination of inefficiencies, or privatisation. Delays were also observed in the execution of its desired duties. It could be because of a lack of inter-departmental communication. Most issues and discussions occur at the managerial level among individual departments (USAID, 2019). Additionally, the personnel of organisations dealing directly with NEPRA also pinpoint the lack of communications between units at NEPRA.

4.3.1. Human Resource Capacity

Adequate human capital resources are essential for quick and effective decision-making. The personal qualification of a regulator is also a key in independent decision-making. Under section 3(3), the experience requirements have been reduced. But their association with the power sector is made compulsory. The new selection criteria and process may favour evaluating an individual's capabilities and adequacy for a position based on their performance and not only on the length of service. The Act has enabled a selection based on technical/academic strengths and performance. This amendment will block the appointment of retired civil servants, or army officials as members or chairman, which used to be the practice at NEPRA. In the past, NEPRA leadership had problems in terms of regulatory expertise as people from bureaucracy or military didn't have power sector backgrounds. By the time the regulator (or member) may develop some understanding of the sector's complexities, their tenure is over.

The regulator must play a proactive role as an independent entity for effective regulation. In the past, this role was found missing in the case of NEPRA. That's why the Authority often faced criticism regarding its role in the sector. However, it is expected

⁵⁵ According to them, licensing and tariff determination are done at the authority level, as the law says so.

that the amendments in experience qualification of the ‘governing body’ at NEPRA will increase the proactive role of the regulator.

Regarding other staff, NEPRA has not developed expertise in relevant areas that may facilitate effective interventions. NEPRA is statutorily empowered to enhance its *human resources*, that is, to appoint employees, consultants, experts, advisers, etc., on such terms and conditions as the regulator deems fit. The Act also lays down a requirement of prescribing these conditions through statutory regulations. The Authority is hindered in terms of professionals for competent working. NEPRA engaged international consultants to evaluate IGCEP, CTBCM, wheeling and supply regime, etc. (NEPRA Annual Report, 2019-20).

In addition, NEPRA has not acquired the services of professional support staff transparently that could establish a proper regulatory framework for consumers and producers alike. Most of the existing professional staff have zero to trim exposure to regulatory concepts and functions or are drawn from the sectors which have no relevance to the operational requirements of a power utility. The severe constraint identified in all interviews, whether at NEPRA or with experts, is the lack of competent staff with regulatory knowledge, experience, and training. The view at the organisation is they don’t find suitable/ qualified persons.⁵⁶

Due to the lack of expertise and capacity, NEPRA could not determine the right upfront tariff for private sector generation projects. It is the lack of knowledge that NEPRA, so far, is unable to develop or explore new tariff methodology to counter excess installed capacity or improve the sector’s financial viability. There are several instances where DISCOs, K-electric, and even provinces, in case net hydel profit, remained unsatisfied with NEPRA decisions and often went to courts against NEPRA determinations.

It is the lack of capacity that emergency planning and preparedness are inadequate; in the preparation to participate in national decision-making and communiqué concerning power sector challenges. Above all, there are delays in preparing the regulatory framework required to establish and develop a competitive market. There is no evidence of a separate research wing at NEPRA. No direct funding for research activities is evident in its financial statements. A research department may help handle challenges related to market development, give information on new technologies developed globally, and give input in government policy and planning, keeping in mind the ground realities. However, NEPRA, being aware of the need to improve its human resource capacity, is taking steps.⁵⁷

Theoretically, to be effective, NEPRA as a regulatory body must have some regulatory standards, regulatory guides, and internal guidance for use by the regulatory staff. This suite of documentation not only needs to exist, but it needs to be reviewed regularly and updated according to need. But it is revealed in an informal discussion with

⁵⁶Despite repeated attempts, NEPRA did not share information on professional staff, i.e., number of economists, engineers, tariff specialists, lawyers etc.

⁵⁷The chairman’s message in the NEPRA Annual Report 2019-20 mentions the development of online training programs on different subjects for the employees to enhance their professional knowledge and skills. Besides, the Massachusetts Institute of Technology (MIT) and Florence School of Regulation were engaged in the capacity building of NEPRA employees.

the staff that set-up at NEPRA is no different from other organisations (especially in the public sector). Most of the training programs are also not very helpful, as the ground realities in Pakistan differ from other countries. The report on NEPRA (USAID, 2019) revealed that the officials at the authority are learning from experience.

In the amended Act, Section 10A provides *legal protection* to NEPRA authority, officers, and employees for their actions in good faith or intended to be done in pursuance of this Act or any rules or regulations made. This provision shall facilitate officers in carrying out their functions, particularly monitoring and enforcement, without fear of courts. However, in Pakistan, there is a tendency for frivolous litigation by vested interests to evade regulatory measures against them. For instance, a petition against the initiation of investigations or inspections by the regulator may impede regulatory action. NEPRA Annual Report (2021) reports that 1293 litigations are pending in different courts as of June 06, 2021, in which a decision of NEPRA is challenged, or NEPRA is made a party. A significant number of pending cases also indicates a shortage of a good legal team at NEPRA, also pointed out by experts.

Some positive developments have occurred in the IT department since 2015-16. The department is evolving to introduce e-governance, paper-less environment, and Open Electricity Data concept in NEPRA. As a first step, NEPRA Dashboard is developed. In 2019-20, the digitisation of files and records started, which will be made available in the SharePoint ECM intranet server. Besides, NEPRA launched the online complaint management system for the public in 2018, expected to be functional soon. Similarly, e-licensing is also on the cards. The hope is once e-licensing is in practice, the delay issue (discussed in previous Section) would resolve to some extent.

Besides, NEPRA has made departmental KPI's to measure success based on specific goals and targets for departments and staff to prove the effectiveness of their performance for achieving their departmental objectives (NEPRA Annual Report 2020-21). This positive step needs appreciation.

4.3.2. Financial Capacity

Regarding NEPRA's financial resources, the 'Authority' approves the annual budget of NEPRA to ensure effective monitoring and control of operating and capital receipt/spending items. In pursuance of section 14 of the NEPRA Act, the statutory audit of annual accounts of NEPRA is carried out by the Auditor General of Pakistan. Similarly, an external audit of NEPRA accounts is also carried out annually via some well-reputed chartered accountant firm. This initiative by NEPRA needs appreciation, as NEPRA is not bound by Act to do so.

The Federal Government provided the initial funding of NEPRA, an amount of Rs 100.5 million. Since then, NEPRA has been meeting its expenses from licensing fees and filing fees for tariff applications. At present, an annual license fee is its primary source of income. NEPRA collects annual license fees under the base rates, as defined in NEPRA (Fees) Rules, 2002 computed/indexed with the most recent Consumer Price Index (CPI) published every month by the Pakistan Bureau of Statistics (PBS) (NEPRA Annual Report, 2020). NEPRA surplus income after-tax increases continuously (Table 4.5), indicating NEPRA has sufficient financial capacity to carry out its functions.

Under total administrative expenses, salaries, and benefits account for 76 percent to 80 percent in the last five years, whereas the budget allocated for training and development remained 1 percent or less of total administrative expenses (Table 4.5). It indicates NEPRA's priority in upgrading its human capacity.

Table 4.5

NEPRA Income and Expenditure Account (Rs Million)

| Year | Fee Income | Other Income | Administrative Expenses | Finance Cost | Tax | Surplus after tax | Other Adjustments | Total Comprehensive Income |
|------|------------|--------------|-------------------------|--------------|-------|-------------------|-------------------|----------------------------|
| 2016 | 918.96 | 36.2 | 815.1 | 4.1 | 38.2 | 97.8 | (14.5) | 83.4 |
| 2017 | 1026.4 | 29.4 | 935.6 | 4.0 | 43.8 | 72.4 | (14.9) | 57.4 |
| 2018 | 1163.4 | 34.8 | 1013.5 | 3.95 | 53.2 | 127.6 | (15.5) | 112.02 |
| 2019 | 1264.0 | 69.8 | 1047.1 | 3.9 | 114.2 | 168.5 | (50.5) | 118.1 |
| 2020 | 1405.03 | 115.5 | 1157.2 | 3.7 | 123.9 | 235.7 | (48.02) | 187.7 |
| 2021 | 1880.3 | 67.2 | 1335.2 | 2.9 | 182.6 | 426.8 | 34.6 | 461.4 |

Source: NEPRA Annual Financial Statements (Various Years).

Via section 12 of the Finance Act 2012, NEPRA must deposit its surplus funds, fines, and penalties with the Federal Consolidated Fund (FCF) of the Government of Pakistan. As evident from its financial statements, NEPRA has deposited its surplus funds since 2011 (Table 4.6). Although, NEPRA claims that this is not affecting its financial planning and management. In the future, the amendment may hamper maintaining high human resource standards, IT standards, IT systems, research & development activities, extensive consultations with stakeholders, etc. Besides, these surpluses also raise the question of a high fee collected by NEPRA, as suggested by some licensees from time to time (Khan and Qawi, 2014).

Table 4.6

NEPRA Surplus Transferred to Federal Consolidated Fund (Rs Million)

| Year | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|------|------|------|-------|------|-------|------|------|--------|-------|-------|-------|
| | 300 | 400 | 111.5 | 73.4 | 126.7 | 83.4 | 57.4 | 112.02 | 118.1 | 187.7 | 461.4 |

Source: NEPRA Annual Financial Statements (Various Years).

As mentioned above, NEPRA has the power to determine its structure and allocation of budget. In comparison, in India, the regulator's budget comes directly from the government budget (Bacon, 2019). NEPRA's funding is established by law (NEPRA Act) and is taken from license fees, filing fees, etc., as prescribed by it from time to time and approved by the Federal Government. Therefore, there is no chance of influence or 'political capture'.

The success or failure of power sector restructuring, i.e., development of the competitive market, depends upon the effective and independent functioning of NEPRA. As discussed above, NEPRA has its funds; therefore, it must have the power to invest or otherwise utilise them. Even if there is a surplus, the Authority has the right to use them to pursue their stated objective.

NEPRA as a regulator is performing policy functions of the state. It is established as a body independent from the influence of ministries, so it must function free of bureaucratic considerations. NEPRA, giving up its surplus to the Federal Consolidated Fund and asking the government to make up for shortfall (if any) in its expenditures may make it vulnerable to political and bureaucratic pressures, thus, affecting its effectiveness.

Does NEPRA Act, facilitates effective governance structure at NEPRA? To what extent does NEPRA Act facilitates its independent and effective functioning?

Findings

Independent regulation (in the true sense) can play an essential role in maximising people's welfare and improving the efficiency of the power sector companies.

4.3.3. Administrative Autonomy

Administrative autonomy is a critical aspect of a regulatory mandate. In the law, NEPRA needs to be provided with powers to perform licensing; determine tariffs; specify standards, review, and assess their implementation; and regulate processes. To be effective, NEPRA should be independent of the influence of power sector companies (it regulates); and also independent from the influence of the Ministry of Energy (Power Division) _who is effectually running public sector energy companies, i.e., generation companies (GENCOs), National Transmission and Dispatch Company (NTDC) and state-owned distribution companies (DISCOs).

By the provisions of the Act, NEPRA is an autonomous organisation under the Cabinet Division according to rule Schedule II of Rule 3(3) Distribution of Business among the Divisions. In the past, efforts were made by the Ministry to bring NEPRA directly under it for better coordination, but provinces resisted the attempt.

However, amendments in the law, which have given more powers in some respects, have compromised regulatory independence in others. For instance, Under Section 14A (5), NEPRA must perform its regulatory duties per Pakistan Electricity Policy and Plan. The law states that NEPRA will implement its clauses through various rules and regulations. The authority is empowered to “issue such directives, codes, guidelines, circulars or notifications as are necessary to carry out the purposes of this Act and the rules and regulations made hereunder.” Regarding rules or regulations_ previously, NEPRA was empowered (under Section 12D) to make or repeal rules or regulations. The amended Act (under Section 46 and 47) is only authorised to “recommend rules or make or repeal regulations”. It may further reduce the regulatory autonomy of NEPRA in carrying out its functions effectively.

The rules and regulations provide processes and guidelines to determine tariffs, issue licenses, and monitor the company's performance. If the rules give enough leeway to NEPRA to obtain all necessary information, the regulator would be able to take decisions objectively based purely on technical considerations. Otherwise, NEPRA's ability to make objective assessments could be affected (USAID, 2018).

NEPRA is not autonomous in its decisions on consumer-end tariffs as the government continues to exercise considerable control over it. Thus, affecting NEPRA's

effectiveness in determining/regulating consumer-end tariffs. Although there is no formal condition or rule allowing the Ministry to reverse NEPRA's decisions, major decisions, i.e., tariffs rates, are subject to Ministry approval. The regulator determines tariffs and can only recommend, which the Ministry notify. Moreover, the Ministry may ask NEPRA to re-consider its determined tariffs or charges.

Besides, under section 31 (31) of the amended Act, NEPRA powers to perform its functions have been reduced if not curtailed. Under this clause, NEPRA determines a *uniform* tariff for all government-owned DISCOs based on their consolidated financial accounts. However, differentiated tariffs are allowed in the case of privatised utilities (currently only K-Electric). It will create difficulty for the regulator to evaluate the managerial performance of DISCOs based on objective criteria and accordingly reward or penalise them. For effective monitoring of DISCOs, company-specific performance, challenges, and issues must be compiled and assessed regularly. However, when DISCOs financial accounts are consolidated, the disparity among companies will be camouflaged, thus, creating difficulty for NEPRA to evaluate each company independently.

Additionally, in recent years, particularly in generation projects under China Pakistan Economic Corridor (CPEC), the government has influenced the tariffs that NEPRA determines. Undue interference and influence of the government hamper the independent functioning, affecting the consumers and producers. The success of electricity restructuring in Argentina and Chile is attributed to a considerable extent to the performance of their independent regulators (Stern, 2000).

On the other side, NEPRA is given some autonomy in enforcing regulatory standards, rules, etc. Section 27(A) allowed NEPRA to investigate any matter violating this Act or any rule, regulation, code, or license issued under the Act. NEPRA is empowered to appoint investigating officers and levy fines on licensees found to violate the Act. The power to conduct the investigation was not with NEPRA in the past. The authority had to request the police, NAB, FIA, or other agencies to perform the required investigations. This change will help NEPRA conduct its affairs regarding enforcement more effectively.

But again, even though NEPRA's decisions are legally binding. However, there is no reliable penalty if the distribution or generation company fails to meet the regulatory standard in practice. NEPRA lacks the authority to make DISCOs accountable for their performance, whether related to operational and commercial inefficiency or over-billing to consumers. Similar is its role concerning the accountability of generation companies (whether in the public or private sector). In particular, the enforcement of service quality is weak (as mentioned in Section 4.2.3). A mechanism to incentivise good performance or penalty in case of poor performance is not in place. In other words, the *de facto* decision-making autonomy is much lower than *de jure*.

To enforce its integrity, NEPRA sends advisories to the Ministry of Energy (Power Division) from time to time for effective utilisation of available generation sources and improving efficiency in the distribution companies. But unfortunately, their advisories are generally ignored.

4.3.4. Accountability & Transparency

The regulator's independence needs to be compliant with measures to ensure that the regulator is accountable for its action. For accountability of the regulator, legislation

should ensure *transparency* of the decision-making process; detailed justifications of decisions; opportunities for all interested parties to take part in public hearings; and provisions for the removal of regulators in case of proven misconduct or incapacity. Proper checks and balances can ensure that the regulator does not drift away from its mandate, engage in corrupt practices, or become grossly inefficient (Malik, 2007).

According to Section 42 of the NEPRA Act, NEPRA must prepare its Annual Reports and the State of Electric Power Services Report. NEPRA shall submit the report to the Council of Common Interests (CCI) and the Federal Government. No doubt, NEPRA has been publishing its Annual Reports since 2003-04 and State of Industry Reports since 2006 regularly. These reports are available on its website. But as such, these are never evaluated at the Federal level, in CCI, or at any other forum.

According to the NEPRA Act, the regulator shall maintain public files open in a convenient form for public inspection; only those files which Authority deems fit. This Act also establishes that NEPRA shall maintain complete and accurate books of accounts of its actual expenses and receipts, which shall be audited annually by the Auditor General of Pakistan. There are also several rules, procedures, and guidelines that provide transparency to the distinct regulatory processes.

As mentioned earlier in Section 4.3.2, in pursuance of section 14 of the NEPRA Act, the statutory audit of annual accounts of NEPRA is carried out by the Auditor General of Pakistan. Similarly, an external audit of NEPRA accounts is also carried. Moreover, transparency at NEPRA is ensured through public participation in the decision-making process by holding public hearings, inviting written comments of stakeholders and the public, availability of public documents including rules, regulations, licenses, tariff determinations, petitions, etc., on the NEPRA website. Most of the NEPRA's decisions are publicly available on their website. However, information regarding its institutional capacity_ its staff expertise is not publicly available.

The law also allowed for removing the Chairman or any member. Section 4(2) says that the Federal Government may remove the Chairman or a member after he is found incompetent or found guilty of misconduct in an inquiry by the Federal Public Service Commission. Though, no such example exists.

The amended Act (section 12 A) allows establishing an Appellate Tribunal, chaired by a former high court judge nominated by the Federal Government or provinces, by rotation. Besides, the Tribunal will have member finance and member electricity nominated by the Federal Government or provinces by rotation. Under the 1997 Act, concerning legal appeals, there were legally established processes to allow regulated companies or other affected parties to challenge or appeal decisions of NEPRA. The process is defined in NEPRA (Procedure for filing appeals) Regulations, 2012. The appeal body was NEPRA itself. However, there was a provision for resorting to courts if dissatisfied with the NEPRA appeal system.

This provision of Appellate Court may provide a forum to check or review NEPRA decisions. It may be considered accountability, as the orders and determinations of the Appellate Tribunal shall be binding on the Authority. Though appealable before the High Court. The formation of an Appellate Court is standard in other countries (USAID, 2018). However, apprehension is that this provision may compromise the independent decision-making of the Authority if the Tribunal makes decisions under the government's influence.

4.3.5. Credibility

In the optimal design of any regulatory institution, there is always a risk of organisational failure unless credibility and transparency in regulatory decisions are in place. Direct involvement of ministers/ bureaucrats in pricing and licensing decisions can affect regulatory credibility and investment decisions (as in CPEC power projects). Politicians turn down the justified increase in tariff for short-term political goals at the expense of long-term benefits of consumers and investments, thus undermining regulatory credibility. In the absence of regulatory credibility, investors being aware of organisational risks associated with their investments will demand high tariffs (as happened in IPPs) to compensate for increased risk. The preference of any investor would always be to invest in industries with an independent regulatory agency (with no government involvement).

A well-informed regulatory framework is a key to improving utility efficiency, mainly when the privatised operator is working in a monopoly environment. But the opposite is the case in the electricity distribution sector of Pakistan. NEPRA's bias in favour of government-owned companies was talked about by many.

4.3.6. Clarity of Roles and Objectives

In the case of Asian regulators, as Jacob (2004) observed, many conflicting public policy missions, government intervention, and market competition go along together and are emphasised equally. So is in Pakistan. Powers and functions are spelt out in Section 7(1) and (2). About NEPRA and government relationship, section 7(2ab) is clear that it will aid and advise the Federal Government in formulating the national electricity plan.

However, about electricity tariffs, section 7(2ac) states that it is the responsibility of NEPRA to ensure efficient tariff structures and market design for sufficient liquidity in the power markets. In contrast, section 31(4) is contradictory. It states that the authority in the public interest determines a uniform tariff for distribution licensees wholly owned and controlled by a common shareholder, based on their consolidated accounts. This clause challenges the efficient tariff structure condition, as the uniform tariff cannot justify the true market principal, where electricity prices reflect the actual cost of service. Besides, this provision of uniform tariffs will seriously jeopardise any effort or incentive for efficiency. Lack of clarity in roles and objectives makes the regulator's job difficult and less effective.

The weak administrative governance in the form of lack of sufficient autonomy and ambiguity in roles in NEPRA results in the overall institutional inability to carry out the desired function effectively. The fundamental constraint highlighted in the evaluation is the lack of capacity at NEPRA to carry out its tasks on time. As we find in previous sections, NEPRA lacks professional expertise to supervise and control the power sector and the authority to establish a rational pricing regime. NEPRA is self-sufficient financially but lacks the human resource capacity to carry out its functions effectively. Without strengthening the regulatory capacity legally and administratively_ to monitor sector, service quality and enforce the prescribed standards, it is impossible to provide tangible benefits to electricity consumers and other stakeholders.

4.4. RECOMMENDATIONS

- There is an urgent need to simplify regulatory processes to minimise delays (because of sludge) in approvals and enhance Federal Government and NEPRA coordination.
- There is a need for clear worded law with provisions for NEPRA's autonomy in decision-making. The law should bar any government interference in the independent decision making of the authority. Only detailed guidelines in the law can restrict undue political influence.
 - The current lack of clarity on roles and functions and autonomy in decision making can open the door to undue government interventions in NEPRA operations. Like countries in Europe (EU, 2019), NEPRA statutes should explicitly determine adequate criteria to ensure the regulator's independence from politics.
- NEPRA is in the process of making new rules/regulations/guidelines in line with the Amended Act; must complete it at the earliest to ensure that the requisite regulatory framework is in place before the formal commencement of competitive wholesale market.
- One of the NEPRA objectives is to alleviate energy poverty; NEPRA must provide an enabling environment for increasing access to those who are under-served or unserved; strategies to promote sustainable energy for all. Ensure standards and measures which encourage the provision of low-cost meters for urban poor and facilitation of distributed generation for rural areas all over the country.
- In law, NEPRA is allowed to play an advisory role purely. Its recommendations must be made publicly available, as well as the government's responses. Moreover, if the government body receiving the recommendations rejects or modifies them, it is required to provide a public explanation for doing so. That will ensure the regulators' integrity.
- The monitoring and enforcement department needs to be strengthened and redefined and should focus on the overall performance of the power sector. Review/ revise the existing standards for the energy companies to improve their performance.
- The transition towards a competitive market requires substantial preparation at NEPRA; NEPRA needs to build the capacity of its staff to work and cope with sector challenges and market forces while meeting their obligations as a regulator. That is,
 - By employing more specialised staff equipped with better and advanced techniques and sufficient background knowledge of Pakistan's Power sector. E.g., One of the ways to reduce the tariff determination challenges is to strengthen NEPRA's tariff division by employing tariff specialists and economists. Those who can manage to incorporate all prudent costs in the final tariff, and who have the knowledge and capacity to explore new tariff methodologies to ensure the sector's financial viability and ensure competitive electricity tariffs to reduce the cost of doing business and the country's trade deficit.

- A research wing at NEPRA may help handle challenges related to market development, information on new regulatory techniques developed worldwide and give input in government policy and planning, keeping in mind the ground realities. NEPRA needs to improve its institutional capacity to supervise the electricity business; acclimatise itself with newer challenges being emerged because of a constantly evolving technological framework of the sector, including smart grid development, distributed generation, grid integration, and development of new innovative models of financing. That is only possible if the authority has a research wing of its own.
- Negligible expense by NEPRA in training and development, in the presence of surplus accounts, emphasised the need to invest more in training and development of its staff for improving efficiency in its regulatory duties.
- Some external factors are also influencing the effectiveness of NEPRA. The most important of these are the court orders. The judiciary must take great care to ensure that its intervention does not deter regulatory decision-making. A robust in-house litigation team is required at NEPRA to defend stay orders and other regulatory decisions before the courts.
- Decentralisation of decision-making powers for effective and speedy decisions in routine matters is suggested. The power sector used to have such a structure under WAPDA.
- More use of information and communication technologies is recommended to minimise delays. To improve coordination among the departments, something like e-office and digitisation of its operations can be helpful.
- For effective accountability, NEPRA reports (Annual and State of the Industry) must also be evaluated by independent experts, just like its financial reports.

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Annex 4A: Key Modifications in New NEPRA Act

- *It defines market operator, electricity trader, electricity seller and system operator; and identify their responsibilities, qualifications, and duties of each of them. The Amendment creates a legal basis for the licensing of all these by the authority.*
- *NEPRA is mandated to perform its regulatory functions in accordance with the national electricity policy and national electricity plan, which the government will prepare and update with the approval of the Council of Common Interests (CCI).*
- *Appellate Tribunal (appointed by the Federal Government) is allowed to which aggrieved parties can appeal against any NEPRA decision. Previously, complaint or grievance redressal was through high courts or through tribunals that NEPRA itself was authorised to establish.*
- *NEPRA powers to ‘make or repeal rules or regulations’ is replaced with NEPRA powers to ‘recommend rules, or to make or repeal regulations.*
- *NEPRA will determine a uniform tariff for all government-owned DISCOs, based on their consolidated financial accounts. Differentiated tariffs are allowed only for privatised utilities (currently only K-Electric).*
- *NEPRA is now authorised to conduct investigations required for managing its regulatory affairs, appointing investigating officers, and levy fines on licensees that are found to be in violation of the Act. The quantum of the fines has been enhanced. Earlier NEPRA had to request the police, NAB, FIA or other agencies to conduct the required investigations. This provision will thus add further clout to NEPRA’s decisions and help strengthen their enforcement.*
- *The Amendment eliminates Section 22, which required the addition of*

Chapter 5

Prime Minister's Construction Package—An Evaluation

LUBNA HASAN, HANZLA JALEEL, and HAFEEZUR RAHMAN HADI

5.1. INTRODUCTION

Acting on the PTI's election manifesto of building 5 million houses, the Prime Minister of Pakistan announced an incentive package for the construction sector in April 2020. This package focused on providing tax cuts, subsidies, and reducing the regulatory burden for creating a conducive environment for construction activities. Since construction in Pakistan is a labour-intensive sector, it was hoped that the package would help the PTI government, albeit partly, deliver its other election promise of creating 10 million jobs. The ancillary by-products were livelihood opportunities and affordable housing for the poor, especially during the COVID-19 pandemic. We discuss the construction package below:

5.2. THE SALIENT FEATURES OF THE PRIME MINISTER'S CONSTRUCTION PACKAGE⁵⁸

The Ordinance was promulgated as the Tax Laws (Amendment) Ordinance 2020 by the President of Pakistan on April 17, 2020, later as Finance Act 2020.

- (a) The ordinance grants the construction sector the status of an industry.
- (b) The ordinance sets a fixed tax regime for builders and developers based on the project area. For builders and developers who choose this scheme, the tax will be computed on a project-to-project basis for (1) a new project to be completed by 30 September 2022; (2) an ongoing project to be completed by 30th September 2022.⁵⁹ The estimated lifetime of a project not to exceed two and half years.⁶⁰ The dates were extended till 30th September 2023 through the Income Tax (Amendment) Ordinance, 2021.
- (c) There will be an exemption from the screening of source of Income as per Section 111 of Income Tax Ordinance of 2001 for capital invested in land or a building. The builders and developers announcing a new project, within

⁵⁸Based on the Tax Laws (Amendment) Ordinance 2020, the Income Tax (Amendment) Ordinance 2021, and analysis by Ferguson and Co (2020) and KPMG & Co (2020).

⁵⁹The construction package and amnesty scheme were later extended through the Income Tax (amendment) ordinance 2021. The tax amnesty (exemption from screening of sources of Income (section 111 of Income Tax Ordinance of 2001) was extended till June 30, 2021. The time for availing fixed tax regime was also extended to December 31, 2021.

⁶⁰The estimated lifetime has been extended to three and half years in the Income Tax (amendment) ordinance 2021 to three and half years.

parameters of this package incentive, shall not be examined for the sources of their wealth.⁶¹

- (d) The builder or developer, willing to avail this scheme, are required to
- (i) open a new bank account and transfer/deposit money into it before 31st December 2020 where investment is in the form of money or
 - (ii) have the title deed of the land in case of investment in the form of land at the time of commencement of the Tax Laws (Amendment) Ordinance. 2020. In the case of investment in land, the construction activity should initiate before 31st December 2020⁶² and finish before 30th September 2022.
- (e) If the investment is made by a company or an association of persons (AOP), such a company or AOP must be a single object (builder or developer) and must be registered under the Companies Act 2017 after the commencement of the Tax Laws (Amendment) Ordinance. 2020 and or on before 31st December 2020. Conditions for investments are as detailed above.
- (f) A person making investments under the above clause shall submit a prescribed form on the IRIS portal by the 30th day of June 2021.
- (g) The money or land invested shall only be used for the said project.
- (h) Exemption from the screening of income will also apply to
- (iii) the first time purchaser of a building or a unit of a building given that (i) for a new project, full payment is made to builder through a crossed banking instrument before 31st March 2023, (ii) full or balanced amount is paid to developers through a crossed banking instrument before 31st March 2023 for an existing incomplete project.
 - (iv) The buyer of a plot who intends to construct a building on it given (i) the purchase and full payment is made through a crossed banking instrument on or before 30th June 2021, (ii) construction is commenced on or before 31st December 2021 and completed on or before 30th September 2023, and the person registers with the Federal Board of Revenue (FBR) through its web portal.
- (i) The builders/developers must obtain from relevant authorities the total land area, covered area, and saleable area in square feet (or yard) of the project, any certificate to this effect, and submit the certificate to the FBR.
- (j) There will be a mortgage subsidy of PKR 30 billion for the first 100,000 houses being built for the poor.
- (k) In case of investment under the Naya Pakistan Low-Cost Housing Scheme, 90 percent of tax payable on the income, profits, and gains of projects of low-cost housing approved by Naya Pakistan Housing and Development Authority (NPHDA) shall be exempted for investors.

⁶¹Section 111 of the Ordinance empowers the tax authorities to require any person to explain the sources of his investments or assets, etc. (Ferguson and Co, 2020)

⁶²This deadline for registration with the FBR as well as initiation of construction on land was extended up to June 30, 2021, in the Income Tax (amendment) Ordinance 2021. The deadline to complete projects registered with the FBR was extended till September 30, 2023. Further, the last date for the purchase of house and plot has been extended from September 30, 2022, to March 30, 2023.

- (l) Builders/developers covered under the special regime will be exempted from the withholding tax (section 153 of the ordinance) on purchase of material (except steel and cement) and of services (provided by non-corporate service providers).
- (m) Compromising section 111 of the Income Tax Ordinance of 2001 on the concealment of wealth, Punjab and Khyber Pakhtunkhwa provinces, and Islamabad Capital Territory have introduced amendments in the relevant tax writs.⁶³
- (n) Provincial taxes have been slashed. Transaction duties amounting to around 8-9 percent, and services cost about 8 percent were reduced to 1 percent stamp duties and eased the rest⁶⁴.
- (o) Aimed at facilitating the construction industry, this package has furthered the regulations through the Naya Pakistan Housing Program (NPHP) and authorised the establishment of the Construction Industry Development Board (CIBD).
- (p) A Real Estate Regulatory Authority to be set up to provide a one-window facility, online approval of permits, and bringing housing-related departments under one roof.

The current package is also seen as an attempt to provide amnesty to both buyers and sellers to whiten their money. For example, it requires, and we quote:

- (1) All money to be invested in projects under this schedule for which an explanation of source is not available with the person making the investment shall be put in a designated bank account of the person on or before 31st day of December 2020 and subsequently be drawn for investment expenses.
- (2) All money to be invested in the first purchase of such projects under this schedule for which an explanation of source is not available with the person making the investment shall be put in a designated bank account of the person on or before the 30th day of September 2022 and be subsequently paid to the owner of the project through a crossed bank cheque.

5.3. WILL THE PACKAGE SPUR CONSTRUCTION?

The construction package promises to address housing deficiency, provide affordable housing, generate economic activity, and provide employment. We evaluate this program on two dimensions, namely: Relevance and Effectiveness. We have also conducted a small perception survey to gauge the response of the end-users.

5.4. RELEVANCE OF THE P. M. CONSTRUCTION PACKAGE

The package seems timely and relevant for ameliorating many ailments that plague Pakistan's housing and construction sector. The construction sector had earlier faced a contraction of activities due to the government's initial stance on the real estate sector

⁶³KP Finance Act, 2010 through a Provincial Ordinance exempts the property value from CVT, be it commercial or industrial, multi-story plazas etc. Also, through an amendment made to Schedule 1's S.N. 18 of Khyber Pakhtunkhwa Act of 1899. The KP Government also notified through 709-11 to grant exemption to Construction and affiliated industries.

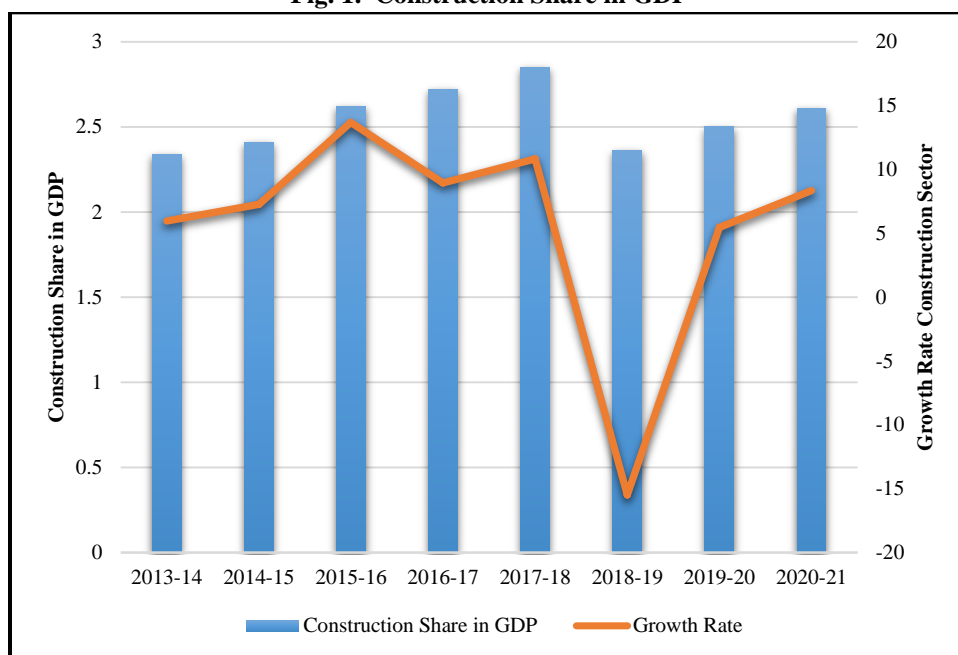
⁶⁴Punjab through its Stamp Duty (Amendment) Ordinance has slashed the stamp duty on immovable property to 1 percent in addition to Sales tax exemption on construction services as per notification dated April 2, 2020.

and a failed reform effort in 2018 that had created a negative sentiment in the market.⁶⁵ Below we look at the construction sector and the housing market dynamics to examine the incentive structure and the factors impeding the demand and supply side of the market, which paved way for an incentive package for the construction sector with a focus on housing for the poor.

5.5. THE CONSTRUCTION SECTOR IN PAKISTAN

Construction is a leading industry the world over. McKinsey Global Institute (2017) had predicted that construction would add 13 percent to the world's GDP and employ 7 percent of the workforce globally. In Pakistan, the sector added PKR 919 billion to the GDP in the Financial Year 2021. Its contribution to GDP stands about 2.7 percent annually,⁶⁶ which is small compared to the neighbouring countries India and China, where the construction sectors are growing rapidly and contributing a more significant share to GDP⁶⁷.

Fig. 1. Construction Share in GDP



Source: Pakistan Economic Survey (PES) (2020-21).

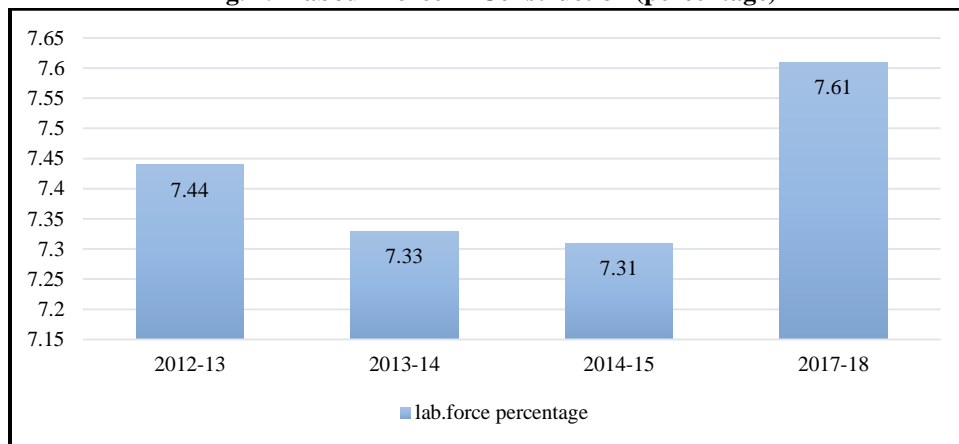
Despite its low weightage in the gross domestic product, it absorbs a relatively large percentage of the labour force.

⁶⁵ See section 5.6.1 below

⁶⁶ On average, construction has contributed about 2.5 percent to GDP over the last 20 years, which pales in comparison to its performance in the early 1990s (4.2 percent) (Islam, 2006, Pakistan Economic Survey 17-18).

⁶⁷ Construction sector contributes 8.2 percent to India's GDP and 6.8 percent to China's GDP (Statista.com, accessed on June 19, 2020)

Fig. 2. Labour Force in Construction (percentage)



Source: PES (2020-21).

It is also a sector that is highly undocumented. Anecdotal evidence suggests that its contribution to GDP is much higher than what official numbers show⁶⁸. The Association of Builders and Developers [ABAD] suggests that about PKR 1.1 trillion is stuck in litigation relating to construction and housing⁶⁹. Fitch Solution, one of the top-rated credit rating agency in the world, predicts the market value of the construction sector in Pakistan to be around PKR 2,705 billion by 2028⁷⁰. The sector has a high multiplier effect due to the backward and forward linkages in the economy (Khan 2008). Estimates put the contribution of construction to GDP at 10 percent after accounting for the multiplier effects (Aurora 2020). Table (2) indicates the value chain in the construction sector. The sector has linkages with more than 40 industries.

Table 5.1

Construction Sector Value Chain in Pakistan

| Value Chain | Complementing Sub-Industries |
|--|---|
| Land Acquisition (both government and Private) | Real Estate, State, Legal Counsel, Bank, |
| Architecture, planning permissions | Consulting and legal costs can be increased by too many permissions |
| Contracting | Consultants, Labour, Engineers, |
| Raw Material & Procurement | Cement, Steel, Glass, Stone, Retail, Plastic, Gas, Electronics |
| Project management and construction | M&E labour managers |
| On-site Construction | Labour, Engineers, Architects |
| Marketing & Sale | Advertising Agencies |
| Use and employment | Rental agencies, offices, homes, employment spinoffs |

Source: Author's own.

⁶⁸ As per the World bank, real estate holds 60-70 percent of the total wealth of the country. This estimate puts the value of real estate between \$300 -400 million (Profit, 2020).

⁶⁹ <https://invest.gov.pk/housing-and-construction>

⁷⁰ Ibid.

Public Sector Development Programme (PSDP) is the main driver of the construction sector, with most revenues coming from government contracts.⁷¹ CPEC has also given boost to construction activities since its onset. Construction of residential projects and houses makes a sizable part of the industry (PACRA, 2021).

The market structure of construction is highly skewed. While the high end of the spectrum is dominated by the government and a few big private firms, the other end is occupied by small private constructors (called contractors or '*thekedar*' in local vernacular). Most of the prominent builders—or developers, as they're called, are either public sector contractors or work on government contracts. FWO, NLC, NHA, WAPDA, NESPAK are heavily invested in public sector work and are public-sector owned. The PSDP remains focused on brick and mortar and offers these large players large portions of public sector work (PIDE Policy viewpoint 11). The most prominent private players—DESCON, Arif Habib—are also taking up the large public sector projects; hence the private sector construction development remains limited. The private sector projects—Bahria, DHA, Eden, Paradise—remain primarily about the construction of single-family houses. This has rendered the construction a lopsided affair in Pakistan mainly consisting of either single-family houses or large infrastructure development (roads, underpasses, flyovers, and bridges). Its grave shortcomings are delineated in the PIDE Policy Viewpoints (12, 16).

The construction sector also suffers from lack of professionalism, planning, qualified workforce, defective and corrupt contracting procedures, time and cost overruns, lack of insurance, inadequate financial resources, lack of equipment (Mir, Tanvir, and Durrani, 2007), low productivity, and lack of innovation (McKinsey Global Institute, 2017), which inhibit the sector from realising its true growth potential.⁷²

5.6. REGULATORY BURDEN AND POLICY FAILURES

Pakistan's construction sector is heavily regulated and controlled (PIDE PV, 12). The procedures and permissions required for construction are extensive and complex. For Karachi, before a builder can start work, about 20 no-objection certificates are needed from several departments (the Sindh Building Control Authority, Karachi Development Authority and Master Plan Department, CAA, SSGC, KE, KW&SB, PAF). The simple process of getting a NOC can take up to a year (Samaa, 2020). The strict regulations for site development, along with the absence of land records and titles deeds, render obtaining a construction permit tedious and time-consuming (SBP 1st Quarterly Report 2019).

The regulatory structure is not well defined either. A developer faces different regulators, spanning across different tiers of government and various Development Authorities. Each Development Authority has its own set of rules and procedures. According to Mr. Arif Habib, regulators such as Sindh Building Control Authority (SBCA) and Lahore Development Authority (LDA) have considerable gaps in regulation standards, quality of human resources, and policies. He terms construction business as

⁷¹ National Highway Authority (NHA) has a portfolio of 40 projects with PKR 179 billion reserved for it in the PSDP outlay (FY21).

⁷² See Annexure 1 for a SWOT analysis of the construction sector by PACRA.

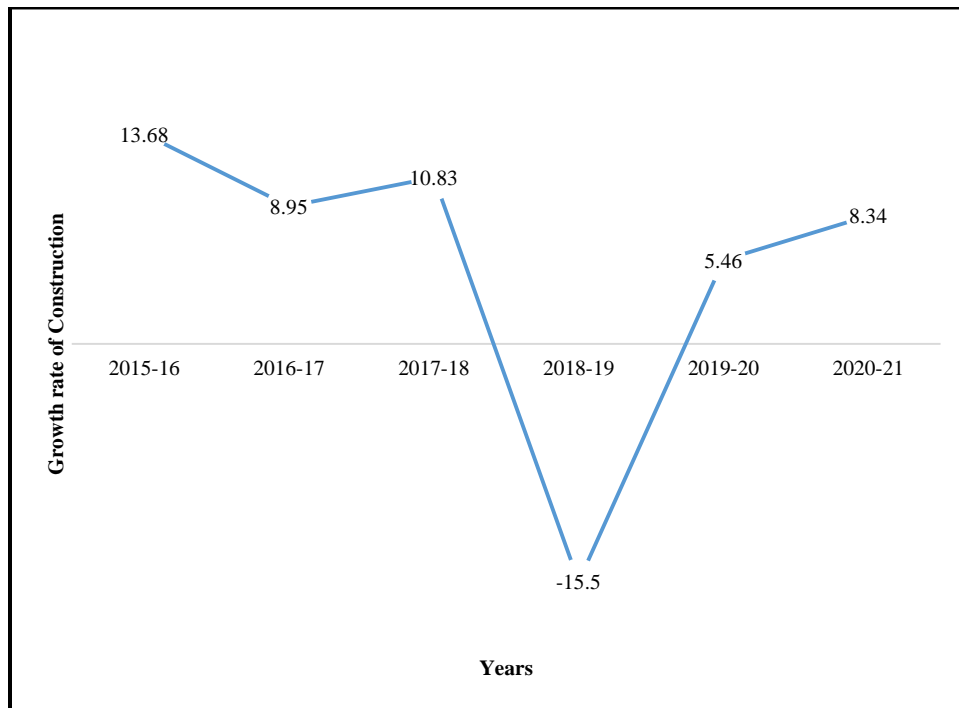
one that must fulfill conditions of town planning, engineering, construction, transport, utilities, legal, and environment. Regulators do not have the capacity to view the sector properly and in its entirety (PIDE Webinar on Construction, 2020).

5.6.1. Policy Failure - The Finance Act 2018

In its earlier days, the incumbent government repeatedly asserted that real estate was a cesspool of black money and had to be ‘documented’ into the formal economy. Numerous measures were introduced in the Finance Act 2018 to counter the under-documentation in the real estate sector and tax avoidance. For instance, it imposed a ban on the purchase of property above PKR 5 million for the non-filers; initiation of legal proceedings against any such transactions that are understated for either concealment of the source of income or tax avoidance; and giving the government the power to purchase the property in question in case the understatement is proven.

This stance created a negative sentiment in the market as transactions dwindled and the businessmen scaled back their works. The construction industry virtually came to a standstill. As per Zameen.com (the most prominent online real estate portal), the construction activity had reduced significantly. ‘Austerity’ had aggravated the unemployment in the country, and no new projects were inaugurated. The State Bank of Pakistan had raised the policy rate to 13.75, which further dampened the willingness to take loans, invest, and construct.

Fig. 3. Policy Failure: Contraction in Construction Activities after the Finance Act 2018

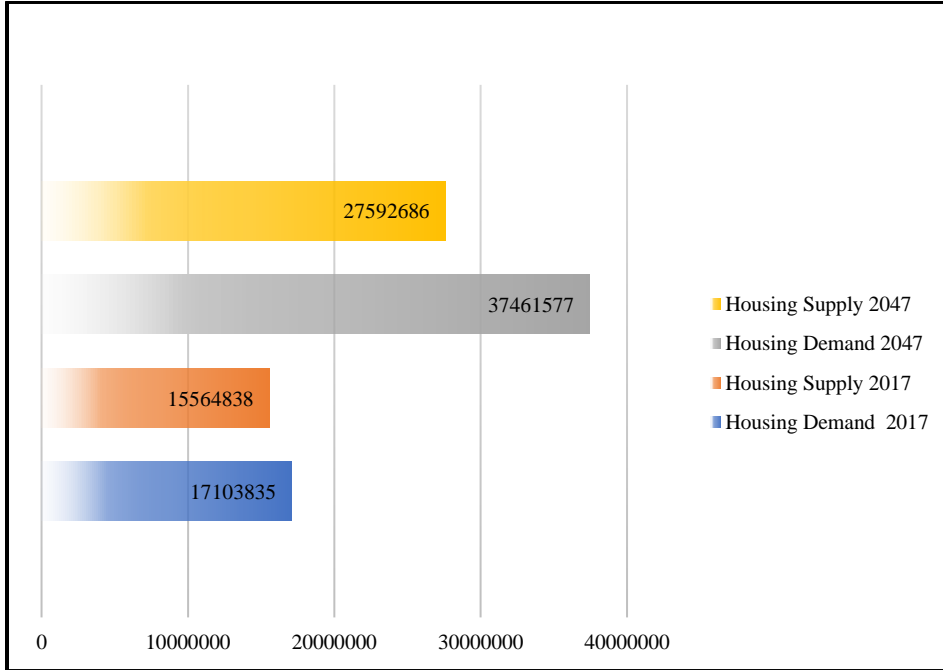


Source: PES (2020-21).

5.7. HOUSING SHORTAGE AND THE DYSFUNCTIONAL HOUSING MARKET IN PAKISTAN

Pakistan also faces a serious shortage of housing. The existing stock of about 32 million houses leaves the country short of between 10-12 million houses⁷³. ABAD estimates that 0.25 -0.3 million houses are constructed annually against a demand of 0.7 million houses, which leaves an annual gap of 400,000 housing units. The population growth and increasing trend of urbanisation⁷⁴ will further require 360,000 units annually in the next two decades (Minhas, 2021).

Fig. 4. Estimated Shortage 2017 projected Shortage 2047 in Punjab



Urban Unit (2019).

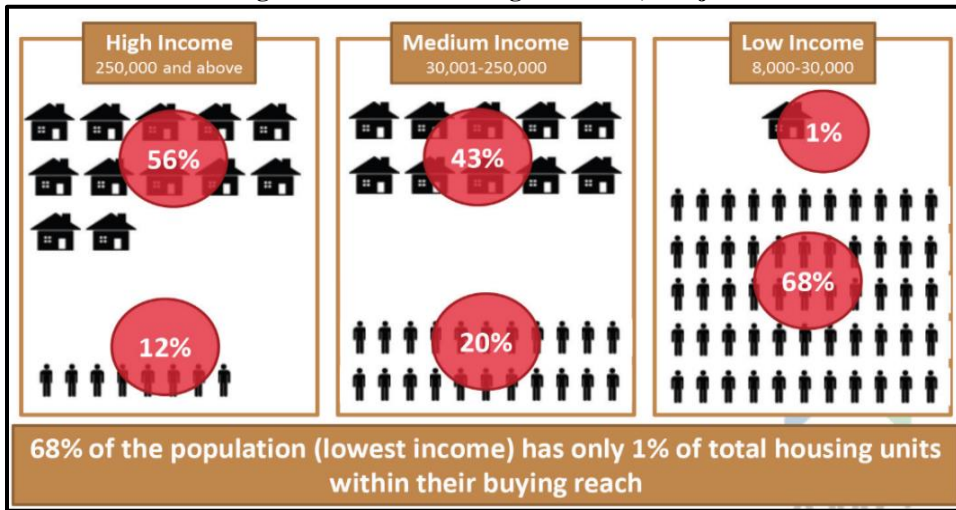
The housing deficit will exacerbate if not tackled on an urgent basis. This shortage implies that about one-third of the population lives with inadequate housing (SBP 2019). For Punjab alone, the housing deficit is expected to increase to about 10 million units by 2047 (Urban Unit 2019).

Much of the housing shortage results from our fancy for garden city approach in urban planning, which is land-intensive and has caused massive sprawl of our cities. This inefficient use of land has made owning a house a distant dream for a large proportion of the population. Vertical development of cities makes housing affordable by distributing the cost of land over many owners. The densification and mixed-use of land in cities have other benefits like reduced dependence on cars.

⁷³ Of which 20 million are in urban areas and 12 million in rural areas.

⁷⁴ Which will add 2.3 million to urban population every year.

Fig. 5. Access to Housing in Lahore, Punjab



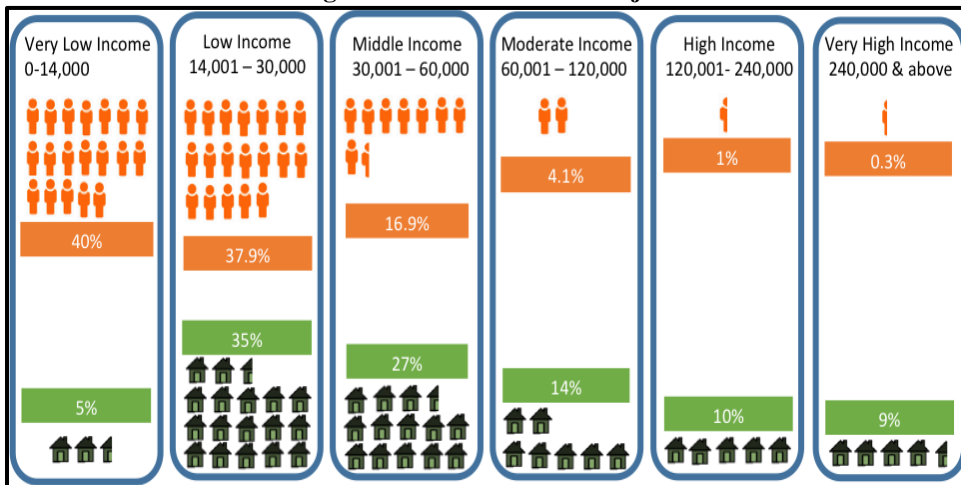
Source: Siddiqui (2014).

Access to housing is also limited. As the above figure shows, in Lahore, 68 percent of the low-income population has only one percent of housing within their reach, whereas the upper 12 percent segment has access to 56 percent. Inadequacy of housing stems not just from the short supply of housing but also from extreme inequality in access to it.

5.7.1. Missing Rental Market for the Poor

The rental housing market is highly skewed against the poor. For Punjab, the poorest 40 percent population has access to only 5 percent of rental housing, whereas upper-income households (0.3 percent) have disproportionately higher access (9 percent) (Figure 6 below).

Fig. 6. Rental Market in Punjab



Source: (Urban Unit 2019).

5.7.2. Inefficiencies in Land Market, Informality and Under-valuation

Pakistan lacks well-functioning land markets. Vague land titling system, regulated prices (such as the Deputy Commissioner (DC) rate), and non-availability of a common record of land and entitlement create impediments in the smooth functioning of markets⁷⁵. Unclear land titles are a major cause of court litigations over land. ABAD suggests that about PKR1.1 trillion are stuck in litigation. “Stringent regulations for site development are responsible for the limited progress” in real estate (SBP 1st Quarterly Report 2019).

To make matters worse, the construction industry is largely informal. Pakistan, in general, has a large informal economy. According to the State Bank of Pakistan (2019), “A significant share of the unreported gains finds its way to the country’s property market. Further, very low official property valuations provide individuals a ‘legal’ way of under-documenting the transactions, those are benefited particularly who aim to minimise their tax liabilities or conceal their wealth as well as the source of income” (SBP, 2019: 92).

Table 5.2

Comparison of DC, FBR, and Market Rates in LHR and KHI

| | Lahore | | | Karachi | | |
|-------------|----------------|----------------|---------------|-----------------|------------------|---------------------|
| | DHA Phase V | Cantt. Area | WAPDA Town | DHA Phase VI | North Karachi | Gulshan-e- Iqbal |
| DC rate | 14000 | 14000 | 8800 | 6987 | 1197 | 6987 |
| FBR rate | 8400 | 11700 | 8400 | 15124 | 3024 | 15124 |
| Market rate | 60254 | 41975 | 41975 | 102180 | 62111 | 59437 |

Source: The average valuation of 1 Kanal Residential Property (thousand Rupees) SBP (2019).

DC = Deputy Commissioner.

FBR = Federal Board of Revenue.

LHR = Lahore, and KHI = Karachi

The difference in District Collector (DC) rate⁷⁶ and Market rate (Table 1) is significant. It not only rips the potential source of revenue for the provincial government but the difference in valuation is also used to whiten black money. It is unclear why property valuations are based on archaic DC rates and do not reflect the actual market price, further hampering the housing market’s growth.

Summing up, given the market imperfections and heavy regulations, the construction sector and housing market are working at a sub-optimal level. We can infer that, at the time of its promulgation, the Prime Minister’s Construction Package and associated tax incentives and subsidies looked pertinent for giving a boost to construction activities, providing employment to skilled and unskilled workers during the Covid pandemic, and increasing the housing stock. The question remains if it would deliver on its promise. In the next section, we analyse the effectiveness of the package. Aside from reviewing the recent construction activities, we have also conducted a small field survey to gain the perspective of the end-user of the package to gauge user satisfaction.

⁷⁵ Minhas (2021) writes that the archaic land titling system creates non-transparency in titles and ownership.

⁷⁶ DC rates are used for valuation of properties for the purpose of levying taxes and stamp duties.

5.8. EFFECTIVENESS OF THE CONSTRUCTION PACKAGE

According to FBR, a total of 2125 projects worth PKR 493 billion were registered under the PM's Construction Package. 1,321 persons had registered themselves through Bureau's online system for 2,125 projects. Out of these, 1,775 were new projects, while 350 were existing projects (The Nation, 2021). Gross Fixed Capital Formation (GFCF) by the private sector grew by 20.6 percent between FY2019 and FY2020. Private sector GFCF amounted to over 95 percent of the total (BOI, undated).

What do we make of these numbers? PTI in its election manifesto had promised 5 million houses and 10 million jobs. The PM Construction Package was pitched to meet both ends. Construction being labour-intensive sector, a boost in it would absorb a large number of skilled and semi-skilled workers. The Prime Minister, while chairing a session of the review committee for the construction sector, had opined that in Punjab only, construction would generate economic activities worth PKR 1500 billion and create 2.5 lakh jobs (The News, 2021). The government believed that the construction of 3 million houses in five years will create 12 million jobs each year for the next five years⁷⁷(NPHA, 2020). Would 2125 projects registered with the FBR and other construction activities outside the ambit of FBR generate the numbers that the government is vouching for is a wild guess at best! Even if we assume a best-case scenario of high-rise buildings of twenty-plus stories, a few housing societies, and the houses constructed by the government, the numbers would not match the target set by the government. Below we discuss where the package hit the right notes and where it hit glitches.

5.8.1. A Much Awaited Reform Package

The stakeholders in the construction sector did receive the Prime Minister's Construction Package with much enthusiasm. Large sums of money were stuck in the real estate sector. There was a perception that the Scheme would boost the construction sector. The data of related inputs also showed an upward trend. Local dispatches of cement went up by 19 percent to 40.2 million tonnes during the first three-quarters of the Financial Year 21. Total cement dispatches (local plus exports) increased to 48.3 million tonnes during this period, up from 40.5 million tonnes from the previous financial year (Dawn, 2021).⁷⁸ Figure (7) below shows the local offtake of cement from July 2019 to June 2021. Barring a dip in local dispatches from February to May 2021, demand for cement saw a steady rise. The data does support an upward trend in the construction sector, but how much of this increase is due to the P.M construction package is hard to gauge when some mega projects are running in the country.

A Construction Industry Development Board (CIDB) was also set up by the Ministry of Planning, Development, and Initiatives. The initial draft bill is pending approval.⁷⁹ CIDB is expected to facilitate the private construction industry, encourage investments, and provide a one-window facility to investors (Business Recorder, 2020).

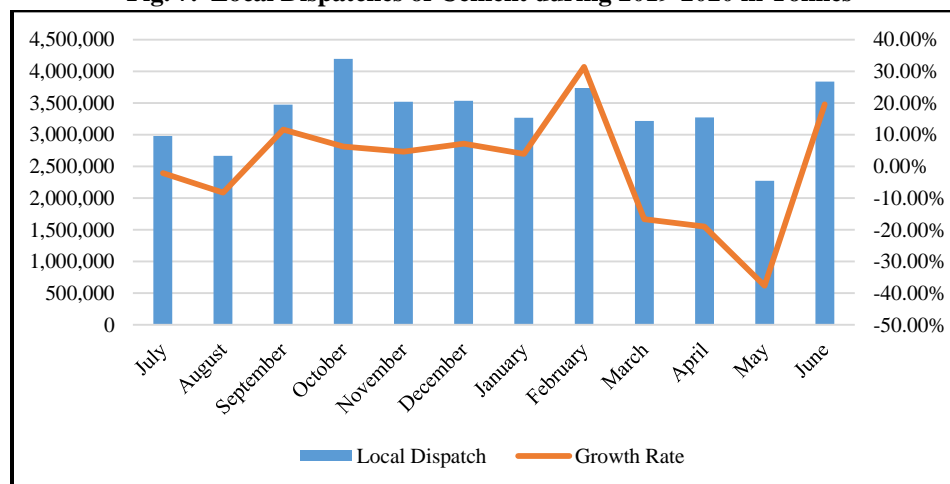
⁷⁷This estimate was arrived at by assuming that the construction of a house creates 20 jobs, and 3 million houses will create 60 million jobs (ibid).

⁷⁸Cement exports also rose by 7 percent during this time. All Pakistan Cement Manufacturers Association (APCMA) expected that the country's installed cement production capacity will reach 99Mt/year within the next few years (Dawn, 2021).

⁷⁹<https://www.pc.gov.pk/web/draftlegis>

A step toward regulation and promotion of the real estate sector was taken with the promulgation of the Islamabad Real Estate (Regulation and Development) Act, 2020⁸⁰, to safeguard the interest of buyers, bring efficiency and transparency in the real estate sector, and provide speedy dispute resolution by establishing an Appellate Tribunal.

Fig. 7. Local Dispatches of Cement during 2019-2020 in Tonnes



Source: APCMA.

The establishment of the Automated Approval Regime by the Capital Development Authority (CDA) and Lahore Development Authority (LDA) has reduced the approval time from years to weeks.

The passing of a Foreclosure Law⁸¹ paved way for the banks to expand their mortgage portfolio. State Bank of Pakistan (SBP) has taken many steps to provide an enabling environment. These include: requiring banks to keep 5 percent of their private sector advances for housing finance, relaxation in prudential regulations, using alternative methods of income assessment, exemption from using verifiable income for calculating debt to burden ratio (DBR), simple and standardised application forms, acceptance of third-party guarantee during the construction period, waiver of debt burden ratio (DBR) in case of informal income, introduction of standard facility offer letter by banks, and establishing helpdesks at SBP field offices (Express Tribune 2022, Rahman 2021).

5.8.2. Unrealistic Timelines for the Projects

The initiative failed to gain momentum initially. As late as August 2020, only 40 projects had been registered with the FBR, with only six months remaining till the deadline (The News, 2020). The developers complained of bureaucratic hurdles and delays, citing lack of coordination between different agencies and Development Authorities and slow processing of projects (ibid.). A former ABAD chairman opined

⁸⁰https://na.gov.pk/uploads/documents/1603371860_439.pdf

⁸¹The law, titled 'An ordinance to provide for the efficient recovery of mortgage-backed securities by financial institutions' (Ordinance No. IX of 2019), was passed by the National Assembly in November 2019.

that getting certifications and approvals from local authorities would be an arduous task. Further, the deadlines for registering projects (December 31, 2020) and for completing grey structures (September 30, 2022) are impractical, given that various authorities' approvals take a long time.⁸² Acquiring reliable contractors and workers would also be extremely difficult (Aurora, 2020). The COVID-19 pandemic had also dampened the construction activities.

The package picked up pace in the first half of 2021 when one thousand seventy projects worth PKR 383 billion were registered with the FBR to avail of the incentives and amnesty by May 2021 (Business Recorder, 2021). Construction sector borrowing in the first half of 2021 stood at PKR 88 billion, up 44 percent from last year's same period (The News, 2021).

5.8.3. Inflationary Pressures and Construction

The construction sector was soon hit by the inflationary trend in the prices of raw materials for construction, putting a brake on the initial momentum. Chairman ABAD, Mohsin Shaikhani, claims that about 50 to 60 percent of construction activities in Pakistan have come to a halt due to a hike in the prices of building material, higher freight charges due to supply chain disruption⁸³, and a weakening of the Rupee against other currencies (Ahmed, 2021).

The Chairman of ABAD claims that the prices of cement, steel, and other construction inputs have increased by 70 percent, which has pushed the overall construction cost from PKR 2500 to PKR 4000 per square foot. The construction of low-income houses has taken a big hit as the estimated price of PKR 3 million has now risen to PKR 4.5 million. Mr. Zaigham Rizvi, Chairman of Naya Pakistan Housing Task Force, also expressed that builders and developers were unable to complete the projects as per earlier estimates and negotiations were underway for the reevaluation of the costs.

Though the prices of construction materials were experiencing an upward trend for the past many years (Table 3), these have shot up exponentially recently. Steel prices started increasing in December 2020 and witnessed an 85 percent increase in its price and were trading at PKR 192,000 per ton (Ahmed, 2021)⁸⁴. Steel bar constitutes 40-50 percent of the cost of construction of high-rise buildings and 15-20 percent share for houses (Zameen.com, undated)⁸⁵. Rising energy costs had pushed up the production cost of steel by 40 percent and increases in fuel prices had raised the freight charges (Express Tribune, 2021).

This inflationary trend in construction materials, owing to disruption in global supply chains due to the COVID pandemic, has dampened the construction activities in Pakistan in recent times.

⁸²The deadlines were later extended through the Income Tax (amendment) Ordinance 2021 as discussed above.

⁸³Freight charges have jackd up from \$2000 to \$9000 from China to Pakistan due to the COVID Pandemic. The charges refer to a 40 foot container (Express Tribune, 2021).

⁸⁴A price adjustment to the tune of PKR 30,000 is expected as international markets correct course (ibid).

⁸⁵The price of steel has decreased slightly by PKR 5000 per ton in recent times owing to low scrap rates and sluggish demand. The price of scrap has come down from \$500 to \$465 per ton. Though, Chairman of Karachi Iron and Steel Merchants Association, Mr. Shamoon Baqir Ali had expected the price to come down by PKR30,000 (Express Tribune, 2022).

Table 5.3

Increase in Costs of Construction Material

| Construction Material | Change in Price (Dec 18 – Dec 20) |
|-------------------------------|--------------------------------------|
| Pipe fittings | 32% |
| Steel bars and sheets | 23% |
| Construction inputs | 23% |
| Bricks, blocks and tiles | 22% |
| Cement | 19% |
| Paints and Varnishes | 15% |
| Ceramic and Sanitary fixtures | 9% |
| Glass sheets | 7% |

Source: Malik (2021).

5.8.4. Where is the Land?

The package aims to spur the construction of 5 million houses to improve the much-needed housing stock. The big question is – where is the land? According to estimates (Table 3), 129,000 acres of land are required to build these houses (Nadeem *et al.*, 2020)⁸⁶.

Table 5.3

Proposed Land-use Breakup and Estimated Area for 5 Million
Low-income Housing Units

| Housing Unit Size | Area of Plot (sq ft) | Percentage | No. of Story* | Housing Units | Area (Acres) |
|---|-------------------------|------------|------------------|------------------|-----------------|
| 3 Marla | 675 | 33 | 2 | 1,650,000 | 15468.75 |
| 5 Marla | 1125 | 18 | 2 | 900,000 | 14062.5 |
| 7 Marla | 1575 | 12 | 2 | 600,000 | 13125 |
| 10 Marla | 2250 | 7 | 2 | 350,000 | 10937.5 |
| Apartments 3 Marla (2 bedrooms) | 675 | 20 | 7 | 1,000,000 | 2678.57 |
| Apartments 4 Marla (3 bedrooms) | 900 | 10 | 7 | 500,000 | 1785.71 |
| Total (45% of total land area) | | 100 | | 5,000,000 | 58058.03 |
| Roads, Commercial & Public Spaces (55% of total land area) | | | | | 70959.82 |
| Grand Total (Area in Acres) | | | | | 129017.85 |

Source: Nadeem, *et al.* (2020).

5.8.5. Constructing Homes for the Poor?

But where is the construction for houses for the poor in the midst of this? Most poor want to live near their places of work, be it the centre of the city, to save on their cost of travel. That is why slums appear where work opportunities for the poor exist. Social Housing programs that do not take account of this fact often fail. The Association

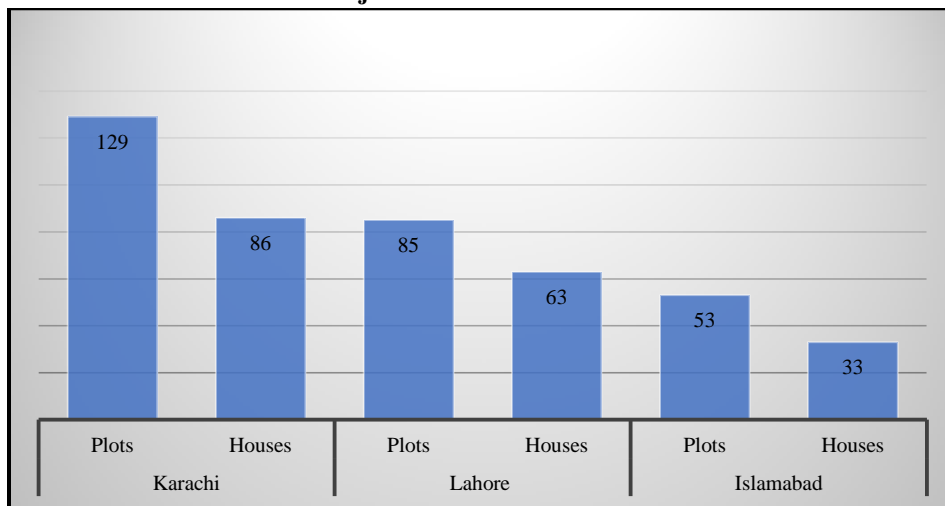
⁸⁶Of 129,000 acres, 58,000 acres would be required for houses and additional 71,000 acres would be needed for road, commercial and public spaces.

of Builders and Developers (ABAD) in Karachi is aiming at the area around Superhighway and Hawkes Bay, where their members already own properties. Both these areas are far away from existing markets, and Hawkes Bay is not connected with public transport (Samaa, 2020). The land is most expensive in the city centres. It is where most job opportunities exist and where poor people want to live. Building houses far away from city centres will add to the miseries of the poor by increasing travel time and cost.

5.8.6. A Market for Plots

Pakistan's real estate market has predominantly been a 'plot' market. As figure (5) below shows plots are more profitable ventures than houses. Prices of plots have risen more sharply in comparison to the house prices. This reflects speculative investments in plots in major cities. SBP (2019) reports that many large industrial conglomerates diverted funds to real estate in search of quick returns instead of investing in their industries. The real estate sector has been the 'go-to' avenue for high net-worth individuals/firms for many years now. Anecdotal evidence suggests that a 125 square yard plot in the commercial area of Bahria Town Karachi has gone up by Rs. 9 million in two years.

Fig. 8. Percentage Increase in Property Prices between June 2013 and June 2018 in Major Cities of Pakistan



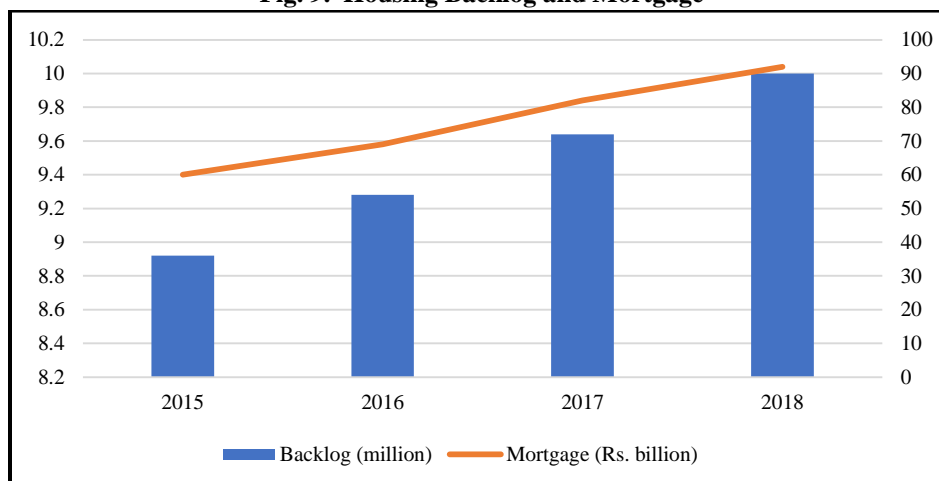
Source: SBP (2019).

Even registration forms for the newly opened sector sell for close to Rs. 100,000, generating millions in profit (Dawn, April 8, 2019). This speculative aspect of the real estate—rather 'plot market' has overtaken building houses as the most lucrative activity. Most buyers of the plot keep them as a holding to sell a few years later at exorbitant profits. A recent study by the Urban Unit Lahore found that 68 percent of plots in approved housing societies were vacant (Urban Unit 2019). The elite has basically captured the real estate business. Only 33 percent of the households in the total population can afford to buy a house (ibid).

5.8.7. Mortgage Reform

House purchase requires a significant up-front investment which is a big hurdle in ownership. Mortgage finance is an important instrument to make house ownership affordable for people with limited resources. The housing mortgage market is under-developed and under-utilised in Pakistan. It has the lowest house mortgage ratio in South Asia (0.25 percent of GDP), whereas India has 11 percent, Sri Lanka 8 percent, and Bangladesh 3 percent (Tola, 2020). The absence of the Foreclosure Law was the biggest hurdle for mortgage finance, forcing banks to adopt a cautious stance for risky investment – lending to the middle or low-income groups. In July 2019, a Foreclosure Law was promulgated by the President in the form of an ordinance titled ‘An ordinance to provide for the efficient recovery of mortgage-backed securities by financial institutions’ (Ordinance No. IX of 2019) to remove this glitch. The State Bank of Pakistan has also announced regulatory measures to supplement the government’s initiatives. Defining a low-income house as one that (1) has a maximum value to PKR. 3 million; (2) has a covered area of up to 850 sq. ft., a loan size of up to PKR. 2.7 million can be availed against it (SBP, March 2019). To facilitate banks/DFI, the reserve requirements against low-cost housing finance portfolio was withdrawn.

Fig. 9. Housing Backlog and Mortgage



Source: Tola (2020).

It should also be noted that subsidising asset acquisition does not lead to poverty alleviation. Often it is a one-time gift to a selected few and not a poverty alleviation program.

More than assets, the poor need sustained growth in their incomes to build and hold on to assets. There is no gainsaying that this will only happen through accelerated growth in the country, which is sustained for about 20 years. As noted in the Framework of Economic Growth (2011), what is required is a coherent set of policies that deregulate the economy for investment to take off. Repeatedly, in the context of Urban Development, that can be achieved through regenerating cities, catalysing economic activity, and easing the businesses in formal and informal sectors.

5.9. P.M CONSTRUCTION PACKAGE—THE GROUND REALITIES

To understand the ground realities, a small survey was conducted. Twenty respondents, owners of 5 and 3 marla plots/houses, were selected for this purpose. Due to Covid restrictions, a convenient sampling approach was adopted. A cantonment area of Rawalpindi, namely respondents living within a 1 km radius of the Lalazar cantonment region, was chosen. The responses from the survey are given in the following bullets.

- The project is time-bound, and the construction is a slow, time-consuming activity.
- After the purchase of the plot, it takes one year to get a construction permit from different departments of the Cantonment Board of Rawalpindi. These departments are Rawalpindi *kachehri*, Tehsil Office, Chaklala Cantt Board, Station Headquarter, and security clearance from the military Intelligence.
- Due to the COVID-19 pandemic, workers' health has to be given due importance, which slows the process.
- Construction material has become costlier, and there is a big gap between the package amount (PKR. 2.7 million) and the actual price of the house.
- 5 *marla* house (double story) costs between PKR 10 to 15 million, and the maximum mortgage amount is 2.7 million for five *marla* houses (Mortgage figures are taken from Meezan Bank Website).
- This makes a five *marla* house out of reach of the poor and lower-middle class.
- Almost all the interviewees had constructed their houses using their own sources.
- There is a perception that the package is for the upper-middle class and not for the poor.
- Further, the respondents felt that the procedure for acquiring the loan is complicated.
- In short, the study could not find a single person who had availed of the house loan.
- The respondents were unaware of any person in their extended circle (friends and family) who had purchased a five *marla* house in PKR. 2.7 million.
- Authorities should allow the purchase of old houses as their prices are low.
- Poor people want to shift in the house after getting the loan amount and don't want to wait for the construction. In this way, they can convert their rents into installments right away.
- The project is time-bound, and the government should extend the period for construction.

5.10. THE WAY FORWARD

This construction package announced by the Prime Minister marks a departure from earlier policies and seeks to revive construction. We can identify three policy initiatives from the PMs Construction Package:

- (1) The Covid pandemic has hit hard across all sectors of the economy. This package was introduced to provide livelihoods to the most vulnerable segment of society.

- (2) Providing homes to the poorest segments of society.
- (3) To lend support to the construction sector, which has sagged due to the documentation drive of the government earlier.

The initiative is huge and intent laudable but is it pitched rightly to serve the above three objectives. The general sentiment in the construction market is positive. Huge sums of money were stuck in the real estate after the documentation drive. The three-year amnesty will help them whiten their money by buying assets and free stuck-up money by selling property.

The Prime Minister conjectures, and rightly so that the construction sector employs a large number of informal workers and needs a special package to revive the economy and livelihoods.⁸⁷ Even though he may not be off the mark, the question remains - is it the right way to hand out the 'incentive package', or do market development and deregulation steps need to be taken to get full-scale benefits from it? The construction package in silos is akin to the sellers without the buyers. Urban development is the key to increasing economic activity, which is essential for creating buying powers for people to purchase housing units. We delineate an urban reform agenda that is needed in conjunction with the construction package for a more profound effect on the living conditions of the urban poor.

5.10.1. High-rise Mixed-use Construction or Sprawl

The commonly held belief that the construction industry mobilises 40 other industries holds true only when we include complex, mix-use, high-rise buildings and places of public entertainment and leisure along with residential plazas. The rhetoric must be complemented with the right act.

A House is a flat in Big Cities.

"Globally, people in big cities live in apartments in mixed-use neighborhoods with ease of access that encourages foot traffic eliminating the need for cars. Why is it that the Naya Pakistan Housing authority is still looking to build suburban housing for the poor far away from the city? Pakistani policy needs to learn from big cities in other countries and accept that large cities cannot be vibrant entities by spreading horizontally and must adopt the vertical growth model." Haque and Khurshid (2020)

The construction in urban planning has to move beyond the single-family households to urban regeneration, allied infrastructure, and city life that supports agglomeration.

Pakistan is now substantially urbanised. Using satellite data, Ali (2013) shows that 70 percent of Pakistan's population lives in urban centres. Some of the world's biggest cities are in Pakistan. As per Noman (2020), ten cities host more than 50 percent of the total urban population in Pakistan. Any proposal for construction must focus on regenerating these cities and making them poor-friendly.

⁸⁷ We discuss this in detail below.

The package does not underscore any area or type except housing. This lack of focus does benefit the status-quo that alarmingly leads to grave urban sprawl and gated communities. The investors are more interested in constructing houses with separate land values to ensure a high return on their investment at the cost of urban sprawl and geographic spread.

The cities in Punjab have spread at an alarming rate. Therefore, the package needed to be focused, and authorities must focus on urban regeneration, high-rise construction, and high-density buildings, as desired by Prime Minister, to:

- (a) Avoid geographic spread,
- (b) Avert high-transportation costs and affiliated pollution costs,
- (c) Have sustainable and regenerated cities.

The country needs to have scores of cranes working every hour to be completing large construction projects. Haque (2017) has, time and again, asked the question, “where are the tower cranes?”. The answer despondently persists as “nowhere in Pakistan.”

5.10.2. Urban Regeneration

Given the prime minister’s desirous agenda for urban development, *Urban Regeneration* can have the highest pay-off. The city centres of our big cities (Sadars in various cities) are all dying because planners have overregulated them. Onerous and erroneous building regulations prevent slums from rejuvenating. Even older middle-class neighbourhoods that are now in city centres such as Lal Kurti in Pindi, Misery Shah and Samanabad in Lahore, Douglas Pura in Faisalabad have poor living conditions, devoid of deserved economic activity and betterment of city; that makes the identity of the city questionable and kaleidoscopic. The planning paradigm thus far has been to forget these areas and build low value-added sprawl (Haque 2015). This is important because the current construction package brings no directive that could engender dividends of high-rise and urban regeneration. Any national construction plan must also consider urban regeneration to elevate life in preexisting urban areas (PIDE Viewpoint 16).

In response to urban sprawl and the negative density per square kilometre of population, PIDE has repeatedly convened discourse on the need of having high-rise buildings. In a recent consultation, the PIDE and stakeholders concluded the need of having high-rise buildings in various cities, including Lahore. The PIDE has argued that this high-rise culture shall:

- (a) Reduce the cost of housing units,
- (b) Lessen the welfare and municipality cost and expenditures,
- (c) And avert urban sprawl.

5.10.3. (De)Regulations

Like most markets in Pakistan, archaic construction regulations have seldom been reviewed; and the PIDE has long resounded that we need to re-imagine our markets. The construction industry is a very good example of how construction, which is a leading sector in other countries, has been curbed by excessive regulation. PIDE has also

argued—and Planning Commission in 2011 conceded this argument in Framework of Economic Growth—that the path to high sustainable growth has to include a period of high-rise buildings in Pakistani cities. And these buildings have to be complex construction within cities, and not sprawl.

To make this happen, several ideas that we have examined, and proposed, are:

- (a) Make cities cohesive and defined: The promise of local governments eludes us. But even with local government, we have to ensure that cities have coherent jurisdictions and even designated areas. Lahore, for example, is divided into almost five overlapping jurisdictions of LDA, Municipal Corporation, DHA, Cantt, etc., and Karachi has 19 agencies, including DHAs, Municipalities, Federal Housing Schemes. Moreover, there are no defined city limits, and mere plot making stretches cities in strange directions.
- (b) The flat is the unit of living in large cities: Whereas in all large cities worldwide, the unit of living is flat, in most of our cities (except perhaps Karachi), planners are holding on to the notion of single-family homes with a garden to be the norm. Surprisingly, the planners remain unaware that the poor cannot be accommodated in such single-family homes with a population running into millions. They had developed a social housing program for the poor in the rural areas around Lahore (Ashiana). The same pattern of mistakes is now being made in the NPHA.
- (c) Density gradients: Let city centres densify through the development of flats living in high (10 or more floors) or midrise (less than 10 floors) buildings and allow for mixed-use there. Density gradually reduces with distance from city centres.
- (d) Deregulation of cities: It should be emphasised that contrary to popular belief, the planner has no tools to develop clarity on where and what to build. Worldwide, people are moving away from the rigid planning of cities that is happening in Pakistan. More and more cities are now developing loose guidelines that allow markets to decide on usage, height, and cityscape. Zoning rules need to be relaxed.
- (e) Mobile cities with limited cars: The planners have, for decades, favoured cars, making mobility for the poor almost impossible. If we want serious development and construction, our paradigm on city mobility has to change. The current paradigm of excluding the poor is based on the use of a car and the preference for suburbia.

“A wholesale deregulation of the real estate sector to facilitate development, transactions, and investment is required. What is holding back real estate development is too many convoluted government regulations based on excessive requirements of permissions and documentation, and outmoded thinking. There is a clear need to check our mercantilist approach and recognise that all economic activity, including real estate investment and development, is productive. In fact, economic activity begins with purpose-built real estate in cities.” Haque and Khurshid (2020).

5.10.4. Simple Rules and their Enactment

The government needs to ensure the uniformity and simplicity of rules to incentivise the developers across the board. The expectation of high-rise and other housing projects to be completed within less than two years is unrealistic. Also, the investors do need liquidity of resources for such large projects. The limited time shall only help the plot-making housing-construction business. Therefore, the state needs to introduce simple laws and do away with the complicated rules and regulations; for they only serve to impede construction and development.

Because of uncertainty due to Covid-19, there's a lack of demand. Thus, the developer must encourage affordable housing units in high-rise buildings, and the state can facilitate them. The construction is imminent, and the government needs to devise easy mechanisms of desired and required construction. For that, the government can start deregulating the system rather than further layering regulations.

Missing Elements of Reform

The government can use this moment to incentivise and streamline its preferences by:

- (a) Enacting (simplifying) laws and reducing the layered over-regulation of markets,
- (b) Relaxing Zoning Laws.
- (c) Encouraging and incentivising high-rise and mixed-use buildings,
- (d) Push further for the condominium law, multiple ownership laws, and reducing the costs of housing units,
- (e) increasing the timeline of incentives for the investors making high-rise, mixed-use buildings,
- (f) Promoting urban regeneration in Pakistan,
- (g) Working with financial institutions to encourage financing for high-rises,
- (h) Punjab, KP, and Islamabad have introduced the amendments in tax ordinances, and the rest need to follow the course,
- (i) The government must encourage the high-rise buildings to construct apartments that shall:
 - (i) Assist in creating more housing units,
 - (ii) Build residential spaces at lower costs,
 - (iii) Decrease the transportation costs and other municipality outlays.
 - (iv) High Building Intensity

The construction package in silos is as ineffective and worse off as the sellers without the buyers. Urban development is key to increasing economic activity, which is essential for creating buying powers for people to purchase the housing units.

The dwindling buying power must be aided two-sided: a) the economic activity can generate employment and increase purchasing power, b) high-rise and apartment-buildings can reduce the inflated costs of house ownership through condominiums and apartments.

Multiple ownership, the establishment of mixed-use buildings, allowance of electricity, and other utility installments as per requirements can ease the process of doing the construction right (PIDE Viewpoint 12).

ANNEXURE 1

SWOT Analysis of Construction Sector

| | |
|---|--|
| <u>Strengths</u> Steady growing demand Abundant labour force Government incentives and support Readily available raw material Increased government spending | <u>Weaknesses</u> Lack of technical Innovation Highly impacted by allied industries Deadlines and delays |
| <u>Threats</u> Low barriers to entry Possibility of lockdown Exchange rate fluctuations Inflation | <u>Opportunities</u> Naya Pakistan Housing Scheme Initiative Government initiatives Lower capital gains tax Advancement in technology |

Source: PACRA (2021).

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Chapter 6

Pakistan Electronic Media Regulatory Authority (PEMRA)

FAHD ZULFIQAR and FIDA MUHAMMAD KHAN

6.1. EXECUTIVE SUMMARY

- Since the liberalisation of the broadcast sector in Pakistan, broadcast media has grown exponentially. The regulations were introduced in 2002 to create an enabling environment for the existence of independent press in the country. The objective of independent press has not been achieved yet. This chapter highlights issues which have hampered the capacity of the media regulatory authority, PEMRA, in not meeting this target.
- Independent media is one of the important responsibilities of the governments which play a critical role in informing its citizens, increasing social interactions, and shaping democratic values. To achieve these objectives, the government of Pakistan, decided to liberalise airwaves of the country in 2002. The intent was to introduce a regulatory authority which designs a regulatory framework for issuing licenses for electronic media to the private sector. Hence, PEMRA was established through the PEMRA Ordinance, 2002.
- PEMRA Ordinance, 2002 articulates a wide array of the authority's objectives regarding improvement in the standards of information, education and entertainment, provision of a wider choice of news and current affairs to the people, easier access of mass media to the rural and urban areas, and good governance ensuring accountability and transparency. With these objectives at the backdrop, PEMRA was authorised to:
 - Issue licenses to the private sector for broadcast media (satellite television and radio), distribution stations at international, national, provincial and local levels.
 - Regulate issuance of licenses to the private satellite and radio broadcasters.
 - PEMRA is also responsible for issuing licenses for distribution system (such as Cable TV, MMDS/LMDS & Direct to Home (DTH)).

Before PEMRA's institutionalisation, Pakistan Broadcasting Corporation was responsible for informing, educating, and entertaining people through the airwaves of the country.

- Regulatory deficits, poor governance, slow enforcement mechanisms, and compromised independence of the regulatory authority impede the capacity of the regulator to implement its policies and plans.
- The role of media regulatory bodies, is to issue licenses to the private sector which is critical for competitive market and a prerequisite for independent

and free media. Literature quotes that media should be free from State control, but the regulation of broadcast media can be justified on the grounds that airwaves being a public good must be safeguarded.

- In addition, wireless communication requires and justifies government authority over the allocation and licensing of broadcasting frequencies. Templeton (2000) quotes media ownership as a rationale for regulations as limiting the private broadcasting sector helps in not over-expanding the media sector and keeping a check on quality and quantity controls.
- In Pakistan, PEMRA laws authorise the federal government to issue policy directives to PEMRA. Hence, the independent status of PEMRA is questionable in this regard. Moreover, in 2017, the government of Pakistan linked PEMRA with the Ministry of Information and Broadcasting. This ministry exercises the federal government's power to issue directives that further compromises the autonomous and independent status of the regulatory authority.
- The legal and regulatory framework structure is based on a conventional mentality of controlling, policing, and surveillance than facilitating, incentivising, & persuading media to abide by the law. This policing over persuading approach is the cause of trust deficit between licensees and PEMRA.
- PEMRA has not worked itself up for upgrading laws for channels, media broadcasters, and media distributors who are becoming more technologically convergent. In the present era, telecommunication services are offering broadcasting services and broadcasting services offering telecommunication services. The laws need to be upgraded.
- The current broadcast sector has turned into an oligopoly because of strengthening ownership of print media over electronic media outlets, due to which entrance of new content creators and media houses has become difficult. Also, it is difficult for them to compete with the existing media tycoons.
 - The concentration of few media players can control the type of information to be disseminated. Lack of pluralism and asymmetrical information are among the issues identified by media advocate lawyers due to excessive controlling of media houses.
- In a post-colonial society like that of Pakistan, liberties and rights are considered privileges whereas they are vital ingredients for a healthy, economically sound, and socially mature society to come into existence. Like many other areas electronic media industry, an indispensable tool of modern-day life style, is also regulated by the State wherein imprints of Pakistan's colonial past can be seen. The chapter has highlighted those areas wherein institutional constraints in the form of regulations hamper the progress of the media industry by limiting their rights and liberties and forcing them to create specific content, thus rejecting creativity and art. The current report sheds

light on undue government intervention in the media industry, which prevents the media market from performing at the optimum level.

- Ironically, the media was liberalised and the private sector was given a chance to invest in it during the dictatorial rule of General Pervez Musharraf. PEMRA was established to regulate the industry. After analysing document and collecting data, it appears that PEMRA has not served these objectives as intended and has been more of a boogeyman to scare of the media franchises and make them submit to the will of the people in power. The media franchises have to run their business, and hence they have to comply. PEMRA is only visible when it bans certain channels or specific TV programs or political talk shows.
- The purpose of the chapter is not to criticise the PEMRA. However, we have put the objectives for which PEMRA was designed, and what it has accomplished so far (on the ground). PEMRA has managed to expand the choices available to the consumers of electronic media content. The number of TV channels has increased and there has also been an increase in the number of radio channels. We believe that PEMRA suffers from certain institutional, structural, and design issues.
 - **Institutionally**, it has proven itself incapable of bringing in the changes as the fast-changing world of digital media requires.
 - As far as the **structure** goes, it is structured as hierarchical management which hinders creativity and out-of-box solutions since bureaucrats with little or no knowledge of media regulation and industry are occupying key posts without any appreciation for the sensitivity of the “Electronic Media” in the 21st century.
 - Thirdly, it is **designed** as a regulatory authority which invites some questions.
 - Why should there be any media regulation?
 - If regulation is necessary, where do we draw the line?
 - How can regulation and liberalisation of media both go together?
 - Is media regulated in other countries in the same manner?

The report has shed light on PEMRA from this perspective.

- PEMRA is an authority, which makes it sufficiently independent, but the institutional constraints put on PEMRA ties it up to a great extent. They hinder the performance of the PEMRA, as well. By institutional constraints, we mean the formal rules and ordinances that are applied on PEMRA. Such rules and ordinances compel PEMRA to seek the permission and consent of the Federal Government in any major action. When PEMRA as a regulatory authority is supposed to be subservient to the Federal Government, we cannot hope for a free and fair competitive media market in Pakistan.
- Finally, the chapter discusses that certain media groups, due to their economic and political capital, can control the entire media industry. PEMRA, as a regulatory authority, was supposed to stop such monopolies

from coming into existence. Yet, there are media groups that not only have a presence on the internet and TV but also in print media. Moreover, a single group has many licenses ranging from sports, entertainment to local and international news. PEMRA, as per its ordinance, was supposed to stop such monopolies from coming into existence, and it was also bound to protect small media groups and media enterprises in the nascent stage so that the big media houses could not drive them out of business.

- In the end, we conclude that several changes are required at different levels, and PEMRA as an authority needs to be made independent from political and economic control of the government. The rules need to be more inclusive and the structure and design needs to be changed. PEMRA should be given liberty in the drafting of rules peculiar to this industry. PEMRA's design should be altered to make it such that media industry can be put to check yet creativity, art and freedoms are protected.

6.2. THE PROBLEM

PEMRA was established in 2002 by the then government of General Musharraf as a regulator for the newly liberated media industry. As a regulator, it has jurisdiction over what content to be aired and what should not be aired. It has the authority to issue licenses to media channels and has the mandate to keep a check on the media content and intervene wherein the management feels that certain religious/cultural boundaries are crossed by the media group(s) or where there is content that could be harmful to national sovereignty, unity, and morale. The question we intend to address is why there is a need for an authority such as PEMRA. Why is there a need for regulation in the media market, where should the lines be drawn and what are the effects of regulation on the media in the case of Pakistan? Also, we intend to study the effectiveness of PEMRA. To articulate PEMRA's effectiveness, we have reviewed PEMRA's ordinance and analysed outcomes associated with the organisation in the light of its objectives and mandate.

For the current research, research objectives were:

- (a) To study the statutory status and role of PEMRA as the regulator of the media content in Pakistan.
- (b) To examine PEMRA's organogram, explain structure and dynamics therein, and study its regulatory framework.
- (c) To explain the aims/objectives of PEMRA, articulate the same with the outcomes, and study its efficacy in the light of its objectives.

The study's research strategy was qualitative, and the research design was a case study. The Units of Data Collection were documents (PEMRA Ordinance, Acts, advisories, show cause notices, and directives) and PEMRA ex and current officials. We used both telephonic and in-person interviewing methods for collecting data. We used semi-structured interviews for collecting data on themes as detailed in the section on qualitative findings. These themes were identified from existing literature by reviewing reports, Acts and Ordinances, and journal articles. The interview guide was revised along the way as the number of interviews conducted increased during the research. For textual data, we used document analysis, and for data collected through interviews, we have used

thematic analysis as the tools for analysing data. We transcribed data in the first stage for thematic analysis, followed by coding, thematic charting, and theming/sub-theming the data.

6.3. RELEVANCE OF PEMRA

PEMRA was established in the early 2000s to regulate the media market since it had just been opened to the private sector. Before that, there was just one state-owned channel - the Pakistan Television Network - which was a multi-content broadcaster. The only access that the people had to outside media was through the satellite Dish antennas and, more recently, the cable TV service providers. The days were peaceful, and the people were fed the information content in the form of news and entertainment which the State wanted them to see. PTV was the tool in the hands of the government, and through it, the State ensured and strengthened its monopoly over broadcast information. The Pakistani media customer had little “freedom to choose” because PTV was the only option available to the public; dish antennas were a luxury that everyone could not afford. Cable operators were an urban middle-class phenomenon. So, post 9/11, when the entire world experienced a change, Pakistan and its institutions also changed accordingly. Media, the fifth pillar, being one of them. There came private media channels, both TV and Radio, the cable business flourished, and so did the sale of both tangible and nontangible entertainment goods. With this shift in consumer preferences, the Government decided that an entity should keep this alien creature to Pakistani society on a tight leash. And hence PEMRA was established on the 1st of March 2002.

PEMRA gets its legal backing from article 19 in Chapter 1 of the constitution of Pakistan. Freedom of speech is a fundamental human right, and the country’s constitution guarantees this right for its citizen. The article states that:

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence”

It is pertinent to mention here that PEMRA was not the first ordinance of its kind. There had been others preceding it, namely Electronic Media Regulator Authority (EMRA) in 1997, which was presented by a caretaker Government⁸⁸. Another ordinance, Rambo Ordinance, was approved twice by the Cabinet of Pervez Musharraf in 2000, but it couldn’t go any further. Finally, in March of 2002, a revised version of the Rambo Ordinance was approved and was named Pakistan Electronic Media Regulatory Authority (PEMRA). The PEMRA Ordinance of 2002 is still enforced. Before PEMRA, there was just one State-owned channel wherein specific time slots were allotted for sports, entertainment, news, and talk shows. A movie used to be featured once a week, a prime time serial aired at 8 o’clock followed by the 09:00 PM *khabarnama* were the two most awaited programs of the day.

⁸⁸ <https://www.dawn.com/news/1104318>

To quote Javed Jabbar, this was an extreme case of monopoly.⁸⁹ The State-controlled what news to be aired and which one to be suppressed. Every political party, when in power, used PTV as Media Avenue to broadcast politically motivated negative information about its opponents. Newspapers were the only avenues where there was some room for criticism of the government. So, suddenly when in such a society, there comes an ordinance that allows for multiple media channels and aims at expanding the options for consumers of mass media, it would certainly lead to mega changes. The abundance of media channels following the ordinance did warrant regulation so that things do not go out of hand, and therefore strong, powerful, and well-equipped PEMRA was the need of the hour.

As per the PEMRA Ordinance 2002, PEMRA's mandate is to regulate the establishment and operation of broadcast media and its distribution.⁹⁰ This may include international broadcasters operating in Pakistan and other local and regional TV and radio stations. The PEMRA ordinance empowers the authority to issue laws that it deems necessary for the regulation and operation of the broadcast media industry in desirable ways. The PEMRA ordinance gives immense power to the authority. It can suspend, close down, re-open, reward or punish any media broadcaster and distribution house as it likes. The question is, what repercussions this amount of power concentrated in a single authority has for free media? Since freedom of expression and freedom of media are necessary for a functional democracy. Were the stakeholders, including the media channels, taken into confidence? How does the uneasy relationship between free press and immense regulation balance? What types of changes are required at the State, legislative, and executive? The current evaluation will try to point out the changes and reforms in these areas.

6.4. STATUTORY STATUS: PEMRA ORDINANCE, 2002

The key features of PEMRA Ordinance (2002) are as follows:

Objectives

The objectives of the Ordinance are to:

- Improve the standards of information, education, and entertainment;
- Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama, and other subjects of public and national interest;
- Facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level;
- Ensure accountability, transparency, and good governance by optimising the free flow of information.

⁸⁹ <https://www.dawn.com/news/1104318>

⁹⁰ Article 4 section 1 PEMRA Ordinance

The objectives cover four important elements for improving standards of information, enlargement of entertainment choices for people, outreach to the locals both in the provision of services and devolution of power, resources, and responsibilities, and finally, to ascertain good governance.

PEMRA as Authority

The Federal Government established PEMRA after commencement of the Ordinance to meet the above-mentioned objectives. The federal government, “may, as and when it considers necessary”, issues directives to PEMRA on policy matters wherein the Federal Government’s decision will be considered final.

- PEMRA members: As per Ordinance, 2002, PEMRA will include chairman and 12 members detailed as:
 - The Chairman: Renowned professional experienced in media, business, management, finance, economics or law.
 - 1 member appointed by the Federal Government on full-time basis, 5 citizens chosen from all the provinces ensuring representation from one or more fields of media, law, human rights, and social service. Out of these 5, must be women.
 - Secretary, MOI&B, Secretary, Interior Division, Chairman, PTA and Chairman, Central Board of Revenue shall be the ex officio members.
 - Two members shall be appointed by the Federal Government on need basis on the recommendation of the Chairman.

Responsibilities of PEMRA

- Compilation and submission of an annual report on its operations and accounts for each financial year. The report will be presented to the President of Pakistan. The authority will also publish and disseminate report.
- The Authority shall issue licenses for broadcast media and distribution service in: (i) international and national scale stations, (ii) provincial scale broadcast, (iii) local area or community-based Radio and TV Broadcast, (iv) specific and specialised subjects, (v) distribution services; and (vi) up-linking facilities.⁹¹
- Issuance of License
 - Exclusive right to issue licenses for the establishment and operation of all broadcast media and distribution services. PEMRA will use this right “in conformity with the principles of fairness and equity applied to all potential applicants”. The eligibility criteria will be based on criteria notified in advance.
 - License will not be issued to a person who is a non-Pakistani, a foreign company or a company whose shares are owned/controlled by foreign nationals or companies, or any person funded or sponsored by a foreign government or organisation.

⁹¹ Please see page no. 7 & 8 of the Ordinance.

- Bidding for the issuance of licenses will be carried if the number of applications exceeds the number of licenses to be issued.
- PEMRA has the power to determine number of licenses to be issued and charge fee at rates fixed by the authority (amenable to changes with time).
- Devising code of conduct (CoC) for programs and advertisements for compliance by the licensees.
- Conditions for the Issuance of Licenses
 - Ensuring preservation of the sovereignty, security and integrity of Pakistan.
 - Ensuring preservation of the national, cultural, social and religious values and the principles of public policy as articulated in the Constitution of the country.
 - Ensuring that all programs and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency
 - Complying with rules made under this Ordinance
 - Representing provincial governments in decisions pertaining to issuance of licenses for establishment and operation of broadcast media and distribution services.
 - Making sure that no monopoly or exclusivity in broadcasting or in establishing or operating of broadcast media or distribution service.
 - In case of issuing licenses to more than one functional media enterprises, PEMRA will ensure principles of open and fair competition.
 - Prohibiting operability of broadcast media or distribution service in case of non-compliance in reference to aforesaid objectives. Suspension of broadcast media or distribution service is contingent on force majeure or with the prior approval of the Authority based on non-compliance with respect to submission of license fee, renewal fee, or any other charge or in case if licensee contravenes any of the rules/regulations/provisions of PEMRA ordinance. In case of suspension, the aggrieved may appeal in High Court.

The Role of Council of Complaints (CoC)

The responsibilities of CoC established by the Federal Government at Islamabad, the Provincial capitals, and in other areas deemed important by the Federal Government include:

- Receiving and reviewing complaints from the public or organisations from the general public against any aspects of broadcasted programs or distributed by a station established through a license issued by PEMRA.
- Members of CoC will include a Chairperson, five eminent members from the general public with at least two female representatives.
- CoCs will have the power to call for the licensees against whom complaint has been lodged.
- PEMRA is responsible for the formulation of rules related to operability and functionality of the Councils within two hundred days of the establishment of the Authority.
- CoCs will recommend a fine against a broadcast program, station, or licensee for violation of the code of conduct as approved by PEMRA.

Authority to Inspect

- PEMRA has the power to hold inspections against a broadcast media station or distribution service.
- All the licensees must remain open to inspection by an authorised officer and provide officer with every assistance and facility in performing his duties.
- Within forty-eight hours of carrying out inspection, the officer will submit inspection report to the Authority. The report will be based on information collected during inspection. PEMRA Chairman can issue show cause notice to broadcast media or distribution service may seize its broadcast or distribution service or seal the premises. The equipment may be issued later. In case of contravention of rules of PEMRA Ordinance, licensees will be charged a fine of PKR. One million rupees.

Offences

- Any broadcast media, distribution service or person who violates any of the provisions of Ordinance will be fined with ten million rupees.
- In case of repetition of the same offence, a person will be imprisoned for a term which may extend to three years, or with fine, or with both.
- If an offence is made by a person who does not hold a license, he will be imprisoned for a term which may extend to four years, or with fine, or with both, in addition to the confiscation of the equipment.
- In case of damages, removals, tampering, or theft of any equipment of a broadcast media or distribution service station, the person will be punished with imprisonment which may extend to three years, or with fine, or both.

6.5. CODE OF CONDUCT

The Ministry of Information, Broadcasting and National Heritage in cognizance with the Federal Government describes following acts as non-compliance to the code of conduct:

- Airing content in news, current affairs programs, or advertisements which is against the Islamic values, ideology of Pakistan, or founders of Pakistan.
- Airing content which incites anti-democratic sentiments against the constitution of Pakistan, country's security and defense.
- Airing content which is discriminatory about any religion, sect, community, or ethnicity.
- Airing content which is vulgar, pornographic or obscene.
- Airing content which incites or glamorises hatred and contempt against an individual or a group.
- Airing content which is against judiciary or armed forces.
- Airing content which is threatening, blackmailing, and falsely incriminating of any person or group.
- Airing content depicting behaviours such as smoking, alcohol consumption, narcotics, and drug use.

- Airing content which is inaccurate.
- Airing content which doesn't treat guests with respect.
- Airing gory contents.
- Airing contents which shows false, distorted or misleading facts.
- Airing content which puts ongoing inquiry, investigation or a trial into jeopardy.
- Airing content which is plagiarised without addressing to the issues pertaining to copyrights.
- Airing enactments of events which depict gore and violence.
- Airing content which glamorises or incites religious intolerance and disharmony.
- Airing abusive language.
- Airing hate speeches.

6.6. COUNCILS OF COMPLAINTS (CoCs)

Ministry of Information & Broadcasting in its gazette published in 2010 detailed establishment of the councils of complaints. The ordinance explains the functions of CoCs as follows:

- To work independently under facilitation by PEMRA and functions will be coordinated by the Secretary to the Authority.
- To take action against the complaints received against broadcast media or distribution service operators as detailed in the Ordinance (fine up to the limit prescribed in section 29 of the Ordinance, suspension of license against a broadcast media or distribution service operator or licensee for violation of the Ordinance).
- Each council to have a chairperson, 5 members (at least 2 should be women), and the members must be persons of eminence from general public.
- The Authority may approve or disapprove of the recommendations made by the CoCs.
- Each of the CoCs to compile and submit report on its operations to PEMRA, bi-annually.

6.7. PEMRA AMENDMENT ACT, 2007

In 2007, PEMRA Amendment Act was framed and implemented. This Act was established to amend PEMRA Ordinance, 2002. Some of its features are as follows:

- There were a total of 28 amendments made in the Act. The amendments were mostly related to explaining the technical terminologies and providing operational definitions for the same. Moreover, under separate clauses and sub-clauses, additional terms such as broadcast media, broadcast station, channel provider, distribution service, DTH, LMDS, among others, were either introduced or further explained for clarity.
- Categories of licenses to be issued were also introduced in the Act such as: international and national scale stations, provincial scale broadcast, local area

community based radio and TV broadcast, specific and specialised subjects, distribution services and uplinking facilities such as teleporting and DSNB.

- The transparency of bidding process was also pressed upon in situations when the numbers of licenses to be issued would be lesser than the license applications. After sub-section 4, a new sub-section was added which says: *The Authority shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees.*
- Regarding power of Councils of Complaint, in section 3(A), following clause was added: *The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation.*
- After section 33, following amendments were made:
 - Federal, provincial and local government officials to assist PEMRA
 - Based on the findings of PEMRA, the Court may issue a search warrant against a person who has ‘unlicensed broadcast media or distribution service’, or if the person has ‘controlled, operated or equipment of such a broadcast media or distribution service is being kept or concealed.’

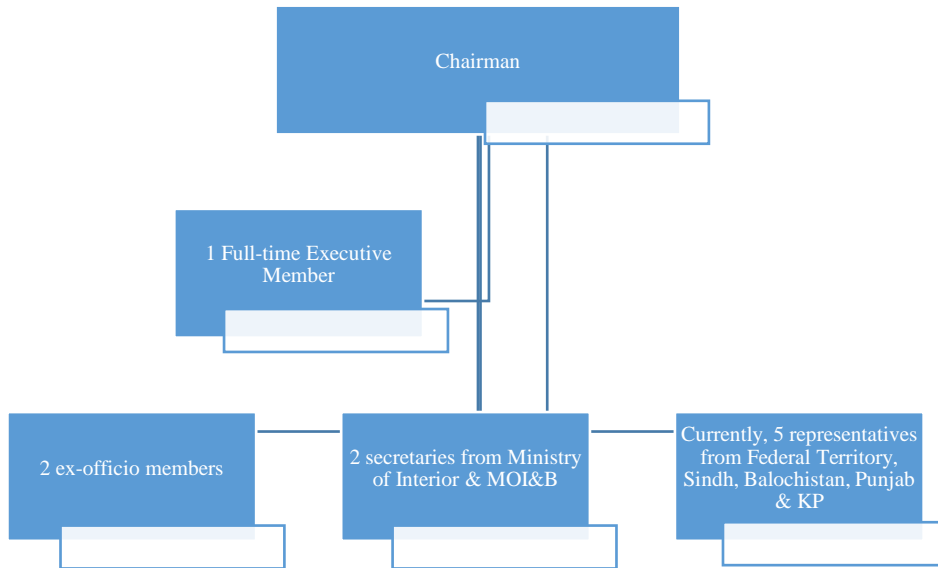
6.8. PEMRA AMENDMENT ACT, 2018

In PEMRA Amendment Act, 2018, following amendments were prescribed:

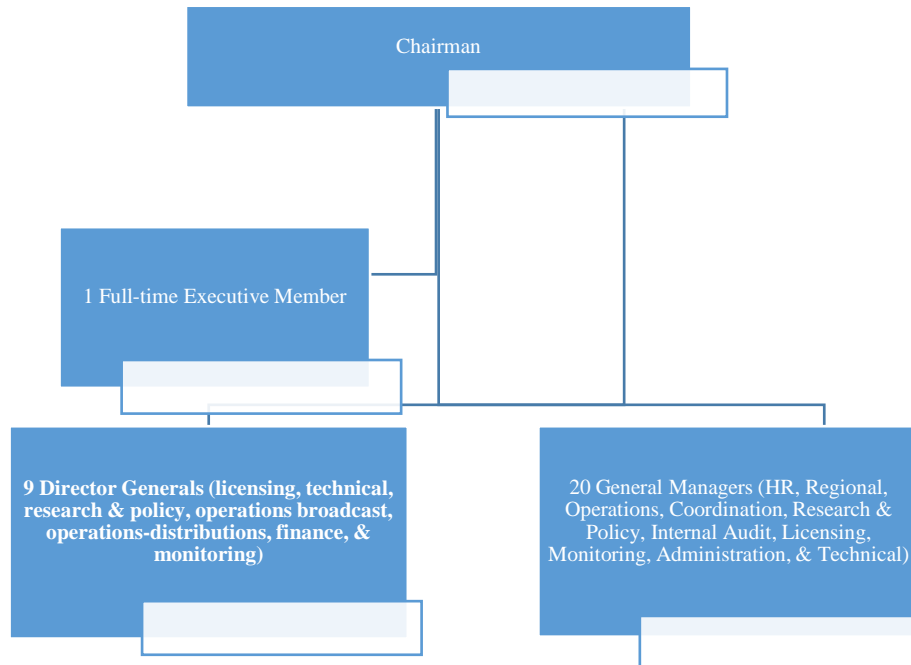
- Under section it was articulated that the Federal Government will have the power to issue directives to PEMRA, ‘in writing on a matter of policy’.
- In cases of ambiguities or questions or concerns raised, the decision of the Federal Government will be considered final.
- PEMRA will include a chairman and eight members who will be appointed by the Federal Government and will embody qualities such as competence and integrity. They must also have experience in any of these fields: Media, Business, Management, Finance, Economics or Law. The Chairman and members should have at least masters or professional degree from an equivalent qualification from institute recognised by the HEC and must also have twenty years of experience in the relevant field.
- Among the members will be one permanent member appointed by the Federal Government who will work on full-time basis, one officer of BS-22 of the Federal Government, the Chairman, PTA, one member nominated by the Pakistan Broadcasters Association, and one member each to be nominated by the provincial government from general public of whom at least 2 must be women. These members will be nominated by the provincial government on rotation basis.
- The composition must also include 2 ex-officio members.
- All members, excepting for ex-officio members, will have to vacate office if remain absent from 3 consecutive meetings.

6.9. PEMRA Organogram

The Authority members are depicted in the following figure.



The administrative functionaries include:



6.10. MEDIA REGULATIONS: EVIDENCE FROM OTHER COUNTRIES

Although every country/region has its peculiar problems and issues, and, indigenous solutions are required to resolve such issues. We are far beyond the one-size-fits-all debate. We acknowledge that every country has its historical realities and political dynamics. There are various social, cultural, and, most importantly, economic factors that determine the market structure and operations. Therefore, we do not argue that we should model our media regulation based on what others have done. Still, we should look into what practices others have adopted, which ones were successful and which weren't, and based on that, we can make a good guess what the peculiarities of our broadcast media industry are and what sort of solutions can we offer keeping in view our unique historical cultural, religious and political situation. Therefore, we intend to briefly describe the broadcast media regulatory framework of some selected countries.

6.11. THE FEDERAL COMMUNICATIONS COMMISSION (FCC): UNITED STATES OF AMERICA (USA)

The United States of America is one of the most relevant examples to discuss since we intend to evaluate PEMRA, a regulatory body in Pakistan. The US constitutions, the bill of rights and the amendments are a euphemism for freedom and the rights of the citizens.

The first amendment regarding free speech provides the foundations for free media in the United States. The amendment states as follow:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”⁹²

This amendment in the US Constitution guarantees individual and press freedom. This freedom is the distinguishing characteristic of the US economy and structure. But despite the freedoms afforded to individuals, certain lines are not supposed to be crossed. There are certain boundaries that need to be set, the freedoms are not absolute, and the US media law is clear on those.

For instance, the media cannot defame a person or harm his/her character by spreading false or unauthenticated information to the public. True that the media is free and the press is given enough freedom to inform the public and form opinions, but that in no way means that the media freedom can transcend boundaries of individual liberties, and personal spaces. If something like that happens, there is a written institutional setup to protect the victims and have their voices heard. Similarly, formal, and informal constraints prohibit the media from spreading information that the government considers inappropriate for public viewing/consumption and which may have an unfavourable impact on national security. There have been instances wherein the government, the court and the press has been dragged into legal battle over publication of material which was classified.⁹³

⁹² https://www.law.cornell.edu/constitution/first_amendment

⁹³ For example, the infamous Pentagon papers case wherein findings of a study regarding the Vietnam War were not allowed to be published by the government. However, the court decided that some parts of the finding may be published while certain critical information shall be kept secret for security purposes and safety of the individuals involved in the clandestine missions during the war. *Source:* <https://courses.lumenlearning.com/americangovernment/chapter/regulating-the-media/>

The United States has a very powerful media watchdog, namely Federal Communication Commission, abbreviated as the FCC. It was established as a result of the 1934 communications act.⁹⁴ The FCC is a seven-member commission that monitors the broadcast media in the United States. Currently, the FCC grants licenses to radio and TV broadcasters. The FCC ensures that the media channel will have to follow the rules and regulations. The FCC, which now has five members, also determines that the broadcaster does not cross the lines and therefore it remains vigilant over the content being aired. The FCC grants frequencies, content approval, fees, and fines. This makes it the US equivalent of PEMRA.

There are specific rules which make the United States Media regulation unique. For example, during a race for a public office, the presidency congress or senate, the TV channels will have to allocate equal time to the participants. If this doesn't happen, the candidates can file a complaint with the FCC. The media channel has to allot equal time, and the rates would also have to be the same. Time will be sold to the participants at the same rate. However, there are certain instances where the rule doesn't apply like coverage of a political rally or coverage of an issue where one or two public officials are interviewed by the journalist.

Till the 1980s there was a practice known as the fairness doctrine, which compelled media broadcasters to give the audience the complete picture and show the two sides of the coin. The FCC also regulates obscene content that is not suitable for certain audiences such as children. If there is any such program which has such content, it only gets late-night airtime slots. If channels do not comply, they are fined, for example, Janet Jackson's wardrobe malfunction cost CBS a huge sum of money.

Other than content regulation, there is an important area of concern where the FCC has played a role. The issue of transparency in media has been one of the hot debates in the realm of US media regulation. Certain specific laws collectively known as the sunshine laws that make the Government agencies disclose information to the public. There are critics of these -called sunshine laws and supporters, both having equally valid arguments. Proponents believe that such disclosures are the essence of democracy, while the opposition holds that such disclosure may have a variety of adverse effects on policy making as well as national security. The Johnson administration in 1966 with the freedom of information act, however reign during his tenure exempted certain government agencies such as the CIA and FBI from the FOIA.⁹⁵

Broadcast media is all about the information it relays between the general public and the government. This makes the media job one of the most difficult ones. In the US, it has been a practice to criticise the administration for not being open enough, but when

⁹⁴ The act was originally made to have uniform regulation for Radio, Telephone and Telegraph. However with the passage of time, there have been various amendments as technology developed and TV, cable and satellite came into the picture. The Act now covers all sorts of information broadcast and regulates the producers and distributors through Government agencies such as the FCC. If the FCC is the equivalent of PEMRA, the communications act of 1934 is the US counterpart of Pakistan's PEMRA Ordinance.

Source : <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1288#:~:text=The%20Communications%20Act%20of%201934%20combined%20and%20organized%20federal%20regulation,overse%20and%20regulate%20these%20industries>.

⁹⁵FOIA is an example of sunshine laws. This act makes the Government offices, the executive branch to give information to the citizen upon the request of the citizen.

the same people (who criticised) got a chance to run the White House, they have sometimes become even more closed. Examples include Barrack Obama, who criticised the Bush administration for being closed. Yet, he only gave a total of 46 question-answer sessions with journalists as opposed to his predecessor, who gave 146. This culture has given rise to journalists relying on sources who provide information on the condition of anonymity, but the supreme court has now lifted the protection from journalists and if a journalist doesn't specify the source, he or she could face jail time, for instance, *Branzburg Hayes* 1972.⁹⁶

The telecommunication act of 1996 was another significant amendment in the 1934 communication act. As a result of this act, the FCC became a monitor rather than a proper regulator. However, still the FCC is a powerful entity and maintains its presence by intervening in the Media broadcast industry as and when required.

6.11.1. Organisation

The FCC is divided into different bureaus, and other offices are working under them. Each office or bureau has its area of expertise, jurisdiction, and span of authority. The key areas include:

- Developing and implementing regulatory programs
- Processing applications for licenses and other filings
- Encouraging the development of innovative services
- Conducting investigations and analysing complaints
- Public safety and homeland security
- Consumer information and education

There are currently seven bureaus and nine offices. The bureaus include Consumer and Governmental Affairs, enforcement, international Media, Public safety and homeland security, and wireless telecommunications. There are nine offices, namely the office of the administrative law judges, office of communication and business opportunities, office of economics and analytics, office of engineering and technology, office of general counsel, office of inspector General, and offices of managing director, media relations and workplace diversity. While conducting its usual business of making rules, the FCC issues notices to the public informing the citizenry of the issues and the rules that are being framed to deal with those new issues or changes being made for reforming already existing rules. The public then responds with comments, criticism, and suggestion. The FCC then considers and gives weightage to the responses received from the public. This type of rulemaking is called "notice and comment".⁹⁷

When it comes to rule making, the FCC classifies its rules into three types

- Legislative rules.
- Non-legislative rules.
- Organisational and procedural rules.

⁹⁶ It was a famous case in 1972 where in the reporters protected the anonymity of the source and refused to answer certain questions of the grand jury. The Supreme Court passed verdict that journalists by not naming the source are obstructing justice. The three reporters had to face jail time

⁹⁷ <https://www.fcc.gov/about-fcc/rulemaking-process>

The non-legislative rules are again divided into subtypes.

- (1) Interpretative rules
- (2) Policy statements

Legislative rules are the result of legislation by the law-making houses of the congress and the senate. Such rules are legally binding on the FCC as well as the public. As quoted on the FCC website, the rule regarding the height of towers can be a good example. Other examples may include the equipment used by broadcasters, their quality, etc. Among the non-legislative rule the first type i.e., the interpretative rules, interpret the meaning of the legislative rules and how to follow them. For instance, there exists legislation that the towers should be of a certain height to reduce hazards for aircraft. The interpretative rules would explain the meaning of what should be height, construction material, what precautions are to be taken, etc. The second type of non-legislative rule is the policy statements. These are communication from FCC to the public. The media houses and distribution agencies explain that how does the FCC intends to follow certain rules and what sort of rewards and penalties are going to be imposed.

The third type of rules is organisational and procedural rules. When the FCC is going to make any in-house changes such as opening a new bureau or delegating powers to some of its offices, the FCC uses organisational and procedural rules. These rules are related more closely to the internal structure and the way that structure is determined.

6.11.2. From where does the FCC Derive Power?

The power to make rules is given to the FCC by the United States Congress. The Congress has given a free hand to the FCC to make specific rules. The FCC has the discretion to introduce new laws and changes, while in a few instances, the Congress does not give that freedom to the FCC. Examples include the grant of licensing to broadcasters in the public interest as a rule wherein the FCC has some level of discretion. On the other hand, if congress asks the FCC to switch from analog to digital and gives a deadline, than FCC no more has its discretion; it has to get the job done.

When does the FCC decide that rules need to be made or amended?

There could many a reasons of the FCC wanting to adopt new rules or make changes in previously existing ones however broadly those reasons could be categorised as follow.

- Statutory Mandate
- Agency identification of a problem
- Petition for rule making.

6.11.3. Statutory Mandate

When the Congress demands the creation of new rules or provisions for changes in the existing rules/regulations, the FCC complies and makes changes accordingly.

6.11.4. Agency Identification of a problem

When the existing body of rules and regulations is silent on the issue than the FCC decides that new rules need to be made. Such situations can result from

technology change and advancement, changes in the market, and peculiar industry behaviours that are harmful to consumers. The FCC will identify a problem and make relevant changes in the existing rules or establish new rules altogether to deal with the issue.

6.11.5. Petition for Rule Making

The ordinary citizens, advocacy groups, organisations (Government and Non-Governmental), and other stakeholders may file a petition and demand changes in the existing laws. The FCC then reviews those demands and may agree or disagree on the changes demanded, however this is one of the mode of rulemaking prevalent in the FCC among others as discussed above. In the usual routine, the FCC makes rules on the notice and comment mechanism. Rules made after such procedure are legally binding on all concerned however, as far as non-legislative regulations are concerned, the FCC has different requirements.

6.11.6. Notice for Proposed Rule Making (NPRM)

Before issuing a notice, the FCC has to give a notice for proposed rulemaking and engage the public in the debate. It's after the NPRM that the FCC can issue a notice and comment for the rule. The NPRM allows for public input before a new law can be made and finalised. The NPRM, serves as a requirement for rulemaking. It is important to note that the FCC or the State can give waivers in good faith for the public interest if it wants to.

The NPRM contains full details such as the need for the new rule of the proposed changes, and it will also include the alternatives available and which one is more feasible moreover, the NPRM may also have the draft of the proposed changes. The deadline for submissions and the contact information of relevant office bearers so that the public can contact them if they need to. FCC tries to ask a direct question on the issues wherein public input is required. The NPRM is then published in the federal register, where it is accessible to everyone.

The public comment period on the NPRM is usually 30 days; however it varies on a case to case basis when the matter is of extreme urgency. The FCC might give less time, or it may extend the deadline if good enough reasons are communicated to them.

The public comments, irrespective of number or length, are then well-received by the FCC. The FCC acknowledges that the public comments are helpful, but FCC requires comments to be backed by relevant data. The commentators are allowed to present their comments in front of the FCC, and this allows for an exchange of ideas and may lead to better rulemaking. These presentations and other rule-making files are then placed in an electronic repository known as the public docket; the docket contains the draft of NPRM, the comments, the reply comments, and all other necessary files related to that particular rulemaking. The docket is accessible through the internet.

6.11.7. Rule Making

Congress is the legislative body in the United States. The entire process is congressional since the FCC derives its power and authority from the act passed by the US congress. When the rule takes the final shape, the FCC is then required to submit it to congress, the congress then can accept the rule, reject it totally, present it for further debate and propose further changes. Even if the Congress approves the rule, the courts still provide an avenue for challenging the rule. The court has many reasons to intervene such as the non-following of due process, violation of APA, or misuse of discretion given to the FCC. Although when FCC proposed rules go through so many filters, there is little chance that it will be dealt with so harshly in the court of law, but as far as procedures are concerned, the court can step up and intervene.

6.12. OFFICE OF COMMUNICATION, UK

Ofcom Act was institutionalised in 2002, based on which Ofcom as a statutory corporate body assumed its office in December 2003. Ofcom issues licenses and regulates the communication industry (telecommunication, radio-communication, cable, and broadcasting media in the UK.

Goals of Ofcom

Ofcom aims to perform three important goals detailed as:

- Independence entails explaining the independence of the communication market from government or private monopoly
- Accountability of regulatory regime to society, to the audience and users of the communication market
- Social and political diversity

Regulatory Role of Ofcom

As mentioned previously that Ofcom as a statutory body was formalised as a result of the Ofcom Act 2002. Among its regulatory role is included:

- To regulate how media programs are transmitted and program content.
- To fine media organisations for breaching regulations
- To close illegal ‘pirate’ broadcasters and commercial broadcasters
- To regulate broadcasting in variant aspects such as:
 - Quality and quantity controls
 - Creating competition by promoting choice, range of viewing, and listening
 - Pluralism of media content
 - Literacy in terms of empowering consumers in accessing services

Ofcom also specifies a code of conduct for the media in the UK. The broadcast journalists should adhere to or face sanctions from their employers. All broadcast journalists must produce politically impartial content. The significant sections of the broadcasting regulations focus on child protection, offense and

harm, crime, religion, undue prominence and impartiality, rules for election and referendums in the UK, rules for fairness, rules for the protection of privacy, and commercial referencing.

Media Regulation in South Asia

- In India, media is regulated by different Acts. For instance, print media is regulated by the Press Council of India Act, 1978. For the regulation of electronic media, Broadcasting Services and Regulations Bill was introduced in 2006. A broadcasting regulatory authority had to be institutionalised, but the Bill is not yet passed. Electronic media (Television and internet) is self-regulated. There are debates currently around whether electronic media should be brought under the PCI Act or make a new Act altogether. For the regulation of films, television, advertisements, and documentaries screened in theaters or television, the Central Board of Film Certification (CBFC) is required. Cable Television Networks (Regulation) Act, 1995, regulates programs and advertisements broadcasted on television.
- Bangladesh Press Council is the only formal regulatory authority in Bangladesh. The Council was established to protect the freedom of press and improve newspapers and news agency standards. The Council consists of 15 members. Usually, a Supreme Court Judge is nominated as the President of the Council who heads as the Chairman of the Council. Three members should be currently working journalists, three editors of news agencies, and three owners of news agencies. Expert panelists should comprise three members: one nominated by the University Grants Commission, second by the Bangla Academy, and the third by the Bangladesh Bar Council. The council addresses issues related to complaints, code of conduct and has the power to summon as well as it enjoys a few rights and jurisdiction of the civil court.
- In Nepal, the National Communications Policy, 1992 opened up licensing process for independent broadcasters. The National Broadcasting Act, 1993 authorises the government as the licensing agency and regulator. The law gives the government the authority to cancel licenses and prevent programs from on-airing. The actions of preventing media content from broadcasting go against Article 15 of the Interim Constitution, 2007, which states that no means of communication will be interrupted except as per law and another which bans censorship of any kind. In Sri Lanka, media regulation is controlled by various Acts directly linked to electronic media regulation, Acts indirectly related to electronic media, and decisions of the Supreme Court and the Court of Appeal. The most procedural and requires extensive documentation is the legal regulation (11 Direct Acts and 9 Indirect Acts).

Table 6.1

Comparison of FCC, Ofcom, and PEMRA

| Country | Regulating Agency | Appointment | Expertise of Commissioners | Stated Purpose | Mandate |
|----------|-------------------|---|---|--|--|
| USA | FCC | Appointed by the US President and then approved by the senate | All commissioners in the current FCC have immense experience in the field of communication policy. They have both public as well as private sector experience in the field. | Commutation act of 1934 FCC is there to regulate all forms of Broadcast media in the United States | Granting of licenses Promoting competition, innovation & quality Revising and reviewing media regulation strengthening the defense of the nation's communications infrastructure Supporting the nation's economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution |
| Pakistan | PEMRA | Appointed by the president directly | Retired and serving bureaucrats | PEMRA ordinance of 2002. Responsible for regulating and establishment of all broadcast media in Pakistan. The authority can make regulations for carrying out the purpose of the ordinance | Improve the standards of education, Informational, and entertainment Enlarge the choices available to people Facilitate the devolution of responsibility and power to the grass root Optimising the free flow of information. To ensure good governance |
| UK | Ofcom | Ofcom Board providing strategic direction to the organisation | Constituting non-executive Chair, Executive Directors, and Non-executive Directors imbibing experience in media economics and communication. | Based on Ofcom Act, 2002 | Quality controls, fine, revocation, and licensing. |

6.13. ISSUES OF MEDIA REGULATION IN PAKISTAN

Regulations and regulatory authorities have very little flexibility, which makes it hard for them to adapt to changes in technology, politics, economics, or socio-cultural changes in society. Regulators are not quick enough to respond promptly; therefore, the case of PEMRA and its response to market changes also offers many questions which

require research. The unique feature of PEMRA compared to other regulators is that it has a very sensitive and strong relationship with the cultural and social aspects of society. The sensitive nature of PEMRA, coupled with a broad mandate wherein definitions of certain important things are unclear and its control over content production and distribution makes it a tough case to be evaluated. The Ordinances are formed but lexicons therein are either undefined or kept adhoc (details are in the subsequent sections). Moreover, there have been instances when PEMRA has acted upon its mandate and has been criticised severely and paradoxically, there have been instances where it has remained quiet, and the silence has been charged. These issues are faced by PEMRA solely because of its pivotal role in regulating electronic media, which forms a significant part of cultural industry. Hence, there are many subjective things. However, both domestic and foreign literature has pointed out certain issues faced by countries in the realm of media regulations.

6.14. THE QUESTION OF REGULATION

E. Dudley and Brito (2012)⁹⁸ define regulations as administrative laws or rules through which the Federal Government implements laws and specifies instructions concerning what individuals, businesses, and related organisations can or cannot do. The authors also argue that market-based economies need rules for efficient functioning and legal frameworks provide standardised instructions for framing and implementing such rules. Regulations can be categorised into social and economic regulations. Social regulations deal with issues related to health, safety, environment, and security, whereas economic regulations concern with industries using economic controls such as price ceilings or floors, production quantity restrictions, demand-supply manoeuvring, and service controls. Theories of regulation provide justification for the government to the behaviours of firms and individuals even in free-market economies. In the following are stated a few theoretical standpoints and later towards the end we will articulate the arguments as proposed in these theories with media regulations.

- According to **Public Interest Theory**, government intervention is justified when competitive markets are not functioning to allocate resources effectively. Hence, politicians' intervention is premised only to correct market failures such as externalities, monopoly power, or asymmetrical information. Public choice theory is critical of politicians' altruistic stands and explains 'self-interest' as the reason for the politicians to intervene (ibid).
- **Capture Theory** argues that framing and institutionalising of standard instructions and rules are not driven by the public interest rather by private interests. In other words, the politicians and regulators are 'captured' by the interests of those intended to be regulated. This standpoint provides a more pragmatic explanation of regulation but doesn't provide a complete picture because many regulations do not tend to serve the interests of the firms, businesses, and individuals being regulated (ibid).

⁹⁸ E. Dudley, Susan. and Brito, Jerry. (2012). *Regulation: A primer*. Mercatus Centre. The George Washington University.

- **The Economic Theory of Regulation** explains the position of the one being ‘regulated’ in a comprehensive way. This theory is based on three interlinked propositions. The first being the basic resource governments embody and has an entitlement over is the ‘power to coerce’ , the second proposition is that interest groups can convince governments to use their coercive power to the advantage of a given group and to the disadvantage of others. Third proposition details that agents such as firms, individuals, interest groups, and government officials tend to maximise their utilities and well-being, even if that actualises at the cost of others. Legislator’s stance to regulate is supported by such groups who lend political support to legislators and regulators in exchange for favourable legislation and regulatory framework.

6.15. BROADCASTING AND TYPES OF BROADCASTING

Rome Convention, Article 3 (f) defines Broadcasting as the ‘**transmission by wireless of sounds or images and sounds for public reception.**’ Broadcasting can be of different kinds: State-controlled (also called public broadcasting), private commercial companies operating at global or local levels, and the third are the ones owned by a community, also non-profit in nature (Abrar, 2012).⁹⁹

- **Public Broadcasting:** Public broadcasting intends to serve the public; hence it is financed from public funds and owned by the State. Its interest should be to serve the interests of the general public as the citizens of the State, not as consumers. However, public broadcasting is misused by the body polity. The funding of broadcasting comes from license fees which can also be done from revenues generated from advertising, sponsorship, tax reductions, or State aid. In Pakistan, the public broadcasting organisation is Pakistan Television Corporation (PTV) which was established in 1964. Initially, it was established as a Private Limited Company under the Name of Television Promoters Company. In 1967, it was converted into a Public Limited Company under Pakistan Television Corporation Limited (PTV). PTV is the largest TV channel in Pakistan and provides coverage to 89 percent of the country’s population. PTV centres are in Karachi, Rawalpindi/Islamabad, Peshawar, and Quetta. PTV has six functional TV channels” PTV Home, PTV Global, PTV News, PTV National, AJK TV, and PTV Bolan. The organisation is owned by the Federal Government of Pakistan, which controls editorial and administrative policies. The government appoints the PTV Board of Directors, who then elects a chairman and managing director. The chairman and MD implement policies framed in cognizance with the Federal Government.
- **Private Broadcasting:** In Pakistan, functional private broadcasting companies include Geo, Aaj TV, Dunya TV, Express TV, ARY, and Hum TV, in addition to a few more vernacular, regional, food and sports channels. Private television broadcasting is regulated by PEMRA. The private broadcasting companies are funded from commercial revenues such as advertising, sponsorship and subscription fee paid by viewers.

⁹⁹ Abrar, Muhammad. (2012). *Enforcement and regulation in relation to TV broadcasting in Pakistan*. University of Glasgow.

- **Broadcasting via TV & Internet:** Broadcasting through TV and internet is also a significant industry in Pakistan. Broadcasting via Television take place through terrestrial, satellite or cable. Similarly, internet also provides broadcasting services, more recently through OTT platforms.

6.16. REGULATION OF PAKISTANI ELECTRONIC MEDIA

Abrar (2012) explains that before PEMRA was established, the electronic media laws were not in a single legislative form rather scattered in different legislative measures such as the Pakistan Television Company Act, 1964, Merchandise Marks Act, 1889, and Pakistan Penal Code, and Custom Act, 1969. Pakistan Telecommunication Authority started operating in 1997 in accordance with the Telecom Reorganisation Act, 1996, to control the private sector of electronic media functioning in Pakistan. With the establishment of PEMRA in 2002, PTA's role is now to 'regulate the creation, operation, and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.' (Abrar, 2012, page. 18).

The four main platforms for distributing TV signals in countries are terrestrial broadcasting, cable television, satellite television, and internet protocol television. Cable Television is a transmission system which takes place through fixed optical fiber or coaxial cable. Coaxial cable is mostly used in Pakistan, whereas some metropolitan cities have been digitalised with fiber optics. Transmission of traditional and broadcasting channels through cable is most common in Pakistan; terrestrial broadcasting is declining as a result of the development of the cable industry for over two last two decades. There is a need to uniform digitalisation of cable TV in Pakistan. Digitalisation can also play its part in increasing cable channel capacity as compared to analog cable TV systems. Digitalisation also helps in improving the quality, makes technical maintenance easier, and improves services such as parental control, pay-TV, and video on demand. PEMRA played its role by approving phase-wise digitalisation of cable TV in Pakistan. The first phase started in the first quarter of 2009 and was completed at the end of 2011. It had two critical features: digital cable TV licenses in metropolitan cities and conversion of existing head-ends in metropolitan cities in which fiber optic and HFC networks were deployed in Karachi, Lahore, Islamabad/Rawalpindi, Peshawar, Quetta, Multan, and Faisalabad. The second phase, which started in 2010, claimed to issue a new digital CTV license and convert existing CTV licenses at a district level.

6.17. PEMRA'S MANDATE

PEMRA is mandated to regulate the production, distribution, and operation of the Media industry. Since 2002, when the media landscape of Pakistan changed and the country which only had one TV channel suddenly jumped a more liberal model wherein private entities could acquire TV channels ranging from sport and news to entertainment and lifestyle. In the military regime where things happen quickly, PEMRA, just like the HEC, was established with a single stroke of the pen by the then administration. Its primary function was to contain the industry through licensing and distribution mechanisms in order to keep a check on the mushroom growth of the industry. PEMRA can make rules, amend them, change them and replace them with new rules. It can allow a company to operate broadcast media stations may it be foreign or domestic TV or radio.

As far as the ordinance is concerned it has monarchic powers when it comes to regulation of the broadcast media industry. However, the same ordinance from which this immense and unrivaled power is derived also chains the authority constraining it from working freely rather the party in power has the real say since Article 5 of the ordinance specifically empower the Federal government to issue directives to PEMRA and that also makes PEMRA answerable to the government at Islamabad¹⁰⁰. The last lines regarding the power of the federal Government stating that the decision of the federal government shall be final on issues of policy and rules. The tone of the draft reflects authoritarian attitude of the federal government. It's understandable that PEMRA like many other regulators were created during the military regime of General Parvez and therefore PEMRA ordinance reflect that dictatorial preference. The question here is that why hasn't there been changes in the ordinance by the successive democratic governments that followed the Musharraf regime? One way to look at it is the hypothesis of Acemoglu and Robinson wherein they talk about political and economic losers. i.e., a change may take place if and only if the political losers are not powerful enough to stop it/ similarly, PEMRA has remained the same although the country no longer under dictatorship. PEMRA allows the Federal government, the ruling elite to bargain effectively with the Media and hence a more independent media regulator will complicate things and make it harder for the political elite to bargain with the broadcast media. There are many instances in the ordinance which require PEMRA to bow to the Federal Government a few examples are given below

| | |
|---|---|
| Article 5 | The Federal Government may, as and when it considers necessary, issue directives to the Authority on matters of policy, and such directives shall be binding on the Authority, and if a question arises whether any matter is a matter of policy or not, the decision of the Federal Government shall be final. |
| Article 6, Section 4 A | ".....the Remaining two members will be appointed the federal government on need basis." |
| Article 7, Section 1 | The Chairman and members, other than ex-officio members, unless earlier removed for misconduct or physical or mental incapacity, shall hold office for a period of four years and shall be eligible for re-appointment for a similar term or as the Federal Government may determine |
| Article 9 | The Chairman and members shall be paid such emoluments as the President of Pakistan may determine and shall not be varied to their disadvantage during their term of office. |
| Article 14 (section 2, sub-section i-v) | foreign aid obtained with sanction of and on such terms and conditions as may be approved by the Federal Government; and all other funds received by the authority from any other source. It can obtain loans on the special sanction of the federal Government |
| Article 23, Section 1 | It is clearly stated in the mandate that the PEMRA will discourage the creation of monopolies. The article states that "no group or person to benefit from any monopoly or exclusivity.....in operative and of no legal effect. |
| Article 38, The Indemnity Clause | No suit, prosecution or other legal proceeding shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder. |

¹⁰⁰ Please see PEMRA ordinance 2002

6.18. ANALYSIS OF PEMRA ORDINANCE

As mentioned earlier, articles 5 and 6 empower the federal government to intervene in the decision-making and design of the leadership of the PEMRA. Such intervention works as a significant hurdle, especially when autonomy is necessary for regulatory authorities such as PEMRA.

The Federal government of Pakistan is usually the one that leads the polls in Punjab and Sindh, the two most important provinces of Pakistan. Therefore, the preferences of the ruling elite are not the reflection of the preferences of the entire country. We can safely assume that the political party in power will never allow for a fully autonomous PEMRA rather, it will desire PEMRA and other such entities to be under their control. A whole body of literature on elite capture and political economy, the most noteworthy and prominent of which is Acemoglu et al.,^{101 102 103} backs our argument when we say that the ruling elite, the political forces in power and the federal government has a big incentive not to make PEMRA as autonomous as it should be. The Federal government will always try to interfere either to control the media industry or favour media corporations that support their cause. In the backdrop of this scholarly work, it becomes clear why the PEMRA ordinance is drafted in this fashion and why it has been constrained, the political party in power will always try to tame it and make it work in the interest of the political regime. This has happened with PEMRA in the past, and there is no surety or legislative change that can ensure that such things won't happen in the future. To make PEMRA more useful and make it more market-friendly (assuming that regulation is a rational and wise economic move.)^{104 105 106 107 108}, we need to revisit the PEMRA ordinance, redraft it make necessary changes, and tailor it to the needs and realities of the Pakistani society keeping in view the social, cultural, economic, and political dynamics of Pakistani society.

For instance, Article 5 states that the federal government has the final say on policy matters. It can issue orders as and when it desires. And PEMRA has to comply. Such power to political government is undemocratic and goes against the

¹⁰¹Acemoglu, D., Johnson, S., & Robinson, J. A. (2001). The colonial origins of comparative development: An empirical investigation. *American economic review*, 91(5), 1369-1401.

¹⁰²Acemoglu, D., Johnson, S., & Robinson, J. A. (2005). Institutions as a fundamental cause of long-run growth. *Handbook of economic growth*, 1, 385-472.

¹⁰³Acemoglu, D., Johnson, S., & Robinson, J. A. (2002). Reversal of fortune: Geography and institutions in the making of the modern world income distribution. *The Quarterly journal of economics*, 117(4), 1231-1294.

¹⁰⁴Freedom of media and regulation in the media industry are very heated topics of discussion. There exists an extreme poles of scholars on the subject. Since going it to that debate is not the objective of this study therefore the issue has not been discussed as much in detail but we do acknowledge that this is question worthy of debate and discussion.

¹⁰⁵McChesney, R. W., & McChesney, R. W. (2008). *The political economy of media: Enduring issues, emerging dilemmas*. NYU Press.

¹⁰⁶Napoli, P. M. (2003). *Audience economics: Media institutions and the audience marketplace*. Columbia University Press.

¹⁰⁷Burger, M. (2006). The discursive construction of the public and the private spheres in media debates: the case of television talk shows. *Revista alicantina de estudios ingleses*, No. 19 (Nov. 2006); pp. 45-65.

¹⁰⁸Kemal, A. R. (2002). Regulatory framework in Pakistan. *The Pakistan Development Review*, 41(4), 319-332.

basic human rights of freedom of media. If the content is disliked by the federal government, it can use PEMRA to punish a particular media outlet, and if it needs it can totally destroy the small and medium-scale players. Therefore, instead of ensuring freedom of media, the PEMRA is used to ensure that media remains on a tight leash.

The young age and mushroom growth on a geometric scale necessitate a regulator, but what kind of regulation is required, how to regulate, and who is to be regulated are all questions that are far more complex than what they appear to be. These questions provide the pillars on which Pakistan's media policy should be based, and its media economy shall be structured. When the regulator and its powers are not specified properly, when its autonomy is not appreciated, and when there are big corporation that can even influence the legislation, regulation, and rules we are doing the exact opposite of what is needed. A free media and well-functioning media industry can serve as a 5th pillar of the government, but government intervention through articles 5 and 6 of PEMRA ordinance makes such freedom a distant dream.

PEMRA, like the judiciary, should be free from political interventions. It should be answerable to the state and not the government. It will function more efficiently when it is free from political pressures. There may be oversight or standing committees comprising government and opposition members from both houses or a team from the judiciary, including civil society members, academics, and civil servants who may review the performance periodically. Article 5 and 6 (4A) need to be revisited, and the political control of the federal government needs to be diminished to ensure the smooth working of the PEMRA.

The appointment of the chairman and the authority members should also be delinked from politics and political control of the government. At present, the PEMRA has 12 members and a chairman. The president of Pakistan selects them. The criterion for appointment of the chairman as described in subsection 2 of the PEMRA ordinance is that he/she should be a person of "known integrity with expertise and experience in the field of MEDIA, business, economics, or the law." This is a vague criterion, it can be subjectively defined, and any person favoured by a political regime can fit in if desired by the ruling party. The criterion should not be so broad and open to interpretation and opinion. There needs to be set criterion, one which is specifically made for a chairman of PEMRA. There needs to be deliberations, debates and discussions on the appropriate criterion; the political bias and influence of the ruling party should be minimised as much as possible. On the flip side, Media corporations may try to coerce political leadership using de-jure and de-facto powers to influence the framing of rules and regulations to suit them (Rasul and McDonald 2012)¹⁰⁹ also see Bagdikian (2004)¹¹⁰, Machensy (2008)¹¹¹,

¹⁰⁹ Rasul, A., & McDowell, S. D. (2012). Consolidation in the name of regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and the concentration of media ownership in Pakistan. *Global Media Journal*, 11(21).

¹¹⁰ Bagdikian, B. (2004). *The new media monopoly*. Boston: Beacon Press

¹¹¹ McChesney, R. W. (2008). *The political economy of media: enduring issues, emerging dilemmas*. New York: Monthly Review press

and Machensy (1999)¹¹², Napoli (1997a, 2003)^{113 114} and Mosco (2009)¹¹⁵ for this point. Enough scholarly work exists that highlights the role of media corporations in influencing the selection of members and even chairman.

The government, on the other hand, may use Regulators such as PEMRA to get back at media outlets that it considers as rebellious, hostile, or undesirable to them. There are many such examples where the government and the ruling political party have used the regulator for their own ends. One relevant is the case of GEO TV during the regime of the Pakistan People's Party. Jang group, through its TV channel, was quick to bluntly criticise the regime, and the government responded through PEMRA by putting charges of tax evasion and also banning the broadcasting of GEO for some time (Rasul and McDonald, 2012). Other examples include the punishment of media outlets for not following state narrative. Such issues emerged during the PTI *dharna* in Islamabad¹¹⁶. Similarly, when the PTI came into power, it slashed government advertisement budget and many unpaid bills. Big television channels such as Waqt news had to shut down. Jobs were lost, and the media industry was put on a downward trajectory. PEMRA was very vigilant in regulating the content production and putting bans. Still, its true purpose, as per its mandate, to expand, improve and make the quality of the broadcast media better by allowing freedom of choice was forgotten. PEMRA still plays this role of listening authority which bans transmission when it doesn't like the content or the ruling party objects to certain program or media product.

Article 6 subsection 3 explains that one member shall be appointed by the Federal Government permanently and the other five Members should be eminent citizens. Two members have to be women while all these members shall have some expertise in Economics, Management, social service or law. The question here is again of the criterion. PEMRA is supposed to regulate the most powerful entity in the society, "the Media". It should be clear that such a regulator needs technical experts. Merely saying that the members should be eminent citizens and adding ex-officio members makes the management design of PEMRA weak, and such a regulator will not be able to play its due role. Similarly, it is admirable that the article mentions and makes it mandatory to have at least two women as members, but what will the criterion be? What is going to determine the eligibility of the women and the men? It should be appreciated that PEMRA needs experts as members, not representatives of various social strata or groups, given the sensitivity of media regulation and the stakes involved.

Article 7 subsection 1 further proves that PEMRA is not as independent as it should be, instead it is brought under political control through various channels provided by the loopholes and generalisations present in the PEMRA ordinance. For instance, in article 7, it is stated that "The Chairman and members, other than ex-officio members, unless earlier removed for misconduct or physical or mental incapacity, shall hold office

¹¹² McChesney, R. W. (1999). Rich media, poor democracy: Communication politics in dubious times. New York: The New Press

¹¹³ Napoli, P. M. (1997). A principal-agent approach to the study of media organisations: Toward a theory of the media firm. *Political Communication*, 14(2), 207-219

¹¹⁴ Napoli, P. M. (2003). *Foundations of communication policy: principles and processes in regulation of electronic media*. Cresskill, NJ: Hampton Press

¹¹⁵ Mosco, V. (2009). *The political economy of communication*. London: Sage

¹¹⁶ <https://www.thenews.com.pk/tns/detail/621174-screen-blues>

for four years and shall be eligible for re-appointment for a similar term or as the Federal Government may determine.” There are many questions that arise due to the vague nature of the above script. Firstly, what is “misconduct”¹¹⁷ How is it defined? What if the chairman says “no” to the political party in power? Will that be counted as misconduct, or will the chairperson just be doing his/her job? For legal clarity, misconduct should be properly defined otherwise, the chairman will always be in a vulnerable position and may also be compelled to bow down to pressure. A Government regulator should always be given enough freedom and autonomy so it can operate fearlessly. Such constraints will hinder the working of the chairman, his/her team and the entire PEMRA. The same is the case with the other members on whom the same rules will apply/are applied.

The ex-officio members of the Authority include the Secretary of MOIB, Chairman PTA, and Chairman Federal Board of Revenue. The federal government also selects the remaining two members. The chairman of the authority may suggest, however the federal government has the final say in the selection. By looking at the composition, it appears that the federal government has a complete say in the board. In theory, the federal government appoints one member and the last two members when the seats are filled, but on the ground, the federal government appoints 3 members, and 3 ex-officio members, making it the controller of PEMRA. There is no denying that chairman PTA, Secretary MOIB, and Chairman FBR are all representatives of the Federal Government. The selection of the board, its representation, and criterion needs to be revisited and revised to make PEMRA more independent and inclusive.

After the selection of the board comes the important issue of remuneration. The remuneration of the chairman and the board members is to be decided by the president of Pakistan. The president is allowed to give any pay package to the board. Article 9 states:

“The Chairman and members shall be paid such emoluments as the President of Pakistan may determine and shall not be varied to their disadvantage during their term of office.”

As good as it sounds, it also means that the saying “No” to the federal government will also be a tough choice to make. There is no criterion against which the remuneration and pay packages can be set. This again increases the influence of the federal on the PEMRA. Therefore, it is of immense importance that the parliament should pass legislation wherein payment packages of PEMRA board members and other regulators may be set based on a standard.

Article 14 sections i-v are regarding the funding of the authority. While section 1 states that seed money will be provided by the Federal Government, the sections immediately preceding it raises questions.

For instance, section 2 states that the authority can apply for a loan, and the Federal government may grant the loan as a special or general case. So here again, the federal government has maintained its sufficient control. There is no denying that

¹¹⁷ The term is very vaguely defined in the ordinance. The ordinance has explained it as follows

“For the purposes of this section the expression

“Misconduct” means conviction for any offence involving moral turpitude and includes conduct prejudicial to good order or unbecoming of gentleman”.

PEMRA is a state institution. The state should keep a check on the regulator and make it stronger and improve it. However, we need to understand that the state and the government are two different things. Government is just one pillar of a functioning state. The media in this regard is as important a pillar of the state as the government. Just like it would be absurd to give the media channels and corporations the control of the government in the same way, it is disastrous for the media market and its consumers if the government is allowed to interfere in it. The ordinance empowers the political authority to interfere in this particular market to a great extent.

Another alarming issue with the ordinance of PEMRA is that it is allowed to take in foreign aid and accept it as a part of the funding (obviously with the consent of the Federal Government). This provision clearly shows that while preparing the draft, the designers and legislators were either unaware of the importance of broadcast media or neglected the impact media can have on society. We cannot afford to receive donations from aid partners because by doing so, we have to follow certain donor-oriented agendas, and thus, the true purpose of media may not be achieved, and opinions that may not be in our best interests be cultivated in the hearts and minds of the people. Why should the ordinance allow PEMRA to get foreign aid? Independent media that may serve its purpose of informing the public and creating awareness will not be able to work independently if it's allowed to accept donations from foreign sources. Therefore PEMRA as a regulator must not be given this permission, and the ordinance needs to be redrafted. Moreover, PEMRA funding report should be made public so that the people's trust on the entire media industry is not shattered.

In article 23 of the ordinance, it is clearly stated that PEMRA will discourage monopolisation. It will stop monopolies from coming into existence in the media industry. The reason for that is that big corporate media groups can control the economics of information by being able to decide what information to be produced, how it's going to be produced, and for whom it's going to be produced. Therefore, having big corporations control the major part of the media broadcast industry, harms the economy of media and leads to poor and less efficient outcomes.

The scholars of the political economy of communication also look upon the concentration of ownership of media outlets by a single group as harmful to the industry. For instance, Rasul and Macdonald (2012)¹¹⁸ quote Mosco (2009)¹¹⁹ while discussing the harms of concentration of ownership of media outlets. When big corporations are allowed to capture major part of the market, according to Mosco (2009), they are then able to decide the economics of broadcast media through which they can limit, mold, and in many cases show custom news more suited to their agendas leading production of less reliable media products while consumers are unaware of it. The Regulator, therefore, is supposed to look into the issue of concentration of the media industry. Ideally, it should be the entity that protects, nurtures, and propels forward the media industry by keeping a check on big corporations and facilitating the small local and regional broadcast media outlets.

¹¹⁸ Rasul, A., & McDowell, S. D. (2012). Consolidation in the name of regulation: The Pakistan Electronic Media Regulatory Authority (PEMRA) and the concentration of media ownership in Pakistan. *Global Media Journal*, 11(21).


¹¹⁹ Mosco, V. (2009). *The political economy of communication*. London: Sage.

This is essentially PEMRA's mandate too, but unfortunately, PEMRA has been unable to play its due role in this regard. The establishment of four big media conglomerates such as the independent media group (commonly known as Jang Group) and the Pakistan Herald Publication (the PHP), owns Dawn Newspaper, Dawn TV channel. Other groups include Waqt news, whose premier product is the rightwing Urdu paper *Nawai Waqt* while express group and ARY Digital are also suitable examples of concentration of ownership.

Rasul and McDonald (2012) view this phenomenon of concentration as one of the biggest challenges faced by PEMRA and the media industry since these big corporations can send the small firms out of business. The small media firms cannot compete with the huge giants as the latter have economies of scale which the former don't. The latter also has political leverage as its popularity makes it an entity to be feared, and hence the regulator and the government favour them.

The PEMRA ordinance Article 4 section 1 clearly states that PEMRA will be regulating the media industry, improving it, and expanding it further. It also has the authority to make rules for local, national, regional, and international media broadcasters. It's been given some freedom or autonomy to issue new rules if required and publish it in the Gazette of Pakistan but concentration of ownership is not mentioned in the ordinance. This shows that the issue was not important for those who drafted the ordinance and those who presented and approved it. Given the importance of the phenomenon, this is not something that should have been overlooked.

The Independent media group, also known as the Jang group tops the list in terms of revenue. In fact, the group's revenue is greater than the cumulative revenue of all other media corporations combined. This statistic is given by Rasul and McDonald (2012). The group owns the English language newspaper "the News International", the English language magazine *Us*, the Urdu language newspaper titled *Jang*. This group was the first to launch a TV channel named *Geo*. Currently, it owns five TV channels ranging from the genres of sports and entertainment to News. Even before the TV Channels, Rasul and McDonald (2012) argue that the IMG or Jung group was the leading media group in terms of revenue. However, after the launch of TV channels licensed by PEMRA and owned by the group, its revenues increased manifold. Right after 2009, the *Geo* TV Channels grabbed 26 percent of the total advertising spending; its English and Urdu newspapers held 34 percent share of total ad spending while the magazines acquired 64 percent share of the total ad spending in the country for that particular year. The total ad spending on TV was 308 million US\$. While the total ad spending in 2019-20 was 444 US\$. Below is given a detailed table.

| <div>  <div> afa ASIAN FEDERATION OF ADVERTISING ASSOCIATIONS <small>www.afaaglobal.org</small> </div> </div> <div>PAKISTAN</div> | | | | | | | | | |
|--|---|-------|-----------|----------|-------|--------|-----|---------|-------|
| MEDIA AD SPENDING BY PAKISTAN | | | | | | | | | |
| Year | Advertising Expenditure in US\$ million | | | | | | | | |
| | Television | Print | Newspaper | Magazine | Radio | Cinema | OOH | Digital | Total |
| 2009-2010 | 152 | 0 | 72 | 1.5 | 11 | 0 | 25 | 0 | 308 |
| 2010-2011 | 201 | 0 | 75 | 1.7 | 13 | 0 | 24 | 0 | 329 |
| 2011-2012 | 240 | 127 | 0 | 0 | 16 | 0 | 33 | 11 | 427 |
| 2012-2013 | 276 | 145 | 0 | 0 | 16 | 0 | 36 | 11 | 485 |
| 2013-2014 | 299 | 147 | 0 | 0 | 19 | 0 | 28 | 19 | 512 |
| 2014-2015 | 334 | 160 | 0 | 0 | 23 | 0 | 83 | 35 | 635 |
| 2015-2016 | 363 | 172 | 0 | 0 | 27 | 0 | 85 | 43 | 689 |
| 2016-2017 | 401 | 191 | 0 | 0 | 29 | 0 | 113 | 53 | 786 |
| 2017-2018 | 344 | 176 | 0 | 0 | 23 | 0 | 63 | 72 | 678 |
| 2018-2019 | 200 | 97 | 0 | 0 | 13 | 0 | 60 | 75 | 444 |

Noted : July - June Figure (12Months)

Waqt media group, a staunch critic of media regulations, was also among the first to utilise PEMRA and apply for a broadcasting license. Following the Jang group, the Waqt media group was the second leading ad revenue generator. They are followed by the Pakistan Herald publication, also known as Dawn News group followed by Express groups officially known as Century Publication or Lakson group.

These four conglomerates own the media industry of Pakistan. Their spread and influence, both political and economic, makes them able to influence regulations in their favour and thus to drive small TV channels out of business. Although PEMRA was established to control the mushroom growth of TV channels, however, it was also supposed to regulate the media industry so that the big sharks are not able to make a meal out of the small fish. These big sharks use their lobbying power and political muscle to make the regulators bring out rules suited to their special needs Rasul and McDonald (2012). It's no wonder that Pakistan doesn't have vibrant local and regional media players in both print and electronic sectors. These few groups are so powerful that they won't allow any small newspaper or media outlet to succeed. PEMRA as the regulator, must provide for a level playing field and look into the concentration of ownership issue seriously.

Other than the concentration of ownership, we also need to look deep into the relationship between media and technology. Media, especially broadcast media, and technology have a very strong relationship. Technological change in the media industry, no matter how small, has the potential to change the entire media landscape. The issue has been discussed by studies such as Rasul and McDonald (2012). They rightly cite Napoli (2003)¹²⁰ and Castella (2004)¹²¹ that while making policy interventions and designing regulatory frameworks, we should keep in mind the changes that the technological change may bring in the dynamic media industry, which is very sensitive to the most incremental of changes in the fields of Technology. The Ordinance should therefore be revisited, keeping in view the changes that have taken place in media specific technology. So far, there has not been any report which can tell us how technology has affected media, the flow of information, consumption, and production of media products, and their style of operations.

The ordeal of the Pakistan Media Industry doesn't end here as the regulation ordinance further has an indemnity clause that gives immense powers to the political government controlling PEMRA. Article 38 states that:

"No suit, prosecution or other legal proceedings shall lie against the Federal Government or any Provincial Government or local authority or any other person exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder"

¹²⁰ Napoli, P. M. (2003). Foundations of communication policy: principles and processes in regulation of electronic media. Cresskill, NJ: Hampton Press

¹²¹ Castells, M. (2004). The information age: economy, society, and culture. New Jersey: Wiley-Blackwell.

This, accompanied by article 28, which allows PEMRA or any of its officers to carry out inspection, gives the impression that PEMRA is more of a tool than a regulator that is brought into the picture once a particular media outlet is supposed to be punished. The fact that it has allowed for monopolies to be established on the one hand while has heavy fines and penalties for others for minor negligible transgressions such as the airing of a sports program which PEMRA defined as entertainment, speaks of the misuse of de-jure power that the authority has. Article 38 states:

“...is in good faith done or purporting or intended to be done under this Ordinance or any rule made thereunder”

These words give a very unfriendly picture along with confusing subjective language. For instance, what is good faith? How do you define it? What is the extent to which one can act in good faith? Mere use of the word “good faith” is testimony to the fact that the PEMRA ordinance is not created from market-friendly perspective. Hence we conclude that PEMRA’s legislation should be revisited, and its design should be reconsidered. We need a regulator, not a *thanedar* the media industry of Pakistan needs to be regulated not chained and toyed with, and we need to acknowledge the role of media and the power it has. It is undoubtedly a pillar of the state. We end this section with the words of Thomas Jefferson:

“Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.”

6.19. FINDINGS FROM FIELD

Following are the themes which emerged from data collected during field research conducted in PEMRA Headquarters from PEMRA personnel and ex-employees.

Issues in PEMRA Ordinance, 2002 and Amendment Act, 2007

Based on the analysis of PEMRA ordinance we have highlighted the issues detailed in the preceding section. One telephonic interview with an ex-PEMRA employee revealed that amendments in Ordinance 2002 and Amendment Act 2007 are needed as both documents do not address some of the core regulatory issues. The following excerpt from the interview is critical in this regard.

“Licensees have objections, media channels have objections, cable operators have objections, and broadcasters both radio or OTT broadcasters have objections, too. I also believe the ordinance needs amendments. How much and where? That is a complicated subject that needs thinking and discussion before amendments are made. The amount of fines, the implementation of code of ethics, and the renewal of licenses to the licensees, be cable operator or DTH operator or TV or radio channel operator.... they all have issues with renewal fee or renewal tenure because it has become an expensive business now. As a result, it has become difficult for all license holders to continue their operations. Amendments are more specifically needed in areas such as the code of ethics and implementation of fines.

That is the reason why they want certain amendments or concessions from the government or the regulator. The document binds PEMRA to follow MOIB even in cases when it doesn't agree with the ministry's decisions."

Regulator of Media Market or Regulator of Media Content?

When asked about PEMRA's over-regulation of media content and not fully regulating the media market for its role in facilitation and incentivising broadcasters, media channels, and service providers, another ex-employee responded:

"This is not the entire reality. It is a perception, and the perception is not wrong. TV channels & people working in media make the perceptions. In reality, PEMRA has a lot more to do rather than implementing a code of conduct. And, in this case, as well, the code of conduct was not made by PEMRA. TV channels took the initiative to finalise the code of conduct, and the Supreme Court ordered PEMRA to implement it in 2015. So, PEMRA has nothing to do with it, except it has become the implementer for a document it neither made nor enforced. PEMRA's role is to issue licenses, renew licenses, respond to technological improvements, and make a budget as it's a self-sufficient organisation. It generates its revenue and spends it to have its independence. So, it has other significant roles too, but unfortunately at the end of the day, the centre of discussion in news channels or in newspapers about PEMRA is the code of conduct and not the other functions."

What is the Public Interest in the PEMRA Document?

The documents are full of buzzwords that are neither explained nor interpreted. One most recurrent term in the documents is public interest. When asked to interpret what it entails, one currently employed PEMRA representative detailed:

"Exactly, you are right! Public interest has not been explained completely in the documents. I don't think this term has been properly interpreted by the Supreme Court of Pakistan or High Court. But generally speaking, the public interest is what the people of Pakistan want, what viewers want, and their priorities and choices. Pakistan's Constitution does not stop you from talking about certain issues, but our culture may consider those issues as taboo or controversial. For example, sex education. It is not forbidden to give sex education, but you cannot talk about it on TV channels. So this is one example. Also, religious issues can be discussed in scholarly environments but TV channels when they discuss them, it becomes a national issue. People resort to violence, and hence such contents are not allowed by TV channels."

Censorship Issues

Questioning whether PEMRA has a censorship role in on-aired content, one ex-employee commented:

"If you accuse someone of corruption without any evidence, that's the crime, and law takes its course, but the law is so weak that it doesn't take its course when politicians are proven corrupt. The interpretations change too,

conveniently. When I was there, we worked upon it. Declaring someone kafir or ghaddar, is not the prerogative of the anchorperson. Only the court of law or parliament can do that. So, we never allowed anchors to do that, and whenever it was said, we took action. On the other hand, talking about blasphemy and sectarian issues cannot be discussed as per the country's law, just like the holocaust cannot be discussed in European countries and USA on TV channels. Every country has certain limits on certain issues, so is Pakistan. But one feels that such freedoms are too restricted in Pakistan. PEMRA cannot do anything on such a front because PEMRA is not sovereign. It is just a State organ which follows the law made by the parliament."

Why PEMRA, When There is the Ministry of Information and Broadcasting?

Speaking on the role of regulator and MOIB and the intersecting functions, one ex-employee responded:

"It is not possible for MOIB to perform regulatory roles. The ministry's role is to make policies. PEMRA is a regulator, just like OGRA and NEPRA. You don't say that these regulatory authorities should shut down when there are functional ministries of petroleum and electricity. Ministry cannot be a regulator. When a policy-making function is with the ministry and implementation of that policy task is with the regulator then these functions should be separated. And it has remained the case worldwide. Whenever there is an industry, and since media is an industry, then there exists a regulator of that industry. So, I think this is a non-issue. Whether it (PEMRA) should be separated from MOIB is a separate question, but I think there must be a regulator. How much power it should have, that is a debatable question but ministries should not be regulators because then ministries will be too powerful and the independence that regulator can enjoy on paper will not be possible."

PEMRA's Performance as a Regulator

While interviewing one ex-chairman about the performance of PEMRA as a regulatory authority, it was shared that:

"The pace and trajectory have remained satisfactory by and large. We had long, mid, and short-term strategies in place, and we implemented the same, as well. But after I left it and before I was there, PEMRA has been headed by non-media people, either bureaucrats or police people. So, that's why they could not take long-term decisions to improve policies and implementation frameworks of PEMRA. Bureaucrats think differently than media persons think of media. So, there is a difference in the implementing strategies and policy frameworks. That is why new lobbying is being discussed, which sounds draconian. It suggests tougher punishments, higher penalty fee so, I don't think PEMRA has done what it needed to do."

PEMRA Organogram

Questioning about the organogram structure of PEMRA, one recurrent theme was severe under-representation of media persons in the authority. One such view was also shared by one of the current employees:

“There is a need to change the composition of the authority and member of CoC, and we plan to bring media persons or people linked to media as authority members. It is a serious issue that why there are no media representatives in the media regulatory authority, which is not the case in other regulatory authorities such as NEPRA and OGRA. The appointments in PEMRA are more political than based on merit and representation. Law doesn’t prohibit hiring media personnel in PEMRA, but successive governments have not introduced media persons because they wanted to employ their people.”

The Question of the Independence of PEMRA

Building on one of the critiques on the independent status of PEMRA, one ex-chairman commented:

“There are issues whenever PEMRA takes its independent decisions. But there is a difference. I will explain. Law making is not PEMRA’s right or prerogative. Laws are made by the parliament and ministries are part of the parliament so if PEMRA starts making its own laws and then starts implementing then it will become a draconian regulator, a dictatorial regulator. You cannot give any authority to any regulator, and it doesn’t happen anywhere in the world. You make an organisation independent by making its Head and Authority independent by not giving it the authority to make law. This dichotomy of power is what is needed. This separation of tasks is needed. Having said this, PEMRA should be free of the State’s interference by making its Head independent for example, he shouldn’t be removed as in the case of High Court Judges, or now they have given the freedom to chairman CPEC; free of any inquiries or cases. That kind of independence is needed.”

PEMRA’s Role is to Regulate, not to Act as Surveillance Body

Speaking of PEMRA’s role as controller and surveillance body, one ex-employee narrated:

“That’s true! I agree with that, primarily because the law was made like that. It was an ordinance implemented by a military dictator and also because appointments for chairman and authority members one after another for many years have remained a parking place for retired police officials, and they acted like policemen in PEMRA while handling media organisations. The regulator shouldn’t be a control freak. It should help develop an industry. The only bone of contention between regulators and industry is the implementation of the code of conduct. If that code of conduct is monitored and implemented by TV channels themselves as it was done earlier in the newspapers by the editors, the same should be done by the editors in the TV news channels. They should decide what should go on-air and must be accountable to their internal systems, which should take action if someone violates the law. This issue is unresolved and the most difficult one, too.”

PEMRA and the Politics of Media Rating

The question regarding the politics of media rating and how can PEMRA play its role in responding to that can be detailed as:

“The problem lies in the system. The majority of cable operators are running analog system. They have been shifted to digital cabling. When you become digital, the TRP issue can be handled. Right now, it’s flawed because there are a few meters that read the rating, which are mostly installed in Karachi and Lahore. Based on this, the entire rating system is conceived and followed. But if cable operators go digital, then it can be told about the exact number of TV channels and programs being watched. Internationally, the analog system has been switched to digital cable systems but the pace is very slow in Pakistan; in this PEMRA can play its role by expediting the process. But cable operators have their issues. Pakistan’s economy is poor, poor people cannot pay for improved services, and that’s why cable operators who have fewer consumers cannot invest in improving the system from analog to digital.”

PEMRA and the Question of Ad-spend Monopoly

The current employee’s take on ad-spend and PEMRA’s role therein details:

“I don’t think PEMRA can do anything in this regard. Those kinds of issues are determined by the market demand/supply because it’s an open market and State cannot interfere in the market. It can interfere by making laws that don’t favour a particular competitor but it cannot dictate why certain TV channels are taking greater shares because channels such as Waqt News and Geo News are in the newspaper too, and as per law, you can have a newspaper and TV channel both. So, if you can have both by law, then it’s up to the prerogative of TV channels. There are entertainment channels that are not associated with any newspaper, still, they are the most watched, such as Hum TV and Samaa TV. So, it’s up to their business models and how well do these live up to the consumer demands, makes the difference.”

6.20. CONCLUSION

Freedoms- whether it’s market freedom or freedom of expression, whether it’s the freedom to choose or freedom to say “Yes” or “No” – such concepts of freedom in their various manifestation were alien to Pakistani Society.

The privatisation of the electronic media was a revolutionary move. For the first time in the history of Pakistan, the media consumers were allowed to choose the information available for sale. But as much as this was a solution to ending state monopoly, it also brought a new set of problems, and to tackle those problems a regulator like PEMRA was needed.

As Per its Mandate, PEMRA was supposed to ensure a level playing field and take steps for improvement, expansion, and up-gradation of Pakistani broadcast media content, its quality, and technology. This authority was supposed to create a framework within which the media industry had to be regulated, keeping in mind Pakistan’s cultural sensitivities, social issues, and politico-economic realities. It was also supposed to prevent monopolies from being created, and it had to safeguard small and medium media enterprises that were new ventures’ in the industry.

Looking back at the 20 years since PEMRA has been in business, we cannot say that its presence has been useless or it has been a sheer waste of Government resources, but we can confidently say that due to certain legislative, political, and economic factors PEMRA has not been able to play the role that it was required to play. In fact, by looking at the industry closely, we can conserve that in certain situations, PEMRA has done the opposite of what it was supposed to do. Brief description of the issues discussed in different sections of the report is given below.

6.21. THE MONOPOLY POWER OF CERTAIN MEDIA GROUPS

When PEMRA was created in 2002, and private sector ventures were encouraged, it was a welcome move appreciated across the board. The Authority was issued a mandate, and the media industry was supposed to be regulated through that ordinance. One of the regulator's objectives as per the mandate was the prevention of monopolies in the media industry. Concentration of ownership was supposed to be kept under check and surveillance. This aspect has however, not been addressed by PEMRA as it should have been.

The PEMRA board should have a considerable representation from the Broadcast media Industry. The current setting doesn't have any room for such members. The absence of such members who represent the media means that the voice of the media is never present when PEMRA decides on rules and policies regulating the media business. Therefore, there is a need to have representatives from the media industry on the PEMRA board. The representatives should be such that the media industry unanimously agrees upon their inclusion. There also needs to be academics who have worked in the area or hold a specialty in the field should be made part of the PEMRA board.

There needs to be legislative changes to make PEMRA more independent in terms of funds, recruitment, pay packages, and policymaking.

6.22. IDENTIFIED ISSUES

| | |
|---|---|
| Formal institutional change in the form of amendments in PEMRA Act. | <p>The institutional constraints on PEMRA binds it with Ministry of information and broadcasting and through this bond federal government can exercise power over PEMRA.</p> <p>There needs to be legislative changes through the parliament but the amendments should come into place once they are backed by sound research.</p> <p>PIDE Islamabad as an institution has the capability of carrying out such research which will help the State adopt well informed policies and amendments.</p> |
| | <p>The debate is that whether PEMRA is regulating the media market or the content produced by the media production house be it news, sports or entertainment. However, PEMRA's response is that the code of conduct is a document that has neither been made by PEMRA nor had PEMRA any specific policy regarding the Code of conduct.</p> <p>As per PEMRA's response to us, it was said that PEMRA has many functions. Code of conduct is a very small part of it. However TV channels and media outlets have created baseless perception in the minds of people that PEMRA only deals with the Code of Conduct. The Code of conduct made by the TV channels was approved by the Supreme Court and PEMRA was asked by the Supreme Court to enforce the code of conduct.</p> <p>There are two opinions on this. One is that PEMRA should not be regulating the Media Market in terms of content it should just facilitate the efficient working of the market. The other is the one given by PEMRA, that is, PEMRA has not created the code of conduct rather the Supreme Court at the request of the TV channels approved a certain code and ordered PEMRA to follow it.</p> |

| | |
|---|--|
| Vague definition of certain terms in the PEMRA ordinance and rules. | There are certain buzzwords which make the interpretation of the certain sections complex and subjective. Such confusions may facilitate undue intervention by the politically powerful groups into the media market. One such example is the recurrent use of the word “public interest”. What is public interest and what sort of rule are there to which one has to adhere to in order to not violate public interest? Moreover, it is subjective for one person based on his/her epistemological orientations, past experiences and training a particular action might be in public interest while for another person there same may go against public interest. The PEMRA ordinance should clearly define what public interest is. If this does not come under the purview of PEMRA than guidance from the legislature should fetched in this regard. |
| Issue of censorship | PEMRA may sensor media content but not on its own discretion. The censorship is based on the directions of the parliament. Whatever the constitution forbids PEMRA blocks and penalises those TV which go against it. However, PEMRA’s power to sensor is sometimes taken advantage of by the politically powerful. Moreover due to cultural and religious reasons there are certain things that PEMRA does not allow PEMRA, according the executives that we have met is a state institution and has to abide by the policies of the state. |
| Need of PEMRA when MOIB is already there. | PEMRA is a regulator, it regulates the media industry. The ministry is the Government itself. It makes the policy and PEMRA then enforces that policy. A senior PEMTA executive shared these views among others; that if ministries are allowed to regulate the former will become so powerful that the market would not be able to reap the fruits of such de-jure reforms. The question that what sort of power should regulator have and to what extent is the regulating body allowed to enforce given the peculiarities of the market is something which needs deliberation from the technical experts of the field (not Bureaucrats whose only achievement is a passing a colonial style competitive exam). Coming up with proper meaningful proposals is the job of experts not PSP or DMG clerks. |
| Performance of PEMRA | PEMRA has been headed by people of different professional backgrounds. There have been very few instances where media experts were pasted as heads of PEMRA. PEMRA has played a significant role especially during the time when it was headed by media technocrats however it’s unfortunate that Postcolonial Pakistan still has the bureaucrats of powerful groups like PAS (formerly DMG), Police and secretariat. Police and DMG have no relevance at all to the working of PEMRA and hence when it was headed by such people who had mostly come here on deputation its performance a regulator was not satisfactory. While in other cases, it has played a significant role in digitisation of airwaves, improvement in technology and regulating the market. We do not argue that when PEMRA was headed by Media Person or media related technical expert, it was a hall mark however based on our findings we believe that PEMRA should be led by media experts and the staff should also be recruited based on relevance of qualification and experience. |
| Organogram | PEMRA has tight bureaucratic structure with very few media experts. Moreover the recruitment of HEAD and senior staff is based more on political preferences rather than expertise, relevance and merit |
| Independence of PEMRA | PEMRA has the mandate to regulate. As far as the designing of regulation is concerned that is the JOB of the legislature and if regulators such as PEMRA are given independence in terms of LAW making this could lead to political and social problems affecting the entire society. The current PEMRA situation warrants that it should be independent as far as the operations are concerned while those operations have be inside the ambit of regulations duly approved by the legislature and the judiciary. |
| PEMRA is a market regulator not a policeman | It is unfortunate as discussed at different points above and at many instance in the report document that Police officers were posted as Chairman and were also given other key posts who due to their training as a postcolonial police force mishandled the media market. Not only did this practice of appointing police officers cost the media industry but it also cost PEMRA in terms of growth and expansion. |
| Code of Conduct | Code of Conduct is bone of contention between the regulators and the regulated. Some data from the field suggests that if this issue is resolved and the TV channels and media houses are themselves supposed to take care of the code then the relationship between PEMRA and the Regulated can be made more productive.’ |
| Analog and digital Cable: issue of resource constraint society of Pakistan and the politics of rating | There has been considerable progress in digitisation of cable TV however the progress is not uniform all across Pakistan. one of the major reason for the over reliance on analog system is that digitisation requires funds which small cable operators operating in less developed geographical zones cannot afford. Rating meters have mostly been installed in Lahore and Karachi this misleads the observer as data from the two cities doesn’t represent the entire consumer base of electronic media. Until we full digitise the issue of media rating and politics that comes with it will remain. |
| The ad spend | A respondent who was currently serving at PEMRA was of the view that it’s the business model of the particular media house that makes it earn more or less revenue. PEMRA as an organisation doesn’t in any way interfere in the market. The ad-spend is pure market based demand supply phenomenon. The PEMRA rules or regulations do not in way manipulate or interfere in this market. |

Chapter 7

SME Sector in Pakistan: Mapping the Policy Framework, Opportunities and Constraints

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This study explores the policy framework, opportunities, and constraints faced by Small & Medium Enterprises (SMEs) in Pakistan. The study focuses on figuring out avenues of development, challenges, and prospects for SMEs in Pakistan. The research covers the perspectives of policymakers, policy facilitators, and the SMEs (of the Multan district). The findings suggest that though the government authorities are well aware of opportunities and challenges, SMEs are not well prepared due to lack of formal business set up with no spending on R&D. Moreover, policies for the integration of SMEs in the mainstream are missing. This research emphasises that policy measures must be undertaken to strengthen our domestic industry, including; announcement of a new SME Policy, mass awareness, and registration campaign for SMEs to integrate them with global value chains and international production networks.

7.1. INTRODUCTION

Small & Medium Enterprises (SMEs) play a significant role in economic growth acceleration in developing and developed countries. SMEs assist in employment generation, innovation, and value addition in the production cycle. With this, SMEs facilitate entrepreneurship, helps in poverty alleviation, assist in export-led growth and boost trade through product diversification (Harvie, 2010; Harvie and Lee, 2005 and Asasen et al., 2003). Literature highlights a positive relationship between economic growth and SME's share in the Gross Domestic Product (GDP) of the economy, which is evident from its share of contribution in the developed countries including; China (60 percent), Malaysia (47.3 percent), Germany (57 percent), Korea (50 percent), and Japan (55.3 percent) (Beck et al., 2005; Levine and Renelt, 1992; Aris, 2007; Katua, 2014).

Hussain et al. (2012) categorised the role of SMEs in an economy in three important domains: Trade, Technology, and Investment. Through these, SMEs play a proactive role in economic growth in terms of competition and innovation. Globalisation has provided the entrepreneurial sector, especially SMEs, the opportunities to broaden their domain internationally through involving in global value chains and international production networks (Harvie, 2010). Aceleanu et al. (2014) highlighted the factors that play a significant role in the development of SMEs, including the macroeconomic environment, government policies for new investment, structural characteristics of the economy, and microeconomic factors like the structure of enterprises.

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SMEs are the source of employment generation in low-income economies. Sharafat, et al. (2014) described SMEs in Pakistan as one of the key drivers of growth in the Pakistan economy. Therefore, one of the principles of SME Policy was to align the SME development in the areas of technology, human resource development, marketing, and creating space for these SMEs in other policy areas through proper measures including labour policy, industrial policy, trade, and fiscal policy. With a modified business proposition after CPEC and having spent 14 years in vogue, it is high time to map the success and shortcomings of the 2007 SME policy. This exercise needs to be undertaken before the announcement of the new SME policy 2021, which is expected to be out soon.

As a facilitator to develop SMEs in the country, the Small and Medium Enterprise Development Authority (SMEDA) was formed in 1998 under the Ministry of Industries & Production (MOIP)¹²³. SMEDA was established to work as a pivot for streamlining SMEs and is facilitating SME operation and growth through several programs. Its efficacy, though needs to be reassessed after the 18th constitutional amendment. According to the National SME Policy 2007, there were 3.2 million SMEs contributing 30 percent to the GDP and having 25 percent of the share in exports of the country. Currently, in 2021, there are 5.2 million SMEs in the country as per the given definition. Despite the fact that SMEs are the most significant contributor to employment generation in the country i.e., 78 percent of non-agriculture sector employment, still these suffer due to low productivity. SMEs contribute only 40 percent to the value addition in the economy (MOIP, 2007). SMEDA is trying to create awareness among the local investors but any particular objectives related to the development of SMEs within the country are missing. In the recent pandemic, SBP launched innovative plans to support the SMEs and ease their financial constraints, an applauded new initiative.

To summarise, the above discussion makes it obvious that SMEs have an important role in inclusive growth and sustainable economic development. Consequently, it is important to explore the issues, challenges, and opportunities faced by SMEs under the existing policy framework in Pakistan. We need to assess how much our SMEs are aware and prepared to realise their potential out of the emerging opportunities in the globalised world. We also need to examine the role of the government in facilitating and regulating these SMEs. Hence, it is important to focus on the development of domestic industry, especially SMEs, and make it an explicit part of the development agenda. It can only be achieved if domestic investments and local industries are developed to their optimal potential and if SMEs are considered while seeking long-term sustainable development. Moreover, CPEC can be utilised and planned in such a way that the development takes place not only on the inter-regional level but also at an intra-regional level.

7.2. SMES IN PAKISTAN

Afaqi (2010) explained that Pakistan inherited a weak industrial base with more dependency on agriculture. The large-scale manufacturing sector was focused initially, and with time, Pakistan was successful in developing its industrial sector. In the First

¹²³“Official Website of SMEDA; Objectives of SMEDA” http://www.smeda.org/index.php?option=com_content&view=article&id=2&Itemid=689

Five Year Plan (1955-1960), SMEs were particularly focused for the first time. According to the Pakistan Bureau of Statistics (2008), about 78 percent of the non-agricultural labour force is employed in the SME sector. SMEs contribute more than 30 percent to the manufacturing sector (GoP, 2005). According to the Economic Census of Pakistan in 2005, there are 2.96 million business units in the country for goods and services divided into two categories of established units and units at households. The provincial concentration of these units is as follows; Punjab (65.26 percent), Sindh (17.82 percent), Khyber Pakhtunkhwa (KPK) (14.21 percent), and Baluchistan (2.09 percent)¹²⁴. Moreover, the SMEs constituted 53 percent of the businesses in wholesale and retail trade, 20 percent of the industrial units and 22 percent of the services sector. Despite these facts, the SME sector is still majorly unregistered. More than 96 percent of these SMEs are established on sole proprietorship, while only 2 percent are based on partnerships. Importantly, it is evident from the data of growth rate of Large-Scale Enterprises and SMEs in three decades 1970s, 1980s, and 1990s that the gap of output growth rate and the employment growth between LSEs and SMEs has increased, with LSEs in the lead (Khawaja, 2006).

7.2.1. Constraints Faced by SMEs

In developing countries, the key constraints that SMEs face include difficulty in market access, financial constraints, lack of information, and institutional constraints such as international competitive market, financial issues, infrastructural problems, and political instability; restraining the SMEs' performance. Khan and Khalique (2014) identified lack of infrastructure, political instability, energy crisis, and lack of capital as the critical issues SMEs face in Pakistan. Similarly, Khattak et al. (2011) highlighted the hurdles faced by SMEs in Pakistan by categorising these into internal and external barriers. Internal barriers are linked with the company and its products, lack of expert personnel, and production capacity and capital. While the external barriers include low foreign demand, legal procedures, and competition. In Pakistan, SMEs face 32 percent of the external barriers and 68 percent of the internal barriers. In an Annual International Conference's session on 5th December 2016, it was highlighted that the financing had improved significantly during these years. Yet, banks are hesitant in providing loans to SMEs due to their riskier financial status. They have low human capital, which makes them more vulnerable to financial shocks.¹²⁵

7.2.2 Overall Business Environment

Internationally, Pakistan stands at 108th rank in 'Doing Business (DB) Rank in 2020 while it was at 147th position out of 190 in 2018. Pakistan has gradually improved its position during the last three years. The disaggregated information of Pakistan's rank

¹²⁴ Economic Census of Pakistan, (2005). Economic Census 2005 | Pakistan Bureau of Statistics, December 5, 2017, from <http://www.pbs.gov.pk/content/economic-census-2005>

¹²⁵ "Challenges and Potential of SME Sector financing in Pakistan and a Way Forward through CPEC" <https://cpec-centre.pk/challenges-and-potential-of-sme-sector-financing-in-pakistan-and-a-way-forward-through-cpec/>

according to the ‘Doing Business Rank 2020,’¹²⁶ is as follows; starting a business (72), dealing with construction permits (112), getting electricity (123), registering property (151), getting credit (119), paying taxes (161), trading across borders (111) and enforcing contracts (156). Hence, on a relative basis, Pakistan has a weaker position in DB indicators globally. If we compare the situation in the South Asian region, India ranked at 63rd and China ranked at 31st position in DBI 2020 rankings. An important constraint is that there are 12 different procedures to begin a business which require about 18 days to complete, while proper registration requires 155 days. Similarly, in the ‘Global Competitiveness Index (GCI),’ Pakistan ranked at 107 out of 122 in 2018 compared to 115th rank in 2017. However, Pakistan stood at second last position in South Asian countries, according to GCI¹²⁷. There is a need to identify the constraints that barred the business sector from flourishing up to its true potential.

Lastly, countries are spending a significant amount of money to facilitate SMEs. Naveed (2012) discussed the budgets allocated for organisations working to facilitate SMEs in different countries. According to the study, India is spending \$109 million, Korea is spending \$3.49 billion, Malaysia is spending \$2.22 billion, and Thailand is paying \$122 million, whereas Pakistan spent only \$1.74 million. He emphasised that due to rapid urbanisation, the SMEs are a better source of utilising skills, entrepreneurship, and capital from rural regions; therefore, they deserve more investment.

7.2.3 Defining SMEs; A National and International Perspective

In countries like France and Germany, the SME sector makes up more than 95 percent of the economy. According to World Bank, 7 out of 10 jobs in developing countries are created by SMEs; therefore, financing SMEs needs to be hassle-free. The World Bank in G-20 summit-2010 highlighted different factors responsible for making up the SME and stressed a global definition of SMEs. With this background, different definitions were offered from time to time. Most of the definitions are based on the size of employees, acceptable loan size, and sales size.

The definition by WB as prescribed in the IFC document is a registered business with less than 250 employees and has assets and annual sales of less than \$100,000. SME categories are micro, small, and medium, based on the number of employees and asset size. The European Union (EU) defines SMEs against the number of employees and annual turnover. Where the number of employees remains less than 250, and the annual turnover is less than 50M Euros. The World Trade Organisation (WTO) has not provided any specific definition of SMEs and has agreed that each country can define it for themselves based on their economic conditions and the market structure. However, the base for the definition will be the number of employees, the capital investment, and sales turnover. This baseline is the basis of most of the definitions worldwide.

To operationalise the definition of SMEs for the current study, it is pertinent to see the definitions used in Pakistan. The SBP defines SMEs based on the global guidelines of the headcount and the capital investment. For SBP, a small firm is the one with employees

¹²⁶ ‘Doing Business Ranking 2020’ <http://www.doingbusiness.org/content/dam/doingBusiness/country/p/pakistan/PAK.pdf/>

¹²⁷ <https://tribune.com.pk/story/1850073/2-global-competitiveness-index-pakistan-faces-supply-side-constraints/>

not exceeding 50, and the investment of 25M (maximum), whereas the medium scale company can have employees no more than 250, and their capital investment can be up to 200M PKR. The Pakistan Stock Exchange defines SMEs as registered firms under the company act 1984 with assets between 25M PKR to 250M PKR.

The SMEDA agrees to the definition of State Bank of Pakistan as most of the financing is being done by the banks. The definition of SME has been a work in process to date, the acceptable criteria for defining SMEs is more than a decade old, but each country is defining these according to their economic and market conditions. The current study will define the SMEs as: *“Any firm that has less than 250 employees and the capital investment up to the maximum of 250M PKR”*.

7.3. METHODOLOGY

This study uses qualitative techniques for analysis. This study undertakes an extensive review of the literature, including research articles, research reports, and other policy documents available on the SME sector in Pakistan. It thus conducts a comprehensive document analysis of the policy framework and the current state of SMEs. Secondly, intensive interviews were conducted with the important stakeholders, i.e. policy-makers, facilitators, and business organisations, regarding the development of SMEs and analysed their perspective through thematic analysis. Last but not least, to explore and learn from the perspective of SMEs, manufacturers were also interviewed about the opportunities, challenges, and expectations. This study covers Multan as a sample area for data collection from SMEs. The following points will explain the assessment tool adopted for analysis of each aspect.

- (i) SME sector performance review-Review of Literature
- (ii) SME Policy, Regulations, and Facilitation in Pakistan- Document analysis
- (iii) Insights from SMEs-Interviews with Manufacturers
- (iv) Insights from sector’ facilitators-Interviews with SMEDA, Islamabad Chamber of Commerce and Industry (ICCI), Islamabad Chamber of Small Traders and Small Industry (ICSTSI), and Multan Chamber of Commerce and Industry (MCCI)

7.3.1. Sampling Method

The selection of SMEs in Multan is made based on stratified random sampling, using the SMEs clusters defined by SMEDA. Moreover, list of pre-investment directory of Multan published in 2012 by the Directorate of Industries, Punjab, was also used to locate the SMEs in the selected clusters.¹²⁸

7.3.2. Sample Size

In this study, 31 interviews consisted of in-depth and key informants’ interviews from the selected stakeholders. The sample was further divided, having 14 key-informant interviews from the government officials and business facilitation organisations (Table 7.1), while 17 in-depth interviews were conducted from manufacturers, as shown in Table 7.2.

¹²⁸Pre-Investment Study Multan’ <https://doi.punjab.gov.pk/system/files/Multan.pdf>

Table 7.1

Sample of Key Informants' Interviews

| S. No. | Stakeholders for Key Informants' Interviews | Number of Interviews Conducted |
|--------|---|--------------------------------|
| 1. | Small and Medium Development Authority (SMEDA) Head Office, Lahore | 3 |
| 2. | Regional Business Centre (RBC) Multan, SEMDA | 1 |
| 3. | Islamabad Chamber of Commerce and Industry (ICCI) | 1 |
| 4. | Islamabad Chamber of Small Traders and Small Industry (ICSTSI) | 2 |
| 5. | Multan Chamber of Commerce and Industry (MCCI) | 2 |
| 6. | Pakistan Small Industries Corporation (PSIC), Multan | 3 |
| 7. | Technical Education and Vocational Training Authority (TEVTA), Multan | 2 |
| | | Total= 14 |

Table 7.2

Sample Size for In-depth Interviews from SMEs in Multan District

| No. | Categories of SMEs in District Multan | No. of In-depth Interviews |
|-----|---|----------------------------|
| 1. | Textile (Handlooms, Power looms, Cotton Ginning & Weaving, and Bed Wears) | 8 |
| 2. | Food Processing Units (Food Packaging, Fruit Processing Plants, and Bakery Items) | 5 |
| 3. | Handicrafts (Blue Pottery & Camel Skin Products) | 4 |
| | | Total=17 |

7.3.3. Data Collection and Analysis Method

For data collection, different versions of questionnaire were designed for different stakeholders (as mentioned in Table 7.1 & 7.2). Each questionnaire was specifically focused based on the stakeholder's nature of functioning and role in the development of SMEs. The questions asked from the officials (policy makers and facilitators on federal and provincial level) were generalised into three parts: facilities provided to SMEs by these organisations, policy perspective of SMEs under these organisations, and perception about prospects and threats for the development of SMEs. Perspectives and initiatives of business organisations (Chambers) were also captured through interviews.

Similarly, interviews were conducted from SMEs in three clusters present in Multan, as mentioned in Table 7.2. The themes for the questionnaires from SMEs included the status of SMEs, challenges faced by the SMEs, perspectives of the SMEs about future challenges, and awareness & preparedness of SMEs. For data analysis of the data collected from interviews, a scheme of 'thematic analysis' was adopted in this study.

The interpretation of the data is based on the selected themes and objectives of the study. The ethical considerations of the data collection and analysis are followed while interviewing and interpreting the data. The identity of the respondents is kept confidential with their consent.

7.4. FINDINGS & DISCUSSION

7.4.1. SME Policy of Pakistan

The SME policy implemented currently in the country is the policy that came out in 2007. The SME Policy 2007 was made in order to promote: the business environment, ease access to finance, human resource development, technical guidance, and technology up-gradation. The SME policy was good in assessing the sector's needs, tried to address the issues of the sector, and set a baseline of how the SME sector should be and how it can grow. The problem is that even after 14 years, the 2007 policy is still intact without any assessments on the extent of success.

The SME policy 2007 was based on the SME act 2006, and the policy facilitated the marginalised groups and women by encouraging them to start up their businesses. The policy planned to introduce the entrepreneurship culture in the country. The policy also mentioned barriers to firms' growth and promised solutions to those issues by providing technical and human support (in the form of labour and human resource development programs). The policy also planned to promote the rural areas and the agro-based initiatives.

To improve the business environment in the country, the policy recommended simplifying the fiscal/monetary laws for the small and medium firms, ease registration processes for the firms by incentivising them to register. The help desks are to be placed at all the major government offices, and the facilitation promises to encourage the people to start up their businesses. The policy had recommendations to ease out the financing for the SMEs by including the SBP to ease out the credit terms for the SMEs and other public and private sectors to ease out the credit policies for the SMEs. Similarly, for the human resource development and technology up-gradation, laws were made, and terms were promised to be relaxed to acquire technology and increase the capacity.

Apparently, the SME Policy 2007 was serving the purpose and proved to be an excellent first step to encourage SMEs. The major concern about the policy is that it is still to be assessed for its efficiency and effectiveness when the circumstances, technology, and rules of engagement for new businesses¹²⁹ have changed manifold. During 14 years, the focus seems to have majorly remained on the agriculture and manufacturing sector despite a clear mention of the service sector in the policy document; because the services sector has been contributing more than 50 percent to the GDP of Pakistan since 2006.

7.4.2. Need for an updated Policy

It is now very important to have an updated policy and a proper implementation plan to facilitate the SMEs in the country and achieve the international standards. It is

¹²⁹ e.g. virtual world, required skills set, innovation, imitation and value chain integration

pertinent to have an official SME policy to align all the policies and determine the roles of all the players and stakeholders. Giving liberty to multiple officials to define the sector can impact the autonomy of the said department that has to manage the major issues. Moreover, the updated policy needs to be finalised, implemented, and smoothen the procedures to facilitate the SMEs across the country. It is important for the progress of SMEs and the country's economic development as unregistered firms are still part of the informal economy, which is suboptimal for the state and the firms. The most important factor in the policy implementation remains the system that needs to be strengthened by removing sludge to get work done easily, timely, and make it hassle-free.

Fig. 1. Targets under the New SME Policy



Source: Prospective SME Policy 2019, A presentation by SMEDA and ICG.

The efforts for new SME policy have been taking place since 2019, when the policy was presented to the Prime Minister¹³⁰. The new draft policy is reportedly developed after the review of the 2007 policy. The new policy updates the definition and calls for strengthening the financing channels. The proposed policy focuses on the increase in the economic contribution through the export and manufacturing sector. Both the ideas are good if implemented properly, but the focus on the service sector remains missing. The draft policy also plans to introduce a culture of entrepreneurship, and the result is an increasing number of student-based start-ups which is beneficial for the economy by relieving pressure from the unemployed youth. The draft SME policy made the start-ups

¹³⁰ <https://fp.brecorder.com/2018/07/20180719392095/>

growth a major agenda which if successful can provide a great support to the economy. The proposed policy intends to formalise the SMEs across the country, which looks like a good plan, though SMEDA was supposed to already do that. By formalising SME sector, youth and local investors can be encouraged towards new start-ups which is believed to bring innovation, employment and more output.

As per the reports, the policy draft is focused towards the development of a proper system and is successful in presenting a good plan. Despite being under consideration since 2019, the irony is that it is still to be formally approved and announced¹³¹. This, though provides an opportunity to further fine-tune the new policy in the wake of Covid-19 to match the SME sector of Pakistan to the international standards. One of the main targets of the policy is to strengthen the institutions, which is also needed to streamline the processes and management of the sector, which asks for universal ownership of the policy across all the involved institutions.

The draft for the domestic commerce policy of Pakistan is also on the tables, and that too recognises the importance of SMEs. The draft recommends policies to accommodate SMEs in the special economic zones, in collaboration with FBR, lessen the tax burden and increase the credit guarantees and facilitations. The brightest recommendation is E-commerce, as with the change in technology and the current world conditions is the way out and the survival regime. E-commerce needs to be encouraged, and capacity building in this area is required too, as it can facilitate manufacturing and agriculture if appropriately implemented.

It is important to mention that the initial delays in the approval of new SME policy were caused by the absence of its implementation plan. The policy was presented at the highest level for approval without an implementation and evaluation plan. Once highlighted, work on the implementation plan for the policy was initiated, requiring active coordination with the provinces in the wake of 18th amendment. Relevant forums agreed upon the new implementation plan in October 2020; however, the new SME policy is still awaited.

In the meantime, SBP has updated its terms and conditions for financing small and medium enterprises. SBP has updated their definitions of SMEs and is now using a differentiation between small and medium firms. Small firms are defined as having less than 50 employees with the annual sales of upto 150M while medium enterprises with employees upto 100 if trading, and upto 250 in the manufacturing and service industry with the upper limit of Net capital to be 800M. The situation thus calls for active coordination among different stakeholders of the SME policy, and the Ministry of Industry and Production is suited best to take the lead on this.

7.4.3. Evidence from Key Informant Interviews

Before going on the objective analysis of the findings, it is important to discuss the structural and functional importance of the selected stakeholders for this study. The stakeholders include policymakers, facilitators, and SMEs.

¹³¹Despite formal announcement of New SME Policy on January 21, 2022, the draft is still not accessible (as of January 23, 2022)

(a) Role of Policymakers

Policymakers selected for the study comprised stakeholders including SMEDA Head Office, Lahore, and Regional Business Centre (RBCs) of SMEDA in Multan are the policy making and facilitating bodies for SMEs at the federal and provincial levels respectively¹³². SMEDA has an important role to play in policymaking and serves as a pivot for upper tiers of policy-making bodies, including Ministry of Industries and Production, Ministry of Planning, Development, and Special Initiatives, SBP and BOI.

(b) Role of Facilitators

Other important stakeholders working as a facilitator for SMEs are; Islamabad Chamber of Commerce and Industry (ICCI), Islamabad Chamber of Small Traders and Small Industries (ICSTSI), and Multan Chamber of Commerce and Industry (MCCI). All these serve as the contact organisation at the district level for SMEDA, MOIP, and SMEs. Punjab Small Industries Corporation (PSIC), another important stakeholder, has been a sound contributor to the development of small industries in the province through its various schemes. The organisation provides loans to Small Scale Industries (SSIs). Technical Education and Vocational Training Authority (TEVTA) – is also an important facilitator for SMEs which provides technical and vocational education for a productive and competitive labour force in Punjab. There are 18 institutes of TEVTA in Multan, including the Institute of Technology, blue pottery, technical training centres, and vocational training centres for both men and women. The role of TEVTA is very important in enhancing the skills set of the SMEs.

Financial institutions also play a very important role in bridging the financial gaps for SMEs. The role of Government sector banks and commercial banks differ in terms of facilitation to SMEs. SME Bank is a specialised government entity, which facilitates SMEs only. It was officially established in 2001 when three organisations, Youth Investment Promotion Society (YIPS), Regional Development Finance Corporation (RDFC), and Small Business Finance Corporation (SBFC), were merged into one entity as ‘SME Bank.’ The mission of SME Bank includes financial and technical assistance to SMEs to promote SME sector for value addition, exports, to provide entrepreneurship and employment opportunities. On the other hand, the State Bank of Pakistan (SBP) is the central governing body for all other commercial banks; therefore, the response of SBP was different from other selected commercial banks. Being a regulatory authority, SBP has a significant role in policymaking, such as defining SMEs, formulating schemes for SMEs policymaking, and providing guidelines to other banks.

7.4.4. Role of SMEDA

(a) New Definition of SMEs

Despite highlighting SMEDA’s positive role, the stakeholders agreed during interviews regarding the lack of consensus on a definition of SMEs in the country. The

¹³² “Introduction to SMEDA” https://smeda.org/index.php?option=com_content&view=article&id=2&Itemid=689

Also find Annexure-I for further details

officially approved definition is the one mentioned in the SME policy 2007, approved by the federal cabinet. However, the State Bank of Pakistan follows a different definition, which is enunciated in the credential regulations of the State bank that deals with the financial sector. Unless the SME sector is not defined properly, it is rather difficult to target support and monitor and evaluate what kind of support is going into the sector.

SMEDA Objectives

- Formulate Policy to encourage the growth of SMEs in the country and to advise the Government on fiscal and monetary issues related to SMEs.
- Facilitation of Business Development Services to SMEs.
- Facilitate the development and strengthening of SME representative bodies i.e. associations/ chambers.
- Set up and manage a service provider's database including machinery and supplier for SMEs.
- Conducting sector studies and analysis for sector development strategies.
- Facilitation of SMEs in securing financing.
- Strengthening of SMEs by conducting and facilitating seminars, workshops and training programs.
- Donor assistances for SME development of SMEs through programs and projects.
- Assist SMEs in getting international certifications (such as UL, CE, DIN, JIS, ASME, KS, etc.) for their products and processes.
- Identification of service opportunities on the basis of supply/demand gap.

Interviews with SMEDA revealed that SBP and SMEDA have now agreed on a definition that has only one parameter, the annual sales/turnover. Based on this parameter, a distinction is made between small and medium enterprises. An annual turnover of 150 million has been classified as small enterprise, while anything between 150 to 800 million has been classified as medium enterprise. This also synchronises with the SBP existing definition, except that the parameter of employment is no longer used to define the SME sector. This is a consensus definition, and once the policy is approved by the cabinet, it will be announced and published in the official gazette. Following that, relevant changes in the prudential regulations will also be made so that across the country, a single definition of SMEs is adopted. So the targeting of a particular sub-sector or category of the firms that government wants to support would be possible. Initially, there is an agreement on it across certain institutions, but eventually, in the coming years, SMEDA is eyeing to have multiple definitions of SME across sectors. An SME in a manufacturing sector will be defined differently from SME in a services sector.

It was elaborated that the existence of multiple definitions is though problematic when the contribution of the sector is assessed in terms of macroeconomic variables like GDP, employment, exports. The PBS has a classification of small and large manufacturing firms based on the employment size. Any unit with less than ten employees is classified as small, and anything above that is large. There is no middle-sized unit. For one indicator, the set of parameters being used to define a sector is

different from what is being used in another indicator to define a sector. In the case of access to finance, the financial sector follows the prudential regulation and uses their group of indicators to define SME. The disaggregated data is a must to assess the various contributions of the SME sector in macroeconomic indicators. It is also very important to track progress across various institutions, programs, and across different levels within the government.

- (a) **The 18th amendment** has raised issues regarding ownership of SMEDA. With this change of policy framework, the organisation's DNA has remained intact, and continuity is ensured. The services and portfolio have remained the same. As per the structure of SMEDA, it is a lean organisation that reports to the Ministry of industries and production. There are 5.2 million SMEs in the country as per the given definition. SMEDA operates in terms of supporting SME development at three levels. One is at the macro policy level at the planning level. At other, it works with different institutions with more of a sectoral and cluster-based approach. And the third is the direct service that is provided to the SME through multiple delivery channels. These services are business development portfolio which includes pre feasibilities, business plans, training programs, energy efficiency related programs. For this direct delivery, SMEDA engages with the private sector. For developing programs related to SME development, it engages with associations, chambers, and different provincial governments. SMEDA works across different levels of government and relevant agencies and the private sector in a very collaborative manner across the entire SME ecosystem. The coordination is a challenge at times. At the provincial level, there are cultural barriers. For example, the community may be close-knit in KPK as compared to Punjab. So the relationship will be stronger in KPK as compared to Punjab. The level and degree of relationships vary across different regions.
- (b) **The SBP financial package of SBP during COVID 19:** Institutionally, SBP and SMEDA have good working relationship. SMEDA is a part of different SBP committees. The input of SMEDA on SME is communicated through those committees or official channels. SMEDA terms the ties with SBP-SME committees as professional and welcoming. The financial package for SME was designed in collaboration with SMEDA. However, most of the Covid 19 policies were designed in collaboration with the Ministry of Industries as lead on the industrial development. And on the social side at the grass root level, Ehsas was the lead. To conclude, SMEDA has been working with Ehsas and SBP instead of taking the lead, reflecting a shortcoming from the perspective of policy initiation. Additionally, SMEDA does not get a projection for even what has been done. For example, the agriculture projects in Punjab are huge projects conducted under SMEDA, but when it comes to the Punjab level, the same programs are not that big to make an impact. There is also a political economy angle to it in addition to visibility and cost-benefit analysis.
- (c) **IT help is required:** The private sector is agile but has issues of understanding and implementation. During interviews, stakeholders highlighted the rising polarisation and political capture in the private sector. In delivery, the private

sector does not operate optimally. Concerning the readiness of the private sector to take up government activity, there is a disconnect. SMEDA needs IT-based mechanisms and outreach that can enable the dissemination of policy initiatives to the SMEs.

- (d) **Resources are a challenge too:** The resource constraint is there in terms of financial resources for developing, designing and delivery of programs at a larger scale. SMEDA tries to tap in with international development partners. They deliver and design programs through their financial institutions that are project-based, short-term interventions. Similarly, for training SMEDA works with academia. The institution-building does not take place as a major source of funding i.e., the donors are project-driven.
- (e) **Ownership:** ownership is very important in ensuring the success of the project. If the federal government designs a program for provinces and does not give these their ownership, then the benefits are not scaled up. SMEDA tries to act as a bridge between the federal and provincial governments. At the policy level, whether it is a policy for SME or any input on any policy, provinces are taken on board by SMEDA. Such interactions helps in getting diverse ideas that help develop a consensus document where the federal government sets the policy direction, and provincial governments come up with a better implementation plan. The objective is to ensure that there is a bare minimum level of ownership for implementing the policy direction.
- (f) **The New SME Policy:** SMEDA has drafted a revised policy framework which is pending for formal approval and implementation. This revision of policy took three years, considering that the 18th amendment and the role of provinces were to be incorporated in it. This policy document also has an action plan with it. The action plan describes, what needs to be done, who will do it, the timelines, and the kind of resources that are made available to implement the policy. Recently, the action plan has been approved by the National Coordination Committee on SME, and SMEDA is now implementing that SME Action Plan 2020. Most of the things have already been taken up by the provinces. There are three areas primarily that have been prioritised. The regulations simplifications for SME, simplification of taxation, and access to finance. The SBP has designed some additional financing schemes that are expected to be announced in the near future.

(b) Facilitation

Initiatives: In the business development portfolio, the SMEs are linked up with different commercial banks. Since SMEs lack the capacity to be bankable, SMEDA builds that capacity of SMEs. This is done by organising training programs, deploying software within those SMEs, and providing one-on-one advisory services. SMEDA also works with commercial banks to conduct the initial assessment of a business proposal. Thus a group of people is linked with commercial bankers that helps in securing finance.

It was further stated that SMEDA played a phenomenal role in developing the website of Kamyab Jawan. SMEDA also developed the information tool kit for the small businesses to provide guidelines both on the parameters of the program as well as on

business side. On the business side, tips were provided on how to pitch the business idea and clear the first round of scrutiny by the banks. This round was conducted via telephones by the banks. There was active involvement in the beginning, but now the banks have taken over. The policies for the said program are more oriented towards the financing of the businesses that have tangible assets associated with cars etc., they will take time in opening up to new ideas. There is no bifurcation between services and manufacturing SME.

(c) *Issues with SMEs*

Registration: SMEDA was of the opinion that different formal and informal registration exist, e.g. with SMEDA, Chambers and market committees; the last two though are not considered formal registration. Hence, the information does exist, but it is not consolidated. There is no data on single proprietorship and the home-based businesses, however, there is a deed for partnership registered at the district level. Efforts for the formalisation of registration are underway in Punjab province. The management of registration data is required for targeted intervention.

The incentive for formal registration depends upon the pros and cons of being documented. As long as the pros do not exceed the cons, the registration will not take place. The cost of doing business immediately increases as enterprises join the formal economy, so the cons are high. There are genuine hurdles, for instance, 32 departments visit each installation which increases the compliance costs; thus requires serious intervention. On the contrary, the unregistered businesses are out of SEMDA's radar. Generally, they are not aware that their opportunities to access finance, skills, training, and emerging opportunities in the formal economy can probably reduce the cost of doing business. The perception and mindset also needs to be influenced to convince these for formal registration. The avoidance from registration varies across the size, as the medium-sized units are registered somewhere as a compulsion. The access and flow of information is also a challenge that needs to be covered. For better policy intervention and targeted facilitation, registration is the first step to follow. The government checks, balances, and quality control could only be imposed in a formal economy; therefore, it also needs to facilitate registration.

7.4.5. Role of ICCI, ICSTSI and MCCI

The Islamabad Chambers of Commerce and Industry (ICCI) does not observe any specific differentiation between SMEs and large enterprises. ICCI accepts any firm that has a turnover of above PKR 50 million. Engagement with policymakers and policy facilitators is its routine job to seek ease of business. During interviews, the importance of SMEs was though iterated concerning CPEC and Kamyab Jawan program. On the contrary, the Islamabad Chambers of Small Traders and Small Industries (ICSTSI) which was set up under the ordinance in 2013, was actively involved in SME affairs. They were in regular contact with SMEDA, which has its office at their premises for weekly interactions. The ICSTSI is helping SMEs with business ideas, taxation matters, and SBP financing schemes. The chamber termed the excessive documentation, cumbersome procedures, and post documentation inspection visits as big hurdles which discourage the registration process. This, though was termed as a barrier to timely awareness being off

the SMEDA's radar. Furthermore, to get membership of ICSTSI, the trader must be a tax filer with an NTN number; thus once undocumented, the firms can remain off the grid from many relevant forums. On the ground, Multan Chambers of Commerce and Industry (MCCI) is also trying to make businesses aware and prepared, especially SMEs, through seminars and meetings with the higher officials.

"We are aware of the opportunities, and we want our local industry to be aware of these benefits as well, for which we try to engage them through SMEDA, which conducts awareness seminars, and have started awareness campaigns all around the country. The Chamber also has meetings with FBR, FPCCI, Chinese stakeholders, and MOIP regarding SMEs integration in CPEC."

(Respondent from MCCI)

(a) Lost SMEs

The 2013 ICSTSI ordinance has added further to the already existing several definitions of SMEs. ICSTSI can accept memberships only from the firms with paid-up capital between PKR 2 to 20 million, which falls under no official definition. Thus, we can expect that lack of observance of a single definition has brought genuine issues on the ground, and policymakers need to resolve this at all relevant forums (Table 7.3).

Table 7.3

SMEs Definition Currently Being Observed in Pakistan

| Organisation | Definition |
|------------------------------------|---|
| SMEDA | Any firm that has less than 250 employees, Capital of Rs.25 million and Annual Sales up to Rs.250 million |
| SBP | A small firm is the one with employees not exceeding 50 and an investment of 25M (maximum) |
| | A medium scale firm can have employees no more than 250, and their capital investment can be up to 200M PKR |
| ICCI | No special differentiation for SMEs. Starts accepting registration of firms with NTN having a minimum annual turnover of PKR 50 million |
| ICSTSI | A registered business with NTN and annual turnover between PKR 2 to 20 million |
| International Organisations | |
| World Bank | A registered business with less than 250 employees and have assets and annual sales of less than \$100,000 |
| European Union | A firm with employees less than 250 and an annual turnover is less than 50M Euros |

7.4.6. Insight from SMEs

The SMEs of Multan were categorised into three categories that are handicrafts, textile, and fruit processing units. These SMEs were further divided into categories from which interviews were conducted. The SME's perspective is the foundation of our findings and analysis for this subsection.

- (i) **Handicrafts Cluster:** In the handicrafts cluster, SMEs with blue pottery and camel skin products in Multan were covered. Most of the businesses were categorised into small enterprises (SEs) because they are home-based. The list of these businesses was provided by TEVTA and PSIC because they are facilitating these SEs. Blue Pottery of Multan is the most famous around the world. The units of blue pottery and camel skin products are established in homes and the two departments are dealing with the facilitation of these businesses, TEVTA and PSIC. In terms of financial assistance, PSIC and NBP also provide these businesses the interest-free small loans. Whereas, in terms of technical assistance, TEVTA provides vocational training. They have established training institutions in Multan, such as the Institute of Blue Pottery in Multan. They were not aware of SMEDA as an organisation for the facilitation of SMEs because of a lack of interaction with them. However, Punjab Small Industries Corporation (PSIC) supports them by buying their products and selling from their shops that PSIC has developed to promote these handicrafts.
- (ii) **Textile Cluster:** In the cluster of Textile, SMEs with businesses of Handlooms, Power looms, Cotton Ginning and Weaving and Bed wear were interviewed. These SMEs are in a better position than the handicrafts SMEs to some extent because they are involved in government schemes and projects on and off through SMEDA, PSIC, and TEVTA. These medium enterprises (MEs) are satisfied with the banking facilities for loans, but the sampled firms never approached the SME bank because they were unaware of it. They were aware of SMEDA and its facilities, though. However, the SEs of handlooms and power-looms were not aware of SMEDA or SME Bank.
- (iii) **Food Processing Cluster:** The food processing cluster comprises the major portion of Multan SMEs of fruit pulp processing units and packaging units. The SMEs in this cluster were more stable and developed than the other SMEs in other clusters. Their businesses have expanded in the last five years. The Labour force is skilled well as the major portion is of daily wage labourers, which is unskilled. When asked about approaching banks for loans, they claimed that the banking process for loaning facility is difficult to understand and complex. However, MEs are satisfied with the banking facilities. They are well aware of SMEDA as a facilitator and policymaker for SMEs. They also are invited to the awareness sessions or workshops organised by SMEDA in Multan. MEs are performing better and stable than SEs as they can easily get loans for expansion.

According to the respondents of the SEs of handicrafts cluster, their business has declined during the last five years. As they are micro industries, so they do not trade outside the country. They face several constraints in their businesses, but the financial constraint is the foremost issue for them. Although they apply for loans in banks but SEs, applications are rejected due to lack of collateral.

“Banks are not favourable for us to take loans because they have the complicated process, as well as they, ask for collateral as guarantee which we, as small enterprises, do not have” (Respondent from Handicraft Cluster)

The handicraft SEs do not get the required profit for their work. They complained that there is no tax exemption or subsidy for them by the government. The second major constraint they face is the role of the middleman in the dealing of their business. The owners of these SEs are not educated; therefore, they get easily exploited by the higher authorities. One of them stated that;

“The craft making is time taking activity and needs sufficient skills as well. However, the profit we get is meager as compared to our input. We also face a shortage of buyers in the market. We then have to approach middlemen for selling our products. In that way, we do not get the idea about the real price of our products.” (Respondent having a business of camel skin products)

In the textile cluster, Multan has the highest number of handlooms in the country. But unfortunately, this sector was unable to attract foreign buyers for their products due to increased competition in the market and lack of funds for expansion of their businesses. Another major constraint that the handloom businessmen have to face is the role of middlemen. These businessmen cannot approach the market directly and do not have the required information about the market demands due to illiterate entrepreneurs. They produce what they are told to by the middlemen and associations. In this way, they do not get what they deserve for their products. On the other hand, MEs are performing better than SEs in textile because they are financially stable. Similarly, the SMEs of the power loom sector is majorly home-based businesses. The present production of existing looms and quality of the fabric is catering mostly to the lower end of the export markets that are low quality, low price and hence is unable to fetch good unit prices. The power looms face major setbacks due to the energy crisis in the country. The role of middlemen is again an issue for these SMEs due to their lack of education and information about the foreign demands and products.

In the case of cotton ginning and weaving SMEs, the situation is not much different. The ginning sector has been adversely affected by the electricity crisis, which has been one of the most pressing problems the country faces. Also, the cotton produced in Pakistan is considered of lower quality due to impurities and contamination, hence unable to meet the international standard required for exporting cotton. To survive as an SME, business owners believe that experience was the most essential element, followed by education. Most businesses are either family-owned or established by the owners themselves. The major constraint that they face is outdated technology or limited technology, and the reason behind the lack of automation and mechanisation in this segment is linked to the unavailability of funds to the small manufacturers for the purchase and installation of such machinery. These businesses required many suppliers to meet their inventor needs. In the cluster of Food Processing units, the major constraints these SMEs face are the lack of funds for up gradation of capital, less skilled labours, low training opportunities, and high cost of production due to technological advancement.

“Production is insufficient because the demand for Mango and other food products increases every year. Due to limited capacity, producers/dealers process their food from private factories that charge them a higher cost. A request has been sent to Government for its expansion or some new units in this area to meet the requirements of the manufacturers.” (Respondent from Agro Food Processing)

It is concluded that the SMEs of Multan showed satisfaction with the facilities provided by the Government organisations, including SMEDA, PSIC, and TEVTA. But they complained about the non-availability of adequate funds or loans for the expansion of their businesses. Most of these manufacturers are not well-educated, so there are several misperceptions regarding government organisations like SMEDA and SME Bank. However, MEs are more stable and involved in the loan process than SEs due to sound financial condition and education. Regarding financial assistance, the SEs are not satisfied with the services because commercial banks ask for collateral for loans and SEs do not have such a guarantee. On the other hand, MEs are satisfied with the financial services provided by the financial institutions.

Regarding technical assistance, technical and vocational training are provided to SMEs by TEVTA and PSIC (for SEs) for their capacity building. On the other hand, policy-makers, facilitators and financial institutions claimed that only particular businesses are targeted for the trainings which included textile, food processing and logistics sector because these clusters will be the most demanded in the initial phase of CPEC. However, they are planning to include SMEs, especially SEs from other sectors of the district in the training and workshops in the near future. They are also planning to improve their general facilitation in all the districts through marketing.

7.5. CONCLUSION

SMEs are considered as growth incubators or foundation enterprises for the sustained development of the economy of any country. They are labour intensive; hence, they generate employment opportunities in the economy at a massive level. The developed countries such as China, Italy, and Japan are exemplary models because they have focused on the development of their small industries and made them independent and competitive through policy initiatives taken on a massive level. As a result, these SMEs were able to contribute up to 60-80 percent to the growth of these economies. The role of SMEs is important in the development of mega development projects to promote Global Value Chains (GVC) and International Production Networks (IPN), in which SMEs were given opportunities to establish their businesses in these directions.

The findings of the study revealed that the officials are well aware of the prospects for SMEs. The new SME Policy is under approval in which SMEs are focused on innovations and facilitation. MEs were relatively more aware and wanted to expand their businesses, nevertheless, SEs were not aware of market conditions and future expansion mainly due to lack of education, lack of finances, and small size in the market. SMEs do not have any formal setup for R&D departments, thus lacks in innovation. However, the authorities like PSIC and TEVTA are organising training and workshops for the awareness as well as the preparedness of the SMEs.

7.6. POLICY RECOMMENDATIONS

From the above findings and discussion, various loopholes are identified for SMEs and the supporting organisations. This section covers the policy recommendations based on findings and literature. Following are the key policy interventions proposed to build a strong nexus of SMEs and growth.

(a) Mass Awareness Campaign among SMEs

According to our findings, SMEs lack proper information on these projects due to illiterate managers and less exposure to the international market. Therefore, to take the local investors into confidence, the authorities at the federal and provincial level must plan mass awareness sessions about the potential projects for SMEs and the opportunities for SMEs in the international market by using cost benefit analysis and technical approaches.

The government must provide doorstep financial and technical assistance to these organisations for conducting these campaigns and roadshows. These awareness sessions must be conducted in collaboration with electronic and print media and public meetings. Similarly, training sessions and workshops must be organised for the targeted clusters among SMEs related to CPEC projects to fulfil skilled labour demand. SMEDA must be given a special budget for the organisation of such awareness and training sessions with respect to the potential projects for SMEs under CPEC. The Federal and Provincial Government must facilitate SMEDA, TEVTA, and PSIC to expand their facilitation by establishing help desks in all the country districts.

(b) Strengthening the Role of SME Bank

SBP must continue special refinancing schemes and credit guarantee schemes and direct all commercial, financial institutions strictly following these schemes. Moreover, SBP must declare SME Bank as a priority financial institution for the facilitation of SMEs. A special budget must be allotted for SME Bank by the government for marketing and awareness sessions for the SMEs.

(c) Strengthening Inter-Organisational Coordination

It is evident from the findings that coordination between the organisations was very weak. Therefore, organisations like PSIC, TEVTA, Chambers of Commerce and Industries, Business representative, associations, and other financial institutions must be connected with the SMEDA to build inter-organisational coordination. Moreover, SMEDA and SME Bank must work together in policy-making decisions regarding SMEs. The inter-coordination between these organisations will build a business-friendly environment for the SMEs due to ease of accessibility, provision of proper information regarding facilities and policymaking initiatives in national policies including labour policy and SME Policy.

(d) Introduction of Global Value Chains and International Production Networks for SMEs

The concept of GVC and IPN is followed globally under which the SMEs of particular sectors are incentivised for the expansion of their businesses and linking these with the international markets through new trade routes provided by the economic corridors and settling their businesses along those routes. For this purpose, particular global value chains and production networks for SMEs must be identified at first by the government. Then, the Government must plan and offer incentives for SMEs to invest in particular businesses, which will serve as backup for LSEs.

(e) Alignment of SME Policy with CPEC Long-Term Plan (2017-30)

Following the execution of CPEC in the country, it is important to revisit and modify our policies regarding demands of CPEC. Hence, keeping in mind the importance of SMEs for inclusive development, the Government must formulate a framework for the inclusion of SMEs in CPEC projects under the revised SME Policy. The principles, objectives, and policy recommendations in the SME Policy 2007 must be revised in consideration of the demands of CPEC and the role of SMEs. Under this framework, the existing and new avenues for SMEs in SEZs and infrastructural projects must be identified so that they can benefit from the opportunities placed in the industrial and agriculture sector. All the federal and provincial stakeholders working for the SMEs, business representatives of SMEs, and associations must be involved in formulating this framework for a representable and demand-driven policy intervention.

(f) One Window Facilitation for SMEs

According to the Doing Business Rank 2020, Pakistan ranked 108 out of 190 countries. It means that starting a new business is far more difficult in Pakistan in terms of the complex registration process, getting permits, access to financial assistance, and dealing with the taxation process. To improve the ease of doing business, one window facilitation for the SMEs must be introduced in the light of the revised SME Policy. The authority of one window facilitation must be given to SMEDA and SME Bank because they are the organisations established solely for the facilitation of SMEs in the country. The revised SME Policy must direct the collaboration of SMEDA and SME Bank so that SMEs can get all the facilities, including registration, financial, legal business development services, under one umbrella. The cost of doing business will be lowered in this way, and SMEs will be encouraged for legal certification as well.

ANNEXURE-I

SMEDA: Mandate, Initiatives and Challenges

In order to develop SMEs in the country, Small and Medium Enterprise Development Authority (SMEDA) was formed in 1998. SMEDA is the mandated to facilitate SMEs in Pakistan and help firms to overcome their weaknesses and realise their potential. It is an independent body working under the Ministry of Industries & Production (MOIP) for the growth and development of SMEs through creating and promoting;

- (i) Conducive regulatory environment;
- (ii) Industrial clusters; and
- (iii) Business Development Services to SMEs in all areas of business management.

Over the time, SMEDA has initiated a number of cluster development projects especially in the areas of leather garments, carpet weaving, cotton ginning, auto sector, marble & granite, glass bangles cluster, fruit processing, fishery, furniture, and ceramic kilns. They have taken several initiatives such as 'Technological Up gradation, access to Formal Finance for SME clusters, Marketing support, establishment of Common Facility

Centres (CFCs), Improving Human Resource skills and Awareness on International Certification & Regulations.’

SMEDA also offers ‘Business Development Services’ to SMEs in all four regional offices. Under these services, SMEs are provided support on different aspects such as Project Briefs, Pre-feasibility Studies and guidance on Regulatory Procedures. SMEDA also offers specific advice to SMEs on different problems. In addition, these helpdesks provide Human Resource Training services by conducting extensive training on need analysis of different SME clusters. Moreover, currently SMEDA has a range of twenty-eight projects with a total outlay of Rs.4.2 Billion under Public Sector Development Project (PSDP) which includes provincial projects in Punjab and Khyber Pakhtunkhwa (KPK).¹³³

On policy awareness, SMEDA organises annual National SMEs Conference and Expo in collaboration with business representatives, financial institutions, Government organisations, international partners and private sector. The first conference was held in 2016¹³⁴.

Regional Business Centres

The Regional Business Centres (RBCs) of SMEDA are a ‘One Man Office’ i.e., only one person is leading RBC in the region. There are total twelve RBCs of SMEDA all over the country which includes Abbotabad, Dera Ismail Khan, Lahore, Faisalabad, Gujrat, Multan, Gujranwala, Sialkot, Rawalpindi, Rahim Yar Khan, Dadu and Ghotki. RBCs provide facilitation only and do not have Research and Development (R&D) unit or policy role, but the rest of the functions are similar as of the Head Office, SMEDA.

Financial Services

On financial front, SMEDA Head Office and RBC do not provide direct financial services or loans to SMEs. However, it has ‘Financial Services under the department of Business & Sector Development Services (B&SDS). The financial role of SMEDA is divided in to four sub-categories that are ‘Supportive role, Advisory services, and SME Financing Products and Financial publications’. SMEDA is playing supportive role for SMEs in terms of conducting ‘Financial Analysis’ or pre-feasibility studies in their sector studies which includes historical status of that particular sector in business market, competitive analysis and source of financing in that sector. SMEDA also prepare ‘Financial models’ or business plans for their clients on their request. One of the respondent from SMEDA Head Office told that;

“We have prepared up to 200 pre-feasibility studies published so far which are also available on our official website. Whenever a client visits SMEDA and asked which business he/she should start, we give them briefing on these pre-feasibility studies for their information.” (Respondent from the Business & Sector Development Services Division, Head Office, SMEDA).

¹³³ “SMEDA Official Website” http://www.smeda.org/index.php?option=com_content&view=category&id=34&Itemid=164

¹³⁴ <https://smeda.org/smeconference/index.php/1st-sme-conference/>

Furthermore, for financial assistance, reference-based loans are provided to SMEs for which the regional office assists their clients for completion of their documents for loan application to respective banks. Moreover, RBC have also Memorandums of Understanding (MoUs) signed with the banks and helps them designing their schemes for the SMEs. In this regard, the respondent from RBC Multan told that;

“We refer our clients to the banks as well for loans and help them in completing their documentation for the application of loans. We have Memorandums of Understandings with the banks like right now we have signed a MoU with the Bank Alfalah for easy loans for SMEs. Whenever, we organise any event in the district or regional level, we invite banks to set their help desks in these events for the easy accessibility of our clients”

For SME financing, SMEDA guides the financial institutions about the demands of SMEs regarding loan facilities. It also updates the information of banking services related to SME financing on its website periodically and make it accessible through one portal on its website named as ‘SME Financing Products Database’. Furthermore, an accounting software ‘SMEDA Accounting Package (SMAP)’ is also introduced for the training of SMEs on book keeping.

“We provide basic training of SMEs on book keeping and preparing financial statements for themselves because most of the SMEs do not keep record of their business matters due to lack of education and guidance, as a result of which, they face difficulties in approval of loans from banks.” (Respondent from RBC Multan, SMEDA)

Business Development Services

For business development, SMEDA works on a hierarchical agenda. First, a sector is identified, then within that sector, sub-sector is formed and under a sub -category, cluster is formed. For these clusters, SMEDA conducts diagnostic studies (complete profile of that district as well as that sector/ cluster), available for everyone on the website so that the clients and new entrants should have complete information of that region/ district before starting a business. SMEDA guides its clients on the spot regarding their queries about business start-up, investment plan, feasibility studies, legal matters, or refers them to other resource persons as well. It also design Customised Business Plans on subsidised cost for the new entrants.

SMEDA also facilitates SMEs through projects as well. There are NGOs which provide short term grants for their projects to SMEDA for technical assistance like setting up businesses for SMEs. Then, SMEDA also supports Pakistan Poverty Alleviation Fund (PPAF) and their partner organisations in several schemes. Financial support is provided through grants from these organisations while technical support is provided by SMEDA such as setting up their model frameworks and hiring consultants for that project. ‘Industry Sector Program (ISP)’ is also initiated by SMEDA in 2004 in which it works in collaboration with the national and international organisations for transferring of technical expertise and assistance to the local investors.

Then, SMEDA also gets share in PSDP projects as well for which funding is provided by government but implementing authority is SMEDA for those projects. Other

than PSDP projects, there are funded projects of United Nation Organisation (UNO), United States Agency for International Development (USAID) and World bank as well, for which Government also gives quarterly funds through Ministry of Industries and Production (MOIP) for execution of these projects. SMEDA also facilitates through Public Sector Development Program (PSDP) annually.

“There were 18 PSDP projects of SMEDA completed in 2017 and five to six projects are under process of approval for this year, 2018 under PSDP. The successful PSDP projects of SMEDA include fruit processing plants in Multan, facilitation to the people of KPK and Ex-Federally Administered Tribal Areas (Ex-FATA) who lost their businesses during war against terrorism, Cutlery project in Wazirabad, Granite Plant in Baluchistan, Foundry Services Plant in Lahore, Honey Processing Plant and Fruit Processing Units in Swat, Business Centres in Gujranwala, Sports Goods in Sialkot, Spices Processing Plant in Kunri (Sindh), Women Business centres in five regions Karachi, Lahore, Quetta, Peshawar and Swat. Mega projects of SMEDA under PSDP covered Embroidery, Marble & Granite and Gems & Jewelry which later on had converted in to separate independent companies/businesses like ‘Aik Hunr Aik Nagar (AHAN)’, Pakistan Gems and Jewelry Development Company (PGJDC).” (Respondent from Business & Sector Development Services Division, Head Office, SMEDA).

Capacity Building Services

In case of capacity building, SMEDA has an annual calendar of activities which includes scheduled trainings based on demand of the market or participants. It organises vocational trainings for SMEs annually 10- 12 in every region. The trainings are conducted for Export documentation and Human Resource trainings as well.

Potential Identification Services

For potential identification, the research wing of SMEDA publishes studies on the sector specific analysis to improve exports and surveys of SMEs. In these studies, there is a separate section of ‘potential projects’ at the end, which serves the purpose of identifying the gap where new investment is needed in the potential projects. District profile is also published which includes Human Resource (HR) profile, climate, sector identification and potential projects in that particular district. For potential identification, RBC Multan provides information related to required raw materials and business options.

Legal Facilities

For legal facilities, SMEDA provides contracting services for the SMEs in which SMEs are informed about the regulation related to businesses and also provides legal opinions for their issues. Regional Business Coordinators are trained for legal purposes so that they can guide their clients. SMEs have an easy access to legal and commercial contracts in a separate section ‘Regulatory Procedures’ on our official website where clients can get all the information regarding legal matters. There are also help desks for one to one information for the SMEs where they can get information about company formation, registration or other services. Moreover, there is a ‘legal cell’ in which legal experts and lawyers are available in every RBC and Head Office.

“For legal services, legal help desks are organised on monthly basis for which experts are invited who tell the clients about financing options and requirements. Either RBC Multan advertises about these helpdesks or conveys through chambers which they forward to their groups.” (Respondent from RBC Multan, SMEDA)

Constraints and Challenges for Organisations and SMEs

SMEDA is the only direct facilitating body for SMEs among facilitators and policy makers therefore, there are some of the challenges that SMEDA has to face in general as well as while dealing with SMEs. First, SMEs misconceive SMEDA as a loan provider or financial assistant for SMEs, which is not true because SMEDA is a facilitator only. The second major challenge SMEDA has its low outreach and human resource to SMEs. Third challenge that SMEDA is facing is the inadequate funds from government and immobility. Fourth challenge is related to RBC Multan, the SMEs are not registered so RBC cannot reach out these SMEs. Registration body is SECP which do not have much work to do with SMEs and RBC does not have any coordination with Securities and Exchange Commission of Pakistan (SECP). Moreover, they inferred that SMEDA must be a registering authority to keep record of these SMEs.

“There are only 22 stations of SMEDA functioning all over the country. SMEs out of these 22 stations do not have an easy access to our organisation. The organisation has less than 100 employees in all branches. RBC is led by only one person and the regional matters are dealt by this person only (Respondent from RBC Multan, SMEDA).

On the other hand, the respondents told that there are number of constraints for SMEs in the market such as unfriendly business environment due to complicated process of registration which may irritate new entrants for business startup, lack of financial support because banks provide loans to SMEs on the basis of collateral which many of the SMEs may not be able to provide, lack of skilled labour, lack of complete or adequate knowledge, lack of experience and technological constraints.

“There are two major constraints for SMEs that are incomplete information and lack of financing. In addition to that seriousness of SMEs is also an issue; they invest their money in different avenues and at the end they face difficulty in return of loans that is proper utilisation of loan is their issue. Understanding of SMEs is also a problem because creativity or new ideas are missing. There is no innovation or technical education for these SMEs. They also feel hesitant in legal documentation” (Respondent from RBC, Multan Head Office).

Though the objectives highlight the mandate of the organisation, SMEDA over the years has evolved as an organisation to support SMEs and take a stock of what has been done. SMEDA has assessment mechanism in place while it has also developed five-year business plan for the institution as well as SMEs. The SMEs vary geographically and regionally therefore SMEDA continuously scrutinise in terms of what SMEDA can deliver itself and what it offer in collaboration with other organisations to facilitate the SME ecosystem.

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Chapter 8

Islamabad Real Estate Regulatory Authority: An Evaluation

AHMED WAQAR QASIM and MOHSIN KYANI¹³⁵

The National Assembly of Pakistan passed the bill of Islamabad Real Estate (Regulation and Development) Act, 2020. The goal of the Act is to establish the Real Estate Regulatory Authority (RERA) that will regulate and promote the real estate sector of Islamabad. The announced goals are:

- (1) To ensure the protection of buyers' interests,
- (2) Bringing efficiency and transparency in transactions
- (3) Regulating mega projects, and
- (4) Resolving disputes swiftly.

Question: Would the proposed RERA be able to regulate and promote the real estate sector or not?

Experiences from other sectors indicate that the real estate sector promotion through the establishment of a regulatory body would perhaps not achieve the desired objectives.

Thus, prior registration of the real estate projects, developers, and real estate agents with the RERA and digital public access to the RERA database along with the establishment of the Real Estate Appellate Tribunal are marked as the needed approaches for the realisation of objectives.

Current Performance of the Real Estate Market:

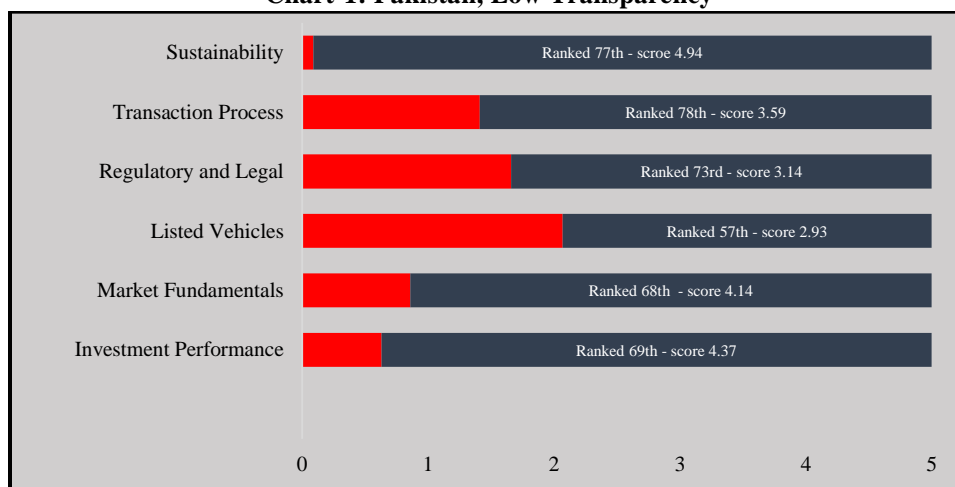
The real estate market of Pakistan exhibits different inefficiencies due to the lack of essential characteristics of a well-functioning market.¹³⁶ The poor performance of Pakistan's real estate market on the "Global Real Estate Index" is a manifestation of these inefficiencies. Pakistan's real estate market is classified as a low transparent market with a score of 3.88 and ranked 73rd out of 90 countries. As chart 1 shows, the

¹³⁵We are grateful to Dr. Nadeem Ul Haque, Vice-Chancellor, PIDE for the idea and valuable suggestions. We are also grateful to Mr. Azwar Muhammad Aslam for gathering data.

¹³⁶ For details about the inefficiencies that exist in the real estate market of Pakistan see "the PIDE reform agenda for accelerated and sustained growth", PIDE 2021.

worst-performing parameter is the transaction process (see Box 1 for a brief description of the parameters), while performance on the market fundamental parameter is also not encouraging.

Chart-1: Pakistan, Low Transparency



Evaluation Strategy:

Box-2: Evaluation Criteria

The evaluation of government intervention can be performed by either of the following criteria.

i) Relevance criteria:

Relevance assesses “the extent to which the objectives of a development intervention are consistent with beneficiaries’ requirements, country needs, global priorities, and partners’ and donor’ policies. The recently revised evaluation methodology also discourses specific features to “review whether appropriate interventions and financial allocations” have been put in place, “appropriate synergies were ensured across activities and services”, implementation arrangements... were suitable” and so on.

ii) Efficiency criteria:

Generally, the efficiency criteria are aimed at measuring how efficiently resources/inputs (funds, expertise, time, and so on) are converted to results. Efficiency is assessed based on the results, outputs, and outcomes.

iii) Effectiveness criteria:

It may be defined as the extent to which the development intervention’s objectives were achieved or are expected to be achieved, considering their relative importance.

*See Husian, Tariq (2010).
The role of ombudsman in improving
public service delivery in Pakistan.
Asian Development Bank.*

Box-1: Global Real Estate Index

Jones Lang LaSalle (JLL) produces the Global Real Estate Transparency Index (GRETl), which reveals the transparency of the real estate markets of 99 countries based on 163 city regions. The index is computed as a weighted average of 6 parameters. These parameters include:

- i) **Investment performance measure:** Evaluate the performance of investment through direct property indices, listed real estate security indices, and private real estate indices.
- ii) **Market fundamentals:** Measures the availability, quality, and depth of real estate market data.
- iii) **Governance of listed vehicles:** Assesses transparency in the financial disclosure and corporate governance requirements of listed real estate vehicles.
- iv) **Regulatory and legal:** Assesses legal and regulatory framework and enforcement relating to taxation, land-use planning, building codes, enforceability of contracts, land registration, beneficial ownership disclosure, and anti-money laundering regulations.
- v) **Transaction process:** Examines key elements of the transaction process for sale transactions including pre-sale information, bidding process, anti-money laundering regulations, and occupier services.
- vi) **Sustainability:** Measures transparency across 11 elements of sustainability.

Source: Global Real Estate Transparency Index, 2020

Although the bill to establish RERA has been passed, however, both the Real Estate Authority and Appellate Tribunal are not established yet. Therefore, evaluating the role of the RERA Act to promote the activities and transactions in the real estate market may be too early to pursue. Nevertheless, one can foresee the likelihood of the realisation of the objectives by juxtaposing the overall relevance of the objectives with the prevailing market fundamentals and requirements. We particularly focused on the “relevance criteria” to assess the prospect of the real estate promotion through the RERA Act. As pointed out by Husain (2010), the evaluation criteria that involves the assessment of the relevance of intervention primarily focus on the alignment of the objectives of the intervention along with stakeholders’ requirements, national and global priorities, and development partners’ policies. Therefore, the mechanism adopted for the evaluation is based on these considerations.

- (i) Whether the proposed RERA would be able to eliminate the real estate market inefficiencies and to promote basic market characteristics?
- (ii) What are the prospects that the RERA will address the prevailing problems in the real estate sector?
- (iii) How much extra regulatory burden will be imposed on the real estate market by the proposed RERA?
- (iv) Do we need to establish a new Authority given the basic infrastructure is already in place?

Box 3. Functions of the Real Estate Authority and Appellate Tribunal

1. The Real Estate Regulatory Authority

Functions

- To Facilitate and promote a healthy, transparent, efficient, and competitive real estate sector.
 - Ensuring protection of interests of allottees, developers, and real estate agents.
 - Creating time-bound project approval and clearance through one window system.
 - Creating a transparent grievance redressal mechanism.
 - Encouraging investment in the real estate sector.
 - Promoting standardised and affordable housing.
 - Facilitating digitisation of land records system that guarantees conclusive property titles.
- To register and regulate real estate projects and real estate agents.
- To maintain a public website of all real estate projects describing the registration status, information of defaulted developers, and registered real estate agents.
- To ensure compliance with the obligations and defined rules and regulations.

Powers

- To call upon any developer or allottee or real estate agent for information and to conduct inquiry and to make assessments.
- To impose a penalty on the breach of any obligations cast upon developers, allottees, and real estate agents.
- To regulate its procedure with judicial powers.
- To take suo moto notice of any issue that distorts competition and or anyone who abuses market power to hurt the interest of allottees.
- To issue interim orders to restrain any developer, allottee, or real estate agent from carrying out any action that violates the Act.

2. The Real Estate Appellate Tribunal

The Act has also proposed the establishment of a Federal Real Estate Appellate Tribunal with one or more benches for various jurisdictions. All cases regarding the real estate sector pending in the court of law shall be transferred to the Appellate Tribunal. The Appellate Tribunal will be bound by the procedure laid down by the Code of Civil procedure 1908, Qanoon-e-Shahadat 1984.

Powers

- Has the same power as are vested in a civil court in respect of the following matters:
 - Summoning and enforcing the attendance of any person and examining him on oath.
 - Requiring the discovery and production of documents.
 - Receiving evidence on affidavits.
 - Issuing commissions for the examinations of witnesses or documents.
 - Reviewing its decisions.
 - Dismissing an application for default or directing it ex parte
 - Any other matter which may be prescribed
- All proceedings before the Appellate Tribunal shall be deemed to be penal code.

(I) Real Estate Market Inefficiencies and the Role of RERA

As highlighted by the PIDE Reform Agenda for Accelerated and Sustained Growth (2021), the real estate market is marked with insufficient **information** regarding the price and characteristics of a property. To make an informed decision, transparent information about the inventory and historical transactions is essential, which is missing in the real estate market of Pakistan. On the other hand, real estate properties' price evaluations for tax purposes, such as FBR immovable property evaluation and DC rates, amplify the non-transparency issue further.

Real estate properties' price evaluations for tax purposes, such as FBR immovable property evaluation and DC rates, amplify the non-transparency issue further.

Besides insufficient information, **land titles and rights** in the real estate sector are vague. The **enforcement of rights** is also unsatisfactory and **dispute settlement** processes are lengthy. The formal dispute settlement mechanism is complicated with huge compliance costs and the court does not respect the economic value of the time. Moreover, the **transaction process** is cumbersome and time-consuming due to a host of regulations and NOCs. These inefficiencies extend the opportunities to fraudulent transactions, deceitful dealing behaviour of the real estate developers and agents, prolonged litigations, and timeless deliverance of services by the developers. Therefore, many potential market participants, especially overseas Pakistanis, fearing getting an unfair deal, might refrain from trading in the real estate market.

Table 8.1

Characteristics of a well-functioning Market and the RERA

| Characteristic | Status in The Real Estate Market | Proposed Solution in the RERA Act | |
|-----------------------|----------------------------------|--|--|
| | | | Assessment |
| Information | Insufficient | The duties of developers and real estate agents are specified. Relevant clauses are 10b, 10c, 10e, 11.2, and 11.3. | Un-addressed The Act is silent about the price and information asymmetry. |
| Property Rights | Vague | The act bound developers to produce undisputed ownership rights before marketing a project. Digitisation of the land record has been also suggested. Particular clauses are 4a, 19.5, and 33h. | Partially Addressed The Act has not addressed the issue of extending boundaries of a real estate project on the name of extension with an assumption that permission will be granted later. |
| Transaction Mechanism | Vague | Single window operation along with enforced sale agreements have been tabled. Particular clauses are 3, 11.4a, 11.4b, 12, 13, 19.6, 33e, and 33b. | Un-addressed The transaction process and technology have not been covered in the Act. |
| Enforced Rights | Unsatisfactory | The Real Estate Appellate Tribunal along with ensuring guaranteed titles. Particular clauses are 33h and 50. | Addressed |
| Solvent Agents | Unsatisfactory | The developers will provide a detailed project briefing along with trust account conditions, particular clauses are 2d, 35a, and 35b. | Addressed |
| Conveyance | Unsatisfactory | | Un-addressed |
| Dispute Settlement | Unsatisfactory | The Real Estate Appellate Tribunal, Clause 50. | Partially Addressed Since the appeal to Islamabad High Court against the decision is also permissible. |

Although the proposed RERA Act has addressed some inefficiencies, however, the approach is restricted with some inefficiencies left unaddressed. For instance, the Act remains silent on the key issue of price (mis)information. One potential way to address this issue could be the addition of a clause related to the provision of price information. Since the Act proposed that the RERA will host a webpage where

detailed information about the real estate agents and developers will be shared. The webpage can also be used

- To list the transaction prices by making it obligatory to put up the transaction price for a certain period before the registration of the transaction.
- When a property gets listed for sale, open bidding should also be allowed.
- To ensure the information about the prices is correct, the government would be allowed to purchase the said property within sixty days of the transaction at the quoted price.

The adoption of such innovative measures will also enable the authorities to abolish DC rates and FBR immovable evaluations.

Box 3. Real Estate Regulatory Agency, Dubai

The government of Dubai has established the Real Estate Regulatory Agency (RERA) in 2017 to regulate the real estate market of Dubai. This administrative independent body also sets policies and makes plans to promote investment and resolve disputes between tenants and landlords. The principal assignments of Dubai RERA include:

- Licensing real estate agents as well as activities.
- Oversee the trust account of developers.
- Registering lease agreements.
- Oversee the managing bodies of various real estate megaprojects.
- Manage marketing activities of developers and real estate agents.
- Facilitate real estate exhibitions to promote investment.
- Disseminating information related to buying and renting.

Vast similarities between the functions and responsibilities of the Real Estate Regulatory Agency, Dubai, and the proposed Islamabad Real Estate Regulatory Authority, Pakistan, raise the eyebrows of the readers. One may assert that the layout of the RERA Act is based on Dubai's model. In that event, any attempt to implement such kind of intervention without assessing the local conditions would definitely be a failed attempt.

Source: mybayut (2021) retrieved Nov. 03, 2021, from <https://www.bayut.com/mybayut/rera-guide/>

On the issue of defined rights, the Act has pointed out that RERA will facilitate the digitisation process of land records. However, having only digital land records may not be the ultimate solution to the problem, particularly, if we take into consideration the practice of digitisation performed in provincial jurisdictions. To ensure rights are clearly defined as well as enforced, the proposed RERA has to go beyond just digital recording of land titles.

The Act has also overlooked the importance of transaction technology as well. The use of technology will not only bring transparency in transactions but will also enhance the velocity of transactions. Starting with automation and moving towards blockchain technology would address vague and unenforced rights issues as well.

(II) Prevailing Problems in the Real Estate Market and the Role of RERA

To identify the major problem faced by different stakeholders, we surveyed the real estate market of Islamabad. The survey involved in-depth interviews with key stakeholders.¹³⁷

The leading concerns that emerged from this short survey are as follow in ascending order.

- (1) Transparency deficiencies in the market promote a corruption culture.
- (2) Dormant behaviour of concerned authorities towards the implementation of rules and regulations.
- (3) Transactions and procedures are time-consuming.
- (4) Non-professional behaviour of the real estate agents due to lack of formal training.
- (5) Existence of considerable illegal housing societies.
- (6) Fraudulent transactions due to file trading culture.
- (7) Prolonged trials in the court due to vague titles.
- (8) Price instability and the recent price hike in the construction industry due to inflation.
- (9) Complicated and inefficient tax mechanism.
- (10) Borrowing constraints.

During the interaction with the stakeholders, we have also asked about the market interventions that the participant perceives critical to address these issues. The leading recommendation was that the existing rules and regulations are sufficient but need substantial implementation. The need of the hour is to form a mechanism to implement as well as disseminate awareness regarding rules and regulations. On the other hand, the RERA Act has heavy assertions about the implementation of rules and regulations for the real estate project as well as dissemination of awareness. Therefore, one can optimistically hope that these suggestions will come into reality after the establishment of RERA.

¹³⁷These include developers, real estate marketing agencies, real estate agents, buyers, sellers, and real estate lawyers.

Table 8.2

Prevailing Problems and the RERA

| Identified Problem | Proposed Solution in the RERA Act | Assessment |
|---|--|--|
| Transparency deficiencies in the market promote a corruption culture. | The RERA will protect the interest of the stakeholder by promoting transparency, particular clauses are 33a and 33c. | Un-addressed The Act is silent about the price and information asymmetry. |
| Dormant behaviour of concerned authorities | The RERA will ensure compliance. The particular clauses are 35f, 37.2i, 37.2iii, 38.1, 43.1, 43.2, 44, 45, and 47. | Addressed But keeping in view the performance of CDA, one can rightly be a pessimist about compliance. |
| Transactions and procedures are time-consuming. | Single window system to ensure timely clearance, clause 33b. | Un-addressed The transaction process and technology have not been covered in the Act. |
| Non-professional behaviour of the real estate agents. | - | Un-addressed |
| Illegal housing societies | The RERA will develop a database for public viewing about all real estate projects, particular clauses are 35b, 35c, and 35d. | Un-addressed |
| Fraudulent transactions due to file trading culture | - | Un-addressed |
| Prolonged trials in the court due to vague titles. | The Real Estate Appellate Tribunal along with the facilitation of land record digitisation. Particular clauses are 33h, 59.1, 59.2, 33g, 60, 69, 71, and 72. | Partially Addressed Since the appeal to Islamabad High Court against the decision is also permissible. |
| Price instability | - | Un-addressed |
| Complicated tax mechanism. | - | Un-addressed |
| Borrowing constraints. | - | Un-addressed |

Among the problems identified, one particular problem that has been neglected by the Act is the formal training of real estate agents. The RERA must consider the necessity of formal training of the real estate agents to develop trust and bring transparency and efficiency to the sector. There are many examples around the world where formal training is required before getting the license for a real estate agent. For instance, Florida Real Estate Commission makes it compulsory for an individual to complete 63 classroom hours to be registered as a sales associate and 72 classroom hours from an accredited institution to be registered as a broker. The RERA can also adopt such models and gradually introduce minimum education and training criteria.

Similarly, the Act has also not addressed the unique practice of file trading in Pakistan, which is one of the primary sources for fraudulent transactions. File-trading refers to the act of buying a document of a plot without possession and allocation because the housing society has yet to be developed. People buy files due to perceived high returns. These files keep on changing hands even without ensuing any actual activity on the ground. Resultantly, the developers have no perseverance as well as incentives to develop the society within the promised timeline.

(III) The Regulatory Burden of the RERA

The establishment of the RERA and the Appellate tribunal through the Islamabad Real Estate Act, 2020, will surely increase the regulatory burden in the real estate market. The main source of burden is the increase in the compliance cost. Since the Act made it mandatory for developers and real estate agents to register their projects and themselves with the RERA, therefore, the real estate market will not observe the increase in compliance cost but a rise in administrative burden as well. On the other hand, web listing of all approved real estate projects, developers, and real estate agents will reduce learning costs for the buyers to a degree. Yet, the major source of learning cost, which is related to the characteristics and price of the property, will persist in the market.

Similarly, the objective of the Real Estate Appellate Tribunal is to provide swift dispute resolution. However, the decisions of the Tribunal would not be decisive in most of the cases due to the right of appeal. Therefore, one can expect the actual impact of the Tribunal on the reduction of the litigation processing time may be marginal. Thus, the real benefits to society due to the establishment of the RERA most likely be outweighed by the administrative burdens of the intervention.

Besides administrative burden, the Act will also create a financial burden as well in the real estate market. The Act identified that the Federal government would provide the seed money for the establishment of the Authority, while the Authority will generate its sources of funding for its function as well. These own sources include the fee levied by the Authority, penalties imposed by the Authority and by the Appellate Tribunal. To understand how much financial burden the RERA will impose on the market, we contemplate the expected budgetary requirement of the RERA. The table below contains our estimation of the budget, which we still believe is based on conservative estimates.¹³⁸

¹³⁸ For details about the calculations, see appendix

Table 8.3

Details of Expected Annual Budget

| Title | Pay Scale | Numbers | Monetised Monthly Salary | Annual Salary bill (Rs. Mil.) |
|-----------------------------------|-----------|---------|--------------------------|-------------------------------|
| Chairperson | MP-I | 2 | 1,054,767 | 25.31 |
| Members | MP-II | 7 | 979,594 | 82.28 |
| Directors | BPS-20 | 4 | 729,511 | 35.01 |
| Registrar | BPS-20 | 1 | 729,511 | 8.75 |
| Treasurer | BPS-20 | 1 | 729,511 | 8.75 |
| Additional Registrar | BPS-19 | 1 | 315,873 | 3.79 |
| Developers | BPS-19 | 1 | 315,873 | 3.79 |
| Deputy Director | BPS-18 | 2 | 230,750 | 5.53 |
| Web-Developers | BPS-18 | 2 | 230,750 | 5.53 |
| Networking | BPS-18 | 1 | 230,750 | 2.76 |
| Web-designer | BPS-17 | 2 | 202,546 | 4.86 |
| Superintendent | BPS-17 | 1 | 202,546 | 2.43 |
| Account Officer | BPS-17 | 1 | 202,546 | 2.43 |
| Transport Officer | BPS-17 | 1 | 202,546 | 2.43 |
| Personal Secretary | BPS-17 | 2 | 202,546 | 4.86 |
| Private Secretary | BPS-17 | 16 | 202,546 | 38.88 |
| Assistant | BPS-16 | 26 | 171,150 | 53.39 |
| Inspector | BPS-16 | 10 | 171,150 | 20.53 |
| Stenographer | BPS-16 | 14 | 171,150 | 28.75 |
| UDC | BPS-11 | 2 | 91,934 | 2.20 |
| LDC | BPS-09 | 12 | 71,740 | 10.33 |
| Driver | BPS-04 | 15 | 47,855 | 8.61 |
| Naib Qasid | BPS-01 | 15 | 43,657 | 7.85 |
| Janitor | BPS-01 | 5 | 43,657 | 2.61 |
| Total Salary Related Expenditures | | | | 371.77 |
| Overhead (@ 15%) | | | | 55.76 |
| Total Budget | | | | 427.53 |

Therefore, the minimal financial burden carried by the RERA is around Rs. 427.53 million, which ultimately falls on the shoulders of the buyers.

(IV) Does the Real Estate Market Need an Authority?

The functions assigned to the proposed RERA currently fall under the jurisdiction of the Capital Development Authority (CDA) except dispute resolution.

Therefore, the establishment of RERA may also bring challenges over the division of functions among CDA and RERA, and the Act has disregarded this point. More surprisingly, the strategy adopted in the Act to achieve the objectives has already been embedded in the By-Laws of the CDA. For instance, the Act made the prior registration of the real estate projects, developers, and real estate agents with the RERA compulsory. While the Islamabad Real Estate Agents and Motor Vehicles Dealers Ordinance (1984) and ICT Zoning Regulation (1992) already deal with the prior registration with CDA before starting the business or project.

Besides the already existing rules and regulations within CDA, the necessary infrastructure and resources required for the implementation of these regulations have also been developed by the CDA. There are at least five directorates within different wings of the CDA performing the tasks that are assigned to the proposed RERA. These directorates include Building Control Directorate I and II, Enforcement Directorate, Directorate of One Window Operation, and Housing Society Directorate. Therefore, in the presence of a massive existing infrastructure establishing a new authority would probably place an extra burden on the market instead of facilitating the market.

Furthermore, the Act also claims that the RERA will maintain a website so that the public can have access to the information about the approved real estate projects, defaulted developers, and registered real estate agents. The CDA is again partially performing this task by disseminating the lists of legal and illegal housing societies and information about other real estate projects.

Concludingly, by having a critical review of the existing body of regulations and resources to regulate and promote the real estate sector, one can safely assert that the establishment of RERA will not be a turning point for the market. Instead, it will add more regulatory burden on the market. Therefore, the more efficient way to achieve the desired goal could be to focus on implementational issues by nudging CDA.

CONCLUDING REMARKS

If we evaluate the relevance of the mandate of the proposed RERA based on the characteristics of a well-functioning real estate market. The mandate assigned to the RERA, and the Appellate Tribunal appears to be incapable to address the inefficiencies of the real estate market. Some of the key areas that particularly need attention for efficiencies concerns have been overlooked by the Act such as availability of transparent information about prices, ensuring land titles and rights are well defined and enforced properly, introducing transaction technologies, and a fast mechanism for dispute resolution.

While the evaluation based on the relevance of objectives of the proposed RERA with the real estate market requirements also indicates that the realisation of the objectives of this intervention will be a daunting task. The Act disregarded some of the key issues of the real estate market such as the element of corruption, prolonged transaction processes, non-professional behaviour of the real estate agents and developers, the inactive approach of authorities. To bring efficiency and transparency in the real estate market, settling these issues on a priority basis is essential.

Furthermore, the RERA will cost heavily in the market in the form of a regulatory burden. Based on the experiences from other sectors, the promotion and regulation of the real estate market through the Authority seems challenging. Especially when the proposed new rules and regulations and strategies have already existed or been tried in the market. Our analysis indicates that the government should utilise the existing infrastructure and resources instead of focusing on the development of a new Authority.

APPENDIX

Calculations of the Budgetary requirements of the RERA

The Act indicates that the Authority shall be consisting of 6 members, while the Appellate Tribunal shall be consisting of one chairperson and two members. Besides these members, the administrative structure of the authority will be formalised by the steering committee. Based on the functions of the RERA, we believed the following departments are needed:

- Information and Communication Technology (ICT) Department
- Account Department
- Human Resources Department
- Registration Department
- Inspection and Monitoring Department
- Transport Department
- Registrar Office

While the composition of each department is as follow:

Expected Sizes of the RERA and Appellate Tribunal to be formed under the Act

| Position | Expected Number of Positions | Pay Scale |
|--|------------------------------|-----------|
| <i>Information and Communication Technology (ICT) Department</i> | | |
| Director | 01 | BPS-20 |
| Team Lead (Developer) | 01 | BPS-19 |
| Web-Developers | 02 | BPS-18 |
| Networking | 01 | BPS-18 |
| Web-Designer | 02 | BPS-17 |
| Assistants | 02 | BPS-16 |
| <i>Accounts Department</i> | | |
| Treasurer | 01 | BPS-20 |
| Deputy-Treasurer | 01 | BPS-18 |
| Account Officer | 01 | BPS-17 |
| Accountant | 01 | BPS-16 |
| Assistant Accountant | 02 | BPS-16 |
| Record Keeper | 01 | BPS-09 |
| LDC | 02 | BPS-09 |
| <i>Human Resources Department</i> | | |
| Director | 01 | BPS-20 |
| Deputy-Director | 01 | BPS-18 |
| Superintendent | 01 | BPS-17 |
| Assistant | 01 | BPS-16 |
| UDC | 01 | BPS-11 |
| LDC | 04 | BPS-09 |
| <i>Registration Department</i> | | |
| Director | 01 | BPS-20 |
| Assistant | 01 | BPS-16 |
| UDC | 01 | BPS-11 |
| LDC | 03 | BPS-09 |
| <i>Inspection and Monitoring Department</i> | | |
| Director | 01 | BPS-20 |
| Assistant | 01 | BPS-16 |
| Inspectors | 10 | BPS-16 |
| <i>Transport Department</i> | | |
| Transport Officer | 01 | BPS-17 |
| Assistant | 01 | BPS-16 |
| LDC | 01 | BPS-09 |
| Drivers | 15 | BPS-04 |
| <i>Registrar Office</i> | | |
| Registrar | 01 | BPS-20 |
| Additional Registrar | 01 | BPS-19 |
| Personal Secretary | 02 | BPS-17 |
| Private Secretary | 02 | BPS-16 |
| Assistant | 02 | BPS-16 |
| LDC | 02 | BPS-09 |

To compute the expected financial burden of the above-mentioned staff, we utilised the information about the grade-wise monetised incentives from the PIDE report “Cash poor, perk rich.” The table-4 in the text contains the calculation of annual salary bills.

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