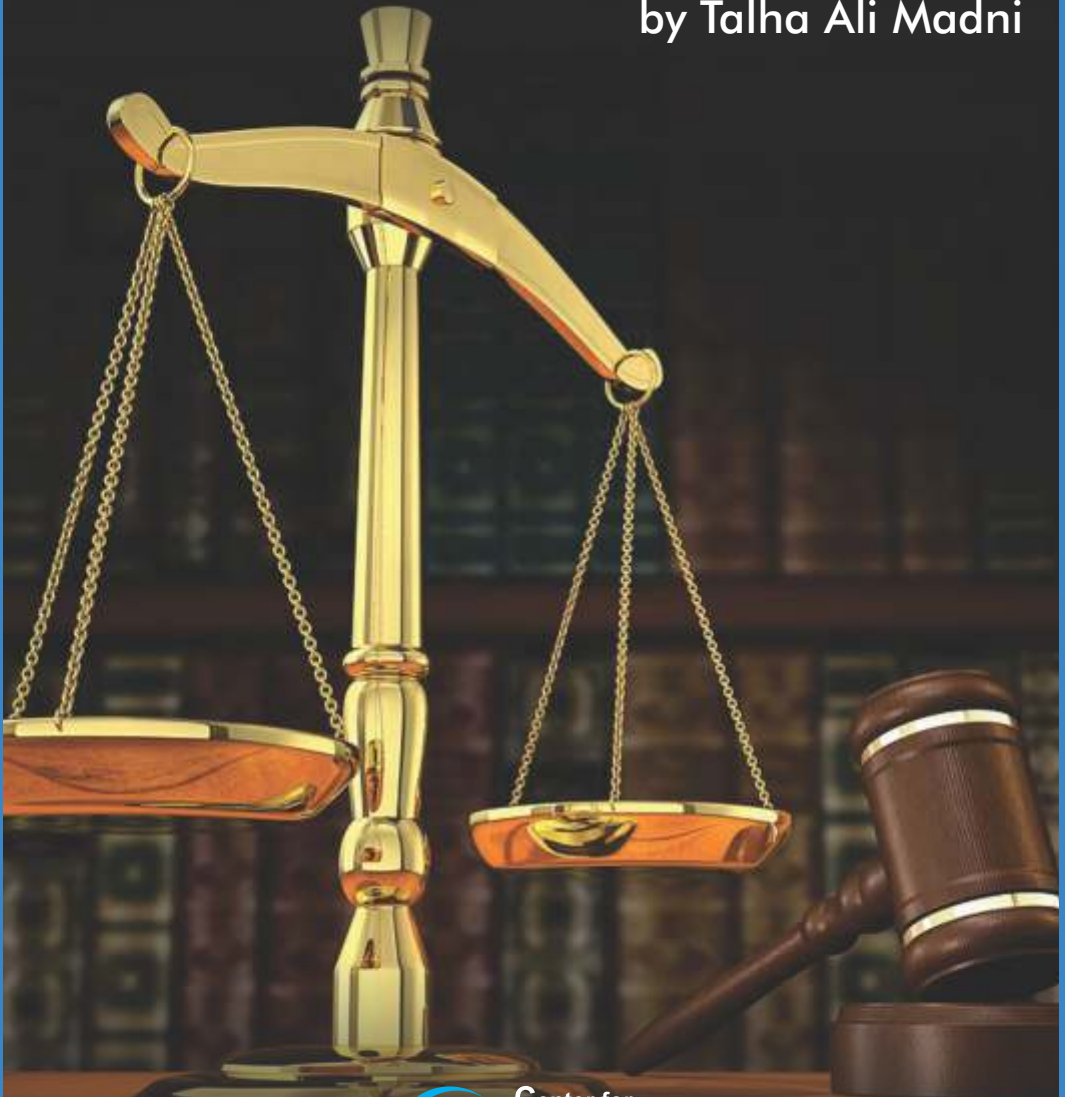


# The Cost of Judicial Activism

by Talha Ali Madni



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Rule of Law - Security - Governance

CRSS RESEARCH REPORT

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## About the author

Talha Ali Madni is a LUMS graduate of 2019 with a bachelor's degree in Economics and Political Science. Currently, he is working as a researcher with a multilateral development bank for improving Punjab's Technical and Vocational Education and Training sector. Additionally, he is also engaged with the government as a researcher on security and economic matters. As a student, he was actively involved in academic research, most notably with Dr. Moeed Yusuf and Dr. Rasul Baksh Rais. Previously, he had been writing for The Nation, an English daily newspaper, as well.

Talha is interested in studying public policy, political economy, strategic and security studies. In leisure, he enjoys listening to classical music and playing badminton.

# Table of Contents

Executive Summary		4
Introduction		5
Reko Diq		6
Pakistan Steel Mills		10
Pakistan International Airlines		15
Karkey		18
Conclusion		20

## Executive Summary

If Pakistan were to pay all the penalties imposed on it for annulment of transactions, breach of contracts, and disregard for its international obligations, it would come to PKR 9.9 trillion, including PKR 1,244 billion in penalties and losses, and PKR 8,505 billion in loss of opportunity. This has been accrued from merely four cases, i.e., Karkey, Pakistan International Airlines (PIA), Pakistan Steel Mills (PSM), and Reko Diq. This is a sad commentary on the senior most judges of the apex court, who issued rulings on cases with direct and indirect, national and international financial implications for the country.

## Introduction

In democratic countries the judiciary has the onerous task of interpreting the laws and constitution of its jurisdiction. This way, the courts perform the duties of a guardian of the law as well as an interpreter of questionable or contested legislation. Therefore, the judiciary is expected to be extremely cautious, measured, and bipartisan in adjudicating matters of public interest.

In the last few years, some of the cases that the Supreme Court of Pakistan (SCP) took up, exercising its *suo moto* powers granted by the Article 184(3) of the constitution, turned out to be more damaging for the economic interests of the country than doing any good. In the four aforementioned cases, the court adjudicated economic matters, without leaving the final settlement to the parties involved, and thus accosted the country in trillions. The amount also does not include the opportunity cost and expected penalties of \$900 million levied by the International Centre for Settlement of Investment Disputes (ICSID).

This report aims to highlight the political and financial cost that Pakistan has paid, and will continue to pay, if all rulings of the ICSID are to be implemented. The rulings on loss-making PSM and PIA have been equally disastrous.

## Reko Diq

Reko Diq, which literally means ‘sandy peak’, is a sparsely populated small remote town in Chagai district of Baluchistan. It is blessed with one of the largest gold and copper reserves in the world, with estimated mineral resources of 5.9 billion tons of copper ore and nearly 1300 tons of gold reserves. According to a conservative estimate Reko Diq amounts to \$240-\$260 billion over 40 years.<sup>1</sup>

To tap these resources, the Government of Baluchistan (GoB) under the then caretaker chief minister Naseer Mengal entered into a joint venture with Broken Hill Proprietary Company Limited (BHP), an Australian mining company, known as the Chagai Hills Exploration Joint Venture Agreement (CHEJVA) in 1993. The agreement allowed the firm to explore and mine minerals in an area of 33,47,226 acres where the BHP would have 75% shares and the GoB would claim the rest. Additionally, the GoB was promised 2% royalty.

As part of their corporate social responsibilities (CSR), the project also required BHP to build schools, health clinics, a mosque, a public square, and a library for the town. Moreover, the construction of a 189-megawatt electricity plant was also planned.

Although the plan looked great on paper, the problem was that the project required the government to relax several terms in the Baluchistan Mineral Concession Rules, 1970 that rendered the project beyond the ambit of the existing law. These concessions, and subsequent loopholes, allowed the firm to form a monopoly and change the ownership of the project and excavate minerals other than gold and copper.<sup>2</sup> Utilizing these concessions, BHP invited Mincor Resources, an Australian mining corporate, to become a part of the project by creating Tethyan Copper Company (TCC) in April 2000. Six years after the inception of TCC, BHP and the GoB agreed to novate CHEJVA in 2006.

Meanwhile, Barrick Gold, a Canadian company, and Antofagasta, a Chile-based firm, together formed an equally owned enterprise called Atacama. In 2006, Atacama bought 100% shares of TCC through the Australian stock exchange, and became a party to the CHEJVA. Thus, all parties to CHEJVA had changed altogether by the end of 2006, with the exception of GoB.

Interestingly, TCC since its inception had lobbied hard for concessions in various rules, including the mining concession rules. These concessions permitted it to get an extension in its mining license until 2009 without providing any feasibility report.

In 2008, when Nawab Aslam Raisani assumed the office of Baluchistan's chief minister, he was alarmed by TCC's lobbying and the slow progress on the feasibility report that was wasting a lucrative opportunity. On December 24, 2009, after many failed attempts to resolve the matter, Raisani refused to extend the mining license to TCC and revoked the CHEJVA.

Earlier, the validity of the CHEJVA and legality of the relaxations made for the project in the Baluchistan Mineral Concession Rules 1970 was also brought before the High Court of Baluchistan in 2006 by Maulana Abdul Haq. The court rejected his petition in 2007. However, a three-member bench of the SCP accepted the petition, and found CHEJVA in violation of the Mineral Development Act, 1948, the Mining Concession Rules, 1970, the Contract Act, 1972, and the Transfer of Property Act, 1882.

Aggrieved TCC took the case to the ICSID, a body of the World Bank Group, under the Article 13(3)(a) of the Australia-Pakistan bilateral investment treaty which allowed them to petition ICSID against such actions of the host country that allegedly damaged their investment. The tribunal had to determine whether Pakistan had violated the bilateral investment treaty. By then, TCC had already invested \$220 million, and intended to invest another \$3.3 billion in the project. The court, after determining the admissibility of the case, entered into the first phase in which the tribunal had to decide if Pakistan was guilty of renegeing on its contractual commitments and violating the bilateral investment treaty.

SCP's verdict did not affect the fate of the case before the ICSID as the tribunal was not tasked to determine whether the CHEJVA violated the laws of Pakistan, but to determine whether Pakistan had violated the Bilateral Investment Treaty with Australia. In 2017, the tribunal in its judgement found the GoB guilty of violating the bilateral investment treaty and renegeing on its contractual agreements. The case then entered the second phase of the trial, in which ICSID had to determine the amount of damages that Pakistan should pay to TCC.

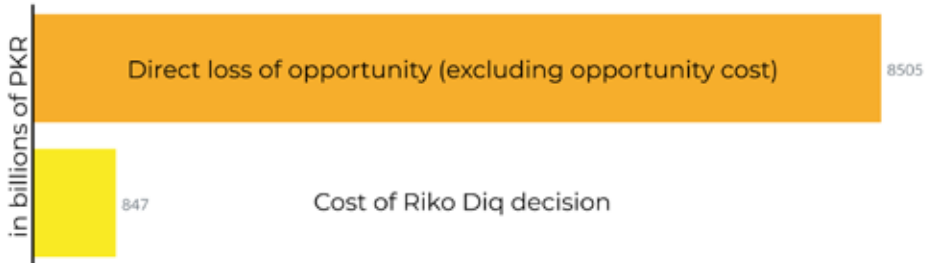
On 13th July 2019, ICSID concluded the quantum phase of the case by slapping about \$5.976 billion damages on Pakistan. The award in favor of TCC consisted of \$4.08 billion in penalty and \$1.87 billion in interest. Interestingly, the court did not order Pakistan for a specific performance that would have required the government to allow TCC to resume its mining operations and rights. Possibly, the government would challenge the verdict, but the record shows that since 1960, around 600 parties have petitioned the ICSID for the annulment of the award, and only 17 have been successful.<sup>3</sup> However, to avoid the hefty fine, the government may also choose to negotiate with TCC as the corporation's management has



shown the willingness to work again with Pakistan.

The cost of malpractices by the GoB compounded by SCP's disregard of the bilateral investment agreement in economic terms is immense. The direct cost of violation of the agreement is PKR 847 billion (USD vs. PKR 2018-19 average equals 141.8<sup>4</sup>), and loss because of non-completion of this project is around PKR 8.5-9.2 trillion (\$60-65 billion), the amount equal to the revenue the GoB would have earned if the project had materialized.

Graph 01: Losses as a result of SCP decisions



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Additionally, indirect costs included the lost opportunity to socio-economically uplift Reko Diq's people, and future international investments in Baluchistan's mining industry.

The Human Development Index (HDI) of Chagai district stands among one of the lowest in the country at 0.21. It is also one of the poorest areas of the country. According to Benazir Income Support Programme (BISP), 58.67% of Chagai's population is poor or below the poverty line.<sup>5</sup> Had the project been implemented, it would have employed thousands of people and helped uplift their living standards. Thousands of people would also have become part of the formal economy of the country. However, economic malpractices and judicial activism squandered this opportunity, and Reko Diq's people missed the elevator of socioeconomic progress.

The project had the potential to offer economies of scale and agglomeration in Chagai district's mining industry as well. Successful completion of a mining project by a multinational firm would have boosted the confidence of investors in the government, and would have encouraged them to invest in Chagai's mineral resources. Sialkot in the Punjab province is such an example where the agglomeration of capital in sports goods has altered the socioeconomic fabric.

Today, Sialkot is one of the least poor cities in the country.

Another effect of such corrupt practices is that it discouraged other mining companies from investing in Pakistan. Therefore, after the episode, there has been no noteworthy investment in the country's mining industry.

## Pakistan Steel Mills (PSM)

PSM - an industrial giant spread over 18,600 acres in Karachi near the Bin Qasim Port - is the largest industrial complex of the country. It was founded in 1973 with the economic assistance of the erstwhile Soviet Union. With a capacity of manufacturing 1.1 million tons of steel a year, it also had an expansion potential of up to 3 million tons of steel a year. The complex has 20 plants that work in tandem with each other. If any of these malfunction, the whole mill comes to a standstill.

Pakistan Steel, once a symbol of the economic strength of the country, was established in an era when the focus of development economics was on import substitution industrialization, and economic structuring. However, after a few years of generating profits, PSM became a liability owing to over-recruitment of employees, malpractices, pilferage, bad planning, and poor management. For the period 1985-90 and 1993-99, it incurred a cumulative loss of Rs. 20 billion.<sup>6</sup> By December 2018, total losses and liabilities of the mills stood at a staggering PKR 400 billion according to a conservative estimate.<sup>7</sup>

On May 29, 1997, the Council of Common Interest (CCI) decided to privatize the mills due to non-viability of the project owing to massive losses. However, after the approval from the CCI, the government changed its mind to not privatize the firm by injecting aid from the national exchequer. Meanwhile, reforms and restructuring of the management were also introduced to cut the running costs. These actions paid off and the mills' loss in the financial year 1999-2000 was reduced to Rs. 1.141 billion.

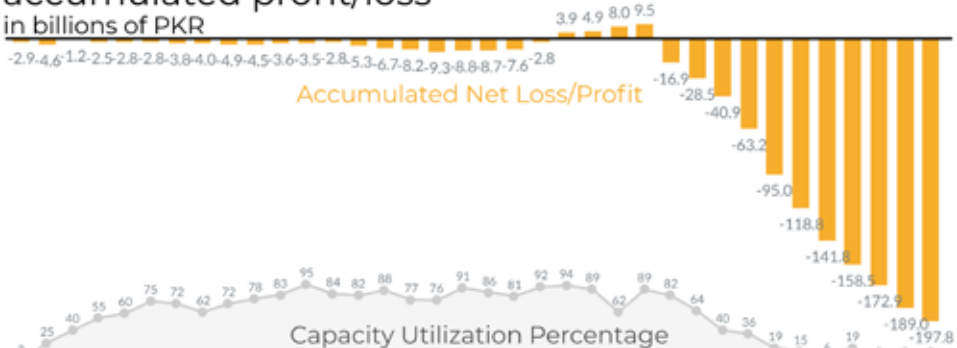
<b>Financial Year</b>	<b>Net Profit/Loss (in millions)</b>	<b>Accumulated Profit or Loss (in millions)</b>	<b>Total Assets (in millions)</b>	<b>Total Liabilities (in millions)</b>	<b>Capacity Utilization Percentage</b>
1983	-1486	-2938	25192	15248	3
1984	-1632	-4570	27326	18180	25
1985	-1168	-1168	28627	20649	40
1986	-1292	-2460	28525	21839	55
1987	-350	-2810	28283	21947	60
1988	57	-2753	28815	23422	75

1989	-1053	-3806	31759	26419	72
1990	-220	-4026	31821	18641	62
1991	-868	-4894	32129	19807	72
1992	396	-4498	30248	17540	78
1993	880	-3618	32196	18608	83
1994	95	-3523	32046	18363	95
1995	731	-2792	33128	18714	84
1996	-2477	-5269	34020	22082	82
1997	-1434	-6703	32504	22001	88
1998	-1482	-8185	32624	23593	77
1999	-1141	-9326	32119	24229	76
2000	552	-8774	30496	22054	91
2001	102	-8672	30150	21606	86
2002	1024	-7648	23669	14101	81
2003	4852	-2796	30936	16516	92
2004	6732	3937	37049	15895	94
2005	930	4866	36580	14498	89
2006	3159	8025	40176	14935	62
2007	2081	9536	41477	14725	89
2008	-26450	-16914	35043	34741	82
2009	-11566	-28480	96676	41748	64
2010	-12434	-40914	93569	54995	40
2011	-22273	-63187	89335	72935	36
2012	-31846	-95032	89529	104967	19
2013	-23750	-118782	146071	126355	15
2014	-23048	-141830	155427	158759	6
2015	-16648	-158478	152138	172118	19
2016	-15787	-172922	149791	186431	0
2017	-16041	-188963	149410	202092	0
2018	-8800	-197763	150007	211487	0

The government also embarked on an ambitious program to expand the capacity of the mills to 3 million tons a year in 2000. In the year 2002, the firm registered profits when its performance was increased from 76 percent in 1999-2000 to 92

percent in 2002-03.<sup>8</sup> August 2002 witnessed a monthly sales record at PKR 1.938 billion. Reforms and the government’s attempt to revitalize the mills bore fruits when the industrial complex registered PKR 4.866 billion accumulated profits in 2005.

Graph 02: PSM capacity utilization against accumulated profit/loss in billions of PKR



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In April 2005, paradoxically, the Musharraf regime decided to privatize PSM. The Cabinet Committee on Privatization (CCP) had planned to sell 51-74 percent shares of the industry. A financial adviser from the Citi Group was hired to estimate the worth of the mills, which he identified at \$500 million. Confusingly, the estimation did not include the land value of the mills. This way, the cost of acquiring 75% shares of the firm was \$375 million, or PKR 17.43 a share for a total of 1,290,487,275 privatized shares. However, when the estimation was sent to the CCP for approval, it revised the share price to PKR 16.18.

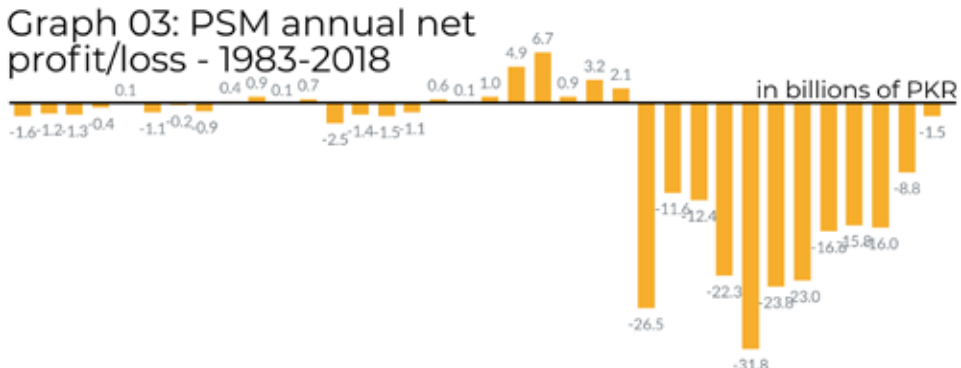
Out of nineteen parties bidding for the privatization, one consortium comprising of Al-Tuwairqi Group (Saudi Arabia), Arif Habib Group (Pakistan), and Magnitogorsk Iron and Steel Works (Russia) succeeded at a share price of PKR 16.80. On 31<sup>st</sup> March 2006, the CCP accepted the offer of the consortium, and formally approved the sale by entering into an agreement on April 24, 2006.

Meanwhile, Pakistan Watan Party and Peoples Workers Union, the elected worker’s union of the PSM, challenged the privatization of the firm in the Sindh High Court which was referred to the SCP on March 30, 2006. The petitioners alleged that the government was selling the Mills at a throwaway price of PKR 21.68 billion that was significantly below its set up cost. SCP in its verdict declared

the government’s privatization as illegal and void on account that the “valuation of the project and the final terms offered to the successful consortium were not in accord with the initial public offering given through advertisement.”<sup>9</sup>

Interestingly, the court in its order also acknowledged that it was not the prerogative of the judiciary to intervene in the matters of the executive.<sup>10</sup> However, Article 184(3) of the Constitution empowers the federal courts with the original jurisdiction to act in matters of public interest. Hence, by concluding the privatization of the mills as a violation of the public interest, it declared the mills’ privatization process as illegal because the acts of omissions and malpractices by the state functionaries had vitiated the process.

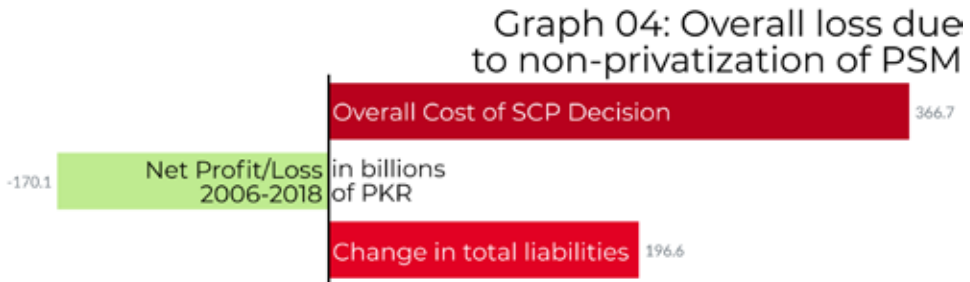
Ironically, the court also appeared to overstep its authority. The article 184(3) states that the court can act in matters of public interest only when there is no alternative mechanism available to overcome the problem at hand. Sections 27 and 28 of the Privatization Commission Ordinance 2000 provide the tools to facilitate the solution, but the apex court disregarded these mechanisms.



SCP’s decision to not allow privatization in 2006 compounded by PSM’s failure to earn profits had cost the country more than 200 billion rupees. In 2005, the state had an opportunity to roll back itself as PSM was in the best shape to be privatized. Today, the accumulated loss of PSM is more than 200 billion rupees compared to 4.8 billion rupees net profit in 2005, and it is no longer a lucrative asset for investors.

Had the industrial complex been sold, the national exchequer would not have to bear this much cost. The government is paying 380 million rupees monthly to the employees of the mills, even though it has been shut for four years.<sup>11</sup>

Cumulatively, the state has paid around PKR 25 billion in salary bills during the last four years.<sup>12</sup> If the state does not address the plight of steel mills, the treasury will keep on bleeding its important resources, which can be spent on other beneficial projects. For the benefit of a few thousand employees, the government should not be punishing millions of others who are in dire need of these resources.



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Ideally, the state apparatus should be hesitant to assume a permanent role in the economic domain. At times, it can and should act as a facilitator for a ‘big push,’ but never become a permanent player in the economic field. Moreover, the government should also give up its obsolete economic thinking that the industrialization can pave the way for development. Currently, the world is going through the fourth industrialization revolution, and Pakistan should become a part of it by developing a knowledge-based economy. The state should provide an environment to attract the flying geese model, where the multinational companies looking for cheap labor relocate their manufacturing plants to Pakistan.

## Pakistan International Airlines (PIA)

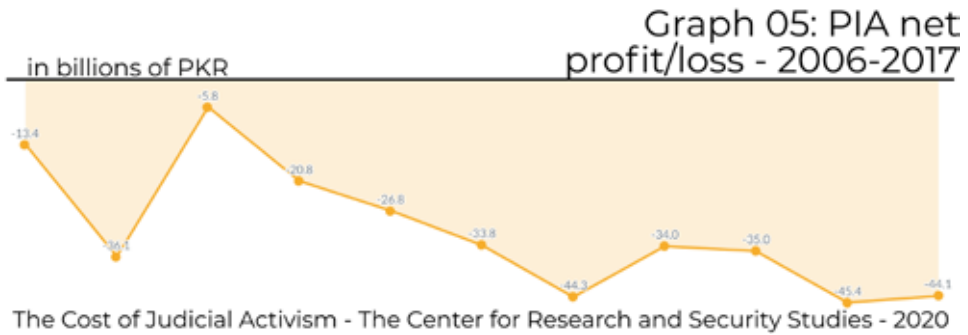
On January 10, 1955, PIA was incorporated under an ordinance, and it quickly rose to prominence. Under the command of Air Marshal Nur Khan, it became one of the most sought-after airlines in the world. It was also the first Asian airline to acquire a jet aircraft Boeing 707 that opened new avenues for the airline. Further on, encouraged by its profits, PIA also started various subsidiaries, including the Roosevelt Hotel, Hotel The Scribe, and PIA Investments Limited.

Unfortunately, the star airliner started to lose its charm in the 1990s because of mismanagement, nepotism, pilferage, and an aging fleet. Years of uncertainty, unaccountability, incompetence, and institutional dogmatism has led to a situation where only a miracle could revive PIA. According to the corporation's financial report of March 2017, its accumulated losses and total liabilities stand at a staggering PKR 339.5 billion and PKR 424.7 billion, respectively, against total assets of PKR 212.3 billion.

<b>Year</b>	<b>Net Profit/Loss (in billions of PKR)</b>
2007	-13.4
2008	-36.1
2009	-5.8
2010	-20.8
2011	-26.8
2012	-33.8
2013	-44.3
2014	-34.0
2015	-35.0
2016	-45.4
2017	-44.1

*Source: PIAC Unconsolidated Balance Sheet*





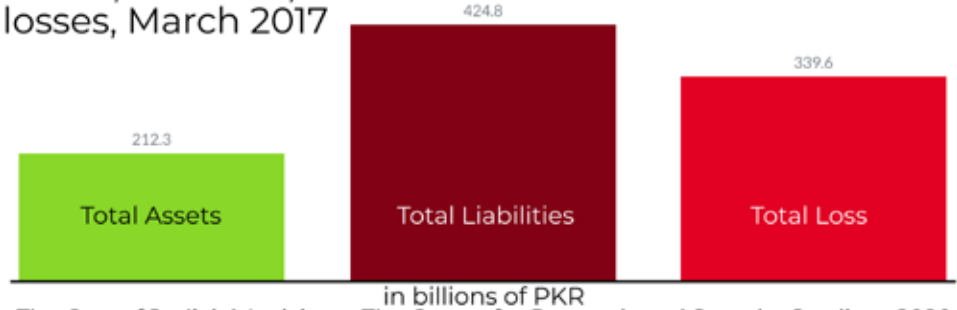
PIA did not become a loss-making corporation overnight. There were many steps taken by the state that were at the expense of national airline. In 2000, the government's open sky policy to encourage competition and investment attracted the airliners from the Gulf countries to operate in Pakistan. Resultantly, PIA lost its monopoly and started to lose the competition. Its revenues started dwindling, and losses went up. To make matters worse, this was compounded by the Pakistan People's Party (PPP) government's malpractices and over-recruitment. In 2013, the number of PIA employees stood at an all-time high of 19,500.<sup>13</sup> The figure was one of the highest plane-to-employee ratios in the world (780 employees per plane), while airliners like Turkish Airlines and Emirates had 86 employees per plane and 220 employee per plane ratio, respectively. In 2013, Nawaz Sharif's government, which was already short on budget and under pressure from the International Monetary Fund (IMF) to privatize all loss-making state-owned enterprises, tried to revive the airline by privatizing it. However, because of strong resistance from the opposition parties and the PIA employees, this initiative failed. Until now, the government is the key stakeholder in the corporation with 96 percent shares that costs the national exchequer between PKR 8-8.5 billion a month.<sup>14</sup>

Ironically, despite making huge losses and costing billions to the national coffers, PIA management decided to spend resources on a new livery in 2018. Although the initiative was intended to give a new outlook to the airline and reclaim its lost glory, it invited the wrath of the SCP's active judiciary. Chief Justice Mian Saqib Nisar took a *suo moto* case against PIA's management for changing the livery of the airline and replacing the national flag with the markhor, the national animal of the country. SCP also barred PIA from recruiting more employees. Furthermore, the court also transgressed into the domain of the executive branch by requiring the executive to seek its permission if the government intended to privatize PIA.

Such a decision by the SCP, the custodian of the public interest, costs people multidimensionally. Firstly, it comes at a great cost for the taxpayers who would

be taxed unnecessarily and made to pay for something that gives them no benefit. Secondly, SCP has incentivized PIA's management to normalize lethargy and unprofessionalism, as PIA knows a state organ protects it from privatization. Therefore, there have been no remarkable changes witnessed in the airline and PIA has lost more than PKR 30 billion since the SCP took up the *suo-moto* case.

Graph 06: PIA's total assets, liabilities, and losses, March 2017



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Source: PIACL Consolidated Condensed Interim Balance Sheet (March 31, 2017)

The government should privatize or at least get rid of loss-making state-owned enterprises that deprive citizens of efficient use of already limited resources. Moreover, the institutions tasked with adjudicating economic matters and other disputes should also not burden themselves and transgress into the domain of the executive.

## Karkey

In 2007-08, when Pakistan faced a huge power crisis due to deficient production capacity, the Economic Coordination Committee (ECC) of the PPP government decided to go for a short-term solution by hiring rental power plants (RPPs). The ECC approved the rental power policy that envisioned to acquire 19 RPPs to overcome a shortfall of 2,200 megawatts (MW) urgently. However, the project was marred with many inconsistencies, critical questions, and doubts about policy implementation. The government eventually decided to scale down the project to nine RPPs on the recommendations of the Asian Development Bank (ADB), which had originally identified the inconsistencies.

Out of the nine RPPs, one was Karkey Karadeniz Elektrik Uretim, a Turkish rental power firm that had bid to become a part of the rental power project. After successful bidding, it entered into rental services contract (RSC) worth \$560 million with Lakhra Power Generation Company Limited, a company owned by the Government of Pakistan (GoP),<sup>15</sup> on April 23, 2009, to set-up a ship-mounted rental power plant to supply 232 MW electricity to Karachi. Pursuant to the terms of RSC, the government also issued a sovereign guarantee. Eventually, Karkey achieved operational status in April 2011.

Meanwhile, Makhdoom Syed Faisal Saleh Hayat, then a Member of National Assembly (MNA), and Khawaja Muhammad Asif, also a parliamentarian, approached SCP regarding the malpractices followed in awarding contracts and an alleged massive scam of \$5 billion in the rental power projects.<sup>16</sup> The SCP took a *suo moto* case on December 2, 2011. In its verdict in 2012, a two-member bench comprising the then Chief Justice Iftikhar Muhammad Chaudhry and Justice Khilji Arif Hussain declared all the RSCs, including the one with Karkey, void *ab initio*, illegal, and against the public interest. The court declared that all the government functionaries “holding charge from 2006 and onward up to 2008 during whose tenure the RPPs were approved/set up, *prima facie*, violated the principle of transparency,” and ordered the National Accountability Bureau (NAB) to pursue a corruption case against the mentioned officials and functionaries under National Accountability Ordinance, 1999. Consequently, all the assets of Karkey were frozen and its ships were seized, until the NAB completed its inquiry.<sup>17</sup>

Aggrieved by the SCP’s verdict and continuous renegeing of Pakistani authorities on its contracts, in March 2012, Karkey lodged a claim of \$250 million loss because of Pakistan’s violation of contract in a competitive international tribunal.<sup>18</sup> However, it was only timely active management of the Turkish government that stopped Karkey from pursuing the case.

Subsequently, NAB after conducting a detailed investigation settled the matter with Karkey in a Deed of Settlement dated September 7, 2012. The Deed cleared Karkey of all the liabilities and investigation after paying \$17.2 million to the authority and permitted the firm to take the route of international arbitration if Pakistan breached the Deed of Settlement in future.<sup>19</sup> Thereafter, in October 2012, NAB also issued a No Objection Certificate (NOC) to Karkey confirming that the firm had no liabilities since NAB had completed its inquiry against Karkey.<sup>20</sup>

However, the SCP revoked the NOC and the Deed unilaterally and ordered NAB to recover \$120 million from Karkey.<sup>21</sup> Moreover, the apex court directed the NAB to pursue criminal charges against the individuals involved in the rental power case. Being intimidated and pressurized for overstepping his duties, the chairman of the NAB expressed his concerns in a letter to the President of Pakistan Asif Ali Zardari that the SCP was encroaching on NAB's independence.

Consequently, Pakistan was taken to an international tribunal on January 16, 2013, when Karkey petitioned against the GoP in the ICSID. The rental power company contended that the SCP's verdict was against the terms of the Pakistan-Turkey Bilateral Investment Treaty, and claimed \$2 billion in compensation because of loss and continuous detention of Karkey's capital assets by NAB. The international tribunal, after carefully examining the merits of the case, accepted the admissibility of the case on February 8, 2013.

Accordingly, the ICSID initially issued an award worth \$760 million in favor of Karkey that carried \$5.5 million monthly interest. After the award, Karkey immediately went into enforcement of the award in various ICSID member states, including the United States, France, and the United Kingdom. Concurrently, Pakistan also petitioned for the annulment of the award before the tribunal and an automatic stay was placed on the enforcement of the award according to the ICSID rules. Pakistan continues to contest the case with the corruption card.

Pakistan, represented by Axis Law Chambers and the Attorney General of Pakistan (AGP), contends that it has gathered fresh evidence of corruption that makes its case strong before the ICSID. According to NAB officials, Laeeq Ahmed Sheikh, who is a key suspect in the rental power case and is in NAB's custody, has revealed some astonishing facts. He has confessed to receiving USD 350,000 from Babar Zulqarnain, who had received \$5 million in kickbacks to facilitate the contract between the Pakistani government and Karkey.<sup>22</sup> Although Pakistan's case appears to be strong this time, and as stated earlier, since 1960 around 600 parties have petitioned the ICSID for the annulment, and only 17 have been successful.<sup>23</sup>

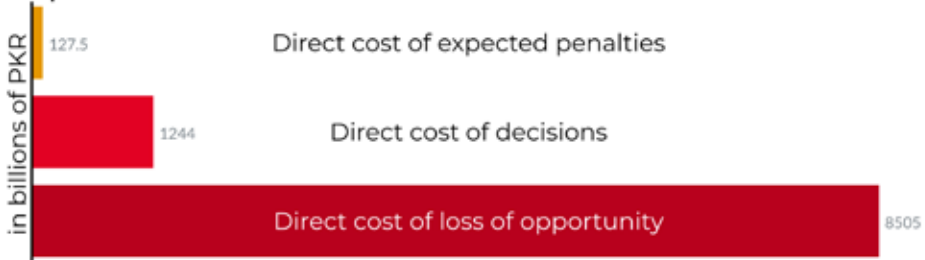
## Conclusion

The four cases – Reko Diq, PIA, PSM, and Karkey – leave little doubt that SCP judgments ended up doing more damage than the harm they had intended to prevent. They badly dented Pakistan’s image as a trustworthy country where “international contacts are not honored and businesses always run the risk of falling victim to corruption, witch-hunting by National Accountability Bureau (NAB) or other official agencies.”

The cumulative documented direct loss because of SCP’s decisions is nearly PKR 9.7 trillion, excluding the expected penalties in Karkey. All this because the honorable judges endeavored to judge matters which not only required knowledge in business, finance and management, but necessitated due deference to the international laws and obligations of a country.

Pakistan cannot, and should not, expect to attract foreign investments until all investors and business operators are assured of a smooth playing field, with no fear of undue interference by officials and courts. Abrupt tax policy changes and retrospective taxation of existing businesses are other debilitating factors. Until businesses are insulated against all these aspects, new investments will remain elusive.

Graph 07: Total Cost of SCP decisions



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The second lesson that the authorities need to draw from this fiasco is to enter into national and international contracts only after sufficient consideration and thorough inter-institutional coordination. Third, why should the judiciary – the ultimate guardian of rule of law and the fundamental rights – seize itself with pure economic matters? Both the government as well as the judiciary must distance themselves from businesses, and instead stay in step with the guidelines of the fourth industrial revolution that require the state to develop the human capital of its citizens and serve only as a regulator to guard against unfair monopolies.

## Endnotes

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# About CRSS

## CRSS Background

The Center for Research and Security Studies (CRSS) is a think tank/advocacy center founded in September, 2007. Founded by noted security expert and media personality Imtiaz Gul, it is committed to the cause of independent research and nonpartisan analysis, and informed advocacy, and help people outside Pakistan understand this nation of 212 million people.

As an advocacy center, CRSS is dedicated to trigger critical thinking through discourse anchored in global democratic values such as socio-political diversity, rule of law, equal citizenry, and acceptance of diversity, fundamental human rights, all at the intersection of empirical research in security studies

## CRSS Core Values

CRSS strives to embed the national conversation in constitutionalism, and rationalize it over extremism and sectarianism. CRSS believes the path to peace is through embodying fundamental human rights, specifically:

- strict adherence to the rule of law, and stringent implementation
- informing the public on civic education, especially good governance and public accountability
- promoting equal rights for all citizens of Pakistan
- championing women empowerment
- providing training and opportunities to youth to veer them away from radicalization through critical thinking

CRSS' programming reflects its core values, which CRSS believes can, along with time-tested methodologies in strategic communications, impactful message development, research and advocacy result in a more tolerant and cohesive Pakistan.

## CRSS Publications

CRSS produces several publications annually. Our flagship publications are the NAP Tracker, an annual audit of the counter-terrorism/counter-extremism National Action Plan (NAP) of the Government of Pakistan; and the Annual Security Report, a measure of the state of security in Pakistan by gauging the number of violence-related casualties across the country.

In addition, our most recent publication was the Role of Madrassas, which provided answers to why parents continue to send their children to madrassas. CRSS also regularly publishes papers, commentary and analysis by our research fellows from around the world. You can find all of our publications freely online, or collect copies free of cost from our offices in Islamabad.

You can also visit the CRSS Blog, as well as the website of our sister organization Afghan Studies Center.

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