

# REGULATORY ENVIRONMENT OF THE PROFESSIONS IN PAKISTAN: AN OUTLINE

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A large number of services in Pakistan – ranging from medical care to legal representation, financial auditing and pharmacy – can only be performed by licensed “professionals”. The quality of these professional services depends greatly upon the regulatory environment of the professional services market. It is important to study the professions because their impact the entire economy and society. So, for instance, a better regulator environment for lawyers would not only improve service delivery in the legal service market, but it would also lead to an overall climate of rule of law and better contract enforcement.

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I would like to thank my Associates, fellow lawyers Muhammad Hashim Zafar, Abdul Rafay Siddiqui and Muhammad Alee Qureshi and office staff members without whose contributions, this would not have been possible. Last but not the least, I remain ever grateful to my family for their steadfast support and appreciation.

## TABLE OF CONTENTS

<b>LIST OF TABLES</b> .....	<b>iii</b>
<b>INTRODUCTION: WHY STUDY THE PROFESSIONS?</b> .....	<b>1</b>
1.1 Background of the Study.....	1
1.2 Objectives of the Study .....	2
<b>THE PROFESSIONS AND THEIR LAWS: A BIRD’S EYE’S VIEW</b> .....	<b>3</b>
2.1 The Professions .....	3
2.2 Governing Laws .....	3
2.3 A Bird’s Eye View of the Professional Regulatory Laws .....	4
Licensed Activity .....	4
Accreditation of Education .....	8
Governance Structure: The Three Circles .....	8
Delegated Legislation .....	9
Power to Make Regulations .....	9
Disciplinary Forums for Professional Misconduct: The “Self-Regulation” Model.....	11
Holding the Regulator Accountable.....	15
<b>COMPARING THE GOVERNANCE STRUCTURE OF VARIOUS PROFESSIONAL REGULATORS</b> .	<b>19</b>
3.1 Licensing Models: Criminalization v. Invalidation .....	19
3.2 Ambit of Regulation: Professions and Business.....	19
3.3 Length of Tenure.....	20
3.4 Elected/non-elected .....	20
3.5 Modes of Election: Direct/Indirect.....	21
<b>UNIVERSAL FRANCHISE AND ONE-MAN-ONE VOTE</b> .....	<b>22</b>
<b>DEMOGRAPHICS OF THE PROFESSIONS IN PAKISTAN</b> .....	<b>23</b>
<b>RE-FRAMING THE REFORM DEBATE</b> .....	<b>26</b>
<b>THE SELF-REGULATION MODEL: PITFALLS AND ALTERNATIVES</b> .....	<b>28</b>
6.1 Separating the “Regulatory” and “Representative” Functions: The Case of the English Legal Profession in the 21 <sup>st</sup> Century.....	28

## LIST OF TABLES

Table 1: Professional Regulators and their Licensees.....	3
Table 2: Legal Framework of the Professions .....	4
Table 3: Definition of Licensed Professional Activities .....	5
Table 4: Delegated Legislation.....	11
Table 5: Disciplinary Forums .....	12
Table 6: Mechanisms for Institutional Accountability .....	16
Table 7: Regulators of Business and Professions.....	20
Table 8: Length of Tenures .....	20
Table 9: Percentage of Elected Versus Nominated Members .....	21
Table 10: Number of Enrolled Professionals .....	23
Table 11: Growth Rates.....	24
Table 12: The Gender Breakdown.....	24
Table 13: Provincial Breakdown.....	25



# INTRODUCTION: WHY STUDY THE PROFESSIONS?

## 1.1 Background of the Study

Professional services may be defined as services provided by professionals who are (i) compulsorily regulated by law and (ii) whose regulator is based upon the principle of peer-to-peer regulation. These services – such as legal and healthcare services – are an important part of the overall market for professional services, both in terms of the total economic value of this market as well as in terms of the significance of these services for overall societal well-being.

Many professions in Pakistan are presently going through serious crises.<sup>1</sup> The issue has recently gained traction in national press on account of an organized attack launched on Chief Justice Islamabad High Court by a sizable group of lawyers in Islamabad led by a serving member of the Islamabad Bar Council, the professional services regulator. Engineering consulting firms which prepared the feasibility study and design of the Rawalpindi Ring Road scandal have been accused of having invested in the project's real estate, thus creating a serious conflict of interest. Physicians are regularly accused of prescribing unnecessary diagnostic tests and expensive drugs to patients because of monetary incentives offered to them by pharmaceutical companies and diagnostic labs. Even the erstwhile highly reputed chartered accountants are being accused of figure-fudging in public companies in collusion with corporate managers.

While the professions – especially law and medicine – are often subject to criticism on media, the reform debate remains marred by moralistic prescriptions, knee-jerk reactions and generalizations. Legal and demographic facts are conspicuously missing when people talk about the professions. There's no mention of the self-regulatory structure embedded in the law which may be an explanatory variable for some of the issue; nor is there any mention of the high growth rate of some of the professions which could perhaps explain deteriorating standards.

A serious and informed debate about the “regulatory structure” of the professions is the need of the hour because, like other rational market agents, the behavior of “professionals” is not determined entirely by the values they espouse; the behavior of professionals is also determined, to a very great extent, by the regulatory environment in which they operate. The cost and quality of professional services in any country has a direct relationship with the regulatory environment of the professions.

Till the time of writing of the research report, there is not a single review or report which attempts to take a holistic view of the regulatory structure of the professions in Pakistan. This is a structure which rests upon almost one dozen primary statutes and even more voluminous delegated legislation. The history, structure, powers and behaviour of each of the regulators – Bar Councils, Nursing Council, Engineering Council etc. – is unique; but there are also some commonalities. Effective public critique and reform of the professions is not possible without taking stock of this complex regulatory structure.

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<sup>1</sup> Malik, H. 2021. “Lawyers Run Amok in Federal Capital.” *The Express Tribune*, February 8.

## 1.2 Objectives of the Study

This study aims to provide, firstly, an accurate description of the law which govern the professions and set up their regulatory structures. After listing the laws down, I also compare them with each other.

Second, this study puts together, for the first time ever, some basic demographics of the professions - for instance, the total number of lawyers, doctors and auditors etc., their gender breakdowns and, in some case, their growth rates too.

Finally, based on the study, I have charted out an agenda for policy debate which is informed by legal and demographic realities, not just anecdotes and personal whims.

This is primarily a descriptive piece rather than a prescriptive one. However, the aim of this descriptive research is to provide a basis for having a more informed debate on prescriptions for reform of the professional regulators. This study is a must read for any political economist, political activist, politician, journalist, judge, lawyer or other interested person who wishes to embark upon the much-needed project of reforming the professions in Pakistan.



## THE PROFESSIONS AND THEIR LAWS: A BIRD'S EYE'S VIEW

### 2.1 The Professions

At the moment, there are a total of 12 autonomous professional regulators in Pakistan, a list of which is provided in the table below. However, some of these are “umbrella regulators”, i.e. they regulate more than one but deeply related set of professionals. Therefore, in the list below we have enumerated not just the professional regulators but also their licensees.

**Table 1: Professional Regulators and their Licensees**

Sr.	Regulator	Licensees
1)	Pakistan Engineering Council (PEC)	Engineers, Constructors, Operators
2)	Pakistan Medical Council (PMC)	Medical Practitioners, Surgeons, Physicians
3)	Pakistan Dental Council (PDC)	Dental Surgeons
4)	Pakistan Council of Architects and Town Planners (PCATP)	Architects Town Planners, Architectural Contractors
5)	Institute of Chartered Accountants, Pakistan (ICAP)	Chartered Accountants, Management Consultants
6)	Institution of Chartered Management Accountants of Pakistan (ICMAP)	Cost and Management, Accountants
7)	Pakistan Bar Council and Provincial Bar Councils	Lawyers
8)	Pakistan Nursing Council (PNC)	Nurses, Midwives, Health Visitors, Nursing Auxiliaries
9)	Pharmacy Council of Pakistan and provincial Pharmacy Councils	Pharmacists
10)	Pakistan Veterinary Medical Council (PVMC)	Veterinarians
11)	National Council for Tibb (NCT)	Tabibs, Vaidis
12)	National Council for Homeopathy (NCH)	Homeopaths

### 2.2 Governing Laws

The titles of principal statutes under which these professional regulators operate are listed below. In legal parlance, one always refers to a statute by its date of promulgation; so, for instance, the PEC Act is referred to as PEC Act, 1976. It may be borne in mind that the date of its principal statute is not necessarily an indication of the founding date of the regulator. In some cases, this may be true; but in other cases, it's not so because the present statute only replaces some earlier statute. To illustrate this point, in the list below, I have not only listed the current statutes but also tried to trace their precursor documents.

**Table 2: Legal Framework of the Professions**

	<b>Professional Services Regulator</b>	<b>Relevant Statute</b>	<b>Precursors</b>
i.	Pakistan Engineering Council	PEC Act 1976	Memorandum of Association of Institution of Engineers Pakistan; Association of Consulting Engineers (Pakistan)
ii.	Pakistan Medical and Dental Council	PMC Act 2020	PMDC Ordinance, 1962
iii.	Pakistan Council of Architects and Town Plan	PCATP Ordinance 1983	None
iv.	Institute of Chartered Accountants, Pakistan	Chartered Accountants Ordinance, 1961	Auditors Certificate Rules, 1950, under Section 144 of the Companies Act, 1913, Auditors' Certificates Rules, 1932.
v.	Institution of Chartered Management Accountants	ICMA Act, 1966	Memorandum of Association of Pakistan Institute of Industrial Accountants, a company.
vi.	Pakistan Bar Council and Provincial Bar Councils	Legal Professionals and Bar Councils Act, 1974	Legal Professionals and Bar Councils Act, 1965
vii.	Pakistan Nursing Council	Pakistan Nursing Council Act, 1973	Pakistan Nursing Council Act, 1952 West Pakistan Nursing Services Ordinance, 1959
viii.	Pharmacy Council of Pakistan	Pharmacy Act, 1967	West Pakistan Drug Rules, 1958 Memorandum of Pakistan Pharmacists Association, a registered Society
ix.	Veterinary Medical Council of Pakistan	Pakistan Veterinary Medical Council Act, 1996	Memorandum of Pakistan Veterinary Medical Association
x.	Tibb Council	Unani, Ayurvedic and Homeopathic Practitioners Act, 1965	None
xi.	Homeopathy Council	Unani, Ayurvedic and Homeopathic Practitioners Act, 1965	None

### **2.3 A Bird's Eye View of the Professional Regulatory Laws**

While each of the above-mentioned laws has numerous unique features, there is also a common scheme which runs through them.

#### ***Licensed Activity***

Firstly, at the very heart of the professional regulatory scheme is the idea of a "licensed activity" – an activity which you cannot do unless you are a registered professional. All the Acts provide some indication of which activity they seek to bring within the ambit of professional regulation. On this count, one finds two different models in vogue here: (i) the criminalization model, and (ii) the invalidation model.

In some of the statutes, a particular activity is defined and carrying out the activity is *per se* declared as criminal except for licensed professionals. This may be called the criminalization model of regulation. In other statutes, if non-professionals carry out the licensed activity, this is not criminalized. However, their acts are declared to have no legal validity; and they are also prohibited from representing or holding out themselves as professionals while carrying out the said activity. This may be called the invalidation model.

The Pakistan Engineering Council Act, 1976, for instance, provides a precise albeit extremely broad definition of “professional engineering work”; the PCATP Ordinance 1983 also provides definitions of “professional architectural work” and “town planning”. After the coming into effect of these Acts, it is now criminal for anyone other than licensed professionals to engage in these areas of work. The activity itself has been criminalized here.

An example of the more benign invalidation model of regulation is what we see in the case of doctors and chartered accountants. Engaging in the art of medicine itself is not prohibited by the law. However, the law says that a non-professional’s prescription commands no legal validity. This means that if it ends up in disaster, the non-professional would have no defense against legal liability. Likewise, if the patient refuses to pay for the treatment, a non-professional would not be able to recover his dues through the court process.

The relevant clauses which illustrate this point are provided in the table below:

**Table 3: Definition of Licensed Professional Activities**

Sr.	Activity	Definition
1.	Town Planning	As below in item 2
2.	Town Planning and Architecture	<p><b>Section 2. “professional architectural work”</b> means the giving of professional advice and opinions, the making of measurement and layouts of buildings, the preparation of feasibility and other reports, the production of concept, the originating, designing and planning, and in association with relevant professionals, producing working drawings and contract documents, specifications and bills of quantities, the inspection and supervision of works and issuing of certificates of such buildings and other works for which an architect offers his professional services;</p> <p><b>“Professional town planning work”</b> means the giving of professional advice and opinions in the field of urban and regional planning, the carrying out of physical and socio-economic surveys, the preparation of feasibility reports, layout plans, and development plans, and, in association with relevant professionals, carrying out inspection and supervision of works and issue of certificates of such schemes and works for which a town planner offers his professional services;</p> <p><b>Section 28.</b> (1) After such date as the Federal Government, may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional architectural or town planning work shall, if his name is not for the time being borne on the Register or on either of the Lists, <b>be punishable</b> with fine which may extend to five thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first day during which the offence continues.</p>

3.	Engineering	<p>Section 2(xxv) <b>“professional engineering work”</b> means the giving of professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans and specifications and the construction, inspection and supervision of engineering works, in respect of – (a) railways, aerodromes, bridges, tunnels and metalled roads; (b) dams, canals, harbours, light houses; (c) works of an electrical, mechanical, hydraulic, communication, aeronautical power engineering, geological or mining character; (d) waterworks, sewers, filtration, purification and incinerator works; (e) residential and non-residential buildings, including foundations framework and electrical and mechanical systems thereof; (f) structures accessory to engineering works and intended to house them; (g) imparting or promotion of engineering education, training and planning, designing, development construction, commissioning, operation, maintenance and management of engineering works in respect of computer engineering, environmental engineering, chemical engineering, structural engineering, industrial engineering, production engineering, marine engineering and naval architecture, petroleum and gas engineering, metallurgical engineering, agricultural engineering, telecommunication engineering, avionics and space engineering, transportation engineering, air-conditioning ventilation, cold storage works, system engineering, electronics, radio and television engineering, civil engineering, electrical engineering, mechanical engineering and biomedical engineering etc; organizing, managing and conducting the teaching and training in engineering universities, colleges, institutions, Government colleges of technology, polytechnic institutions and technical training institutions; (h) preparing standard bidding or contract documents, construction cost data, conciliation and arbitration procedures; guidelines for bid evaluation, prequalification and price adjustments for construction and consultancy contracts; and (i) any other work which the Council may, by notification in the official Gazette, declare to be an engineering work for the purposes of this Act;</p> <p><b>Section 27. Penalties and procedure.</b>- (1) After such date as the Federal Government may, after consultation with the Council, by notification in the official Gazette, appoint in this behalf, whoever undertakes any professional engineering work shall, if his name is not for the time being borne on the Register, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first during which the offence continues.</p>
4.	Chartered Accountants	<p>(2) A member of the Institute shall be deemed <b>"to be in practice"</b> when individually or in partnership with chartered accountants in practice, he, in consideration received or to be received-</p> <p>(i) engages himself in the practice of accountancy; or (ii) offers to perform or performs services involving the auditing, or verification of financial transactions, books, accounts, or records or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice; and</p>

		the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.
5.	Doctors	<b>Section 29. Licensing.</b> (11) Notwithstanding anything to the contrary in any law for the time being in force, no medical certificate or prescription or medical or dental advice <i>shall be considered valid</i> unless obtained from a medical or dental practitioner having a valid provisional or full license. (12) No person shall be entitled to <i>recover any charge</i> in any court of law for any medical, dental or surgical advice or attendance or for the performance of an operation or intervention or for any medicine prescribed or supplied unless he is a registered medical or dental practitioner having a valid registration with the Authority...
6.	Lawyers	<b>Section 22.</b> (1) Save as otherwise provided in this Act, <b><i>no person shall be entitled to practice the profession of law</i></b> unless he is an advocate.
7.	Nurses	<b>Section 23.</b> Prohibition of employment of unregistered nurses etc. (1) No hospital, asylum, infirmary, dispensary or lying in hospital maintained or aided by the Federal Government or a Provincial Government or a local authority shall <b><i>employ therein any person as a nurse, midwife, health visitor or nursing auxiliary unless such person: (a) is registered</i></b> in the register; or (b) is a trainee at an institution recognized for the purpose by the Council and is certified by the head of that Institution to have already received sufficient training to be able to perform his duties safely and satisfactorily.  <b>Section 24 Penalty for Certain Offences</b> (1) A person shall be punishable with imprisonment of either description for term which may extend to 6 months or with a fine which may extend to one thousand rupees or with both if he:... (c) he practices as a nurse, midwife, health visitor or nursing auxiliary in contravention of any Regulations made under section 26.
8.	Pharmacists	<b>Section 31.</b> Prohibition of practice without registration.- (1) Subject to the provisions of sub-section (4), no person shall, after the expiry of five years from the commencement of this Act or such later date as the Central Government may, by notification in the official Gazette, specify in this behalf, <b><i>practice as a pharmacist</i></b> unless he is a registered pharmacist and displays his certificate of registration in a conspicuous place within the premises in which he so practices.
9.	Veterinarians	<b>Section 19.</b> Privileges of registered members. (1) Notwithstanding anything to the contrary in any law for the time being in force, no person other than a registered veterinary practitioner shall <b><i>hold any veterinary position</i></b> in private or public sector.
10.	Tabibs and Homeopaths	<b>Section 37.</b> No person other than registered or listed practitioner shall <b><i>practice or hold himself out, whether directly or indirectly, as practicing</i></b> the Unani, Ayurvedic or as the case may be Homeopathic System of medicine.  <b>Section 37-A.</b> Prohibition against calling applications, etc., by un-recognised institutions.— (1) No institution which is not recognized under section 17 shall call applications, advertise or arrange for admission to

		such institution for imparting <b><i>education in the Unani, Ayurvedic or Homoeopathic</i></b> system of medicine, nor shall such institution advertise or conduct any correspondence course in any such system of medicine.
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It is interesting to note that some of the statutes do not provide any definition of the licensed activity itself. For instance, the Bar Councils Act does not provide any definition of the term “practice of law”; likewise, the Nursing Council Act nowhere defines “nursing”. This is a major legal lacuna which should be addressed in any comprehensive legislative reform initiative. It is not reasonable to prohibit non- professionals from the engaging in an activity which has not been defined.

### **Accreditation of Education**

Our study of the laws shows that in Pakistan the professional regulators don’t just confine themselves to prescribing certain learning outcomes, i.e. “goals” which must be attained by the person who wishes to join a profession; the regulators also prescribe the “means” through which a pupil is supposed to attain those learning goals. So, for instance, the professional regulators have been given the power to accredit particular educational and training institutions which must be attended before joining the profession; likewise, the regulators also prescribe the courses which must be taught by the accredited educational institutions.

This unification of educational and professional functions is, in a sense, what sets professional licensing system apart from the trade licensing systems. In the case of trades such as banking and marketing, for instance, trade licenses are controlled by one entity (government or non-profit entities), while education is generally controlled by the universities. In the profession, both functions are merged in one regulator.

Since professional regulators have a major say in what pupils study and where they study it, it often brings these regulatory at loggerhead with the other state-sanctioned entities involved in “higher education”: chartered universities, the Higher Education Commission of Pakistan and provincial HECs. An illustration might make this point easier to comprehend: Who decides what content a teacher who teaches contract law to LLB students in LUMS will teach? The answer is: in addition to the teacher, three different entities have a say in this matter: the Board of Faculty set up under LUMS Order, 1985, HEC set up under HEC Ordinance, 2002 and last but not the least, Pakistan Bar Council set up under the Legal Practitioners and Bar Councils Act, 1974. The teacher of contract law must balance the often conflicting demands of all three regulators: LUMS Board of Faculty, HEC and Bar Council.

This overlapping of territories definitely leads to confusion. While this overlap is not entirely avoidable; but it can certainly be reduced through a comprehensive legislative reform for the laws which govern higher education ranging from the statutes studied in this paper, as well the laws governing universities and the HEC Ordinance, 2002. These laws have never been viewed as whole.

### ***Governance Structure: The Three Circles***

In most cases, the governance structure of the professions has been divided into three circles.

First, there is an outer circle consisting of the entire body of professionals; so, for instance, the term “Pakistan Engineering Council” refers to all those who are enrolled as engineers. At present, more than three hundred and twenty thousand persons are part of this extended body of professionals. They are all supposed to be invited to the Annual General Meeting and are allowed to partake in major decisions affecting the engineering profession.

Second, there is an inner circle comprising of “governing bodies”. The composition, mode of appointment or election, powers and tenures of these bodies is defined in detail in the relevant statutes. The number of members in these governing bodies varies widely. Some, like the Pharmacy Council of Pakistan (12) and provincial Pharmacy Councils (10) are relatively small; others like the Governing Body of Pakistan Engineering Council (66) and Pakistan Bar Council (24) are much larger. A more detailed and comparative analysis of the mode of appointment/election, eligibility requirements and length of tenures is carried out in a later part of this study.

*The third* and inner-most circle in the governance framework of the professions comprises of “executive bodies”. These are mostly a sub-set of the governing bodies comprising only a handful of key decision-makers who run the day-to-day affairs of the regulatory body. The executive bodies often rely upon the support of a full-time bureaucracy of officials who are headed by the “Registrar”.

### ***Delegated Legislation***

One of the most important features of the professional regulatory laws is that they confer extensive delegated legislative powers upon the regulators. Professional regulators can make rules and regulations governing the relevant professionals; and such rules and regulations have the status of law. By way of illustration, one such legal provision, which confers delegated legislative power upon the regulator is reproduced below:

#### ***Power to Make Regulations***

- (1) The council may, by notification in the official Gazette, make regulations for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:-
  - (a) The standard and conduct of examinations under this Act;
  - (b) The qualifications for entry of the name of any person in the Register as a member of the Institute;
  - (c) The qualification for the purpose of sub-section (4) of section 5;
  - (d) The conditions under which any examination or training may be treated as equivalent to the examination or training prescribed for membership of the Institute;
  - (e) The conditions under which any foreign qualifications may be recognised;
  - (f) The manner in which and the conditions subject to which applications for entry in the Register may be made;
  - (g) The fees payable for membership of the Institute and the annual fees payable for certificates of practice;
  - (h) The manner in which election to the Council and the Branch Councils may be held;
  - (i) The particulars to be entered in the Register;

- (j) The functions of Branch Councils;
- (k) The regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (l) The carrying out of research in cost and management accounting;
- (m) The maintenance of libraries and publication of books and periodicals relating to cost and management accounting and allied subjects;
- (n) The management of the property of the Institute and the maintenance and audit of its accounts;
- (o) The summoning and holding of meetings of the Council and committees thereof, the times and places of such meetings, the procedure to be followed thereat and the number of members necessary to form a quorum;
- (p) Recording and certifying minutes of meetings of the Council and the annual general meeting and extraordinary meetings;
- (q) Appointment and removal of auditors of the Institute;
- (r) The manner in which the annual list of members of the Institute shall be published;
- (s) The powers, duties and functions of the President and Vice-President;
- (t) The functions of the Standing Committees and other Committees and the conditions subject to which such functions shall be discharged;
- (u) The terms of office, and the powers, duties and functions of the Secretary, Treasurer, and the other employees of the Council;
- (v) Rules of professional and other conduct and the exercise of disciplinary powers in relation thereto;
- (w) The terms and conditions of service of the employees of the Institute including persons who have become its employees under section 29;
- (x) The registration of students and the fees to be charged for such registration; and
- (y) Any other matter which is required to be or may be prescribed under this Act.

Over the course of years, the regulators have exercised this power to create a voluminous body of delegated legislation. Perhaps the most significant aspect of this body of delegated legislation is that which pertains to setting standards of conduct for professionals – such as the Canons of Etiquette adopted by the Bar Council in 1976. Some, though by no means all, of this body of delegated legislation is identified in the table below:



**Table 4: Delegated Legislation**

<b>Regulator</b>	<b>Delegated legislation</b>
Pakistan Engineering Council	PEC Bye-laws, 1976 Engineering Education Regulations 1985, Construction and Operations of Engineering Works Regulations, 1987 Consulting Engineers Bye-laws, 1986 Continuing Professional Development Bye-laws, 2008
Pakistan Medical and Dental Council	PMC Medical and Dental Undergraduate Education (Admissions, Curriculum and Conduct) Regulation, 2021 PMC Conduct of Examinations Regulations, 2021 Placement of The Appointment of Members (Council and Board) Rules, 2021 Medical Tribunal (Functions) Rules, 2021 PMC (Enforcement) Regulations, 2021 PMC (Employees Disciplinary Proceedings) Code, 2021 PMC (Service) Regulations, 2020 Admission Regulations (Amended) 2020-2021
Pakistan Council of Architects and Town Plan	Pakistan Council of Architects and Town Plan Bye-laws, 1983 Code of Conduct Regulations for the Promotion and Conduct of Architectural Competitions Regulations for Licensing of Architecture and Town Planning Contractors
Institute of Chartered Accountants, Pakistan	Chartered Accountants Bye-Laws, 1983 Training Regulations and Guidelines, 2015
Institution of Chartered Management Accountants	Cost and Management Accountants Act, 1966 & Regulations, 1990
Pakistan Bar Council and Provincial Bar Councils	The Pakistan Legal Practitioners and Bar Councils Rules, 1976
Nursing Council	Minimum Criteria to establish new Nursing Educational Institutions for Degree programs, 2019 Professional Code of Ethics for Registered Nurse, Midwife, Lady Health Visitors and Nurse Auxiliaries
Pharmacy Council	Pharmacy Council of Pakistan Bye-Laws, 1969 Pharmacy Council of Pakistan (Inspection and Recognition) Regulations, 2009 Pharmacy Council of Pakistan (Examination for Registration in Register "B") Regulations, 2006.
Veterinary Council	Pakistan Veterinary Medical Council Regulations, 2000 Pakistan Veterinary Medical Council -Standard of Education Regulations, 2001 Pakistan Veterinary Medical Council (Standards of Conduct and Professional Ethics of Veterinary Practitioners) Regulations, 2002. Pakistan Veterinary Medical Council (Accreditation and Equivalence) Regulations, 2015
Tibb Council	Unani, Ayurvedic and Homoeopathic System of Medicine Rules, 1980. Administration and Financial Management Rules, 2008

**Disciplinary Forums for Professional Misconduct: The "Self-Regulation" Model**

Each of the laws related to the professions provides a specialized forum for redressal of complaints related to professional "misconduct". These forums and the relevant legal provisions are

listed in the table below. A theme that is common to the various disciplinary fora is the dominance – in some case exclusive control – of professional insiders. This may be referred to as the “self-regulation” model. So, for instance, complaints against engineers are to be decided by engineers alone; complaints against lawyers are to be decided exclusively by their lawyers and judges. The idea is that professionals should be judged only by a jury drawn from their peers; nobody from outside the profession is given any serious role in the disciplinary system. This system of peer-accountability has drawn much criticism in recent years and might be the fundamental structural flaw in the regulatory environment. While the pros and cons of self-regulation can be discussed at length, my objective here is to simply flag the point that self-regulation is not some fact of nature; it is the result of certain legal provisions which can, and perhaps should be, revisited by the legislature and should certainly be re-evaluated by the society at large. The relevant legal provisions are listed in the table below:

**Table 5: Disciplinary Forums**

<b>Regulator</b>	<b>Disciplinary Forum</b>	<b>Relevant section</b>
Pakistan Engineering Council	Tribunal of Inquiry	Section 21. Tribunals of Inquiry.- (1) For holding inquiries into the professional conduct of registered engineers, professional engineers, consulting engineers, constructors and operators, the Governing Body may constitute as many Tribunals of Inquiry as it may consider necessary. (2) A Tribunal shall consist of three members appointed by the Governing Body out of a panel of members of the Council maintained by the Committee who have professional standing of not less than ten years and who hold or have held high engineering assignments. (3) The Governing Body shall appoint one of the members of a Tribunal to be the Chairman thereof.
Pakistan Medical and Dental Council	Medical Tribunal	Section 33. Disciplinary proceedings, suspension or cancellation of license.-- (1) The Council in compliance to directions of the Medical Tribunal or upon a finding pursuant to a disciplinary hearing or upon an inquiry and hearing conducted by the Authority or the Council itself, may temporarily suspend or permanently cancel the license of a practitioner for having violated any obligation imposed upon the licensee or for medical or professional negligence or misconduct.
Pakistan Council of Architects and Town Planners	Tribunal of Inquiry	Section 21 Tribunals of Inquiry:- (1) For holding inquiries into the professional conduct of architects and town planners, the Executive Committee may constitute as many Tribunals of Inquiry as it may consider necessary. (2) A Tribunal shall consist of three members appointed by the Executive Committee. (3) The Executive Committee shall appoint one of the members of the Tribunal to be the Chairman thereof.
Institute of Chartered Accountants, Pakistan	Investigation Committee Council High Court	Section 20A Facts, etc., to be laid before the Investigation Committee.- (1) The Secretary of the Institute shall, and any member or any aggrieved person may lay before the

		<p>Investigation Committee any fact indicating that-</p> <p>(a) a member of the Institute has prima facie been guilty of any professional misconduct specified in Schedule I or Schedule II; or</p> <p>(b) a student has prima facie been guilty of any professional misconduct specified in Schedule III.</p> <p>(2) Where a complaint is received by the Institute that any member of the Institute or student is guilty of professional misconduct referred to in sub-section (1), the complaint shall, with relevant and necessary facts, be laid before the Investigation Committee.</p>
Institution of Chartered Management Accountants	Council	<p>Section 20. Removal of name from the Register.-</p> <p>(1) The Council may remove from the Register the name of any member of the Institute: -</p> <p>(a) who is dead; or</p> <p>(b) from whom a request has been received to that effect; or</p> <p>(c) who has not paid any prescribed fee payable by him; or</p> <p>(d) who is found to have been subject, at the time when his name was entered in the Register, or who, at any time thereafter, has become subject, to any of the disabilities mentioned in section 8, or who, for any other reason, has ceased to be entitled to have his name borne on the Register.</p> <p>(2) The Council shall remove from the Register the name of any member who is not entitled to remain a member under this Act.</p>
Pakistan Bar Council and Provincial Bar Councils	Disciplinary Committee Tribunal	<p>Section 15. Committees of the Pakistan Bar Council.</p> <p>The Pakistan Bar Council shall constitute the following committees, namely: -a Disciplinary Committee consisting of a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be its Chairman, and four other members elected by the Council from amongst its members.</p> <p>S. 42. Tribunals of Bar Councils. (1) The Pakistan Bar Council may constitute one or more Tribunals each consisting of two of its members elected by it for the purpose and a Judge of the Supreme Court nominated by the Chief Justice of Pakistan, who shall be the Chairman.</p> <p>(2) A Provincial Bar Council may constitute one or more Tribunals each consisting of two of its members elected by it for the purpose and a Judge of the High Court nominated by the Chief Justice of the court, who shall be the Chairman.</p>

Nursing Council	Council	<p>22. Disqualification for Registration. (1) A person shall be disqualified for registration in the register if he-</p> <p>a) has been convicted of any offence under this Act or of any other offence which in the opinion of the Council implies a defect of character; or</p> <p>b) has, at any inquiry held by the Council in which the person was given a reasonable opportunity of being heard, been found guilty of such conduct as is considered regulations derogatory to his profession in accordance with the regulations made under section 26.</p>
Pharmacy Council	Provincial Council	<p>Section 28 Revocation of certificate.-</p> <p>(1) The Provincial Council may, after giving the person concerned an opportunity to make representation and of being heard, revoke the certificate of registration issued to him, if such person-</p> <p>(a) incurs any disqualification specified in sub-section (3) of section 25; or</p> <p>(b) contravenes any of the provisions of the Poisons Act, 1919 (XII of 1919), the Dangerous Drugs Act, 1930 (II of 1930) the Drugs Act 1940 (XXIII of 1940), or this Act or of the rules made under any of those Acts; or</p> <p>(c) fails or neglects to comply with any directive in respect of the profession of a pharmacist with the Central Government or the Provincial government may, from time to time, issue; or</p> <p>(d) is guilty of such professional misconduct as may be laid down by the Provincial Council in this behalf.</p> <p>(2) Where any certificate of registration is revoked under sub-section (1), the name of the person whose certificate has been so revoked shall, after he has been given a notice in writing of such revocation, be struck off the register in which his name was entered and his registration shall thereupon stand cancelled.</p> <p>(3) The Provincial Council may, of its own motion. and shall, upon an application made in this behalf within thirty days of the receipt of the notice under sub-section (2) by the person concerned review its decision to revoke a certificate of registration; and the decision of the Council upon such review shall be final.</p>
Veterinary Council	Council	<p>Section 22. Removal of names from the register.-</p> <p>(1) The Council in its discretion may refuse to permit the registration of any person or direct the removal altogether or for a specified period from the register the name of any registered person who has been convicted of any such offence as implies in the opinion of the Council a defect of character, or has been held by the Council as guilty of infamous conduct in any professional respect, or who has become incapable to practice veterinary medicine by reason of physical or mental incapacity.</p> <p>Provided that no action shall be taken under this sub-section, unless such person has been provided an</p>

		<p>opportunity of being heard.</p> <p>(2) The Council may direct that the name of any person removed from the register under sub-section (1) shall be restored.</p> <p>(3) For the purpose of an inquiry under sub-section (1), the Council shall be deemed to be a Court within the meaning of the <i>Qanoon-e-Shahadat</i>, 1984 (P.O. No. 10 of 1984) and shall exercise all powers of a Civil Court for summoning the witnesses, for compelling the production of documents and for issuing commissions.</p>
Tibb Council	Council	<p>Section 28 Removal from register. etc.—</p> <p>The Council may direct that the name of any practitioner who has been convicted of a cognizable offence or who after due enquiry has been found guilty of misconduct shall be removed from the register or the list if the offence or misconduct in the opinion of the Council discloses moral turpitude such as to render him unfit to practice his profession;</p> <p>Provided, however, that no action shall be taken by the Council under this section unless the person convicted of the cognizable offence or found guilty of misconduct has been given a reasonable opportunity to show cause against the punishment proposed to be inflicted on him.</p>
Homeopathy Council	Same as above	Same as above

### ***Holding the Regulator Accountable***

It is interesting to note that many of the laws also provide for some in-built mechanism whereby the government can hold the otherwise autonomous regulator accountable. Here, again, we see a number of different models. Most of the statutes provide for a 3-member “Commission of Inquiry” to which the government can refer a “complaint” alleging that the regulatory is not “*complying with any of the provisions of the Act*”. The Commission is to be headed by a retired judge or senior lawyer; the other two members must be drawn from those belonging to the profession itself, one nominated by the regulator itself while the other member nominated by the Federal Government.

The various in-built mechanisms for accountability of the regulators are summarized in the table below:

**Table 6: Mechanisms for Institutional Accountability**

Regulator	Accountability Forum	Relevant section
PEC	<p><b>Commission of Inquiry.-</b> (1) Whenever it is made to appear to the Federal Government that the Council is not complying with any of the provisions of this Act, the Federal Government may refer the particulars of the complaint to a Commission of Inquiry consisting of-</p> <p>(a) a person who is, or has been, or is qualified to be, a Judge of a High Court, to be appointed by the Federal Government;</p> <p>(b) a professional engineer, to be nominated by the Federal Government; and</p> <p>(c) a professional engineer, to be nominated by the Council.</p> <p>(2) The Commission shall proceed to inquire and report to the Federal Government as to the truth of the matters charged in the complaint and, in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend remedies, if any, which are in its opinion necessary.</p> <p>(3) The Federal Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit; and, if the Council fails to comply with any such requirement, the Federal Government may amend the bye-laws or make such provision or order or take such other steps as may seem necessary to give effect to the recommendations of the Commission.</p>	Section 30
Pakistan Medical and Dental Council	<p>(4) <b>Commission of Inquiry.-</b> (1) Whenever it appears to the Division that the Council is not complying with any provisions of this Act, the Federal Minister-in-charge may refer to the particulars of the complaint to a commission of inquiry consisting of three persons two of whom shall be appointed by the Federal Minister-in-charge, including the chairman being at least a person who has been a judge of a High Court, and one member nominated by the Council by a resolution.</p> <p>(5) (2) Such commission shall proceed to inquire in a summary manner and to report to the Federal Minister-in-charge as to the truth of the matter charged in the complaint and in case of any charge of default or of improper action being found by the commission to have been established, the commission shall recommend the remedies, if any, which are in its opinion necessary. This process shall be completed within thirty days.</p> <p>(3) The Division shall forward the report of the commission of inquiry to the Council for implementation and for remedial actions. The Council shall submit to the Division a detailed plan of remedial measures to be adopted by the Council which shall be considered as approved if no further order are passed by the Division in this regard within three months. All remedial actions shall be taken by the Council within a stipulated period of six months and the Council shall submit to the Division a report of action taken thereon. If the Council fails to comply with the remedial measures forwarded to it by the Division, the Division may by itself amend the regulations of the Council or make such provisions or issue orders or take such other steps as may seem necessary to give effect to the recommendations of the commission.</p> <p>(4) The commission of inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents</p>	Section 42

	and shall have other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).	
Pakistan Council of Architects and Town Planners	<p><b>Commission of Inquiry:-</b> (1)Whenever it is made to appear to the Federal Government that the Council is not complying with any of the provisions of this Ordinance, the Federal Government may refer the particulars of the complaint to a Commission of Inquiry consisting of:-</p> <p>(a)a person who is, or has been or is qualified to be, a Judge of a High Court, to be appointed by the Federal Government.</p> <p>(b)an architect or town planner, to be nominated by the Federal Government; and</p> <p>(c)an architect or town planner, to be nominated by the Council.</p> <p>(2)The Commission shall proceed to inquire and report to the Federal Government as to the truth of the matters charged in the complaint; and, in case of any charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend remedies, if any, which are in its opinion necessary.</p> <p>(3)The Federal Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit; and, if the Council fails to comply with any requirement, the Federal Government may amend the bye-laws or make such provision or order or take such other steps as it may deem necessary to give effect to the recommendations of the Commission.</p> <p>(4)The Commission shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as are exercised by a civil court under the Code of Civil Procedure, 1908 (Act V of 1908).</p>	Section 32
Veterinary Council	<p><b>Commission of Inquiry.-</b> (1) Whenever it is made to appear to the Federal Government that the Council is not complying with any provisions of this Act, the Federal Government may refer particulars of the complaint to a Commission of Inquiry consisting of three persons, two of whom shall be appointed by the Federal Government, one being a Judge of a High Court and one by the Council; and such Commission shall proceed to inquire in summary manner and to report to the Federal Government as to the charge of default or of improper action being found by the Commission to have been established, the Commission shall recommend the remedies, if any, which are in its opinion necessary.</p> <p>(2) The Federal Government may require the Council to adopt the remedies so recommended within such time as, having regard to the report of the Commission, it may think fit, and if Council fails to comply with any such requirements, the Federal Government may amend the Regulations of the Council, or, make such provision or take such other steps as may seem necessary to give effect to the recommendations of the Commission.</p> <p>(3) A Commission of Inquiry shall have power to administer oaths, to enforce the attendance of witnesses and the production of documents, and shall have all such other necessary powers for the purpose of any inquiry conducted by it as exercised by a Civil Court under the Code of Civil Procedure 1908 (Act V).</p>	Section 25

Tibb Council	<p><b>Supersession of Council.</b>— (1) If at any time it appears to the Federal Government that the Council has failed to exercise or has exceeded or abused any of the powers conferred upon it by or under this Act, the Federal Government may, if it is satisfied that such failure, excess or abuse has adversely affected the efficient conduct of the affairs of the Council or the achievement of the objects of this Act, by notification in the official Gazette, supersede the Council for a period of one year and may, by a like notification, extend the period of supersession for a further period of one year:</p> <p>Provided that no Council shall be superseded unless a reasonable opportunity has been given to it to show-cause against the supersession.</p> <p>(2) Upon the supersession of the Council under sub-section (1)-</p> <p>(a) the persons holding office as President, Vice- President and members of the Council shall cease to hold office; and</p> <p>(b) all powers and functions of the Council shall ,during the period of supersession, be exercised and performed by such person or authority as the Federal Government may appoint in this behalf, as if such person or authority were the Council.</p> <p>The Council shall be reconstituted in accordance with the provisions of this Act, for the exercise and performance of its powers and functions on the expiry of the period specified in the notification under sub-section (1).</p>	Section 42
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## **COMPARING THE GOVERNANCE STRUCTURE OF VARIOUS PROFESSIONAL REGULATORS**

### **3.1 Licensing Models: Criminalization v. Invalidation**

As noted in Chapter 2, there is a key difference between the licensing models adopted in the various statutes. In some cases, such as that of engineering and architecture, the law criminalizes non-professionals engaging in the licensed activity. However, in other cases, a more benign licensing system has been adopted whereby non-professionals can continue to engage in the licensed activity; however, their acts would lack “legal validity”. This is the model adopted in the case of medicine and chartered accountancy. Another model is that of tibb and chartered accountancy where the only prohibition is against non-professional “marketing” or “holding out” themselves as professionals.

### **3.2 Ambit of Regulation: Professions and Business**

One of the most important differences between the various professional regulators is with regard to the scope of their regulation. The scope of some regulators has been extended to the allied businesses which these businesses serve; others not so.

For instance, the regulatory ambit of Pakistan Engineering Council is not confined to “engineers”; its scope also extends to “constructors” and “operators”, ie. businesses who employ engineers to carry out engineering work. In 1987, PEC made an entire set of bye-laws specifically for constructors and operators. These bye-laws have placed constructors in to 4 major subject-area categories such as “electrical” and “mechanical” and 27 different sub-categories. The licensing system also categorizes firms into 8 different tiers in accordance with their demonstrated history of work and the experience level of their employees. In other words, PEC’s bye-laws have promoted both vertical and horizontal specialization in construction firms. In return, PEC charges reasonably high fee from the firms; this revenue obviously helps the regulator’s finance.

It is because of this revenue stream drawn from businesses (and not professionals) that the PEC has been able to gain complete financial autonomy from the federal and provincial governments and is not a cash- starved institution.

The case of most other profession regulators is totally different. So, for instance, PMC only regulates the conduct of doctors; it does not regulate the operation of those hospitals and clinics where the said doctors work. The regulation of hostels falls into the ambit of the various statutory health care commissions recently set up by the provinces, such as the Punjab Healthcare Commission set up through separate Acts of the provincial assemblies. The Pharmacy Council of Pakistan regulates pharmacists who sell drugs; but the pharmaceutical companies which manufacture or import those drugs fall in the regulatory ambit of the Drug Regulatory Authority of Pakistan created under DRAP Act, 2012.

Those regulators which only regulate professionals not business is, for understandable reasons, often cash-starved and, as a result, dependent upon governmental largesse. This, obviously, reduces their autonomy from the government.

**Table 7: Regulators of Business and Professions**

Sr.	Profession	Regulator	Allied Business	Regulator
1.	Engineering	PEC	Construction	PEC
			Industrial Manufacturing	PSQCA
2.	Architecture	PCATP	Construction	PEC
				Building Control Authorities/ Departments
3.	Medicine	PMC	Hospitals	Health Commission
4.	Pharmacy	PCP	Pharmaceutical Manufacturing	DRAP

### 3.3 Length of Tenure

It is a common feature of all the professional regulators that they enjoy a statutory tenure. However, the length of their tenures varies widely. The longest is that of Pakistan Bar Council and provincial bar councils which is 5 years; the shortest is that of PCATP which is only 2 years.

**Table 8: Length of Tenures**

Executive body	Term in Years
Provincial Bar Councils	5
Pakistan Bar Council	5
Institute of Chartered Accountants, Pakistan	4
Veterinary Council	4
Pakistan Engineering council	3
Pakistan Medical and Dental Council	3
Institution of Chartered Management Accountants	3
Nursing Council	3
Pharmacy Council Central Council	3
Pharmacy Council Provincial Council	3
Pakistan Council of Architects and Town Plan	2
Tibb Council	To be determined through rules
Homeopathy Council	To be determined through rules

### 3.4 Elected/non-elected

The most significant difference between the regulators is with regard to the proportion of elected members in their Governing Bodies.

**Table 9: Percentage of Elected Versus Nominated Members**

<b>Executive body</b>	<b>Number of members</b>	<b>Elected members</b>	<b>Non-elected members -how these members selected and appointed?</b>	<b>Percentage of elected members</b>
Pakistan Engineering Council	66	42	24	63 %
Pakistan Medical and Dental Council	9	2	7	22%
Pakistan Council of Architects and Town Plan/Council	16	13	3	81%
Institute of Chartered Accountants, Pakistan/Council	16	12	4	80 %
Institution of Chartered Management Accountants	13	8	4	61%
Provincial Bar Councils	153	148	5	97%
Pakistan Bar Council	24	23	1	95%
Nursing Council/Council	30	18	10	60%
Pharmacy Council/ Central	12	0	12	0
Pharmacy Council/ Provincial	10	0	10	0
Veterinary Council	16	4	12	25%
Tibb Council	22	14	8	64%
Homeopathy Council	21	13	7	62%

### **3.5 Modes of Election: Direct/Indirect**

The mode of elections also varies greatly between the various professions. In some, the national-level elected representatives are directly elected by all of members of the profession. In other professions, elections are indirect: the individual professionals elect their representatives at local or provincial level; those representatives then elect the national-level leadership.

For instance, the members of Chairman of Pakistan Engineering Council is elected every three years through nation-wide direct elections in which all enrolled engineers of the country are entitled to vote; the provincial Vice Chairmen are also elected through province-wide direct elections. The electoral college for the Chairman consists of enrolled engineers all over Pakistan; as a result, in the prelude to the elections, the candidates tour all over the country to seek votes from engineers of all ages, genders. The winning candidate often enjoys the direct vote of over 10,000 engineers from all over the country. Because of the nationwide scale of the elections, in 2015, 2018 as well as in 2021, PEC Elections were carried out through electronic voting.

The elections for the Pakistan Bar Council, on the other hand, are held indirectly. The electoral college of Pakistan Bar Council is restricted to the members of the provincial Bar Councils. The provincial Bar Councils are divided into districts. The lawyers who are enrolled in each district would vote only for the candidates contesting for office from that particular district. Once the provincial Bar Councils are elected through this district-wise elections, they elect the Pakistan Bar Council.

This difference in the mode of elections to the highest professional office – direct/indirect – obviously leads to a very different electoral culture which prevails in different professions. Local-

ized, district-wise elections in the legal profession is quite likely to have contributed toward giving rise a leadership which is deeply rustic and parochial in its outlook but is also remarkably accessible to its electorate. Nation-wide, direct elections give rise to a leader which is less accessible but is often more charismatic and visionary.

### ***Universal Franchise and One-man-one Vote***

Some of the features that are common to all the professional regulatory laws are: universal franchise and one-man-one vote.

Universal franchise means that every professional is automatically given a right to vote in the elections for the regulatory body. There is no requirement for completing a certain number of years of practice, nor is there is any requirement to prove one's commitment to professional excellence before getting the right to vote.

One-man-one-vote means that each professional has exactly the same amount of voting power. Achieving excellence in the profession or spending time does not increase or decrease voting power.

While these features are quite normal in the political institutions of a modern democracy, they seem to have been thoughtlessly adopted in the laws governing the "professions". Because of their very nature, professional communities are more amenable to being governed on the basis of meritocracy rather than egalitarianism. Historically, in professional guilds, all professionals were not deemed equal. Those elders - those who were able to achieve recognition for professional excellence either through spending decades of effort or through genius - were looked up to, and almost revered by, other less gifted professionals. By importing the principles of universal franchise and one-man-one-vote, the laws have greatly damaged the social structure of the professions in Pakistan. It is arguably linked with the deterioration of average professional standards and the rise of hooliganism.

Interestingly, the adoption of these principles in the laws does not seem to be the result of any widespread social movement; it appears to be have been done rather thoughtlessly by the framers of the laws.

## DEMOGRAPHICS OF THE PROFESSIONS IN PAKISTAN

It is quite surprising that until the writing of this research paper, no one in Pakistan has bothered to carry out even a rudimentary demographic study of the professions. In the tables below, we have put together, for the first time ever, some broad numbers which have been gathered through key informant interview with senior official of the relevant regulators. Some of these figures are also published in their annual reports. The key findings are as follows:

- Total estimated number of enrolled professionals is around one million.
- Most numerous profession is engineering, followed by law, medicine, homeopathy and nursing. The least numerous are town planners, architects and chartered accountants.
- Highest growth rate (in numerical strength only) is in architecture, engineering and law. Lowest growth rate is amongst chartered accountants.
- Engineering and chartered accountancy are the most male-dominated profession in numerical terms. Nursing, on the other hand, is the most female dominated one. Medicine and dentistry are more evenly split.
- Sindh (probably because of urban Sindh) has a disproportionately higher share in almost all the professions; Balochistan is the opposite. The shares of Punjab and KPK are somewhat closer to their overall population share.

More detailed information is provided in the tables below. As may be noticed, this is only a beginning. There remain major gaps in this data set because the figures of some of the professions are not yet available. This points towards an avenue of fruitful research for demographers.

**Table 10: Number of Enrolled Professionals**

Sr.	Profession	Date	Total Number
1.	Engineers	2021*	320,365
2.	Doctors	2014**	138,421
3.	Dentists	2014**	12,748
4.	Chartered Accountants	2021***	8,889
5.	Lawyers	2021	~190,000
6.	Nurses	N/A	94,950
7.	Registered Midwives	N/A	16,522
8.	Registered Community Midwives	N/A	7,454
9.	Registered Lady Health Workers	N/A	17,505
10.	Pharmacists	N/A	8,102
11.	Homeopaths	N/A	132,828
12.	Tabibs	2021	75,118
13.	Total Number of Professionals	N/A	~832,902

*Notes:* \*: PEC Annual Report (2021). \*\*: <https://pfmsg.com/registered-doctors-statistics-in-pakistan/>. \*\*\*: <https://icap.org.pk/files/per/icap/annualreports/Annual-Report-2021.pdf>.

**Table 11: Growth Rates**

<b>Sr. No</b>	<b>Profession</b>	<b>Average Annual Growth Rate</b>
<b>1</b>	Engineers	6.30%
<b>2</b>	Doctors	N/A
<b>3</b>	Dentists	N/A
<b>4</b>	Architects	10.10%
<b>5</b>	Town Planners	6.40%
<b>6</b>	Chartered Accountants	4.00%
<b>7</b>	Cost & Management Accountants	3.07%
<b>8</b>	Lawyers	N/A
<b>9</b>	Nurses	N/A
<b>10</b>	Pharmacists	N/A
<b>11</b>	Veterinarians	N/A
<b>12</b>	Tabibs	N/A
<b>13</b>	Homeopaths	N/A

**Table 12: The Gender Breakdown**

<b>Sr. No</b>	<b>Profession</b>	<b>Male</b>	<b>Female</b>
<b>1</b>	Engineers	92.50%	7.50%
<b>2</b>	Doctors	55.00%	45.00%
<b>3</b>	Dentists	41.00%	59.00%
<b>4</b>	Architects	65.00%	35.00%
<b>5</b>	Town Planners	73.00%	27.00%
<b>6</b>	Chartered Accountants	91.00%	9.00%
<b>7</b>	Cost & Management Accountants	N/A	N/A
<b>8</b>	Lawyers	N/A	N/A
<b>9</b>	Nurses	19.00%	81.00%
<b>10</b>	Pharmacists	N/A	N/A
<b>11</b>	Veterinarians	N/A	N/A
<b>12</b>	Tabibs	N/A	N/A
<b>13</b>	Homeopaths	N/A	N/A

**Table 13: Provincial Breakdown**

<b>Sr. No</b>	<b>Profession</b>	<b>Federal (incl. AJK, GB)</b>	<b>Punjab</b>	<b>Sindh</b>	<b>Balochistan</b>	<b>KPK</b>
<b>1</b>	Engineers	4.1%	46.2%	31.4%	2.8%	15.4%
<b>2</b>	Doctors	N/A	N/A	N/A	N/A	N/A
<b>3</b>	Dentists	N/A	N/A	N/A	N/A	N/A
<b>4</b>	Architects	12.6%	42%	34%	3%	9%
<b>5</b>	Town Planners	6.5%	66%	19%	0.9%	8%
<b>6</b>	Chartered Accountants	N/A	N/A	N/A	N/A	N/A
<b>7</b>	Cost & Management Accountants	9.60%	40.20%	36.25%	0.37%	1.28%
<b>8</b>	Lawyers	N/A	N/A	N/A	N/A	N/A
<b>9</b>	Nurses	N/A	N/A	N/A	N/A	N/A
<b>10</b>	Pharmacists	N/A	N/A	N/A	N/A	N/A
<b>11</b>	Veterinarians	N/A	N/A	N/A	N/A	N/A
<b>12</b>	Tabibs	0.58%	79.41%	10.58%	0.84%	8.58%
<b>13</b>	Homeopaths	N/A	N/A	N/A	N/A	N/A

## RE-FRAMING THE REFORM DEBATE

In this chapter, the author lists down some key questions which one needs to ask about the regulatory environment of the professions. Carrying out an extensive discussion on these questions would be beyond the scope of the present study; however, the aim here is to simply lay down questions which need urgent attention of policy makers and – of course – the people of Pakistan, who are the ultimate stakeholders in this entire system. Only one of these questions – the issue of self-regulation – is addressed at some length in the next chapter.

1. *Is the self-regulation model working? If not, what are the alternatives?*
2. *How about we set up a common regulator for all the professions? Or at least for some of the closely related professions, such as architecture and engineering and the healthcare professions, ie medicine, dentistry, nursing and pharmacy. Complaints of professional misconduct could be decided by professionals from various professions sitting together and after appeals decided by a judicial tribunal?*

One of the issues that needs to be seriously examined is the issue of “multiplicity”. Each of the professions – including those which are closely related, such as architecture and engineering – has a completely separate regulator and a completely separate disciplinary forum. This, it can be argued, leads to a waste of public resources. One possibility is to have a common forum comprising a range of professions for investigating and deciding complaints of professional misconduct and after that a common appellate judicial tribunal for adjudicating appeals? So for instance, if a lawyer is accused of having cheated his clients, the case could be heard by a jury comprising of a mix of lawyers, accountants, doctors etc, while appeals would lie to a tribunal specializing in professional negligence.

3. *Should we have universal franchise and one-man-one vote?*

While there is some merit in have a governance framework for the professions which is based on the *principles* of democracy, is it also essential to have universal franchise and one-man-one-vote? Why not delay the right to vote until the “young professional” attains some experience and excellence; and why not give those the more respected professions – the elders, so to speak – more voting power as compared to others.

4. *Should we be giving lifetime practice licenses or time-bound, renewable licenses?*

Initially, most of the professional regulators were issuing lifetime licenses. However, with time, the regulators have realized that this contributes towards a decline in the average quality of the professionals. Therefore, many professions have moved towards temporary licenses which are renewed only upon proof of performance. The licenses of professional architects and engineers are, for instance, renewed every few years. However, the legal profession continues to stick the archaic practice of issuing lifetime licenses.

5. *Should we make license renewal contingent upon producing proof of regular practice or Continuing Professional Education, as in the case of engineers and account-ants? Lawyers?*
6. *Should we make specialization compulsory in all professions as in the case of engineers? Should we make it a pre-requisite for renewal of license? Or should we make it partially compulsory, as in the case of doctors? Or at least require the regulator to accredit specialists in various sub-disciplines?*



7. *Should the regulator provide “rating” services to the professionals?*
8. *Should we include persons from outside the profession in the Disciplinary Body, as has been done in the case of PMC?*
9. *What source(s) of funding should a Regulator have: Government grants? Professional licensing Fee? Licensing fee of education institutions? Taxes/tithes on professional income? Endowment funds? Donations?*
10. *Should we merge the regulator of the professions with the regulators of the allied businesses (as is the case with PEC) or should we continue with separate regulators(as is the case with PMDC and Health Commissions)?*
11. *What should be the relationship with “foreign-qualified” professionals?*

Should they be given an edge, as has been done by the Bar Councils? Or should they be treated equally? Or discouraged? Should we ensure that the local regulator has a linkage with the international market? What can be done to ensure that? Should we focus on training local professionals with a view to prepare them for practice abroad, as is the case for engineers? Or should we focus on training them for practice inside the country, as is the case with lawyers?

## THE SELF-REGULATION MODEL: PITFALLS AND ALTERNATIVES

Our study confirms the general impression that the regulatory framework of the professions in Pakistan is based entirely upon the model of “self-regulation”. So, for instance, if any client has a grievance against her lawyer, her only option is to approach the Disciplinary Committee of the relevant Bar Council with whom that lawyer is enrolled. This committee comprise entirely of lawyers and one judge who also happened to be a former lawyer. Not only that, the lawyers who sit on the Disciplinary Committee are persons who are elected by lawyers for a 5-year tenure.

The self-regulation model – especially in its pure and undiluted forms - is quite prone to the menace of nepotism. It is important to bear in mind that even in a self-regulatory system, peers protecting peers is not an inevitable outcome. While there is some incentive for doing that, there is also some incentive for the very opposite. Professionals can benefit if the “bad sheep” within their professional community are culled because “bad sheep” tarnish the brand value of the profession and, in turn, reduce overall market “demand” for the services of that particular profession.

Be that as it may, there is a vast body of anecdotal evidence that in practice, left to themselves, professional leaders, especially elected ones, are quite prone to nepotism. They protect their electorate against claims and complaints by lay members of society. This nepotism leads to multiple harms. First and foremost, is the lost causes to complainants whose grievances remain unaddressed. But a more long-term and possibly more disastrous effect is an overall race to the bottom in terms of professional standards. If one professional is able to go scott-free after violating the canons of good conduct, he or she becomes a model of other professionals. Sooner or later, everyone stop making the sacrifices required for such compliance because it is no longer economically feasible.

### **6.1 Separating the “Regulatory” and “Representative” Functions: The Case of the English Legal Profession in the 21<sup>st</sup> Century**

The “self-regulation” model has received criticism in many parts of the world; and some countries, such as the United Kingdom, seem to be moving away from it in recent years towards a somewhat different mode. It would be fruitful to carry out a systematic study of the global trends in this field, although that is definitely beyond the scope of the present study. Here we can gainfully look at just one example: the legal profession in the United Kingdom.

Up until the advent of Legal Services Act 2007, the legal profession in the United Kingdom adhered strictly to the “self-regulation” model. Complaints of misconduct against barristers were dealt with by the Bar Council of the UK, a representative body of the around 10-15 thousand practicing barristers in the United Kingdom. Complaints against the 165 thousand strong body of solicitors were dealt with by the Law Society of England and Wales, which is the representative body of solicitors. However, over the course of years, this system came under severe public scrutiny.

In July 2003, the Government of the UK appointed Sir David Clementi, a former business professional, to carry out an independent review of the regulatory framework for legal services in England and Wales. His terms of reference were “...*To consider what regulatory framework would best promote competition, innovation and the public and consumer interest in an efficient, effective and independent legal sector; and To recommend a framework which will be independent in representing the public and consumer interest, comprehensive, accountable, consistent, flexible,*

*transparent, and no more restrictive or burdensome than is clearly justified...<sup>2</sup>*

In December 2004, Sir David published his report titled 'Review of the Regulatory Framework for Legal Services in England and Wales'. One of his principal recommendations was that front-line professional bodies should be required to "*separate their regulatory and representative functions.*" The Government broadly accepted Sir David's report, and in October 2005 it issued a White Paper, 'The Future of Legal Services: Putting Consumers First'. In that document, the Government announced its intention to publish a draft Legal Services Bill which would include proposals to implement the key Clementi recommendations.

In October 2006, the Government introduced the Legal Service Bill which remained under debate in Parliament for almost a year until it was enacted in October 2007. The Legal Service Act 2007 gave birth to Solicitors Regulatory Authority and Bar Standards Board which carry out disciplinary proceedings against solicitors and barristers respectively. These bodies are staffed partly by lay people and partly by professionals. The Legal Services Board, an autonomous government body, supervise both the front-line regulators. These reforms represent a major break from the old tradition of self-regulation amongst English lawyers.

In Pakistan too, in recent years, some notable departures have also been made from this model. In the three healthcare related professions – medicine, dentistry, and nursing the task of dealing with negligence complaints has now been delegated to the "Medical Tribunal" which is primarily staffed by professional judges. Since the Medical Tribunal has become function only recently in 2021, it remains to see whether it is more efficient. Suffice it to say that further empirical research needs to be carried out to assess the impact of departures from professional self-regulation in other countries as well as inside Pakistan.

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<sup>2</sup> LSB (Legal Service Boards). 2021. "History of Reforms." <https://legalservicesboard.org.uk/about-us/history-of-the-reforms> (accessed December 2021).