

2018



## **Boston Conference Series | 23<sup>rd</sup>-25<sup>th</sup> April 2018**

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8th International Conference on Interdisciplinary Social Science Studies– ICISSS 2018

5th Annual International Conference on Law, Economics and Politics– AICLEP 2018

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**FLE Learning**



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## THE DEVELOPMENT OF ISLAMIC COMMERCIAL AND SOCIAL FINANCIAL SYSTEM THROUGH ISLAMIC HOUSE FINANCING IN PAKISTAN

SANAULLAH ANSARI<sup>1</sup>

### ABSTRACT

Pakistan is a developing country, the importance of house financing is very high. As 97% population is Muslim in Pakistan, a large number of needy people do not avail conventional house financing facility due to the prohibition of Riba (Interest). Islamic banking started in Pakistan in 2002 and providing house financing according to the principles of Sharia'h. Currently, the share of Islamic banking sector is PKR 31.25 billion out of total house financing of PKR 69.26 billion by all banking sectors including House Building Finance Company Limited. Similarly, NPLs of Islamic banks is only 5.98% as compare to 27.63% and 18.93% of conventional Public and Private banks respectively which shows the seriousness and sincerity of Islamic bank consumers towards the return of their house financing amounts. Therefore, Islamic banks are imparting their positive role in the growth and resilience of Islamic commercial and social financial system through Islamic house financing.

**Keywords:** House financing, Islamic banks, Pakistan

### INTRODUCTION

To be the owner of a house is the biggest human desire at all times. It gives maximum mental relaxation to all family members who live in their owned house. If a person is not in a position to build his house by his own, he has to get the services of any financial institution. Historically, this process is very old and financial institutions played very important role for this cause. As conventional financial system is based on *Riba* (interest), it provides financial assistance to the individuals but in return, they take back their amounts with accumulated interest. This mechanism is prohibited in Islam therefore there was a need to establish a financial system which can provide house financing facility to the consumers as per the teaching of *Sharia'h*.

In the light of the teachings of *Sharia'h*, conventional banking system is gradually being replaced with Islamic banking system throughout the world, including Pakistan. In this system, *Sharia'h* compliant financial services are provided to the customers. House financing is the major financial service being provided by Islamic banks. According to Haroon (2005) and Amin (2008), Islamic house financing is *Sharia'h* based and it eliminates all elements of uncertainty and interest. Whereas, conventional financial institutions provide this facility by securing these loans by real assets and Interest based repayment is calculated (Amin, 2008). Islamic financial institutions calculate their repayment amounts on the basis of flat profit rate. Therefore, installments are decided in the beginning of the contract and decided amount is not changed in future in any case. To execute this contract, Islamic bank purchase or build a house as per customer's requirement and sells it to him on installment along with his profit. (Maali et al., 2006). Islamic banks provide this facility on Interest free base as Interest (*Riba*) is prohibited in Islam (Olson and Zoubi, 2008). Therefore, the difference between cost price and selling price is the profit of the bank (Rosly, 1999).

### Islamic Banking in Pakistan

Banking industry in Pakistan is mainly consisting of conventional banking which is as old as the country is. This banking system was tried to be replaced with Islamic banking system in the decade of 1950s, but it could not succeed due to various reasons. Finally, as per the decisions

<sup>1</sup> Shaheed Zulfikar Ali Bhutto, Institute of Science and Technology (SZABIST), Pakistan  
sanaullahansari@hotmail.com

of Supreme Court of Pakistan and Federal *Sharia'h* Court in 1992, State Bank of Pakistan started its working for the establishment of Islamic banking industry in the country. Meezan Bank is the pioneer Islamic bank which was established in Pakistan in 2002. At present, 5 full-fledged Islamic banks having 1,168 branches are operating in the country. 16 conventional banks have established Islamic Banking Divisions and are operating 760 Islamic banking branches. 154 sub-branches of conventional and Islamic banks are also operating in Pakistan. The total network of Islamic banks is consisting of 2,082 branches with total assets of Pak Rupees 1,625 billion and total deposits of Pak Rupees 1,336 billion (SBP). During the short period of 14 years, Islamic banking industry grew at the rate of 15-20% which is a remarkable growth. Similarly, this industry has captured 11.9% share of total banking assets and 12.9% of total banking deposits in Pakistan (SBP). This is the indication of the rapid growth and development of Islamic banking industry and it also shows that it has potential to grow further in Pakistan.

### House Financing in Pakistan

Total population of Pakistan was 132.4 million, according to the last census which was conducted in 1998 (Bureau of Statistics). At that time, there were 19.2 million housing units for the entire population in Pakistan which was insufficient. In recent surveys of Government of Pakistan, total population is estimated as 200 million and housing units as 30 million in the country. A large proportion of the total population is homeless and needs own houses. The main reason of shortage of houses is the high cost and un-affordability by the people. To provide financial assistance, financial institutions started providing funds to individuals so that they can buy or build their houses. Currently, there are 48 conventional banks and financial institutions in Pakistan which are providing house financing facilities on the basis of Interest. Similarly, 5 full-fledged Islamic banks are also providing house financing facility as per the teachings and guidelines by *Sharia'h* (SBP)

**Table 1: List of conventional banks and names of house financing**

<b>Bank</b>	<b>Name of House Financing</b>
National Bank of Pakistan	Saaiban
The Bank of Khyber	Suhana Ghar
The Bank of Punjab	Apna Ghar Apna Jahan
Askari Bank Limited	Makaan Se Ghar Tak
Bank Alfalah Limited	Alfalah Home Finance
Bank Al-Habib Limited	Housing Finance
Faisal Bank Limited	Faisal Home Finance
Habib Bank Limited	HBL Home Loan
JS Bank Limited	JS Ghar Apna
MCB Bank Limited	Home Loans
Standard Chartered Bank Limited	Saadiq Home Finance
NIB Bank Limited	NIB Home Loan
United Bank Limited	UBL Address Home Loan Facility
APNA Microfinance Bank Limited	Apna Ghar
House Building Finance Company Limited	Ghar Aasan Flexi

**Table 2: List of Islamic banks and names of house financing**

<b>Bank</b>	<b>Name of House Financing</b>
Al-Baraka Bank (Pakistan) Limited	Al-Bait Home Finance
Bank Islami Pakistan Limited	MUSKUN Home Financing

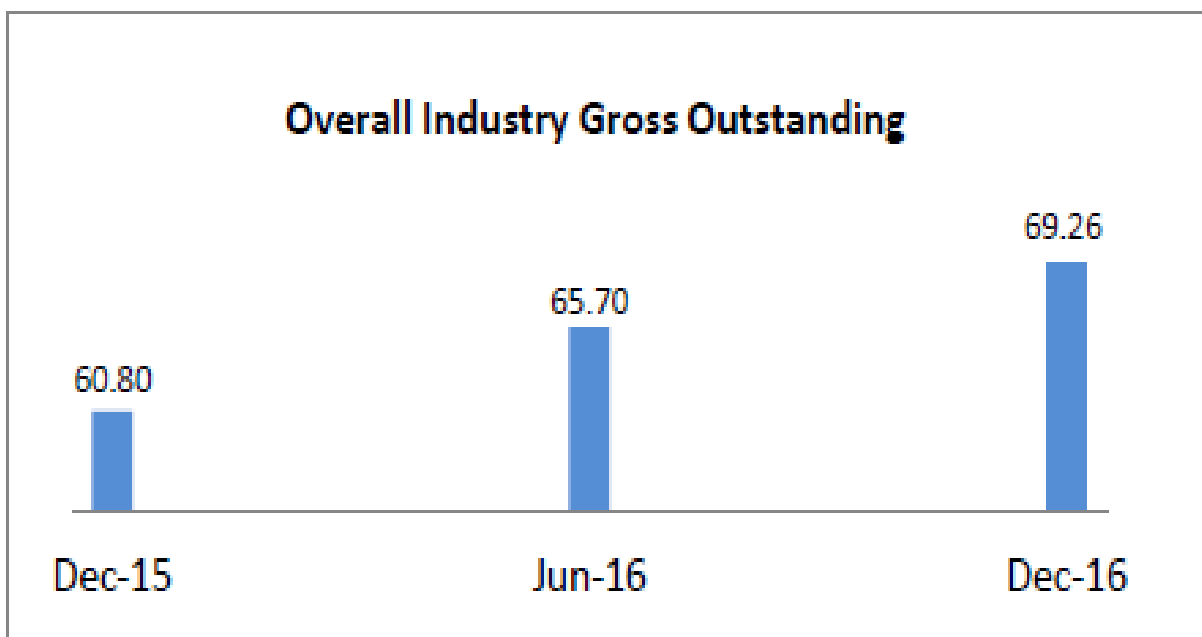
Dubai Islamic Bank Pakistan Limited  
Meezan Bank Limited  
MCB Islamic Bank Limited

Dubai Islamic Home Finance  
Meezan easy Home

-

House Building Finance Company Limited (HBFC) is the largest financial institution, providing financing to the consumers in Pakistan. As HBFC is managed and controlled by Federal Government, it is fulfilling its responsibility to provide house financing facilities to the people of this country. Conventional banking is in practice in Pakistan since its establishment in 1947, whereas Islamic banking industry has started its operation in 2002. All conventional banks are providing house financing facility on conventional basis whereas Islamic banks are using Islamic modes of financing for the provision of his facility to the consumers.

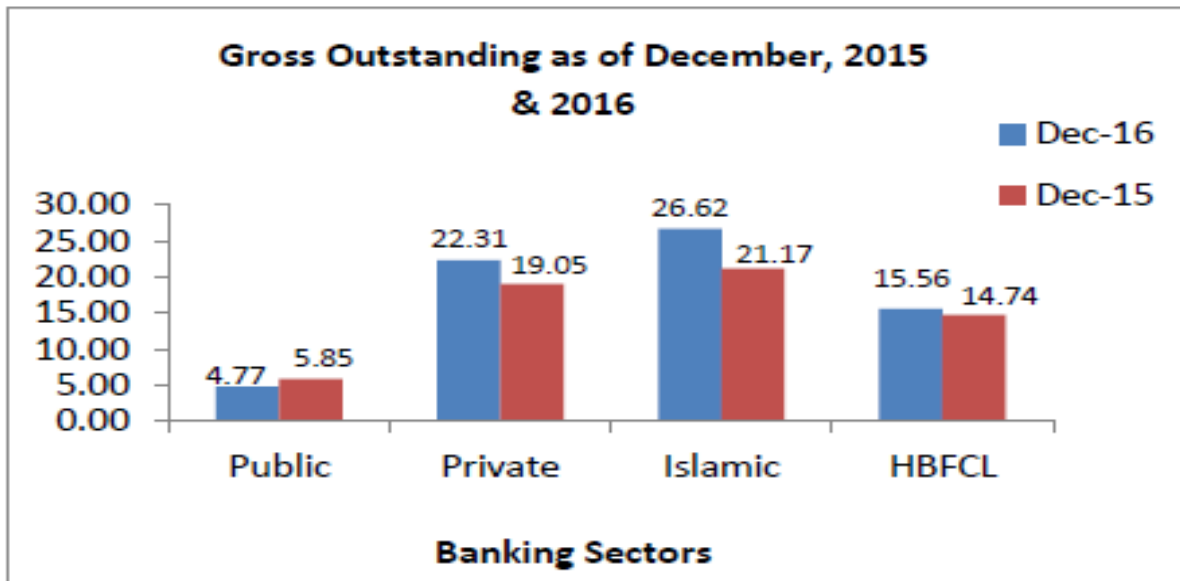
**Figure 1: Overall Industry Gross Outstanding (Pak Rupees in Billion)**



*Source: Housing Finance Review; State Bank of Pakistan*

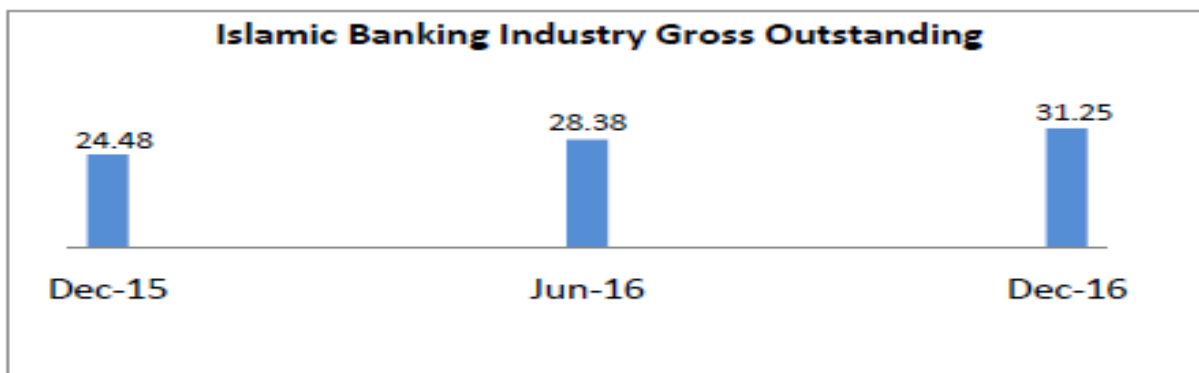
House financing sector in Pakistan is growing at a massive speed. Figure 1 represents the overall industry gross outstanding. According to State Bank of Pakistan, overall industry gross outstanding was PKR 60.80 billion in December 2015 which reached at PKR 69.26 billion by the end of December 2016 which is 13.9% increase in one year. These figures show that house financing sector is attracting those people who cannot afford to buy or build houses by their own. It is also the indication that the trend of owning the house is increasing in Pakistan.



**Figure 2: Gross Outstanding as per Banking Sectors (Pak Rupees in Billion)**

Source: Housing Finance Review; State Bank of Pakistan

Figure 2 shows house financing gross outstanding as per different banking sectors and financial institutions. Public sector banks have an outstanding of PKR 5.85 billion in December 2015 and it decreased to PKR 4.77 billion by the end of December 2016. This decrease was due to the shifting of consumers towards other financial institutions. Conventional and private banks gross outstanding was PKR 19.05 billion in December 2015 which increased to PKR 22.31 billion in December 2016. This shows an increase of 17.10% due to the reason that people are switching towards Islamic banking system. House Building Finance Company Limited (HBFCL) only has contributed PKR 14.74 billion in December 2015 which increased to PKR 15.56 billion in December 2016 which is 5.6% increase. The reason of this increase is that HBFCL has also started Islamic House Financing along with conventional system. Therefore, many of the consumers have availed Islamic house financing from HBFCL. Islamic banking sector has shown an extraordinary growth as its total outstanding was PKR 21.17 billion in December 2015 which increased to PKR 26.62 billion in December 2016 which is 25.75% increase in only one year's time. This huge increase is showing the confidence and trust of consumers towards Islamic house financing system which is playing its major role in this sector.

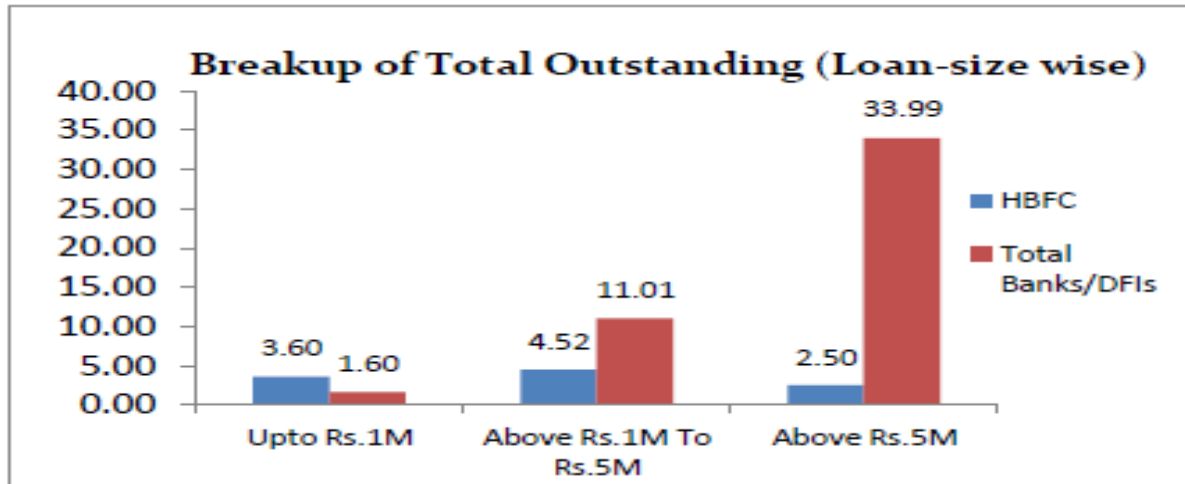
**Figure 3: Islamic Banking Industry Gross Outstanding (Pak Rupees in Billion)**

Source: Housing Finance Review; State Bank of Pakistan

Gross outstanding of Islamic Banking Industry has increased from PKR 24.48 billion in December 2015 to PKR 31.25 billion in December 2016 which is 27.65% increase within a

period of one year. This huge growth is showing the acceptance of Islamic house financing by the consumers in Pakistan.

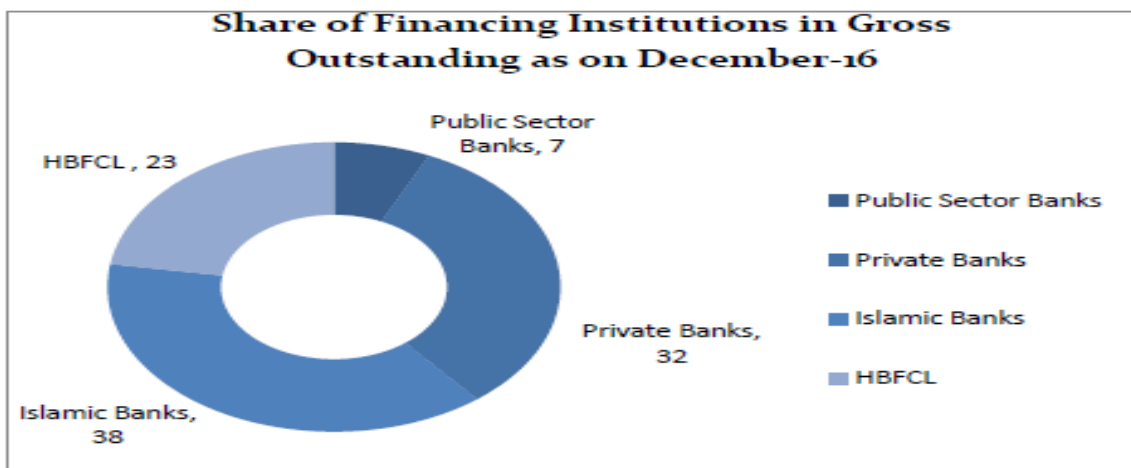
**Figure 4: Breakup of total outstanding according to loan size (Pak Rupees in Billion)**



Source: Housing Finance Review; State Bank of Pakistan

Figure 4 represents the breakup of total outstanding according to loan size. By the end of December 2016, total outstanding was PKR 1.60 billion of all conventional and Islamic banks and PKR 3.60 billion of House Building Finance Company Limited (HBFCL) of those loans which were up to PKR 1.0 million. This financing is availed by low income segment of the society. Total outstanding was PKR 11.01 billion of all conventional and Islamic banks and PKR 4.52 billion of House Building Finance Company Limited (HBFCL) of those loans which were from PKR 1.0 million to PKR 5.0 million. However, total outstanding was PKR 33.99 billion of all conventional and Islamic banks and PKR 2.50 billion of House Building Finance Company Limited (HBFCL) of those loans which were above PKR 5.0 million. This trend shows that those consumers whose financing affordability is high, preferring banking industry including conventional and Islamic.

**Figure 5: Share (%) of financial institutions in Gross Outstanding**

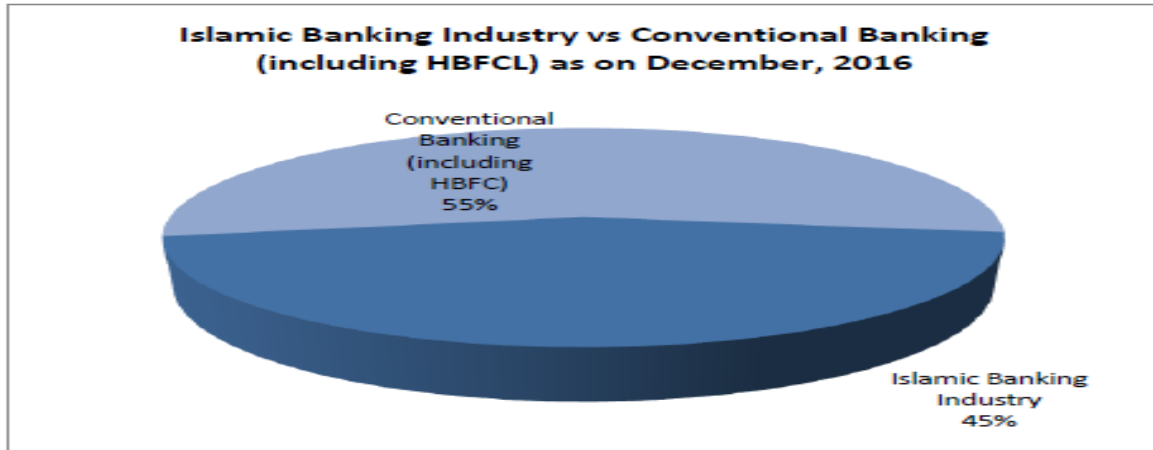


Source: Housing Finance Review; State Bank of Pakistan

As on 31<sup>st</sup> December 2016, share of public sector banks in total house financing is only 7% and share of private banks is 32%. These banks are working on conventional basis out of which 16 banks have established their Islamic Banking Divisions. Share of HBFCL is 23% which is also working on conventional basis with a limited portion of Islamic house financing. Remarkably,

the share of Islamic banks in total house financing is 38% which is the highest proportion by any category. This shows the rapid growth of Islamic house financing in Pakistan.

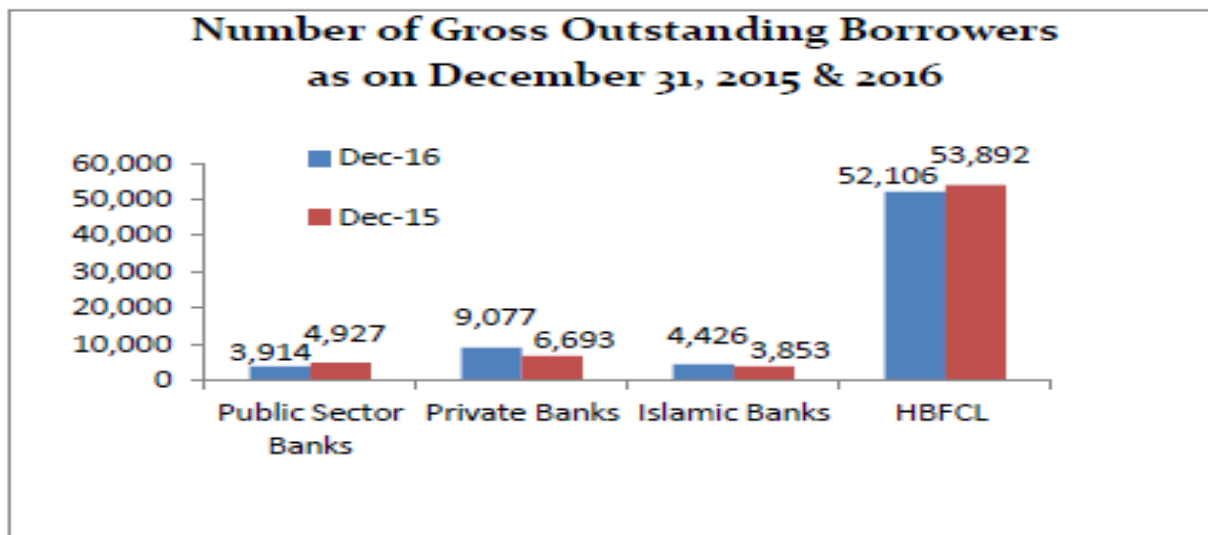
**Figure 6: Share of Islamic banking and Islamic Banking Divisions of Conventional Banks**



Source: Housing Finance Review; State Bank of Pakistan

Figure 6 represents the percentage share of Islamic banks which is 45% in total outstanding house financing by Islamic banking industry. The share of conventional banks and Islamic Banking Divisions of conventional banks is 55% which shows that consumers preferring to avail house financing from Islamic banks and they are not relying on the financing provided by conventional banks and Islamic Banking Divisions established by conventional banks in Pakistan.

**Figure 7: Number of Gross Outstanding borrowers**

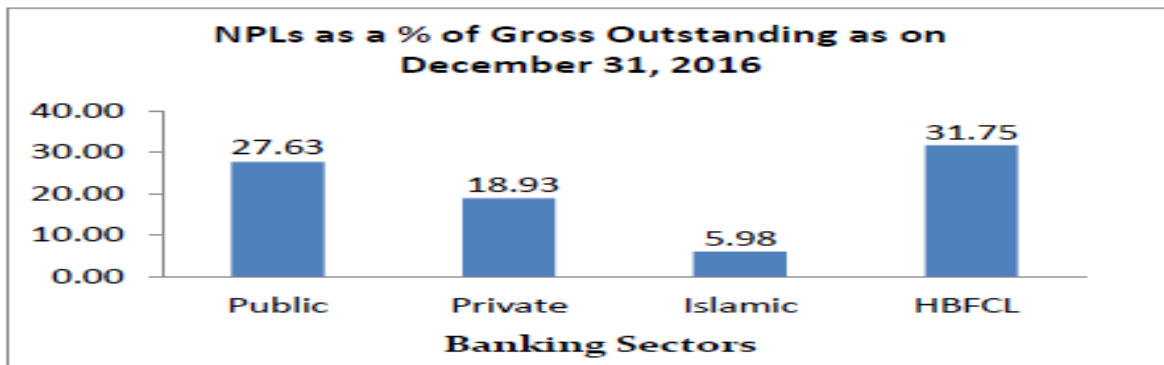


Source: Housing Finance Review; State Bank of Pakistan

Total number of house financing borrowers from public sector banks was 4,927 in December 2015 which decreased to 3,914 by the end of December 2016. Borrowers from private banks were 6,693 in December 2015 which were increased to 9,077 by the end of December 2016. Similarly, house financing borrowers from House Building Finance Company Limited (HBFC) were decreased from 53,892 in December 2015 to 52,106 by the end of December 2016. Decrease in all these banks and financial institutions are due to the shifting of consumers

toward Islamic house financing. Therefore, the borrowers of Islamic banking sector were increased from 3,853 in December 2015 to 4,426 in December 2016 which shows the trust and confidence of bank consumers towards Islamic house financing.

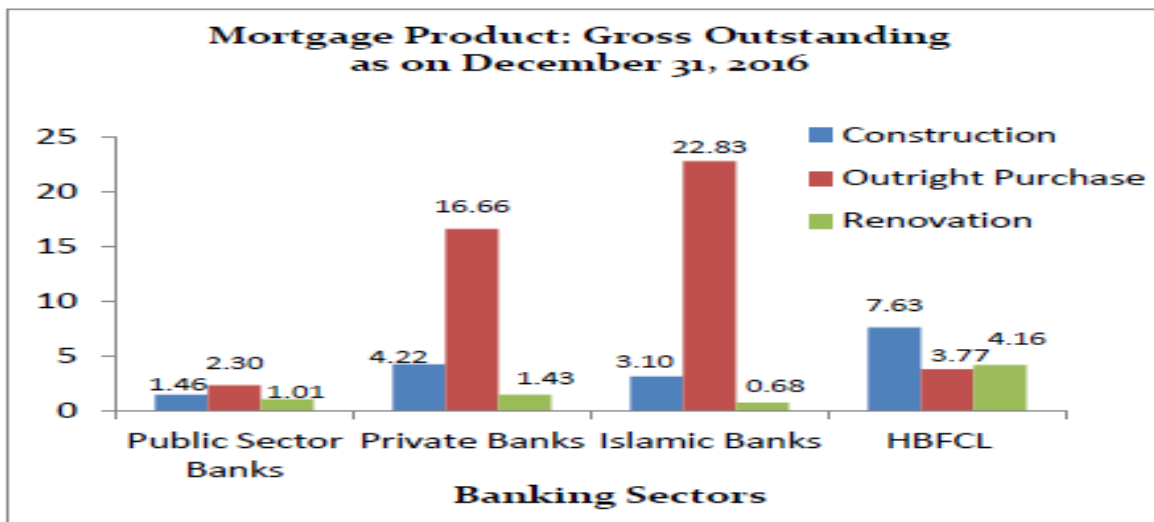
**Figure 8: NPLs of all banking sectors (Pak Rupees in Billion)**



Source: Housing Finance Review; State Bank of Pakistan

Figure 8 shows the amount of NPLs of all banking sectors. Total NPLs of all banking sectors were Pak Rupees 12.07 billion in December 2016. The NPLs of Public Sector banks were 27.63% of their total outstanding borrowers. Total NPLs of private banks were 18.93% of their total outstanding borrowers. Total NPLs of Islamic banks were only 5.98% of their total outstanding borrowers. Total NPLs of House Building Finance Company Limited (HBFC) were 31.75% of their total outstanding borrowers. All these figures and rates show that the borrowers of Islamic banks are sincerer in returning their house financing amounts as compare to all other financial institutions.

**Figure 9: Gross outstanding as on March 31, 2016 (Pak Rupees in Billion)**



Source: Housing Finance Review; State Bank of Pakistan

Figure 9 represents the gross outstanding amount of all banking sectors by the end of December 2016. Total outstanding amount of public sector banks is Pak Rupees 4.77 billion consisting of Pak Rupees 1.46 billion for construction, Pak Rupees 2.30 billion for purchase and Pak Rupees 1.01 billion for renovation purposes. Total outstanding amount of private banks is Pak Rupees 22.31 billion consisting of Pak Rupees 4.22 billion for construction, Pak Rupees 16.66 billion for purchase and Pak Rupees 1.43 billion for renovation purposes. Total outstanding amount of Islamic banks is Pak Rupees 26.61 billion consisting of Pak Rupees 1.43 billion for construction, Pak Rupees 22.83 billion for purchase and Pak Rupees 0.68 billion for renovation purposes. Total outstanding amount of House Building Finance Company Limited (HBFC) is

Pak Rupees 15.56 billion consisting of Pak Rupees 7.63 billion for construction, Pak Rupees 3.77 billion for purchase and Pak Rupees 4.16 billion for renovation purposes. Overall, total outstanding amount of all banking sectors is Pak Rupees 69.25 billion consisting of Pak Rupees 16.41 billion for construction (23.7% of total outstanding amount), Pak Rupees 45.56 billion for purchase (65.8% of total outstanding amount) and Pak Rupees 7.28 billion for renovation purposes (10.5% of total outstanding amount). These figures show that house financing consumers are more inclined towards purchasing of houses in Pakistan.

## CONCLUSION

The importance of house financing is a key element in the economic development of any country. Being a developing country, this sector has tremendous importance as a vast majority of people don't have their own houses in Pakistan. Government is trying its level best to provide housing facility to all needy people but it is not possible for it to cater all segments of the society. Therefore, there is a huge responsibility of financial institutions to provide house financing to the consumers. As conventional banking is as old as the country is, this sector has established house financing and providing finances to the consumers for purchase, construction and renovation of houses. The age of Islamic banking is very small as it started in 2002 in the country. Currently, there are only 5 full-fledged Islamic banks operating in the country with 2,082 branches which are offering Islamic house financing. 16 conventional banks have also established Islamic Banking Divisions and providing Islamic house financing to the consumers. Therefore, Islamic banking sector is playing its leading role in the provision of Islamic house financing.

By the end of December 2016, total outstanding house financing by all financial institutions is Pak Rupees 69.25 billion. Out of this amount, the proportion of Islamic house financing is Pak Rupees 26.61 billion which is 38.42% share of total outstanding amount. This shows the trust and confidence of bank consumers towards Islamic banks and they preferring their banking services due to reason that Islamic banks are working under the principles and guidance of *Sharia'h*. This leads to the growth and resilience of Islamic commercial and social financial system through Islamic house financing in Pakistan. Therefore, by the development of house financing, Pakistan's economy is also developing. Islamic house financing, as a major shareholder, is playing its vital role in economy's development and it is expected that this sector will increase its share in future.

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**Appendix 1: List of conventional banks who established Islamic Banking Divisions**

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Allied Bank Limited	Askari Bank Limited
Bank Al-Habib Limited	Bank Al-Falah Limited
Faysal Bank Limited	Habib Bank Limited
Habib Metropolitan Bank Limited	National Bank of Pakistan
Silk Bank Limited	Sindh Bank
Soneri Bank Limited	The Bank of Punjab
Standard Chartered Bank (Pakistan) Limited	Summit Bank Limited
The Bank of Khyber	United Bank Limited

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**ASSOCIATION BETWEEN DISPOSITIONAL MINDFULNESS AND MATERNAL CORTISOL REACTIVITY**MS. ZOË DODGE-RICE<sup>1</sup>; MS. FAAIZA KHAN<sup>2</sup>; AND DR. HEIDEMARIE LAURENT<sup>3</sup>**ABSTRACT**

Dispositional mindfulness has been proposed as an effective method for coping with stress and has been associated with lower cortisol reactivity during stress tasks (e.g., Brown and Ryan, 2003). However, little is known about how dispositional mindfulness relates to stress during the postpartum period. This study examines the relationship between mothers' scores on the Five Facet Mindfulness Questionnaire (FFMQ) (Baer et al., 2006) and cortisol reactivity to a stress task at 12-months postpartum. We hypothesized that mothers' overall levels of dispositional mindfulness, as well as scores on specific mindfulness facets (i.e., Acting with awareness, Non-judgment, Non-reactivity, and Describing) would be negatively associated with maternal cortisol reactivity, whereas scores for the Observing facet of mindfulness would be positively associated with cortisol reactivity. In order to test these hypotheses, we conducted simple and multiple linear regression analyses with mindfulness (overall and at the facet level) predicting maternal cortisol reactivity.

**Keywords:** Dispositional Mindfulness; Maternal Stress; Cortisol Reactivity

**INTRODUCTION**

Dispositional mindfulness has been associated with an array of positive physical and mental health outcomes (Grossman et al., 2010). In particular, dispositional mindfulness has been associated with lower physiological stress – as indexed by cortisol levels – in a number of at-risk populations (e.g., undergraduate students, cancer survivors, law enforcement officers; Zimmaro et al., 2016; Garland et al., 2014; Christopher et al., 2016). New mothers, similar to the previously mentioned at-risk populations, are especially vulnerable to increased stress (Barclay & Lloyd 1996). During early parenthood, mothers experience a multitude of physical and psychosocial transitions that have been associated with the experience of distress (Emmanuel and St. John, 2010). However, little is known about the relationship between dispositional mindfulness and stress response during the postpartum period. The current study was designed to examine associations between dispositional mindfulness and cortisol reactivity in postpartum mothers.

Mindfulness has been defined as the awareness that comes from purposefully and non-judgmentally paying attention to present-moment experiences (Bishop et al., 2004; Kabat-Zinn, 2006). Importantly, mindfulness can be conceptualized and measured as either a state-like, practice-based skill (Bishop et al., 2004), or as a trait-like predisposition to be mindful (Brown and Ryan, 2003; Rau and Williams, 2016). It is vital to distinguish between state and trait mindfulness because, although each is associated with psychological well-being, there are distinctions between which psychological outcomes are related to which conceptualization of mindfulness. A study conducted by Brown and Ryan (2003) found that those higher in dispositional mindfulness experienced less unpleasant affect in daily life, whereas those higher in state mindfulness experienced both lower levels of unpleasant affect as well as higher levels

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<sup>1</sup> University of Illinois at Urbana-Champaign, Department of Psychology, Undergraduate Student United States of America Dodgeri2@illinois.edu

<sup>2</sup> University of Illinois at Urbana-Champaign, Department of Psychology, PhD Student United States of America Khan44@illinois.edu

<sup>3</sup> University of Illinois at Urbana-Champaign, Department of Psychology, Professor United States of America hlaurent@illinois.edu

of pleasant affect. It appears that trait mindfulness exhibits associations similar to, yet distinct from, the associations between state or practice-based measures and well-being.

Dispositional mindfulness encompasses the three axioms of intention, attention, and attitude (Shapiro et al., 2006). These components work together as one process, articulated as “purposefully paying attention in a particular way” (Shapiro et al., 2006). Dispositional mindfulness has been examined through various self-report measures, the majority of which define it as a multidimensional construct (Hill and Labbé, 2014). The FFMQ, in particular, considers dispositional mindfulness to be a composite of five dimensions: Observing, Describing, Acting with awareness, Non-reactivity, and Non-judgment of inner experience (Baer et al., 2006).

The results of previous research suggest that each mindfulness facet relates uniquely to various measures of psychological distress. Baroni, Nerini, Matera and Stefanile (2016) and Baer et al. (2006) found that all of the mindfulness facets, except Observing, were associated with reductions in psychological distress. Higher levels of Observing, however, were associated with greater distress (Baer et al., 2006). Similarly, Desrosiers, Klemanski, and Nolan-Hoeksema (2013) found that Non-reactivity and Non-judgment were associated with lower general distress-depression symptoms. Non-reactivity was further associated with lower general distress-anxiety symptoms, whereas Acting with Awareness was not found to be associated with symptoms of either form of distress. Along with this, Cash and Whittingham (2010) found that higher levels of Non-judgment were associated with lower depressive, anxious, and stress-related symptomatology. The findings from these studies suggest that the five components of mindfulness play important, distinct roles in easing (and less often exacerbating) psychological distress. However, two of these studies used undergraduate populations (Baer et al., 2006; Cash and Whittingham, 2010) and, of the remaining two, only one study targeted an at-risk sample of adults (Desrosiers et al., 2013). Therefore, more research is required to replicate these findings with a wider range of individuals, including those at higher risk of psychological distress.

One understudied topic is how mindfulness may relate to maternal stress response. After childbirth, it is especially common for women to experience mild to moderate levels of distress and impairment (Emmanuel and John, 2010; Williamson et al., 2014). Work conducted by Barclay and Lloyd (1996) found stress among mothers to be distinct from the general concept of ‘psychological distress’ as defined by Ridner (2004) and identified it as an independent phenomenon known as Maternal Distress (MD) (Barclay and Lloyd, 1996). Maternal Distress is defined as a woman’s response to changes to their bodies, roles and relationships; birth experiences, and the challenges that are associated with the transition to motherhood (Emmanuel and John, 2010). Despite this knowledge that early motherhood has been found to be a critical period in which mothers are at risk of experiencing increased psychological distress, minimal research has investigated the effects of mindfulness on maternal stress.

Of the studies that have been conducted regarding the relationship between maternal stress and mindfulness, the majority of research has focused heavily on pregnant women, as opposed to postpartum mothers, and has primarily investigated mindfulness practice effects, as opposed to trait mindfulness. Mindfulness-based intervention has been found to be effective in decreasing maternal psychological distress during pregnancy (Dimidjan et al., 2016; Dunn et al., 2012). It has been found that mindfulness is beneficial in reducing psychological distress in postpartum mothers as well. Perez-Blasco, Viguer and Rodrigo (2013) found that postpartum mothers who participated in an 8-week mindfulness-based intervention exhibited lower levels of anxiety and psychological distress than did the control group. Although these findings suggest that mindfulness practice is associated with lower psychological distress in both prenatal and postpartum mothers, they can not be generalized to assume that the same associations hold for dispositional mindfulness.



To the best of our knowledge, there has been one study in particular that has investigated the association between dispositional mindfulness and stress levels in postpartum mothers. Conner and White (2014) explored this relationship in two samples of mothers: those who had children with Autism Spectrum Disorder and those who did not. They found maternal dispositional mindfulness to be associated with lower stress levels in both groups. The findings of this study allow some insight into the relationship between mindfulness and maternal stress, but there is still a lack of knowledge about how mindfulness may impact maternal stress at the physiological level.

There are various methods for measuring physiological stress. One common method involves assessing hypothalamic-pituitary-adrenal (HPA) axis activity via salivary cortisol levels. The HPA axis is one of the body's main control and regulatory systems (Kudielka and Kirschbaum, 2005). In the face of threat, the HPA axis engages the release of a sequence of hormones that ultimately trigger the secretion of glucocorticoids, such as cortisol.

Importantly, the HPA axis response to stressors is attenuated during the postpartum period (Brunton, Russell and Douglas, 2008; Duthie and Reynolds, 2013; Slattery and Neumann, 2008). These changes in HPA axis activity are generally considered to be adaptive for both maternal and infant well-being (Brunton, Russell and Douglas, 2008; Slattery and Neumann, 2008). However, it has been found that these adaptations may be disrupted, for example, in mothers who experience chronic stress (Slattery and Neumann, 2008). The disruption of this adaptive hyporesponsiveness to stressors during the postpartum period has been found to increase the risk for mood disorders, such as postpartum depression (Slattery and Neumann, 2008). Women who experience postpartum depressive symptoms show significantly higher morning cortisol levels than women who do not experience such symptoms (Ehlert et al., 1990). Despite the knowledge that early parenthood is a potential time of increased stress, there is limited knowledge regarding the effects of mindfulness on cortisol in postpartum mothers.

Although the relationship between mindfulness and cortisol reactivity during stress tasks has been previously examined, the findings are inconsistent and it is unknown how the results may relate to new mothers. A study conducted by Brown, Weinstein and Creswell (2012) investigated the relationship between dispositional mindfulness and cortisol responses to the Trier Social Stress Test (TSST) (Kirschbaum et al., 1993) in a sample of 44 undergraduate students. The findings suggest that those who report higher levels of dispositional mindfulness showed attenuated cortisol responses during the TSST. The results of this study support the notion that mindfulness is negatively associated with stress-related cortisol responses. However, there are conflicting findings in the field. Creswell et al. (2014) found that a brief 25-minute mindfulness training once a day for three days decreased self-reported psychological stress reactivity, but increased salivary cortisol reactivity to the TSST. Along with this, the authors found that those with the lowest levels of dispositional mindfulness, who received the mindfulness-based training, exhibited the greatest cortisol reactivity to the TSST. Within the literature examining mindfulness and cortisol, there is also a dearth of research regarding the ways that individual facets of mindfulness may relate to cortisol reactivity. Because of the inconsistency and gaps in the literature, it is imperative to conduct further research investigating the relationship between dispositional mindfulness and cortisol reactivity, especially in populations at-risk for elevated stress levels, such as postpartum mothers.

The research reviewed above suggests that mindfulness may be beneficial in reducing maternal distress. However, more empirical work is required to explore how maternal dispositional mindfulness may result in lower cortisol reactivity to stressors. In particular, there are gaps in knowledge of (a) associations between dispositional mindfulness and cortisol reactivity, (b) the role that each mindfulness facet plays in response to stressors, and (c) the association between dispositional mindfulness and maternal postpartum stress. The present study was designed to address these gaps. In particular, we investigated the relationship

between mothers' self-reported dispositional mindfulness – both total scores and each of its five facets --and maternal cortisol reactivity during a stress task at 12 months postpartum in order to illuminate associations between the mindfulness facets and maternal stress response. Given the evidence presented above, we expected that mothers higher in dispositional mindfulness would exhibit lower cortisol reactivity to the stress task. We also expected mothers' scores on all mindfulness facets except Observing to be inversely correlated with cortisol reactivity, whereas Observing scores were expected to be positively associated with cortisol reactivity.

## **METHODS**

### **Participants**

Participants were recruited as part of a larger study investigating mother-infant stress regulation from the Women Infants Children (WIC) program and other community agencies that serve low-income families. In order to be eligible for participation, mothers must have had a baby less than 12 weeks prior to recruitment, must have anticipated remaining in the study area until the infant involved was 18 months old, and must speak English. All cases with data on the variables of interest at Time 3 (T3) (12 months postpartum) of the larger study were included in the present work. Final analyses were conducted on the 60 of the 91 total cases with complete data from this assessment. Demographic information on the overall sample can be found in Laurent (2017).

### **Procedure**

Participants were required to provide written informed consent to all procedures, which were approved by the University of Oregon Institutional Review Board, prior to participation in the study. Mothers completed questionnaires assessing the variables of interest via Qualtrics at 3, 6, 12, and 18 months postpartum. At T3, mothers completed the Strange Situation (SS) (Ainsworth and Whitting, 1978) procedure—a developmentally appropriate interpersonal stressor involving maternal separation during which infants typically show distress. During separations, the mother was able to watch her infant on a computer monitor. Four saliva samples were collected from the mothers (passive drool using Salimetrics Saliva Collection Aid) and infants (using Salimetrics Infant's Swab) during the session. Laboratory sessions were uniformly conducted in the afternoon in order to control for diurnal cortisol rhythms. The first saliva sample was collected shortly after the participants' arrival to the lab. The second sample was collected immediately following the peak stressor (SS second separation). The third sample was collected 20 minutes after the second sample, and the fourth sample was collected 30 minutes after that.

### **Measures**

#### ***Dispositional Mindfulness***

Dispositional mindfulness was measured using the Five Facet Mindfulness Questionnaire (FFMQ). The FFMQ is a 39-item self-report questionnaire that evaluates mindfulness with the following subscales: Observing, Describing, Acting with Awareness, Non-judgment and Non-reactivity to inner experience. Each item is rated on a 5-point Likert scale ranging from 1 (rarely or never true) to 5 (very often or always true). Example items include “I pay attention to how my emotions affect my thoughts and behaviors” (Observe) and “It seems I am ‘running on automatic’ without much awareness of what I’m doing” (reverse keyed; Acting with Awareness). Total scores and scores for each subscale were calculated before analysis, and the reliability of the FFMQ in the present study was adequate. (Observing  $\alpha = .81$ , Describing  $\alpha = .90$ , Acting with Awareness  $\alpha = .92$ , Non-reactivity  $\alpha = .77$ , Non-judgment  $\alpha = .79$ ).

### ***Cortisol Reactivity***

Salivary Enzyme Immunoassay (Salimetrics, Carlsbad, CA) was used to assay mothers' and infants' saliva samples without modification to the manufacturer's recommended protocol. Cortisol scores were natural log-transformed prior to analysis to correct for positive skew. In order to calculate maternal cortisol reactivity, baseline cortisol levels (i.e., the first saliva sample) were subtracted from peak stress cortisol levels (i.e., the third saliva sample).

### **Planned Analyses.**

Linear regression modeling using IBM SPSS Statistics (IBM Corporation, 1968) was selected to analyze the association between dispositional mindfulness and cortisol reactivity.

First, a simple linear regression model was run in order to assess the association between total dispositional mindfulness scores and maternal cortisol reactivity. Simple linear regression models the relationship between two variables (a predictor variable and a dependent variable) by fitting a linear equation to the observed data. A multiple regression analysis was then conducted in order to evaluate the relationship between each of the mindfulness facets (predictor variables) and maternal cortisol reactivity (dependent variable). Multiple regression analyses are performed when exploring the relationship between several predictor variables and one dependent variable, in order to consider each predictor variable while holding all others constant.

## **RESULTS**

Descriptive statistics and correlations among predictor and outcome variables are presented in Tables 1 and 2.

### **Explanatory Models**

First, we tested the simple linear regression model with participants' total score for dispositional mindfulness on the FFMQ as a predictor of maternal cortisol reactivity (see Table 4). Then, to better understand the effects of specific aspects of mindfulness, we entered the scores for all five subscales of the FFMQ together as predictors for maternal cortisol reactivity (see Table 4).

### **Main Effects**

#### ***Dispositional Mindfulness***

Total scores on dispositional mindfulness were not found to significantly predict maternal cortisol reactivity to a stress task at 12-months postpartum ( $\beta = -0.164$ ,  $SE = 0.122$ ,  $p = 0.185$ ).

#### ***Subscales of Dispositional Mindfulness***

None of the FFMQ subscales were found to significantly predict maternal cortisol reactivity, but for descriptive purposes, we detail the direction of the associations. Specifically, negative coefficients were found for Observing ( $\beta = -0.037$ ,  $SE = 0.087$ ,  $p = 0.674$ ), Describing ( $\beta = -0.063$ ,  $SE = 0.088$ ,  $p = 0.475$ ), and Acting with Awareness ( $\beta = -0.171$ ,  $SE = 0.094$ ,  $p = 0.074$ ), and positive coefficients were found for Non-judgment ( $\beta = 0.065$ ,  $SE = 0.141$ ,  $p = 0.581$ ) and Non-reactivity ( $\beta = 0.065$ ,  $SE = 0.086$ ,  $p = 0.456$ ).

### **Summary**

The present findings do not support the proposal that (a) dispositional mindfulness is associated with lower maternal cortisol reactivity, or that (b) the distinct facets of mindfulness ease or exacerbate cortisol reactivity to a stress task. Nevertheless, these findings contribute to the limited literature regarding the potential relationship between dispositional mindfulness and maternal stress response.

## DISCUSSION

This study investigated the relationship between dispositional mindfulness and maternal cortisol reactivity during a stress task at 12-months postpartum. One of our primary predictions was that higher levels of dispositional mindfulness – both total scores and specific facets -- would be associated with lower maternal cortisol reactivity. Although the findings were not statistically significant, the present work adds to the literature on the associations (or lack thereof) between mindfulness and cortisol reactivity, specifically in postpartum mothers. However, more research is required to further explore the relationship between dispositional mindfulness and maternal stress response.

Overall, the findings of our research suggest that no aspects of dispositional mindfulness exhibit statistically significant associations with cortisol reactivity. It could be the case that an overarching character trait, such as dispositional mindfulness, is not effective in easing the cortisol response elicited by an acute stress task such as the Strange Situation. This does not negate the possibility that dispositional mindfulness is, instead, effective in buffering HPA activation in the context of more chronic stressors. In fact, this understanding of the role of dispositional mindfulness falls in line with previous research that has found dispositional mindfulness to be associated with lower physiological stress in populations who experience chronic levels of elevated stress, such as undergraduate students (Zimmaro et al., 2016), cancer survivors (Garland et al., 2014) and law enforcement officers (Christopher et al., 2016). It may also be beneficial to consider ways in which dispositional mindfulness correlates with other cortisol measures, instead of cortisol reactivity. Future research should investigate the relationship between dispositional mindfulness and more stable, longitudinal measures of cortisol levels in populations at-risk for increased chronic stress. A recommended approach may be to measure Cortisol Awakening Response (CAR), first established by Pruessner et al. (1997), which is a distinct component of the diurnal cortisol rhythm. The CAR evaluates one's cortisol increases during the first hour after awakening (Powell and Schlotz, 2012), and is positively correlated with general life stress (Chida and Steptoe, 2009).

Another consideration in interpreting the present null findings is that, on average, cortisol levels did not change ( $t[123] = -1.23, p = 0.22$ ) from baseline to expected peak stress in response to the SS. It could be the case that the SS did not provoke a strong enough stress response from mothers to be able to detect meaningful effects of mindfulness. Although maternal separation from infants has been found to be stressful for mothers (Cooklin et al., 2013), the task was primarily designed to elicit a stress response from infants (Ainsworth et al., 1978). It could also be that mothers involved in this study exhibited attenuated postpartum HPA axis activity, as supported in previous literature (Brunton, Russell and Douglas, 2008; Duthie and Reynolds, 2013; Slattery and Neumann, 2008). This inhibition in stress response has been found to be adaptive in allowing mothers to provide adequate maternal care (Slattery and Neumann 2008) and reserve energy that otherwise could potentially be directed toward biological processes necessary for healthy infant development (Brunton, Russell and Douglas, 2008).

Furthermore, there could be potential moderators that contributed to the null overall effects of this study; that is, mindfulness could have led to higher *or* lower cortisol reactivity depending on other factors. For example, individual levels of infant distress during the SS could have elicited different responses from mothers, depending on the distress that their infant demonstrated. Consistent with the idea that mindfulness allows one to do what is needed for a given situation, it could have been the case that mindful mothers whose children exhibited minimal distress to the SS demonstrated less cortisol reactivity, whereas mindful mothers whose children exhibited greater distress responded more. These variations in cortisol reactivity could have then led to null overall effects. Differences in maternal state mindfulness during the stress task itself could have also potentially contributed to variations of cortisol responses. It could be the case that dispositional mindfulness was less effective in shaping the cortisol

response elicited from mothers who did not exhibit much state mindfulness during the task itself. It could then be beneficial to utilize a more comprehensive assessment of mindfulness that investigates aspects such as state mindfulness during the task and parenting-specific mindfulness. In fact, other research within this sample, which examined maternal mindfulness as a predictor of mother/infant cortisol during the 6-month session (Laurent et al., 2017), found a significant effect of parenting-specific mindfulness but not general dispositional mindfulness.

The present work furthers our understanding of when mindfulness does and does not relate to maternal physiological stress during the postpartum period. However, there are limitations in the current study that are imperative to recognize and may be used to inform future research. The sample size was relatively small and homogeneous, limiting our statistical power and ability to generalize these findings to a wider population of postpartum mothers. The findings uncovered in this study should be further examined in a larger sample that is representative of a more diverse socio-demographic population profile. As noted above, more comprehensive assessment of both mindfulness (i.e., parenting-specific and state measures) and HPA activation (i.e., CAR) may also be useful in uncovering maternal mindfulness effects on stress regulation. Addressing these limitations in future work could illuminate mindfulness effects we were unable to detect in the present study and inform the development of interventions for mothers experiencing postpartum distress. In further understanding the effects of mindfulness on stress, it is possible that mechanisms of mindfulness may be integrated into stress-reduction interventions for mothers who are at-risk for increased stress during the postpartum period.

## TABLES

**Table 1: Correlations Between FFMQ Subscales**

	Alpha	Observing	Describing	Acting with Awareness	Non-reactivity	Non-judgment
Observing	.81	1	.403	-.066	.282	-.051
Describing	.90		1	.273	.519	.337
Acting with Awareness	.92			1	.106	.525
Non-reactivity	.77				1	.017
Non-judgment	.79					1

**Table 2: Descriptive Statistics**

	Observing *	Describing *	Acting with Awareness *	Non-judgment *	Non-reactivity *	FFMQ Q Total	Cortisol Reactivity
Mean ± SD	3.10 ± 0.75	3.68 ± 0.89	4.07 ± 0.73	4.40 ± 0.51	2.87 ± 0.80	3.62 ± 0.47	-0.0839 ± 0.758
Range	3.63	4.00	3.13	1.88	3.71	1.99	3.97

*Note.* Scores represent mean ratings for items in each domain.\*

**Table 3: Results for Main Effects Models**

Cortisol Reactivity		
	Coefficient, SE	p-value
Model 1		
Observing	-0.037 (0.087)	0.674
Describing	-0.063 (0.088)	0.475
Acting with Awareness	-0.171 (0.094)	0.074
Non-judgment	0.079 (0.141)	0.581
Non-reactivity	0.065 (0.086)	0.456
Model 2		
FFMQ Total	-0.164 (0.122)	0.185

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## LEARNING FROM THE MUD TALK: CONTINUUM UNDERSTANDING OF SEASONAL MIGRATION IN SOUTHWEST COASTAL BANGLADESH

MD MOSTAFIZUR RAHMAN<sup>1</sup> AND MAHMUD UZ ZAMAN<sup>2</sup>

### ABSTRACT

To explain the theoretical link between migration and development, this paper conceptualizes that seasonal migration offers compartmental development, which is a step-by-step ‘priority accomplishing activities’ ranging from fulfilment of primary needs to upliftment of social status. In exploring seasonal migration linked with the three zones namely i) zone of influence-questioning the ‘why’ aspects, ii) zone of involvement-questioning the ‘how’ aspects, and iii) zone of investment-questioning the ‘what’ aspects, this research adopts a qualitative research design. The thematic analysis based on 15 in-depth interviews with brickfield workers shows that due to limited working opportunities in rural areas of southwest Bangladesh, seasonal migration holds opportunities to earn an ‘extra’ amount of money that is impossible to earn at the place of origin. Furthermore, seasonal migrants invest the economic gain immediately at the place of origin, and social gain in the next season to find more profitable and consistent working opportunities.

**KEYWORDS:** Seasonal Migration, Brickfield Workers, 3 I’s, Thematic Analysis, Southwest Coastal Bangladesh.

### SEASONAL MIGRATION: THE OVERALL SITUATION

Due to rapid urbanisation and improvement in using modern technology in transport and communication sector, migration research has become exceedingly challenging. With the development of modern technology, people can move easily from rural to urban areas to organise low-cost accommodation facilities using their social capital/kinship relationship and to explore both short-term and long-term job opportunities mostly in informal sector. Generally speaking, migration is a movement that involves permanent or semi-permanent change in residence from one settlement to another (Chandana, 1998). Migration is associated with two major issues namely economic reasons or income opportunities dominated by pull factors of migration and environmental change driven by push factors of migration (Afsar, 2000; Martin, 2009). Many researchers (Todaro, 1969; Afsar, 2000; Thet, 2009; Kainth, 2010) have highlighted that both push and pull factors play influential role in moving from rural to urban context though the boundaries of pull and push migration are not clearly articulated in the conceptual understanding of overall migration literature. On top, the diversity in conceptualising the migration, in particular, the seasonal migration that occurs regularly on seasonal basis aligning with semi-permanent migration, which is a temporary change in residence leaving some of the family members at the place of origin to maintain a strong connection between place of destination and origin, have challenged the overall understanding about the movement pattern of people from rural to urban (Dolgova, 2002). The trade theory entails that rural workers are attracted to the higher income in urban areas and are keen to sell their labour from traditional rural agricultural sector to modern urban manufacturing sector (Lewis, 1954; Ranis and Fei, 1961). Surprisingly, the employments in informal sector characterised by unskilled labour fluctuates in every year that also create instability and uncertainty in the availability of work in urban areas. Again, sometimes the employments in

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<sup>1</sup> PhD student, Department of Sociology, Macquarie University, NSW, Australia; E-mail: urp\_402@yahoo.com (Corresponding Author)\*

<sup>2</sup> Assistant professor, Urban and Rural Planning Discipline, Khulna University, Bangladesh; Email: anik\_kurp@yahoo.com

informal sector are considered unattractive to the native labourers, and it can create a potential market for the seasonal migrants (Piore, 1979).

In contrast to pull factor in seasonal migration, push factor also dominates the seasonal migration. Now, the question arises in what aspects push factor influence seasonal migration. In addressing that question, the aspects of productivity associated with seasonality and the environmental degradation due to climate change can act as major factors of push migration. During the lean period, people tend to temporarily migrate to the nearby and/or distant urban areas for employment as because of the unavailability of minimum livelihood opportunities at the place of origin (Breman, 1994). The period of adversity at the place of origin can also become periodic and can create seasonal unemployment resulting push migration. In that case, migration becomes a survival strategy of life (Konseiga, 2002). Besides, the climate change reflected through the frequent disasters has displaced many people especially from the coastal areas (Brindal, 2007; Martin, 2009). This displacement has caused a large number of people to migrate in adjacent big cities and urban areas either temporarily or permanently to find safer places (Boncour and Burson, 2010).

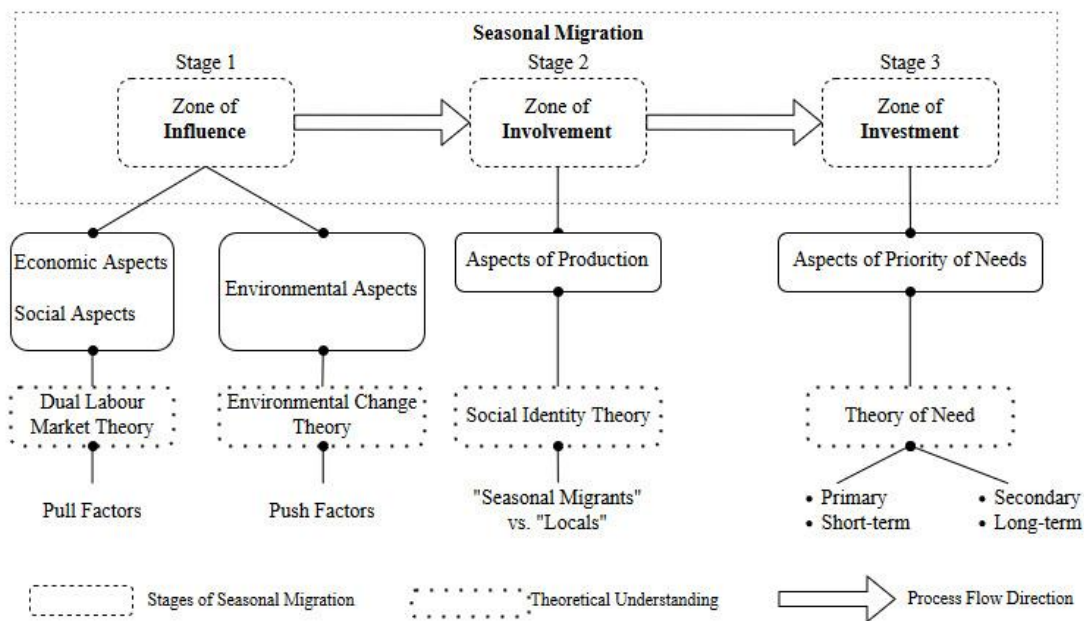
Migration seems to be a natural process for many cities around the world, and Khulna, the 3rd largest city in Bangladesh is not an exception on that, because it also holds economic potentials and smooth connectivity with the adjacent small cities and satellite towns (Haider, 2010). One of the key features of Khulna is the dominance of brickfield sites located in the fringe areas, which is lying immediately outside the main city (McManus and Ethington, 2007). Brickfield sites are one of key locations that offer seasonal employability with a large number of occupancy. On top, the seasonal migrants do not require any particular technical skills to get working opportunities except physical fitness for performing activities like soil digging, soil cutting, carrying with pushcart, and organising the bricks for firing. Therefore, in every year, the brickfield sites attract a large number of seasonal migrants for a particular time. This study is conducted in Rupsha Upazila under Khulna District (Upazila is the second administrative tier that performs as sub-units of districts and maintains communication between District level and Union level). Out of 86 brick kiln factories in Khulna District, around 50 percent brick kiln factories are located in Rupsha Upazila that is the highest number in contrast with the other Upazilas of Khulna District (Bangladesh Bureau of Statistics, 2013). Referring to the empirical evidence, this research explores the three zones associated with seasonal migration namely i) the zone of influence-questioning the 'why' aspects of seasonal migration, ii) the zone of involvement-questioning the 'how' aspects of seasonal migration, and iii) the zone of investment-questioning the 'what' aspects of seasonal migration. Furthermore, this study establishes a connection between migration and development understanding that seasonal migration offers compartmental development, which is a step-by-step 'priority accomplishing activities' ranging from fulfilment of primary needs to upliftment of social status.

### **CONCEPTUAL COMPLEXITIES: UNDERSTANDING THE 3 I'S (INFLUENCE-INVOLVEMENT-INVESTMENT) IN SEASONAL MIGRATION**

Within the overall discourse of migration, the seasonal migration can be resembled as a multi-stage process. In exploring that multi-stage of seasonal migration, this study postulates that seasonal migration is associated with three 3 I's (Influence, Involvement, and Investment). Considering the three 3 I's, the first stage of seasonal migration dictates the zone of influence that is pertained with the three aspects namely economic, social, and environmental. This research conceptualises that the zone of influence deals with the 'why' aspects of seasonal migration, mainly questioning the reasons of seasonal migration, and the migratory status of the families, and their factors of migration. This research recognises the zone of influence as a primary proponent of seasonal migration. In explaining this stage, the factors of migration such as pull factor and push factor can be further examined with the two major theoretical perspectives namely dual labour market theory and environmental change theory respectively.

Dual labour market theory explains the migration with detailing on supply and demand. According to Piore (1979), wages for migrants are not only a reflection of the condition of supply and demand, but also are a matter of status and prestige. In opposite, environmental change theory highlights that there is a connection between income inequality and increased consumption of status-oriented goods and fossil fuel that can be further reflected through global environmental degradation, and that can influence the decision of migration (Chao and Schor, 1998; Ostrom, 2008; Wilkinson and Pickett, 2009).

Understanding the theoretical perspectives, we admit that the seasonal migration takes place due to both push and pull factors. In pull seasonal migration, issues like the presence of strong kinship at the destination, differential wage pattern, and consistent working opportunities along with the seasonal variability, and sometimes the overall quality of living close to urban areas exemplify the relationship between theoretical perspectives and empirical perspectives. In establishing a connection between the pull-factors and the economic and social aspects of seasonal migration, this research has adopted the dual labour market theory. Again, while examining the push-factors of seasonal migration linked with the extreme climatic events such as cyclone, flood, and river erosion, this research has applied the environmental change theory. Based on the theoretical understanding, we recognise that the zone of influence is associated with issues of the place of origin and the deciding reasons of seasonal migration (see Figure 01).



Source: Authors generated, 2018

**Figure 01: Conceptual understanding of the 3 I’s in seasonal migration**

The second stage of seasonal migration, the zone of involvement deals with the ‘how’ aspects of seasonal migration, incorporating the issues like period and duration of migration, process of getting works / chances of employability, types of works, and their payment structure. This stage incorporates the activities performed by the seasonal migrants at their place of destination. Primarily, the zone of involvement indicates the internal mobility pattern of seasonal migration. This stage also establishes the interconnection between the existence of classification of labour followed by the different wage structure and the period of engagement to understand the dynamics of seasonal migration. The interconnection clearly indicates the production perspective of seasonal migrants characterising the possibility of selling labour in parallel with the amount of financial gain. In contrast to financial gain, the tension dynamics between seasonal migrants and the local workers are also common, especially when it comes to find jobs

at the place of destination. By using the social identity theory perspective, we can recognise the socio-psychological behaviour between these two groups because social identity theory apprehends how the identities are negotiated in a context of migration (Tajfel and Turner, 1986; Weber, 2014). It also exerts the inter-group identity forms and links to group membership (Burke and Tully, 1977; McAreavey, 2017).

The third and final stage of seasonal migration, the zone of investment incorporates the ‘what’ aspects of seasonal migration, featuring the after effects of seasonal migration. The final stage of seasonal migration exemplifies the types of benefits classified as economic and social received by the migrants. The zone of investment explains how the seasonal migrants use their income and social gain at the place of origin. We have anticipated that the economic benefits coupled with social benefits affect migrants in multifaceted ways. This research accepts that the benefits received by the seasonal migrants are used according to their priorities ranging from the fulfilment of primary needs to the upliftment of social status. The benefits offer a step-by-step and/or a section-by-section, generally speaking, gradual development that can be resembled with a compartmental development establishing a strong reference between migration and development.

### **METHODOLOGICAL APPROACH: EXPLORING THE VOICES (‘MUD TALK’) OF THE BRICKFIELD WORKERS**

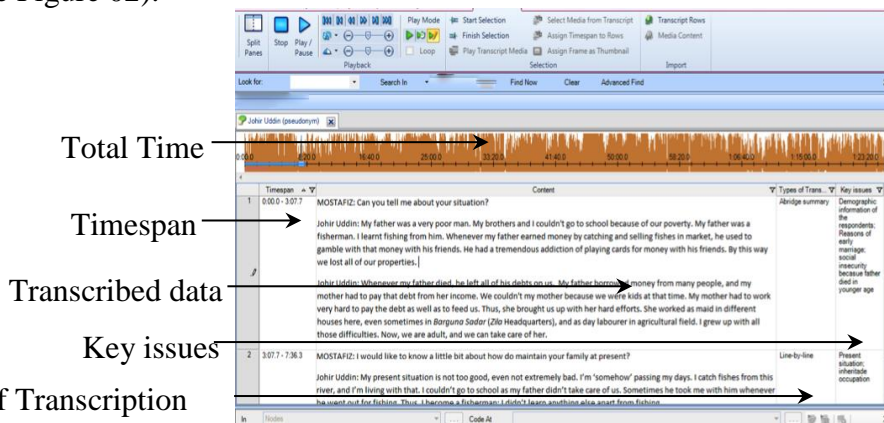
The understanding of seasonal migration is continually changing because it is associated with multiple aspects such as economic, social, and environmental aspects. Also, the indistinguishable boundaries between pull and push factors of seasonal migration have made the understanding even more complex. Recognising that this research is primarily grounded on the experiences of the seasonal migrants, particularly working in the brickfields of Rupsha Upazila. We have adopted a qualitative research approach because it provides detailed understanding of the seasonal migration by talking directly with people, going to their places of work, and allowing them to tell their stories (Creswell, 2007, p. 40). At the beginning, we had limited understanding about the experiences of seasonal migrants who work at the brickfields of Rupsha Upazila, and the use of qualitative methods enabled us to get the boarder perspectives of seasonal migration and development because qualitative methods are soft, flexible, subjective, and grounded in data (Halfpenny, 1979, p. 799). Though qualitative research requires a broader and less restrictive design, it also demands the combination of empirical evidence as well as theoretical claims to produce an argument (Schwandt, 2007, p. 265). Recognising that whenever we have collected data, we have attempted to continually relate the data with the theoretical understanding of seasonal migration. Furthermore, we have used case study approach because it offers an in-depth exploration from multiple perspectives (why people migrate from rural to urban areas; how seasonal migrants get employment at their place of destination; what seasonal migrants receive from migration) within the real-life context (Simons, 2009, p. 21).

This research focuses on the making sense of the complex issues related to seasonal migration, and in doing so, we have purposely selected 15 seasonal migrants working in the brickfields of Rupsha Upazila for face-to-face in-depth interviews. We have adopted purposeful sampling because it has allowed us to choose research participants in such a way that we are interested in (Silverman and Marvasti, 2008, p. 167). Aligning with the purposeful sampling, we have also used the ‘problem sampling’ that offers a much looser and more general theoretical role, and contains an opening to the possibility of conceptual and analytic discovery (Layder, 2012, p. 121).

We have developed an interview guide with fairly specific topics related to seasonal migration prior to interview. However, we have kept the interview process flexible as to ask further questions in response to what are counted as important replies from the research participants. The in-depth interviews have been conducted in February to May. Due to the

seasonal variation followed by the availability of migrants, we have collected data at the initial stage of their working season, just after winter. We have adopted a qualitative perspective of data analysis that is not concerned with statistical representativeness, but rather with a selection of units of investigation that can generate some theory (Kardorff, 2004). We have used both note taking and audio recording as data collection tools during the interviews because using those tools can establish greater trustworthiness, and conformability in interpretation (Denzin and Lincoln, 2005, p. 24).

From the beginning of this research, we have used NVivo, which is a qualitative data storing and analysis software, to store and organise the collected information from the brickfield workers. Typically software like NVivo has provided us the opportunities for storing textual documents in reference to a coding system tagging or indexing parts of those documents (Gregorio and Davidson, 2008, p. 1). Along with many researchers such as Miles and Huberman (1994), Maxwell (2009), and Saldana (2011), we also recognise that it is impossible to separate data gathering and data analysis steps in qualitative inquiry; therefore, we have collected the data and have analysed the data simultaneously. During the data analysis, we have done the translation and transcription by ourselves because the real value of doing own transcription is building intimate knowledge of the data (Bazeley, 2013, p. 73). The use of NVivo software has provided us the opportunity to link the audio data with the transcripts. By this way, the contextual information has been kept embedded in each transcribed documents. One of the main advantages of using NVivo software is to link the specific information along with the time frame (see Figure 02).



Source: Authors generated in NVivo, 2018

**Figure 02: Data transcription and analysis process in NVivo**

While analysing the data, we have given our priorities in exploring the meaning from the text because the proper analysis involves developing the meanings of the interviews, bringing the research participants’ perspectives into light and providing new perspectives from the researchers (Kvale and Brinkmann, 2009, p. 196). Due to high flexibility feature in interview, we have used thematic analysis to identify and to interpret the patterns (themes) within data (Bazeley, 2013). During the thematic analysis, we have explored ‘codes’ like economic aspects of migration, push and pull factors of migration, payment types-fixed and/or flexible, and social benefits of migration from the interview data (see Table 01). Coding is one way of analysing the qualitative data, where codes are generated from language-based data, which are the most often words or short phrase that symbolically assigns a summative, salient, and essence-capturing attribute (Saldana, 2013, p. 3).

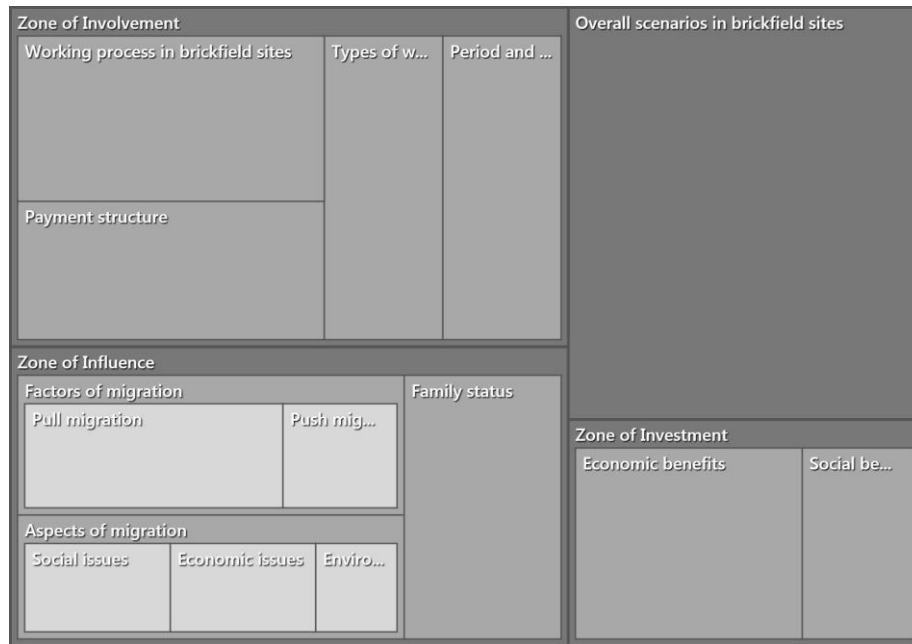
**Table 01: Exploration of codes from interview data during thematic analysis**

Name of the Codes	Sources	References
1.0 Overall scenarios in brickfield sites	15	60

2.0 Zone of Influence	15	69
2.1 Aspects of migration	9	23
2.1.1 Economic issues	6	9
2.1.2 Environmental issues	5	5
2.1.3 Social issues	4	9
2.2 Factors of migration	14	26
2.2.1 Pull migration	12	18
2.2.2 Push migration	7	8
2.3 Family status	15	20
3.0 Zone of Involvement	15	78
3.1 Payment structure	15	20
3.2 Period and duration of seasonal migration	14	17
3.3 Types of works	14	17
3.4 Working process in brickfield sites	11	24
4.0 Zone of Investment	12	33
4.1 Economic benefits	12	22
4.2 Social benefits	7	11

*Source: Authors generated in NVivo, 2018*

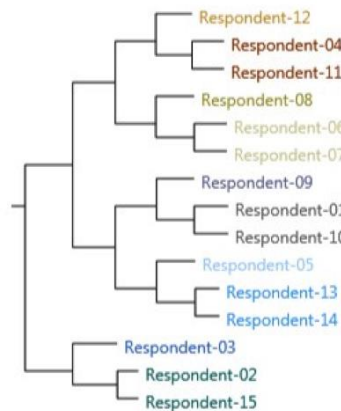
The preliminary analysis from the aggregated data shows that the 15 in-depth interviews are categorised into three codes namely zone of influence, zone of involvement, and zone of investment. Zone of influence contains further three more sub-categories such as aspects of migration, factors of migration, and family status of the migrants. The analysis also indicates that both pull and push factors are present in seasonal migration. Then, the zone of involvement has four sub-categories such as payment structure, duration of seasonal migration, types of works, and working process. The value in the 'references' column in relation to the zone of influence indicates that the seasonal migrants have mentioned 78 times the sub-categories of zone of influence either directly or indirectly in their interviews. Lastly, the zone of investment holds two sub-categories namely economic benefits and social benefits that are coded from 12 interviews instead of 15 interviews (see Table 01). This is because three of the respondents did not mention anything regarding their benefits or their outcomes of migration either positively or negatively. The rest of the respondents have stated that the economic benefits play crucial role at their place of destination. The study also suggests that the notion of economic benefits commensurate with upliftment in personal and family sphere of seasonal migrants act as a tool to break persistent debt cycle and achieve some extents of social status.



Source: Authors generated in NVivo, 2018

**Figure 03: Hierarchy of codes in examining the 3 I’s**

Hierarchy of codes have assisted us to assimilate the common factors regarding seasonal migration into four themes: zone of influence, zone of involvement, zone of investment, and the overall scenarios in brickfield sites. Learning from the voices of the brickfield workers, we could establish that both zone of influence and zone of involvement have equal share to explain seasonal migration in the brickfield sites (see Figure 03). However, the zone of influence occupies more versatile factors than the zone of involvement. The zone of investment has an emphasis on both social and economic benefits where economic benefits hold the leading characteristics. The crosscutting issues have been discussed under the overall scenarios in brickfield sites, indicating that seasonal migrants mostly focus to repay their debt and fulfil their personal and family needs rather engaging in long-term activities in brickfield sites.



Source: Authors generated in NVivo, 2018

**Figure 04: Interviews of brickfield workers clustered by word similarity**

The cluster analysis of the source data (interview data) shows that there exist some similarities and dissimilarities in responding the questions related to seasonal migration by the migrants. Figure 04 shows that respondent 04 and respondent 11 have addressed similar topic and have identified similar issues related to seasonal migration; therefore, these two respondents are

located in the same cluster on the basis of their interviews (see Figure 04). Also, the respondent 02 and respondent 15 are identified in the same cluster, but they are different from the rest of the cluster. This exactly matches with the initial findings of the data, indicating that the respondent 02, respondent 03, and respondent 15 are contractors of the seasonal migrants who also work as a seasonal migrant in the brickfield sites (see Figure 04).

The preliminary analysis of the source data shows that seasonal migrants are coming to the transition zones to tap the benefits from their newly developed social connections, which also act as a tool to social capital for recurring seasonal migration. This issue has made seasonal migrants more susceptible to migrate frequently from rural to urban context. These underlying dynamics are explored and discussed in detail in accordance with the 3 I's (Influence-Involvement-Investment).

### UNDERSTANDING THE ZONE OF INFLUENCE: THE 'WHY' ASPECTS

To explore the zone of influence, we have started our analysis from producing the 'Word Cloud' to analyse critically the voices of the brickfield workers. 'Word Cloud' is a common tool to explore and visualise textual data (McNaught and Lam, 2010; Filatova, 2016). The more frequently the words appear within the written transcripts, the larger and bolder it appears in the Word Cloud. In this research, we have used this tool in NVivo to get a quick visual response of the source data, the interviews with the brickfield workers.

The Word Cloud of zone of influence depicts that this stage of seasonal migration is linked with the place of origin because its strong presence, in particular, 87 times appearance within the aggregated codes of zone of influence (see Table 02). The data from Table 02 also shows that family holds an important role for migration that can be further influenced by the role of contractors who offer either working opportunities or income opportunities that can be further associated with monthly engagement in order to support their family and relatives and to pay the loans of destination.

**Table 02: Fifteen most frequent words of the aggregated codes of 'Zone of Influence'**

Word	Length	Count	Weighted Percentage	Similar Words
working	7	203	6.83	work, worked, working, works
brick	5	124	4.17	brick
village	7	121	4.07	village, villagers, villages
family	6	87	2.93	family
origin	6	87	2.93	origin, original
contractor	10	63	2.12	contractor
place	5	62	2.09	place, places
household	9	60	2.02	household
income	6	48	1.62	income
workers	7	41	1.38	worker, workers
months	6	39	1.31	month, monthly, months
opportunity	11	38	1.28	opportunity
relative	8	34	1.14	related, relative
debt	4	30	1.01	debt
money	5	30	1.01	money

*Source: Authors generated in NVivo, 2018*

A complete illustration of words of the aggregated codes of 'Zone of Influence' is shown in Figure 05 where words like 'Family,' 'Village,' 'Origin,' 'Household,' 'Relative,' 'Problem'









Source: Authors generated in NVivo, 2018

### Figure 07: Visual appearance of the aggregated codes of 'Zone of Investment'

The thematic analysis of zone of investment shows that seasonal migrants have identified the association of payment and its impacts on both economic and social areas. This can be exemplified in the voice of one of the migrants (Pseudonym-Moyna Begum; Sex-Female; Age-35; Activity type-Prepare and cut bricks according to size; Payment type-Flexible, and weekly; Migratory status-With family):

*"I work here along with my husband. I have to send 400 taka (5 USD) weekly to my village, so that my rest of the family members can use that money. My husband has taken some loan before coming here. In every week, we repay a portion of that loan from our income. I have learnt many things such as the process of cutting soil and making bricks using modern equipment, which is going to help me for the next time to get work here."*

Analysed data also shows the existence of two distinct branches to understand zone of investment namely economic benefits and social benefits. Most of the respondents have identified that economic benefits are crucial as it directly assists them to improve their economic conditions. However, the respondents also recognise their improvement in understanding about the urban facilities and knowledge about the quality of living through their engagement in brickfield sites, which are closely located to urban areas.

## CONCLUSION

This research recognises that seasonal migration is a recurring phenomenon for experienced workers. This study has identified two groups: inexperienced and experienced seasonal migrants. Inexperienced migrants utilise their economic on short-term basis mostly targeting to meet their primary needs. In contrast, experienced migrants utilise their income on long-term basis targeting to satisfy their secondary needs, in particular, asset accumulation. Experienced migrants are also keen to bring their family members into their job location to increase the number of earning members. In a nutshell, in this paper, we have advocated that there is growing need to recognise the existence of the three chronological stages namely zone of influence, zone of involvement, and zone of investment in seasonal migration. We have argued that if we want to understand those stages explicitly, we must consider both pull and push factors simultaneously as the boundaries of these two factors are indistinctive. Finally, this research signifies that with the incorporation of the 3 I's in understanding the seasonal migration is going to assist the policy makers from government and non-government organizations to restore their understandings regarding seasonal migration in stage by stage fashion.

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**DEFERENCE OR *DE NOVO* REVIEW OF ARBITRAL AWARDS AND IMPLICATIONS FOR INVESTOR-STATE RELATIONS IN BRICS**MURUGA PERUMAL RAMASWAMY<sup>1</sup>**ABSTRACT**

Finality of arbitration award, albeit being a fundamental characteristic of international arbitration mechanism, is acquiescent to a range of post-award challenges. One of the key questions facing an intervening tribunal or a court in post-award challenges is what should be the standard of review of an arbitration award? The paper argues that uncertainty in standards of review has the potential to impact international confidence in domestic business environment or investment climate and emphasizes the need for clear standards. This paper is an attempt to examine key attributes that determine when judicial review is done *de novo* or with deference to arbitral awards. The paper first examines the key attributes of review carried out by international courts and tribunals in scrutinizing the decisions of the national courts. The paper then shifts its focus to national jurisprudence to examine whether some clear parameters or attributes to determine the degree of deference emerge. The paper makes a specific reference to situation in individual BRICS member states and emphasizes the need to articulate clearer standards of review with due regard to emerging practices and standards.

Key Words: Judicial Review of Arbitral Awards, Standards of Review, Deference and De Novo Review, Investment Arbitration, BRICS

**INTRODUCTION**

The principle of finality of arbitration award, albeit being hailed as the corner stone of international arbitration mechanism, is acquiescent to a range of post-award challenges. Even though an appeal of an award may not be conceivable, parties' right to seek clarifications or revisions or annulment of an award is generally recognized. In this context, one of the key questions an intervening tribunal or a court has to face is what should be the standard of review of an arbitration award? The paper argues that uncertainty in standards of review will impact international arbitration as a viable choice in investor state dispute settlement (ISDS) and emphasizes the need for clear standards.

As there is a growing skepticism over ISDS mechanism, the standards of review adopted by national courts would increasingly be subjected to scrutiny by both international investors and host states. Therefore, it is essential for the reviewing bodies, especially the national courts, to ensure that the standards of review are not only well balanced but clearly articulated. In response to the growing skepticism over ISDS mechanism, concrete initiatives to restore confidence on the system like the international legal measures mandating transparency in treaty based investor-state arbitration have been introduced<sup>2</sup>. However, the efforts to restore confidence on ISDS mechanism should not only be limited to the investor-state arbitration system but comprehend other related frontiers that has the potential to intervene in the arbitration process or impact its outcome. In this regard, the role of various allied institutions or bodies and their review or enforcement powers should be clearly delineated as they have equal potential to impact the confidence on ISDS mechanism. In particular, any unrestrained use of the review powers by national courts could adversely affect the confidence of the parties to an investment dispute. Therefore, efforts to clearly demarcate the roles of domestic courts

<sup>1</sup> Associate Professor, University of Macau, Macau. The author would like to thank the MYRG provided by the University of Macau in support of the related project.

<sup>2</sup> See UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2013 and United Nations Convention on Transparency in Treaty-based Investor-State Arbitration 2014.

and international investment arbitration are highly crucial to ensure that the dissipations of the former do not affect the sanctity of the latter.

This paper is an attempt to identify and analyze key attributes that determine when a review process is done with deference to the international arbitration and distinguish it from situations where a *de novo* review is carried out without regard to the position of an arbitral tribunal. The paper first examines the key attributes of review carried out by international courts and tribunals in scrutinizing the decisions of the national courts in order to highlight the scope and limitation of the powers of review recognized by those international bodies. The paper then shifts its focus on some national jurisprudence to examine whether some clear parameters or attributes to determine the degree of deference emerge. The paper makes a specific reference to practice of national courts in some member states of BRICS cooperation and how they compare with the practice of some prominent jurisdictions. The paper finally concludes with an analysis of the importance of clear standards with due regard to international practices in order to restore the increasingly eroding confidence over ISDS mechanism.

### **FINALITY AS A KEY CHARACTERISTIC OF ARBITRATION MECHANISM**

Alternative dispute resolution (ADR) is the manifestation of party autonomy and the sanctity of the mechanism will be upheld only when a due legal recognition is attributed to the outcome of the given process. Among various types of ADR, Arbitration in particular gains a significant respect with a categorical acceptance of the resulting award. In comparison with the negotiations, conciliation or mediation, where the resulting settlement mainly qualifies a recognition akin to a contractual enforcement, the outcome of an arbitration process gains a higher pedestal. While the challenges in enforcing settlement agreements are still being grappled in international legal bodies like the UNCITRAL, the finality and enforceability of arbitral awards have long been clearly mandated by binding international obligations. Even a more germane comparison with the other adversarial dispute resolution method, namely the litigation, reveals a higher sanctity for arbitration. Cross-border enforcement of judgements is still clouded with the principle of reciprocity and governed primarily through bilateral instruments.

In contrast, arbitration awards enjoy a more forthright reception across national boundaries, which is characterized by a multilateral mechanisms that command ratification among a large number of state parties<sup>3</sup>. For example, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) has created a strong mandate to execute international awards except on certain grounds that are specifically recognized. The euphoria of arbitration as a choice of investment dispute resolution is further augmented when assessing the features of investment regime that limit potential challenges against the investment awards. The investment arbitration governed by the Convention under the auspices of International Center for Settlement of Investment Disputes (ICSID Convention) recognizes a more limited scope for challenging investment awards before national courts (Bishop and Marchili, 2012; Delaume, 1986).

Subsequent to the rendering of an investment award, the parties to the investment dispute could seek either attempt to annul or confirm the same in order to seek recognition and enforcement. Annulment challenges could be raised before national courts in the place or seat of the arbitration. In case, if the investment dispute is arbitrated under the auspices of the ICSID, the annulment proceedings could be initiated within the ICSID using a special procedure. Unlike investment disputes arbitrated outside the ICSID, a set of self-contained post award

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<sup>3</sup> As of March 2018 the New York Convention commanded a whooping number of 159 state parties with Sudan being the latest state to accede to the Convention. See for the more updated status of the parties to the New York Convention UNCITRAL, 'Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 Available from: [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html) [Accessed 17 April 2018].

remedies<sup>4</sup> are available within the ICSID mechanism. ICSID regime not only provides the remedies but also precludes the parties to an investment disputes from seeking the intervention of national courts. Similarly, when the ICSID award are sought to be recognized or enforced before national courts the grounds of challenging the process are relatively limited in comparison with those that are permissible under New York Convention. Therefore, the role of national courts' intervention at the stage of recognition and enforcement will also be less in case of ICSID awards.

Although ICSID arbitration awards are less susceptible to subsequent judicial scrutiny before national courts it is crucial to assess and address any potential adversarial impact any judicial intervention may have on non-ICSID arbitration. Any such assessment should acknowledge that the scope and limitation of the power of judicial review in individual jurisdictions will differ albeit the fact that international conventions like New York Convention lays down some common grounds to raise a challenge. In particular, how national judicial practices differ in showing deference to arbitration proceedings or in conducting *de novo* review of matters arising therein is critical factor in determining the role arbitration could play in promoting the underlying transaction in a given jurisdiction. The following section will first examine the practice of international courts and tribunals when they are asked to review national judicial decisions in order to examine whether some standards are visible and whether they could be extrapolated to the scenario of national courts reviewing the decisions of international arbitral tribunals. The subsequent section will analyze some relevant national judicial review practice, especially showing deference to international investment award or conducting a *de novo* review, before the position of some individual BRICS member states and implications for the parties of investment disputes are examined.

## **ATTRIBUTES DETERMINING DEFERENCE TO DECISIONS OF NATIONAL COURTS**

Review powers of any institution or tribunal presupposes the existence of clear standards that have to be adopted in exercising the power. The establishment of such standards are crucial not only to ensure that the reviewing body exercises its powers within the confines of its authority but also to guarantee that due consideration and respect is given to the body that rendered the decision, which is subjected to the review. Measures to secure the mutual exclusivity of the two distinct bodies grappling with the same dispute or legal issues are indispensable to uphold the very purpose and object of existence of those bodies. When the decisions of national courts stand scrutiny before international courts or other tribunals, the attributes considered in determining the scope of intervention will be useful reference in developing standards of judicial review of international arbitral decisions.

The practices of international courts and tribunals have shown greater restrains and a high level of deference to national courts decisions is commonly found. The deference to the decisions of the national courts is impelled by the special status attributed to adjudication, which is not only seen as an efficacious institution of social ordering (Fuller, 1978) but also a sovereign prerogative of a state to render justice. These two factors namely the 'integral characteristics that constitute the efficacy of adjudication' as well as its role as a 'mechanism of sovereign prerogative' are the critical set of elements that confers the special status to national adjudication. The first factor mainly includes attributes that are fundamentally relevant to ensure due process and any relevant standards of justice. The second factor is essentially focused on attributes that are relevant to ensure that sovereign rights and duties could be sufficiently accommodated.

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<sup>4</sup> These remedies are contingent on the rendering of an investment award and are not extended to other decisions made during the course of the arbitration.



Studies have identified some crucial attributes that prompt international courts and tribunals to grant deference to national adjudicatory mechanism (Fuller, 1978). Although the sanctity of adjudication has been a subject of enquiry in various studies, the treatise of Fuller is of a greater relevance here. The significance of the Fuller's treatise is not only because of the systematic identification of various attributes that sets adjudication apart, but also a clear demonstration of how such attributes distinguish adjudication from other instances of decision making. The basic premise of Fuller's thesis based on rationality has the potential to serve as the valuable reference to develop a 'test of rationality' to determine the degree of deference a decision may deserve.

Fuller's emphasis on the role of rationality in proclaiming adjudication as an eminent form decision making reveals key attributes that are crucial to note. Firstly, Fuller compared adjudication with other relevant social orders others like 'contracts' or 'elections' and distinguished each other based on the manner in which relevant parties participated in the decisions reached. While recognizing 'negotiation' and 'voting' as the forms of participation in contracts and elections respectively, he highlighted 'presentation of proofs' and 'reasoned arguments' as distinct form of participation in adjudication. Even a cursory comparison of above indicates a more sophisticated form of participation in adjudicatory process that entails 'proofs' and 'reasoning', while the other two forms seem to be sheer manifestation of a bargain or expression of will.

Fuller's work is an elucidation adjudicatory process as a unique form of social ordering. In his exposition of adjudication as a higher form of participation, he believed that such participation will only be meaningful if the adjudicatory mechanism is not influenced by certain vitiating elements. For example, his caveat that a "participation through reasoned argument loses its meaning if the arbiter of the dispute is inaccessible to reason because he is insane, has been bribed, or is hopelessly prejudiced" (Fuller, 1978, p364) accentuates the significance of ensuring that the adjudicatory process is free from such pitfalls<sup>5</sup>. In emphasizing the relevance 'reasoned arguments', he fully believed that the mechanism of adjudication provided the best guarantee for its 'formal and institutional expression'. He vehemently argued that adjudication "assumes a burden of rationality not borne by any other form of social ordering" (Fuller, 1978, pp366 and 367)<sup>6</sup>. It is arguable that this 'burden of rationality' has the potential to serve as a fundamental standard for any assessment aimed at determining deference to the decisions of international arbitral tribunals.

In order to design and develop a test of rationality key attributes that evidences the existence of rational decision making should be identified. Some fundamental attributes Fuller examines in his discourse of standards of rationality merits consideration. They include forms of participation that provides opportunity to present reasoned arguments and proofs, assertion of some principles that makes arguments sound and the proofs relevant, distinguishing claims of right from naked demand; and accusation of fault or guilt from sheer expression of displeasure or resentment, relevance of rule of law (including in the context of international relations<sup>7</sup>) in providing reasoned arguments and decisions (Fuller, 1978, p379), the question of necessity for adversary presentation of arguments and the role of lawyering, suo moto acts of an arbiter, the issue if resting a decision on the grounds not argued by the parties, qualifications and disqualifications of an arbiter, the implications of the retrospective effect of a decision, moot cases and declaratory nature of a decision, the impact of the source of an arbiter's power (state appointed judge v parties appointed arbitrators), etc.

<sup>5</sup> Fuller's consideration of a potential argument "the essence of adjudication lies not in the manner in which the affected party participates in the decision but in the office of judge" underscores the importance of such attributes.

<sup>6</sup> This in turn lead to an inevitable conclusion that adjudication possesses a "higher responsibility toward rationality".

<sup>7</sup> Interestingly, the example cited in this context is an arbitration clause included by the erstwhile Soviet Industry in their agreements with foreign traders.

In a more recent study focused on examining international responsibility for domestic adjudication Zachary Douglas identifies attributes of the acts and omissions that could constitute a ‘denial of justice’ (Douglas, 2014)<sup>8</sup>. Before highlighting the attributes arising from this study, it is important to note the fundamental emphasis of Douglas that any threshold for a denial of justice should link “the procedural aspects of the adjudication with the substantive outcome it produces”. A necessary corollary of this assertion demands that any procedural irregularities to be considered as a denial of justice should categorically be shown to have denied a substantive right. The linking of the procedural elements to substantive rights gains significance in the light of the traditional practice that international courts and tribunals will refrain from engaging in any substantive review of the national courts findings on domestic law. Some of the relevant attributes noticeable in the study includes, refusal of a right to access to a court or tribunal distinct from the denial of access to justice, unreasonable delay in administering justice, irregularities in conducting the proceedings, denial of justice (procedural v substantive) arising from the content of the judgement, non-execution of a judgement or inordinate delay in the enforcement of arbitral award, etc. These attributes are particularly interesting as they are raised under the notion of denial of justice which has the bearing of the common international practice.

### **DEFERENTIAL OR DE NOVO REVIEW OF INTERNATIONAL ARBITRAL AWARDS**

The last section discussed certain attributes that are arising in the context of international courts and tribunals reviewing national decisions. Although, these attributes will be greater relevance for national courts in developing standards of review of international awards, the test of rationality resulting from Fullers discourse can get enriched from the actual practices of national courts on this question. Therefore, in this section, the transposed situation of national courts reviewing international arbitration awards will be closely examined. This section will examine some domestic cases to identify the key considerations made in determining whether to grant deference or conduct a de nova review of international arbitral awards. As the limitation of space in this paper does not permit a systematic review of a wide range of national decisions, some recent cases reviewing investment awards from the US, which is a prominent seat of arbitration will be examined in the remaining part of this section.

In *Werner Schneider v. The Kingdom of Thailand*<sup>9</sup> the petitioner sought to confirm an arbitration award granting compensation to a German investor against Thailand before the US District Court on the ground of deprivation of the return on investment. Thailand demanded a *de novo* review in determining the question of whether the parties agreed to arbitrate the dispute in question. However, the court held that the ‘narrow scope of the agreement to arbitration’ did not warrant production of additional evidence or justified a *de novo* review. The Court held that while the issue regarding the scope of an arbitration agreement did not deserve a *de novo* review, a review might have been justified if the question was whether there existed an arbitration agreement.

Interestingly, the court recognized that even though the case was a non-local dispute with non-local parties, additional evidence would not have been of any help to the Court and it did not involve any issue of foreign law. The court also expressed skepticism that even if a *de novo* review were to be carried out in the instant case, it might not have resulted in overturning the award as it was well reasoned. The Court remarked that awards should generally be subjected to ‘very limited review’ to ensure the essential goals of arbitration. Subsequently, when Thailand appealed, the Court of Appeal upheld the decision<sup>10</sup> of the District Court but disagreed

<sup>8</sup> Douglas uses the phrase ‘denial of justice’ in a broader sense to connote a range of acts and omissions relating to the ‘administration of justice’ in a state that could give rise to international responsibility.

<sup>9</sup> 10 Civ 2729 (DAB) US District Court, Southern District of New York (14 March 2010).

<sup>10</sup> Docket No. 11-1458-CV, US Court of Appeals for the Second Circuit (8 August 2012).

with its reasoning that *de novo* standard depended on question whether the issue was that of the ‘scope or formation of the arbitration agreement’.

The Appellate Court held that the standard to determine *de novo* or differential review depended on whether there existed or not a “clear and unmistakable evidence of the parties’ intention” to commit the question of arbitrability (irrespective of whether it is related to scope or formation of an arbitration agreement) to the process of arbitration. The Court held that in the presence of such an evidence, national courts should only conduct a differential review. The Court observed that in cases where the said intention was clearly evidenced, *de novo* review by national courts would cause frustration of the purpose of arbitration. The court ultimately justified the use of deferential review by the District Court by interestingly citing certain features of the outcome and process of arbitration in the present case<sup>11</sup>.

The issue of standards of review involving the interpretation of BITs was addressed for the first time in a landmark case decided by the US Supreme Court in *BG Group Plc v. Republic of Argentina* in 2014. This case involved a compensation claim by a UK investor, BG Group against a legislative action of Argentina introducing emergency measures that forced a currency conversion in calculation of gas tariff charged by the investor (causing substantial reduction in value below market price and a consequential loss.) When the international arbitration decided in favour of the investor, Argentina sought to vacate the award before the US District Court of the District of Columbia and the investor cross petitioned to confirm and enforce the award. The District Court refused to vacate the award, which was subsequently reversed by the Court of Appeal but ultimately the US Supreme Court decided in the favour of the investor.

With regard to Argentina’s argument that arbitral tribunal did not have jurisdiction on the ground that the investor failed to exhaust a domestic litigation requirement in the UK-Argentina BIT, the US District Court agreed with the approach of the arbitral panel, which held that the domestic litigation requirement was not an impediment to arbitration because such a requirement in the BIT read with the ‘applicable principles of international law’ (in particular the Vienna Convention on Law of Treaties 1969 (VCLT)) demonstrated that mandating the BIT requirement in the light of the emergency measures (that essentially barred recourse to courts) would cause absurd and unreasonable result under Article 32 of VCLT. The Court held that since the authority to determine arbitrability was conferred upon the arbitral tribunal, the judicial review of arbitral decision was extremely limited and it had no authority to hear claims of factual or legal error by the arbitrator. The court while articulating the principle of limitation of judicial review of arbitral decisions emphasized the need to distinguish the situation from appeals court reviewing the decisions of lower courts.

Subsequently, the Court of Appeal held that the decision of the arbitral tribunal not recognizing the domestic litigation requirement amounted to the ignoring of the terms of the BIT, which in effect was made in consideration of outside legal sources and without regard to the agreement of the parties to the BIT establishing a precondition to arbitration. Although the Court of Appeal acknowledged that the scope of judicial review is exceedingly narrow, it insisted that the intention of the contracting parties to the BIT could not be ignored. Moreover, it held that the question of interpretation and application of the terms of the BIT could be decided *de novo* by the Court of Appeal without showing deference to the views of the arbitration panel on the matter. However, this was later reversed by the Supreme Court, which held that the question was for the arbitrators to decide and the US courts should review the decision with deference.

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<sup>11</sup> It observed that failure to give deference to decision of the arbitral tribunal, which was marked by extensive opinion of the tribunal, lengthy submission of the parties and long hearings would result in waste of resources that would be contrary to the very purpose of the New York Convention 1958. See the judgement of the Court of Appeal, op.cit. p.12.

The Supreme Court held that there was no critical difference in the present case due to the fact that it was a treaty (BIT) and not a contract that had to determine the issue of whether it was an arbitral tribunal or a court to decide the question of domestic litigation requirement. The Supreme Court made an interesting distinction between the disputes concerning arbitrability and disputes about procedural preconditions for the use of arbitration. While holding that there was a presumption of intention of the parties in favor of courts to determine the former, it pointed out that the presumption existed in favor of arbitration to determine the latter. As the domestic litigation requirement related to the latter category of disputes, it held that the presumption favored the arbitral tribunal to decide the matter and not the court. Therefore, a deferential review of the decision of the arbitral tribunal was held as appropriate in the present case. The Supreme Court raised a caveat that any assumption that the parties intended *de novo* review of the procedural precondition of the domestic litigation requirement by a court will make the practice of the US Courts contradict with international regime manifested in numerous BITs.

### **THE MANIFESTATION OF STANDARDS OF REVIEW OF INTERNATIONAL ARBITRAL AWARDS IN BRICS**

In comparison with some of the judicial decisions in the US that have articulated the standards determining difference or *de novo* review in detail, clear standards may not exist in other jurisdictions. US as a popular place of seat of international arbitration has provided motivation for its national courts to articulate relevant standards in detail. However, such incentives may not exist for national courts in jurisdictions that may not be popular seat of international arbitration. From this perspective, the BRICS jurisdictions may not have much motivation to lay clear standards as in the US. Firstly, the position in Brazil supports this assertion.

Studies have indicated that standards granting deference are not common even in situation of Brazilian appellate courts reviewing the decision of lower courts (Pritsch, 2017, p. 56). The practice of the Brazilian appellate courts indicate that they are not reluctant to exercise a review *de novo* of both law and facts when exercising their appellate jurisdiction. Such practice of appellate courts exercising unlimited *de novo* review even in factual or discretionary issues indicates a clear lack of recognition of deferential standards of review in Brazilian appellate courts on matters of litigation. In matters arising out of arbitration, to what extent the Brazilian courts will show deference is unclear. Given the willingness of the Appellate Courts to adopt *de novo* standards in reviewing lower court decision, concerns as to the possibility of limited or no deference to international arbitration awards may easily arise if the standards of review in Brazil are not clearly articulated. Although Brazilian courts were found to be increasingly clarifying situations of when the courts could review decisions of arbitral tribunals, the issue of whether a *prima facie* or a *de novo* test should be applied in reviewing arbitral decisions on jurisdiction was found to be indeterminate (Sperandio, 2013). For example, in the case of *Samarco Mineração S/A v Jerson Valadares da Cruz*<sup>12</sup> (Sperandio, 2013), although the Superior Court of Justice in Brazil had the opportunity to clarify when national courts have competence to determine the validity of an arbitration agreement, the question of whether there should be deference or *de novo* review in determining the validity was not articulated.

In Russia, the need for clear standards to clarify the scope of judicial intervention in arbitration proceedings and outcome is equally compelling, especially in the light of certain distinct characteristics of the legal regime governing arbitration in Russia. The Law on International Commercial Arbitration 1993<sup>13</sup> as amended in 2008 and 2015 governs the role of

<sup>12</sup> See Special Appeal No 1278857, 19 June 2013 as cited and summarized in Baker & McKenzie (2014, p. 52).

<sup>13</sup> See Russian Federation Law on International Commercial Arbitration (The Law No 5338-1) 1993 (as amended on 3 December 2008 and 29 December 2015). Although the law mainly applies to awards resulting from the proceedings in which Russia is the place of arbitration some of its provisions apply even if the place of arbitration

the courts in setting a side of international arbitral awards as well as in granting them recognition and enforcement. This law recognizes that national courts have power to grant interim measures of protection even before or during the pendency of arbitral proceedings<sup>14</sup>. This power of the courts to hear a dispute, when it is arbitrable or being arbitrated is one of the factors that signifies the need for sufficient measures to ensure that roles of the court and arbitration tribunal do not conflict with each other. Similarly, distinct powers of the domestic courts to intervene subsequent to the rendering of awards have been recognized under Russian Law, also add to the justifications for developing clear standards. For example, the right to challenge arbitration awards is not only limited to the parties to a dispute but also extended to third parties whose rights and obligations may be affected by the resulting award (Bocharova, 2017, p. 89). By virtue of the recognition of right of a third party to challenge an arbitration award, concerns of domestic court intervention in the outcome of arbitral proceedings will be much higher than in jurisdictions that do not recognize such a third party right. The need to quell related concerns underscores the significance of developing and articulating clear standards of potential review by the Russian Courts.

Another member of BRICS, India with its common law legal system had the opportunity to address the role of domestic courts in reviewing the outcome of international arbitration process in a range of judicial decisions. The decisions rendered by the Supreme Court on this issue since the turn of this century demonstrates a major shift in interpretation regarding the scope of judicial review of international arbitration awards. During last decade, the decisions of the Supreme Court in *Bhatia International v Bulk Trading S. A. & Another* 2002<sup>15</sup> and *Venture Global Engineering v Satyam Computer Systems Ltd & Another* 2008<sup>16</sup> extending Part I of the Arbitration and Conciliation Act 1996 governing domestic arbitration to foreign awards have come under increasing criticism (Rendeiro, 2011, p. 722). However, the criticisms about the highly intrusive characteristic of the Indian judiciary over the international arbitral awards have been stifled by a series of more recent apex court decisions rendered in this decade. The decisions of the Supreme Court in *Videocon Industries Limited v Union of India and Another* 2011<sup>17</sup>, *Bharat Aluminium Co v Kaiser Aluminium Technical Services Inc* 2012<sup>18</sup>, *Shri Lal Mahal Ltd v Progetto Grano Spa* 2013<sup>19</sup> and *Reliance Industries Ltd. & Another v Union of India* 2014<sup>20</sup> have categorically limited the scope of judicial review and thereby restrained the role of domestic courts' intervention in outcome of the international arbitral proceedings<sup>21</sup>.

Among the spate of recent decisions that evidences the resolute stand of the Supreme Court in upholding the sanctity of international arbitration, some attempt to articulate certain standards of review is visible. For example, in *Shri Lal Mahal Ltd v Progetto Grano Spa*, when the respondent first sought to enforce the foreign awards rendered by an international tribunal against the appellant, the High Court of Delhi<sup>22</sup> rejected the arguments raised by the appellant in resisting the enforcement and held that the relevant grounds of refusal of enforcement in

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is outside Russia. See Article 1 (1). The provisions of this law could also be applied in the context of arbitration relating to foreign investments. See Article 1(3).

<sup>14</sup> See Article 9 of Law No 5338-1.

<sup>15</sup> (2002) 4 SCC 105.

<sup>16</sup> (2008) 4 SCC 190.

<sup>17</sup> (2011) 6 SCC 161.

<sup>18</sup> (2012) 9 SCC 552.

<sup>19</sup> (2014) 2 SCC 433.

<sup>20</sup> (2014) 7 SCC 603.

<sup>21</sup> As a result of these decisions, Part I of the Arbitration and Conciliation Act, 1996 is now construed as inapplicable to international arbitration seated outside India and the possibility of the Indian courts intervention is clearly limited to situation when the resulting awards are sought to be enforced by virtue of Part II of the said Act.

<sup>22</sup> *Progetto Grano Spa v Shri Lal Mahal Ltd* CS (OS) 2594A/2000 (9 February 2012) para 23 Available from: <http://delhicourts.nic.in/FEB12/Progetto%20Grano%20Vs.%20Shri%20Lal%20Mahal%20Ltd..pdf> [Accessed 17 April 2018].

Section 48 of the Arbitration and Conciliation Act 1996 should be construed narrowly and a review of foreign award on merits is not permitted. Subsequently, on appeal the Supreme Court held that Section 48 does not grant the domestic courts an opportunity to have a second look at the foreign award during the enforcement proceedings and the courts do not exercise appellate jurisdiction over the award or enquire whether any error has been committed during the rendering of the award. Given the concerns of intrusive trends of the Indian domestic courts in a line of cases, the role of the Supreme Court in reversing the trend through important landmark decisions in recent years is a significant one. However, the attempt to articulate the scope and standards of judicial review in *Shri Lal Mahal Ltd v Progetto Grano Spa* is just a beginning and future cases should continue to contribute to the related jurisprudence in restoring confidence in international arbitration including in investor-state arbitration.

In comparison with other BRICS members, any assessment of the scope of judicial review of investment arbitration awards in China should be carried out in the light of its obligation under ICSID Convention as it is the only BRICS state that is a party to the Convention. Moreover, the issue of judicial review of arbitral decisions has received a distinct attention in China by virtue of specific provisions published to address the matter. The Supreme People's Court has recently issued two sets of specific provisions on the subject namely a) Provisions of the Supreme People's Court on Several Issues concerning Deciding Cases of Arbitration-Related Judicial Review 2017<sup>23</sup> and b) Provisions on Issues relating to the Reporting and Review of Cases Involving Judicial Review of Arbitration 2017 (Lichtenstein and Zheng, 2018), which came into effect since 1 January 2018. These provisions based on relevant legislation and adjudicative practice in China covers both domestic and foreign arbitral awards and addresses a range of issues.

The first provisions mainly deal with the question of jurisdiction of courts on different issues like determination of the effect of an arbitration agreement and recognition of the arbitral awards as well as in situations where applications are filed in more than one competent court. It also enumerates the requirements for applications seeking recognition of effect of arbitration agreement or recognition and enforcement of arbitral awards. It prescribes the procedures and relevant time limits that has to be followed once an arbitration-related judicial review has been accepted by the courts. The provisions address the issue of determining the law applicable to the recognition of the effect an arbitration agreement, when an application for recognition and enforcement of a foreign arbitral award is made. The second Provisions prescribes the relevant rules mandating the lower courts to report to the Higher People's Court and to the Supreme People's Court in certain situations like when a refusal of recognition of the validity of a foreign related arbitration agreement or enforcement of the resulting award or recognition and enforcement of a foreign arbitral awards occurs. Although, the initiative of the Supreme People's Court to address certain issues of judicial review of arbitration awards is a distinct effort, specific standards to determine the degree of deference may not be derived from the Provisions. It is important to underscore the role of the Court in continuing to elaborate those standards in the future through individual decisions.

Finally, the examination of the situation in South Africa as the last member of the BRICS reveals that different judicial decisions in South Africa have emphatically accentuated the significance of showing deference to arbitral decisions. Among them, a specific decision of the Supreme Court of Appeal in 2006 would be apt for the current discussion as it succinctly highlights the judicial tradition in showing deference to arbitration in South Africa. In *Telcordia Technologies Inc v Telkom SA Ltd*<sup>24</sup> the appellant sought to squash the decision of the High Court, which had set aside an interim award (favouring the appellant) resulting from an

<sup>23</sup> Available from: <http://en.pkulaw.cn/display.aspx?cgid=307539&lib=law> [Accessed 17 April 2018].

<sup>24</sup> Case number: 26/05 The Supreme Court of Appeal of South Africa (22 November 2016) Available from [http://www.justice.gov.za/sca/judgments%5Cscsa\\_2006/2005\\_026.pdf](http://www.justice.gov.za/sca/judgments%5Cscsa_2006/2005_026.pdf). [Accessed 10 April 2018].

international commercial arbitration proceedings held consensually between the appellant (a foreign Company) and the respondent (a domestic company). In exercising the judicial review under relevant provisions of the South African Arbitration Act 42 of 1965, the Supreme Court held that the High Court had “disregarded the principle of party autonomy in arbitration proceedings and failed to give due deference to an arbitral award”. The court cited a number of historical decisions to demonstrate that South African Courts have shown deference to arbitral process as early as the nineteenth century.

The Court in arguing that such a practice of showing a high degree deference is part of a worldwide tradition cited relevant case law from Canada, New Zealand and the UK. Moreover, the court aptly pointed out that various principles including international comity have created a need for adopting standards to preserve party autonomy and minimize judicial intervention. The detailed judgement that followed demonstrates very well how the Court went on to show deference to the decision of the arbitral tribunal in the light of the facts of this case and ultimately reversed the decision of the High Court. The high degree of deference articulated by the Supreme Court even at a time when UNCITRAL Model Law standards (limiting interferences in arbitration) were not adopted by South Africa is well noted. Since then, however, South Africa has enacted a new International Arbitration Act in 2017 adopting the UNCITRAL Model Law standards that will exclusively govern international arbitration proceedings (Browning, 2018). These developments evidence the resolve of the judiciary as well as the legislator in South Africa to uphold the sanctity of international commercial arbitration.

## CONCLUSION

The primary argument of this paper is that the power of national courts to review the outcome of international arbitration has the potential to impact the business environment or investment climate in any domestic market. In cases of international commercial disputes or in investor state investment disputes, due regard and recognition to the international arbitration proceedings and its outcome play a crucial role in improving the confidence of the foreign parties. As national courts play an indispensable role in realizing the fruits of arbitration, sufficient standards to clearly delineate the scope of judicial review gains significance. The paper argued that clear standards of judicial review are particularly compelling in restoring confidence in investor-state arbitration mechanism.

The opening of this paper underscored the significance of safeguarding the fundamental characteristic of international arbitration mechanism namely the finality of awards rendered. As the power of judicial review of national courts has the ability to shake this foundation, it is important for national courts to explicitly recognize a set of self-imposed attributes that will influence the scope of any potential review. In this regard, given the fact that the issues in question are of international in nature and the reviewing body (the national courts) derive their powers from the sovereign, the utility of parallel attributes considered by international courts and tribunals in determining deference to the national courts’ decisions in order to develop a test of rationality that could be used by national courts was highlighted.

The examination of different jurisdictions in the paper reveals that the national standards determining the degree of deference or a *denovo* review have not been always sufficiently articulated. In particular, the comparison of some cases in the US with examples in the BRICS reveals that that US courts seems to have elaborated the relevant standards more precisely, which could be attributed to the choice of US as a popular seat of arbitration. However, given the purpose of BRICS to promote various economic objectives among the members as well as the inherent attraction of the individual markets in BRICS for other international traders and investors, the need to clearly articulate standards of judicial review of international arbitral

outcomes should be equally compelling. The paper argues that such a need is much higher in the context of investor-state arbitration in BRICS.

A quick comparison of individual BRICS members as a host state reveals that the related concerns of individual jurisdictions differ. Among BRICS, China being the member of ICSID faces limited grounds of review of investment awards in national courts in annulment proceedings. Although potential concerns relating to recognition and enforcement are addressed through the specific provisions issued by the Supreme People's Court the need for articulating specific standards of review was revealed. Among the two common law jurisdictions, the conspicuous efforts by the Supreme Court of South Africa to demonstrate a long history of deference to arbitration is a good start, although more detailed elaboration of the standards should be attempted by future decisions to especially quell possible concerns arising out of recent measures in South Africa to overhaul foreign investment protection using domestic law. India on the other hand seems to be focused much on restoring the concerns of active judicial interventions in international arbitral outcome during the last decade. Although, recent decisions have shown much judicial restraint, the discourse on clear standards of deference to arbitral awards should be explicitly developed.

Finally, Brazil and Russia, being non-common law traditions may not find judicial decisions as the viable instrument to articulate the standards in detail. However, the concerns that are exposed specifically with regard to each of them including the tendency of Brazilian courts to *de novo* review lower court decisions as well as the practice of Russian Court to order interim measures before an arbitral award is made as well as providing rights to third parties to challenge arbitral awards accentuates the importance of clearly articulating the standards through alternative means. Both of them could benefit from experience of China but any relevant measures introduced should articulate clear standards to determine deference. Finally, a more concerted efforts in this direction under the auspices of the BRICS platform would be even more desirable as it would improve international as well as intra BRICS investor confidence.

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**1-CG04-1367****UNCONVENTIONAL JUDICIAL REMEDIES TO PROTECT EMPLOYEES FROM UNFAIR DISMISSAL: A COMPARATIVE ANALYSIS OF AMERICAN AND TURKISH EMPLOYMENT LAW**DR. HANDE BAHAR AYKAC<sup>1</sup>

Having a job and not losing it arbitrarily is indispensable to earning a livelihood and protecting workers' mental, physical, emotional health since it also constitutes a part of many workers' identities. The conventional way to restrict employers' rights to terminate employment contracts is to set forth a job security system in a statute, collective bargaining agreement, or employment contract provision. Additionally, there are some narrowly-implemented judicial remedies to ensure this protection inferred from the surrounding circumstances of the case and the idea of establishing justice even where there is no clear contractual or statutory restriction in the case. Some courts in the United States, for example, have found an implied-in-fact exception to the "employment-at-will" rule in certain conditions considering the totality of the facts, such as past practices of the employer, hiring letters, oral statements/assurances of the employer, longevity of the service, turning down another job offer to remain with an employer, pre-employment negotiations, employees' promotions, or the custom of the industry.

In Turkey, on the other hand, there is another judicial exception, which has a similar function as to the restriction of employer's dismissal right within the context of the specific circumstances of each case. Accordingly, the employer is considered to be under an obligation to treat his/her employees equally and not to create unrealistic or unfair differences in case of the termination of employment contract in certain limited situations. The Court of Cassation of Turkey, for example, found that the dismissal of a long-term employee was unjust and invalid where a second employee started a fight with him, and the employee who started the fight was not terminated.

Although their scope and content are quite different, the idea and function of both judicial limitations are same: to protect employees' reasonable expectations not to be dismissed arbitrarily, and to declare the dismissal unfair by entering into the fine details of cases independently from clear and written regulations. They also have common functions to resolve the conflict between employees' right to job security and employers' right to fire by the judicial balancing of competing equities, and therefore to seek to real justice beyond the written rules.

The objective of this study is to examine and compare the conditions of these progressive interpretation tools by presenting some case samples from the case law of the United States and Turkey.

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<sup>1</sup> Dr. Hande Bahar Aykac, Postdoctoral Research Fellow at Harvard Law School, Labor and Worklife Program (2016-2017/ 2017-2018 academic years) and Research Assistant at Gazi University, Labor Economics and Industrial Relations Department, Turkey. This study was supported by the Scientific and Technological Research Council of Turkey (TUBITAK) 2219 Postdoctoral Research Fellowship Program.

**2-CG06-1345****THE UNQUALIFIED RIGHT OF ACCESS TO COMPANY RECORDS BY NON-SHAREHOLDERS UNDER SOUTH AFRICAN COMPANY LAW**MR. VELA MADLELA<sup>2</sup>

Section 26(2) of the Companies Act of 2008 gives a person who holds no beneficial interest in the securities issued by a profit company, or who is not a member of a non-profit company, the right to inspect or copy the securities register of a profit company, or the members register of a non-profit company that has members, or the register of directors of a company. Such person must pay a fee for the inspection. The person may exercise the right of access to such company records for a reasonable period during office hours, by making a direct request to a company either in person or through an attorney or other personal representative, or in accordance with the Promotion of Access to Information Act of 2000 (“the PAIA”). A failure by a company to accommodate a reasonable request for access (or an unreasonable refusal of access by the company) to the company’s records constitutes an offence. It is also an offence to impede, interfere with, or attempt to frustrate the reasonable exercise by any person of the right to access.

Notably, section 26(2) is in addition to the information that is accessible to the public from the Companies and Intellectual Property Commission, including a company’s Memorandum of Incorporation. Furthermore, section 26(7) makes it clear that the rights of access to information in section 26 are ‘in addition to, and not in substitution for’ the rights of access to information under section 32 of the Constitution of the Republic of South Africa (“the Constitution”), the PAIA or any other public regulation.

An important issue that arises in the context of the right of access to company records by non-holders of the company’s securities relates to the proper interpretation of section 26(2) of the Companies Act, that is, the nature and ambit of the right that this section confers. There has been conflicting decisions by the High Court on the correct interpretation of this provision, particularly on the question of whether the right enshrined in section 26(2) is qualified or unqualified. This issue was considered by the Supreme Court of Appeal in *Nova Property Group Holdings Ltd and Others v Cobbett* 2016 (4) SA 317 (SCA) (“Nova”), in view of the appellants’ contention that section 26(2) did not confer an absolute right to inspection of a company’s securities register, and that the court had a discretion to permit or refuse access to a company’s securities register.

In this paper I, therefore, discuss the Nova case with a focus on the approach of the court regarding the proper interpretation and the ambit of the right of access to a company’s records by any person as conferred by section 26(2) of the Companies Act of 2008. I provide critical comments on the main issues that this judgement raises, including the impact of the Constitution in this area of South African company law, the interpretation of section 26(2) in light of the role and impact of companies in society, the interpretation of section 26(2) in light of the purposes of the Companies Act of 2008, the interface between section 26(2) and the PAIA as well as the potential for abuse of the right of access to company records enshrined in section 26(2). This is followed by some concluding remarks.

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<sup>2</sup> Mr. Vela Madlela, Senior Lecturer, University of South Africa.

**4-CE15-1432****UNDERSTANDING UNDERGRADUATES LEVEL OF DIVERSITY ENGAGEMENT THROUGH CAMPUS DIRECT AND INDIRECT INTERACTION**MS. YIT PHING LOH<sup>3</sup>; AND EZHAR TAMAM

Campus based diversity experience research has been carried out to understand level of diversity engagement in campus. This survey examines the relationship of curriculum diversity, co-curriculum diversity and informal interaction diversity with civic responsibility among students in three public research universities in Malaysia. A total of 606 final year students voluntarily participated in a self-administered survey. Results of the multiple linear regression and Pearson product moment coefficient suggested that the level of diversity involvement relates differently to civic responsibility, at significant and low magnitude.

**5-CE04-1310****ISLAMIC BANKING AND FINANCE EDUCATION: AN ACADEMIA-INDUSTRY MISMATCH**PROF. MUHAMMAD MAHMOOD SHAH KHAN<sup>4</sup>; AND RAHMAT ULLAH, FATIMA JAMIL

The industry of Islamic Banking and Finance (IBF) is on fast growth track for a decade and also presents very lucrative future potential. The education sector as a human capital source to this emerging field is responding in terms of research and development and supply of competent qualified Islamic Bankers. However the education sector in the field IBF is much behind the industry and facing the challenge of relevancy too. The current study conducts a quantitative inquiry in 50 branches of Islamic Banking by posting a literature based semi structured questionnaire and asking two responses from one branch. The questions were closed ended asking multiple inputs on various dimensions of IBF education from IBF industry perspective. The study achieved more than 50% response rate and analysis was done using SPSS software covering descriptive and inferential hypothesis testing. The study presents a theoretical framework of five IBF gaps between education and industry. The IBF Gaps include conceptual clearance, employability skills, exposure/experience, communication and technical skills. The study findings are very helpful for practitioners and policy makers to more align IBF education with industry and contribute in growth.

**Key words:** Education, Islamic Banking, Islamic Finance, Banking Industry, Gap Study, Gap Analysis, Quantitative Research

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<sup>3</sup> Ms. Yit Phing Loh, Professor, University Putra Malaysia.

<sup>4</sup> Prof. Muhammad Mahmood Shah Khan, Assistant Professor, University of Management and Technology.

**6-CG20-1426****GLOBAL ENTERPRISE HUBS: INCUBATORS FOR INTERNATIONAL ENTREPRENEURSHIP**

MR. BRADLEY MORABITO<sup>5</sup>; AND PETER GONZALES, J.D., PRESIDENT & CEO  
WELCOMING CENTER FOR NEW PENNSYLVANIANS

Innovation hubs provide collaborative spaces that promote entrepreneurship, a key driver of economic growth. The value of these hubs is evident in the reduction of initial costs for businesses and the potential they create for sharing of new knowledge. Firms, governments, research institutions and non-profits have seen the benefits of investing in such spaces for some time. In a global economic system, innovation hubs have even greater potential when their benefits are extended to the context of immigration – becoming “soft-landing” spaces that attract foreign direct investment and promote synergies between international entrepreneurs. Initiatives such as the Welcoming Center for New Pennsylvanians’ Global Access Program provide an example of how innovation hubs can serve as transnational spaces for entrepreneurship suited to a global economy.

**7-CG05-1316****SOLIDARITY IN CONTRACTS: A COMPARATIVE ANALYSIS FROM AN AFRICAN CUSTOMARY LAW AND COMMON LAW PERSPECTIVE**

MS. CONTILIA HLAMALANI BAYI<sup>6</sup>

Solidarity in contracts: a comparative analysis from an African customary law and common law perspective. African legal systems are traditionally oral and informal in nature. There are no formal categories of law classification; like the one you will find in common law such as public and private law. Private law is further divided into different categories such as family law, law of contract, law of succession, etc. For instance in the common law of contract, in order for a contract to come into existence there are clear outlined offer and acceptance requirement that have to be complied with. While in the African customary legal system, there are no formal general outlined requirements for a contract to come into existence. Consequently, there has always been this misconception by foreign ideals that African customary law systems lack substantial stance and are inferior in comparison to other legal systems. As a result, African customary law is described and interpreted subject to common or civil law in South Africa. This paper seeks to demonstrate that prior to foreign influences such as colonialism; although there were no written down authorities on African customary law systems. There is sound evidence suggesting that African customary law systems were systematic and well acknowledged among its users. In addition, to put emphasis on the fact that as much as there are dissimilarities between African customary law and common law systems, there are also remarkable similarities. In the African customary legal system there are obligatory customary performances to signify the conclusion of a contract, such as the slaughtering of an animal, in most instances if not all it will be a cow. In order to understand African customary law systems, one needs to trace their source of origin. There is this worldview validating that all African customary law systems find their roots in the ubuntu philosophy. The

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<sup>5</sup> Mr. Bradley Morabito, Masters Student, The Pennsylvania State University.

<sup>6</sup> Ms. Contilia Hlamalani Bayi, Lecturer and Phd Student, University of South Africa.

concentration of this paper will be on African customary law systems of contracts in comparison to common law of contract with solidarity at the core of both contracts. Under African customary legal systems, customary contracts will be discussed. Specific attention will be drawn to the lobola contract whereas some contracts if mentioned will be in passing to highlight the differences or emphasise a point. The issue which requires investigation is to ascertain whether a contract such as the African customary contract of lobola qualifies as a relational contract. Hawthorne has drawn attention to this distinction, which has been generally accepted in modern contract law. Under common law of contracts, long term contracts specifically the relational contracts will be the essential point of focus. The paper seeks to ascertain whether solidarity in the African customary legal systems is the same one echoed in the common law of relational contracts. To also find out if they have similar characteristics or and if there are any differences which one are those.

## **8-CE10-1370**

### **LOOKING AT THE SOURCE FOR SOLUTIONS TO FOOD INSECURITY**

MS. FIONA PURKISS<sup>7</sup>; AND DR. SARA CUMMING, PROFESSOR

Current strategies that address food insecurity across Canada are out-dated and fail to address individual needs effectively and appropriately. This qualitative research study, in partnership with several not-for-profit food bank program providers, incorporated participatory methodologies with food program users aimed at uncovering barriers to access and consequences of food insecurity by food bank client users in Halton Region.

The methodology for this project entailed a two step qualitative data collection strategy. The first step was through group interviews with people involved in food service programs. The second step was the incorporation of a problem tree analysis. Problem tree analysis is used often for project planning among development agencies and was used here for its effectiveness in mapping out the cause and effect around issues. This methodology has several advantages, the problem can be broken down into manageable and definable chunks. The benefit of which enables a clearer prioritization of factors and helps focus objectives. By focusing on the overlying factors it allows for an in depth understanding of the problem as well as its interconnected and even contradictory causes. This qualitative method is often the first step in finding solutions that are positive for all individuals involved as every voice is taken into account and a solution is communally agreed upon.

With the goal of creating meaningful, innovative and systemic changes to food services and programs clients explored food security hurdles and discussed creative, practical and sustainable solutions to the ever growing gaps in food services.

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<sup>7</sup> Ms. Fiona Purkiss, Research Assistant, Sheridan College.

**10-CE08-1312****ATTACHMENT PSYCHOEDUCATION FOR FOSTER CARE PARENTS: A PILOT STUDY**MS. GINA ROSSITTO<sup>8</sup>

Attachment theory was originally developed by John Bowlby (1983) and has been the subject of extensive empirical validation. Insecure attachment styles have been correlated with negative outcome variables such as maladjustment (Goldner and Scharf, 2013; Holt, 2014; Laible et al., 1999; Smojver-Ažić et al., 2015), lower perceived social support (Florian et al., 1995; Green et al., 2011; Shahyad et al., 2011), behavior problems (Easterbrooks et al., 2008; Lacasa et al., 2005; Muris et al., 2003), lower physical wellbeing (Picardi et al., 2007; Puig et al., 2013; McWilliams et al., 2000; McWilliams and Bailey, 2010), and lower psychological wellbeing Consedine and Magai, 2003; Diehl et al., 1998; Kafetsios and Sideridis, 2006; Kobak et al., 1991; Yang, et al., 2008). Within the community of foster care children, insecure attachment styles and attachment disorders are likely to develop, particularly given the inconsistent nature of foster care placement. If foster care children are at risk for attachment insecurity, then, by extension, they are also at risk for the negative correlates of such insecurity. Current training procedures of foster care parents do not seem to formally and regularly include attachment education. Given the significance of attachment formation and the lack of security among foster care children, this current training is evidently inadequate. The current research seeks to aid in this difficulty by providing a psychoeducation module for foster parents focused on attachment styles and disorders, attachment correlates, and attachment insecurity within foster care children. By way of a pilot study, this module was presented in an online format to university faculty and staff along with pre-, post-, and follow-up test questions measuring knowledge attainment and maintenance. It was hypothesized that participants would receive higher post-test scores as compared to their pre-test scores and that participants would maintain higher post-test scores at two-week follow-up. Results showed that knowledge was increased from Pre to Post administration but that this knowledge was not retained at Follow-up. Increased emotional content within the module along with additional module and questionnaire alterations may improve knowledge retention in future studies. Based upon the results obtained via this pilot study, the psychoeducation module will be modified as appropriate and ultimately presented to the population of interest: foster care parents.

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<sup>8</sup> Ms. Gina Rossitto, PsyD Student, Marywood University.

**11-CE18-1438****VISITING FRIENDS AND RELATIVES (VFR) TOURISM: A CAMEROONIAN CASE STUDY**PROF. TEMBI MALONEY TICHAAWA<sup>9</sup>

VFR has been an important niche focus of tourism research in Africa. This aspect of tourism is ever present in many destinations globally, and mainly linked to domestic tourism. If well promoted by relevant stakeholders, VFR can make a substantial contribution to local economic development and job creation. Despite its potential and prominence, VFR has not been recognized within certain economies in Africa, with most rather focusing their resources in attracting international leisure or MICE tourists. This study focuses on analyzing VFR in the Cameroonian context, an under researched paradigm within the country's tourism research endeavor. Through a series of surveys with 320 domestic travellers in four major cities (Douala, Yaoundé, Buea and Bamenda) in Cameroon, the study reveal differences in terms of purpose of visit. While the vast majority of respondents from rural to urban areas travelled for the purpose of visiting family and friends and also to look for business and work opportunities, those travelling from urban to rural areas were mostly visiting their traditional homes for purposes including traditional ceremonies and festivities, funerals and cultural events as well as for family meeting. Additionally, rural to urban visits tend to be longer and with more spending on local provisions, souvenirs and entertainment. Furthermore, most of the respondents are repeat visitors who tend to travel at least once a year for the same purpose. The findings point to the existence of a strong potential for the development of VFR as a way to promote domestic tourism in Cameroon.

**Keywords:** Tourism development, VFR, domestic tourism, Cameroon

**12-CE03-1332 (Delegate Absent)****IMPROVING EFL TEACHER-SUPERVISOR INTERACTION AND RELATIONSHIP IN THE SAUDI ARABIAN CONTEXT: A GULF TO BE BRIDGED.**DR. AYEDH ALMOHANNA<sup>10</sup>

Educational supervision is an important element in teacher education and development. It plays a significant role in developing and improving the quality of practice of teachers. Trends in teaching/learning English as a foreign language is an essential area where the supervisors of English can play a significant role. According to the literature, the need for supervision as an element of teacher education and development is widely accepted. Therefore, this study is set to explore the status of supervision and the role of supervisors in TEFL context in Saudi Arabia. It is an attempt to improve this important aspect which, in turn, would improve ELT in Saudi Arabian context.

The data for the study are collected through intensive interviews with a total of 30 EFL teachers and 10 EFL educational supervisors at different elementary, intermediate and secondary state schools in Riyadh city-the capital of Saudi Arabia. The data collected is analyzed qualitatively as the research approach used for this study is the qualitative approach to research.

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<sup>9</sup> Prof. Tembi Maloney Tichaawa, Associate Professor, University of Johannesburg.

<sup>10</sup> Dr. Ayedh Almohanna, Associate Professor, King Khalid Military Academy.



The analysis of the data indicates that the EFL teachers lack the proper contact and interaction with their EFL educational supervisors. They also lack the proper support and guidance from them. The data also shows that the EFL educational supervisors face some obstacles or difficulties that hinder them from doing their jobs effectively. Among these are their heavy workload, lack of appropriate preparation, lack of sufficient experience and shortage of specialized training courses.

The study concludes with a brief discussion of some of the developmental implications needed to bridge the gap between EFL teachers and their educational supervisors.

### **13-CE13-1378**

#### **POLITICAL POLARIZATION AND THE DYNAMICS OF POLICY-MAKING PROCESS**

MS. DA HYUN LEE<sup>11</sup>

The purpose of this study is to explore the relation between the internal dynamics of standing committees and legislative productivity of the Korean National Assembly using statistical methods. Studies on legislation in South Korea have been largely revolved around political parties due to the uniqueness of its political context including strong party cohesion and party's nomination right. However, as standing committees have been at the center of legislatures since the 6th National Assembly, there is a growing need for studying the operation and effectiveness of standing committees in legislation process. Thus, through panel data analysis for the sixteen standing committees across the four terms of the Korean National Assembly-from the 16th to the 19th-this article attempts to reveal that legislators' bill passing rate is not a sole function of factors pertaining to political party as the existing studies have believed. By measuring the ideological distribution within a committee and the bill passing rate, this article provides differentiated interpretation from established theories of standing committees and presents compelling evidence describing complex interactions and independent operation of the standing committees with the subsequent legislative results.

### **14-CE20-1389**

#### **MANGA, OTAKU, AND THE SHIFTING LANDSCAPE OF ESCAPISM**

MS. SE EUN KIM<sup>12</sup>

Otaku are individuals known for their copious consumption of anime and manga; that is, Japanese animated show or movies and comic books. In this article the evolution of what defines an otaku is explored by examining various research on what it means to be an otaku and the changing public perspectives on it. In addition, it is hypothesized that the high rate of consumption by otaku can be explained as an escape mechanism from their daily reality from which they feel estranged. By tracking the sales of two different types of anime and manga, world-type and battle royal type, an attempt was made to correlate sales with the specific way in which otaku are disconnected from the world around them. Although the findings weren't a strong indicators, they do seem to suggest that otaku use anime and manga as an escape tool.

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<sup>11</sup> Ms. Da Hyun Lee, Graduate Student, Ewha Womans University.

<sup>12</sup> Ms. Se Eun Kim, Student, Hankuk Academy of Foreign Studies.

**15-CE06-1328****RATIONAL EGOISM AND ALTRUISM IN AYN RAND'S THE FOUNTAINHEAD: A STUDY**MS. PANKTI DESAI<sup>13</sup>

Ayn Rand's *The Fountainhead*; is a reflection, a literary depiction of her own philosophy of Objectivism, aimed at transcending a norm that is Collectivism. Describing reason as man's only absolute, Rand pits two contrasting ideologies; namely Rational Egoism and Altruism, against each other. She diversifies her characters into different kinds of Altruists and Rational Egoists, an attempt at portraying a more holistic, and a more varied experience at understanding these ideologies. Rand, in her book *The Fountainhead*, essentially places these characters in a societal setting, addressing their function in a society through character development. Being a passionate individualist, she has written in praise of "the men of unborrowed vision," who live by the judgment of their own minds, willing to stand alone against tradition and popular opinion; thereby giving her readers an insight to her own narrative of an 'Ideal Man'. Identifying and analysing the four major characters, distinctly exhibiting the attributes of Altruistic and Egoistic individuals, namely Catherine Halsey, Peter Keating, Ellsworth Toohey and Howard Roark, the paper aims at compartmentalising these characteristics into sub-altruistic and sub-egoistic behaviours with an attempt at understanding why they do what they do. Through this exercise, an ulterior motive of the paper is to examine an Objectivist society, governed by a rather more individualistic behaviour as observed and propagated in the West; as compared to a more Collectivist society, dominated by a collective identity that could evidently be seen in the East.

**Keywords-** Ayn Rand, *The Fountainhead*, Rational Egoism, Altruism, Objectivism, Individualism, Collectivism

**16-CG19-1403 (Delegate Absent)****EMPLOYMENT DISCRIMINATION BASED ON AGE**MR. ANTONIO SORELA CASTILLO<sup>14</sup>

This research assists job discrimination on the basis of age, which violates the human right of non-discrimination and the right to work. We can observe that this type of practice is exercised both by private companies and government institutions; one of its main criteria is to demand as a requirement that a particular applicant has an age to get or keep a job, which is a way to make a distinction for reasons that have nothing to do with the abilities and skills that are required for play true employment.

While there are rules of internal law, as well as international instruments which prohibit the discriminatory treatment, these acts are still being practiced. The first problem that can be identified is the lack of mechanisms to sanction the breach of such rules, under which laws only prohibit discriminatory acts, and convictions are purely social.

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<sup>13</sup> Ms. Pankti Desai, Student, Pandit Deendayal Petroleum University.

<sup>14</sup> Mr. Antonio Sorela Castillo, Student, El colegio de Morelos.

Job discrimination by age cannot be allowed, it should be avoided since the call, the hiring, during and after the employment relationship. Also, sanctions to condemn the behavior of employers must be instituted and a secondary norm that establishes measures to enforce the non-discrimination employment must be designed, that is to say, a simple, immediate and expedited procedure.

This research is structured in the following way: the first chapter discusses the elementary concepts of the right to work and meanings related to issues of research, such as the concept of worker, employer, discrimination, young man and elder. The second chapter analyses the legal system in Mexico and abroad, which safeguard the human right of the work of young people and older adults, and also guarantee the human right to equality and non-discrimination. In the third chapter the job discrimination by reason of age is addressed specifically. Here is reflected the discrimination faced by people since the call for employment, recruitment, until the access to a better job position and salary, for the simple fact of being a young man or an elderly adult person.

The work was developed within an epistemic integrator model; different methods were used for its development, such as the deductive, parting from general concepts to learn the basic ideas of the subject of research. In the second chapter applies the analytic method, which was of vital importance to know the legal foundation from a national and international perspective. In the third chapter, approaches the method legal and analytical, since we conducted a doctrinal, legal and social analysis, both the right to work—the Mexican legal system—as well as international instruments, not to mention the study of the discrimination in employment on grounds of age, where the real problem is exposed; finally, also the empirical method was a support with surveys and interviews targeting people who fit with research.

## 17-CG09-1344

### WOMEN PARTICIPATION AND DECISION MAKING IN HARGIESA SOMALILAND

MS. FADUMO MUSE YUSUF<sup>15</sup>

I am here summarizing by abstract of my call paper so this follow my research thesis which I did four years ago but I reviewed and based on today situation in Somaliland. This paper is talking about women participation and decision making in Somaliland. So Women's participation has been recognized internationally as an important measure of the status of women in any particular country. Hence, in recent years, women's participation in politics and decision-making has received significant attention across the world. However, women remain seriously underrepresented in decision-making positions. The study further revealed that political participation allow women to address their basic problems and needs in their community and ensures the openness, real fight against rent-seeking, accountability, political commitment, political leadership, and responsiveness of the existing national, regional, districts, and local levels. So that women's equal participation in decision-making and politics is not only a demand for simple justice or democracy, but a necessary pre-condition for women's interest to be taken into account. The study concludes that women face serious challenges in their political careers of decision making governance and state building in Hargeisa Somaliland. I recommends that the government, civil society and women activists need to work towards sensitization and awareness creation among the community to realize the need of the women to participate in politics and governance. The men need to realize the women's need for political power and change the way

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<sup>15</sup> Ms. Fadumo Muse Yusuf, Executive Director, Somaliland Lawyers Association (SOLLA).

they look at the women and the government should embark on activities which support women's political initiatives.

## 20-CE21-1398

### NURSE MIGRATION AND GOVERNMENT EFFECTIVENESS: A CASE OF A PACIFIC COUNTRY

MR. GYANENDRA SISODIA<sup>16</sup>; MELANIA LOUEY; WAINKITI SOQOLALA; APISAI TUILOMA; AND WAISELE LATIANARA

Migration has been associated to the development of humans. However, migration is also linked to the brain drain issues. The influences of migration are perceived to be more complex. Historical, contemporary and future perspective and due to the increasingly economic instability conditions in Fiji, many nurses have left the country to obtain employment elsewhere apparently increasing the rate of migration. This study focusses on identification of factors linked to the migration of Nurses from the Fiji Islands. We studied the effect of variables such as salary, limited education, marriage and government effectiveness on the nurses' migration. We used time series data analysis over the 20 year-period, from 1995 to 2015. This study propose the two models, and results of both were analysed and compared. The results suggest that government effectiveness, salary and limited education are significantly associated to the migration of nurses. We have also proposed a policy recommendation through this study. Governments and international financial institutions must work together to ensure informed macroeconomic decision-making that creates enabling fiscal environments supportive to workforce development and well-functioning, responsive health systems.

**Key-words:** migration, salary, education, government effectiveness

### LIST OF LISTENER(S)

MR. AMER SALEH A ALSAYARY<sup>17</sup>

MR. NAYIF ALHARTHI<sup>18</sup>

MS. SHATHA ALHARTHI<sup>19</sup>

MR. OMAR ALSULAMI<sup>20</sup>

MS. EUNSUN GIL<sup>21</sup>

MR. ABDULLAH ABOHIMID<sup>22</sup>

MR. MOHAMMED SHEGAIGI<sup>23</sup>

<sup>16</sup> Mr. Gyanendra Sisodia, Associate Professor, Ajman University.

<sup>17</sup> Mr. Amer Saleh A Alsayary, LL.M SJD Student, Case Western Reserve University School of Law.

<sup>18</sup> Mr. Nayif Alharthi, LL.M Student, Case Western Reserve University.

<sup>19</sup> Ms. Shatha Alharthi, LL.M Student, Case Western Reserve University.

<sup>20</sup> Mr. Omar Alsulami, LL.M Student, Case Western Reserve University.

<sup>21</sup> Ms. Eunsun Gil, PhD student, University of Wisconsin.

<sup>22</sup> Mr. Abdullah Abohimid, Doctor of Juridical Science Candidate, Case Western Reserve University.

<sup>23</sup> Mr. Mohammed Shegaigi, PhD Student, The University of Iowa.



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Hong Kong

**Dr Monika WIECZOREK-  
KOSMALA**  
Assistant Professor  
University of Economics in  
Katowice  
Poland

**Dr Indianna Minto-Coy**  
Deputy Director of Mona  
ICT,  
School of Business &  
Management  
Jamaica

**Dr Joanna Blach**  
Assistant Professor  
University of Economics in  
Katowice  
Poland

**Miss Kate Masih**  
Lecturer  
London South Bank  
University  
United Kingdom

**Dr Bashar Malkawi**  
Associate Professor  
University of Sharjah  
UAE

**Ms. Mercy Khaute**  
Assistant Professor  
University of Delhi  
India

**Dr Jamil Ammar**  
Research Fellow  
Rutgers Law School  
USA

**Dr Zinatul Zainol**  
Associate Professor  
Universiti Kebangsaan  
Malaysia  
Malaysia

**Dr Nitin Upadhyay**  
Associate Professor  
Goa Institute of Management  
India

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