

Combating Corruption: The case of the National Accountability Bureau, Pakistan

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Abstract

This paper analyses the National Accountability Bureau (NAB), the prime investigation and prosecution agency against corruption in Pakistan. It starts with a general background regarding the practice and control of corruption. It then gives some information about Pakistan's political and administrative set-up. This is followed by an overview of the problem of corruption in Pakistan and then, an analysis of the NAB in terms of its mandate. The paper shows that, while NAB has the potential to turn into an effective organization, presently, its political nature has undermined its credibility and effectiveness. NAB must learn from international experience and channelize its energy and resources for national reconstruction.

Key words: Anti-Corruption; Pakistan; Institutions; Governance.

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Background²

Corruption is defined as an act done with the intent to give some advantage inconsistent with official duty and the rights of others (www.lectlaw.com). The study of corruption is a complex phenomenon. Each situation presents its own set of circumstances with which to study corruption and find solutions. It is important to have a holistic approach. Corruption thrives due to a particular context that involves historical, political, cultural and socio-economic factors. Some studies show that, while corruption slows growth in most developing countries, it has increased growth in the large East Asian newly industrializing economies (Rock and Bonnett, 1999). However, the positive effects can last only for a relatively short time in a country's economic development and, at some point, the trend towards growth will start reversing because corruption creates distortions in the socio-economic and political system of a country which have a multiplier effect. Empirical evidence based on cross-country comparisons suggests that corruption has large, adverse effects on private investment and economic growth (Mauro, 1988).

In order to better understand the varying levels of corruption in different countries, it is worthwhile to study: (1) The nature of the causes of corruption in these countries and (2) The degree of effectiveness of the measures initiated to combat corruption (Quah, 1981).

Administrative history of Pakistan:

The Civil Service System of Pakistan is rooted in the public administration system of British India. This had a cadre structure with the Indian Civil Service (ICS), the executive branch, at its apex. The system was designed, mainly, to maintain law and order and collect taxes (Chowdhury, 1972). District officers were the key stone of the administration. They collected revenue, ran the police and were the chief magistrates of their districts. "It was important to the British that the executive and judiciary should not be separated: unrepresentative rulers need to block challenges to their authority" (Duncan, 1989).

Independent, Pakistan retained this civil service structure. The service patterned on the ICS was called the Civil Service of Pakistan (CSP), later the District Management Group (DMG). The administration was highly centralized. However, under the 2001 civil service reforms, there has been substantial political and administrative decentralization at the field level but not at the secretarial level. Pakistan's civilian remained centralized with rigid hierarchies (Kennedy, 1987). "It is odd that once the foreigners left and the Pakistanis were ruling themselves they should have adopted a system so open to abuse. May be they, like the colonial government, were more interested in executive strength than in impartial justice" (Duncan, 1989). The political leaders, attempted to rely on the bureaucracy the way the British had done.

² This paper was written in 2007 and finalised before the establishment of the new elected government in Pakistan. The current of Prime Minister of Pakistan, on March 29, 2008, has indicated the policy to revamp the National Accountability Bureau and to make it subservient to the normal judicial system. Perhaps the critique of this paper will be illustrative for the readers and will provide many clues on how not to run an anti-corruption agency.

Pakistan has remained under military rule for twenty nine out of its sixty years of existence. “The bureaucracy and the army, which constituted the ‘steel frame’ of the Raj, continued after the emergence of Pakistan to determine the parameters within which political and economic changes were to occur” (Hussain, 1989).

The roots of corruption in Pakistan lie in the exploitative colonial institutions transplanted into the new country. To make matters worse, the record of the judiciary in Pakistan has been far from exemplary. The higher judiciary has, generally, sided with the forces of the establishment (Khan, 1997) and the lower judiciary has been involved in corruption (International Crisis Group, 2007).

Bhutto’s democratic government attempted to make the civilian bureaucracy more responsive. The 1973 reforms brought more egalitarianism within the bureaucracy and somewhat reduced the powers of the CSP. They also facilitated entry of more subject specialists into the bureaucracy (Kennedy, 1987).

However, the reforms reorganized rather than substantively change the structure and functions of the bureaucracy in terms of a democratic and professional institution. In 1978, Bhutto was removed by a military coup d’etat. The General set out to create a constituency for himself through party-less local elections and strengthening parochial forces (Shafqat, 2002). This helped in decentralizing corruption and making it more rampant. Drug trade and gun running became widespread and crime shot to new heights (Aziz, 2001). Deteriorating economy, inflation, low salaries for government officials and virtually non-existent accountability combined into a lethal formula for epidemic corruption. This stint of military rule ended in 1988.

Subsequently, four successive civilian governments, each dissolved prematurely with military involvement (Shafqat, 1997) remained embroiled in struggling with the chaotic socio-economic conditions of Pakistan, the armed forces’ perpetual flexing of muscles and international pressure on issues such as nuclear technology, the drug trade and the debt situation. These governments also had their own record of corruption and mismanagement with little accountability in governance patterns.

It was under these circumstances that General Pervaiz Musharraf took over from a civilian government, declaring it corrupt, inefficient and dangerous to the national interest. In a deviation from past practice, the General targeted the executive bureaucracy point blank, refusing to make an ally of it.

The General declared that he would cleanse and restructure the political and some major steps such as the decentralization of political and administrative powers and the separation of the judiciary and the executive. This was a radical step in the context of Pakistani politics. Another was the establishment of the National Accountability Bureau (NAB), under the National Accountability Ordinance, 1999. Before we examine the NAB in detail, the following section provides an overview of corruption in Pakistan.

Outline of Corruption

Pakistan has figured prominently on the list of corrupt countries. In 1998, the World Bank estimated corruption in Pakistan close to 10% of GDP (Khan et al., 2004). The country is being fast abandoned by its manpower because of being victims of corruption and left with no opportunities of advancement.

Pakistan's ranking on Transparency International's Corruption Perception Index (CPI) has consistently been among the lowest:

Pakistan's CPI Rating

Year	Number of Countries	Pakistan's Rank	Pakistan's Score (out of 10)
1995	41	39	2.25
1996	54	53	1.0
1997	52	48	2.53
1998	85	71	2.7
1999	99	88	2.2
2000	NA	NA	NA
2001	91	79	2.3
2002	NA	NA	2.6
2003	133	92	2.5
2004	145	129	2.1
2005	158	144	2.1
2006	163	142	2.2

Source: Transparency International

By 1999, the wealth looted by the corrupt amounted to \$36 billion- equivalent to the total national foreign debt (Khan et al., 2004).

National Accountability Bureau Ordinance, 1999

General Musharraf announced his seven point agenda in 1999 which included revival of the economy, restoration of law and order, dispensation of speedy justice and swift and across-the-board accountability. His supporters contended that, since he was a neutral army person, there was no question of political victimization in prosecuting corruption. Additionally, the purpose was to recover the wealth robbed by the corrupt.

The NAB Ordinance is the most comprehensive piece of legislation to date in Pakistan for controlling corruption. It gives NAB unprecedented powers. The preamble sets the tone for what NAB was proclaimed to achieve by aiming for "effective measures for the detection, investigation, speedy disposal of cases of corruption, corrupt practices, misuse or abuse of power."

The offence of corruption was made punishable with 14 years rigorous imprisonment. The application of the law was to all persons in Pakistan, except serving members of the military and judiciary. The Chairman, NAB, is appointed by the President of Pakistan, making it a political appointment. After an amendment in 2001 in the NAB Ordinance, further security of tenure was granted to the chairperson by equating his/her terms of appointment with that of a Supreme Court judge, who can only be removed by the Supreme Judicial Council, a constitutional body.

Some of the main powers of the Chairman, NAB include: a) order non-bailable arrest of the accused for inquiry and investigation for a maximum of 90 days; b) order freezing of the property of the accused; c) call for information from or examination of any person and the production of any document relevant to the proceedings; d) request a foreign state for all kinds of assistance necessary for investigation; and e) release an accused if he returns to NAB the assets acquired through corruption among others.

The cases prepared for adjudication by NAB are tried by special Accountability Courts established under the Ordinance. Appointment of judges to these courts is made by the President after consultation with the Chief Justice of Pakistan. The High Court and then the Supreme Court are appellate authorities. NAB Ordinance vests too much arbitrary power in the Chairman and so is likely never to be truly institutionalized. This law can be a potent instrument of unleashing terror if it is in the hands of an irresponsible ruler.

A number of provisions of the Ordinance have been criticized as violating human rights. Following are the major ones:

Arrest without Warrant

The power to arrest anyone suspected of being corrupt and keep in custody for 90 days militates against the right of a person to be considered innocent until proven guilty. Initially, there were several cases of arresting people without legal evidence of wrong doing against them (Sethi, 2005). After a Supreme Court Judgment, NAB now can only arrest someone after it has prepared a case against him which provides enough prima facie evidence to presume the person likely to be guilty.

Plea Bargaining

Disputes can be settled by the accused surrendering an agreed upon amount of the ill-gotten wealth. There has been scathing criticism of this provision for letting criminals go who deserved deterrent punishments. The government's justification, however, was that recovery of looted wealth was more important in a poor country.

The criticism is that the above practices make NAB a money recovering agency but not one which adequately punishes corruption and inhibits it by setting up examples. Plea bargaining is only regarding the amount recoverable from the offence for which the accused is undergoing trial. However, most highly corrupt people have been involved in many cases of corruption. Also, since there is no transparency in calculating the amount due for plea

bargaining, there is a perception that a compromise deal is struck between the accused and the NAB authorities regarding it.

The contention of NAB that plea bargaining shames the accused and deters corruption by him and by the society in general is simplistic because usually the accused is viewed to have been let off easily by surrendering only a fraction of his assets and he is not stigmatized as perception of corruption regarding people has long ceased to be a social constraint. Voluntary return does not even turn an offender into a convict and places no constraints on him. The argument is that such measures strengthen the belief that you can pay yourself out of trouble in this country.

Judiciary and the Armed Forces Exempted from NAB

Serving members of these institutions were kept outside the ambit of the Ordinance on the premise that both institutions had internal mechanisms of accountability. This was decried by the public because the civilian bureaucracy also has mechanisms for accountability, but these have invariably failed, in the public perception, including those of the judiciary and the armed forces (Khan et al., 2004).

Over the years, corruption has been alleged in the army's higher ranks. The heavy secrecy enveloping arms deals makes it difficult to investigate into allegations of widespread corruption relating to them. For example, in August 2000 allegations of kickbacks in arms deals, amounting to \$2.7 billion, implicating two army chiefs, one naval chief and two air force chiefs, made headlines (Shah, 2007).

Sections of judiciary, particularly at the lower echelons are also perceived to be corrupt by the public. Both intellectually corrupt-for example having given legal protection to all the martial laws and financially, as evidenced from the life styles and assets of most members of the judiciary. However, this corruption has not been investigated through the officially prescribed channels.

Now we look at the main areas where NAB has applied its powers and make an analysis of the situation:

Willful Default

Initially, NAB mainly targeted cases of willful default of loans from state-controlled banks and financial institutions. In 2002, willful default was reported to be \$3.3 billion and non-performing assets were placed at \$5 billion (Khan et al., 2004). Huge loans were written off based on concocted reasons. Businessmen as well as politicians and their cronies were guilty of this practice.

However, NAB disproportionately targeted businessmen. The politicians were largely untouched. Many businessmen had defaulted because their clients, who were public sector corporations and federal and provincial governments, had not paid them. Similarly, several had defaulted because of the haphazard economic policies of the previous regimes (Gauhar,

H. 2005). Bankers were not touched. NAB recovered some money but most businessmen could not be prosecuted because of the lack of evidence. However, the government scared away investors. This was ironic as the government was trying to improve the economic situation and had undertaken steps to facilitate business.

For every loan default that NAB recovers, it gets a 3% of the returned money. This gives NAB a vested interest in the recovery, impinging on the law of natural justice. According to NAB, the 3% is like a service charge and does not influence impartiality. However, this makes it vulnerable to public criticism (Gauhar, S. 2005).

High Profile Politicians not convicted

Not a single high profile politician has been successfully prosecuted (Khan et al., 2004). In July 2000, NAB secured the conviction of Nawaz Sharif, the prime minister ousted by Musharraf on the basis of corruption. He was sentenced to 14 years' imprisonment. But due to a 'political decision' he was pardoned and exiled to Saudi Arabia (Shah, 2007). Musharraf held elections in 2002 and, ironically, all those elected to the assemblies were the same people linked with corruption in the past (Gauhar, H. 2005). A few prominent politicians with pending cases were also made ministers (Khan et al., 2004).

Selective Approach and Corruption

Several commentators have pointed out that NAB has been selective in its approach, for political maneuvering and that there might be corruption within its ranks. Courts have been approached with details of massive kickbacks and corruption and accusing NAB of striking under the table deals and arm twisting people into joining the government (Khan et al., 2004).

Field reconnaissance, supported by media reports, indicates, though, that opinions about the integrity and efficiency of NAB vary from being considered corrupt and inefficient to, generally, acting with integrity and efficiency. This is a change from perceptions about previous anti-corruption agencies, which were uniformly seen by the public as instruments of state coercion.

Assessment of NAB's Achievements

Criticism aside, NAB has been effective in pursuing a number of corrupt persons of prominence. An array of politicians, bureaucrats and businessmen has been dealt with (Gauhar, S. 2005).

The overall record of NAB up to December 2005 is as follows: NAB has recovered Rs. 136 billion; it has prosecuted 885 cases, out of which Accountability Courts have decided 564 cases, with 410 convictions and fine of Rs. 4113 million (NAB, 2005). However, many of those prosecuted are lower ranking officers and businessmen.

Relief has also been provided to several thousand poor people caught up in various financial scams. NAB has recovered billions of rupees from embezzlers and returned them to the rightful owners. There had been several high profile cases of fraud involving various companies that fooled people into investing into them by offering high interest rates. After some initial payments these companies disappeared with the money. NAB has investigated some of these cases and returned 6.77 billion rupees to the affectees (NAB, 2005).

National Anti-Corruption Strategy

After an amendment in the NAB Ordinance in 2002, NAB is now also responsible for enhancing awareness about corruption and for its prevention. It has prepared a National Anti-Corruption Strategy (NACS). The awareness campaign has found allies in the educational sector and the media such as poster competitions for students and television shows like a popular talk show called Pachas (Fifty) minute have initiated public debate on corruption (Hafiez, 2005).

Initiatives by NAB on the preventive side include revamping of the assets' declaration system for public servants and recommendations to enhance the emolument structure of public servants.

This more holistic approach by NAB is a welcome change. Corruption is a symptom of more deep rooted socio-political and economic problems and until these are not tackled, corruption cannot be dealt with effectively.

The Government has launched a number of important institutional reforms, the most significant being the decentralization and separation of powers through the Local Government Ordinance, 2001, mentioned above. This Ordinance also gives a formal role to the civil society to participate in development. Other initiatives include civil service reforms, judicial reforms and separation of accounting functions from the auditor-general's office etc. During a mission to Pakistan in April 2002, Transparency International praised the government for these measures but also pointed to a range of areas where further reforms were needed such as freedom of information legislation, overhauling the public procurement system and bringing the military and judiciary under NAB (Ham et al., 2007). A glaring gap is inadequate implementation of the existing reforms in this area though the police force is one of the most corrupt institutions of the country.

A single anticorruption institution cannot function as an omnipotent and omniscient entity. In order to combat corruption it is imperative to reform all the institutions and make them capable of effectively implementing their mandate and developing coordination and inter linkages among institutions. For example, NAB's debt collection function properly belongs to the banks themselves and they should be empowered to fulfil their responsibilities.

Structurally and functionally NAB follows the Hong Kong model i.e. it is assigned functions of investigation, prosecution, prevention and awareness. The success of this model depends upon a number of conditions including: support from and independence from government; a national anti-corruption strategy; levels of corruption that allow the agency to manage

workload; other agencies that deal with types and levels of corruption not falling within the remit of the anti-corruption agency; wider governance activities that reduce the incentives and opportunities for corruption; and appropriate legal frameworks to pursue cases through the courts. Internally, the agency should have adequate financial resources and appropriate staffing; clear strategic and operational objectives; operational independence and freedom from political interference; high levels of integrity in its leaders and competency among staff; and public awareness of and confidence in the agency (Doig et al., 2006). However, as can be seen from the above discussion, many of these conditions do not yet exist in Pakistan.

Lessons can be learnt from successful and unsuccessful cases of anti-corruption organizations from other developing countries. For example, in Ghana the parliament and judiciary lack operational and financial independence and is dominated by the president/executive. However, the Serious Fraud Office, which is funded by the government and has sufficient powers, has been able to maintain some independence. This is helped by the presence of a vigorous media and civil society (Doig et al., 2006).

Effectiveness of NAB would require high political commitment, accountability of NAB itself to an elected body such as the parliament and overall governance reforms to create an enabling environment.

Conclusion

The fact that there have been a number of references against various facets of NAB Ordinance and the functioning of NAB and that the courts have modified some its key elements is a positive trend. This kind of check and accountability by other institutions and the public can help in improving the working of NAB, which otherwise has no inbuilt accountability mechanism for itself. Thus, an early move by NAB to have judicial powers in cases investigated by it was shot down by the Supreme Court on the principle of the necessity of separation of the executive from the judiciary.

The government has been praised by independent observers such as the World Bank and Transparency International for the institutional reforms it has undertaken. However, the test of sincerity lies in effectively implementing policy. Hope for controlling corruption lies in building on the reform from bottom up and not to use it as window dressing to please foreign donors.

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