

EVOLUTION OF ACCOUNTABILITY FRAMEWORKS IN PAKISTAN: 1947 TO 2022

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Abstract. *This paper focuses on the evolution of laws and institutions related to public sector accountability in Pakistan since its independence. It critically outlines a chronological legal history of the regulatory and institutions anti-corruption frameworks since 1860. It overviews the development phases of the promulgation, amendments, and annulment of such laws and points to the intent of the legislature and lawmakers in defining the scope of and promulgating these laws. In this regard, it outlines several different laws and seven evolution categories of accountability institutions. The authors also touch upon the influence of political government changes on such laws, especially through to contemporary political situation of Pakistan. In the later sections, there is a discussion on the international (comparative) context of accountability mechanisms followed up by conclusion. This paper offers a comprehensive review of accountability history vis-à-vis its institutional mechanisms and bodies, and serves as a source document for policy makers, academic researchers, and students of accountability in the context of Pakistan.*

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Introduction

The legal-institutional structure or framework to deal with corruption in Pakistan comprises of at least three key sources of law: the Pakistan Penal Code (PPC) 1860, being the oldest enactment; the Prevention of Corruption Act (PCA) 1947, being the first formally established anti-corruption law, and; the National Accountability Ordinance (NAO), 1999 (NACS, 2002). The Anti- Money Laundering Act promulgated in 2010 does have provisions to stop this menace when the proceeds of corrupt and illegal practices are used in money laundering and terror financing. The Accountability Courts are established under the NAO,

while the Central and Provincial Special Courts are set up under the Criminal Law Amendment Act 1958 (Ahmed, 2013). Pakistan has two ACAs at the federal level, including the NAB and Federal Investigation Agency (FIA), and four at the provincial levels, i.e., the Anti-Corruption Establishments (ACEs). The Khyber Pakhtunkhwa Ehtesab Commission (KPEC) was abolished by the provincial Assembly in December 2018 (Ali, 2018).

Researchers broadly divide Pakistan's anti-corruption regime into pre and post-1996 phases (Cheema *et al.*, 2020). The difference between the two phases spins around the consideration of the nature of the crime, measures in practice, punishments and the functional independence or control of anti-graft bodies. In the *first phase*, corruption used to be taken as an ordinary offence, so the coping procedures adopted and the penalties imposed were equally ordinary. Government-led anti-graft bodies (attached departments) were responsible for dealing with it. The *second phase* becomes an era of recognizing corruption as a special crime (especially in the public sector) by promulgating new laws with an extended scope and harsh punishments, especially in creation of anti-graft bodies as independent of governmental control. The credibility of such bodies was compromised by how both civilian and military governments reportedly utilized these for 'selective' accountability, political victimization, and political engineering (Javaid, 2010).

Development of Legal-Regulatory Accountability Frameworks in Pakistan

The Penal Code enacted by the British in 1860 contained an entire chapter mentioning the punishment of bribery and illegal gratification offences. Bribery is made an extradition crime under the Prevention of Corruption Act 1889 to 1916, the Extradition Act 1906, and the Honours (Prevention of Abuses) Act 1925. The past seven decades have witnessed a rise in the regulatory systems in Pakistan, whereby accountability laws have been promulgated to administer accountability to curb corruption in the public service (Hamid, 2015).

The anti-corruption policy environment in Pakistan has mushroomed since independence, whereas Aziz and Bakhtiar (2012) view these efforts to fight corruption as pervasive. The laws established the outline for future accountability regulations (Khan *et al.*, 2004). Special committees were created for the 'Eradication of Corruption from Service' in 1961 and 1987 to explore the occurrences and reasons for corruption, to suggest remedies, and to survey corruption perceptions across various sectors. In this regard, the first committee could have emphasized the need for long-term reforms (Schultz, 2007).

The PCA and PPC were enacted to make more effective provisions for preventing bribery and corruption (Hamid, 2015). The PCA was extended to the Province of West Pakistan after promulgating the first Martial Law in 1958. It was followed by other laws that set up Anti-Corruption Establishments to enforce the Anti-Corruption Laws effectively. Many '*allegedly*' corrupt government servants

were dismissed, and ‘*allegedly*’ corrupt politicians were disqualified and punished under different laws soon after the Martial Laws were imposed in 1958 and 1969. Simultaneously the concerned governments enacted Civil Servant Conduct Rules 1964, to be observed by their employees along with Efficiency and Discipline (E&D) Rules 1973, providing for departmental action to punish violations of the rules.

To further strengthen the accountability regime, right after the adoption of the 1973 Constitution, the Federal Government proceeded to enact the Federal Investigation Agency Act 1974. Military Courts disqualified and punished allegedly corrupt politicians during the third Martial Law in 1977 following the two amongst many, as mentioned in the literature, ‘*draconian*’ orders. There was no significant effect of various legislative measures and prevention mechanisms in reducing corruption, even restoring democracy.

The Ehtesab Ordinance issued by the President of Pakistan in 1996 during the caretaker government was re-enacted with amendments such as the Ehtesab Act 1997 by the coming elected government. The law had one important though symbolic feature, i.e., to bring in the highest public functionaries under the ambit of anti-corruption regulations. The National Accountability Ordinance 1999, replacing the Ehtesab Act, has the main criticism that there is ‘*no across-the-board accountability*’ that excludes the serving military and the judicial officers from its ambit and operations.

NAO 1999 attempted to remove the perceived lacunas in earlier laws to provide a comprehensive legal backing/ framework to the Bureau, ensuring its operational effectiveness and functional independence. These included:

- i. A retrospective effect from 1st January 1985;
- ii. Its statutory protection to the posts of the Chairman NAB and Prosecutor General Accountability;
- iii. Its enhanced scope of the law to both public and private sectors;
- iv. Setting up the maximum penalty for corruption, including a bar on joining public office or attaining finances;
- v. A change in the traditional law doctrine (excluding special laws) that presumed the innocence of the accused while creating an effective deterrence against corruption. This way the onus of proof of innocence was shifted to the accused;
- vi. The changes made in the remand law giving an enhanced scope of investigation powers to the Bureau;
- vii. The Chairman NAB to enjoy certain quasi-judicial powers (including freezing assets);
- viii. The NAB empowered to engage in international anti-corruption cooperation;

- ix. The law widening the definition of corruption by adding "persons who maintain a living standard not commensurate with their known sources of income" (Section 9);
- x. The Ordinance providing indemnity to the NAB from proceedings, including prosecution, while performing their official functions (Section 36); and
- xi. The offences under the Ordinance to be 'non-bailable' though the superior courts have the constitutional jurisdiction to grant the concession of bail bail as enshrined in the Articles 4 and 10 of the Constitution of Pakistan (Raja, 2017).

Accountability courts have been set up, having jurisdiction to run a trial of offences under the Ordinance. In 2002, the then military government developed a National Anti-Corruption Strategy (NACS) that used a three-pronged approach based on monitoring, preventing, and combating corruption. The democratic governments, unfortunately, could not contribute to updating this strategy (Lughmani, 2022). In the following section, the legal framework for the anti-corruption regime has been described right from independence.

The Legal Anti-Corruption Framework

The accountability laws could be analyzed based on the formation of a dedicated executing agency, scope, oversight function, and many other provisions. In addition to three basic accountability laws, other related laws were mostly promulgated to initiate and offer support to accountability/ oversight bodies or, in certain cases, even provide legal cover to politically generated actions. Some of the examples include Extradition Act 1972; Benami Transactions Act 2017; Qanoon-e-Shahadat Order 1984, as read with Electronic Transaction Ordinance 2002, which provide the procedural framework for investigation and prosecution of anti-corruption cases (Sadiq, 2020). Following is a brief overview of these laws in chronological order:

Table 1: *Anti-Corruption Laws in Pakistan*

#	Title of Anti-Corruption Law	Acronym	Year of Promulgation	Status
1	The Pakistan Penal Code	PPC	1860 (before partition)	In Force
2	The Prevention of Corruption Act	PCA	1947 (before partition)	In Force
3	Pakistan Special Police Establishment Ordinance	PSPE	1948	Repealed
4	Public Representatives Offices Disqualification Act	PRODA	1949	Repealed
5	Sind Prevention of Bribery and Corruption Act	SPBCA	1950	Repealed

#	Title of Anti-Corruption Law	Acronym	Year of Promulgation	Status
6	Elected Bodies Disqualification Order	PODO	1959	Repealed
7	Elective Bodies Disqualification Order	EBDO	1959	Repealed
8	Special Police and Provincial Police (Amalgamation) Order	SPPPO	1962	Repealed
9	Holders of Representative Offices Act	HROA	1976	Repealed
10	Parliament and Provincial Assemblies Act	PPAA	1976	Repealed
11	Representation of the People Act	RPA	1976	In Force
12	Holders of Representative Offices (Punishment for Misconduct) Order	PPPO-16	1977	Repealed
13	Parliament and Provincial Assemblies (Disqualification for Membership) Order	PPPO-17	1977	Repealed
14	West Pakistan Anti-Corruption Establishment Ordinance	WPACEO	1958	In Force
15	The Federal Investigation Agency Act	FIAA	1975	In Force
16	Sindh Enquiries and Anti-Corruption Act	SEACA	1991	In Force
17	Parliament and Provincial Assemblies (Disqualification for Membership) (Amendment) Act, 1991	PPA	1991	In Force
18	The <i>Ehtesab</i> Ordinance	EO	1997	Repealed
19	The <i>Ehtesab</i> Act	EA	1997	Repealed
21	National Accountability Ordinance	NAO	1999	In Force
21	The Balochistan Enquiries and Anti-Corruption Act	BEACA	2010	In Force
22	The Khyber Pakhtunkhwa <i>Ehtesab</i> Commission Act	KPECA	2014	Repealed

The Code of Criminal Procedure (CrPC) 1898 lays down detailed procedures for collection of information, investigation, arrest, search, seizure, confiscation, and trial of cases (Sadiq, 2020). The PCA extends to entire Pakistan, whereby the Anti-Corruption Laws (Application to Tribal Areas) Regulation 1966, has applied this Act along with the Pakistan Special Police Law Amendment Act 1958, and the Pakistan Criminal Law Amendment Act 1958, to the Tribal Areas of the Peshawar Division. Senior politicians were charged with corruption and declared ineligible for becoming a candidate in elections until 1966 without trial and conviction. Public officials were tried for misconduct by tribunals, and more than three

thousand officials were demoted and removed from their official positions (Sayeed, 2010; Shah, 2016). Article 42A of the HROA 1976 made it compulsory for the parliamentarians to submit annual wealth statements of his/her family before the Election Commission of Pakistan. The Chief Election Commissioner (CEC) was authorized to publish the same and de-notify the names of the non-complying members or punish them on false submissions (Ahmed, 2013). The Ehtesab Act 1997 was re-enacted with inclusion of the option of Voluntary Return (Lughmani, 2022). The Khyber Pakhtunkhwa Ehtesab Commission (KPEC) was abolished by the provincial Assembly in December 2018 (Ali, 2018). While discussing the promulgation intent, scope, coverage and retrospective effect, it is obvious that a major difference in the KPEC law at the provincial level and other laws was that it provided a ‘legislative oversight’ (TI, 2018). Following is the tabular description of the same:

Table 2: *Comparative Indicators for Anti-Corruption Laws*

#	Anti-Corruptior Law	Promulgating Government	Scope	Coverage	Retrospective Effect
1	PPC	Elected	Govt. servants; Private persons		No
2	PCA	Elected	Govt. Servants; Employees of state corporations		No
3	PSPE	Elected	Public Officials		No
4	PRODA	Elected	Politicians		Yes
5	SPBCA	Elected	Public Officials	Whole of Pakistan	No
6	PODO	Martial Law	Politicians		No
7	EBDO	Martial Law	Politicians and Public Officials		Yes
8	SPPPO	Martial Law	Public Officials		No
9	HROA	Elected	Politicians		No
10	PPAA	Elected	Politicians		No
11	RPA	Elected	Politicians		No
12	PPPO 16	Martial Law	Public Officials		No
13	PPPO 17	Martial Law	Public Officials		No
14	WPACEO	Martial Law	Public Officials	West Pakistan (Now KP and Punjab)	No
15	FIAA	Elected	Politicians, Public Officials and private persons	Whole of Pakistan	No
16	SEACA	Elected	Public Officials	Sindh	No
17	PPA	Elected	Politicians	Whole of Pakistan	No
18	EO	Care Taker	Politicians and Public Officials	Whole of Pakistan	No

#	Anti-Corruptior Law	Promulgating Government	Scope	Coverage	Retros-pective Effect
19	EA	Elected	Politicians and Public Officials		Yes
20	NAO	Martial Law	All persons in Pakistan		Yes
21	BEACA	Elected	Public Officials	Balochistan	No
22	KPECA	Elected	Politicians and Public Officials	Khyber Pakhtunkhwa	No

In addition to the laws mentioned above directly concerned with the anti-corruption issues, some related laws were also promulgated in KP to assist in better governance and implementation of accountability efforts at the provincial level. These have been described in Table 3 below:

Table 3: *Relevant Laws for Better Governance at Provincial Level*

#	Title of the Law	Year of Promulgation	Status
1	The Khyber Pakhtunkhwa Right to Information Ordinance	2013	Repealed
2	The Khyber Pakhtunkhwa 'Right to Information Act	2013	In Force
3	The Khyber Pakhtunkhwa 'Right to Public Services Act	2014	In Force
4	The Khyber Pakhtunkhwa Whistleblower Protection and Vigilance Commission Act	2016	In Force

The Freedom of Information Ordinance (FOIO) 2002 of Pakistan did not provide sufficient access to information practices with application only to the federal government sectors while rest were out of its jurisdiction (CRSS, 2009, p. 2). Access to information was not given prime importance before the promulgation of RTI Act 2013. Further, a Commission (KPWPVC) was set up to encourage and protect such citizens from harm. This law is consistent with the UNCAC, which requires member nations to incorporate safeguards for those reporting corruption within their legal frameworks (Shah, 2016).

Institutional Anti-Corruption Framework

During the pre-independence era of British rule, Police Establishment was formed to curb corruption and investigate crimes against the British Empire or the general public. Pakistan inherited the same crime control body in 1947 and renamed it as Pakistan Special Police Establishment (PSPE) in 1948. It can be safely concluded that it was the beginning of establishing new institutions to enforce new laws, which later sprung up at regular intervals. The PSPE was

followed by the West Pakistan Anti-Corruption Establishment of 1961, which created provincial-level Anti-Corruption Establishments (ACEs). The Federal Investigation Agency (FIA) replaced the Special Police Establishment in 1975, having a wider mandate covering immigration matters, economic crime, anti-terrorism, and corruption (Schultz, 2007).

These bodies have received support from ‘*legislative oversight*’ mechanisms like Prime Minister and Chief Minister Inspection Teams and the Parliamentary (Public) Accounts Committees (PAC). The institutional mechanisms included the Auditor General of Pakistan, the PAC, the public procurement regulatory authorities, and the Ombudsmen's offices in the federation and the provinces. The NAB was established in 1999, while the inter-sectoral regulatory bodies like the Federal Tax Ombudsman and the Banking Ombudsman were established in 2000 and 2005, respectively. Following is a brief description of the prevailing Institutional Mechanisms.

Table 4: *Institutional Mechanisms for Implementation of Anti-Corruption Laws*

#	Anti-Corruption Law	Dedicated Bodies	Acronym	Year of Formation	Status
1	PPC	Police	-	-	In Force
2	PCA	Pakistan Special Police Establishment	PSPE	1947	Repealed
3	PSPE	Pakistan Special Police Establishment	PSPE	1947	Repealed
4	PRODA		<i>No dedicated agency</i>		
5	SPBCA		<i>No dedicated agency</i>		
6	PODO		<i>No dedicated agency</i>		
7	EBDO		<i>No dedicated agency</i>		
8	SPPPO	Police	-	-	In Force
9	HPOA		<i>No dedicated agency</i>		
10	PPAA		<i>No dedicated agency</i>		
11	RPA		<i>No dedicated agency</i>		
12	PPPO-16		<i>No dedicated agency</i>		
13	PPPO-17		<i>No dedicated agency</i>		
14	WPACEO	Anti-Corruption Establishment	ACE	1961	In Force
15	FIAA	Federal Investigation Agency	FIA	1975	In Force
16	SEACA	Anti-Corruption Establishment	ACE	1970	In Force
17	PPA	No dedicated agency			In Force
18	EO	<i>Ehtesab</i> Commission	EC	1996	Repealed
19	EA	<i>Ehtesab</i> Bureau	EB	1997	Repealed
20	NAO	National Accountability Bureau	NAB	1999	In Force

#	Anti-Corruption Law	Dedicated Bodies	Acronym	Year of Formation	Status
21	BEACA	Anti-Corruption Establishment	ACE	2010	In Force
22	KPECA	KP <i>Ehtesab</i> Commission	KPEC	2014	Repealed

PSPE was also empowered to investigate under the Official Secrets Act, 1923; Foreign Exchange Regulation Act, 1947; Passport (Offences) Act, 1952; and Customs Act, 1959 (Sadiq, 2020). West Pakistan Anti-Corruption Establishment splits into local ACEs after the dissolution of the One Unit in 1970. On the recommendations of 'The Police Reforms Committee', the FIA was replaced with the PSPE in 1975. The bodies mentioned in table 4 can be bifurcated or compared based on different indicators. These include the provision of special courts, appointment and tenure of the head of the body, availability of rules, overseeing authority etc.

Table 5: Comparative Indicators for Anti-Corruption Bodies

#	Dedicated Bodies	Courts	Head of the Agency	Tenure of Head	Rules of Business	Overseeing Authority	Independence of Actions
1	Police	Criminal Courts	<i>Provincial Police Officer</i>	Not fixed	In place	Home Department, Provincial Assembly	Not independent; Political and Administrative pressures
2	PSPE	Repealed					
3	ACE	Anti-Corruption Courts	<i>Director-General</i> in Punjab and Balochistan, a <i>Director</i> in KP and a <i>Chairman</i> in Sindh.	Not fixed	In place	Establishment Department	Not independent; reports back to Establishment Department
4	FIA	Special Judge Central	<i>Director-General</i> appointed by the Federal Government	Not fixed	In place	Ministry of Interior and Committees	Not Independent; Reports back to Ministry of Interior
5	EC	Repealed					
6	EB	Repealed					
7	NAB	Accountability Courts	<i>President appoints the Chairman.</i>	Fixed	Not Available	No overseeing authority	Independent/Constitutional Body
8	KPEC	Repealed					

The Sindh Enquiries & Anti-Corruption Establishment was established in the 1970s. The Sindh Enquiries & Anti-Corruption Act was promulgated in 1992 where the rules were framed in 1993 (Lughmani, 2022). The NAB was established to eradicate corruption and corrupt behaviour across several institutions in Pakistan, having the authorization to implement strategies and take actions (NAB, 2013).

The quasi-public accountability Institutions

There are some quasi-legal institutions responsible for public sector accountability. These institutions play a decisive role in upholding governmental accountability (GOP, 2002: 45). Institutions like the Provincial Inspection Team (PIT), Governor Inspection Team (GIT) and Monitoring and Evaluation (M&E) Directorate are like attached bodies or departments to an existing mechanism and usually take action on given instructions. The quasi-legal public accountability bodies have been discussed in table 6.

Table 6: *The Quasi-Public Accountability Institutions*

#	Name of the Body	Head of the Body	Year of Formation	Appointing Authority	Jurisdiction
1	The Auditor General	The Auditor General	Constitutional Body	The President	Federal and Provincial
2	The Public Account Committees	Chairperson	Constitutional Body	Federal Government	Federal
3	The Public Account Committees	Chairperson	Constitutional Body	Provincial Government	Provincial
4	The Federal Ombudsman	The Federal Ombudsman	1983	The President	Federal
5	The Provincial Ombudsman	The Provincial Ombudsman	<i>Punjab</i> : 1997, <i>Sindh</i> : 1991, <i>Balochistan</i> : 2001, <i>KP</i> : 2010	Provincial Government	Provincial
6	The KP Public Procurement Regulatory Authority	Managing Director	2012	Provincial Government	Provincial
7	The Right to Information Commission	Chief Information Commissioner	2013	Provincial Government	Provincial
8	The KP Right to Public Services Commission.	Chief Commissioner	2014	Provincial Government	Provincial
9	The KP Whistle-blowers Protection and Vigilance Commission	Chairman	2016	Provincial Government	Provincial

The North-West Frontier Province (NWFP) Procurement of Goods, Works, Services and Consultancy Services Ordinance 2002 was in force before the promulgation of KPPRA Act 2012 (Muhula, 2021). In view of the Westminster

model of democracy, the Public Accounts Committee (PAC) is one of the most important committees in the National and Provincial Legislatures. KP was the last in the provinces to promulgate the Khyber Pakhtunkhwa Provincial Ombudsman Act in 2010, establishing the Provincial Ombudsman office.

Political settlements as a deterrent to anti-corruption efforts

The National Reconciliation Ordinance (NRO) was considered a controversial ordinance as it constrained the authority of NAO and compromised the anti-corruption efforts in Pakistan (Ahmed, 2013). Ironically, the NRO was enacted just a couple of months after ratifying the UNCAC, reflecting the seriousness of commitments (Transparency International Pakistan (TIP), 2014, p. 161). The NRO opened new doors for legalizing corrupt practices, benefitting the politicians, bureaucrats, and armed services personnel suspected of corruption. In October 2007, the NRO was promulgated, by President Musharraf by exercising his powers under Article 89(1) of the Constitution (Agha, 2020), granting amnesty to politicians and bureaucrats allegedly accused of corruption etc., between the period of two martial law regimes in Pakistan, i.e., between January 1, 1986, and October 12, 1999. The anti-corruption efforts had to deal with the biggest legitimacy crisis in the history of Pakistan after the said promulgation, as it developed constraints to the anti-corruption strategy and its implementation. The Supreme Court of Pakistan (SCP) declared this act of the President unconstitutional and without lawful authority on December 16, 2009 (TIP, 2009), when it had already benefitted about eight thousand allegedly 'tainted' people. During the next elected government's term (2008-13), the NAB was told to wrap up its investigations against almost sixty leaders of the ruling coalition.

A few powerful bureaucrats and federal ministers arrested during this tenure were primarily due to the *suo moto* notices of the Chief Justice of Pakistan. The same situation was witnessed during the next regime (2013-18 and 2018-22) and the current coalition government (2022-present), as one can hardly find a conviction and a lack of will of the ruling parties to punish the corrupt. Hussain (2009) quoted the chairperson of TI Pakistan accusing the judiciary of validating martial law regimes from 1951 to 2007 while applauding the efforts of the then Chief of Army Staff for taking bold initiatives to uproot corruption from its ranks.

Efforts to amend the accountability systems

Different attempts were made by the democratic governments, especially in the last decade, to bring about amendments to accountability laws, repeal them, make new laws, wind up accountability institutions or establish new anti-graft bodies. However, insufficient political and parliamentary support did not make this a reality. The prevailing laws and the bodies continued working despite the huge criticism (Mehboob, 2020). In this regard, a majority of laws or bills presented in

the Senate, the National Assembly or the provincial assemblies are discussed below:

Table 1: *Amendments in Accountability Laws*

#	Law	Bill Title	Year	Description
1	NAO	The National Accountability (Amendment) Act	2016	Amendments in NAO
2	NAO	National Accountability (Amendment) Ordinance	2017	Amendments in NAO
3	NAO	The National Accountability (Amendment) Act	2019	Amendments in NAO
4	NAO	The National Accountability (Second Amendment) Ordinance	2019	Amendments in NAO
5	NAO	The National Accountability Act	2021	Amendments in NAO
6	NAO	National Accountability (Second Amendment) Bill	2022	Amendments in NAO
7	NAO	Holders of Public Office (Accountability) Bill	2009	Abolishing NAO and bringing in a new law
8	NAO	Holders of Public Exchequer (Accountability) Act	2015	To repeal the NAO, 1999, abolish all anti-corruption Establishments and enact new law of accountability
9	ACE	Repeal of the Anti-Corruption Establishment Ordinance 1961	2014	ACE in KP was absorbed into KPEC, but later the government took back the decision through an amendment in KPECA
10	KPEC	The KP <i>Ehtesab</i> Commission (Amendment) Bill	2016-17	Amendments in KPECA
11	KPEC	The Khyber Pakhtunkhwa <i>Ehtesab</i> Commission (Repeal) Act 2019	2018	To repeal KPECA and dissolve KPEC

The study of the relevant bills, Acts and Ordinances on amendments in Accountability Laws reveal the underlying motives which usually were controversial and considered politically justified in holding the powers in the garb of amendments. As per the institutional annual report 2017, the KPEC Act 2014 was amended at least seven times in four years (Lughmani, 2022). The most recent amendments in the NAO 1999 could better present the picture as discussed in the next section.

Recent amendments to National Accountability Ordinance 1999

The recent attempt to amendments appears to be fruitful though not applauded by the critics, and viewed as a political stunt to save the ruling coalition's skin and still faulty. It would be worthy to mention here that the change of government and subsequent amendments in NAO took place after the first submission of this paper which was taken into consideration during revision. In May 2022, the newly established coalition government under Pakistan Democratic Movement (PDM), for one parliamentary year, took its first major action by passing National Accountability (2nd Amendment) Bill 2021 in Parliament, trying to roll back

retrospective application. The amendments include alignment of the mode of arrest, production before the court, provision of bail and remand period with the common law; taking procedural lapses, developmental allocations and taxation as out of the jurisdiction of the NAB; restricting public statements by the officials of A-GB; acquittal in cases initiated with *mala fide* intentions; and, modifying the terms and procedures for the appointment and removal of Chairman and Deputy Chairman NAB. The long-disputed issue of ‘*across-the-board accountability*’ has not yet been touched upon, leaving the military and judiciary out of the ambit of the NAO. The opposition criticized these amendments as a skin-saving effort by the coalition government to get an NRO to avoid accountability regulations.

The President of Pakistan, while returning the bill to the Parliament, vide letter No. (PS(Public)’s U.O. No. 5(117)/Senate/Dir(E)/2022, dated: 04.06.2022, came out with detailed reasoning, besides alleging that the government violated Article 46 of the Constitution by not informing him about the legislative proposals before bringing them to the Parliament. He observed that the amendments had been passed by the National Assembly and the Senate “in haste and without due diligence”, adding the legislation having a far-reaching impact on society should have been discussed in detail in consultation with the legal fraternity and civil society. The President said the amendments made the NAB law similar to the CrPC 1898. He rendered it a burial of the accountability process while mentioning these amendments as against the spirit of Islamic jurisprudence and various accountability laws of the developed countries e.g., Swiss Foreign Illicit Assets Act 2010 and Unexplained Wealth Order 2018 of the UK in White-Collar Crimes. The President emphasized that these amendments would make tracing of ‘money trail’ for acquiring illegal assets almost impossible by investigators and not helpful to the ongoing mega corruption cases in courts. Therefore, the proposed amendments were rendered a ‘toothless’ entity (Wasim, 2022). It is pertinent to mention that despite being opposed by the President of Pakistan, the amendments made in 2022 by the coalition government stood enforced as amended law throughout Pakistan, benefitting the politicians, public officials and private persons who were previously accused or were charged under the NAO 1999.

Discussion

Certain preconditions discussed in the literature ensure the effective and impartial implementation of accountability regulations through proactive A-GBs. Out of different preconditions, the first and foremost is the political will of the government to eradicate corruption. Such political will is backed by the favourable policy context, which helps in the smooth implementation of such laws. Quah (1978) argued that anti-corruption laws must clearly define corruption and provide specified powers to the A-GBs. The perceived legitimacy to exercise power is

among the crucial dimensions of accountability relations in the public sector (Bovens *et al.*, 2008).

In the case of Pakistan, even the thoroughly debated strong laws are made toothless or even repealed due to continuous tinkering with the existing legislation to mold it on one's behalf or save someone's skin. In the aftermath of the amendments in the Act, the KPEC annual report 2017 mentioned:

“The arrest of accused has been conditioned with the permission of court. This is unprecedented preposition inserted in this Act...such permission from a court in cognizable offences of white-collar crime is a hurdle”.

The transfer of powers from the Chief *Eshesab* Commissioner to a political appointee at the *Ehtesab* Cell, restricting the powers of Commissioner KPEC or the repeal of KPECA 2014, and the National Accountability (Second Amendment) Bill 2022 are some of the examples.

Quah (1978) advocated for promulgating new laws and periodic reviews of existing laws to remove loopholes. Instead of addressing the lacunas present in the laws or certain obvious flaws in the implementation, the whole course has been changed multiple times to benefit blue-eyed persons. A-GBs require a clear mandate to enforce laws (Heilbrunn, 2004) and substantial legal or institutional change (Vyas & Wu, 2020) to succeed. There has been a continuous disagreement between the government and opposition benches in Pakistan regarding promulgating a new anti-corruption law or bringing amendments to prevailing laws.

It is of utmost importance for an A-GB to be independent of political pressures and have operational autonomy. In the case of Pakistan, the heads of the ACEs and FIA are usually on deputation from the Police, which further deteriorates the situation regarding these bodies' long-term goals and institutional independence. The current Director General is from Police Service of Pakistan (PSP) as per the prevailing tradition (Lughmani, 2022). A list available in the official report reveals the names of the Director Generals of the agency where out of 39 DGs till date 32 were PSP (Federal Investigation Agency (FIA) Annual Report, 2020). Quah (2007), while discussing the operational autonomy and independence of A-GBs, renders that the police, the biggest obstacle in curbing corruption, should never be responsible for controlling it. It took decades for Singapore and Hong Kong to learn this important lesson as best practice to reject the British colonial government's ineffective method of relying on the police for anti-corruption. In contrast, Pakistan has unfortunately not followed this best practice as yet (Lughmani, 2022).

Further, the political leaders must not have any control or interference in A-GB's operations. Literature narrates the examples of the Corrupt Practices Investigation Bureau (CPIB) in Singapore (Quah, 2007; RIAP, 2001; Tan, 1999);

the Independent Commission Against Corruption (ICAC) in Hong Kong, and the National Counter Corruption Commission (NCCC) in Thailand (Borwornsak, 2001) for the compromises including usage against political rivals, the executives being reporting authority and having political oversight (Quah, 2007) respectively, despite their good reputation. On the other hand, the ACAs in India are considered under government control and influenced by party politics, which have to obtain sanctions before any action (Vyas & Wu, 2020). The use of ACA as an attack dog against political rivals undermines its effectiveness, e.g., the Central Commission for Discipline Inspection (CCDI) in China (Quah, 2017) and the NAB in Pakistan (Quah, 2021).

In the case of Pakistan, the ACEs and FIA are not autonomous and independent bodies as they report back to the Establishment & Administration Department and the Interior Division under Ministry, respectively. The undue bureaucratic (and political) checks like permissions required to take action against corrupt elements limit the operational autonomy, mandated role and effectiveness of the A-GBs (NACS, 2002; Sadiq, 2020). The Prosecution Division at the NAB is also not independent. An interference with due process and discriminatory acts violates the principles of natural justice, undermining the trustworthiness of A-GBs (Sadiq, 2020).

Conclusion

The accountability journey started in 1947 and now rests on the NAB Ordinance 1999. Over the period, an effective execution remains a key problem for the authorities. The intent of the promulgating government cannot be ruled out as almost all the laws except the PCA intend to crush and sideline political opponents. The PCA is the only law free from allegations of ‘political victimisation’. This way, the intent of the government becomes significant in such promulgation. Authors believe that though the oversights and compulsory permissions are crucial to check the undue and unbridled powers of the A-GBs, it is unacceptable to make such bodies ‘toothless tigers’ as the incumbent government has done in the very recent move.

It has been discussed repeatedly that strict accountability implementation is the need of the hour. The point to be considered is that such implementation should strictly observe the constitutional rights, prevailing laws, and international conventions. The concept and sense of brutality imposed in various accountability laws in the past and KPEC and NAO recently do not propose any solution to such a ‘chronic disease’, i.e., corruption. A decent, respectable and systematic mechanism could have been followed up in the examples of ICAC, CPIB and NCCC having features like oversight and across-the-board accountability to replicate those systems in the Pakistani context. This way, the deterrence will be

there, and culprits will get captured while the innocent could save their dignity and respect from the clutches of the A-GBs.

References

- Agha, I. S. (2020,). National Accountability (Second Amendment) Ordinance 2019 – An Analysis. *Courting the Law*. Retrieved from <https://courtingthelaw.com/2020/06/19/commentary/national-accountability-second-amendment-ordinance-2019-an-analysis/>.
- Ahmed, N. (2013). The dark side of authority: A critical analysis of anti-corruption frameworks in Pakistan. *Law, Social Justice & Global Development Journal*, 15, 1-18.
- Ali, Z. (2018, December 29). KP Ehtesab Commission dissolved, cases transferred to ACE. *Dawn*. Retrieved from: <https://www.dawn.com/news/1454226>
- Aziz, D., & Bakhtiar, U. (2012). Anticorruption and its discontents: Anti-corruption in post-independence colonial bureaucracies. In *IPMN conference: Innovations in Public Management for Controlling Corruption* (pp. 27-29).
- Borwornsak, U. (2001). Depoliticising Key Institutions for Combating Corruption: The New Thai Constitution. In P. Larmour and N. Wolanin (Eds.), *Corruption and Anti-Corruption* (pp. 177-203). Canberra: Asia Pacific Press.
- Bovens, M., Schillemans, T., & Hart, P. T. (2008). Does public accountability work? An assessment tool. *Public Administration*, 86(1), 225-242.
- Cheema, A. M., Fatima, M., & Mahsud, M. I. (2020). Pakistan's Anti-Corruption Legal Regime: A Story of Political Rag Tag. *Pakistan Journal of Criminology*, 12(1), 89-108.
- CRSS (2009). The mirage of rule of law in pakistan. centre for research and security studies, Islamabad, Pakistan. Accessed on: 22 August 2021. Available at: <http://www.crss.pk/wpager09/we29Mar09.pdf>
- Federal Investigation Agency, *Annual Administrative Report*, 2020. Available at www.fia.gov.pk
- Hamid, S. (2015). Anti-Corruption Mechanisms and Institutions to Address the Problem of Corruption in Pakistan, Pakistan Institute of Legislative Development and Transparency (PILDAT).
- Heilbrunn, J. R. (2004). Anti-corruption commissions: Panacea or real medicine to fight corruption. *World Bank Institute*, 2.
- Hussain, S. (2009). Pakistan slips into more corrupt category: TI. *The News*, 18 November.
- Javaid, U. (2010). Corruption and its deep impact on good governance in Pakistan. *Pakistan Economic and Social Review*, 123-134.

- Khan, M., Kakakhel, N. A., & Dubnick, M. (2004). Prosecuting Corruption: The Case of Pakistan. In *Ethics Forum, American Society for Public Administration*, 26-27.
- Lughmani, M. S. A. (2022). *A Critique of Accountability Regulations in the Public Sector Institutions of Khyber Pakhtunkhwa in Pakistan*. Under submission doctoral dissertation, University of Peshawar.
- Mehboob, A. B. (December 09, 2020). Pakistan's obsession with elusive accountability. *Arab News*. Retrieved from: <https://www.arabnews.pk/node/1774806>
- Muhula, R. (2021). Final Environmental and Social Systems Assessment (ESSA) - KP- Spending Effectively for Enhanced Development - P175727. Retrieved from: <https://documents.worldbank.org/pt/publication/documents-reports/documentdetail/421461617221281073/final-environmental-and-social-systems-assessment-essa-kp-spending-effectively-for-enhanced-development-p175727>
- NAB, (2013). National Accountability Bureau. Accessed on: 14 March 2013. Available at: <http://www.nab.gov.pk/>
- National anti-corruption Strategy report (2002). Islamabad. Islamabad Printing Corporation of Pakistan. Retrieved from: <http://www.nab.gov.pk/Downloads/Doc/NACS.pdf> retrieved 22-02-2019
- Quah, J. S. (2021). Breaking the cycle of failure in combating corruption in Asian countries. *Public Administration and Policy*.
- Quah, J. S. (2017). Singapore's success in combating corruption: lessons for policy makers. *Asian Education and Development Studies*.
- Quah, J.S.T. (2007). National Integrity Systems in East and Southeast Asia 2006 Regional Overview Report. Berlin: Transparency International.
- Quah, J. S. (1978). *Administrative and Legal Measures for Combatting Bureaucratic Corruption in Singapore*. Chopmen Enterprises.
- Raja, Z. A. (2017). Bail in the light of English and Islamic Law. *Courting the Law*. Retrieved from <https://courtingthelaw.com/2017/06/03/faqs/bail-in-the-light-of-english-and-islamic-law/>.
- Wasim, A. (2022, June 5). Refusing assent, President returns election, NAB bills. *Dawn*. Retrieved from: <https://www.dawn.com/news/1693218>
- Research Institute for Asia and the Pacific (RIAP). (2001). Public sector challenges and government reforms in South East Asia report 2001. Sydney: RIAP, University of Sydney.
- Sadiq, E. (2020). Anti-corruption investigation agencies in Pakistan: An appraisal. *ISSRA Papers*, 1(XII), 1-27.

- Sayeed, A. (2010). The Nature of Corruption and Anti- Corruption Strategies in Pakistan. *International Covenant on Civil and Political Rights*, 9(1), 33-40.
- Schultz, J. (2007). Anti-corruption policy making in practice: Pakistan—a country case study. *Anti-corruption policy making in practice: What can be learned for Implementing Article, 5*, 147-172.
- Shah, S. (2016, April 20). Steps against corruption remained futile in Pakistan’s history. *The News*. Retrieved from: <https://www.thenews.com.pk/print/114035-Steps-against-corruption-remainedfutile->
- Shah W. A. (2016, September 26). KP takes lead in enacting whistleblower protection law. *Dawn*. Retrieved from: <https://www.dawn.com/news/1286118/kp-takes-lead-in-enacting-whistleblower-protection-law>
- Tan, A. L. (1999). The experience of Singapore in combating corruption. In: R. Staphenhurst & S. J. Kpundeh (Eds), *Curbing Corruption: Toward a Model for Building National Integrity* (pp. 59–66). Washington, DC: The World Bank.
- Transparency International Pakistan. (2014). Country report 2014.
- Transparency International Pakistan (2009). Country report 2009.
- Vyas, L., & Wu, A. M. (2020). Anti-corruption policy: China’s Tiger Hunt and India’s demonetization. *International Journal of Public Administration*, 43(11), 1000-1011.
- Wasim, A. (2022). Refusing assent, President returns election, NAB bills. *Dawn*. Retrieved from: <https://www.dawn.com/news/1693218>