

Accountability Institutions, Suggestions for Change & NAB Ordinance 2019

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CORRUPTION is a universal curse and exists in all countries, both developing and developed. Difference is the degree of corruption. No universal definition of corruption. It is commonly referred to as “the abuse of public office for private gain”. The most functional definition adopted by various international organizations is the “misuse of public office for private profit or political gain”. Quide E- Azam (11 August 1947) Corruption is a curse in sub-continent.

Accountability or being accountable is a much, cherished concept which everyone likes.

It can be defined as the obligation of an individual or organisation to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property. All of us are convinced that people especially who are in power or have any other social responsibilities must be accountable for their use of power and funds they use. But it is also a fact that most of us want others to be accountable and want amenity for ourselves.

The word ‘accountability’ is rocking these days. People of Pakistan want their rulers to be accountable for all the misused powers and funds they have been using while are or were on some high-profile job. It has been more than seven decades, Pakistan came into existence. In these years so many governments have been toppled due to the reason of the corruption and every government following the predecessor made big promises for full and fair accountability but nothing has ever happened, rather the later ones were found even bigger scandals of corruption than before. In these years, our country has never witnessed accountability in true sense. Hence due to lack of accountability corruption has gained deep roots in our society that it has become part and parcel of our life. It has also resulted in the loss of respect for political leaders amongst common masses. Secondly, our country has also indebted by foreign loans. Half of our annual budget goes in paying the interest money on these loans. The total population of Pakistan is almost 220 million out of which more than 40 percent live in deplorable condition. They neither have their two-time meal nor do they have access to clean drinking water, electricity, gas, education and proper medical facilities. Pakistan has reached to level where accountability has become essential. It is the time that someone should take bold steps and make sure that full and fair accountability is done in Pakistan.

The Prime Minister Imran Khan has taken initiative and vowed to enforce 'strict' accountability. The common public is also determined to hold their rulers accountable. They like to see accountability done and corrupt leaders to get punishment and at the same time they wish to see the change in their lives as well.

Since the process of accountability has started many different voices are being heard. Those who are convicted in corruption or have the fear of conviction are terming the process as political vendetta. Some are of the view that the government should stop this process and other important issues must be looked into.

Making the accountability process controversial is very unfortunate. This is the same old trick which was used in the past to stop or to create hurdles in such initiatives. What is essential for this accountability derive is that it start from the top and secondly, no one should be spared if found guilty in corruption. Thirdly, NAB should work independently and there should be zero tolerance for any political intervention. Fourthly, the army and judiciary should also look into their own house and if there is any serving or retired person found guilty of corruption should be immediately taken to task. A full and fair and across the board accountability process is required to take this country ahead. Progress in Pakistan has already been hindered in a major way by accountability that has been non-existent and the corruption of the rulers.

The best way to satisfy the people of Pakistan is to recover the money from corrupt elites and use that money for the welfare of the people, to reduce poverty, in education and health sectors. It can also be used for the development of poor regions like interior of Sindh, Baluchistan, KPK, Saraiki Belt Punjab and Gilgit Baltistan, as these regions have been neglected in the past, then it will be so much beneficial for the unity of Pakistan as people of these regions have been so much mislead by their own corrupt national leaders who have used their grievances but themselves involved in mega corruption. The history of Pakistan is one of corruption and dishonesty by its leaders but let's hope that time has come for a change and our next generations can feel proud to be citizens of a country where there is true accountability and corruption free society. Where there is a will there is a way!

Like free and fair elections, a fair system of accountability has also remained elusive in Pakistan. Numerous efforts have been made in the past to institute a credible mechanism of accountability but almost all such efforts failed to win the trust of the people and establish a system which could continue at a steady pace without being interrupted by political exigencies.

From the Public and **Representative Office (Disqualification) Act (PRODA) of 1949** to the **National Accountability Ordinance (NAO), 1999**, at the federal level and **KP's Ehtesab Commission Act of 2014** at the provincial level, around **a dozen laws** have been promulgated and some **half a dozen institutions** created in the name of accountability in the past 70 years and then wrapped up. The mere fact that so many accountability laws had to be repealed in the past indicates the poor level of trust in or satisfaction with the system of accountability which these laws sought to create.

The relatively small number of politicians in the NAB accountability cycle is perhaps no consolation.

Since 2002 when NAB was used as the key instrument to twist some PPP MNAs' arm to create a faction called PPP-Patriots for supporting the pro-Musharraf PML-Q, NAB was not

criticised so vehemently as it is today. 'Political victimisation' seems to be the rallying cry as the top leadership of the two principal political parties, the PML-N and PPP, are being rounded up or vigorously investigated by NAB. Although politicians are not the largest group being investigated by NAB, they certainly are the most visible and their protests are the loudest.

The latest NAB quarterly update of July-September 2018 indicates that of the total **241 ongoing enquiries**, only **45** or a mere **19 per cent pertain to the category of 'others'** which, among the various categories, includes politicians. **Civil servants** form the largest segment with **73pc** ongoing inquiries while **businessmen** have only **8 pc** inquiries against them. The **same is the pattern for ongoing investigations and prosecution** in the accountability courts.

The relatively small number of politicians in the NAB accountability cycle is perhaps no consolation as the major complaint pertains to the alleged partisanship of the accountability drive. Although NAB does not release the statistics for politicians in various stages of accountability and their party affiliation, desk research based on the press releases of NAB and media reports since July 2018 certainly indicates a pattern of greater focus on the PML-N and PPP.

Of the **79 ongoing inquiries**, investigations or prosecution of cases of politicians, the largest number, 29 or **37pc**, pertains to **PPP affiliates** followed by 21 or **27pc** linked to the PML-N. The PTI has a share of 10 or **13pc** in various stages. Among the government servants and businessmen are a number of persons who are facing NAB accountability or arrests because they are alleged to be involved in cases primarily relating to one opposition politician or the other. The low number of 'others', therefore, may not depict the real scale of politicians' involvement in NAB cases.

Accountability versus Economy

The foremost election slogan of PTI was across-the-board ruthless accountability and economic turnaround for the betterment of the have-nots who for decades have been reeling under poverty and hopelessness. This election pitch was too powerful to be resisted by this segment of society as they removed the barriers of their party affiliation and loyalty and voted PTI into power. They, therefore, want the PTI government to deliver on its commitments. In its over 1 year of governance, the government has made some significant inroads in the **accountability process**. Insofar as **economy is concerned**, it is still trying to figure out its action plan. A few weeks ago, PM Imran Khan met in Karachi a delegation of **FPCCI, OICCI and stock exchange** and sought the cooperation of the private sector to help eradicate poverty, create new jobs and build up the nation's economy. There were some useful suggestions volunteered at the meeting, significant of which was the proposal by the President of OICCI who presented to the PM a comprehensive booklet titled **"Recommendations on National Program for Digital Transformation" prepared by OICCI**. Digitalization of processes and systems enforces seamless accountability and good governance; it also enhances the operational performance of the organization. The financial crisis of 2008, emerging from the compliance and governance gaps in the banking industry, compelled multinational organizations all over the world to follow the global compliance protocols of good governance and Pakistan is part of it. The government can benefit a great deal from the recommendations of OICCI and the experiences of its member companies which will map government's agenda of accountability and economy for the poor. While there are recommendations and voices in support of **good governance and**

accountability there are also some voices and suggestions to the government that it must divert its focus from accountability to economy as the rhetoric of accountability is limiting the economic growth of the country. These are the same voices, infected by vested interests, who finally had their way in the early years of President General Musharraf who had embarked well on the process of across-the-board accountability by NAB but soon succumbed to the pressure of this lobby and diverted the focus of NAB to selective politically-inspired accountability. In the process, the President lost his credentials as a leader. What flourished most after this unfortunate U-turn was corruption, which gradually penetrated all segments of society. The economy of the nation cannot be separated from accountability. **A poor and honest nation can survive with dignity and modest living but a corrupt nation cannot. Accountability is directly proportional to economy. Good governance and accountability lead to good economy. Bad governance leads to bad economy.**

Pakistan's foremost economic woes are on account of bad governance and lack of accountability, which is a lethal combination of corruption, incompetence, inefficiency, nepotism, cronyism and vote politics. As per the **World Bank report** released earlier this week the power sector alone is causing the nation a **whopping loss of \$ 18 billion per year** due to inefficient power sector primarily on account of **pathetic governance** which works out to be **6.5 percent of nation's GDP** - of which **\$ 8.4 billion is on account of losses in businesses. If corrected it could increase household incomes by \$ 4.5 billion.** This is the strength of accountability. **Increase in tariffs to cover the losses negatively impact the poor and the vulnerable, the WB report adds. This is the unanimous opinion of the WB, the IMF and ADB.**

In addition to this, the accumulated losses of **Rs 1.3 trillion on account of loss-making entities in the public sector and Rs 1.4 trillion on account of circular debt and bankrupt PIA and PSM, etc., are all primarily on account of poor governance.** The PM had announced that he is placing the setup of '**Ease and Cost of Doing Business**' under his direct surveillance at the prime minister's house. All the ten parameters specified by the World Bank in this regard are dependent on governance - issues of permits, dispute resolution and arbitration, setting up of industry, etc., etc. One of the major deterrents for a foreign investor to invest in Pakistan is **not profitability but the high incidence of corruption at all levels.** Local investor is still surviving because he has learnt to live with the institutionalized regime of **speed money** which is rendering the **businesses uncompetitive.** So, great is the power and effect of accountability on the economy of the nation. But **accountability is only successful and rewarding if it is above board and equally applicable to all defaulters.** The incumbent government can only derive benefits and achieve success in eradicating corruption if it demonstrates **fairness in the process** for which at the end of the day the government will itself be the beneficiary in having achieved its agenda of accountability. Much has to be reformed and delivered on this account as the results of accountability are not tangible so far. The voices against accountability are becoming louder but the government must not succumb to such pressure come what may but should bring changes in accountability laws after hearing all the stake holders.

In Pakistan, the struggle over power often provokes people to spin the law towards their own interests and misuse of state institutions to reach political ends. Under such conflictual circumstances, anti-corruption institutions are frequently used by the people in power to persecute opposition parties. The political disputes and the conflict between civilian and military authorities have not only led to the foundation of anti-corruption agencies at the national level-the Ehtesab Cell (EC) and National Accountability Bureau (NAB), but also created a bias against civilian institutions in the legal provisions that regulate their activity.

The statistical data shows that the NAB, founded in November 1999, has tended to side with the interests of the parties and people in government.

Changes to Nab Law (NAB Amendment Ordinance 2019)

The Federal Cabinet on 27th December 2019, gave its approval to the National Accountability Bureau (NAB) Ordinance, 2019, which was also approved by President Alvi on the same day. The ordinance has been approved by circulation message, media reported. After the ordinance passes, NAB will no longer be allowed to take action against government employees. NAB will not seize property of government officials without the orders of the court, as per the ordinance.

Moreover, if the accountability watchdog cannot complete an investigation against a suspect within three months, the accused will be entitled to bail. In addition, NAB will now only be able to proceed in corruption cases of Rs.500 million and more. Moreover, according to the amendment ordinance, NAB's jurisdiction over matters relating to tax, stock exchange and IPOs has been curtailed. The Federal Bureau of Investigation, Securities and Exchange Commission of Pakistan and building control authorities will be the sole authorities tasked to act on all such matters. In addition, for land evaluation purposes, NAB will seek guidance from the Federal Board of Revenue or the District Collector.

"The application of the NAB laws may not be extended in respect of a private person or entity, who/which is directly and indirectly unconnected with a holder of public office," reads the amendment to the law.

The ordinance has striped the NAB of powers to probe private citizens. Accountability courts have been conferred the power of entertaining and deciding pre-arrest and after-arrest bail applications.

Voluntary return of an embezzled amount and release of a person under a plea bargain: -

- (i) The voluntary return shall be approved by a committee formed by the prime minister.
- (ii) Guidelines to be formed for entertaining a request for voluntary returns and plea bargains.
- (iii) The acceptance of a plea bargain and voluntary return may see the public office holder disqualified to hold office or employment for a period of 10 years or any other period.

A threshold of Rs500 million has been introduced, valuation of immovable properties is to be reckoned either as per the District Collector rate or the Federal Board of Revenue (FBR) rate, whichever is higher.

The new NAB law will also take into consideration that lapses by officials do occur and will not categorise them as offences.

"NAB shall not take cognizance of offences based on procedural lapses" unless there is evidence corroborating that the "officer has materially benefitted from such a decision or

lapse", reads the amendment. Act will only be cognizable if there is an underlying criminal intent and the action results in an illegal or unjustifiable increase in the assets of a government servant.

Furthermore, a government servant's assets will not be frozen solely on account of a belief that they have committed an offence. *"The property shall be frozen once the officer has been convicted by the court, or ordered by the court"* according to the amendment.

An arrested accused released on bail if an inquiry under the NAB ordinance is not concluded within a period of three months. Additionally, the previous 90-day physical custody period of an accused public office holder will be brought down to 14 days.

Paragraph (i) has been added to Section 18, whereby, A case previously investigated by NAB and closed will not be reopened.

The scrutiny committee consisting of Chairman NAB (convener), Secretary Cabinet Division, Secretary Establishment Division, Chairman SECP, Chairman FBR, Officer Law Ministry (21 grade) and an officer of the concerned ministry shall give approval for the arrest of a government servant.

NAB authorities will also have a reduced jurisdiction in matters pertaining to taxation, stock exchange including IPOs and building control *"because appropriate action can be taken by the FBR, SECP and Building Control Authorities"*. All such pending inquiries shall be transferred to the relevant persons or departments. Whereas, the pending cases shall be transferred from NAB courts to Tax Levies and Recoveries, concerned Criminal Courts.

A public servant would be entitled to bail if National Accountability Bureau (NAB) fails to complete investigation within three months.

"The application of the NAB laws may not be extended in respect of a private person or entity, who/which is directly and indirectly unconnected with a holder of public office" reads the amendment to the law. NAB should not take action against government employees on departmental defects, rather there should be proceedings against employees who have evidence to benefit from the defects. The NAB will prosecute over 50 million corruption cases and scandals.

NAB will have to seek approval from the President of Pakistan at the Federal level and from the Governor at the provincial level before filing a reference.

A new Section 36 A has been added, whereby, Chairman NAB shall prescribe a procedure for redressal of complaints against NAB.

The new Section 36 B puts a restriction on NAB officers to issue any statement with respect to any pending inquiry or investigation until a reference has been filed.

PPP Bill for Changes in NAB laws in Senate

The opposition has also introduced a bill in the Senate to curtail powers and jurisdiction of the National Accountability Bureau (NAB) at a time when its key leadership is facing corruption cases being prosecuted by the anti-corruption watchdog. Former chairman Senate and Pakistan People's Party (PPP) Senator Farooq H Naek tabled the National Accountability (Amendment) Bill, 2019 following house's approval as the government did not oppose it.

The bill that seeks to amend the National Accountability Ordinance (NAO) 1999 was referred to Senate standing committee concerned for further deliberations.

Senator Naek while introducing the draft bill said that NAO was promulgated by then military ruler General (Retd) Pervez Musharraf at a time when both Senate and National Assembly had been suspended. "The purpose of the bill is to remove draconian effects of the law," he said adding, that successive governments failed to amend or repeal this law.

NAB was created to pursue mega corruption cases but it had been observed that it in the past had arrested low-level revenue officials and clerks which was the jurisdiction of provincial anti-corruption departments and Federal Investigations Agency at the federal level.

"The bill proposes that NAB could only probe corruption case of at least 500 million rupees worth or more," he added. He said the law proposed that the bureau would have to know about the crime first to probe cases of beyond known sources of income. Senator Naek, a known legal expert as well, told the house that under the existing law, NAB courts have no bail powers and chairman NAB has powers to issue arrest warrants of any accused against whom even reference has not been filed. After this, NAB can keep him/her under detention for 90 days.

In addition to that, violence is used by NAB investigators to get statements of accused during custodial interrogation. He said that either the accused should be questioned without keeping him in custodial interrogation or he/she should be given the right to arrange attorney and to say no to any question. The bill also bars NAB officials from giving public statements and there will be no media trial of any accused, he concluded.

Parliamentary Affairs Minister Senator Azam Khan Swati in his response told the house that the government was bringing its own amendments in the NAB law and this has already been discussed in the cabinet meeting. He said that integrity of present NAB was under question as most of its officials were recruited by its former chairman Qamar Zaman Chaudhry. He admitted there were lacunas in the NAB law.

Solid changes in NAB law are suggested.

- A mere patchwork in the National Accountability Ordinance (NAO) will be inconsequential to carry out an across-the-board accountability of all segments of society. There are overlapping in the jurisdiction of FIA, Directorates of Ant-Corruption and NAB law and may times same cases are simultaneously tried by different investigation agencies. There has to be **one law, one court, one agency and uniform trial** to deal with cases of corruption and corrupt practices for all institutions. This entire process can be given any nomenclature.
- Professionalism competence is required and capacity building and training of investigators, prosecutors, defenders and judges in white collar crime has to be done. Public participation is a must. We to change management & integrity pledges. Codes of conduct need to be revised and strictly followed by all the stake holders.
- Knowledge and training in new and highly sophisticated scientific fields such as computer digitals and forensics. Forensic accounting is required for all stake holders.
- We ought to have an effective Anti-Corruption Legislation. Rules of evidence and admissibility of evidence have to be changed for white collar crime.

- There has to be a strong Political will, commitment of leadership to change. There should be across the board accountability and transparency in dealings. Merit has to be introduced for appointments, we must have the right man for the right job.
- Deregulation must be done and there has to be removal of unnecessary regulations and processes. Rationalization of discretionary powers has to be done.
- Reporting conflicts of interest has to be made strictly mandatory. Politicians, state officials and judges must disclose their assets before appointment and then annually during their tenure/ service/assignment.
- Freedom of information legislation has to be implemented and information should be available to public at large. Emoluments of civil servants in general and anticorruption officials in particular need to be rationalised. Whistle blower protection/ job security would give much needed confidence to employees to expose corruption.
- Anti-Corruption Toolkit Standardization & Automation is the need of the hour. Efficiency of service delivery has to increased.
- If the peers were empowered to carry out accountability of their colleagues in bureaucracy, judiciary and other institutions, why not a parliamentary committee should do this job when it comes to the complaints against the members of parliament. “Why should there be a discretionary and preferential treatment to them alone?”
- There should be an all-embracing accountability and no particular class should be targeted for political considerations.
- Regardless of his category every accused equally has the constitutionally guaranteed fundamentals rights, which can't be denied. If civil servants are being excluded from the purview of the National Accountability Bureau (NAB), why not politicians as well?
- The raising of the threshold to Rs500 m of the alleged corruption involved that the NAB can take up for investigation. Record shows that the NAB has been getting into petty cases of malpractices.
- The reduction in the physical remand to 14 days from 90 is a good move to bring it at on par with other offences. Why should the NAB be allowed to keep the accused in its custody for an exceedingly long duration to extract what he has not committed?
- The NAB chairman should not have wide discretionary powers and the one-man show has to be dispensed with. A committee comprising different officials should take decisions of initiation of investigation and filing of references instead of only the chairman.
- The NAB amendment ordinance, 2019 says an accused will be released on bail if an inquiry under the NAO is not concluded within a period of three months; accountability courts will be conferred the power of entertaining and deciding pre-arrest and after-arrest bail applications of the accused; and the acceptance of a plea bargain and voluntary return will lead to disqualification of public office holder to hold office or employment for a period of 10 years or any other period. According to the new law, private citizens or entities, which are directly and indirectly unconnected with a public office holder, will be excluded from the purview of NAO; and a threshold of Rs500 million may be introduced, and the valuation of immovable properties will be reckoned either as per the DC (Deputy Commissioner) rate or the Federal Board of Revenue (FBR) rate, whichever is higher.
- The ordinance says that civil servants' lapses will not be categorised as offences and the NAB will not take cognizance of offences based on procedural slips unless there

is evidence corroborating that the officer has materially benefited from such a decision or lapse; an underlying criminal intent and action resulting in an illegal or unjustifiable increase in the assets of a government servant will be cognizable; a bureaucrat's assets will not be frozen solely on account of a belief that he committed an offence and his property will be frozen once the officer has been convicted by the court; and NAB's jurisdiction on tax matters and stock markets will be undone.

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