Report on Present Situation, Problems and Solutions in the Legal System Related to Corruption Control and Corruption Cases in Pakistan

Mansoor Qadir

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PAKISTAN / PAKISTAN

REPORT ON PRESENT SITUATION, PROBLEMS AND SOLUTIONS IN THE LEGAL SYSTEM RELATED TO CORRUPTION CONTROL AND CORRUPTION CASES IN PAKISTAN

Mansoor QADIR

Introduction

The significance of corruption is highlighted by the fact that whenever a political regime has crumbled in Pakistan and some other countries in South Asia, a major and often decisive cause has been the prevalence of official misconduct amongst the politicians and the administrators and the concomitant spread of corruption amongst businessmen. The current Pakistan regime has rightly concluded that in order to provide suitable system in the future, corruption from all segments of society must be eliminated. This task has been identified as a priority objective in line with the seven points Agenda of President Gen. Pervaiz Musharraf and is being pursued with full commitment in an unbiased, transparent manner with new optimism and seriousness, so that the word accountability no longer remains merely a slogan amounting to self-deception. Strict accountability is also a major public demand, as the people believe that a non-political government can deliver on this issue. A Government rooted in the masses, committed to public well-being, cannot afford to loose the opportunity or down play the problem of accountability for if it does so it will do it at its own peril. Even the World Bank in its latest report has acknowledged the sea change response, which has taken place with the efforts of the Government of Pakistan towards improving its financial management in accountability functions.

Genesis of Corruption in Pakistan

In order to develop a practicable Anti-Corruption Strategy in Pakistan, it is imperative to understand the phenomenon of corruption in its historical and
political context. The culture of corruption was promoted in the colonial system of administration by the award of lands, titles and jobs to a specific group supporting colonial objectives as part of political bribery. In Pakistan white-collar crime had its roots in the 1950s, starting from settlement of refugee claims, industrial sanctions, allotment of agricultural lands, although the mechanics of money making giving rise to rampant corruption.

Till the Second World War, corruption was prevalent in considerable measure amongst Revenue, Police, Excise and Public Works Department officials, particularly of the lower grades while the higher ranks were comparatively free from this evil. By the time of Independence in 1947 increase of corruption by public officials became much noticeable. During the last 10 years all elected Governments have fallen due to massive political corruption. The role of money in politics in Pakistan has brought in a new class of wealthy businessmen turned politicians who have constantly strived for saving their business interest over the national economic advantage. Some of the main reasons for post independence Corruption are given as under:-

a) Land Awards
Settlement of millions of homeless through allotment of lands resorting to corruption. Fake claims were approved for the allottees.

b) Bloated Public Sector
Nationalization Programme in the 1970s being a poor economic option brought a new form of nepotism of corruption. Bureaucracy inducted into the public corporate sector for collusive mode of corruption both at individual and organizational level.

c) Private Sector Cooperatives
In the decade of 70s, 80s and even upto 90s a large sum of the public was misappropriated by private sector Cooperatives, Housing & Finance Corporations. As a result public money to the tune of Rs.13 - 14 billions went into the accounts of these Corporations.

d) Drug Money
Pakistan saw the entry of drug money in the early 80s inducing corruption and strengthening the underground economy.

e) Foreign Aid and Investment
f) The utilization of foreign funds was not properly perceived. The public sector utilization of foreign funding was not done prudently thus scaring away investments as well as tying up the country in heavy foreign debts.

g) Informal structure of National Economy
h) An informal and undocumented economy coupled with lax procedures provided considerable opportunities to the business community for un-fair practices.
i) g) Institutional Erosion
The institutions of legislative, executive and judiciary failed to establish a system of check and balances. Institutional failure is one of the main causes of corruption in Pakistan.

Nature, Causes and Extent of Corruption

Corruption in our Country is so pervading in that it has destroyed the very fabric of our society. To keep the Government clean, the current regime has shown its will to eradicate corruption by initiating a crusade against it through the efforts of NAB and other Anti-Corruption Agencies thereby strengthening the stability and durability of its social and political institutions. Some of the major issues which have been the main cause of corruption in our society are as follow:-

1. **Public Utilities** In terms of the amount of corrupt money changing hands, taxation department, state-owned banks and DFIs, power sector utilities like WAPDA, Sui-Gas etc., and other public works departments account for the large scale institutional corruption.

2. **The Tax Regime** Characterized Pakistan’s Taxation system by widespread tax evasion, lack of documentation, existence of large untaxed sectors and weak administrative capacity to collect taxes resulting in as much as 50% of the total urban income going unreported. As per recent estimates, annual tax evasion stands at Rs.218 billion.

3. **Public Sector Banking** Public Sector Banks have dominated the financial sector since the nationalization of the Banks in the 1970s, have experienced serious deterioration in their loan portfolios mainly because of political interference in their lending and loan recovery decisions. About 90% of the defaulted loans and bad debt concentrated among a small number of influential people (top hundred defaulters). Recently, the system protected such defaulters. In many cases, loan amnesties were granted. Loan recovery efforts by officials of public sector banks were undermined by fear of politically motivated retribution.

4. **Public Sector Expenditures** Due to a non-transparent process and weak accountability system, the public sector expenditures are officially misused, thereby, kickbacks and pilferage of revenue is in connivance with the public officials.

5. **Underground Economy** The burgeoning under ground economy and smuggling in large part are symptoms of wide spread corruption in Pakistan’s economy. This underground economy has expanded at an annual rate of 20% over the last 23 years as compared to the average annual growth of 17% under normal GDP.
Short Comings of Existing System

Many Governments in the past have attempted accountability drive in some form or other but these could not materialize into potent effort to check the spread of corruption in the society. Some of the Main Causes of Failure are:-

1. Misuse of the Agencies by Successive Governments, for arms twisting of their political opponents.
2. Poor investigations and lack of professional expertise, to detect and investigate crimes towards vested interest.
3. Misuse of mandate by the Investigating Agencies, to please their political masters under social or financial coverage.
4. Implementation of Fair and Just Accountability, lacked in successive Governments. Resultantly, the public demand for accountability has gained momentum in the last decade. Weakness in the accountability system, in-effective laws and the Anti Corruption Agencies own lack of professional expertise to detect and investigate the white-collar crimes.
5. The Incompatible Legal Judicial System, is widely perceived to be an obstacle to economic efficiency. Legal institutions in Pakistan are under-staffed, lack of trained administration, defective management system and technology.
6. Appointment of Heads of Investigating Agencies, and other officers on political consideration and not on merits.
7. In-adequacies & Institutional Weakness of the Anti Corruption Agencies. The ACA’s do not have the necessary capacity for undertaking the national task.

Key Corruption Issues in Pakistan

1. Post independence settlement of refugees and allocation of properties, termed ‘Evacuee Property’. Corruption thus seeped into Pakistan society surreptitiously spreading its tentacles everywhere.
2. The interventionist economic polices and discretionary powers (liquid petroleum gas quotas & textile quotas. Wide discretionary powers tempted public officials into criminal acts.
3. Inadequate compensation to civil servants and ‘Demonstration Effect’ induced by the corporate salaries and remittance from Gulf countries is another contributory factor to corruption.
4. Excessive aid flows over the years and the reluctance of international funding agencies to tackle corruption, even the social sector projects have been victim of grafts, also social sectors programme are directed at less visible outputs. A large number of projects in the social Sectors have been mere exercises in paper pushing.
5. In the 1980s Pakistan received a major portion of its aid in the form of grants and these funds served to line many a pocket.
6. Rent-seeking in land acquisition and undertaking imprudent economic projects like “Green Tractor Scheme”, “Yellow Cab Scheme”, “Karachi Mass Transit Project”, “IPPs”, “Ghazi Barotha Hydropower Project” and “Motorway Project” have been a major source of corruption. Exorbitant valuation led to huge increases in project outlays.
7. Crime-wise analysis reveals, financial scams have severely damaged public trust foremost among these was the Cooperatives scandal, which has shaken the confidence of the small depositors. In a country with low saving rates such incidents have long-term economic implications.
8. Loan default resulted in trust breaching crimes. Trust nationalization policies of the 1970s gave direct political controls and financial prudence gave way to political pressure and bribes. Political clout and ability to bribe became the criteria for loan issuance.
9. Weak regulatory system. The state Bank of Pakistan was unable to prevent disasters. Financial institutions were completely at the mercy of ruling clique of businessman, who did not waste the opportunity to exploit the situation to their advantage. Arrival of the businessman politician undermined the tax authorities.
10. Corruption is invariably a collusive form of activity premised on a nexus of the elites e.g. politicians, bureaucrats, businessmen (including foreign companies) and technocrats. Colluding Bureaucrats assisted in the politicization of the civil services thus ushering in the subsequent loss of professionalism.
11. Delivery failures of civil institutions to greater extent are attributed to planned political inductions at lower levels through payment to legislators. The result was reduced efficiency and increased corruption. Some of the daring functionaries accumulated assets worth millions.
12. Complete breakdown of structures, including the internal accountability structure of government departments and Anti-Corruption Organizations, thereby resulting in delivery failures and institutional collapse.
13. Financially motivated, the sociological factors responsible for it cannot be ignored. Favours were given on the basis of ethnic, familial, religious and other social considerations are responsible. Large number of public office holders have failed to stand up to resultant pressures.

Crisis of Governance

Pakistan ranks 170th out of 210 countries in per capita income. Pakistan has borrowed to the point where it now stands with 40% of the government budget being spent on debt servicing. With another quarter of the budget going to the defence services and more leaking out in corruption, little remains for
development. Therefore, Pakistan’s travails of governance viciously reinforce one another. The three crisis of governance are:

i. Corruption.
ii. Crime.
iii. Weakness of the justice system.

These issues need to be urgently addressed if Pakistan is not to herald the reverse wave of the future. A genuine Rule of Law requires an over-lapping, reinforcing system of agencies, horizontal accountability, which needs to be empowered. In order to strengthen the institutional Anti-Corruption framework, a more systematic approach requires building integrity and sustainable development for which ‘National Integrity System’ needs to be built with mutually supportive pillars. These pillars of integrity are inter-dependent, weakening of one pillar results in an increasing load being shifted on the others.
Improvements in the Inadequacies of Anti-Corruption Agencies

1. Law and procedure for all the Anti-Corruption Agencies should be uniform. Reformulation of existing laws and rules and procedures is urgently required.

2. The existing Anti-Corruption Agencies in the Provinces should maintain their constitutional status with working linkages with NAB. Capacity building and strengthening at grass root level in districts. Training in white collar crimes etc. is urgently needed to make ACAs more effective. The Anti-Corruption Agencies will deal with middle level corruption and large scale corruption cases would be the focus of NAB.

3. The administrative, financial jurisdiction and public convenience requires that there should be one court instead of three different kinds of courts functioning at present for which purpose necessary law making is required. The courts should function under the common name of ‘Accountability Courts’ or ‘Anti-Corruption Courts’ which would also reduce the financial burden and duplicity on the public exchequer.

4. Anti-Corruption Agencies should have their own Vigilance Wings on the pattern of NAB to reinforce and break difficult cases as well as carrying out sting operations against their own delinquent employees/staff.

5. Incentives be given to the officers to attract them for posting in Anti-Corruption Agencies as at present they do not have accommodation, transport or telephone facility available. The IOs may also be given same defined percentage of recovery as reward as being done in some Federal and Provincial Departments.

6. Unions be banned by declaring the Anti-Corruption Agencies as essential service. The same does not exist in other Provinces, Police or FIA.

7. It is also proposed that a ‘Provincial Anti-Corruption Commission’ be established to obviate undue influence and pressure on the working of the Agencies.

Vision for the Future

1. The present accountability system has three-tiered structure i.e. first tier of the Anti-Corruption edifice is the Internal Mechanism inherent in every Government Department. The Provincial Anti-Corruption Establishments and the Federal Investigation Agency form the second tier, and the NAB constitutes the third tier. Ideally, the internal accountability systems should take care of the bulk of the corruption related matters. With the promulgation of the NAB Ordinance, the basis of a sound accountability system has been laid. These policies and the development of accountability systems are complementary. The growth of NAB and other ACAs will hopefully be supplemented by appropriate Government polices devised for better governance. NAB should be involved in cases with
macro level impact, with the FIA and ACEs taking care of the rest. For attaining better results, the role and the related scope of duties of the FIA and the ACEs need to be modified to comply with the NAB programme.

2. At times, the archaic functioning of the institutions was itself responsible for corruption. The current regime has been instrumental in rehabilitating the image of the institutions. The office of the Auditor General of Pakistan has been strengthened through an Ordinance. This will enable the Auditor General to constantly look out for better auditing techniques, new avenues of auditing and the use of information technology. State Bank of Pakistan has been given autonomy and structural reforms are underway. Along with Public Accounts Committee, it can serve as an important conduit between the Government and the Anti-Corruption Organizations.

3. Anti-Corruption measures fall into three broad categories; Prevention, Monitoring, and Combating. The restructuring of the administrative hierarchy and political devolution are exercises in the preventive sphere. The Auditor General and the Ombudsmen perform monitoring functions at the federal and provincial levels. The State Bank of Pakistan monitors the activities of the banking and financial sector, which the Securities and Exchange commission undertakes the monitoring role in the corporate sector. Combating corruption within the ambit of an accountability forum is the task of the Anti Corruption Agencies and the Judicial System. The present Government has enforced the civil service reforms and responsibility of powers, which are briefly given as under:

a) Civil Service Reforms
The government has initiated studies for reducing the size of bureaucracy and number of public sector organizations and ministries. The right sized bureaucracy would be a well-paid and competent work force, available to the government.

b) Devolution of Power & Responsibility
Successive governments in Pakistan have supported the idea of devolution, but, this support has not been translated into action. The present government of Pakistan introduced a plan of devolution of power to the grass-root level as one of its main objectives. The plan to establish genuine democracy at the lower levels in a manner so as to ensure that power is transferred to the people comprehensively and irrevocably. Under the devolution plan, public representatives at district level will generate resources at District level and carry out need oriented developmental projects in an open and transparent manner. Exclusive monitoring should also be ensured through designated bodies of public representatives. Vested with power and their own stake in development, the new set up will hopefully be more responsive to the needs of effective accountability.
c) Socio Economic Reforms
Although ACA’s due to their performance have created an impact during two years of their existence, the general public is not convinced that there has been a reduction in corruption. One reason perhaps is the inability to contain petty corruption which directly affects the common man. Reduction of corruption at this level cannot come about only through anti-corruption activities but it calls for socio-economic reforms affecting all segments of civil society.

d) Deregulation of Economy.
An ambitious programme of privatization of public units in the Energy, Financial and Communication sectors is already underway. Unless absolutely in the public interest, the requirement of Government sanctions/approvals are being minimized and planned to be eventually eliminated.

e) Capacity Building of ACA’s
In view of the dimensions of the phenomenon of corruption in Pakistan, anti-corruption institutions in the country require improvements in both quantitative and qualitative terms. The current dispensation with its successful institutionalization is not equipped to cope with all the requirements of anti-corruption operations. Extensive capacity building measures are needed before they are capable of containing nation-wide corruption.
Investigation of white-collar crime requires expertise in financial forensics, criminal law and other procedures. At present no specific entity in Pakistan combines all these skills. Besides the Provincial Anti-Corruption Establishments other departments responsible for monitoring and auditing public offices should also be strengthened.

f) Mobilizing Public Opinion
The deleterious fall out of burgeoning corruption has eroded ethical values. The corrupt emerged out of their closet and gained perverted respectability amongst the elite. NAB and other anti-corruption agencies have somewhat managed to reduce the ostentations display of ill-gotten wealth and lessening of the social acceptability of the corrupt. The overall impact has been limited and thus a more concerted effort is required to mobilize public opinion so as to ostracize the corrupt in society.

g) Good Governance.
Across the board accountability is imperative for ‘Good Governance’; yet equally important and directly related to administrative accountability are improvements in social indicators, like Poverty Alleviation; Improved Literacy Rates; Better Education and Health Services; Increased Gender Equality, which are some
of the essential pre-requisites for development. Attainment of respectable levels of these indicators along-with elimination of corruption would lay the basis for good governance.

h) Documentation of Economy and Re-structuring of Tax System.

Recognizing that a very large informal economy and complex taxation system are the root cause of corruption, the government is addressing these issues by following:-
A massive drive on documentation of economy is being carried out with the help of Pakistan Army, to bring on record the real economy for widening the tax base. Through this effort about 1.0 million residential and commercial units would be registered. This process would eliminate the revenue slippages quite effectively. The entire tax department is being restructured to bring in computerization with the purpose of reducing contact between tax collector and tax payer. Work on simplification of laws is in the pipeline.

Conclusions

1. Given the Country’s history on corruption we need NAB as a permanent institution by way of accountability as well as other Anti-Corruption Agencies like ACE & FIA in the Provinces by way of accountability to restore the peoples confidence.
2. To combat corruption in the new millennium, it is necessary to devise national Anti-Corruption strategy for capacity building, resource development, improving the skills and knowledge of investigators and prosecutors in the complex financial/local/cyber crimes.
3. A particular collective approach and strategy is required to make accountability a sustainable process.
4. For the awareness of the reforms it is essential that the support of citizens, NGOs and society is essential to have a well-informed public opinion thereby, developing an environment of self-accountability. Adoption of such Anti-Corruption measures will shift from active to pro-active approach thus building the cycle of awareness and feed back.
5. We need to strengthen our institutions of public administration and remove the ill effects of over all decisions and ensure that in future they do not become bastions of patronage.
6. The concept of accountability can become enforceable, if the judicial system is strengthened and if we confirm to the Rule of Law and we are guided by the due process of law. Shift is therefore essential from individuals to organizations, through law, rules & regulations in-force.
7. Having dealt with prevention issues in the short term, the commitment to combat corruption in the long term can only be fulfilled if economy of the country permits the Govt. to meet the basic needs of the population and transparent and efficient institutions are established, which would be possible only with the will and commitment of the Government.

8. While implementing the Anti-Corruption strategy we must learn the lessons of other countries, with respect to both mistakes and successes. Everything that can improve the genuineness of access of accountability in Pakistan should be adopted specially the experience of the countries where socio economic set up is similar to Pakistan.

9. In order to prevent corruption we need to eliminate procedures and cumbersome systems that easily lead to corrupt behaviour and try to change the attitude of our Government officials.

10. There is a need to take a clear decision regarding how to deal with the widespread systematic corruption and have a check so that the current corruption is combated effectively.

11. Our main focus under the current strategy should be to strengthen the existing Anti-Corruption Agencies without bringing major structural/additional changes and without the assistance of the donor agencies.

12. To make our Anti-Corruption strategy effective, it is proposed that a three-tiered accountability process be put in place. In the first tier, the departments own internal controls should be made effective, while in the second tier, the Anti-Corruption Agencies should under take the task of Accountability and at the higher levels the NAB should be the last tier to take charge of prospective and collusive corruption in high places.

13. It is also suggested that proper salary incentives be given to the Investigators in the Anti-Corruption Agencies to ensure a minimum living wage for subsistence and for honourable living of the Investigators who are the main arm of the Investigating Agencies. There is a need to provide the officers with appropriate compensation and social benefits.

14. The present Government of Pakistan has included devolution of powers to the grass root level in the Districts as one of its main objective. To ensure the smooth functioning of the devolution plan a system is required to be devised for continuous monitoring of the performance/activities of this system and periodical evolution of the overall working of the system. This will help in eliminating the misuse of authorities/powers and ensure better financial management and optimum utilization of the resources at the district level.