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The Dark Side of Authority: A Critical Analysis of Anti-Corruption
Frameworks in Pakistan

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Abstract

Pakistan is experiencing a very hard time due to various external as well as internal factors that undermine the rule of law, good governance and development objectives. A significant part of these internal problems relate to corruption. Although various anti-corruption frameworks have been introduced in Pakistan by the civilian as well as military regimes, these have been largely ineffective. The article critically analyzes the anti-corruption frameworks introduced in various regimes to analyse the reasons for this ineffectiveness. It analyses the current situation on corruption in Pakistan and considers whether the existing legal mechanisms in Pakistan are capable of dealing with the menace of corruption.

Key Words: Pakistan; corruption; anti-corruption; legal frameworks; effectiveness; accountability.

1.2 Defining “Corruption”

The word ‘corruption’ is defined by the Oxford Advanced Learner’s Dictionary as “dishonest or illegal behavior, especially of people in authority or the act or effect of making some body change from moral to immoral standards of behavior”.

The United Nations Convention against Transnational Organized Crime (UNTOC) describes corruption as, “the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties”¹ (UN, 2004: 10).

In recent times, the World Bank, the IMF and other international institutions have taken up leading roles in the effort to tackle corruption. The United States government has also played a key role in global anti-corruption under the US Foreign Corrupt Practices Act of 1977, under which US companies may be penalized for bribery in international business transactions. The impact of various anti-corruption campaigns has had a significant impact.

In Pakistan, anti-corruption campaigns and reforms have led to the indictment of political figures and high profile personalities on charges of corruption. For example, in two successive regimes of Mian Nawaz Sharif and Benazir Bhutto, some officials were dismissed on the charges of Corruption in 1990 and 1993 respectively by President Ghulam Ishaq Khan under article 58 2 (b) of the Constitution. In 1997, the Benazir government was dismissed on the same charges by the President Farooq Leghari (Wilson, 2009: 83).

History reveals that the issue of corruption is not new and is frequently cited in different civilizations. For example, Kautilya,² a well-reputed Prime Minister of an Indian state, almost two thousand years ago, described this issue in his noted work “Arthashastra” (Tanzi, 1998: 559). Dante in his “Divine Comedy” has categorized bribery in the lowest section of Hell, which reflects Middle-Age awareness of the phenomenon. Shakespeare also discussed the issue of corruption in his plays. The framers of the U.S. constitution were also very concerned about the issue, so they included a provision that American Presidents could be impeached on grounds of corruption and treason (Tanzi, 1998: 559-560).

Sen notes that rampant corruption in Asian and African states is a key obstacle to development. He concedes that to eradicate corruption altogether from society is not an easy assignment but effective accountability laws can produce better results to control this scourge (Sen, 1999: 278). He cites the work of a Chinese author almost around 122 B.C., Huai-nan Tzu who observed that:

¹ Article 8 (1) (b) of the United Nations Convention against Transnational Organized Crime.

² In the fourth century B.C, an Indian political expert Kautilya after thorough observation differentiated forty diverse behaviours that can allure the civil servants towards monetary dishonesty and identified various methods of accountability followed by punishments and incentives to avoid such actions (Sen, 1999: 275).

The power to achieve success or failure lies with the ruler. If the measuring line is true, then the wood will be straight, not because one makes a special effort, but because that which it is “ruled” by makes it so. In the same way if the ruler is sincere and upright, then honest officials will serve in his government and scoundrels will go into hiding, but if the ruler is not upright, then evil men will have their way and loyal men will retire to seclusion (Sen, 1999: 278).

A report by Mahbub ul Haq Human Development Centre points out that although corruption is everywhere in the world, it mutates in a different form in South Asia. Firstly, corruption starts from the upper stratum to the lower one, which hampers the development process. Secondly, monies accrued from corruption are deposited in overseas foreign currency accounts. Thirdly, the people involved in corruption are often not penalized because of their relationship with government officials; and corrupt persons are so influential that they hardly feature on the accountability radar. Fourthly, corruption is one of the major causes of growing poverty. Accordingly, there is an immediate need to draw the attention of authorities to fight corruption and to take practical steps not only to punish corrupt elites but also to end poverty (1999: 99).

In order to understand the nature and problems of corruption and the utility of social justice in providing realistic alternatives it is imperative to first examine the outlook of corruption in Pakistan and a secondly, to assess its deeper impact.

2.0 Causes and manifestations of corruption in Pakistan

Quaid-E-Azam Muhammad Ali Jinnah, the founder of Pakistan said in an address to the 1st Constituent Assembly after independence on 11th August 1947 that:

One of the biggest curses from which India is suffering - I do not say that other countries are free from it, but I think, our condition is much worse - is bribery and corruption. That really is a poison. We must put that down with an iron hand and I hope that you will take adequate measures as soon as it is possible for this assembly to do so (Jinnah's Speech to the first Constituent Assembly of Pakistan on 11th August, 1947).

A number of scholars identify various reasons for corruption in Pakistan. For example, Awan notes that the culture of bribery and corruption was rampant during colonial rule in India. He further reveals that during the British invasion in Indian Sub-continent, they tempted the local leaders by rewarding them with ‘jagirs’ (lands) and titles in return for their loyalties to the British rule (Awan, 2004: 19).

The National Anti-Corruption Strategy (NACS) of Pakistan identifies one historical catastrophe that fostered corruption in the country; mass migration because of the partition of the Indian sub-continent. The separation of East Pakistan resulted in migration that led to shortage of skilled civil servants in various institutions culminating in poor performance. (GOP, 2002: 11).

Ali analyzes the level of transparency in Pakistan and notes lack of access to information and the concealment of public documents are so widespread that it has fundamentally affected free access to governmental archives. Generally, there is a perception that the official reports and press releases are usually unreliable and deliver misleading information. The publication of yearly reports is a rare phenomenon and when it does happen, they are usually littered with inaccuracies. Parliamentary enquiries proved to be helpful in accessing information, but this has also been fraught with problems of delay or refusal on the basis of national security. In general, the courts provide through public trials sufficient official information especially on those cases involving governmental departments. But it is also a noted fact that information from such sources is mostly limited and does not reach the people regularly. Information is sometimes relayed in cases where a case obtains considerable media attention (2007: 6-7).

The International Crisis Group in its report on Asia states that the eight years regime of General Pervez Musharraf led to an incompetent civil service that was subservient to the military government. A systematic policy was adopted that led to the recruitment of army Generals as civil servants. This included the chairperson of Federal Public Service Commission (FPSC) who was the principal authority for recruitment and promotion in the civil service. The military government's ill-conceived devolution plan aggravated an already dysfunctional system. Obsolete rules and regulations and an inflexible ranking procedure in civil and military bureaucracy further weakened the supervision of public servants (ICG, 2010: I; Hart, 2006: 7).

Sayed asserts that both the politicians and military personnel are complicit in boosting corruption. He notes that the politicians should be more responsible as compared to the high army officers for three reasons. In the first place, the process of election enables the electorate to give their verdict on the conduct of politicians. However, it might not be true in the case of Pakistan because the politicians find an opportunity to be elected again and again from the same class because of corruption, which means the electoral democratic process is not based on fair play. It is very difficult to assess the performance of government on the basis of voter's rating as no elected government has completed its tenure in Pakistan. Moreover, the audit and accountability regulations are rarely applied to the military officials.³ The activities of politicians are always quite visible but the military do not have sufficient checks and balances, especially over military expenditure. A comprehensive budget of the Pakistan Army has never been presented or debated before the House. In addition, the civilian inspection establishments are not allowed to check the army accounts and even the military officials are not liable to be investigated by the civilian anti-corruption establishment as per situation in Pakistan, and it is quite risky for the media to demand accountability from army officials (2010: 36).

Gilani⁴ said that the National Reconciliation Ordinance (NRO)⁵ issued by President Musharraf in October 2007 opened new ways to legalise corrupt practices in Pakistan. The politicians,

³ The military budget cannot be discussed in parliament and they have their own system of accountability.

⁴ The Chairmen Transparency International of Pakistan (TIP).

⁵ On October 5, 2007, President General Musharraf promulgated the National Reconciliation Ordinance (NRO), which provided immunity to politicians, political workers and bureaucrats who were indicted of corruption, misappropriation, money laundering, murder and terrorism between January 1, 1986 and October 12, 1999, the

bureaucrats and army officials accused of corruption were amongst the beneficiaries under the NRO. The chairperson of Transparency International Pakistan (TIP) identifies the army as the most corrupt institution in Pakistan. He however applauds the efforts of the current Army Chief General Ashfaq Pervez Kayani for taking bold initiatives in tackling corruption especially in the management of the Defence Housing Authority (DHA). He asserts that corruption is widespread due to non-availability of real democracy in Pakistan and as a result, countries such as China, Saudi Arabia and the United Arab Emirates (UAE) are not willing to invest in Pakistan (Hussain, 2009).

Moreover, he further suggests that the employment of army generals after their retirement should be discouraged. He also calls for an effective law to strengthen accountability of army generals and the judiciary. He accuses the judiciary of validating martial law regimes from 1951 to 2007. In addition, the government of Pakistan has weak governance structures which ultimately result in economic crisis, growing poverty, increasing inflation, serious food shortage, energy crisis and mounting unemployment in the country (Ibid).

Transparency International Pakistan conducted a survey to determine the causes of corruption in government departments and came up with the following results in its 2009 report.

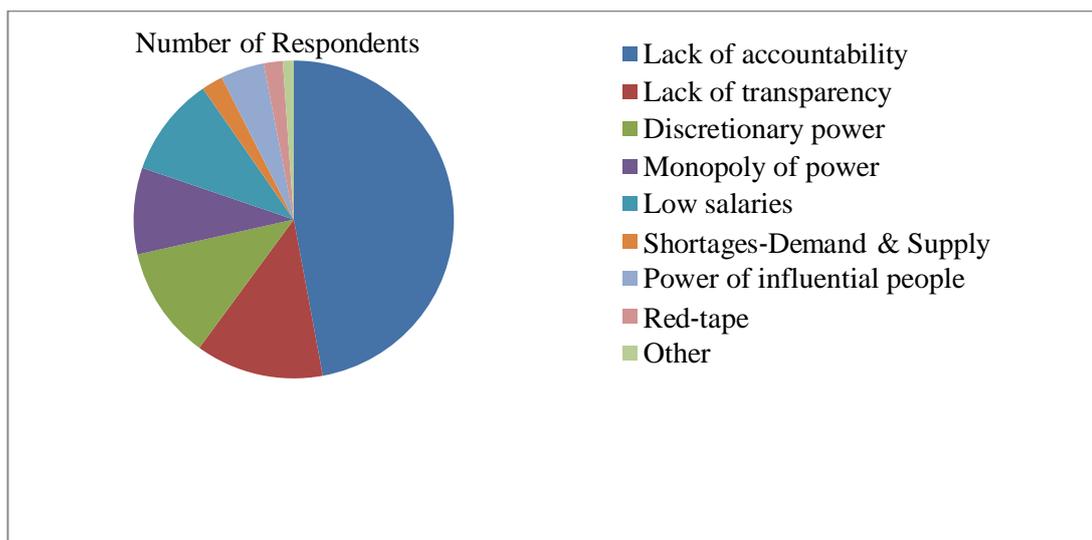
Table 1.1 Causes of Corruption in Government Departments

Causes of Corruption	Number of Respondents	Percent
Lack of accountability	2449	47.096
Lack of transparency	673	12.942
Discretionary power	594	11.423
Monopoly of power	458	8.8077
Low salaries	527	10.135
Shortages-Demand & Supply	113	2.1731
Power of influential people	229	4.4038
Red-tape	100	1.9231
Other	57	1.0962
Total	5200	100

Source: "National Corruption Perception Survey TI Pakistan 2009". *NCPS 2009*, <http://www.transparency.org.pk/documents/NCPS%202009/NCPS%202009%20%20Report.pdf>

Graph 1.1 Causes of Corruption

period between two martial law regimes in Pakistan. On December 16, 2009, the Supreme Court of Pakistan took an important step by declaring this act of the President unconstitutional and without lawful authority (TIP, 2009).



The table below shows Pakistan’s most corrupt rank during the military as well as civilian regimes from 2005 to 2012.

Table 1.2 Transparency International; Corruption Perception Index Pakistan Score and Ranking

Year	Pakistan Rank/Score	Pak Most Corrupt Rank	No. of Countries Ranked	Military and Democratic Regimes
2012	139/2.3	33	176	President: Asif Ali Zardari (6 September 2008 to onwards), PM: Raja Pervez Ashraf (22 June 2012 to onwards)
2011	134/2.5	42	183	President: Asif Ali Zardari (6 September 2008 to onwards), PM: Yousaf Raza Gilani (25 March 2008 to 26 April 2012)
2010	143/2.3	34	178	
2009	139/2.4	42	180	
2008	134/2.5	47	180	
2007	138/2.4	42	179	General Pervez Musharraf (as Chief Executive of Pakistan 12 October 1999 to June 2001);
2006	142/2.2	20	163	
2005	144/2.1	16	159	
2004	129/2.1	19	147	President: General Pervez Musharraf (June 2001 to 18 August 2008); PM: Mir Zafarullah Khan Jamali (21 October 2002 to 26 June 2004); PM: Shaukat Aziz (20 August 2004 to 15 November 2007)
2003	92/2.5	42	133	
2002	77/2.6	26	102	
2001	79/2.3	13	91	
2000	N/A	N/A	90	
1999	87/2.2	13	99	

1998	71/2.7	15	85	President: Muhammad Rafiq Tarar (1st January 1998 to 20 June 2001); PM: Nawaz Sharif (17 February 1997 to 12 October 1999)
1997	48/2.53	5	52	
1996	53/1	2	54	President: Farooq Ahmad Khan Leghari (14 November 1993 to 2 December 1997); PM: Benazir Bhutto (19 October 1993 to 5 November 1996)

Source: "Corruption and its Deep Impact on good governance in Pakistan". *Pakistan Economic and Social Review*, 48(1): 123-134.
<http://www.pu.edu.pk/economics/pesr/PDF-FILES/7%20JAVID%20Corruption%20and%20its%20Deep%20Impact%20on%20Good%20Governance%2085.pdf>
 "National Perception Survey" 1996-2012. *Transparency International Pakistan*, <http://www.transparency.org.pk/>

Transparency International Pakistan showed below some results of the most corrupt departments in a survey conducted by Gallup Pakistan and Gratis for TIP.

Table 1.3

2011 Ranking	2010 Ranking	2009 Ranking	2006 Ranking	2002 Ranking
1. Land Administration	Police	Police	Police	Police
2. Police	Power	Power	Power	Power
3. Taxation	Land Admin.	Health	Judiciary/Courts	Taxation
4. Judiciary/ Courts	Education	Land Admin.	Land Admin.	Judiciary/ Courts
5. Power	Local Government	Education	Taxation	Custom
6. Tender & contracting	Judiciary	Taxation	Custom	Health
7. Customs	Health	Judiciary/Courts	Health	Land Admin.
8. Health	Taxation	Local Government	Education	Education
9. Military	Custom	Custom	Railway	Railway
10. Education	Tender & Contracting	Tender & Contracting	Bank	Bank

Source: "National Corruption Perception Survey 2011". 28th December 2011.
<http://www.transparency.org.pk/ncps2011/ncps2011.pdf>

The report identified the factors that have made it almost impossible to prosecute the political leadership for corruption. General Musharraf promulgated the NRO that provided immunity to political leaders, army officials and civil servants from all charges of corruption which provides an opportunity to establish corruption at institutional level. In addition, the anarchy and uncertainty that deeply engulfed the affairs of the country, besides growing inflation, joblessness and rapid decline in development have aggravated the situation (TIP, 2009).

Khawaja and Mian observe that that political meddling and corruption is enhanced by government-controlled banks that have been used by top-level officials to swindle large sums of money. In addition, politicians use the state controlled banking system to gain access to huge loans from these banks and then default on repayment (2004: 7).

Ishrat Husain⁶ reveals that political involvement is pervasive in the banking system of Pakistan. He notes that:

The nationalized commercial banks and development financial institutions have made a few thousand families fabulously rich but made the rest of the population pay the price for their malfeasance. The cost of capital has become exorbitantly high and the access to credit has been so severely curtailed that legitimate businesses and enterprises are unable to carry out their productive activities or expand. No wonder, employment opportunities are shrinking and the ranks of the unemployed youth are swelling. The recruitment, postings and transfers in all government ministries, departments and corporations are largely made either in exchange for outright pecuniary favours or on purely political considerations. The result is that the government offices are saddled, barring some honourable exceptions, with incompetent and dishonest functionaries who are always trying to please their bosses or political masters while being completely oblivious to the grievances of the common man whom they are supposed to serve (Husain, 1998).

The Additional Auditor General of Pakistan while delivering his speech at the Association of Chartered Certified Accountants (ACCA) in Lahore admitted that corruption is widespread in Pakistan due to some flaws in the economic, social, political, and legal frameworks; resulting towards a loss of Rs. 500-600 billion to the treasury. He said, “We have developed a culture of tolerating corruption” whereas good governance and transparency are indispensable elements for sustainable and even-handed economic development. He laments Pakistan’s constant appearance on the list of most corrupt states in the world (Ahmed, 2009).

⁶ Dr. Ishrat Husain a renowned Pakistani banker and economist previously served as an economist in the World Bank in 1979. He also served as governor of the State Bank of Pakistan for almost six years (02/12/1999 to 01/12/2005). He worked for ‘National Commission on Government Reforms’ for the period of two years (2006-2008).

Husain argues that Pakistan harbours a “legalized corruption” which provides excuses to the members of national and provincial assemblies, secretaries, ministers and their associates for their corrupt practices. For example, corruption is encouraged in the shape of allocation of government housing to these elites at rates below the market value. This also includes distribution of permits and licenses without merit to their families and friends causing a huge loss to the public treasury. He added that due to this problem, our political system is a “plotocracy⁷” and not a democracy (Husain, 2010).

Another important issue of low wages for public servants was identified as a contributing factor for corrupt practices. There is an urgent need to transform the civil service including the revision of pay structure so that an average family may survive. The World Bank also identified political intervention as one of the root causes of the problems faced by Pakistan, echoing calls for reforms of the civil service (World Bank, 1998: 25).

3.0 Overview of Anti-Corruption Frameworks in Pakistan

In Pakistan, corruption not only engulfs the public servants but also other organs of state. Twelve different legal instruments have been enacted to deal with this problem. In recent years, public demands have been increased to deal with the issue of corruption which has resulted in assurances by the political leaders to tackle and punish those involved. In spite of the promises, not much has changed. The new institutional structure for the elimination of corruption is quite deficient in its performance due to the absence of a robust tribunal. There is consensus that Anti-Corruption Commissions failed to achieve their goals because the proper environment has never been provided (i.e. strong judicial set up, a clear consistent process and adoption of stringent measures to improve public servants’ accountability to the public) (World Bank 1998:25).

In Pakistan, various anti-corruption laws have been enforced by different regimes but an effective execution was always a key problem for the authorities. For example, the Prevention of Corruption Act 1947 passed by the British government was reinforced by the Public Representatives (Disqualification) Act of 1949 and the Elected Bodies (Disqualification) Ordinance of 1959. These laws were meant to purge dishonesty from the public service. But they were abused and ultimately used to victimize political opponents (Schultz, 2007: 153).

The Federal Investigation Agency (FIA) was established to tackle corruption. It was later replaced by Pakistan Special Police Establishment (PSPE) in 1975. The West Pakistan Anti-Corruption Establishment was set-up in 1961, which was subsequently split into provincial ACE’s after the dissolution of One Unit in 1970. The highly intricate procedural aspects and excessive political intervention transformed these bodies into unproductive organs as they were plagued with corruption and inefficiency. The Anti-Corruption Agencies (ACAs) not only failed to control this problem but they also became entangled in corruption. The pervasive corrupt practices in the anti-corruption agencies forced the government to establish the

⁷ The term “Plotocracy” or “Qabza Group” is commonly used for land mafia which is backed by some parliamentarians, who occupy the government as well as private lands and pay a minute price as compared to the market price. In addition, the parliamentarians are awarded lands free of cost by housing societies.

Inspection Commission. In 1997, 'the Ehtesab Bureau' was established to support the actions taken by the 'Ehtesab Commission'.⁸ The Bureau was charged with investigation whereas the Commission was assigned the role of prosecution. In spite of having a very strong statute, the Bureau produced disappointing results because it was relentlessly used for political persecution. Therefore, public lost confidence in the Ehtesab Act 1997. Thus, the Ehtesab Bureau missed an opportunity to build a consistent and impartial system to eradicate immense corruption (GOP, 2002: 12).

The table below shows the anti-corruption agencies established so far in Pakistan.

Table 1.3 Anti-Corruption Agencies in Pakistan

Name	Year Established	Jurisdiction	Functions
Anti-Corruption Bureaus	1970	Provincial	Check on corruption in Provincial Governments
Federal Investigation Agency (FIA)	1975	Federal	Immigration, Financial & Cyber-Crime, Anti-Terrorism
National Accountability Bureau (NAB)	2000	Federal	Public and Private Sector , White-Collar Crimes

Source: "the Nature of Corruption and Anti- Corruption Strategies in Pakistan".

<http://www.article2.org/mainfile.php/0901/369/>

The legal structure to deal with corruption comprises the Pakistan Penal Code, 1860 (PPC), the Prevention of Corruption Act, 1947 (PCA) and the National Accountability Ordinance, 1999 (NAO). The PCA covers various aspects of corruption and bribery whereas the NAO summarizes the power of the NAB. In September 2002, the NAO⁹ was again amended and it will remain applicable subsequent to the election of a fresh legislature. The main criticism leveled on the NAO is that considerable sections of public servants including the serving military officials and the Judiciary are excluded from its operation. Notwithstanding, President

⁸ In November 1996, a prospective key establishment, the 'Ehtesab Commission' was founded after some disappointments with the efficiency of current establishment charged with ensuring accountability of civil servants for their unlawful activities. This institution performed efficiently for the first six months and referred almost 64 cases to the High Court for alleged corruption. The formation of 'Ehtesab Bureau', which was directly liable to the Prime Minister and the elimination of the probing power of the Ehtesab Commission considerably, curtailed its effectiveness (World Bank, 1998: 27).

⁹ The National Accountability Ordinance 1999 (NAO) authorizes establishment of the National Accountability Bureau (NAB) in order to eliminate corruption and corrupt practices in various institutions of Pakistan. It consists of 37 sections which provide an effective system for the detection, investigation, prosecution and rapid removal of cases containing bribery, inappropriate use of power by the public officials. It includes the cases relating to the white collar criminals such as defaulters of commercial banks and monetary institutions. The jurisdiction of NAB has been extended to the whole of Pakistan and it is fully authorized to make efforts in order to implement strategies and measures to eradicate corruption at all levels in Pakistani society (NAB, 2013).

General Musharraf issued the NRO on October 5, 2007 that not only restricted the authority of the NAO but also shattered the process of anti-corruption in Pakistan.

The table below shows the anti-corruption legislations enacted to date in Pakistan.

Table 1.4 Anti-Corruption Legislations in Pakistan

Year Enacted	Title	Present Status
1947	Prevention of Corruption Act	In force
1949	Public Representatives Disqualification Act	Repealed
1958	Elected Bodies Disqualification Ordinance	Repealed
1997	Ehtesab Act	Repealed
2000	National Accountability Bureau Ordinance	In force

Source: "The Nature of Corruption and Anti- Corruption Strategies in Pakistan". *Article 2 of the International Covenant on Civil and Political Rights*, 9(1): 33-40. <http://www.article2.org/mainfile.php/0901/369/>

Under the leadership of Zulfiqar Ali Bhutto, founder of the PPP, the legislature of Pakistan passed a statute, the Representation of Peoples Act, 1976 on January 4, 1977. Article 42A of the Act clearly mentions that "every member shall...submit a statement of assets and liabilities of his own, his spouse and dependents annually to the (Election) Commission (of Pakistan)" and for that a specific form has been provided to disclose this information. Article 42A (2) of the Act supports the right of access to information and authorizes the Election Commission of Pakistan to publish these particulars and a copy of these documents can be acquired by paying a charge. Article 42A (3) speaks about its procedure and says that the Chief Election Commissioner "shall...notify the names of the members who fail to file statements of assets and liabilities within the period specified...and by an order direct that such member shall cease to function till such statement is submitted".

However, it is surprising that no parliamentarian has ever been served such a warning ordering him to "cease to function". Article 42A (4) states "where a member submits the statement of assets and liabilities...which is found to be false in material particulars, he may be proceeded against under Section 82 for committing the offence of corrupt practice." Section 82 provides that "Any person guilty of corrupt practice shall be punishable with imprisonment for a term which may extend to three years, or with a fine which may extend to five thousand rupees, or with both." It is also a distinct feature of Pakistani politics that since its promulgation, no parliamentarian has ever been penalized or charged for submitting a false statement of assets and liabilities under Article 42A (4). One of the major issues is that the access to information has not been given prime importance; the current Freedom of Information Ordinance (FOIO) 2002 of Pakistan does not provide sufficient access to information practices. It applies only to the federal government sectors whereas the provincial and local divisions along with private institutions are not in its jurisdiction. (CRSS, 2009: 2).

The federation of Pakistan has various procurement rules that apply nationally and within each of the four provinces and two territories. The national procurement practice of Pakistan has recently been restructured, following the passing the Public Procurement Regulatory Authority Ordinance 2002 and the Public Procurement Rules 2004 (PPR 2004), which are based on the UNCITRAL¹⁰ model law. The application of PPR 2004 extends to all procuring organizations of the national and regional governments. On the other hand, the Public Procurement Regulatory Authority (PPRA) is permitted to excuse the procurement of some item or group of items from the application of the regulations or some further law regulating public procurement. This regulatory structure allows individual procuring bodies to determine key regulations and strategies themselves as well as carry out public procurement. The PPRA oversees procurement and aims to administration, governance, accountability, transparency as well as the quality of public procurement of merchandise, works, and services. In addition, the PPRA has authority to examine the application of rules and regulations, strategies, and measures; suggest to the national government policy amendments and alteration to current rules and regulations; and recommend policies and organize moral principles and measures for public procurement. In order to improve transparency, the PPRA has established its own web site, where all invitations to bid or requests for tenders are publicised¹¹ (ADB, 2006: 86).

The PPR 2004 further initiates means of tackling corruption. The law provides a complaint mechanism essential in identifying and preventing bribery in the public procurement in government and the judiciary. Judicial review should be preceded by an administrative review. The administrative review merely involves pronouncements made in the course of a tender and cannot question, for example, the decision of the procurement process or the pronouncement completed in arbitration measures except tendering. However, the procurement regulations have not provided any administrative review system. Every procurement organization lays down its own measures.¹² The PPR 2004 authorize public access to information concerning awarded contracts in order to enhance public checks but on the other hand, measures of pre-qualification and ineligibility are still inaccessible (ADB, 2006: 88).

From the above, it may be seen that Pakistan has legislated very good accountability laws but their proper implementation has always been problematic. A few examples will serve to illustrate the ineffectiveness of the framework. In 2006, there was a rapid rise in the cost of sugar, which was deemed to have been manipulated by manufacturers. The NAB immediately took initiative and announced to expose the actions of cartel and tax evasion but afterwards the whole process subsided completely (Schultz, 2007: 152; TI, 2006). In reality, most of the ruling and opposition party ministers are the owners of sugar mills and there is a common perception that they politically influenced the NAB. Pakistan is a major producer of sugar but due to widespread corruption, people are forced to buy sugar at very high prices.

¹⁰ United Nations Commission on International Trade Law

¹¹ The Public Procurement Regulatory Authority (PPRA) of Pakistan under Article 5 and 21 of the PPRA Ordinance 2002 deals with the issues relating to “functions, powers” and “power to exempt” respectively.

¹² The Public Procurement Regulatory Authority (PPRA) of Pakistan under Rule 48 and 49 of Public Procurement Rules 2004 deals with the issues relating to “Redressal of grievances by the procuring agency” and “Arbitration” respectively.

Pakistan Steel Mills¹³ is another corruption case which involved incidence of corruption in the process of privatization. The government was going to sell it to Russian, Saudi and Pakistani investors at the cheapest rates. The decision of the government was challenged in the Supreme Court who accepted the petition and cancelled the deal because the sitting government elites were through stealthy means earning enormous amounts of money. After this event, General Musharaf suspended the Chief Justice Iftikhar Muhammad Chaudhry, which further eroded public confidence in the battle against corruption. Since 2006, the people of Pakistan are skeptical about the initiatives taken by the government to resolve this issue. The Global Corruption Barometer of TI reveals some incredible facts about the level of corruption in Pakistan that 23 percent of people believe that the anti-corruption attempts of government are “not effective” whereas 27 percent believe that the government is not willing to eliminate this problem and a 10 percent declared the government to support corrupt practices intentionally (TI, 2006; Schultz, 2007: 152).

Other public accountability Institutions are the Auditor General’s (AG’s) Division, the Public Accounts Committee (PAC)¹⁴ and the office of Ombudsman. These public bodies are supposed to play a decisive role in upholding governmental accountability (GOP, 2002: 45).

The office of the Auditor General has significantly enhanced its investigative capabilities, but its reliance on the Ministry of Finance to allocate its budget implies that its independence may be compromised. Accusations of covert understanding between individual auditors and civil servants are also prevalent. The sluggish effects of the reports and its failure to inflict sanctions when the administrators overlook commands actually frustrate the Public Accounts Committee (PAC).

The office of the Ombudsman entertains and investigates complaints of administrative failure and in certain cases, may facilitate compensation. Generally, the primary function of this institution is to deal with the issues of lower level corruption and up to a certain extent play a significant role in reducing corrupt practices of civil servants. The office of Ombudsman, however, needs the cooperation of the authorities to execute its decisions (Schultz, 2007: 154).

In 2002, a National Anti-Corruption Plan was prepared and the National Accountability Bureau (NAB) as the implementation agency was provided with powers of investigation and prosecution to confront corruption. The NAB is the key anti-corruption institution of Pakistan and its foremost responsibility is to eradicate corruption through a holistic approach of responsiveness, deterrence and enforcement. It retrieves national assets stolen through corruption, abuse of authority and dishonest practices. It uses power under the National

¹³ Constitution Petition No. 9 of 2006 & Civil Petition NOs. 345 & 394 of 2006.

¹⁴ The Public Accounts Committee is one of the constitutional bodies of the National Assembly of Pakistan. Under Article 171 of the Constitution of Pakistan 1973, the Report of the Auditor General (AG) concerning the financial records of the Pakistan shall be submitted to the President, who is responsible to send it to the Parliament. Then under Rule 177 (2) of the National Assembly of Pakistan that report shall be referred to the Public Accounts Committee. Under rule 201 (4) of the National Assembly of Pakistan, the committee may examine the expenses, “administration, delegated legislation, public petitions and policies of the Ministry concerned and its associated public bodies and may forward its report of findings and recommendations to the Ministry and the Ministry shall submit its reply to the Committee” (National Assembly of Pakistan, 2013).

Accountability Ordinance 1999. Its operational headquarter is in Islamabad and it has four regional branches in the provincial capitals and one at Rawalpindi.¹⁵ (NAB; Husain, 2007: 7). The major aim of this institution was to curb corruption in order to improve accountability, which worked well for almost six months. Unfortunately, the Bureau was used for victimization of political opponents during the tenure of General Musharraf.

Pakistan's unstable political situation coupled with a weak judiciary and dysfunctional anti-corruption agencies have been the major obstacles in the battle against corruption. A notable point is that the anti-corruption trials have long been assumed to be unfair. It is a common practice that most of these trials are initiated against political opponents and junior grade public servants, whereas the actions of army officers have never been examined. Besides this, the National Reconciliation Ordinance 2007 has provided exemption from the previous corrupt practices and provided a safeguard to many civil servants and political leaders from trial. Since the NAB is under the administrative control of the army and the president who appoints its head, the occupants have mostly been ranked army officers. However, a notable aspect is that army officers and judges are exempt from its application. The consensus is that NAB was created for the persecution of rival political leaders and subordinate civil servants. The judiciary, army officials and coalition partners of the government have been granted 'blanket immunity' from investigative inquiry or any sort of accountability for their conduct. (Chene et al 2008: 1, 8).

The powers of NAB to deal with the matters relating to corruption, misappropriation, abuse of authority, fraud and unlawful enrichment originated from the National Accountability Ordinance. The NAO has come under heavy criticism partly because its mandate is very narrow as it excludes key officials from the army and the judiciary. The head of the NAB is fully authorized to discharge an accused because of "voluntary return" of assets acquired in the course of corruption, which is criticized on the basis that it is almost an exemption from punishment. The law of "plea bargain"¹⁶ granted to NAB has also been criticized as it is matter for the courts. The said ordinance granted power to detain the suspects without charges for 90 days. The law was overtly misused in its early days and many of the suspects were detained or confined for more than two year continuously, in spite of having no conclusive evidence against them (Schultz, 2007: 154-55).

The United Nations Convention against Corruption (UNCAC), adopted by the United Nations General Assembly on October 2003 shows a unanimous commitment of the international community to fight against corruption, penalize the culprits and recover possessions of unlawfully acquired money both nationally as well as globally. In 2007, Pakistan signed the UN Convention against Corruption (UNCAC) and was under obligation to make local anti-corruption laws compatible with the convention (Soofi, 2010: 1). The NAO Ordinance 1999 of

¹⁵ The Preamble of National Accountability Ordinance No XVIII of 1999 of Pakistan

¹⁶ Under Rule 25 of the NAB Ordinance 1999, if the accused person voluntarily returns corruption money, the said ordinance does not fix any criminal liability on him afterwards.

Pakistan is compatible with UNCAC but the underlying issue is its proper implementation as it is often used to victimize the political opponents.¹⁷

4.0 CONCLUSION

In Pakistan, internal political factors have hindered anti-corruption. There are various facets of corruption including extensive economic and political corruption in Pakistan. The two categories such as petty and grand corruption are rampant in the country and the people are forced to pay bribes in order to get access to basic necessities of life.

Transparency International Pakistan has contributed a lot in exposing corruption. The most unsettling aspect of corruption in Pakistan is that it has not only institutionalized but also given some 'blanket immunity' to influential people in society. It breeds underdevelopment by denying basic facilities to the people and creating social injustice, disparity and disappointment.

It has been identified that the access to information should be given prime importance in order to have transparent procedures in the institutions as the current Freedom of Information Ordinance (FOIO) 2002 does not provide sufficient access to information practices. Its jurisdiction must be extended to the provincial and local divisions along with private institutions. It also falls short of providing a broad definition of the term 'information' or 'records'. Moreover, it places less responsibility on the public offices in widening access to information to all.

Finally, the problem of corruption cannot be resolved unless there is a strong political will to do so and in Pakistan this has been lacking. Regimes including military as well as civil have come in promising to end corruption and even introduced new machinery to deal with it. However, their attempts have been unsuccessful. This is either because they never intended to deal with corruption in the first place and have used the new machinery cynically to punish their opponents or they have not been able to cope with the forces which promote corruption and have been corrupted in the process. Thus while the legal machinery as well as the institutions to deal with corruption are important, real reforms will not take place in the absence of strong political will.

In case of Pakistan, the UNCAC can provide a strong basis to formulate a policy to deal with the issue of corruption in foreign banks and there is an urgent need to make compatible all the domestic anti-corruption laws with the convention.

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¹⁷ See Footnote 9 and under 3.0 for further details.

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