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A Critical Analysis of Effectiveness of Anti-Corruption Laws in Pakistan: Policy Recommendations

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Abstract

This policy paper attempts to gauge the effectiveness of anti-corruption laws in Pakistan designed to address the menace of corruption. For this purpose, the challan and conviction data of NAB, FIA, and ACE (Punjab) over the past few years has been analyzed. It has been observed that the change in NAB law in 2021 and 2022 had a significantly negative impact on both the number of challans / references filed by NAB and conviction ratios. The analysis of the amended NAB law shows its inherent deficiencies in addressing the offenses related to assets beyond means and misuse of authority. Furthermore, the predominant law of both FIA and ACE – Prevention of Corruption Act, 1947 – is unable to deal with the complexities of the 21st century, thus significantly impacting the conviction ratios of these agencies. It is also discussed that the countries with very low CPI, such as Singapore, have a broad perspective regarding the definition of corruption which is lacking in our national anti-corruption legal framework. The policy paper also discusses the preventive approach of Hong Kong to combat corruption, both, at legislative and strategic levels. Based on analysis and discussion, this research recommends necessary rectifications in the anti-corruption legal framework of the country to make it effective in curbing the prevalence of corruption in Pakistan.

Keywords: Anti-corruption laws, corruption, Hong Kong, legislation, USA

Introduction

Corruption has remained a menace for Pakistan since its inception, but in the past few decades its magnitude has been escalated, choking the country's economic resources and growth. Pakistan has been ranked as one of the top most corrupt countries in the world as indicated by the Global Perceptions Index of Pakistan since 2001 (The Global Economy, [2023](#)). The current rank of Pakistan in CPI is 140 out of 180 countries, with the

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score of 27 points. The figure reflects that Pakistan had hit the lowest score in 2003 to 2005. It had achieved its highest score of 33 points in 2018, after which the score started declining. Therefore, Pakistan has not fared well in reducing the menace of corruption.

Figure 1

Conviction Ratio



Note. Source: The Global Economy ([2023](#))

The Figure 1 also depicts the conviction ratio in another way. Moreover, it also shows a decreasing trend in the conviction ratio over the years.

There is no dearth of laws in Pakistan to combat corruption. The legal framework to deal with the offenses relating to corruption encompasses the following laws:

- Pakistan Penal Code, 1860
- Prevention of Corruption Act, 1947
- The West Pakistan Anti-Corruption Establishment Ordinance, 1961
- FIA Act, 1974, and Schedule therein
- National Accountability Ordinance, 1999
- Anti-Money Laundering Act, 2010
- National Accountability (Amendment) Act, 2022

Despite a plethora of laws, the issue of corruption has only exacerbated in Pakistan over the years. Despite legislative efforts, corruption remains a formidable challenge that requires a more comprehensive and effective approach.

Statement of the Problem

Pakistan has endeavored to combat corruption through a variety of anti-corruption agencies and laws, but corruption has increasingly penetrated into society over the years, hindering sustainable economic development. Where government agencies meant to provide a conducive and enabling environment to boost economic growth, they have increasingly continued to be seen as impeding factors to economic growth. Pakistan's corruption Perception Index stood at 140 in 2022 out of 180 countries, indicating a high level of corruption. Though, Pakistan has a plethora of anti-corruption laws, yet the conviction rates of different agencies are not impressive. For instance, the conviction rate of ACE Punjab remained less than 2% from July 2016 to August 2018 (Khan, [2018](#)). Low conviction rates along with a very low CPI entail that anti-corruption laws have not been much effective in significantly reducing corruption in Pakistan.

Key Questions

1. What shortcomings in anti-corruption laws of Pakistan have led to the failure in curbing corruption?
2. Do anti-corruption laws in Pakistan comply with the international guidelines and best practices?

Scope of the Study

The scope of the study is to identify and analyze the shortcomings of anti-corruption laws in Pakistan, specifically focusing on the laws governing three major anti-corruption agencies in Punjab: NAB, FIA and ACE. The study has delved into the most significant anti-corruption laws associated with these anti-corruption agencies. The data from the last five years has been analyzed for this purpose. Additionally, the study has incorporated an international perspective by examining best practices from a selection of developed countries. This comprehensive approach will shed light on the strengths and weaknesses of Pakistan's anti-corruption legal framework in comparison to global standards.

Literature Review



Corruption has been defined differently by different theorists. For example, Shleifer and Vishny (1993) and Svensson (2005) have defined corruption as extending benefits by the government officials in government departments for personal gains, such as taking bribes to provide licenses or certificates, or prohibit other competitors from participating. Jain (2001) argues that corrupt practices rely on misusing public power or authority for personal gains by breaking the rules. Corruption undermines the whole fabric of the society. It not only brings down the economic activity in a country, thereby reducing its growth, but also demoralizes the citizens of a country who lose their trust in the system and government. Academic literature on corruption is of the view that it disrupts economic development (Mauro, 1995; Myint, 2000). In other words, corruption disturbs the market forces which tend to bring the best options to the forefront, resulting in optimal allocation of resources as well as accelerated growth of economy. The citizens of a country trust in the system and govt. and thus focus on enhancing their skills, competencies and capabilities to win jobs, contracts, licenses and certificates. The presence of corruption in government departments causes people to behave otherwise. Clausen et al. (2011) argue that corruption undermines public trust, weakens the rule of law, and ultimately delegitimizes the government as well as the moral standing of the bureaucracy in the eyes of the people.

Assessing the potential impact of corruption on economic affairs, countries have been formulating and updating anti-corruption laws to deal with this menace. This is because effective anti-corruption laws are considered indispensable in reducing corruption (Herzfeld & Weiss, 2003). Levin and Satarov (2000) have stressed upon the relationship between strong legislation and lower level of corruption and while, analyzing the context of Russian transition, have pointed out that a weak and inadequate legislation leads to the growth of corruption of various forms, manifesting itself inconsistent legislative acts and vague legislative procedures. Ineffective anti-corruption legislation also motivates bureaucracy to indulge in corruption fearlessly. Andvig and Moene (1990) have argued that relative indulgence of bureaucrats in corruption relates to the effectiveness of the legal system and the apprehension of getting detected and punished.

Method

This research paper relies on the secondary data obtained from Annual Performance Reports of NAB, FIA and ACE (Punjab) over the last five

years. The data used in Annual Performance Reports of these agencies is collected by gathering relevant data across all the regional offices. It is then compiled to deduce final figures. The data gathered is quantitative in nature as it depicts mainly the numerical data of challans filed by these agencies and convictions achieved.

The research uses secondary data sourced from the Annual Performance Reports of investigation agencies because hard data of challans and conviction ratios stands most relevant to assess the effectiveness of accountability legislation. The data of challans filed and conviction ratios of these anti-corruption agencies is presented in tabular forms, followed by analysis and graphic depiction.

Data Analysis

The secondary data was obtained from the Annual Reports of National Accountability Bureau, Federal Investigation Agency and Anti-Corruption Establishment (Punjab) for last few years to analyze the situation of filing of Challans (by FIA & ACE (Punjab) / References (by NAB) and conviction rates in addition to impact of significant changes in NAB law on the conviction rates of NAB cases.

Section 1: NAB Data

The data in Table 1 below shows the conviction ratio of the Challans/References filed by NAB in the Accountability Courts all over Pakistan from 2018 to 2022. The data shows that the conviction ratio has not been much impressive because it has never surpassed 60% in the years specified.

Table 1

Conviction Rate of References Filed by Nab

| Year | References Filed u/s 18(g) of NAO, 1999 | Decided (including previously filed) | Convictions u/s 10 of NAO, 1999 | Acquittals | Conviction Ratio | Returned to NAB |
|------|---|--------------------------------------|---------------------------------|------------|------------------|-----------------|
| 2018 | 198 | 134 | 78 | 56 | 58.2% | 0 |
| 2019 | 183 | 96 | 43 | 53 | 44.8% | 0 |
| 2020 | 136 | 97 | 31 | 66 | 32.0% | 0 |
| 2021 | 63 | 91 | 38 | 53 | 41.8% | 10 |
| 2022 | 30 | 78 | 25 | 53 | 32.1% | 469 |

Note. Source: NAB Annual Reports: 2018 to 2022

The data also shows the number of references filed in each year. It is notable that the number of references filed in the year 2021 and especially in the year 2022 is quite low, as compared to other years. The conviction ratio is also significantly lower in these years. The main reason for the dismal performance in the years 2021 and 2022 is amendment in the NAB law during the period of Imran Khan govt. and PDM govt. This sharp decline in the performance of NAB over this period shows the impact of legal modification on the performance of an agency in combating corruption.

Low conviction ratio could be attributed to other qualitative factors such as poor investigations conducted or poor prosecution of the cases. But the law of the land is the ultimate deciding factor in raising the bar of getting higher convictions. Changes in NAB law since 2021 have significantly narrowed down the definition of corruption and imposed stringent standards in some sections which were extremely hard to meet. Consequently, both the number of challans as well as conviction ratio witnessed a decline since 2021, as the courts were bound to adhere to the prevailing law.

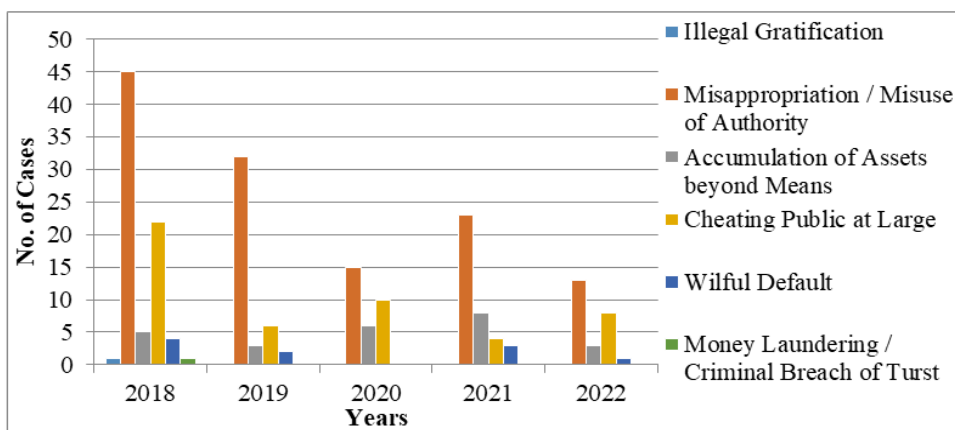
Table 2 below shows specifically the convictions made in different types of offenses each year.

Table 2
Offense-Wise Convictions of Nab Cases

| Year | Illegal Gratification | Misappropriation / Misuse of Authority | Accumulation of Assets beyond Means | Cheating Public at Large | Willful Default | Criminal Breach of Trust | Total |
|-------|-----------------------|--|-------------------------------------|--------------------------|-----------------|--------------------------|-------|
| 2018 | 1 | 45 | 5 | 22 | 4 | 1 | 78 |
| 2019 | 0 | 32 | 3 | 6 | 2 | 0 | 43 |
| 2020 | 0 | 15 | 6 | 10 | 0 | 0 | 31 |
| 2021 | 0 | 23 | 8 | 4 | 3 | 0 | 38 |
| 2022 | 0 | 13 | 3 | 8 | 1 | 0 | 25 |
| Total | 1 | 128 | 25 | 50 | 10 | 1 | 215 |

Note. Source: NAB Annual Reports: 2018 to 2022

Over the last 5 years, only 1 conviction each was made in NAB references related to offenses of illegal gratification and criminal breach of trust. The offense of misappropriation / misuse of authority saw the highest number of convictions, followed by offense of cheating public at large. However, the convictions under misappropriation / misuse of authority dropped down to 13 in 2022, due to changes in NAB law enacted through second and third amendment made in 2022.

Figure 2*Offense-wise Convictions of NAB Cases*

The Figure 2 shows a decreasing trend in the number of convictions in all offenses under NAB law. However, the year 2022 is marred with lowest number of convictions in each offense category, resulting from the change in NAB law. Moreover, the offenses of misuse of authority and cheating public at large are more conspicuous in convictions than other offenses.

Section 2: FIA Data

The Table 3 shows the conviction rate in challans filed by FIA over 6 years all over Pakistan, depicting all regions of FIA.

Table 3*Conviction Rate of Challans Filed by FIA Anti-Corruption Wing*

| Year | Challans Filed | Disposed off (including previously filed) | Convictions | Acquittals | Consigned to Record | Conviction Ratio |
|------|----------------|---|-------------|------------|---------------------|------------------|
| 2017 | 585 | 344 | 157 | 131 | 56 | 45.6% |
| 2018 | 281 | 367 | 147 | 138 | 82 | 40% |
| 2019 | 320 | 671 | 170 | 220 | 281 | 25.3% |
| 2020 | 633 | 466 | 302 | 131 | 33 | 64.8% |
| 2021 | 772 | 543 | 196 | 270 | 77 | 36.1% |
| 2022 | 453 | 645 | 213 | 183 | 249 | 33% |

Note. Source: NAB Annual Reports: 2018 to 2022

The conviction rate of the anti-corruption wing of FIA has remained, on average, 40% in 6 years from 2017 to 2022. The conviction rate stood lowest in 2019 when only 25% cases were decided in favor of the prosecution. The year 2020 has been an exception when the conviction rate has remained 64.8%. The lower conviction rate depicts the ineffectiveness of anti-crime legislation of FIA in securing convictions for a majority of white-collar criminals, thereby failing to create an effective deterrence for such criminals.

It is quite pertinent to mention that the scope of the anti-corruption wing of FIA extends far beyond investigation of white-collar criminals such as govt. officials to crimes relating to Intellectual Property Rights, theft of electricity, counterfeit currency, spurious drugs. If segregated data is made available by FIA, the conviction rate of purely govt. related corruption cases might be significantly lower. For instance, 2019 data of FIA shows that out of 761 cases, 290 cases, i.e.38%, related to govt. officials, while 471, i.e.62%, related to private persons (Sadiq, 2020). This relatively low ratio of government officials as accused persons suggests that conviction rate of white-collar crimes prosecuted under Prevention of Corruption Act, 1947 is quite low.

The pictorial representation of the FIA data in Figure 3 shows that the conviction ratio is higher than the acquittal ratio each year, except in 2021. While the highest number of convictions occurred in 2020, the lowest number of convictions was recorded in 2021.

Figure 3
Conviction Rate of FIA Cases



Section 3: ACE (Punjab) Data

Table 4

Conviction Ratio of ACE Punjab

| Year | Challans Submitted | Convictions | Conviction Rate |
|------|--------------------|-------------|-----------------|
| 2017 | 1388 | 54 | 3.9% |
| 2018 | 1418 | 31 | 2.2% |
| 2019 | 869 | 34 | 3.9% |
| 2020 | 830 | 12 | 1.4% |
| 2021 | 1099 | 29 | 2.6% |

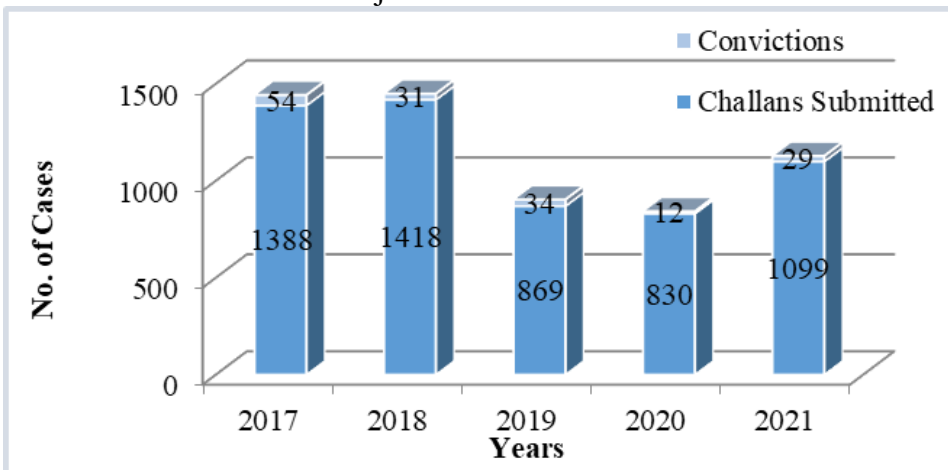
Note. Source: ACE (Punjab) Annual Reports: 2017 to 2021

Table 4 presents data related to the conviction ratio of ACE (Punjab) cases from 2017 to 2021. Despite filing a good number of challans each year, the conviction ratio remains very low in these years, as it has not exceeded 4% in any of these years. While the highest conviction rate stood at 3.9% over this period, it was just 1.4% in 2020, indicating a very dismal performance of ACE (Punjab).

The Figure 4 shows that ACE (Punjab) has had very low conviction rate from 2017 to 2021. The data labels on top of the bars represent the number of convictions made each year, which are dismally low as compared to the challans filed each year by ACE (Punjab).

Figure 4

Conviction Rate of ACE Punja



Results and Discussions

The analysis of data gives some useful insights. NAB, FIA and ACE (Punjab) have filed a significant number of challans each year. However, the number of Challans filed by NAB significantly dropped in 2021 and 2022. Secondly, the convictions rates are not that much impressive for NAB, FIA and ACE (Punjab). Thirdly, NAB has performed better in offenses of misuse of authority and cheating public at large as compared to other offenses.

Section 1: National Accountability (Second Amendment) Ordinance, 2021

The reason for drop in filing of challans as well as conviction rates in 2021 and 2022 is the amendments introduced in the NAB law. The PTI govt. introduced amendments in NAB Ordinance, 1999 through the National Accountability (Second Amendment) Ordinance, 2021. The said ordinance made the following significant exceptions (Pakistan Lawyer, [2021](#)):

- a. The decisions of the Federal or Provincial Cabinet or their Committees or Sub-Committees were exempted from NAB law.
- b. Procedural lapses in any governmental work, project or scheme were exempted, unless it was shown that the holder of public office had made any material benefit from the procedural lapses, whether directly or indirectly, which he was not entitled to receive.
- c. An advice or report or opinion by a public office holder or any other person during the course of duty is exempted from NAB law unless it is shown that such public office holder or any other person has received any material benefit from that advice or report or opinion which he was not entitled to receive.

The nutshell of the exemptions in the amended ordinance was that an offense would only be established if an accused made a material benefit by extending illegal favors to a person. The loss to national exchequer was not considered in the amendments as liability to the accused if violation of rules and law resulted in such loss to national exchequer. The result was that NAB could only file a lower number of challans / references in 2021 and it became increasingly hard to get convictions, as reflected in the data shown in previous section. Moreover, 10 cases were returned to NAB in 2021 as a

result of amendments in law as these cases were deemed beyond the jurisdiction of NAB law.

Section 2: National Accountability (Amendment) Act, 2022

The PDM govt. amended the NAB ordinance through the act of parliament. It retained all the exceptions to NAB law as given in the National Accountability (Second Amendment) Ordinance, 2021. On top of that, it also amended the definition of offense of assets beyond known sources of income and misuse of authority as given in Sub-Sections (v) and (vi) Section 9(a) of the NAO, 1999.

The amendments in Section 9(a)(v) resulted in significantly narrow definition of the offense of acquiring assets beyond known sources of income. The amendments entailed the assets to be valued at the District Collector rate, instead of the price at which they were bought and sold. Moreover, the banking credits did not account for towards accumulation of assets unless the credits were used for purchase of assets, even if an accused person credited huge cash transactions in his bank account which he then withdrew in cash and used for cash transactions. Moreover, the amendment of definition of ‘Benamidar’ in Section 5 further complicated the situation. Now a person would only be considered a ‘Benamidar’ if he owns an asset for which payment has been made by the accused who also holds the title documents and possession of the property.

The offense of misuse of authority as given in Section 9(a)(vi) of NAO, 1999 was also amended and its scope and definition were narrowed down. The amended section meant that the offense of misuse of authority would not be constituted unless a public office holder gained any material or monetary benefit from the person in whose favour the act of misuse of authority was made. This narrow definition clearly ignored the loss to national exchequer accused public office holder who caused huge loss to national exchequer by violating all laws and rules, he would not be held accountable under the amended NAB law if he did not acquire a monetary gain directly from the favoring party in the shape of, for instance, direct transfer to his bank accounts or payment made for a property by the favoring party in the name of the accused public office holder. Keeping in view the facilitations provided in cash transactions in Pakistan, such amendments have favored the criminals.

The NAB law was further curtailed in its application as the minimum amount involved in the offense must be 500 million rupees and in cases of cheating public at large, one hundred persons must be complainants. The result of these amendments was that NAB could only file 30 references in 2022. This was also the reason that 469 cases were returned to NAB in 2022 by the Accountability Courts all over Pakistan because they no more came under the jurisdiction of amended NAB law.

Section 3: Anti-Corruption Offenses Dealt by FIA and ACE (Punjab)

The main law supporting FIA and ACE (Punjab) in handling anti-corruption offenses is the Prevention of Corruption Act, 1947. This act makes Sections 161, 162, 163, 164, 165 and 165-A of Pakistan Penal Code, 1860 cognizable. Sections 161 to 164 relate to the offense of taking illegal gratification or gain by a public servant to give benefit to someone by violating law and rules. Section 165 relates to the offense where a public servant obtains a valuable thing without consideration, or inadequate consideration, from a person who has been, or is likely to be involved in any proceeding or business transaction with the public office holder in the official capacity.

The Prevention of Corruption Act, 1947 also included sections related to offenses which dealt with dishonest misappropriation of property entrusted to a public office holder and the possession of a valuable thing or property by a public servant, or his dependents, which he cannot reasonably account for from his known sources of income.

Gul et al. (2022) has criticized the PCA, 1947 that it is simply an extension of Pakistan Penal Code (PPC), 1860 and, like the PPC, 1860, it is also unable to encompass the complexities of white-collar crimes in modern times. The PCA, 1947 is restricted to public office holders only, entails maximum imprisonment of 7 years only and lacks provisions for adopting preventive measures. It also completely ignores an act of criminal negligence where an accused public office holder causes loss to national exchequer by violating law and rules. It focuses on obtaining a material gain while ignoring the modern nature of transactions of 21st century. Sadiq (2020) also cited ineffective legal framework of FIA and ACE as one of the reasons for low performance of these agencies.

International Practices

Singapore has been ranked as the 5th least corrupt country in the CPI rank of 2022 of Transparency International. The anti-corruption law of Singapore, called Prevention of Corruption Act, 1960 gives a detailed definition of gratification which includes the following (Singapore Statutes Online, [2023](#)):

- (a) Money, gift, reward, commission, valuable security, or other property of any description, whether movable or immovable;
- (b) Any office, employment or contract;
- (c) Discharge or liquidation of any loan, obligation or any other liability;
- (d) Any other service or advantage of any nature, including protection from any penalty incurred from a proceeding of disciplinary or penal nature, whether or not already instituted

Such broader scope of definition of illegal gratification is absent in anti-corruption laws in Pakistan.

The United Nations Convention against Corruption (UNCAC) is a guideline to countries to adopt measures that include legislating sufficiently so as to include a broad range of offenses of corruption. It also encompasses guidelines for adopting preventive measures to combat corruption. The Articles 5 to 14 of UNCAC relating to preventive measures dictate that each signatory country shall adopt such policies and measures that lead to the rule of law, and proper management of public affairs and public property while enhancing integrity, transparency and accountability (United Nations Office on Drugs and Crime [UNODC], [2023](#)).

Hong Kong has adopted a three-pronged strategy to combat corruption: enforcement, prevention and education as a part of its legislative framework, i.e. Independent Commission against Corruption Ordinance, 1974 (Independent Commission Against Corruption [ICAC], [2022](#)). To implement its strategy, it has set up three different departments in its anti-corruption agency called, Independent Commission against Corruption (ICAC). Hong Kong has given significant importance to adopting and implementing preventive strategy, which is also the statutory duty of the Commissioner of ICAC, as reflected in Section 12(d)(e)(f) of the ICAC Ordinance (E-Legislation, [2023](#)). The preventive corruption strategy of Hong Kong aims to enhance efficiency, transparency and accountability in

government services. Hong Kong has prioritized such areas as procurement, public works, grant of licenses, public service delivery, enforcement of law and collection of revenue (Man-Wai, [2016](#)). Some of the measures adopted by Hong Kong to achieve its objective of adopting preventive measures are as follows:

- Updating and streamlining manuals of procedures
- Inculcating the practice of surprise checks by high-ups for better staff supervision
- Digging out loopholes in internal audit and strengthening internal controls
- Maintaining proper documentation for transparency and tracking
- Job rotation policy
- Use of technology for better transparency and accountability
- Identifying risk areas where corruption can be done with ease
- Ensuring and exercising transparency and merit in all areas of recruitment and subsequent appraisals and promotions

It is pertinent to mention that FIA and ACE (Punjab)'s predominant anti-corruption laws have no mention of prevention strategy. National Accountability Ordinance, 1999 does include Section 33C to adopt preventive actions but the law itself is not binding in nature to the public bodies in the sense that it suggests no negative consequential actions for non-implementation of suggested preventive measures. Moreover, NAB lacks a preventive strategy in its law because it has not framed any rules relating to that.

Conclusion

While Pakistan has struggled to combat corruption over the last two decades, it is evident that the anti-corruption laws have not been much highly effective in reducing corruption. Data analysis shows that amendments in NAB law in 2021 and 2022 had significantly negative impact on the performance of NAB in filing Challans and getting convictions. On the other hand, the PCA, 1947, which is a predominant law of FIA and ACE, is an antiquated law which is unable to handle the complexities of white-collar crime in the 21st century. Developed countries

like Singapore have adopted a broader definition of corruption, by clearly including a range of practices in the definition of corruption which Pakistan has not done so far. Moreover, United Nations Convention against Corruption (UNCAC) has given guidelines to adopt and implement preventive strategies. Developed countries like Hong Kong have effectively adopted and implemented a three-pronged strategy as part of its legislative framework. Hong Kong has taken significant measures in preventing corruption that have helped it to control the menace of corruption. Pakistan, on the other hand, has not performed well in suggesting and implementing preventive measures, primarily due to absence of an appropriate legal framework, delineating statutory duties of anti-corruption agencies in suggesting preventive measures while binding the client govt. agencies to implement them.

Policy Recommendations

To improve its legislative framework to effectively combat corruption, Pakistan needs to update its legislation, relating to NAB, FIA and ACE, in line with the following recommendations:

- A broader and clear definition of corruption and illegal gratification needs to be adopted, so as not to leave room for misinterpretation for the agents of law, including state prosecutors, defense lawyers and judges.
- There is need to align the valuation of assets of an accused persons to the market value, or the values reflected in the transfer deeds and agreements, and in banking transactions.
- Heavy cash credits need to be presumed to be assets of accused and included in the liability of the accused person, unless contrary evidence is generated such as loan agreements between the two parties.
- A clear-cut loss to national exchequer emanating from sheet violation of law and rules must not go scot-free. The accused person must face some punitive response from the state.
- Misuse of authority resulting in favor to somebody in violation of laws must not be clubbed with monetary or material benefit by public office holder from the party to whom favor was given. The trilogy of abuse of power, favor to somebody and the loss to national exchequer must be sufficient to establish the offense of misuse of authority.

- The preventive strategy needs to be streamlined so as to frame appropriate and effective rules relating to it in legislative framework of anti-corruption agencies that also suggest consequential measures, in case of non-implementation, in legislative framework to effectively implement the suggested course of action in government departments.

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