



Recent Amendments in NAB Law an In - Depth Analysis

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Abstract

The purpose of this study is to evaluate the effectiveness of the National Accountability Ordinance (NAO) 1999 in the prevention of corruption within the public sector of Pakistan. It evaluates the legal framework and the results of its implementation. Corruption is a substantial impediment to the development and stability of nations, particularly in the sphere of public affairs, as it perpetuates inequalities, impedes economic growth, and undermines trust. A comprehensive set of laws, regulations, and institutional structures, the National Accountability Ordinance (NAO) was enacted in Pakistan to address corruption. Its objective is to promote effective governance, accountability, and transparency. The study employs doctrinal qualitative analysis to contextualise the research within the ethical, legal, and social frameworks. The research methodology employed is interpretive, analytical, and evaluative. The study emphasises the fundamental principles that serve as the foundation of the NAO, with a particular focus on its role in the prevention of corrupt practices, the investigation of corruption cases, and the imposition of sanctions on those responsible. This essay investigates the function of the National Accountability Bureau (NAB), a distinguished organisation that is dedicated to the prevention of corruption. The National Accountability Bureau (NAB) is responsible for the enforcement of the National Accountability Ordinance (NAO) through the conduct of investigations and legal proceedings in corruption cases. This article examines the obstacles and conflicts that arise during the implementation of the NAO in the context of anti-corruption initiatives. The assessment conducts a comprehensive evaluation of the efficacy of accountability mechanisms, the independence of anti-corruption organisations, and political interference. The research indicates that corruption has significantly undermined the efficiency of the public sector. It is imperative to establish and enforce the National Anti-Corruption Organisation (NAO) with impartiality and efficiency in order to resolve this issue. The study also finds gaps in the recent amendment promulgated by the law makers in the NAO during the phase of 2021-2023 and recommends the legislative changes to offer more effective anticorruption frame work keeping in view the concerns of the law makers. This thesis provides rational and logical analysis of the National Accountability Ordinance and operations in precluding the rampant corruption in Pakistan based on the best practices exercised by the international agencies. The study explores the procedures and types of corruption in vogue in the country and how the top class enjoys the authority to challenge the NAB Laws, the investigators and the officials who are deployed to eradicate the menace of corruption. The study further discovers that the law makers have not pursued the structural reforms in the NAB laws to augment modern/unbiased ways to inquire white collar crimes and as such no amendment has been designed to tailor the Policy Implementation of the NAB Laws 1999, with regard to fairness and Code of Conduct of NAB employees (as enshrined in NAB Terms and Conditions of Service – 2002) which declares that the NAB Human Resource is the first and foremost subject of accountability.

Keywords: NAB Law; Anti-Corruption; Pakistan; Legal Amendments; Political Interference; Accountability; NAO 1999

Introduction

The National Accountability Bureau (NAB) is a high-ranking anti-corruption institution that was established to investigate corruption cases involving government officials, civil servants, and private sector individuals. It has attracted significant attention in the context of ongoing political discussions. Consequently, the political elite have effectively limited the NAB's authority, as evidenced by the subsequent amendments to the NAB Ordinance from 2021 to 2023.

The United Nations Convention Against Corruption (UNCAC) is a multinational treaty that is legally binding and is designed to combat corruption. In 2003, the United States General Assembly approved the convention following discussions among member states, and it became effective in 2005. Pakistan formally ratified the United Nations Convention against Corruption in 2003, and it was subsequently endorsed in 2007.

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The term "accountability" has experienced a significant increase in prominence as a political watchword in Pakistan over the past two decades. Despite the implementation of numerous accountability system reforms, Pakistan was ranked the lowest in the region in the Corruption Perception Index (CPI) released by Transparency International (TI, 2022). The number two. In the 2021 CPI-based classification, Pakistan was ranked 140th out of 180 countries. In comparison to the economies of South Asia, Pakistan's economic ranking was significantly lower. A number of accountability procedures have been implemented in Pakistan to combat and mitigate corruption. Nevertheless, Pakistan's accountability measures are inadequate. The Voice and Accountability Index (VAI) 3 is the statistic employed to assess vertical accountability. Their values range from -2.5 (indicating the lowest level of responsibility) to +2.5 (indicating the highest level of accountability). Pakistan's score is considerably lower than the average score of South Asian nations, which is -0.36. Pakistan's vertical accountability has been consistently inadequate over the years. The VAI values are all negative, which implies that vertical accountability is not effectively implemented in Pakistan. The information is derived from the 2022 World Bank Annual Report.

Pakistan also exhibits subpar results on the Control of Corruption Index (CCI), which evaluates the extent of horizontal accountability in nations. The CCI indicates that Pakistan's horizontal accountability performance is insufficient, as the CCI ratings for all years are negative. Entities such as the National Accountability Bureau (NAB) and the Anti-Corruption Bureau of Pakistan are accountable for the implementation of horizontal accountability.

The fundamental objective of the numerous NAB Ordinances that were adopted by the legislatures between 2021 and 2023 is the source of the issue. The institute was established by an Ordinance issued in 1999 during the military administration of General Pervez Musharraf in accordance with Section 5(m) of the NAB Ordinance, the judiciary and active military personnel are excluded from the definition of public office. Despite the fact that the judges are not explicitly mentioned in the law, it enables them to circumvent accountability by utilising the court's silent discretion. The Constitution was never intended to establish a presumption of complete innocence for any institution, despite the fact that it does use its language to prohibit the open discussion of military matters in order to safeguard national security. Article 25(1) of the Pakistani Constitution explicitly states that all individuals are regarded equally by the legal system and are entitled to identical safeguards under the law. The aforementioned assertion is in direct opposition to this provision. Nevertheless, the Ordinance establishes a sham connection between the prevention of financial malfeasance and national security by utilising the pretext of discipline in the military forces and tribunals as a justification.

The study issue demonstrates that Pakistan is performing below par in all global indices that evaluate the country's accountability system and corruption. It will be analyzed that how the recent NAB amendments can impact on the NAB functions to investigate and prosecute the corrupt functionaries and corrupt practices. The study will further evaluate the intent of the law makers to frame recent amendments in NAB laws and its impact on the elite class of Pakistan in comparison to best practices in the world.

Methodology

The research relies on a comprehensive review of primary and secondary sources, including legal documents, government reports, academic literature, and media sources. Thematic coding and content analysis are among the qualitative data analysis methods employed to identify significant themes, trends, and patterns related to the revisions to the NAB Law.

Quantitative Analysis

Quantitative data, including statistical information, interviews, cross sectional and case studies based quantitative analysis have been conducted. Interviews from politicians, lawmakers, bureaucrats, NAB officers and other stake holders are collected to analyze empirical insights into the impact of the recent amendments in NAB Laws.

Ethical Considerations

Ethical consideration played a central role, with a commitment to withholding ethical principles throughout the study. Verbal consent was taken from the interviewees. The permission was taken for the collection of data from concerned quarters.

Limitations

Despite efforts to conduct comprehensive analysis, this study has several limitations with regard to data collection as most of the stake holders are not ready to share their experiences being matter related to a sensitive subject.

Being NAB officer, element of biasness is attached to this study. Its application cannot be generalized. Limited data is available on the subject, as the stake holders other than the NAB officers, are not ready to come forward and share information and details.

Research Questions

Whether the recent amendments 2021 -2023 in NAB Laws are efforts to regulate National Accountability Bureau, extend National Reconciliation Ordinance-II (NRO) to the higher ups and make the investigation and prosecution of corruption allegations an extremely challenging attempt.

Whether the recent amendments 2021 -2023 in NAB Laws are coherent to international best practices who are pursuing the corruption matters efficiently and independently.

Results and Analysis

Corruption has become so thoroughly ingrained in our culture that it is no longer perceived as a criminal offence. According to Transparency International's definition, corruption is the act of exploiting authorized authority for personal gain. Inequity, prejudice, and the exaltation of the upper class—who are frequently regarded as sacrosanct and have the ability to exert influence on positions of power—are the consequences of corruption within a society. Corruption is a highly significant issue that the modern world is currently confronting, according to Transparency International (TI). Corruption is a widespread issue that has a particularly detrimental impact on developing countries. By undermining democracy and the rule of law, corruption imposes political costs. It also leads to economic costs by depleting national wealth. Furthermore, corruption undermines public confidence in the political process and its leaders, resulting in social costs. Finally, corruption has environmental consequences, as it contributes to environmental degradation. Corruption has a significant impact on the governance, development, and economy of a nation by undermining the principles of legal order, eroding institutions, and diminishing the credibility of the state. Additionally, corruption undermines the government's ability to fund critical services, including healthcare, sanitation, water supply, and law enforcement. The government is heavily reliant on borrowing from the public to finance ongoing expenses and attain public sector development objectives, which has led to a significant increase in the national debt. Pakistan's corruption perception score has declined to its lowest point in a decade.

Pakistan was one of the ten countries that experienced a considerably decrease in Corruption Perception Index ratings in 2022, according to Transparency International. It is known as the 140th least corrupt country out of 180.

To understand the effectiveness of the NAO 1999 in reducing the menace of corruption in the communities, it is necessary to consider the historical backdrop and history of anticorruption policies in Pakistan. The NAO 1999 was enacted to offer a comprehensive legal framework to investigate and prosecute corruption offenses. Over time, this law has been amended and improved to strengthen its efficiency in fighting corruption and embracing individuals implicated in corrupt acts accountable.

It has impacted Pakistan from its inception. Since independence, the country has enacted various anti-corruption legislation and established various entities to combat corruption, (Shaikh & KHAN, 2023) which includes:

- Prevention of Corruption Act 1947 (POCA)
- Sindh Prevention of Bribery and Corruption Act 1950
- FIA Act 1974
- Ehtesab ordinance 1996 and Ehtesab Act 1997
- National Accountability Ordinance 1999 (Promulgated on November 16, 1999)

Following Acts are also made to complement above laws: Anti-Money Laundering Act (AMLA) (2010)

- Pakistan Penal Code (PPC) (Act XLV of 1860)
- Extradition Act (EA) (1972)
- Benami Transactions Act 2017

Corruption in Pakistan is a highly structured and pervasive issue of considerable magnitude. Bribery and other forms of minor corruption are prevalent in the fields of procurement, public service delivery, and law enforcement (Shaikh & KHAN, 2023).

The court is seen as deficient in autonomy and is thought to protect corrupt political actions from legal responsibility. However, the National Accountability Bureau (NAB) was granted significant power to examine and impeach allegations of fraud. However, the lack of resolve from political leaders, together with the apparent manipulation of the legal system and the unpredictable nature of many anti-corruption initiatives, provide significant challenges in tackling the corruption issue. (Shaikh & KHAN, 2023)

A careful examination of the National Accountability Ordinance (NAO) 1999 indicates that it was enacted on November 16, 1999. It applies to all Pakistanis, including those who have served in the Pakistani military. It consists of 37 pieces. It establishes appropriate procedures for the confinement, investigation, prosecution, and prompt resolution of cases involving corruption, corrupt practices, abuse of power, embezzlement of property, kickbacks, commissions, and other ancillary or incidental issues. It is the country's leading anticorruption group. NAO established 21 accountability courts throughout the country. are formed to expedite the prosecution of cases involving corruption, abuse of power, deception, corruption, commissions, kickbacks, and so on.

Prevalence and Magnitude of Corruption

The prevalence of corruption in Pakistan is an open secret and can be weighed on the basis of transparency international reports, number of complaints, the NAB processed and their subsequent prosecutions and convictions, the road, infrastructure projects and daily routine works whereby people are constrained to give bribe (Greece the palms of public servants) and place wheels below the file to get their job done or suffer if they do not give the money.

The departments like, police, revenue, judiciary (especially staff), communication and works department, customs, Inland Revenue, irrigation, health Frontier Constabulary and Rangers are few examples where corruption prevails on daily basis as a "routine" matter and it has not been denied at any level at any stage.

The quantum of daily, monthly and yearly rampant corruption prevailing in the society is difficult to measure as major economy in Pakistan relates to informal and un-documented economy (another form of irony to extract fortune in favorable/ untraceable manner). It was revealed by ex -NAB Chairman Fasih Bukhari that Pakistan suffers an estimated amount of Rs. 12 billion corruption/illicit monies on daily basis, which comes to Rs 240 billion /per month and Rs-4368 billion /per annum.

Tracing un-documented economy and foot prints of money trails embedded with smartness of white-collar criminals and linkages/comradeship of elite class at higher level as well as with judiciary whose competence, integrity and fairness has not been upto the mark, has remained daunting task for the NAB officers.

The corrupt class all over the Pakistan has uniformly devised relevant/hidden terms to facilitate their bribe, kick-backs, dishonesty, commission, misuse of authority which is described in open language as, wheel the un-wheeled file, routine, system, speed money, duniya-dari etc.

RECENT AMENDMENTS TO NAB 1999-FINDINGS and IMPLICATIONS

Crux of Recent Amendment in NAO-1999

The Pakistan Democratic Movement (PDM)-led coalition government effectively adopted the National Accountability (2nd Amendment) Bill 2021 in May 2022, cementing a significant achievement. Their first substantial action of the legislative year was to nullify the retroactive effect of prior legislation. The modifications assured that the protocols for apprehending persons, presenting them in court, establishing terms for release, and deciding the duration of pre-trial confinement were in line with the established norms of customary legal principles. The National Accountability Bureau (NAB) has been granted exemption from legal jurisdiction for procedural errors, distribution of funds for development, and tax disputes. In addition, the changes imposed limitations on public remarks made by Accountability, allowed for acquittals in cases begun with ill intent, and modified the criteria for the selection and dismissal of the Chairman and Deputy Chairman of NAB.

Nevertheless, the National Responsibility Ordinance (NAO) did not include the military and judiciary owing to the unresolved issue of "across-the-board accountability." The adversaries, especially those from the opposing side, saw these modifications as a tactical move used by the coalition government to evade responsibility.

On June 4, 2022, the President of Pakistan rejected the bill and sent it back to Parliament, citing concerns. According to him, the administration breached Article 46 of the Constitution by not seeking his opinion before proposing the legislative measures to Parliament. The President denounced the expedited modifications, asserting that they were implemented without meticulous consideration and without the involvement of the legal profession and civil society. In addition, he noted that the changes effectively made the NAB Act indistinguishable from the CrPC 1898 and denounced them as a "restriction on the procedure of holding individuals responsible." The person voiced concern that these alterations would significantly hinder investigators' capacity to track illegal assets and would not assist ongoing inquiries into serious misconduct. The adjustments were implemented and legally required, notwithstanding the President's resistance.

The National Accountability (Second Amendment) Act, 2022 states that dishonesty charges under the NAO 1999 will only apply if the amount involved in the corruption exceeds Rs500 million. This is the latest iteration. This implies that NAB lacks the capability to conduct corruption investigations involving amounts less than Rs500 million. The opposition strongly criticised this alteration, arguing that it weakened the power of the National Accountability Board (NAB) and essentially put a stop to any attempts to hold individuals accountable. Moreover, a constitutional expert described the changes as a "permit for corruption," expressing discontent with the lawmakers' apparent intention to protect themselves from the anti-corruption organisation.

Furthermore, the NAB Amendment Bill 2023 was passed automatically after a 10-day constitutional period, bypassing the need for the President's signature. The recently implemented legislation grants the NAB Chairman the authority to transfer cases outside his jurisdiction to other entities and carry out investigations even in the lack of definitive proof, despite President Dr. Arif Alvi's attempts to send the measure back for further examination. The revisions also require the CEO to do a thorough evaluation of all ongoing investigations. If the chairman concludes that there is inadequate evidence against a defendant, the case may go to court to request the dismissal of the accusations against the defendant. Furthermore, in the absence of the chairman, the deputy chairman shall take on the responsibilities and tasks of the chairman.

In addition, the NAB (Amendment) Ordinance 2024, a recent legislative decree, has been enforced, extending the period of imprisonment for arrested persons from 14 to 40 days. The NAB chairman has been granted the authority to issue arrest warrants for those who refuse to cooperate during investigations.

A Brief Performance Review of NAB

Since its establishment, the NAB has directly and indirectly recovered 864 billion rupees from corrupt individuals and entities. According to a NAB Report accountability courts have convicted 1,405 individuals and imposed substantial fines as a result of NAB's rigorous prosecution efforts. The overall conviction rate in accountability courts stands at 66 percent.

NAB has received a total of 405,768 complaints since its inception, with 405,212 complaints resolved and 556 complaints currently under examination. The bureau has verified 100,865 complaints, of which 100,425 have been processed, and 779 remain under investigation. Additionally, NAB has conducted 9,883 inquiries, completing 8,953, with 930 inquiries still ongoing. Out of 4,547 investigations initiated, 4,201 have been concluded, while 346 are still in progress. (Shaikh & KHAN, 2023)

Since its commencement, NAB has filed 3,645 references in accountability courts, with 2,398 references disposed of according to the law. Presently, 1,237 references, involving a total value of 1,335 billion rupees, are under trial in various accountability courts. Regarding the 179 mega corruption cases, 93 references are currently under trial, while 68 have been concluded.

Plea Bargain (PB), Voluntary Return (VR)

The bureau has handled 2,330 cases of Plea Bargain (PB) and 3,194 cases of Voluntary Return (VR) up to August 31, 2021. As per NAB's 2022 annual report, total recoveries by December 2022 amount to 891.957 billion rupees. This includes recoveries of 26.556 billion rupees through Voluntary Return (VR), 65.696 billion rupees via Plea Bargain (PB), 121.658 billion rupees from Bank Defaults, 59.709 billion rupees through Restructuring/Rescheduling of Loans, 16.694 billion rupees in the case of PCBL, 57.684 billion rupees from court-imposed fines, and 543.960 billion rupees from indirect recoveries.

NAB's comprehensive efforts highlight its significant role in combating corruption in Pakistan, although the effectiveness and scope of its operations continue to be subjects of public and political debate. (Shaikh & KHAN , 2023)

Mega Cases taken by NAB (as on 14-4-2023)

Pursuant to Supreme Court's directions in their judgement, an account of 179 x mega cases handled by the NAB were presented before the Supreme Court as follows:

Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
1.	Application	"It extends to the whole of Pakistan and shall apply to all persons in Pakistan, and persons who are or have been in the service of Pakistan including areas which are part of Federally and Provincially Administered Tribal Areas"	<p>"Same</p> <p>1. except persons and transactions specified in sub- section (2)</p> <p>2. The provisions of this Ordinance shall not be applicable to</p> <ul style="list-style-type: none"> a. Matters pertaining to Taxation b. Decisions of Federal or provincial Cabinet, their committees and similar bodies c. Person or entity not directly or indirectly connected with holder of public office d. Procedural lapses in any public or governmental work, unless it is shown that monetary or material benefit was received from that Particular work." 	<p>"Same,</p> <p>1. Except persons and transactions specified in sub-section (2)</p> <p>2. The provisions of this Ordinance shall not be applicable to the following persons or transactions, namely:-</p> <ul style="list-style-type: none"> a. Matters pertaining to Taxation b. Decisions of Federal or provincial Cabinet, their committees and similar bodies c. Person or entity not directly or indirectly connected with holder of public office d. Procedural lapses in any public or governmental work, unless it is shown that monetary or material benefit was received from that particular work. e. Decision, Advice, report or opinion rendered or given in the course of duty unless it is shown that monetary or material benefit was received from that particular work" 	<p>"All pending inquiries / investigations required to be transferred will be examined by the Chairman. If he is of the view that <i>prima facie</i> case is made out under any other law, he shall refer the matter to the relevant agency / authority or forum."</p>	"** ele the am vir ser off NA vir ser off NA

2	Definition	"Clause (c) :- Assets means any property owned, controlled by or belonging to any accused, whether directly or indirectly, or held benami in the name of his spouse or relatives or associates, which	"Asset" includes all kinds of property, owned, controlled or belonging to an accused, whether directly or indirectly, or held benami in the name of his spouse, relatives, associate, or any other person,	"Asset" includes all kinds of property owned by or belonging to an accused or held as benami whether within or outside Pakistan;"		
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Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
		[he] cannot reasonably account [for], or for which [he] cannot prove payment of full and lawful consideration"	whether within or outside which he cannot lawfully account for"			

		"Clause (e) :- Benamidar means a person who ostensibly holds any property of an accused on his behalf for the benefit and enjoyment of the accused"		"Benamidar means a person who ostensibly holds any Property of an accused on his behalf for the benefit and enjoyment of the accused. Explanation.—A property shall only be held as a Benami property when the accused has paid the consideration of the property, and holds title documents and possession of the property with the intention and object of executing a Benami transaction."		"Te de Co for De bar ser off 9a(the Pr 19 leg co Am of no NA be Co acc the tan
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Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
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		"Clause (o):- "Offence" means the offences of corruption and corrupt practices [and other offences] as defined in this Ordinance and includes [the offences] specified in the Schedule to this Ordinance."			"Clause (o) :- "Offence" means the offences of corruption and corrupt practices [and other offences] as defined in this Ordinance [of the value not less than five hundred million rupees] and includes [the offences] specified in the Schedule to this Ordinance."	
3	Prosecutor General Accountability		"The Prosecutor General and Special Prosecutors shall render to the Chairman and shall ensure fair, consistent, uniform, and expeditious prosecution of cases protect and accord all lawful rights and interests of the persons. Chairman NAB shall provide Investigation Report to the Prosecutor General and seek concurrence for commencement or continuation of prosecution."		"The service tenure of NAB' prosecutor general can be extended by three Years"	
6(a)		Old Clause (e):- "Chairman National Accountability Bureau" means a person who is appointed as such by the President of the		New clause (f):- —Chairman National Accountability Bureau] means a person who is appointed as such by the Federal		

Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
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		Islamic Republic of Pakistan as mentioned in Section 6 (b) hereafter.		Government as mentioned in section 6 (b) hereafter;		
9	Corruption and Corrup t Practices	"(a) A holder of a public office, or any other person, is said the offence of corruption and corrupt practices (i) if he accepts or obtains from any person or offers any gratification directly or indirectly, other than legal remuneration, as a motive or reward for-bearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person, or"	"All offences under the ordinance shall be non-bailable and notwithstanding the provisions of sections 439, 491,496, 497, 498, 498(a) and 561A of the code, no court other than the court under the Ordinance, shall have the power or the jurisdiction to grant bail to or otherwise release an accused person in a case triable by an Accountability Court. Provided where an accused person is released on bail, the surety amount shall not be less than the alleged Alleged amount."			
		"ii) if he accepts or obtains or offers any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person, concerned in any proceeding or business transacted or about to be transacted by him, or	Nil	Nil	"Provided that as and when the office of the NAB chairman falls vacant, or when the chairman is absent or unable to perform the functions of his office, due to any action whatsoever, the deputy chairman shall act as the NAB chairman and in absence of deputy chairman, the federal	

Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
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		iii) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use, or for the use of any other person, any property entrusted to him,"			government shall appoint an acting chairman from amongst the senior officers of NAB"	
		"iv) if he by corrupt, dishonest, or illegal means, obtains or seeks to obtain for himself, or for his spouse or dependents or any other person, any property, valuable thing, or pecuniary advantage; or"	Nil	Nil		

		<p>"(v) if he or any of his dependents or benamidar owns, possesses, or has 4[acquired] right or title in any 5" ["assets or holds irrevocable power of attorney in respect of any assets] or pecuniary resources disproportionate to his known sources of income, which he cannot 1[reasonably] account for 2[or maintains a standard of living beyond that which is commensurate with his sources of income]; or"</p>	Nil	<p>"If he or any of his dependents or other Benamidars, through corrupt and dishonest means, owns, possesses or acquires rights or title in assets substantially disproportionate to his known sources of income which he cannot reasonably Account for.</p> <p>Explanation I.—The valuation of immovable property shall be reckoned on the date of purchase either according to the actual price shown in the relevant title documents or the applicable rates prescribed by District Collector or the Federal Board of Revenue whichever is higher. No evidence contrary to the later shall be admissible.</p> <p>Explanation II.— For the purpose of calculation of movable assets, the sum total of credit entries of bank account shall not be treated as</p>	
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Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
				an asset. Bank balance of an account on the"		

		"(vi) if he mis-uses his authority so as to gain any benefit or favour for himself or any other person, or 3[renders or attempts to render] 4[or] wilfully fails to exercise his authority to prevent the grant, or rendition of any undue benefit or favour which he could have prevented by exercising his authority];"	Nil	"If he intentionally misuses his authority by dis-regarding law so as to gain any monetary benefit or favour for himself or any other person related to him or on his behalf. Explanation I.—That an act done in good faith and in discharge of duties and performance of official function shall not constitute an offence under this clause. Explanation II. —That nothing shall be an offence of misuse of authority unless it is proved through material evidence that the holder of public office has gained any monetary benefit or asset from the person in whose favour the act of misuse of authority has been rendered. Explanation III. —That the authority of the holder of a public office shall be clearly specified as per the applicable Government rules and"		
		"(vii) if he has issued any directive, policy, or any SRO (Statutory Regulatory Order) or any other order which grants or 5[attempts to grant] any 6[undue] concession or benefit in any taxation matter or law or otherwise	Nil	Nil		

Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
		So as to benefit himself or any relative or associate or a benamidar 1[or any other person] 7"				
		"(viii) if he commits an offence of willful default {; or }]"	Nil	Nil		
		"(ix) if he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860), and thereby dishonestly induces members of the public at large to deliver any property including money or valuable security to any person; or"	Nil	"If he commits the offence of cheating as defined in section 415 of the Pakistan Penal Code, 1860 (Act XLV of 1860) and Provided that nothing shall be an offence under clause (ix) Unless it is established that there was an intention of cheating at the time of initiation of a transaction. Explanation.—The civil and commercial disputes between parties shall not be triable under the provisions of this Ordinance. Illustration I: A runs a Ponzi scheme and gives profit to its investors with intent to allure public. A is said to have committed cheating."		

		"(x) if he commits the offence of criminal breach of trust as defined in section 405 of the Pakistan Penal Code, 1860 (Act XLV of 1860) with regard to any property including money or valuable security entrusted to him by members of the public at large;"	Nil	Nil	Nil		
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Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
		"(xi) if he, in his capacity as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust as provided in section 409 of the Pakistan Penal Code, 1860 (Act XLV of 1860) in respect of property entrusted to him or over which he has dominion; &"	Nil	Nil		
		"if he aids, assists, abets, attempts or acts in conspiracy with a person or a holder of public office accused of an offence as provided in clauses to (xi).; and"	Nil	Nil		
				"(d) The closure of an inquiry or investigation shall be communicated to The accused and such inquiry and investigation shall not be reopened without prior permission of the Court."		

16	Trial of offences	"Prosecution of trial shall be completed within one month period"	"In the section regarding the case management and trial of offences.— (a) Notwithstanding anything contained in any other law for the time being in force, an accused shall be prosecuted for an offence under this Ordinance in the court established under this Ordinance and the case shall be heard day to day and shall be disposed of within six months."				"Se ille in ele an Pa of Am rig pro fro
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Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	
		day and shall be disposed of within six months."				pro fro
				"An amendment to Section 19E, NAB's authority to allow surveillance with the help of high court withdrawn, including any assistance from government agencies."	"Any person called to provide information in relation to an offence will be informed of the allegations against him."	
24	Remand of accused	90 days	14 days	14 days	2024:40 days	

33 E	Recovery of amount of fines					"St leg Se NA co Am pu 25(ind for av Se
			"Section 33 F was inserted according to which prior to filing of a reference, the Chairman NAB, in consultation with the Prosecutor General, having regard to the totality of facts, circumstances and evidence, may partly, wholly, conditionally or unconditionally withdraw or terminate any			
Sec	Section 1 (in Original)	National Accountability Ordinance (NAO) 1999	1 st Amendment 2021	2 nd Amendment 2022	3 rd Amendment 2023	

			<p>proceedings under the ordinance, if such proceedings are unjustified. After the filing of a reference, the Chairman NAB in consultation with the Prosecutor General, having regard to the totality of facts, circumstances and evidence is of the view that the reference is partly or wholly unjustified, he may recommend to the court that the reference may partly or wholly be withdrawn or Terminated."</p>		
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Functional amendment is assessed

Accountability Mechanisms of Four Countries

The accountability systems in Japan, Hong Kong, India, and Pakistan exhibit both positive and negative aspects, with no single model being universally applicable. Key factors influencing the effectiveness of these systems include political will and the public's stance on corruption.

1) Japan

Ranking: Japan consistently ranks high on global anti-corruption indices, such as the Transparency International Corruption Perceptions Index.

Laws and Institutions: While Japan lacks a single independent Anti-Corruption Authority (ACA), its anti-corruption efforts focus on enhancing public service ethics, preventing collusion in public procurement, and protecting whistleblowers.

Implementation Bodies: The Public Prosecutor's Office and the National Police Agency are responsible for investigating and prosecuting corruption cases, ensuring operational independence from interference. The public and the government functions cries have shown their trust over the prevailing anticorruption modernism

2) Hong Kong

History: Hong Kong witnessed a surge in corruption in the past but effectively combated it with the establishment of the Independent Commission against Corruption (ICAC) in 1974.

Independence and Accountability: The ICAC operates independently and is constitutionally protected, with a commissioner appointed for a fixed term by the State Council of China.

Checks and Balances: To prevent misuse of power, Hong Kong has established various oversight mechanisms, including free media, an independent judiciary, and advisory committees. The public and the government functions cries have shown their trust over the prevailing anti-corruption modernism

3) India

Complexity: India employs a multi-agency model to tackle corruption, encompassing numerous public bodies. However, this layered approach has not been entirely effective.

Legislation: The Prevention of Corruption Act (PCA) 1988, along with other laws, forms the legal framework for combating corruption. Efforts to establish the Lokpal, an independent anti-graft ombudsman, have faced delays.

Investigative Bodies: India's anti-corruption efforts involve agencies like the Central Vigilance Commission (CVC), the Central Bureau of Investigation (CBI), and state-level Anti-Corruption Bureaus (ACBs). there is a rarity of review over the functions of the prevailing anti-corruption, mechanism which show positive and negative trends.

1) Pakistan

Challenges: Pakistan faces significant challenges in combating corruption, reflected in its lower rankings on corruption indices.

Legal Framework: Pakistan has various anti-corruption laws and multiple agencies, including an independent Anti-Corruption Authority the NAB. However, the effectiveness of these institutions is debated on the basis of provincial and federal matters and overlapping impacts of varied corruption subjects.

Performance: Despite having multiple mechanisms, Pakistan's accountability system lead by the apex body, the NAB which though shown substantial progress, however, has remained in the limelight due to the arrest of big fishes and prosecution made by the NAB. The Politicians, Law Makers and Elite class in return have made substantial efforts to amend the NAB laws and protect their vested interests

In summary, while Japan and Hong Kong demonstrate effective anti-corruption mechanisms driven

by political will and robust institutions, India and Pakistan face challenges in translating legislation into tangible results, highlighting the complexities of combating corruption in diverse socio-political contexts. (Shaikh & KHAN , 2023)

Year	2016	2017	2018	2019	2020	2021	2022	2023
Pakistan's Corruption Ranking	117	117	117	120	124	140	140	140
India's Corruption Ranking	76	81	78	80	86	85	85	85
Japan's Corruption Ranking	18	20	18	20	19	18	18	18
Hong Kong's Corruption Ranking	18	13	14	16	11	12	12	12

According to Transparency International reports, the Corruption Perception Index (CPI) of Pakistan, India, Japan, and Hong Kong during the last ten years is as follows:

Limitations

Despite efforts to conduct a comprehensive analysis, this study pertains to a sensitive subject of corruptions, prevalent almost all over in the society, it has experienced

several limitations, like reluctance of employees, public office holders and various departments with regard to data collection and references.

Sample Size

For statistical measurements, sufficient *sample size* could not be achieved as mostly people are shy to disclose method and magnitude of corruption, hence, there are limitations to draw valid conclusion...

Discussion

The findings reveal conspicuously with regard to first question that the recent amendments in NAB Laws are made to clip the feathers of the NAB. The Laws are tailored in a way to benefit the nexus of higher public office holders, civil servants and elite class who is involved in larger housing scams in the on-going inquiries, investigations and references worth Rs.1250 billion approximately and subsequently damage the credibility of the NAB investigators who performed diligent duties on behalf of the state.

As regards the research question two, the findings depict that the law makers have not pursued the **structural reforms** in the NAB laws to augment modern/unbiased ways to inquire white collar crimes and as such no amendment has been structured to challenge, the **Policy Implementation** of the NAB authorities with regard to fairness and Code of Conduct as enshrined in NAB Terms and Conditions of Service – 2002 which specifies first and foremost accountability for the NAB **Human Resource**. The legislature while passing the recent amendments in NAB Laws also did not consult the best practices pursued by the **Japan, Hong Kong and India or any other country**, rather these amendments are focused to make inquiries, investigations and filing of references a daunting task for the NAB. The recent amendments in NAB laws, have been made **retrospectively, since 1985** and will likely to promote corruption in the society as **NAB has been placed under the Federal Government reversing its autonomy, corruption cases below Rs. 500 million** will not be investigated,

100 x complainants required for public cheating at large case (mostly against elite capture) and **decisions/opinions** made by the Federal or Provincial cabinets/ forums **given immunity** which are arbitrary to obligations of **United Nations Convention on Anti-Corruption (UNCAC)**.

It is tenable to conclude that the lawmakers have applied their minds to restrain the NAB for probing the corruption cases contrary to developed countries as Pakistan's most economic trends are informal and undocumented. Recently, Supreme Court have found complex web of multiple manipulations in the recent

amendments in NAB Laws and have declared all amendments as illegal on 15 September 2024 for which a review is pending adjudication in the Supreme Court.

The lawmakers during the course of recent amendments in NAB laws did not address the observation made rarely by the court that NAB investigators do not have the competence to prepare investigation reports / references which could entail convictions. Such untenable observations are spread by the bureaucrats, elite capture and subjects of the NAB to diverge and blame the NAB officers, who file NAB reference in the court after exhaustive scrutiny by Investigation Officer, Combined Investigation Team, Regional Board and Executive Board meetings, and it warrants that act/conduct of judiciary may also be aligned, rather a single judge deciding the fate of such reference.

Conclusion

The National Accountability Bureau (NAB) has effectively initiated legal proceedings against certain individuals who hold prominent positions in the government, including public officials, administrators, government staff, and those implicated in corrupt practices of larger housing scams which have entailed multiple negative connotations that NAB officers are not competent to investigate white collar crimes, misuse their authority and are involved in political engineering without any reasonable evidence and considering the strengths of the NAB. In order to enhance the efficacy of the NAB Law whether original or amended, it is imperative that apex anti-corruption body operate independently and is subject to public supervision and foremost subject to accountability. The recent amendments to the NAB Laws aim to terminate current inquiries, investigations, and references worth approximately Rs.1250 billion, thereby undermining the credibility and meticulous work of the NAB professionals who have faithfully fulfilled their duties on behalf of the state.

The frequent amendments in NAB laws 2021 – 2023, are the testimony that the legislators did not cater for the specific and realistic concerns of the politicians, bureaucrats, civil society and judiciary with regard to political engineering and incompetence of the NAB investigators and the reasoning/competence of the courts, rather the motive is to frame laws which may support to make the anti-corruption watch dog a toothless organization and dilute the impetus of the ongoing investigations and references pursued by the NAB authorities.

The history of Pakistan's efforts to eradicate corruption is replete with numerous instances of unsuccessful endeavours to convert good intentions into effective actions. The occurrence of corrupt practices within society has been exacerbated by these failures, to the extent that certain individuals may have little hope or expectation regarding the potential efficacy of the NAB in comparison to previous well intentioned endeavours.

There are two critical questions that must be addressed: What are the factors that have contributed to NAB's success? What are the rationales for advocating for the NAO 1999? In order to enforce the NAO 1999 and success of the NAB, factors like will to combat corruption, perform duties independently and diverse coalition of influential individuals must demonstrate strong commitment and devotion. In order to address the second issue, it is essential to eradicate corruption for the benefit of both individuals and society as a whole. Pakistan's economic, social, and political influence will be enhanced in a corruption-free nation. Additionally, there has never been a more opportune moment in the past 77 years to eradicate corruption. Temporary discomfort may be felt. Individuals who have been influenced by dishonest behaviour and lack of integrity may express opposition to change, particularly if it directly threatens their own objectives.

It is imperative to ensure the robust and diligent implementation of NAO 1999, which should remain a major priority in the foreseeable future, despite the anticipated criticism and resistance. The anti-corruption policy is the primary focus of Pakistan's current priorities.

Investments in Pakistan's endeavours to eradicate corruption necessitate adequate funding. This expenditure will be justified by the economic and social advantages of progressively eliminating corruption.

The National Accountability Bureau (NAB) is without a doubt the most advantageous investment for Pakistan's future and its population. (HAFIEZ, 2002).

It is evident that Hong Kong's corruption management system surpasses all of the established benchmarks following an evaluation of the four countries and their respective strategies. Japan remains susceptible to corruption, regardless of its superior ranking on the TI CPI tables. Japan's superior ranking is due to the fact that its scores on the Transparency International Corruption Perceptions Index (TI CPI) are determined by public opinion. It is evident that Hong Kong has a superior framework for combating corruption, as it surpasses all of the aforementioned indices after evaluating the four countries and their distinctive approaches. Nevertheless, Japan has achieved a more elevated position on the TI. India and Pakistan possess robust anti-corruption protocols; however, they are not well-regarded by the public. Pakistan's National Accountability Bureau was demonstrated after Hong Kong's Independent Commission Against Corruption (ICAC).

Based on the mechanism and experience of Japan and Hong Kong, the following aspects are considered reasonable for a vibrant and independent anti-corruption body/NAB:

- In accordance with obligations of United Nations Conventions on Anti-corruption and to pursue an organized, transparent and economically sustainable society, the state of Pakistan needs an independent anti-corruption body in the country.
- Corruption is strongly ingrained in society and not considered a crime.
- The latest modifications to the National Accountability Act from 2021 to 2023 will have significant impact on the accountability process, perhaps leaving corrupt behaviors to elites which will damage across the board accountability manifolds.
- Remove parallel jurisdictions and establish a single Anti-Corruption Authority to handle all corruption matters.
- Encourage the public to report corrupt practices and conduct.
- Pakistan lacks a federal law governing whistleblower protection and reporting methods. Complete whistleblower protection laws should be enacted and aggressively enforced in order to remove corruption.
- Conviction in corruption case should be announced within shortest possible timeframe (one-month period codified in NAB Law) and the merits and demerits of the investigation / reference must be reasoned in the judgment and all judgements be made public for awareness purpose.
- The NAB should conduct a comprehensive campaign to educate the public about the negative impacts of corruption, rather than making isolated attempts.

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