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Contextualising Corruption in Pakistan*

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Discourse on corruption has lately consumed urban Pakistanis more than perhaps any other national issue in the recent past. In fact there is a discernible pattern over the years where concerns about corruption dominate discourse for some time and then other issues seamlessly take over public imagination. Meanwhile corrupt practices continue in one form or the other, only to raise their head again.

It is useful to note that corruption was mentioned as one of the ailments afflicting territories constituting Pakistan by the founder of the country, Mohammad Ali Jinnah, in his first address to the Constituent Assembly on 11 August, 1947. He said:

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.

That is exactly what the Constituent Assembly did. An anti-corruption law was one of the first items of legislation enacted by the assembly soon after independence, only to be followed by a myriad of laws (see Table 1). However, the perception of Pakistan as a highly corrupt polity and

society persists amongst Pakistanis as well as outsiders even after 62 years of the country's existence.

The obvious question is why in spite of so much concern for so long, has Pakistan failed to effectively reduce corruption? Is it because of lack of effective anti-corruption strategies? If that is so, then it must be ascertained why international or regional best practice cannot be adopted. After all, in some areas, most notably those related to weaponization and warfare, international best practice has been adopted. Or are we to understand that corruption is not the cause but the symptom of socio-political tensions that Pakistan as a nation-state has been unable to resolve over the years?

One can only attempt to answer the above questions once we discern the nature of corruption prevalent in Pakistan along with the form and substance of anti-corruption strategies adopted to combat the problem. Therefore, this article first lays out the contours of corruption in Pakistan by classifying it into three broad categories for analysis and then provides a brief history of existing anti-corruption laws and strategies in the country. It concludes with tentative proposals for more effective and sustainable anti-corruption drives in Pakistan.

Contours of Corruption in Pakistan

Corrupt practices and their impact on citizen welfare can be categorized in several ways over time and across countries. Numerous unethical and illegal practices are termed as corrupt in common parlance. However, there is no perfect overlap between legality and ethics or vice versa.¹ In fact for these very reasons, the UN Convention Against Corruption itself does not provide a succinct definition of the phenomenon. According to the UN, a uniform definition of corruption encountered “legal, criminological and in some countries, political problems.” (UN 2004b, p. 10). This article is going to deal with

facets of corruption that involve transfer of public resources for private gain.

There are three broad areas where the prevalence of corruption needs to be examined in Pakistan. This particular categorization will also help us in assessing the effectiveness or otherwise of anti-corruption mechanisms adopted in the country.

Collusion between private sector and the state

What is commonly referred to as 'rent-seeking' in economic literature occurs when individuals and groups from the private sector interface with the state through a variety of mechanisms to transfer public resources to themselves. The most salient example of this form of corruption in Pakistan has involved land, both through the allocation of state land and in the process of land transactions.

The practice started immediately after partition, when millions of refugees came to Pakistani territory from post-partition India. In the aftermath of the Partition, the state adopted a policy of granting land and housing left behind by migrating Hindus to the incoming refugees in order to honor property 'claims' based on what the latter had left behind in India. Waseem (2002) documents the use of influence and money as a form of patronage by the bureaucrats and politicians in granting such claims. This particular policy resulted in creating a class of 'propertied' migrants and was one of the first forms of 'primitive accumulation' carried out in Pakistan.

The practice of 'land grabs', of both urban and rural land, has continued through a variety of channels over the years. The Acquisition of Land Act (1894) has been modified periodically to facilitate the acquisition of land by government agencies which then sell it off to private developers (colloquially referred to as the 'land mafia').² Residential colonies and commercial ventures developed on such land cater largely to the more affluent sections of society. Therefore the distributional implications of this transfer, mainly from the poor to the rich, are also

self-evident.

Land transactions, as distinct from the land grabs discussed earlier, are also an important conduit for whitening black money acquired through corruption and criminal activities. Due to taxation loopholes, usually more than two-thirds of the money paid in a land or property transaction is unrecorded. Thus even if an honest property seller is to claim the market value of her property, she will be handed a fraction of money which is not declared. This particular practice, which is pervasive, results in large chunks of black money circulating in the economy and a variety of ingenious methods adopted subsequently to 'launder' that money.

Another important form of rent-seeking that has bred corruption over time has occurred due to state control over allocation of resources. In the pre-liberalization period, cases of bribery in acquiring industrial and commercial licenses and later in willfully defaulting on loans acquired from state-owned banks and financial institutions frequently hit the headlines in Pakistan.³

The literature on rent-seeking for development (read industrialization) is divided on its implications. The mainstream view is that not only does state allocation of resources create artificial monopolies (and hence inefficiency), but also that the process of seeking rents itself creates a deadweight loss to the economy (Krueger, 1974). Others have argued that in the early stages of industrialization, it is prudent to allocate resources to sectors which create greater externalities and are geared towards creating dynamic comparative advantage in the long run.⁴ This stream of literature does not deny the existence of corruption in the process but contends that long-run returns to the economy outweigh the deadweight loss incurred in seeking rents. East Asian development is often flagged as evidence of this process of capitalist development (Chang, 1994).

The above form of corruption was prevalent in Pakistan till the economy was liberalized in the early 1990s. Cheema (2002) demonstrates that state-led industrialization did

not bring about the intended outcomes for a variety of reasons. As a result, corruption became an end in itself rather than a necessary means for accumulating capital for productive purposes. He thus concludes that by the end of the 1980s, “economic graft was no longer restricted to funding individual members of the bureaucracy . . . but also included financing key political factions in dominant political parties and the army” (Cheema 2002, p. 32).

However, this does not imply that economic liberalization has eliminated rent-seeking behaviour amongst Pakistan's business elite. Rent-seeking for licenses and quotas has been replaced by unregulated cartels across a range of industries—such as banking, automobile, cement, and sugar sectors—that have served to reduce consumer surplus in the same manner that licensing and quota regimes did earlier.

Corruption and Extortion by State Actors

Agents of the state, across different institutions, engage in various forms of corrupt practices. These range from straightforward bribery and extortion from individuals and businesses to various forms of domestic and international kickbacks on procurement of material and services. For the sake of clarity, we will distinguish between and expand on state-led corruption committed by civil bureaucrats, the armed forces and politicians.

Much of the bribery and extortion carried out by the state is executed through the civil bureaucracy, ranging in value from the petty bribes accepted by the policeman or the building authority clerk to major kickbacks on procurement. Civil bureaucrats are the 'deal executors.' In other words, they are in the loop of all corrupt transactions for the simple reason that they carry out the requisite documentation and are most familiar with all existing rules, regulations, loopholes and lacunae. However, apart from the petty bribes and extortion, the civil bureaucrat is not the sole claimant of big ticket corruption. Over the years, the civil bureaucracy in Pakistan has lost its clout and political power to the

executive presiding over them, whether it is civilian politicians or the military.⁵

As such, the central protagonists in state-led corruption are the military junta and civil politicians who have intermittently controlled executive power in the country. Arguably, civil politicians are more accountable than the military junta for three reasons. First, the logic of electoral democracy itself holds politicians accountable for their misdeeds and lack of delivery to the electorate.⁶ Second, various audit and accountability laws apply to politicians, leaving them relatively more susceptible to legal provisions than their uniformed counterparts. Third, their conduct tends to be more transparent because of their greater interface with the public as well as the media.

The military, on the other hand, is powerful enough to evade public accountability. The military's budget in Pakistan is neither presented in detail to Parliament nor is it thus far allowed to be debated by public representatives. Moreover, not only is the military budget not audited by civilian audit authorities, but to top it all, serving military personnel are also exempt by law from investigation by civil anti-corruption watchdogs (see below for more details). Also, because of the very nature of the civil-military imbalance in Pakistan, investigation and reporting of military 'scandals', as opposed to those of politicians is a much more hazardous proposition for an otherwise free media.

'Institutionalized' Corruption

There are a number of areas in Pakistan where corruption is institutionalized. As mentioned earlier, enough tax and legal lacunae exist through which black money can be laundered. The most salient in this regard is the 'no questions asked' private remittance in foreign exchange. According to this law, an individual can receive any amount of foreign exchange into the country tax-free without being questioned about the source of funds. This is the most common conduit for laundering money made through land transactions (mentioned earlier), tax evasion and criminal activity. In addition to this law,

periodically a window is provided by the state to 'whiten' black money at a nominal rate of taxation.⁷

The other form of institutionalized corruption is land grants given to military personnel. As an entitlement, officers of the armed forces are granted residential, commercial and agricultural land at highly subsidized prices. In the case of residential land, numerous societies developed by the armed forces dot Pakistan's urban landscape where infrastructure is developed largely at state expense while land is allotted to military personnel at subsidized rates, who in turn can sell it at the market rate and extract a hefty premium.⁸ Similarly, developed agricultural land is provided at subsidized rates and in some cases army personnel are deputed to tend the land at state expense.⁹

Another feature of institutionalized corruption in Pakistan is located in the country's covert security and foreign policy. For the last three decades, the Pakistani state has been involved in a number of operations as part of its foreign and security policy. Perhaps the most elaborate has been the country's nuclear program. The confession of Dr. A.Q. Khan in 2004 that he supplied contraband material to other countries in return for cash¹⁰ is perhaps the tip of the iceberg so far as money laundering and clandestine activity for this purpose is concerned. In the formative phase of the program, material and equipment was purchased illegally from the international market. According to Levy and Scott-Clark (2007), this process involved a large number of state and non-state actors that laundered state money for this purpose.¹¹

The other major element in this vein has been the secret operations conducted in Afghanistan and Kashmir by the Pakistani state. Conducting the entire war effort through non-state actors (including training, provision of arms and ammunition as well as logistic support) meant a large chunk of state resources was diverted to them. For the Afghan jihad in the 1980s, covert funding provided by the American CIA and the General Intelligence Department (GID), the external intelligence arm of Saudi Arabia, has been well documented.¹²

According to Gregory (2008, p. 4), "Neither the CIA nor the GID had clear and tight oversight of what the ISI [and by extension the Pakistan military government] was doing with the money or the arms. It has since become clear that the ISI siphoned off hundreds of millions of dollars for its own purposes as well as millions of small arms." This undisclosed transfer of money was laundered through a variety of bank accounts, domestically and internationally.¹³ Nawaz (2008, pp. 372-73) further states that "private Saudi money was also encouraged and these flows used various channels, including the informal network of *Hundi* agents and the *Hawala* system under which funds were delivered speedily and efficiently to specific recipients merely on oral instructions and the use of simple code words."

Apart from channeling foreign money, domestic resources through the budget are expected to have been siphoned off through various informal and illegal means. The actual quantum of the money is less important; what is important is that this money will eventually make its way back through re-laundering into the land and real estate markets as well as other 'legal' and criminal activities.

The most important implication of institutionalized corruption is that the actors involved—be they state or non-state—wield so much influence and power that bringing them under the 'due process' of anti-corruption laws appears virtually impossible. This is because there will always be an imperative to protect big business and state personnel (in the case of covert policy operations) for what may be considered important interests for the state and the economy.

Anti-Corruption Mechanisms and Laws in Pakistan

Apart from regular laws against crime and fraud enshrined in the Pakistan Penal Code (PPC), specific anti-corruption laws in Pakistan date back to the inception of the country. As we see in Table 1, five anti-corruption legislations have been enacted to date.¹⁴ Much of the legislation has

Table 1: Anti-Corruption Legislations in Pakistan

Year	Name of Act	Basic Features	Present status
1947	Prevention of Corruption Act	<ul style="list-style-type: none"> Any public servant who accepts or obtains any undue gratification is liable to be punished under this law 	In force
1949	Public and Representative Office (Disqualification) Act—PRODA	<ul style="list-style-type: none"> This Act provided for the debarring of public and representative office holders found guilty of misconduct¹⁵ 	Repealed
1959	Elected Bodies (Disqualification) Ordinance—EBDO	<ul style="list-style-type: none"> This law applies to persons holding any public office or membership of any elective body In this law, misconduct includes all the offences mentioned in PRODA, in addition to indulgence in 'subversive' activities¹⁶ The punishment prescribed is disqualification from membership of an elective body for a period of seven years. 	Repealed
1997	Ehtesab Act	<ul style="list-style-type: none"> The law applied to political administration as well as public servants (federal or provincial government employees). The law excluded the institution of judiciary and members of the armed forces except in cases when they hold a post in public office. 	Repealed
2000	National Accountability Bureau Ordinance—NAB	<ul style="list-style-type: none"> Investigate corruption against holders of public office or any other person The Chairman NAB or Court under 'plea bargain' (voluntary return clause) may withdraw the case against any accused The burden of proof to prove innocence is on the accused¹⁷ Serving armed forces personnel and judiciary are exempted¹⁸ 	In force

Source: Sardar Muhammad Raza (2000)

Table 2: Anti-Corruption Agencies in Pakistan

Name	Date of Establishment	Jurisdiction	Functions
Anti Corruption Inspection Commissions	1970	Provincial	Check on corruption within the Federal and provincial governments
Federal Investigation Agency (FIA)	1975	Federal	Immigration, financial and cyber crimes, anti-terrorism
National Accountability Bureau (NAB)	2000	Federal	Investigate public and private sector white collar crime

concentrated around politicians. The Prevention of Corruption Act (1947) and the National Accountability Bureau Ordinance (2000) have, however, included bureaucrats and big business in their ambit also.

In addition, there are a number of specialist agencies and bureaus that are dedicated specifically to investigate white collar crime. Presently, there are three specialized anti-corruption agencies listed above. The list provided in Table 2 is in addition to routine investigation carried out by the police and other civil and military intelligence agencies.

The general perception in Pakistan is that in spite of the myriad laws and agencies investigating corruption, white collar crime has increased over time. Moreover, analysts do not consider anti-corruption mechanisms in Pakistan to have been successful. The most common lament is that the above cited laws and agencies are seen to be discriminatory and focused on politicians (in the main) and civil bureaucrats. As such, politicians have often questioned the legitimacy of anti-corruption mechanisms citing it as a form of victimization in a country where civil-military tensions have dominated politics. Their recriminations get further credence from the fact that these legislations consistently exclude the military and

the judiciary. While big business has been intermittently targeted by anti-corruption entities, it has by and large escaped the net for the simple fact that if captains of industry and commerce are seen as 'hounded' by the state, private sector investment will suffer.

Other complaints have essentially centered on capacity and intent issues: lack of adequate training, duplication of effort across bureaus, lack of audit controls, interference from the executive, etc. While the last is a political issue, there is no reason for capacity shortcomings to persist for so long, when ostensibly there is so much focus on corruption.

The Way Forward

That corruption is pervasive and endemic in Pakistan is without doubt. As we have seen not only is it multi-faceted in character, but also unchecked by the proliferation of various laws and bureaus. There is little room for better strategizing on anti-corruption when the existing mechanisms are widely perceived as ineffective and discriminatory as well as compounded by issues of institutional capacity. The issue is thus inextricably linked to the existing socio-political

imbalances in Pakistan.

If Pakistan is to embark on an effective and sustainable anti-corruption drive, some level of agreement across different power brokers is necessary to ensure that accountability occurs across the board. Only then will there be broader societal legitimacy for the fight against corruption. Once such an agreement is reached, a prospective anti-corruption focus should have four components:

Bury the past and start anew: Bringing up corruption cases from the past will open up a Pandora's Box where, given the pervasiveness of corruption, for the process to be perceived as legitimate and impartial, demands will be made for accountability of past transgressions of all sections of the elite. Not only will this be divisive but will be forcefully resisted by those in powerful positions (including formulators of the state's security policy). If catharsis is needed, then a process of truth and reconciliation à la South Africa might be more productive.

Constitutional provision for across-the-board accountability: Create a constitutional body that oversees all aspects of corruption with no group or entity outside its reach, including those with existing constitutional protection as well as members of the judiciary, the armed forces and elements of big business. The creation of such an entity will also justify the duplication in the mandate of several extant anti-corruption agencies.

Capacity enhancement of the Auditor's Office: Enhance the capacity and oversight functions of the Auditor's Office to ensure that corruption is minimized in service delivery, which is most important for the citizen. This would entail expanding the jurisdiction of the Auditor General to military accounts, enhancing the budget of its office and providing training for its personnel.

Bureaucratic reforms: Since the civil bureaucrat is an important element in corrupt practices, incentive-

compatible bureaucratic reform should be carried out, such that a balance between security of tenure and credible penalization for malpractice is created.

Last but not the least, it is important to be mindful of the fact that excessive moralizing on corruption does not generate substantial dividends. As with much else, it is advisable to create institutions that will reduce the incidence of corruption over time.

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Notes

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¹ For instance, granting state land to military officers as an entitlement for military service may be legal but is commonly considered unethical. The flipside is when small vendors encroach footpaths to trade their wares which may be illegal, yet action against them may be seen as victimizing the poor.

² The Acquisition of Land Act (1894) allowed the state to purchase privately owned land for public interest purposes. The law was subsequently altered to allow the purchase of land for industrial use and then for housing and commercial activities. Since housing and commercial activities could not be justified under the rubric of 'public interest,' construction was given the status of industry. Moreover, the Act itself states in Section 23 that compensation for the land will take place at the existing market value rather than any expected change in value due to change in use. But subsequent court decisions have created a situation where "land acquired for bona fide public purpose—such as road construction—tends to be over-compensated while that acquired for private purposes through dubious applications of the law tends to be under-compensated" (Gazdar, 2009, p. 37).

³ See Sayeed (2002) for details on the process of accumulation in Pakistan's industrial sector.

⁴ See Khan and Sundaram (2000) for a detailed discussion on

different forms of rents and the net effect of rents in the process of capitalist development.

⁵ See Cheema and Sayeed (2006), where we have historically traced the loss of bureaucratic autonomy since the bureaucratic reforms carried out by the first PPP government in the 1970s.

⁶ This proposition may be contested in the case of Pakistan, where politicians with a tainted reputation are re-elected time and again. However, the fact that electoral democracy has not had a fair run in Pakistan—in that no incumbent government has gone back to the electorate after a full completion of its term and subjected to a fair election process—has meant that this contention has not been put to a robust test.

⁷ Every few years, the Government of Pakistan announces a 'whitener' scheme where black money can be declared at a minimal rate of taxation. The last time this facility was provided in December 2008 and a flat income tax rate of 2 percent was charged for whitening black money. When the state provides this facility every few years, the incentive structure for those accumulating black money is that they can get the money whitened at a rate of taxation that is lower than those who earn taxable wealth.

⁸ See Siddiqua (2007, Chapter 7) for more details on the process of land grants to military personnel.

⁹ *Ibid.*, p. 185.

¹⁰ Details of the A.Q. Khan clandestine sale of nuclear material are provided in Albright and Henderson (2004).

¹¹ Levy and Scott-Clark (2007, p. 126) report that the Bank for Credit and Commerce International (BCCI) was an important channel through which Pakistani agents used to make payments to suppliers, disseminating funds in over seventy countries. BCCI also allowed its extensive network to be used for the transfer of CIA money intended for the Afghan jihad into the country's nuclear program.

¹² For a small sample of this documentation, see Gregory (2008), Nawaz (2008) and Haqqani (2005).

¹³ According to Levy and Scott-Clark (2007, p.125) the money was held in bank accounts in the BCCI, National Bank of Pakistan and the Bank of Oman (partly owned by the BCCI).

¹⁴ There is another legislation which is on the anvil that is expected to replace the existing National Accountability Bureau (NAB) law.

¹⁵ Misconduct includes bribery, corruption, robbery, favoritism, nepotism, willful mal-administration, misapplication or diversion of public money or any other abuse of official power, position or any other abetment thereof.

¹⁶ These included the preaching of any doctrine or committing any act which contributes to political instability and abuse of power.

¹⁷ See www.sbp.org.pk/1_frame/NAB_Ord_1999.pdf

¹⁸ Baxter, 2004, p.62.