

The Holders of Public Offices (Accountability) Bill 2009
Paper for PILDAT Discussion
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Reading through the Brief on 'The Holders of Public Offices (Accountability) Bill 2009', one is left with no other conclusion but that this Bill is *munafiqat ki benazir misal*. It does not even retain a façade of accountability, and is, therefore, a forerunner to political doom.

If we are serious about a clean government, beyond political lip service, then we must formulate a sustainable policy and stick with it. Each new government should not be allowed the liberty to play around with legislative measures to prevent corruption. We must continue to improve and focus our anti corruption drive for better results, from year to year. Our efforts began with Pakistan Penal Code 1860, followed by Prevention of Corruption Act 1947, then Public Representatives Disqualification Act 1949, Elected Bodies Disqualification Ordinance 1959, Anti Corruption Establishment Act 1961, Federal Investigation Agency Act 1975, Ehtesab Act 1997, National Accountability Ordinance 1999, and now back to Pakistan Penal Code – each government with a fresh mandate – and a fresh anti corruption drive. This will take us nowhere. We require a sustained effort – a slow letting out of the bad blood, perhaps over decades; sudden hemorrhage will kill the patient.

While we consider this latest accountability bill, we should comprehend the ground realities as regards corruption within our political and administrative environment. Based on my experience as Chairman NAB I will make six brief observations:-

1. No one, who holds either money or power, wants any form of accountability. It is only the deprived who seek accountability. The political masters only need a façade of anti corruption for political prudence.
2. Bureaucracy is the single biggest hurdle in fighting corruption.
3. Banks, protected and covered by the State Bank, plunder citizens' money in loan write offs and massive profits. Such was the clout of banks that the National Accountability Ordinance was amended, to prevent NAB from looking into loan write offs and other activities of banks, unless the State Bank reported a case, which never happened.
4. Any anti corruption activity other than prosecution of individuals was a taboo, in the name of safeguarding political and economic stability, whether it was Stock Exchange, Privatization Commission, development projects, earth quake relief or the corporate sector.
5. The most painful was the plundering of the population by all forms of mafias, with full backing of government functionaries, and even policy decisions. These included petroleum products, edible oils, sugar, repeated Stock Exchange scams, land scams, etc, etc.
6. Despondency in media and citizens is of such magnitude that they have given up hope of ever seeing a clean government.

I cannot comment if the situation is now better or worse. But it does not really matter. From here, and wherever that is, we must move forward in a sure and deliberate manner and not permit a slide back, on political whims which give birth to such nationally suicidal documents. There is nothing in the current Accountability Bill to debate or discuss. In our environment, it is a license for a clean sweep of whatever is left in our country. Bureaucrats and administrators are exempt from prosecution, and political masters do not sign any incriminating documents. So how would you target them? Corporate sector has been left out to enable plunder of the population through all kinds of mafias. Banks and financial institutions are excluded. Bank transactions and assets cannot be looked into; loot cannot be frozen and is permitted to be siphoned off. The alleged criminal cannot even be questioned. Where will any evidence come from? Misuse of authority to seek benefit is now to become the fashion, and possession of resources beyond means – the objective, since these are crimes no more. And if, God forbid, one was stupid enough to be caught, he is to be honourably acquitted on return of that portion of loot which slipped his attention. I presume, as a nation, we have finally reached that high station where our concerns are left to Providence. Allah be praised. In our political culture, where corruption is rewarded, what else could one expect?

I would strongly advise that the recommendation drafted and placed at the end of the Legislative Brief not be made. This recommendation states: "The Bill requires serious review and redrafting to ensure compliance with Pakistan's international obligations ..." What you are saying actually is that we accept the Bill, with meaningless amendments for the sake of form. That is what this recommendation will eventually amount to. All the amendments that you suggest will be debated and watered down and at the end of the day "the Bill would have been seriously reviewed" – as desired by you. What else do you expect? The Bill must be thrown out of the window in entirety. Can you repair a house where even the foundation does not exist? And what of Pakistan's International obligations? Do we have any obligation that stands above the heads of our own lot of miserable millions? Our obligation must first be to our own people. At least the Parliament

should know this, if not the Government. This is a trick line added to the recommendation. When the Bill has been amended sufficiently to conform to UN Convention against Corruption (UNCAC), it will be hailed as acceptable; and the issue would then be closed. There is nothing binding in the UN Convention that we cannot slip by. A large number of democracies are doing it. Pakistan's National Accountability Ordinance was a document envied by most anti corruption agencies the world over. Copies were sought in every international conference by other agencies. Our success rate was not equaled by any anti corruption agency other than Hong Kong's. And this was based only on the performance of NAB during the pre democracy years of Gen Amjad.

The National Accountability Ordinance was drafted during the opening year of the Military Government, when it had neither the intent of getting involved in politics nor any understanding of how it works in our environment. The document was, therefore, puritanical in its nature. No political government would ever draft an ordinance which empowered the anti corruption agency in this manner. This same ordinance became a hurdle during the Government's later years of political prudence.

If any meaningful accountability is to be done, we must continue to uphold the National Accountability Ordinance and make necessary changes by building in safeguards, to address our concerns. Now here is a structure which could be modified, even with some redesigning, if you please. If there was something wrong with NAB, it was certainly not the ordinance. This is the only non partisan anti corruption legislation we will ever have, and we should not allow it to be trashed.

Political environment is not going to sufficiently change to allow across the board transparent accountability, in any foreseeable timeframe. In real terms, accountability will continue to remain more of a show-biz than anything substantially meaningful. Ideally, corruption must be tackled first at the highest levels, as this new Ordinance would make us believe. This also conforms to the aspirations of the people. However, in our environment this is not a practical approach. It directly targets the interests of those who hold power and is politically expensive. Deep rooted as corruption is, any broad based tackling will also destabilize the economy. All such high sounding endeavours in the past have failed and a culture of tolerance to corruption is steadily growing. If we are serious in getting our country out of this quagmire and want to move beyond rhetoric and pretensions, we must be **patient** and **forgiving**, but persistent. Anti corruption drive must continue regardless of the hurdles. I have eight recommendations in this regard:

1. Anti corruption must be set as the highest national agenda, and whatever policy is formulated must be given constitutional protection. It is a long drawn affair and no single government can tackle it.
2. Constitute an all parties committee to formulate the anti corruption policy. Take the leading personalities of media and a select group of citizens on board.
3. Treat the anti corruption drive like your strategic weapons program, in terms of secrecy and sanctity. No political government should be allowed to mess with it. They should only cash on it politically.
4. Retain National Accountability Ordinance, with suitable modifications. Doesn't matter what name you give it.
5. A separate anti corruption agency be formed which should be overseen by a group of selected politicians and citizens.
6. Announce that across the board accountability will be done but set a 'doable and selective' agenda.
7. Give immunity to all echelons including and above Provincial Ministers and Grade 20 officials. Keep the senior officials only on reprimand list and prosecute only the very acute cases, with clearance from the Government. Set limits of ingress into corporate and financial sectors. This should be informally and quietly done, so as not to create a political stir.
8. Phase your program in an incremental manner, spread it over two decades. Focus on preventive measures. Slowly build transparency. This must be the core of our anti corruption drive.

This is the only practical solution that I could come up with. Corruption should be slowly made to shrink upwards, cleansing those spheres of governance with which the frustrated masses have to deal on day to day basis. Beyond that, one should not be looking, at this time. Target the middle cadre and then slowly move downwards. Focus on transparency. More can come later. This policy will have at least five positive results:

- 1) It will not directly threaten those in power, and will therefore be sustainable.
- 2) We will escape the possibility of a political and economic upheaval.
- 3) The public will be able to breathe in a less coercive environment.
- 4) The anti corruption drive will bear tangible results gaining confidence of people and will, therefore, take root.
- 5) Growth environment for our youth will improve, giving us greater hope in our future.

Immoral as it may sound, there appears no other way forward. We can debate new policies every few years and pay lip service to anti corruption, continue to lament and blame everyone else around, pray for a benevolent ruler with teeth to descend from the heavens and set us right, continue our favourite pastime of throwing muck at each other and dig up graves in a hope to beautify tomorrow. It is all meaningless. If we are serious in tackling this cancer, which is now possibly in its terminal stage, we must make the best of what we have and move forward. The Holders of Public Offices (Accountability) Bill 2009 is not doing it.

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