

EVOLUTION OF ACCOUNTABILITY LAWS IN PAKISTAN

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ABSTRACT

The British colonial period over the sub-continent of Pakistan and India was based on corruption, favouritism and discrimination. After independence on 14th August 1947, Pakistan inherited corruption, accountability laws and agencies from the colonial era. This study investigates that how the process of making Accountability Laws was further evolved to seize the corruption. It was mainly developed at federal level and almost each Government made their own respective laws with explicit objective that the laws were made to end corruption, corrupt practices and award punishment to the delinquent persons after due process of law. The study discloses that the federating units were also, later on, permitted to make their own respective accountability laws and agencies. The research unearths that the main basis of the accountability laws was the constitutional provisions. The study explores that these laws gave birth to accountability agencies at federal and provincial levels. The study concludes that the accountability laws and agencies failed to keep the country safe from threat of corruption.

Keywords: *Anti-corruption agencies, Corruption, Disqualification, Laws, Public Servant.*

INTRODUCTION

Corruption and accountability have co-relationship and both run simultaneously. One's absence renders other meaningless. A human being is to be made accountable on one's corruption or corrupt practices. Corruption is a symptom that something has gone wrong in the management of the state (Rose-Ackerman & Palifka 2016). Accountability prevents and warns a human being to avoid indulging

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in such practices and actions which may be termed as violation of law and rules. For this, stringent punishments exist since the creation of the mankind on earth. A human being has been created to worship Allah Taala. The Creator of all the creations says in His holy Quran, '[And] I created the jinn and humankind only that they might worship Me' (51:56) (Pickthal, 1983, p. 526). For the creation it is necessary to keep check and balance on their actions and make them accountable. There are various verses of the holy Quran, which emphasise on accountability of human beings. The holy Quran says, 'And whoso doth good an atom's weight will see it then' (99:7) and 'And whoso doth ill an atom's weight will see it then' (99:8) (Pickthal, 1983, p. 561).

A word 'accountability' has been derived from French word 'compter' or 'conter', which means 'to count' or 'to enumerate'. A word accountable is adjective which means responsible; answerable whereas a word accountability is a noun. Accountability existed in every society in one or other shape. It evolved as society began feeling threats and dangerous. The system of punishment and justice also advanced. However, from known history majorly the traces of accountability may be made as far as back in 400 BC in election politics and administrative behaviour of the Athenian states (Matek, 1977).

This paper attempts to discuss the following questions:

1. Whether Pakistan inherited accountability laws and agencies from the pre-partition era and evolved gradually after the independence?
2. How accountability laws were made and enforced at federal and provincial levels separately?
3. Why the accountability laws failed to yield positive fruit for nabbing corruption and corrupt practices?

LITERATURE REVIEW

Hamid Khan a famous lawyer and writer, has critically examined the constitutional development side-by-side political history of Pakistan in his book *Constitutional and Political History of Pakistan*. The book is also important for the fact that it has discussed the constitutional cases from Maulvi Tameezuddin Khan Case and their impact on the legal and constitutional governance of the country. Moeen Cheema (2021) has inked the topics of governance and politics in background of the legal system of Pakistan. It covers colonial and post-colonial periods in book *Courting Constitutionalism: The Politics of Public Law and Judicial Review in Pakistan*. It contains roots of legal system sprouts from the constitution of Pakistan, Judicial activism and impact of judicial review on legal and constitutional history of Pakistan. Sprauge (2020) in his book entitled *Pakistan Since Independence: A History, 1947 to Today* has discussed political history and imposition of various martial laws in the country. The book contains account of such history period wise from independence and partition to General Musharraf. Part III of the book mentions event of 9/11 attacks and its impact on Pakistan.

RESEARCH METHODOLOGY

The article traces the roots of evolution of accountability laws and establishing agencies in both the periods i.e. pre and post-partition of the sub-continent. Therefore, qualitative research method was opted to complete the task. Moreover, secondary source of qualitative research method i.e. books, research journals and material available on internet was adopted aimed at making the study comprehensive and effective.

DISCUSSION AND ANALYSIS

There are various types of accountabilities. These include but not limited to administrative accountability, audit accountability, business accountability, bureaucratic accountability, ethical accountability, financial accountability, government accountability,

media accountability, political accountability and representational accountability. Media accountability may further be divided into three types i.e. electronic media, print media and social media. The basic spirit of all types of accountabilities is common and that is to keep check on activities of a human being and resources under his use whether they are processed in accordance with the relevant laws, rules and good social practices.

The United Nations is a single forum of international community having participation without discrimination of religion, community, creed and race. It found its existence in 1945 after the World War II. Currently, one hundred and ninety-three countries are members of the United Nations. The United Nations has dealt with the challenges being faced by the mankind, other creatures and the earth planet itself. In order to redress and minimise the threats the United Nations adopt various strategies. The United Nations has passed various conventions including United Nations Convention against Corruption. The Convention is aimed at strengthening and promoting measures to prevent and combat corruption more effectively and efficiently. The article 7 (1) and article 30 (8) of the Convention deals with the recruitment and other matters pertaining to the international civil servants. It interalia provides, 'Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials' (UNCAC, n.d).

Pakistan signed the convention on 9th December 2003 and ratified it on 31st August 2007. It declared at the time of the signing that it does not consider itself bound by the provisions of paragraph 2 of article 66 and does not take the Convention as the legal basis for cooperation on extradition with other States parties pursuant to article 44, paragraph 6 (Noman,2021). Pakistan inherited corruption and anti-corruption laws from the colonial era. The British occupation of the Indo-Pak sub-continent survived and continued due to various

reasons including bribing the local people to win their support and loyalties.

The founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah in his letter written to Isphahani in July 1943 stated, "Corruption is a curse in India, and amongst Muslims, especially the so-called educated and intelligentsia" (The NEWS, 2021). The Quaid-e-Azam in his address to the Constituent Assembly of Pakistan held corruption as a curse for newly independent Muslim country and termed it as a poison, which must be put downed as soon as possible by the legislature Assembly.

A word 'LAW' stands for Legal Administration of Whip. Legal Whip is prepared by the legislature, enforced by judicature and implemented by executive. The punishment is administered / awarded to an accused after due process of law and once commission of a crime is proved. There are various types of Laws include accountability laws. The accountability laws, repealed or enacted, in Pakistan may be divided into two categories i.e. before and after the partition of the sub-continent. A few laws continued after independence of Pakistan. Such important laws include Pakistan Penal Code 1860, Criminal Procedure Code 1898 and Prevention of Corruption Act 1947.

The legislature passed the Prevention of Corruption Act 1947 and it received assent of the Governor General on 11th March, 1947. It was passed for more effective prevention of bribery and corruption. Section 2 of the Act provides definition of a Public Servant as mentioned in Section 21 of the Pakistan Penal Code 1860. Section 1 (1) of the said Act provides its application to all the citizens of Pakistan and persons in the service of Government wherever they may be (acepunjab.gov) The provincial anti-corruption agencies and Federal Investigation Agency (FIA) take action, in their respective jurisdiction, against a public servant or person under this Act read with the PPC. Main relevant sections of the PPC are 161, 162, 163, 164, 165 and 165-A.

The British government established federally controlled Special Police Establishment in the sub-continent in 1942 during the World War II. It mainly came into existence to investigate in corruption rampant in the Supplies and Procurement Department (Pakistan Intelligence). It was aimed at nabbing corruption and investigating crime against the British Empire or the general public (Muhammad, 2017).

This police establishment was renamed as Pakistan Special Police Establishment after the creation of Pakistan. It was, with the passage of time, mandated apart from the investigation of offences of bribery and corruption of central government employees. It was also authorised to investigate offences in respect of Acts which include Official Secret Act 1923, Foreign Exchange Regulation Act 1947, Passport Offences Act 1952 and Customs Act 1959 (Pakistan Intell.). The Government of India Act 1935 was adopted as an interim constitution with certain modifications by the constituent assembly until the enforcement of the new constitution (Kanwal, Asghar, & Massarrat, 2012).

The Section 100 of the Government of India Act 1935 contained three lists i.e. Federal Legislative Law, Provincial Legislative Law and Concurrent Legislative Law. The federal legislature was to make laws on items contained in first list whereas the provincial legislature was empowered to legislate on the items enumerated in second list. Both the legislatures could make laws on the subjects mentioned in third list. All the lists were placed in seventh schedule of the Act (Act 1935). The criminal law and criminal procedure were placed at S.No. 1 & 2 respectively in the Concurrent Legislative List on which the central and the provincial legislatures could make laws (1935). These powers of the federal legislature and provincial legislature continued after independence of the country.

The first constituent assembly passed the Public and Representative Officers (Disqualification) Act (PRODA) in January 1949. It was given effect from 14th August 1947 and politicians could be disqualified for as long as 10 years (Shah, 2016). It empowered the Governor General,

provincial Governors and even ordinary citizens to lodge a complaint against a minister or elected official suspected of corruption, nepotism, favouritism or mismanagement. The constituent assembly repealed PRODA in 1954. The history of Pakistan took new turn in 1958 when then Field Marshal General Muhammad Ayub Khan imposed martial law in the country on 7th October 1958 and assumed the office of the President. He revived PRODA which the constituent assembly had abolished prior its dissolution in 1954 (Neubery, 1995).

The President General Ayub Khan promulgated Public Offices Disqualification Order (PODO) in 1959. It could be used to demote or sack civil servants on the charge of corruption, subversive activities and misconduct. Over five hundred officers were retired or removed from office (Shah, 2014). He also issued Elective Bodies Disqualification Order (EBDO) on 7th August, 1959. It broadened the interpretation of corruption and misuse of powers. This law permitted existing and former elected officials suspected of “misconduct” could choose to retire from public life or be tried by the special courts (Sprague, 2020). It barred Firoz Khan Noon from the electoral politics (Korson, 1974). Under the EBDO 75 politicians were disqualified for participating in politics for the period of eight years.

The President General Ayub Khan resigned from his office on 25th March 1969 and transferred power to Army Chief General Agha Muhammad Yahya Khan (Hossain, 2010). He assumed the office of the President on 1st April, 1969. On 9th April, 1969 the Chief Martial Law Administrator promulgated the Provisional Constitutional Order which provided that the state of Pakistan would be governed as nearly as may be possible with the latest constitution despite abrogation of the constitution (Muhammad, 2017). The President General Yahya Khan, in a broadcast on 28th March 1970, made announcement of end of One Unit by 1st July in West Pakistan. Thus, the provincial status of the Punjab, the KPK and Sindh was restored. Moreover, Balochistan was given a status of a province.

After dissolution of one unit and declaring Balochistan as a separate province, the Provincial Assembly of Balochistan came into existence

under a Presidential Order on 30th March, 1970 (pabalochistan.gov). Since independence of the country, first ever general elections were held on the basis of adult franchise on 7th December 1970. The Legal Framework Order 1970 contained 313 seats for the National Assembly of Pakistan out of which 300 seats were reserved for general seats and 13 reserved for women (Chaudhry, 2011). Awami League emerged as the largest party in East Pakistan, which won 160 out of 162 seats where as in the western wing of the country, Pakistan People's Party secured 81 out of 138 seats. On 16th December 1971, East Pakistan emerged as an independent country of Bangladesh. In rest of Pakistan, a civilian government [headed by Zulfikar Ali Bhutto of PPP] assumed the power in December 1971 as it had secured majority in 1970 general elections. It gave the nation an interim constitution in 1972. The National Assembly passed constitution on 12th April 1973 which took effect from 14th August 1973 (Senate Pakistan).

For the evaluation of the federal and provincial accountability, laws in the light of the constitution 1973 it is necessary to first highlight the constitutional relationship of federal and provincial governments. The Majlis-e-Shoora (Parliament) of Pakistan passed Eighteenth Amendment to the constitution 1973 in 2010. It amended 102 articles of the constitution. This amendment is important for devolving legislation to the provincial legislatures on various items. The amendment abolished Concurrent Legislative List and continued Federal Legislative List in Fourth Schedule of the constitution. Article 142 of the constitution contains domain of the Majlis-e-Shoora and the provincial legislatures for the legislation. Article 142 (a) assigns exclusive power to the Majlis-e-Shoora for making laws with respect to any matter mentioned in the Fourth Schedule. Article 142 (b) empowers the Majlis-e-Shoora and the provincial legislatures to make legislation on criminal law, criminal procedure and evidence. Article 142 (c) contains jurisdiction of the provincial legislatures to make laws on the matters not enumerated in the Federal Legislative List (Zaka, 2019). The legislative empowerment of the provinces through Eighteenth Amendment was momentous development in the constitutional history of Pakistan. To further understand the

legislative relationship between the center and the federating units, a few other articles of the constitution 1973 require to be discussed.

In the context of article 142 (b), article 143 of the constitution provides that in case Act of a Provincial Assembly is repugnant to the Act legislated by the Majlis-e-Shoora then the Act passed, whether before or after the Act of the Provincial Assembly, by the Majlis-e-Shoora shall prevail. Article 144 authorizes the Majlis-e-Shoora to make laws in respect of any matter not enumerated in the Fourth Schedule on the resolution passed by one or more Provincial Assemblies (Zaka, 2019, p.128).

Article 146 of the constitution confers powers of Federation on the Provinces in certain cases. The Federal Government with the consent of the Government of a Province may entrust powers unconditionally or conditionally to that Government or to its officers, functions in relation to which the executive authority of the Federation extends and confers powers and impose duties upon a Province or officers and authorities in respect of matters to which a Provincial Assembly has no power to make laws (Shah, 2020). Article 147 deals with power of the provinces to entrust functions to the federation. The provincial government, with the consent of the federal government, entrust, conditionally or unconditionally, latter government or to its officers functions in respect of the executive authority of the provinces extends subject to condition that the provincial government shall get entrustment of functions to the federal government ratified from the provincial assembly (Shah, 2020, p.181).

The Majlis-e-Shoora (parliament) passed the Federal Investigation Act 1974. The Act has application to whole of Pakistan and all citizens of Pakistan and public servants wherever they may be. It repealed the Pakistan Special Police Establishment, 1948 and the Special Police and Provincial Police (Amalgamation) Order, 1962. The schedule appended with the Act contains more than thirty laws including Prevention of Corruption Act 1947 and the Official Secret Act 1923 (fia.gov).

Pakistan received two different laws of accountability in late 1970s. The Holders of Representative Offices (Prevention of Misconduct) Act 1976 was notified in official gazette on 9th January 1977 and was enacted in the country. The Parliament and Provincial Assemblies (Disqualification for Membership) Order 1977 was issued and enacted in November 1977. According to section 2 (a) of the Order 1977, holder of representative office included office of the President or Governor or the office of Prime Minister, member of President's Council of Ministers, Federal Minister, Minister for State, Attorney General, Chief Minister, Provincial Minister and member of national assembly, senate or provincial assembly and advocate general etc. Article 8 of the Order extended right of appeal (nasirlawsite.com).

Next accountability law was passed by the Majlis-e-Shoora, which was called the Ehtesab Act 1997. It was applicable to holders of public offices. The section 2 (i) of the Act provided definition of public officer holders which included President, Prime Minister, Governor, Speaker, Chairman Senate, Federal Ministers and holder of office or post BS-18 or above in the service of Pakistan etc. Section 3 of the Act contained definitions of corruption and corrupt practices (na.gov). The chairman, Human Rights Committee of Pakistan Bar Council headed by Rana Riaz Ahmed Khan rejected it and demanded to hold referendum on the Act (Muhammad, 2017). Benazir Bhutto ex-prime minister of Pakistan and her spouse faced more than dozen cases under the said Act and in case of conviction they would have been disqualified from being a member of parliament (Cheema, 2021).

Within two years, another accountability law found its existence in the country. In 1999, elected prime minister, Nawaz Sharif was deposed by the then Chief of Army Staff, General Pervez Musharraf who assumed the reigns of the country. Interestingly, he did not impose martial law but began his civilian government as Chief Executive of the country. He promulgated National Accountability Ordinance 1999. The said Ordinance was protected firstly through seventeenth amendment and then eighteenth amendment to the constitution 1973 of Pakistan. It repealed the Ehtesab Act 1997.

It introduced a few new features in the criminal justice system of Pakistan. Among them concepts of plea bargaining and voluntary return are the most prominent. There was no statutory provision in law of the country permitting the application of plea bargaining until enactment of National Accountability Ordinance in 1999 (Baxter, 2004). It gave accountability process effect from 1st January 1985. The Ordinance provides that National Accountability Bureau will deal with all cases of corruption, corrupt practices and wilful default in payment of loans (Maluka, 2004).

Each provincial Government made and promulgated their respective anti-corruption laws. Before dissolution of one unit in the West Pakistan in 1970, there were two provinces of the country i.e. West Pakistan and East Pakistan. East Pakistan Anti-corruption Act 1957 and West Pakistan Anti-corruption Establishment Ordinance 1961 were enacted in each province respectively. The latter law is still applicable in the provinces of the Punjab and the Khyber Pakhtunkhwa. The Sindh Enquiries and Anti-Corruption Act, 1991 was enforced in the province of Sindh. The province of Balochistan also enacted its own the Balochistan Enquiries and Anti-Corruption Act, 2010

The Federal Investigation Agency and the provincial anti-corruption agencies take cognizance of criminal misconduct defined in section-4 of the Prevention of Corruption Act 1947 co-related with mainly the section 161 and section 165 of the Pakistan Penal Code 1861. This Act is aimed at nabbing corruption but it lacks the definition of a word *corruption*. The National Accountability Ordinance 1999 is outcome of the one-man wisdom, which was given effect retrospectively from 1985. Muhammad Nawaz Shareef was elected as Chief Minister of the Punjab in 1985. He became Prime Minister of Pakistan in 1997 second time. He removed General Pervez Musharraf from the office of Chief of Army Staff and elevated General Ziauddin as an army chief on 12th October 1999. On assuming the governance of the country probably General Pervez Musharraf wanted to take revenge from the deposed premier of the country and enacted 1999 law. As it was based on

revenge, thus, it is said that the said law has not achieved its objectives. Moreover, it appears that the law has been used as a tool against the public office holders and has failed to yield the desired results.

CONCLUSION

Pakistan inherited some bad practices from the colonial period. Corruption was one of them. Accountability laws inherited or made after the independence failed to establish healthy Accountability Framework. Despite accountability laws and agencies corruption flourished because mainly implicit motive of making such laws was to take revenge, thus, the laws failed to bear positive fruit.

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